

(2015) 04 KAR CK 0332

In the Karnataka High Court

Case No : Writ Petition Nos. 13711-13723/2015 (S-RES) and 13810-13811 of 2015

K.R. Vijaykumar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0332

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Vinod Prasad, for the Appellant; H.B. Mahesh, Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.V. Nagarathna, J.—These writ petitions are listed for considering the interim prayers sought by the petitioners. The matters were listed yesterday (8/4/2015) and have been re-listed today (9/4/2015) to hear the arguments of learned counsel for the respective parties, which I have heard at length.

2. Petitioners have sought a direction to respondents to comply with directions issued by this court in W.P. Nos. 173-194/2004 and connected matters disposed of on 23/2/2004, in the matter of filling up of vacancies in the post of Junior Assistants.

3. Briefly stated the facts are, petitioners and other similarly situated persons were employees working in Karnataka Electricity Board ("KEB" for short). After reorganization of KEB, petitioners became employees of the Karnataka Power Transmission Corporation Limited (KPTCL) as Ledger Clerks. Subsequently, KPTCL has been divided into several local units. One such unit is, 2nd respondent-Bengaluru Electricity Supply Company (BESCOM). The petitioners were working on temporary basis in Bengaluru. Their services were dispensed with, on 1/1/2004. Petitioners and other similarly situated persons had preferred writ

petitions before this court seeking absorption in their respective zones. This court, by order dated 23/4/2004, rejected the relief of absorption, but granted certain directions and directed the respondent-BESCOM to formulate a scheme with regard to reappointment of the petitioners and other similarly situated persons. Pursuant to the order of this court, the 2nd respondent-BESCOM issued order No. BECSOM/BC-25/1778/2003-04 dated 5/5/2004, a copy of which is produced at Annexure-B. Since 2004, no notification or order has been issued by the 2nd respondent inviting applications to fill up any vacancy in the cadre of Ledger Clerks or Junior Assistants. However, by Notification dated 7/3/2015 (Annexure-C), applications have been called for filling up of vacancies in the said cadre. When the said Notification was issued, petitioners and other persons similarly situated became aware of the fact that, 2nd respondent-BESCOM intends to fill up totally 228 posts in the cadre of Junior Assistant. The grievance of the petitioner, however, is that, in terms of the qualifications and other conditions prescribed in the said Notification, petitioners are unable to apply. It is, in that context, petitioners have sought a direction to the 2nd respondent to implement the directions of this court given in W.P. Nos. 173-195/2004 on 23/2/2004 (Annexure-A to the writ petition) and also the order dated 5/5/2004 issued by BESCOM in the matter of recruitment.

4. I have heard the learned for petitioners and learned counsel for respondents as well as perused the material on record.

5. At the outset, learned counsel for 2nd respondent contended that the idea of a scheme to be formulated by the 2nd respondent has not been approved by this court in W.P. Nos. 36202-203/2009 disposed on 17/12/2009 and therefore, petitioners cannot, at this stage, seek implementation of Annexure-B orders by way of implementation of scheme.

6. He further contends that petitioners were only contract employees appointed on temporary basis and for the last one decade, they have not been employees of 2nd respondent. At this stage, they cannot seek any direction with regard to the employment in BESCOM. He, therefore, contended that no relief could be granted to the petitioners at this point of time and that if the petitioners are otherwise eligible, they are entitled to apply under Annexure-C Notification, inviting applications from the eligible candidates for the post of Junior Assistants.

7. This submission was countered by learned counsel for petitioners by contending that in the earlier round of litigation, petitioners had sought for absorption of their services. Declining the relief of absorption, this court had, however, directed the respondent-BESCOM to formulate a scheme with regard to the consideration of the case of the petitioners if and when any recruitment to the vacant posts was to be made.

8. He drew my attention to order of this court dated 23/2/2004 and also the order of BESCOM dated 5/5/2004 (Annexures-A and B to the writ petitions) and contended that all the petitioners are seeking implementation of those orders

and that when order dated 5/5/2004 has been in operation for the last one decade and that the time has now come for making recruitment to the vacant posts, BESCO is estopped from going back on that order dated 5/5/2004. He, therefore, submitted that petitioners are neither seeking regularization nor are they seeking absorption, but are only seeking an opportunity to be considered to the vacant posts in terms of Annexures-A and B orders.

9. I have considered the aforesaid submissions in light of material on record and also order dated 17/12/2009 passed in W.P. Nos. 36202-203/2009. In those writ petitions, this court considered the submission made on behalf of BESCO in the context of the judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 and held that the petitioners could not seek any relief of regularization.

10. Learned counsel for BESCO placed reliance on order dated 17/12/2009 to contend that, petitioners cannot seek any relief in these writ petitions. But learned counsel for the petitioners pointed out that the petitioners are not seeking regularization or absorption of their services in BESCO and therefore, that order would not come in the way of considering their case in light of Annexures-A and B orders.

