

(2012) 03 KAR CK 0170

In the Karnataka High Court

Case No : Writ Petition No's. 2775 to 2777 of 2012 (S-KAT) connected with Writ Petition No. 3109 of 2012 (S-KAT)

Mahadev Teggi and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 4 KarLJ 62

Hon'ble Judges : K. Govindarajulu, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : C.M. Nagabhushan for M/s. Goutham and Rajeshwar, for the Appellant; Revathi Adinath Narde, High Court Government Pleader and Sri P.S. Rajagopal, for Sri Reuben Jacob, for the Respondent

Judgement

Dr. K. Bhakthavatsala, J.—These writ petitions are directed against common order dated 6-1-2012 dismissing all the applications in Nos. 4962 to 5055 of 2010 and connected cases, on the file of the Karnataka Administrative Tribunal (in short, "KAT") at Bangalore. The brief facts of the case leading to the filing of the writ petitions may be stated as under:

The petitioners are applicants before the KAT. The petitioners along with others had approached the KAT for the following reliefs:

(i) to declare Note 4 of Clause A in Section I of Second Schedule to the Recruitment Rules providing the selection of candidates for the main examination in order of merit on the basis of performance in the preliminary examination as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India; and

(ii) to direct the respondents to select the candidates for the main examination by adopting a methodology by which candidates including applicants choosing different optional subjects are given a fair and equal chance of selection to the

main examination.

2. Contention of the Karnataka Public Service Commission (KPSC) is that no case is made out to interdict the process stipulated by rules and rewrite the Rules. Further, the concept of scaling and proportional representation, as of now are not provided by the rules.

3. In view of the pleadings and arguments addressed by the learned Counsels for the parties, KAT had formulated the following points for its consideration:

(i) Whether the present method of selecting candidates for the main examination on the basis of marks obtained in preliminary examination can be said to be violative of Articles 14 and 16 of the Constitution of India on the ground that it is not as fool proof as scaling or moderation method?

(ii) Whether award of full marks to questions key answers of which were found to be not appropriate, amounted to discrimination?

(iii) Whether para 7.1 of the impugned notification dated 27-1-2010 need reading it down as providing for consideration of all candidates who obtain minimum marks, for the main examination?

(iv) What order?

4. The KAT, for the reasons stated in the impugned common order, has answered Point Nos. (i) and (ii) in the affirmative and Point No. (iii) stating that it does not require that the Rule to be interpreted in a different way and dismissed all the applications. This is impugned in this batch of writ petitions by few of the applicants.

5. Sri CM. Nagabhushan, learned Counsel appearing for M/s. Goutham and Rajeswar, submitted that the Tribunal has held that the suggestion of the candidates for adopting scaling method has been conveyed to KPSC that the Commission would examine the same for future recruitments, but erred in holding that the present method of recruitment for the posts of Gazetted Probationers Groups "A" and "B" is not violative of Articles 14 and 16 of the Constitution of India, and also erred in holding that the present process cannot be faulted as unconstitutional. He has cited the following decisions:

(i) Kanpur University and Others Vs. Samir Gupta and Others, , on the point where it is proved that the answer given by the students is correct and the key answer is incorrect the students are entitled to relief asked for. In case of doubt unquestionably the key answer has to be preferred. But, if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong;

(ii) Pankaj Sharma Vs. State of Jammu and Kashmir and Others, , on the point that it cannot be said that by not granting benefit of additional marks to "selected" candidates which were given to "unselected" candidates, injustice had

been done to "selected" candidates; and on the point that in Kanpur University's case, combined Pre-Medical Test was taken by the University for admission to medical course. Objective type of questions were set up and four options were indicated, three being wrong. It was held that the Court will presume key answers to be correct and proceed to examine accordingly. But, if any of the key answers is proved to be "demonstrably wrong" or is such that "no reasonable body well-versed in the subject would regard as correct", it would be unfair to penalise students for not giving an answer that accords the key answer. In such a situation, a Court of law can issue an appropriate direction;

(iii) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , on the point that where there is a composite test consisting of a written examination following by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled;

(iv) Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, , on the point that the fact that scaling is a standard method of assessment, when a common base has to be found for comparative assessment of candidates taking examinations in different optional subjects, is not in dispute. In fact, the Commissioner may continue to adopt the said system of scaling, where a comparative assessment is to be made of candidates having option to take different subjects. The question is whether scaling, in particular, linear standard scaling system as adopted by the Commission, is a suitable process to eliminate "examiner variability" when different examiners assess the answer scripts relating to the same subject.

