

(2017) 03 KAR CK 0226
In the Karnataka High Court
Case No : 142-160 of 2013 (S-RES)

Mr. JOSEPH K.P., S/O. K.M. POULISE, & ORS.

APPELLANT

Vs

STATE OF KARNATAKA REPRESENTED BY ITS UNDER
SECRETARY EDUCATION DEPARTMENT (HIGHER), & ORS.

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions
Karnataka Education Act, 1983, <

Citation : (2017) 03 KAR CK 0226

Hon'ble Judges : A.N. Venugopala Gowda

Bench : SINGLE BENCH

Advocate : O.SHIVARAMA BHAT, M.A. SUBRAMANI

Final Decision : Allowed

Judgement

1. These petitions have been filed to quash the order as at Annexure-A and extend the benefit of the Government Order dated 02.08.1999 in No.13 PBS 99(B) to the petitioners, with effect from 01.08.1999, instead of from 21.01.2002 vide Annexure-B.

2. The primary contention of Sri O. Shivarama Bhat, learned advocate is that the petitioners have not been treated on par with the teachers working in the Government Primary Schools in the matter of extending the benefit of additional increment i.e., to all those teachers who have completed 20 years of service in the same cadre without any promotion. He contended that there is discriminatory treatment. According to the learned advocate, the Government instead of extending the benefit of one increment with effect from 21.01.2002, ought to have extended the benefit with effect from 02.08.1999, as was done in the case of Government Primary School Teachers. By referring to Annexure-Y, learned advocate contended that there is invidious discrimination and violation of Article 14 of the Constitution of India.

3. Sri M.A. Subramani, learned HCGP submitted that combined reading of Section 49 of the Karnataka Education Act and Rule (3)(1)(b) of the Private Aided Primary and Secondary Educational Institution Rules, 1999 make clear that the obligation of the State Government for extension of benefit to employees of Aided Educational Institution is subject to the financial capacity of the State and the benefit having been extended as per Government Order dated 21.01.2002, the policy decision taken cannot be found fault with. Learned counsel submitted that there is no discrimination and the petitioners cannot compare themselves with the Government Primary School Teachers. By referring to the statement of objections filed, learned HCGP sought dismissal of the petitions.

4. By extracting in the order as at Annexure-A, the order dated 12.12.2007 passed in W.P.Nos.319- 389/2004 and the judgment dated 06.08.2008 passed in W.A.No.346/2008 and also the judgment dated 06.09.2010 passed in W.A.Nos.1733/2008 and 2360- 2426/2008, it has been concluded as follows:

"VERNACULAR MATTER OMITTED"

5. The point for consideration is, whether the Government has given sufficient reasons for the order it passed, at the time of passing Annexure-A?

6. The Government must defend its action on the basis of an order that it has passed, and it cannot improve its stand by filing subsequent affidavit as was laid down by the Apex Court in the case of Commissioner of Police, Bombay vs. Gordhandas Bhanji, reported in AIR 1952 SC 16, in the following words:

"9.public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

7. The aforesaid principles of law was reiterated by the Apex Court in the case of Mohinder Singh Gill & Another vs. The Chief Election Commissioner, New Delhi & Others, reported in (1978) 1 SCC 405, as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out....."

8. Every decision of an administrative or executive authority must be composite and self sustaining one. It should contain all reasons which prevailed on the authority taking the decision to arrive at the conclusion. An authority cannot be permitted to travel beyond the stand adopted and expressed by it in the

impugned action, as has been sought to be done in the present case by filing statement of objections.

9. The impugned order as at Annexure-A when tested in the light of the aforesaid principles, there is no other option than to characterize it as arbitrary as it is bald. The case has not been considered in the manner required under law.

In the result, petitions are allowed and the order at Annexure-A is quashed. The case of the petitioners shall be examined by respondent No.1, by keeping in view the observations made in the orders and the judgments passed by this Court, noticed supra and also the Government Order No.ED 99 PMC 2011 Bangalore dated 06.06.2012 (Annexure-Y).

Time for compliance is three months from the date a copy of this order becomes available.