

(2005) 07 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No's. 8148-49 of 2003

Jayashree Rajappa Terdal and Another	APPELLANT
Vs	
The Registrar, Karnataka University and Others	RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Karnataka State Civil Services Act, 1978 — Section 3 (1), 8
Karnataka Universities Act, 2000 — Section 57, 57 (3)

Citation : (2005) ILR (Kar) 4242 : (2005) 6 KarLJ 12 : (2005) 4 KCCR 254 SN

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; N.B. Bhat, for R1 and Rosa Perumal, HCGP for R2, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—The two un-successful candidates who have not been selected for the post of peon/watchman under the Karnataka University which is arrayed as party respondent No. 1 being represented by the Registrar, are before this Court challenging the Select List. They have sought for a declaration that the action of respondent No. 1—University in calling for a written test and for an interview while making appointment to the post of peon/watchman and in selecting respondents 3 to 21 as arbitrary, illegal and violative of article 14 of the Constitution of India and for a further declaration that the said action is contrary to the Special Recruitment Rules, 2001.

2. The facts that are relevant for the purpose of examining the grievances of the petitioners can be set out. The 1st respondent—University issued a notification on 5.10.2002 calling for applications to fill up the back log vacancies existing in the University. Annexure-A is the said notification issued on 5.10.2002. The filling up of the back log vacancy was undertaken in accordance with the Government Notification dt. 21.11.2001 which has been published notifying the Rules known as the Karnataka State Civil Services (Unfilled Vacancies Reserved for the

persons belonging to the Scheduled Caste and Scheduled Tribe) (Special Recruitment) Rules 2001. These Rules have been framed in exercise of the powers conferred by Sub-section (1) of Section 3 r/w Section 8 of the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) by the Government of Karnataka. The provisions which are relevant for the purpose of this case are contained in Rules, 3, 5 & 6. They are usefully extracted hereunder:

"3. Age: Notwithstanding anything to the contrary contained in the Karnataka Civil Services (General Recruitment) Rules, 1977, or the rules of recruitment specially made for recruitment to any service or post, the candidates for recruitment to any service or post, under these rules must have attained the age of eighteen years but not attained the age of forty years.

4. ...

5. Mode of Recruitment:

(1) Notwithstanding anything to the contrary contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 or the rules of recruitment specially made for recruitment to any service or post, recruitment under these rules shall be made by the Selecting Authority.

(2) The Selecting Authority shall, for recruitment to the category of posts referred to in Rule 4, cause to invite applications from the candidates possessing the qualification by publishing in the Official Gazette and in more than one widely circulated regional newspapers, of which, at least, one shall be in kannada.

6. List of Selected Candidates:

(1) The Selecting Authority shall, from among the candidates who have applied in pursuance to the publication inviting applications under Rule 5 and who have attained the age of 29 years but not attained the age of 40 years, prepare a list of Candidates for each category of posts in the order of merit on the basis of percentage of total marks secured in the qualifying examination and taking into consideration the reservation for women, ex-servicemen, physically handicapped and project displaced persons in accordance with the Karnataka Civil Services (General Recruitment) Rules, 1977 and the rural candidates in accordance with the Karnataka Reservation of Appointments or posts (in the Civil Services of the State for Rural Candidates) Act, 2000. If however, sufficient number of candidates, who have attained the age of 29 years but not attained the age of 40 years are not available, the candidates, who have attained the age of 18 years but not attained the age of 29 years shall also be included in the select list in accordance with the provisions specified above to the extent of such insufficient number.

Provided that if two or more candidates have secured equal percentage of total marks in the qualifying examination, the order of merit in respect of such candidates shall be fixed on the basis of their age, the one older in age being placed higher in the order of merit. The number of candidates to be included in

such list of eligible candidates shall be equal to the total number of vacancies notified under these rules.

