

(2006) 03 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 35109 of 2004

K. Santhoshkumar

APPELLANT

Vs

Karnataka Power Corporation Limited and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Constitution of India, 1950 — Article 34

Citation : (2006) 3 KCCR 1570

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.V. Bhat and G.S. Motigi, for the Appellant; Somashekar, for S.N. Murthy, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petition by a person who claims to be belonging to Kotegar community, who had availed of certain benefits available to a Scheduled Caste community by not only getting the initial appointment to the post of assistant engineer in the year 1989 but also an out of turn promotion to the post of assistant executive engineer in October, 1992 against a post reserved for a person belonging to Scheduled Caste community and who is aggrieved by the denial of further promotion to the post of executive engineer as against a post reserved for Scheduled Caste community people and on the premise that a vacancy exists for such persons in the cadre of executive engineer since from 1996.

2. Petitioner though perhaps would have got even such promotion also, but for certain government order clarifying that Kotegar community was not a community notified as Scheduled Caste community; that the High Court having taken an emphatic view of the matter that it is only such communities which have been declared as Scheduled Caste community either in terms of the Presidential order or in terms of the law laid down by the Parliament in this regard that become Scheduled Caste or Tribe, as provided in Article 34 of the

Constitution of India; that synonyms of the community sounding similar cannot by itself become a Scheduled Caste community and having also clarified in terms of this government order [copy at Annexure-R1 produced along with the statement of objections filed on behalf of the Respondents] that while Kotegar community is not a community which is classified as Scheduled Caste community, nevertheless, appointments/promotions which the persons belonging to this community have got on the premise that they belong to Scheduled Caste community be protected but by treating them as candidates appointed/promoted on general merit from the date of initial appointment or promotion as the case may be. Petitioner in fact did not get any such promotion after the cadre of assistant executive engineer thorough reservation.

3. While the government order at Annexure-R1 serves the purpose of protecting the present position of the Petitioner, Petitioner feeling aggrieved by the denial of a promotional post to be filled up as a backlog vacancy which had occurred in the year 1996, which if had been given to him, instead of giving the same to some other persons belonging to Scheduled Caste community, also would have enured to the benefit by the savings clause under this government order and the Respondents having not accorded such promotion at that time which action was not justified, has approached this Court for issue of a writ of certiorari to quash the endorsement dated 28/29.5.2004 [copy at Annexure-F] where under such request of the Petitioner has been denied and also for quashing the portion of the order indicating that the Petitioner will not be treated as a person belonging to Scheduled Caste community henceforth, as also for quashing promotion accorded to others to the post of executive engineer, though, according to the Petitioner, are juniors to the Petitioner, and also for quashing the seniority list at Annexure-Q in the cadre of executive engineers, as in the meanwhile, it appears, the Petitioner had been promoted even to the post of executive engineer not as a person belonging to Scheduled Caste community but otherwise and as persons who had been promoted earlier obviously are shown as seniors to the Petitioner, but the Petitioner contending that if he should have been given promotion in the year 1996 he also would have been ranked much higher and in the premise to issue directions to the Respondents to promote the Petitioner to the post of executive engineer with effect from May, 1996 and to give all such consequential benefits to the Petitioner as also for redoing the seniority list at Annexure-N, on the premise that the Petitioner is promoted in the year 1996 and for further direction to restore the status of Scheduled Caste community to the Petitioner in the service register and other consequential relief etc.

4. Respondents had been put on notice and are represented by Counsel. Respondents have also filed statement of objections, inter alia, clarifying the development with regard to the status of Kotegar community and as to how earlier the community had been understood/treated as a Scheduled Caste community in view of the fact that the name of the community is synonymous to Kotegar-metri community one which is now classified as Scheduled Caste community and the government having clarified in terms of the government

order published in the Karnataka Gazette dated 1.5.2003 indicating that all other synonyms or abbreviations, such as kote kshatriya, kotegar, koteyava, koegara, rama kshatria, sherugar and sharvegar are not treated as Scheduled Caste community and therefore the Petitioner cannot be promoted to the post of executive engineer against a post reserved for Scheduled Caste community; that however, action taken hitherto is saved and there is no question of Petitioner being given retrospective promotion from the year 1996 on the premise that a backlog vacancy being in existence from this year and the writ petition has no merit either for quashing the impugned endorsement at Annexure-M or for any consequential directions, as prayed for in the writ petition.

5. Sri Somashekar, learned Counsel for the Respondent-Corporation submits that the Respondents have acted fully in consonance with the government order/directions; that it is a fact that the Petitioner has not been promoted to the post of executive engineer as against a reserved post for Scheduled Caste community and whether it was proper or improper is not a question any more for examination, as the Petitioner is not a person belonging to Scheduled Caste community as of now; that the contention of the Petitioner that if he would have been promoted against such post available to Scheduled Caste community in the year 1996 his position as such is protected, is a far fetched possibility not available in law and therefore the prayer are not tenable and the writ petition deserves to be dismissed.

6. If it is a fact that the Petitioner had availed of certain benefits as a person belonging to Scheduled Caste community and if the government itself has clarified that the community is not a Scheduled Caste community and if such promotions had been given on an erroneous understanding that the community is also a Scheduled Caste community, the Petitioner in fact would lose all the benefits including his initial appointment and subsequent promotions. However, the government order having saved such situations by calling in aid the fiction of law that though such persons had been appointed/promoted as persons belonging to Scheduled Caste community their appointments/promotions are to be deemed to be as against the posts available to general merit candidates and the same having been saved, the Petitioner should consider himself as lucky as his present post is safeguarded by this government order.

7. Aspiring for a retrospective promotion from the year 1996 on a hypothetical basis by filing a writ petition in the year 2004 that too at a time it is clarified by the government that the caste of the Petitioner is no longer a Scheduled Caste community is nothing but asking for the moon. Not available in a writ petition nor the writ jurisdiction can expand to respond to such apparitions of the Petitioner.

8. Absolutely no entitlement or any merit in the writ petition. No occasion for this Court either to issue a writ of certiorari or a consequential mandamus, as sought for in this petition. Writ petition is dismissed.