6. Sri P.S. Rajagopal, learned Senior Counsel, appearing for Sri Reuben Jacob, for respondent 2-KPSC, submitted that final selection list has been prepared after the dismissal of the application by KAT and the same is ready. He further submits that as per notification bearing No. E(1) 11961/2009-10/PSC, dated 27-1-2010, applications were called for the post of filling up vacancies of 268 posts of Gazetted Probationers-Groups "A" and "B" in accordance with Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997, but the petitioners did not challenge the notification and Rules, and they appeared for the preliminary examination and thereafter resorted to litigate the matter and the KAT has rightly held that there is no error in the present method of selecting candidates for the main examination on the basis of marks obtained in the preliminary examination and not applying the method of scaling and awarding of full marks to questions when key answers of which were found to be not appropriate, is not amounting to discrimination. He has cited the following decisions.--

(i) University of Cochin, Rep., by its Registrar, University of Cochin Vs. N.S. Kanoonjamma and others, ;

(ii) Dhananjay Malik and Others Vs. State of Uttaranchal and Others, ;

- (iii) Madan Lal and Others Vs. State of Jammu and Kashmir and Others, ;
- (iv) Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others, ;
- (v) Chandrashekar S. Salimath Vs. Director of Collegiate Education of Karnataka and Others, ;
- (vi) Punjab University Vs. Narinder Kumar and Others, ;
- (vii) P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, ;
- (viii) State of Karnataka and Another Vs. B. Suvarna Malini and Another etc., ;
- (ix) Asif Hameed and others Vs. State of Jammu and Kashmir and Others, ;
- (x) The Director, National Institute of Technology, Surathkal, Dakshina Kannada v N.S. Harsha and Others 2003(7) Kar. L.J. 533 (DB): ILR 2004 Kar. 4215 (DB);
- (xi) Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others, ;
- (xii) A.P. Public Service Commission Vs. Balaji Badhavath and Others, ; and
- (xiii) Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others, .

7. Apart from the above decisions, learned Counsel for respondent 2 has contended that the petitions are not maintainable on the ground that the selected candidates are not made parties to these writ petitions. In this regard, he relies on an unreported decision of Circuit Bench at Dharwad dated 29-11-2010 made in W.P. Nos. 13810 of 2005 connected with 14421 of 2005 (S-CAT) (Lalan Kumar Jha and Others v Sri Abdul Siddiq) and another decision in All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., .

8. Contention of the learned Counsel for respondent 2 that the selected candidates were not made as parties and therefore this batch of writ petitions are liable to be rejected, holds no water, as the select list is not yet published and therefore the candidates, who are going to be selected, are not necessary parties for adjudication of this case. Therefore, the contention of learned Counsel for respondent 2 that the writ petitions are not maintainable on the ground of non-joinder of necessary parties, falls to the ground.

9. Insofar as the merits of the case is concerned, learned Counsel for the petitioners submits that the scaling method, which was approved by the Apex Court, shall be adopted by KPSC for present recruitment itself.

10. Admittedly, the petitioners have appeared for the preliminary examination without challenging the notification dated 27-1-2010 (at Annexure-A1) and the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997. Hence, the Tribunal is justified in holding that the

KPSC has followed the Rules while selecting the candidates for the post of Gazetted Probationers Groups "A" and "B". In pursuance of the impugned order dated 6-2-2012, the KPSC has finalised the selection process and list is ready. Further, in pursuance of the direction given by KAT, Government of Karnataka, by notification bearing No. DPAR 14 SRR 2011, dated 28-9-2011, has amended the 1997 Rules relating to preliminary examination and KPSC on the basis of the amended Rules, has issued a notification dated 3-11-2011, calling for applications to fill up 352 posts of Gazetted Probationers of Groups "A" and "B". Hence, we see no good ground to interfere with the impugned order. In the result, the writ petitions fail and they are hereby rejected.