

(2005) 12 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 26045 of 2005

Krishnarajendra Bharat and Others

APPELLANT

Vs

The Karnataka Public Service Commission and Another

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 — Rule 13, 2 (1) (i), 3, 4

Citation : (2006) 2 KCCR 1308

Hon'ble Judges : R. Gururajan, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Ravishankar, for Lex Nexux, for the Appellant; Venugopala Gowda A.N., for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Krishnarajendra Bharat and two others are before us challenging an order dated 29.11.2005 passed by the Karnataka Administrative Tribunal, Bangalore (for short, "the Tribunal") in Applications Nos. 3400, 3409 and 3410 of 2004.

2. Petitioners are the applicants before the Tribunal and they had challenged the notification dated 28.2.2004 in addition to seeking for various directions in terms of the prayer made in paragraph-6 of the application before the Tribunal.

3. State Government made an indent in the matter of 95 vacancies for Groups A and B Gazetted posts by a notification dated 15.12.1999. Examinations were held in 2000. More than 70,000 candidates appeared for the examination. Results were withheld. Ultimately, results were declared on 28.2.2004. Applications were subsequently filed on 4.6.2004. Matter was adjourned from time to time. Learned Tribunal by way of an interim order dated 30.6.2005 permitted the KPSC to go ahead with the personality test. Tribunal however restrained the KPSC from publishing final select list. Orders passed by the

Tribunal dated 30.6.2005 was unsuccessfully challenged before this Court. Matter was listed from time to time before the Tribunal. In the course of the proceedings before the Tribunal, a memo was filed seeking leave to publish final select list. Matter was contested. Thereafter, the Tribunal by a detailed order has chosen to allow the Respondents to go ahead with the selection process and appointments, however, subjecting it to final orders in the said applications. Tribunal accordingly modified its interim order dated 27.9.2005 in terms of the impugned order dated 29.11.2005. This order is challenged in this writ petition.

4. Notice was issued. Detailed statement of objections are filed objecting to the petition.

5. Sri Ravishankar, learned Counsel for the Petitioners would vehemently argue that the Tribunal is not justified in modifying its order thereby providing permission to publish a final select list and for appointments. He would argue that the selection of 1998 is pending consideration, and that therefore, permission to publish final select list of 1999 is legally unsustainable. He would refer to us the 1973 Rules and 1997 Rules with reference to recruitment, and, he would further say that in the light of the said rules and in the light of Rule 13 of 1997 Rules, non-finalisation of 1998-selection would come in the way of the Respondent s, in terms of the arguments addressed after we reserved the case for orders. Learned Counsel would argue that the Tribunal instead of hearing the matter on merits, has chosen to modify its earlier interim order, which, according to him, requires to be considered by this Court. Learned Counsel would complain that the matter is delayed and during this delayed period several developments have taken place, and, if the Respondents were allowed to publish the final list, there would be unnecessary litigations in the matter.

6. Per contra, learned Advocate General would argue that "public interest is paramount", and that the government machinery has come to a grinding halt on account of want of personnel in terms of the indent made by it. He would urge that "public interest" has to prevail over private interest.

7. Sri Venugopala Gowda, learned Counsel for KPSC would say that Courts have accepted such publications in terms of case laws. He would contend that no prejudice as such would be caused to the Respondent s. Sri Venugopala Gowda, learned Counsel would say that 1973 and 1997 Rules would not apply to the facts of this case in the light of Rule 3 of 1997 Rules.

8. After hearing, we have carefully perused the impugned order.

9. The Tribunal, after noting various facts of the case, and in the light of the need of the State Government in the matter of administrative personnel, has chosen to modify its order in public interest. Let us see as to whether facts of the case would warrant our interference as argued by the learned Counsel for the Petitioners.

10. It is no doubt true that 1998-Selection is still pending, and, in the

meanwhile, 1999 selections have commenced in terms of the pleadings. Examinations are over. Personality test is permitted and the final list of appointments is permitted to be published, however, subjecting to the results of the applications before the Tribunal.

