

(2006) 03 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No. 20720 of 2005

Karnataka State Aided Primary School Teachers Association
(Regd.), Kannada Hindi Paata Shaale and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Karnataka Education Act, 1983 — Section 98, 99
Karnataka Educational Institutions (Recruitment and terms and conditions of services of employees in private Aided Primary and Secondary Educational Institutions) Rules, 1999 — Rule 10, 11

Citation : (2006) 3 KarLJ 473

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

Bench : Single Bench

**Advocate : Subrahmanya Jois for Vagdevi Associates, for the Appellant;
Monohar B., AGA, for the Respondent**

Judgement

D.V. Shylendra Kumar, J.—This writ petition, presented by the Association of the Karnataka State Aided Primary School Teachers' Association, joined by some other teachers, was one for quashing a portion of the order dated 9-6-2005 (copy at Annexure-B) passed by the State Government, which is a scheme for the purpose of rehabilitating the teachers who were facing threat of retrenchment in view of student, strength of the institutions having been come down and the scheme having been propounded for the purpose of rehabilitating such number of teachers who had been identified as excess upto 15-2-2005 and also a scheme providing for rehabilitation programme being in operation upto 31-5-2007, where after the scheme will be closed.

2. The complaint of the petitioners is about the limiting of the benefit under the scheme only in respect of those who had been identified as excess upto 15-2-2005 as also keeping the. scheme open only upto 31-5-2007 which according to the petitioner is discriminatory vis-a-vis those who do not come

within the scope of the scheme,

3. Respondents had been put on notice and they have, made their stand clear by filing statement of objections, additional statement of objections and yet another additional statement of objections followed by the latest affidavit sworn to by Sri G Chandrashekar, Director of Primary Education, inter alia, furnishing the certain data that had been called for by this Court in terms of the order dated 7-2-2006, which reads as under:

Petitioners' main ground of attack, in respect of the scheme formulated by the government in terms of Annexure-B to the writ petition is that it is discriminatory in nature making an artificial classification and discriminating as between such, of those teachers who have been identified as excess teachers in private aided institutions as on 15-2-2005 vis-a-vis those who may possibly become excess for the very reason but after this date.

The grievance of the petitioners as against the scheme now envisaged by the government, for the purpose of rehabilitating such of those teachers who have been found excess in aided institutions as on 16-2-2005 is that some of the teachers who are also facing identical or similar situation are not provided such benefit and therefore drawing a cut off date without any justification for making a distinction as between those who become excess before this date and those who become excess after this date is therefore discriminatory etc.

On such premise, the scheme formulated by the government vide Annexure-B is sought to be quashed and a consequential direction is sought for extending similar benefit or to annul a suitable scheme etc.

Sri Subrahmanya Jois, learned Senior Counsel, appearing for the petitioners submits that the very act of drawing such cut off date and making a distinction between the two groups is violative of Articles 14 and 16 of the Constitution of India and therefore the matter warrants examination and interference by quashing the scheme.

Counter on behalf of respondent-state is that the scheme is a beneficial scheme for the benefit of the teachers who are identified as excess teachers in private aided institutions due to the fact that the student strength in those institutions having come down drastically and there being no need for retaining such number of teachers in the schools any further and while such teachers are being paid salary from out of the aid extended by the State there cannot be any justification to keep paying such salary from the fund or aid without any work available in the institutions employed by them and therefore action was returned to be taken by the respective management under the provisions of Section 98 and 99 of the Karnataka Education Act, but to ameliorate the grievance and difficulties of such teachers the government came up with the scheme as indicated under Annexure-B and while the government is making maximum efforts to rehabilitate such number of teachers as can be accommodated under the scheme, the government cannot accommodate all such teachers who are likely to face the guillotine of

retrenchment as a consequence of teachers becoming excess for want of commensurate number of students.

It is also submitted that in respect of identified teachers who become excess on or before 15-2-2005 they are not being provided aid upto 31-5-2007 and thereafter if some of them still remain without being accommodated, the provisions of Section 98 and 99 of the Act will operate against them thereafter and necessary action will be taken in accordance with law under the Rules against them.

It is also the version of the government that even in respect of those who may become excess after 15-2-2005 the very provision under Sections 98 and 99 will operate. However, in view of the pendency of this writ petition, the matter is not precipitated further and such teachers have not been subjected to treatment under Sections 98 and 99 of the Act.

The action that is required to be taken in respect of excess teachers is an action that can be taken by the appointing authority - management of the institution - and the role that the respondent-government plays while extending aid. is to ensure that the teachers who are provided with the aid even paid better emoluments on par with the pay scales in the government schools, but when the government finds that there is no need for retaining such number of teachers by the management, it is principally the responsibility of the management to take necessary steps and it is only in this regard though the government is not obliged to provide alternative employment or otherwise, it is only as a goodwill gesture to the teachers, the scheme has been formulated and therefore no exception or fault can be taken by such action of the government.

