

(2006) 11 KAR CK 0079
In the Karnataka High Court
Case No : Writ Appeal No. 858 of 2006

M. Pakkeerappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Education Act, 1983 — Section 130

Karnataka Educational Institutions (Appellate Authority) Rules, 1998 — Rule 3, 3 (1)

Citation : (2007) ILR (Kar) 23

Hon'ble Judges : Cyriac Joseph, C.J.; Ram Mohan Reddy, J

Bench : Division Bench

Advocate : L. Narayanaswamy, for the Appellant; Sharada S.S., for Jayakumar S. Patil and Associates for Respondent No. 4, H.S. Sureshappa Gowda and A.N. Venugopala Gowda, Government Advocate for Respondent Nos. 1, 2 and 3, for the Respondent

Judgement

Cyriac Joseph, C.J.—This Writ Appeal is against the judgment dated 17.4.2006 in Writ Petition No. 38932/2002. The appellant is the petitioner in the Writ Petition.

2. The appellant is an Assistant Teacher in Sri Siddavrushubendra Pre-University College, Jada, in Sorab Taluk in Shimoga District (4th respondent herein). He filed the Writ Petition praying for a direction to the respondents to consider the representation dated 16.5.2002 (Annexure-"B") and to give him promotion to the post of Lecturer in Political Science with retrospective effect from 16.5.2002 and to grant all consequential benefits including arrears of salary. During the pendency of the Writ Petition, the 5th respondent was appointed as Lecturer in Political Science in the 4th respondent College and the approval was granted to the said appointment by the Director of Pre-University Education as per Annexure-"L" order dated 3.6.2003. Thereupon the petitioner amended the Writ Petition to include a prayer for quashing Annexure-"L" order. The 4th respondent filed statement of objection justifying their action in appointing the 5th respondent as Lecturer in the vacancy reserved for Scheduled Caste instead of

giving promotion to the petitioner who belongs to Scheduled Caste. Though the learned single Judge referred to the rival contentions of the petitioner and the respondents, the Learned Single Judge observed that it is not possible to adjudicate the controversy between the parties under Article 226 of the Constitution of India. The Learned Single Judge also held that alternate remedy is available to the petitioner under the Karnataka Education Act, 1983. The Learned Single Judge further observed that no prejudice would be caused to the respondents if liberty is reserved to the petitioner to approach the concerned authority for appropriate relief if so advised. Accordingly, the Writ Petition was rejected reserving liberty to the petitioner to approach the appropriate authority for appropriate reliefs if so advised. It is also directed that if the petitioner approaches the appropriate authority by making an appropriate representation, the same shall be considered and disposed of in accordance with law within a period of six months from the date of the petitioner approaching the concerned authority. Aggrieved by the order of the Learned Single Judge, this Writ Appeal has been filed by the Writ Petitioner.

3. Having heard learned Counsel for the appellant and having considered the materials placed on record, we agree with the Learned Single Judge that the petitioner/appellant has got an effective alternate remedy against Annexure-"L" order passed by the Director of Pre-University Education and therefore, the petitioner/appellant should first resort to such alternate remedy before invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Section 130 of the Karnataka Education Act, 1983 provides that any person or Governing Council, aggrieved by an order passed by an Officer or authority under the Act may within the prescribed period prefer an Appeal to the prescribed Appellate Authority. The Appellate Authority as well as the period for preferring an Appeal have been prescribed as per the Karnataka Educational Institutions (Appellate Authority) Rules, 1998. As per Rule 3 of the said Rules, against an order passed by the Director of Pre-University Education, an appeal lies to the Government. As per Rule 3(1), the appeal shall be filed within a period of 30 days from the date of the order appealed against. Hence it cannot be disputed that the petitioner/appellant has got an alternate remedy of filing an Appeal to the Government against Annexure-"L" order passed by the Director of Pre-University Education. Therefore, the Learned Single Judge was right and justified in rejecting the Writ Petition reserving liberty to the petitioner to resort to such alternate remedy.

4. Learned Counsel for the appellant submits that Annexure-"L" order was passed on 3.6.2003 and in view of the pendency of the Writ Petition, the appellant had not filed any Appeal against Annexure-"L" order and now the period of 30 days prescribed under Rule 3 of the above mentioned Rules has already expired. Since the Writ Petition filed by the appellant was pending before this Court when Annexure-"L" order was passed and since the appellant had amended the Writ Petition to incorporate a prayer for quashing Annexure-"L" order, we are of the view that the Appeal, if any, to be filed by the petitioner/

appellant, should not be rejected on the ground of delay. Otherwise, injustice will be caused to the appellant. Hence we are inclined to allow the appellant to file the Appeal within a stipulated period and to direct the first respondent-Government to consider and dispose of the Appeal on merits also within a stipulated period.

5. Accordingly, Writ Appeal is disposed of in the following terms:

- 1) The Challenge against the order of the Learned Single Judge is rejected:
- 2) If the appellant wishes to file any Appeal against Annexure-"L" order before the first respondent-Government of Karnataka u/s 130 of Karnataka Education Act, 1983, he shall file the Appeal within a period of one month from today. If he does not file the Appeal within the said period of one month, he will not be entitled to file any Appeal on the strength of this order:
- 3) If the appellant files his Appeal, as stated above, within a period of one month, the Government shall consider the Appeal on merits and pass appropriate orders in accordance with law, after issuing notices to respondents Nos. 4 and 5 also. The appeal shall be disposed of as expeditiously as possible and at any rate, within a period of four months from the date of receipt of the Appeal.