
(2001) 08 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 8174 of 2001

Maresh

APPELLANT

Vs

The Commissioner of Public Instruction, Bangalore and
Another

RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Citation : (2002) ILR (Kar) 1997 : (2001) 6 KarLJ 189 : (2001) 4 KCCR 220 SN

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : V.T. Rayareddi, for the Appellant; Rosa Paramel, Government Pleader and B.S. Patil, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner in this writ petition has sought for a direction to respondent 2 to consider his case for appointment to any post including the clerical post on compassionate ground.

2. Respondent 2 is a private educational institution. The father of the petitioner had served as an attender in the said institution and while in service he died after having put in 27 years of service. Thereafter, the petitioner being a minor at that time made an application for appointment on compassionate grounds. On the said application the Management is said to have issued an endorsement to the petitioner stating that since the petitioner is a minor he cannot be appointed to any post and further stated that as and when he attains majority, his case would be considered for appointment.

As averred in the writ petition the petitioner has attained majority on 1-5-1996. Thereafter, he filed an application seeking for appointment in the year 1999 i.e., almost about four years after he attained majority.

3. Learned Counsel for respondent 2 submits that since there is a delay in filing the application for appointment, the petitioner is not entitled for any relief in this

writ petition.

4. When the petitioner made an application for appointment while he was a minor, he was informed that his case would be considered for appointment after he attains majority. That means the application seeking for employment was pending consideration till he attained majority. Therefore, the second application filed in the year 1999 is to be considered as an application in continuation of the earlier application. Admittedly, as per the rules prevailing in respect of the institution, if a person dies while in service, any one of the legal heirs is entitled for appointment on compassionate ground. The petitioner has passed SSLC. In support of it he has produced a copy of the marks card. If that is so, he is qualified to be appointed as a second division clerk. The petitioner has no other disqualification for appointment in the second respondent-institution.

5. Sri Patil, learned Counsel appearing for respondent 2, submitted that there is no vacancy so as to appoint the petitioner in the institution. The petitioner after filing the writ petition has filed an application bringing out certain additional facts. Along with this application the petitioner has also produced the advance salary bill submitted by the institution which is marked as Annexure-K. The correctness and the contents of the said document is not disputed by the Counsel appearing for the respondent 2. The contention of the Counsel appearing for the institution is that though in the said salary bill four posts of non-teaching category are shown as vacant posts, in fact there are no vacant posts. Further, in the statement of objection filed by the institution it is stated that those posts are shown as vacant posts because they are not approved by the department. Approval by the department for any post is only for the purpose of grant-in-aid. This non-approval by the department cannot be said that the posts which are mentioned as vacant as "no posts" at all. The number of posts mentioned in the salary bill including the posts which are shown as vacant is on the basis of requirement of the institution. When the institution shows that the posts are vacant necessarily those posts are available and they have not been filled up. Therefore, the contention taken by the Counsel for the institution in the statement of objection that there are no vacant posts cannot be accepted.

6. As stated earlier if the petitioner is entitled for appointment on compassionate ground under the Rules and when there are vacant posts necessarily, the Management is required to consider his application and appoint him if he is otherwise qualified to be appointed. In the instant case as the Management had not taken any steps to consider the request of the petitioner for appointment even though there are vacant posts, it is just and necessary to issue direction to the institution as prayed for in the writ petition.

7. Learned Counsel for the institution placing reliance on the case of Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak, (1997) 11 SCC 390 submits that the Management is required to consider the overall facts for the purpose of recruitment. I have already held that there are vacant posts and I have also held that the petitioner is qualified to be appointed under the Rules.

Therefore, under these circumstances, the above said decision does not help or in any way assist the institution.

Hence, I pass the following order.-

(i) Writ petition is allowed;

(ii) The endorsement Annexure-G is quashed;

(iii) Direction is issued to respondent 2 to consider the application of the petitioner for appointment on compassionate ground to a post suitable to his qualification in the light of the observations made above, as expeditiously as possible not later than three months from today.