11. Annexure-C is Notification dated 7/3/2015, inviting applications to fill up 228 vacant posts of Junior Assistants. It is the case of the petitioners that they are entitled to be considered for selection to the said post, provided BESCO makes applicable orders at Annexures-A and B to them. This Court, while disposing writ petitions filed by the petitioners and other similarly situated persons in W.P. Nos. 173-195/2004 and connected matters, on 23/2/2004, rejected the prayers sought for, by them for absorption. But the following order was passed at paragraph 18:

"18. In the result the following order is passed:

These petitions stand rejected subject to

- i) a direction to frame a scheme in terms of the direction in para 15.
- ii) a direction in terms of Sec. 12 of the Act in terms of para 15.1.
- iii) representation and reply in terms of para 15.2 and training in terms of 15.3.
- iv) a direction in terms of para 17.

Respective parties to bear their respective costs."

The scheme to be formulated was detailed in para 15 of that order. The same reads as under:

"Relief

15. This case involves several young faces being deprived of their engagement resulting in their livelihood. Large scale of unemployment is prevailing in the state. Several persons are waiting in queues in employment exchanges. This court as pointed out by the apex court has to weigh the circumstances and provide relief in terms of the law governing these matters. In terms of the law governing these matters. In such circumstances, the apex court and this court have provided a scheme for providing employment to these persons in the event of any future vacancy that may arise in the respondent-company. The scheme would be as under;

i) The Board is to draw immediately the list of employees with particulars who are disengaged in terms of the impugned order.

ii) Seniority is to be maintained in terms of their entry into service.

iii) While providing future employment, reservation policy of the Government has to be strictly adhered to.

iv) As when vacancy arises, the same may be notified and in the event of these petitioners applying in terms of the notification, the Board is to provide preference in terms of the seniority list maintained by them in terms of the scheme.

v) The engagement in case of future vacancy is subject to the petitioners being found medically fit by the Board and subject to their eligibility and having necessary qualification. Their cases are to be considered not only for these jobs but also for other jobs in the light of the memo filed in this court.

vi) Age relaxation is to be provided.

The respondents are directed to prepare the scheme within eight weeks from the date of receipt of a copy of this order for the purpose of future vacancy."

12. Pursuant to those directions, BESCO has issued order dated 5/5/2004. A copy of which is produced as Annexure-B, which reads as under:

"BENGALURU ELECTRICITY SUPPLY COMPANY LIMITED (WHOLLY OWNED GOVERNMENT OF KARNATAKA UNDERTAKING)

Order No. BESCO/BC-25/1778/2003-04

dated 5.5.2004

In compliance to the order dated 23.02.2004 of the Honorable High Court of Karnataka in writ petition Nos. 173-195/2004 and connected cases, approval is hereby accorded for the following:--

1. As and when recruitment is made for any posts by the Company under direct recruitment quota, a candidate who fulfills all other requirements, preference

shall be given to those who worked as ledger clerks on contract basis.

2. The preference will be in terms of 12 marks for those who have worked up to 3 years and 15 marks for those who have worked for above 3 years duly providing age relaxation to the extent of period of contract employment they have served.

3. All other conditions stipulated in R and P Regulations (as existing) including the reservation policy shall be followed strictly.

4. The concerned General Manager (Ele.,) (Commercial, Operation and Maintenance) shall maintain a list of persons who have worked in their divisions as temporary ledger clerks on contract basis year-wise for the purpose of seniority based on their date of engagement.

By Order Sd/- Deputy General Manager (P and A) BESCO

The aforesaid order has been in force since the last decade. It may be that, during that period, there may not have been any occasion to implement that order and no recruitment may have been made to the post of Junior Assistants. But now, BESCO has invited applications from eligible candidates, by Notification dated 7/3/2015 to fill up 228 posts. Thus, the BESCO must be directed to implement the directions of this Court as well as its order dated 5/5/2004. It is observed that in the Notification dated 7/3/2015, there is no reference made either to the order of this Court nor to order dated 5/5/2004 of BESCO. It is in this context that the petitioners have sought a direction to the 2nd respondent-BESCO to implement the orders at Annexures-A and B while making the recruitment to the said vacant posts.

13. In the circumstances, I am of the considered view that the order dated 17/12/2009 passed in W.P. Nos. 36202-203/2009 would have no relevance having regard to the nature of the prayer sought for, by the petitioners herein.

14. Having regard to the fact that the order of this court has not been either modified or set aside nor the order dated 5/5/2004 of BESCO has been modified or withdrawn till date, it is just and necessary to issue directions for implementation of those orders while making recruitment pursuant to notification dated 7/3/2015. The same having not been done so, 2nd respondent-BESCO is directed to implement what has been stated by this court in order dated 23/2/2004 and also order dated 5/5/2004 (Annexures-A and B respectively) while filling up the vacant posts under Notification dated 7/3/2015. Under that notification, last date for receipt of application was, 10/4/2015, but in view of the direction issued by this court with regard to implementation of orders of this court as well as order of BESCO dated 5/5/2004, the 2nd respondent is at liberty to either withdraw Annexure-D Notification dated 7/3/2015 and issue a fresh notification in accordance with the observations made above or issue a corrigendum to the said Notification so as to incorporate Annexures-A and B orders.

15. With the aforesaid observations and directions, writ petitions are disposed.

16. It is needless to observe that, if the fresh Notification is issued or if corrigendum is issued to notification dated 7/3/2015, then only those persons, who have the eligible qualification could apply to the said notification.

17. Parties to bear their respective costs.