11. Tribunal has noticed various relevant facts, and after noticing the same, the learned Tribunal was of the view that the peculiar facts of this case warranted modification, as otherwise, Government's work would be affected. We have repeatedly posed a question to the Petitioners to show us as to whether pending 1998-Selection would come in the way of 1999-Selections in terms of any rules governing the selection and appointments in the case on hand. Learned Counsel refers to us Rule No. 4 of the Karnataka Recruitment of Gazetted Probationers" (Appointment by Competitive Examinations) Rules, 1997 to say that the KPSC has to hold competitive examinations every year subject to the availability of vacancies in the manner set out in Schedule II(b) to the Rules. He would also point out the definition of "available vacancies" as contained in Rule 2(1)(i) of the said Rules. However, he was unable to show us that there is any estoppel or embargo in the matter of subsequent selection as in the present case during the pendency of the previous selections. The arguments with reference to 1973 Rules and 1997 Rules addressed by the learned Counsel on either side are left open. Therefore, prima facie, we are satisfied that the rules do not come in the way of the Respondents proceeding further in the matter.

12. Even otherwise, we see from the material on record that the examinations have been held, results are announced, personality test is held, and the only thing that requires to be completed is announcing the list and issuing subsequent appointment orders.

13. Admittedly, posts are meant for Government and governmental work. Any delay, in terms of the submission made by the learned Advocate General, would affect the public administration. In the circumstances, and in the absence of any statutory prohibition, it cannot be said that the Tribunal has, in any way, committed any wrong or illegality in modifying its earlier interim order.

14. At this stage, we may also refer to certain case laws in the matter of interim orders. Sri Venugopala Gowda, learned Counsel for KPSC has placed before us several judgments in support of his submissions.

A Division Bench of this Court, after referring to various case laws, has chosen to hold while considering a similar question in the case of N. Sriraman v. Union of India and Ors. 2004 (7) KLJ 152 (DB), as follows:

27. In so far as latter of the two grounds stated by the Tribunal are concerned, we do not see any real basis for the view taken by the Tribunal inasmuch as the applications filed before the Tribunal could not have been rendered infructuous merely because the selection process was allowed to go through and an order of appointment allowed to be made. We say so because any order based on the selection process and validity and regularity whereof was under challenge before

the Tribunal would have remained subject to the ultimate outcome of the said proceedings. The question whether the selection process was affected by any illegality or any irregularity could be examined and the appointment made set aside if the Tribunal were to come to the conclusion that the selection was illegal and therefore unsustainable.

The said judgment is equally applicable to the facts of this case.

Another Division Bench of this Court in *Corporation of the City of Bangalore v. Doddaiiah* 1993 (2) KLJ 158 (DB), has chosen to say in paragraph 5, reading as under:

While making an interim order, Court is normally guided by the factors such as prima facie case, balance of convenience, the resultant injury caused to one of the parties by making the order in a particular manner and whether it can be appropriately compensated if necessary, while disposing of the main case, and the public interest involved in the case of writ petitions wherein State and its instrumentalities are parties.

15. From the judgments referred to above, it is clear that public interest is paramount. In the light of the said two judgments, we are of the view that the Tribunal is fully justified in modifying its order in the public interest. Such public interest modification cannot be interfered with under our discretionary jurisdiction under Articles 226 and 227 of the Constitution.

16. Learned Counsel for the Petitioners, however places reliance on the earlier endorsement and earlier pleadings in the matter 1998 and 1999 selections. This pleading has to be understood with reference to a situation prevalent then. Subsequent orders of the Tribunal and subsequent situations would dilute the earlier statements. As mentioned earlier, where statutory Tribunal has chosen to modify its interim order taking into consideration the "public interest", we would not be justified in interfering in such matters under Article 226 of the Constitution of India.

17. In the circumstances, we accept the order of the Tribunal and reject the writ petition.

18. However, we see from the material on record that the matter was listed for final hearing from time to time, and, on account of heavy pendency, the Tribunal could not dispose of the applications finally. In the circumstances, we deem it proper to direct the Tribunal to give priority to this case and dispose of the same as early as possible but not later than two months from the date of receipt of a copy of this order. Parties are directed to co-operate with the Tribunal in the early disposal of the pending applications.

19. Ordered accordingly. No costs.