

(2014) 02 KAR CK 0276

In the Karnataka High Court

Case No : Writ Petition No's. 5261 and 5305-5309 of 2014 and 5310-5311 of 2014 (S-RES)

Melamani Shekhar and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 KAR CK 0276

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : H.K. Basavaraj for Sri B.K. Manjunath, for the Appellant; Rafee Unnisa, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

A.N. Venugopala Gowda, J.—Heard the learned Advocate for the petitioners and Smt. Rafee Unnisa, learned HCGP for respondents and perused the writ petition record. The petitioners are the teaching and non-teaching staff of Shankareshwara High School, Chamundeshwari Nagara, Laggere, Peenya Post, Bangalore-560 058. A memorandum 26.5.2008 has been issued by the 4th respondent approving the proposal of management for admitting them to grant in aid with certain conditions. Thereafter, an order dated 1.10.2008 as at Annexure-B has been passed. A communication dated 25.10.2013 as at Annexure-C has been submitted by the Secretary of the school, wherein the petitioner are working. These writ petitions have been filed on 30.01.2014, to direct the respondents to reckon and count the past service rendered by the petitioners from the date of their initial appointment up to the date of approval of their appointment with aid, for the purpose of fixation of pay scale, seniority, increments etc. and extend the benefits flowing there from by keeping in view of the orders at Annexures-D, E, F, G, H, J, K and L.

2. Annexure-C cannot be considered to be a representation submitted by the

petitioners for consideration of their grievance. Merely because the Secretary of the institution sent a communication, the petitioners cannot claim the same to be a representation submitted by them for redressal of their grievance.

3. There is no averment that the petitioners made a demand with the respondents, to perform the legal duty. Since the petitioners have not made any demand with regard to the claim made in these writ petitions with the respondents, the writ petitions for issue of writ of mandamus is untenable.

4. In *A. Prabhakara Reddy Vs. The State of Karnataka and Others*, , with regard to issuance of writ of mandamus to the authorities, it has been held as follows:

9. As a rule this Court exercising it's under Article 226 of the Constitution will issue a Writ of mandamus to the Authorities like the 1st and 2nd respondents if they failed to discharge their duties arising out of legal Obligations, in spite of a written demand it is only when such duties are cast on the authorities and they fail to perform them, the right to seek a Writ of Mandamus arises in favour of the citizen.

5. In ILR 2013 Kant 5085 , considering the object of Writ of Mandamus and criteria for issue of Writ of Mandamus, in a case relating to the identical claim, it was held as follows:

2. The object of issue of writ of mandamus is to compel performance of a legal duty. A mandamus will be issued to a person aggrieved who approaches the Court, if he makes out (i) existence of a legal right in him and a corresponding obligation on the respondent to perform a legal duty and (ii) refusal, either express or implied, by the respondent to perform such duty, in spite of a demand. Where a petition seeking mandamus is not preceded by demand for performance of a legal duty, the Court cannot entertain such a petition.

6. In *The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another*, , Apex Court has held that while granting a writ, the Court must make every effort to ensure from the averments of the writ petition, there exists proper pleadings. With regard to the writ of mandamus, it has been held as follows:-

22.....In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right.

Sri. H.K. Basavaraj, learned Advocate conceded that prior to filing of this writ petitions, the petitioners did not approach the respondents to extend the service

benefits on par with the relief, which the Lecturers working in other Colleges have got by virtue of the orders passed, vide Annexures-D, E, F, G, H, J, K and L. The petitioners having not made a demand with competent authority having the requisite authority to perform the demand and there being no opportunity for the competent authority to examine the claim and take a decision in the matter, these writ petitions for issue of writ mandamus to the respondents, in view of the ratio of law in the decisions, noticed supra, are not maintainable.

In view of the above, the writ petitions are disposed of by reserving liberty to the petitioners to submit detailed representation to the respondents seeking extension of benefit on par with the benefits extended to the similarly placed employees. Ordered accordingly.