On the allegation of discrimination, as the scheme is a beneficial scheme and as a matter of concession shown to certain teachers who have been identified as excess, and those teachers who are not absorbed on or before 31-5-2007 will also be subjected to the same subsequent action as u/s 98 and 99 of the Act.

The scheme, on the face of it, is a beneficial scheme and being in the nature of a concession it is rather difficult to accept the argument of discrimination, A concession is not a matter of right and Article 14 arises only in the context of a right and denial of that right.

Be that as it may, if the respondents-state is anxious to provide rehabilitation to such teachers and if can work out any other alternative scheme, it is open to the State to do so.

In the meanwhile, it may be useful if the respondents place the facts and developments of the manner of the scheme hitherto indicating as to how many teachers have been identified in excess as on 15-2-2005, number of such teachers who have been rehabilitated under the scheme, and have many perhaps may remain even after the cut off date. It is also open to the respondents to examine such further possibilities and if any such possibilities are available, to

have the same placed before the court.

Sri Manohar, learned (Government Advocate seeks two weeks time. List this matter after two weeks for further orders. Registry is directed to furnish a copy of this order to the teamed Govt. Advocate.

4. In the affidavit, inter alia, indicated the following data:

-----	I	No. of excess	
teachers identified as on 15-202005		1700	
-----	II	1. No. of excess	
teachers deputed temporarily to the aided schools run by minority		86	
managements for the period of 2 years		2. No. of teachers rehabilitated in the	
counselling conducted on 203 28-7-2005 to 29-7-2005 in aided schools		3. No.	
of teachers rehabilitated in the counselling conducted on 117 24-10-2005 and		25-10-2005	
in aided school			
-----		TOTAL	406
-----	III.	No. of teachers	
who were not allowed to report for duty by the aided schools		50	
-----	IV.	Actual No. of	
teachers rehabilitated		356	
-----	V	No. of teachers to	
be rehabilitated 1344			

It is further stated in the affidavit that these teachers (13-11) have been deputed to the offices of the Block Education Officers in the State to work as leave reserve teachers.

5. It is also indicated in para-6 of the affidavit that possibly by the cut off date, another 300 and odd teachers may be rehabilitated, which could still leave about 1000 teachers without being rehabilitated and on an after 31-7-2007 even these teachers will have to be dealt with in accordance with Sections 98 and 99 of the Karnataka Education Act, 1983 [for short, the Act) read with Rules 10 and 11 of the Karnataka Educational Institutions (Terms and Conditions of Service of of Employees in Educational Institutions) Rules, 1999 [for short, the Rules

6. I have heard Sri Subrahmanya Jois, learned Senior Counsel appearing for the petitioners and Sri B Manohar, learned Additional Government Advocate, appearing for the respondents,

7. Even in terms of several statements of objections filed on behalf of the respondents, the teachers who had been identified as in excess upto the cut off date - 15 -"2 -2005 - are all continued in one capacity or other and. if there is no vacancy in any aided minority or other schools, they will be. retained as leave reserve by paying salary etc. Such persons cannot have any grievance at present,

8. The scheme being one which is over and above the statutory provisions and ill fact a scheme for the purpose of ameliorating the difficulties of teachers who otherwise, face the threat of retrenchment is a scheme though pursuant to

certain observations made by this Court earlier, and a scheme promulgated by the government as part of its policy for rehabilitating such teachers likely to face the treat of retrenchment. The question of retrenchment would have never arisen nor the scheme would have become necessary if there was no excess teachers. It is only because the court was aware of this possibility, this Court had expressed a pious wish which was very positively and in a proper spirit responded by the State and the scheme was put in operation.

9. The entire scheme is a beneficial provision conferring or extending certain benefits over and above the statutory entitlement to the teachers. In matters of concession or a benefit extended, the right of equality assured under Article 14 of the Constitution cannot be invoked, as concession is not a matter of right.

10. It is no doubt true that the State even while extending the benefit/concession cannot act arbitrarily and the test applied is examination of such act on the part of the State if it is bona fide, fair and non-arbitrary and not in the context of any individual rights of any person.

11. The scheme on the face of it is a bonafide scheme and if financial constraints on the State permit the scheme to be operative upto a particular point of time and in respect of those teachers-identified as excess and rehabilitated upto that date, it cannot be said that by limiting the benefit in that manner the action by itself becomes discriminatory. At any rate I do not find any red in the scheme to characterize the act of promulgating or executing the scheme in terms of the circular dated 8-7-2005 vide Annexure-C as an act of discrimination on the part of the State to quash or invalidate any part of the scheme. To this extent the challenge to the scheme and its execution as indicated in Annexure-B and C to the writ petition does not sustain and it is accordingly rejected,

12. In so far as any other remedies are concerned, it is always open to the petitioners or any other teachers to work out the same independently in accordance with the statutory provisions and no further directions in this regard is necessary in this writ petition.

13. Writ petition is disposed of accordingly.