

(2011) 12 KAR CK 0278

In the Karnataka High Court

Case No : Writ Petition No. 36239 of 2011 (S-RES)

Gundappa M. Kummur

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Citation : (2012) 1 KarLJ 494

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R. Padmanabha and Sri S. Thyagaraja, for the Appellant; Manjula R. Kamadolli, High Court Government Pleader, Sri Deviprasad Shetty for M/s. Jayakumar S. Patil, Associates and Sri K.G. Shanthappa, for the Respondent

Judgement

Anand Byrareddy, J.—I.A. No. I of 2011 is filed by respondent 5 contending that the petitioner herein has questioned the validity and correctness of the communication dated 15-3-2011 issued by respondent 3 and the order dated 3-9-2011 passed by respondent 2 produced at Annexures-J and K respectively, relating to the appointment to the post of Principal in the Pre-University College, Jade, run by the fourth respondent-Management, apart from other directions and other reliefs sought, to the effect that respondents 1 to 3 ought to accord approval to the promotion as alleged to have been granted to the petitioner by the fourth respondent as Principal and to reckon the past services from the date of his initial appointment upto the date of approval with aid and for other consequential benefits.

2. This Court had ordered emergent notice on the petition to the respondents and had also passed an interim order directing the fourth respondent not to disturb the petitioner from the post of incharge Principal, in case he had not been relieved as on 29-9-2011.

3. It is contended that the fourth respondent is a Private Aided Educational Institution running the Pre-University College in question, wherein both the fifth respondent and the petitioner are employed. The fifth respondent is said to hold

a Masters Degree and was appointed on 30-3-1990 as a Lecturer in Geography and admitted to salary grant on 15-2-1994. Whereas, the petitioner has been admitted to salary grant on 29-6-1995 and appointed on 28-3-1990 and is working as a Lecturer in Economics. Therefore, it is contended that the fifth respondent is senior to the petitioner herein and after the Principal's post became vacant on retirement from the previous incumbent with effect from 31-3-2011, the petitioner was placed incharge of the post by the fourth respondent, which according to the fifth respondent was contrary to the Rules and was without authority of law and subsequently, it is alleged that the petitioner has been shown favour in contravention of Rule 21 of the Karnataka Pre-University Education (Academic, Registration, Administration and Grant-in-Aid etc.) Rules, 2006, to fill up the post of Principal against a sanctioned vacancy overlooking the seniority of the fifth respondent when he is legally entitled to it and further a proposal is made seeking approval of the petitioner's appointment as Principal, without notice to the present respondent 5. Therefore, the second respondent has sought through the third respondent to secure a proposal of the candidature of the fifth respondent, by an order dated 15-3-2011 based on the communication, wherein it is also observed that the fifth respondent appears to be deserving to be shown at Sl. No. 1 in the Attendance Register, since he was Senior from the date of admission to salary grant in compliance with the Rules. It is therefore urged in the application that the petitioner is not entitled for promotion to the cadre of Principal based on a resolution dated 5-4-2011 and the relieving letter dated 31-3-2011 issued by the fourth respondent-Management, which is clearly in violation of the law and overlooking the seniority of the fifth respondent and when the petitioner is junior to him and hence the directions now issued which are sought to be challenged are in order and therefore, the interim order of stay granted earlier ought to be vacated and further steps, as proposed by the second respondent, should be taken in order to address the seniority of the fifth respondent vis-a-vis the petitioner and to take a decision in accordance with the Rules.

4. The learned Counsel for the petitioner, however, would contend that the positive direction issued by the second respondent to place the fifth respondent at Sl. No. 1 in the Attendance Register on the assumption that he is senior to the petitioner and that, he should be considered for the candidature to the post of Principal overlooking the petitioner's candidature, is a foregone conclusion and therefore, would submit that the impugned order is rightly kept in abeyance by this Court, while directing that the petitioner shall not be disturbed from the post of Principal, which he is holding.

5. The learned Government Pleader, on the other hand, would submit that the petitioner has been only placed incharge of the post of Principal and as rightly stated by the second respondent, a proposal requires to be sent by the Management with due regard to the seniority of the candidates namely, the petitioner and the fifth respondent and it is thereafter to be considered in accordance with the Rules and the petition is therefore, premature and seeks to

stall the legitimate procedure which has to be taken up in accordance with the Rules.

6. Having regard to the rival contentions, it is apparent that the direction issued by the second respondent is sought to be construed as an order which has spent itself out, in that, the petitioner claims that he has been appointed as a Principal and therefore, the direction now issued seeking to displace him, would result in injustice. This is however not tenable, as rightly pointed out by the learned Government Pleader as well as the Counsel for respondent 5. The direction is only intended to direct the Management to act in accordance with the Rules in considering the candidature of the fifth respondent vis-a-vis the petitioner and therefore, the Management would have to take steps in accordance with law and in terms of the direction issued by the second respondent. There is no illegality or irregularity in the same. Accordingly, the interim order granted as on 29-9-2011 stands vacated and the petition itself is disposed of, as being premature, in the light of the above circumstances.