(2) The list prepared in accordance "with Sub-rule(1) shall be published in the Official Gazette and shall be valid till all the candidates suitable for appointment notified under these rules are appointed,"

3. In this case we are concerned with the mode of recruitment which is required to be adopted for the purpose of filling up the backlog vacancy in terms of the Rules framed as per the Special Recruitment Rules, 2001, referred to supra. As can be seen from the opening expression used in Rule 3 it starts with a non abstained clause stating that notwithstanding anything to the contrary contained in the Rules of recruitment for the purpose of filling up the unfilled vacancies existing, the provisions of these Rules shall apply. Again a perusal of Rule 5 makes it clear that the mode of recruitment to be adopted is the one that is stipulated in these Rules notwithstanding anything to the contrary contained in the General Recruitment Rules, 1977 or the Rules of Recruitment especially made. Rule 6 of the Special Recruitment Rules deals with the preparation of the list of selected candidates. A perusal of the same would show that the applicants who have applied pursuant to the publication inviting applications and who have attained the age of 29 years but not attained the age of 40 years shall be entitled for being considered in each category of posts in the order of merit on the basis of percentage of total marks secured in the qualifying examinations. If sufficient number of candidates who have attained the age of 29 years but not attained the age of 40 years were not available, the Rules permitted consideration of the application of those who have attained the age of 18 years but not attained the age of 29 years. There is no provision made under the Special Recruitment Rules for conducting any interview. The marks obtained in the qualifying examinations was determinative for selecting them subject to the condition that they satisfied the age requirements and other requirements pertaining to the reservation in different categories like women, physically handicapped etc.,

4. Respondent No. 1-University issued a notification dt. 6.10.2002 calling for applications in the prescribed form from the eligible candidates for the purpose of filling up the backlog vacancies in the non-teaching category. A copy of the said notification is produced at Annexure-A. This notification makes reference to the Government Order/the Special Recruitment Rules. In the column pertaining to the mode of recruitment, the Notification advertising the posts reveals the mode of selection provided under Rule 6 of the Special Recruitment Rules. It unmistakably notifies the public that the select list of candidates would be prepared in the order of merit on the basis of percentage of total marks secured in the qualifying examination. There is no mention made of any interview to be held or for that matter the number of marks earmarked for such interview.

5. Pursuant to this notification, the petitioners 1 and 2 herein have applied for the post of watchman/peon. The 1st petitioner has passed the qualifying

examination namely the 4th standard by securing 80% marks and she is aged about 39 years. Likewise, the 2nd petitioner has secured 95.25% of marks in the qualifying examination and was aged about 39 years 4 months when the application was submitted. Both of them belong to Scheduled Caste category.

6. It is the case of the petitioners that the respondent-University which was required to make the selection in accordance with the criteria indicated in the advertisement and as also the method stipulated in the Special Recruitment Rules has adopted a novel method of introducing oral test only to pick a favoured few so as to enable them to discard and reject the otherwise meritorious candidates. This according to the petitioners was impermissible. The petitioners demonstrate by referring to the method of selection adopted, that persons who have secured for less marks and are far behind in merit in the qualifying examination than the petitioners, have been selected by giving inflated marks in the so called interview. It is their case that the petitioners are the most eligible candidates and have the sure chance of getting selected had the criteria mentioned in the Rules and the notification advertising the posts been adopted and adhered to. It is therefore their grievance that the entire selection process is vitiated being opposed to the Rules and Regulations and the notification advertising the posts. In this back ground, the petitioners have sought for a declaration that the selection made is contrary to the Special Recruitment Rules, 2001. They have also sought for quashing the impugned select list produced at Annexure-D in so far as it relates to the post of peon/watchman.

7. The respondent-University has filed the statement of objections contending that according to Section 57(3) of the Karnataka Universities Act, the Board is enjoined with an obligation to prepare a list of candidates for appointment to the direct recruitment vacancy arranging the names in the order of merit being determined on the basis of the percentage of marks obtained by them in the qualifying examinations and the marks awarded in the interview. It is the contention of the University that since the Act mandates that the candidates have to be interviewed and the marks shall be awarded in the interview, even if there is no provision in the Special Rules of 2001 to conduct an interview, the University is bound to interview the candidates and award marks in compliance with the requirements of the Act. It is further contended by the University that the Act passed by the Legislature shall prevail over any statutory Rules issued by the Government by way of notification. The University has also made available the select list of candidates disclosing the marks secured in the qualifying examination and the marks assigned in the interview.

