

(2004) 11 KAR CK 0015
In the Karnataka High Court
Case No : Writ Appeal No. 2548 of 2004

Karnataka State Road Transport Corporation	APPELLANT
Vs	
Udayashankar C.S.	RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations,
1982 — Regulation 4, 4 (7)
Road Transport Corporations Act, 1950 — Section 45

Citation : (2005) 104 FLR 1168 : (2005) ILR (Kar) 275 : (2005) 1 KarLJ 329 :
(2005) 1 KCCR 28 SN

Hon'ble Judges : S.R. Nayak, J; H.N. Nagamohan Das, J

Bench : Division Bench

Advocate : L. Govindaraj, for the Appellant; M.V. Hiremath, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The management of the K.S.R.T.C. being aggrieved by the order of the learned Single Judge dated 15-4-2004 in W.P. No. 45952 of 1999 has preferred this writ appeal.

2. The respondent herein filed the above writ petition complaining that his non-selection to the post of Assistant Administrative Officer (Class II) is illegal and irregular. So alleging, the respondent sought intervention of this Court under Articles 226 and 227 and prayed for a mandamus to the management of the appellant-Corporation for appointment to the post of Assistant Administrative Officer (Class II). The writ petition was opposed by the management of the Karnataka State Road Transport Corporation by contending that the writ petition is misconceived; the respondent did not possess the prescribed minimum percentage of marks in the qualifying examination, therefore, his non-selection is justified. The learned Single Judge having appreciated the rival contentions has opined that the prescription of 50% marks by the management of the Karnataka State Road Transport Corporation is unauthorised and without jurisdiction. So

opining, the learned Single Judge has allowed the writ petition. Hence, this writ appeal.

3. We have heard Sri L. Govindaraj, learned Standing Counsel for the Karnataka State Road Transport Corporation and M.V. Hiremath, learned Counsel for the respondent and perused the impugned judgment of the learned Single Judge.

4. Since the learned Single Judge has opined that the prescription made by the management of the Karnataka State Road Transport Corporation as reflected in the employment notification with regard to minimum percentage of marks a candidate should possess so as to qualify himself in order to apply for the post of Assistant Administrative Officer (Class II) as one without authority of law, we think it appropriate to first deal with the contention of Sri L. Govindaraj that the above opinion of the learned Single Judge is untenable in view of the power granted to the Karnataka State Road Transport Corporation under Sub-regulation (7) of Regulation 4.

5. The Karnataka State Road Transport Corporation by virtue of power u/s 45 of the Road Transport Corporations Act, 1950 has framed Regulations called the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 (for short, the "Regulation"). Regulation 4 deals with eligibility for appointment and disqualifications for appointment. It is true that none of the clauses of Regulation 4 or any other provisions of the Regulations prescribe the minimum percentage of marks a candidate should possess in order to apply for the post of Assistant Administrative Officer (Class II). But, it needs to be noticed that Sub-regulation (7) of Regulation 4, in unmistakable terms, grants power to the Karnataka State Road Transport Corporation to prescribe minimum percentage of marks a candidate should possess in order to enable him to apply for any post in the Corporation. Sub-regulation (7) of Regulation 4 reads:

No person who has secured less percentage of marks as may be stipulated by the Corporation from time to time in the examination prescribed as the minimum qualification required for appointment in the regulations of recruitment to the respective cadre or post shall be eligible to apply.

6. Therefore, it is quite clear that the Corporation by virtue of the power granted to it under Sub-regulation (7) of Regulation 4, as a donee of that power, has prescribed 50% of aggregate marks in the qualifying examination as the minimum for a candidate who wants to apply for the post of Assistant Administrative Officer (Class II). Hence, the prescription of 50% of aggregate marks as a minimum, cannot be condemned as one without authority of law. Unfortunately, Sub-regulation (7) of Regulation 4 was not brought to the notice of the learned Single Judge when the matter was heard. Be that as it may, we hold that that Sub-regulation (7) of Regulation 4 grants power to the Corporation to frame minimum percentage of marks as the qualification for applying to any post in the Corporation. In that view of the matter, we cannot sustain the view taken by the learned Single Judge. We direct accordingly.

7. This takes us to the merit of the matter. The facts are simple and straightforward. The respondent, in the B.Sc. degree out of 1600 marks has secured 709 marks. Further, the respondent in the post-graduation Diploma in Personnel Management, out of 900 marks has secured 525 marks. Thus, out of 2500 total aggregate marks, the respondent has secured 1234 marks. It is trite that the respondent falls short of 50% of aggregate marks in order to make him eligible for the post of Assistant Administrative Officer (Class II). In that view of the matter, non-selection of the respondent to the said post cannot be faulted. It is in accordance with law, more particularly in accordance with the prescription made by the Karnataka State Road Transport Corporation by virtue of the power conferred upon it under Sub-regulation (7) of Regulation 4.

8. However, it is the contention of the learned Counsel for the respondent that, while determining the actual percentage of marks, the Court should separately determine the percentage with regard to the marks obtained by the candidate in the basic degree and the percentage of marks obtained in the Post-graduation Diploma and those percentages should be added and if it is so done, in the present case, the percentage of marks secured by the respondent in two examinations would be more than the minimum of 50% prescribed under the employment notification.

9. This contention of the learned Counsel is not acceptable to us. If we read Clause V(4) along with Clause IV of the Employment notification, the only reasonable way of understanding the prescription is to work out the percentage of the aggregate of marks obtained in the two examinations and if it is so done, it becomes apparently clear that when the respondent applied for the post of Assistant Administrative Officer (Class II), he did not possess the prescribed minimum percentage of marks. In that view of the matter, no objection can be taken to the action of the management in not considering the application of the respondent, much less in not appointing him to the post of Assistant Administrative Officer (Class II).

10. It is well-settled that Article 14 read with Article 16 will come into play only in a case where the person approaching this Court possesses the prescribed minimum qualifications for a post. There is nothing for us to enforce under Article 226 for any breach of any of the legal right of the applicant. In conclusion, we state, with great respect, we cannot sustain the order of the learned Single Judge.

11. Writ appeal is allowed. The order of the learned Single Judge dated 15-4-2004 is set aside and W.P. No. 45952 of 1999 is dismissed.

However, in the peculiar facts and circumstances of the case, the parties are directed to bear their respective costs.