

(2014) 06 KAR CK 0054
In the Karnataka High Court
Case No : W.P. No. 15391 of 2014 (S-PRO)

Karnataka State Electronics Development Corporation Ltd.	APPELLANT
Vs	
Karnataka State Electronics Development Corporation Ltd. (Keonics)	RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 4 AKR 219 : (2015) ILR 203

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : Muralidhar H.M., Advocate for the Appellant; M.R. Rajagopal, Sr. Advocate and C. Jagadish, Advocate for the Respondent

Final Decision : Dismissed

Judgement

L. Narayana Swamy, J.—The petitioners are Associations who made prayer in this writ petition seeking for direction to respondents 1 and 2 to give effect to promotion to its members in accordance with C & R Rules and to give promotion to the employees after obtaining the approval from the Government. Since the approval has not been obtained, they sought to quash the order dated 13.12.2013 vide Annexure A passed by the first respondent effecting retrospective promotion to 3rd and 4th respondents to the post of Manager as the same is unconstitutional, illegal and affects the morale of the senior employees/workers of the first respondent-Corporation.

2. The learned counsel for the petitioners submits that a relief of direction may be issued to the respondents 1 and 2 to give promotion to its employees in accordance with cadre and recruitment rules. The promotion is given to respondents 3 and 4 with retrospective effect even without complying with the C & R Rules and it was direction from this Hon'ble Court in W.A. No. 364/08 decided on 14.12.2009 in the case of N. Ramesh Vs. The Government Tool

Rooms and Trading Centre and others, that the public sector undertakings to comply with the cadre and recruitment rules for the purpose of promotion. In the year 1989 the C & R Regulations have been framed and the same was amended in 2007. However, the said rules have not been approved by the Government. Without getting approval from the Government, the respondents 1 and 2 hurried and effected promotion of respondents 3 and 4 which is unconstitutional and against the direction in W.A. No. 364/08.

3. The grounds urged by the petitioners is that the action of the first respondent in granting promotion to respondents 3 and 4 with effect from 1984 to the post of Manager by overlooking the seniority of other scheduled castes/scheduled Tribes employees of the first respondent-Corporation is in contravention of the directives issued by the D.B. of this Court in W.A. No. 364/2008.

4. I have heard the learned counsel for both sides. The petitioner-Associations have preferred this writ petition seeking enforcement of fundamental rights of Part III of 226 of Constitution of India. To approach this Court, the petitioners should be aggrieved parties. The petitioners do not have fundamental rights or statutory rights to seek reliefs as prayed for in this writ petition. Challenging promotion of respondents 3 and 4 is not sustainable in law. The retrospective or any promotion could be challenged by an aggrieved person. The reliefs sought for by these petitioners is stated to be on behalf of its members. The respondents 3 and 4 are also the members of the association. When such being the case, petitioners cannot seek relief against them. The persons aggrieved by seniority or promotion, if their rights are infringed, those persons can only prefer writ petition agitating their rights. The petitioners cannot maintain this writ petition and they have no locus standi to invoke jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

5. In this regard, it is beneficial to refer the decision in Dalit Sena, Karnataka Vs. The Karnatak University, Dharwad and Another, wherein it is held in Para 14 & 16 as follows:

"14. We are further of the opinion that public interest litigation should not normally be permitted to be initiated and continued in the service matters. The principle of locus standi should normally not be waived in such cases, exception being the case where a writ of quo warranto is sought against the usurper of a public office or where the petitions are filed by representative statutorily recognized trade unions for the redressal of the grievances of their members, mainly with the object of avoiding multiplicity of litigation by avoiding separate writ petitions by the persons who otherwise have the cause of action against the act complained of. Strictly speaking, such petitions would not be petitions in public interest, but would be petitions initiated in representative capacity as is contemplated for suits filed under Order 1, Rule 8 of the Code of Civil Procedure. We are further of the opinion that as and when any petition is filed in a representative capacity, the procedure provided under Order 1, Rule 8 of the CPC should be insisted to be followed and specific permission granted in that behalf.

Normally a person aggrieved by an action relating to service matter would be a person capable of approaching the Court in his own name. Busybody or group of persons proclaiming to espouse the cause of any specified section of the Society cannot be permitted to initiate litigation in the name of public interest, as such litigation has been considered to be instrument of administration of justice to be used properly in appropriate cases only. In service matters, the dispute in fact is inter parties, which should not be attempted to be settled at the instance of a person not personally aggrieved. In exercise of the powers under Article 226 of the Constitution at the instance of a person not aggrieved, the Court should keep in mind that it was not encroaching the sphere reserved by the Constitution to the executive or the legislature".

16. Letters/petitions falling under the following categories alone required to be entered as public interest litigation:

- (1) Bonded Labour matters.
- (2) Neglected children.
- (3) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
- (4) Petitions from jails complaining of harassment, for pre-mature release and seeking release after having completed 14 years in jail, death in jail, release on personal bond, speedy trial as a fundamental right.
- (5) Petitions against police for refusing to register a case, harassment by police and death in police custody.
- (6) Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.
- (7) Petitions complaining of harassment or torture of villagers by co-villagers or by police, of persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes.
- (8) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance.
- (9) Petitions from riot-victims.
- (10) Family pension.

Cases falling under the following categories are required not to be entertained as public interest litigation:

- (1) Landlord-tenant matters.
- (2) Service matter and those pertaining to pension and gratuity.
- (3) Complaints against Central/State Government Departments and local bodies

except those relating to item Nos. (1) to (10) above.

(4) Admission to medical and other educational institutions.

(5) Petitions for early hearing of cases pending in subordinate courts."

6. In Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., , this is what is stated by the Hon"ble Supreme Court in Para-16:

"16. In Thammanna Vs. K. Veera Reddy and Others, , it was held that although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something".

7. In Bholanath Mukherjee and Others Vs. R.K. Mission V. Centenary College and Others, , this is what the Hon"ble Supreme Court has stated in Para-31:

"31. In the alternative, the learned Senior Counsel submits that the writ petition would have to be treated as public interest litigation. It is, however, settled by this Court that public interest litigation would not be maintainable in service law cases. In support of this submission, he relies on the judgments of this Court in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., and Gurpal Singh Vs. State of Punjab and Others, . Therefore, again no relief can be granted to the appellant-writ petitioners".

8. Further as stated in the writ petition, the respondents 3 and 4 are given retrospective promotion. If the promotion is given on retrospective date, the aggrieved person only can approach this Court and not the associations. If these petitioners are aggrieved, their relief is elsewhere either by raising the dispute or approaching appropriate forum. Under these circumstances, the writ petition stands rejected.