8. The State which is also a party to these petitioner has filed the statement of objections contending principally that the respondent-University ought to have adopted the procedure prescribed under the Rules (Special Recruitment Rules) and the procedure adopted by the University to conduct any test and assign marks based on that test was apart form being uncalled for was impermissible.

9. I have heard the learned counsel appearing for the petitioners Sri F.V. Patil and

the learned counsel appearing for the respondent-University Sri N.B. Bhat and as also the learned Government Pleader.

10. The only point that arises for consideration in these writ petitions is as:

"Whether the method adopted by the University introducing additional test by way of interview to assess the merit of the candidate is in accordance with law?"

11. It is an undisputed fact that the recruitment is made as a special measure to fill up the unfilled back log vacancies pursuant to the special provisions made in the Rules called the Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging to the Scheduled Caste and Scheduled Tribe) (Special Recruitment) Rules, 2001. In fact, the advertisement issued by the respondent-University called for the posts makes a clear mention to these Rules and the mode of recruitment. The column pertaining to the mode of recruitment as published and notified in the advertisement, the criteria mentioned is the same as the one stipulated in Rule 6 of the Special Recruitment Rules. No mention is made of any interview to be held. Section 57 of the Karnataka Universities Act, deals with appointment of non-teaching, ministerial and other staff. Sub-section 3 and 4 are the relevant provisions which are usefully extracted hereunder;

"(3) The Board shall prepare a list of candidates for appointment to the direct recruitment vacancies arranging the names in the order of merit being determined on the basis of the percentage of marks obtained by them in the qualifying examination and the marks awarded in the interview.

(4) While preparing the select list under Sub-section (3)m the Board shall follow the rules or orders issued by the State Government from time to time in the matter of reservation of appointments or posts for persons belonging to Scheduled Castes and Scheduled Tribes and Other Backward Classes, under Article 16(4) of the Constitution."

12. A perusal of Sub-section 4 would clearly show that the Board is enjoined with an obligation to follow the Rules or orders issued by the State Government from time to time in the matter of reservation of appointments or posts for persons belonging to Scheduled Caste and Scheduled Tribe and other backward classes under Article 16(4) of the Constitution. It is undeniable that the Government Notification issued is traceable to the provisions made under Article 16(4) of the Constitution. Therefore, it has to be stated that the University was bound to follow the Special Recruitment Rules and it is only in pursuance to the same that the University issued the publication advertising the posts strictly mentioning the criteria which was laid down in the Special Recruitment Rules. It is the stand of the University now that the University is required to prepare the list of candidates in accordance with Sub-clause(3) of Section 57 which enjoins upon the University a duty to conduct an interview and combine the percentage of marks obtained by the candidates in the qualifying examination and those awarded in the interview and thereafter prepare the select list in the order of merit.

13. The selection that is now made is under the Special Recruitment Rules notified by the Government which are self contained and which provides the method of recruitment. The recruitment made is not as per the provisions contained under the Universities Act. The Rules prescribe special criteria. The requirement of age limit is totally different. The method and mode of recruitment and the manner in which the list of selected candidates is prepared is also provided which is distinct and special having regard to the special nature of the recruitment made for the unfilled vacancies belonging to schedule caste and schedule tribe. The University having acted on the basis of the said Rules and having called for applications mentioning the very criteria contained in the Rules cannot adopt a different procedure apart from the one provided in the Rules. The object behind dispensing with the oral test and confining the evaluation of the merit only to the marks obtained in the qualifying examination for the purpose of filling up these back log vacancies is obviously discernible in as much as an opportunity is sought to be provided to all those merited candidates belonging to these categories without introducing any element of subjective analysis of their suitability by conducting any interview. When that is the endeavour made in the Rules, the University cannot by introducing the oral test frustrate that object and purpose. The argument advanced by the learned counsel Sri. Bhat contending that the requirement of holding interview is a statutory requirement as per Section 57 Sub-clause (3) and the stipulation made in the Rules dispensing with interview cannot over ride the statutory prescription loses sight of the fact that there is no room for introducing any conflict here, in as much as the Rules provide for special recruitment confined only to filling up the unfilled vacancies pertaining to scheduled caste and scheduled tribe and Sub-clause(4) of Section 57 specifically provides that the Board shall follow the Rules or orders issued by the State Government from time to time in the matter of reservation of appointments or posts belonging to Scheduled Caste and Scheduled Tribe. Therefore, the argument of learned counsel Sri N.B. Bhat to the effect that the University was bound to follow section 57(3) and introduce oral test to find out the merit of the candidates cannot be accepted in the facts and circumstances of the present case.

14. One more aspect of the matter that is required to be referred to herein is the aspect pertaining to the merit of the petitioners. Petitioner No. 2 is at serial No. 1 in the merit list so far as the percentage of marks obtained in the qualifying examination are concerned. He has secured 95.25% of marks in the qualifying examination whereas in the interview he is awarded only 8 marks. As regards petitioner No. 1 who is a lady candidate her name is at serial No. 18. The particulars of the list of the applicants produced along with a memo by the learned counsel for the respondent-University discloses that she has secured 80% of the marks in the qualifying examination and she is awarded 17 marks in the interview. A close perusal of the marks obtained in the qualifying examinations and the marks awarded in the oral test would clearly show that persons who are more meritorious in their performance in the qualifying

examination have performed very badly in the oral test and have been awarded very less marks. At any rate, this is referred to only to point out that in the respective merits of the candidates who are successful vis-a-vis the unsuccessful petitioners as regards the qualifying examination is concerned there is considerable gap. It is in this background that the learned counsel for the petitioner has attacked the process adopted as arbitrary and illegal. Be that as it may, as I have already held, the University was not entitled to introduce oral test as the recruitment was made under the Special Recruitment Rules in special circumstances and as such there is absolutely no room for introducing inconsistency in the requirements of the Rules and the requirements of statutory provisions contained in Section 57(3). In this view of the matter, I am of the considered view that the petitioners are entitled to succeed in these matters.

15. The question that arises now is as to what is the nature of the relief to which the petitioners are entitled. It is seen from the order dt. 26.3.2003 passed by this Court earlier at the time when these matters were listed for preliminary hearing that the petitions have been dismissed against respondents 18 to 21 as they are candidates who are selected under the Schedule Tribe category. Notices were ordered only to respondents 3 to 17 as they were selected under the scheduled caste category. The petitioners belong to scheduled caste. This Court has thought it fit to retain the selection made so far as it pertains to candidates belonging to schedule tribe as the petitioners had no grievance against them. Though the entire process adopted in the matter of selection is vitiated having regard to the time gap and further having regard to the order that is already passed by this Court which in effect confined the grievance of the petitioners to their interest, I am of the view that it is unnecessary to declare the entire selection process as being vitiated. The relief in the instant cases has been confined to the petitioners. Moreover, two years have lapsed since the date of selection. It is unnecessary to dislodge the entire select list. However as the petitioners are more meritorious and have been left out of the select list only on account of the marks assigned to them in the oral test which is now held to be impermissible, the relief that the petitioners are entitled to is for a direction to the University to redo the select list by considering the merit of the petitioners taking into account the percentage of marks obtained by them in the qualifying examination and ignoring the criteria introduced pertaining to the oral test. Obviously, upon such method being followed, the petitioners would in all probability succeed in securing a place in the select list. In which event, their names have to be arranged in the select list in the order of merit. If the resultant position is to displace any of the selected candidates, then such an inevitable consequence has to follow unless the respondent-University is in a position to accommodate the petitioners herein without any need to deprive any of the selected candidates already appointed who have been working for the last couple of years or more. These observations are made only to mitigate the hardship of the candidates who have secured appointment and who for no fault on their part are to be shown their way out. The mistake is attributable to the omissions of the

respondent-University and not to the persons who have already been selected and are working. At any rate, the interest of the petitioners are required to be protected. The petitioners are entitled for consideration of their case for select on to the post in accordance with their merit as obtained in the qualifying examination passed by them. Hence, I pass the following:

ORDER

The writ petitions are allowed. Petitioners are held entitled for being considered for selection to the posts of peon/watchman by taking into account their merit as per the qualifying examination only, without referring to the marks assigned to them in the interview. The respondent-University is directed to redo the select list in the light of the observations made above. The petitioners are entitled to costs of these proceedings. Each of the petitioners are entitled to a sum of Rs. 2,500/- as costs from the 1st respondent-University. Ordered accordingly.