

(1983) 02 KAR CK 0010
In the Karnataka High Court
Case No : WP 29592/81

Nagesh, N.F.

APPELLANT

Vs

Karnataka Public Service Commission and Others

RESPONDENT

Date of Decision : 02-02-1983

Acts Referred:

Constitution of India, 1950 — Article 16 (4), 226

Citation : (1983) 2 KarLJ 252

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, who was one of the applicants for selection for appointment for the post of Chief Librarians in the Department of the State Government, has prayed for the issue of a writ of mandamus directing respondent 1, the Karnataka Public Service Commission (the Commission for short) to consider his case for selection as against a post reserved for scheduled caste.

2. The facts of the case, in brief, are as follows: The Commission by its notification dt. 3-5-1979 invited applications for selection for appointment to the posts of Chief Librarian. The petitioner submitted his application. Along with the application, the petitioner submitted a certificate issued by the Tahsildar Haveri, to the effect that he belonged to "Koraga" caste, which had been declared by the State Government as Backward Tribe in its order made under Cl. (4) of Art. 16 of the Constitution directing reservation of posts in favour of Backward Classes. After the petitioner submitted his application, the State Government by its order dt. 27-3-1980 (a copy of which was produced at the time of hearing) issued a clarification, with the approval of the Government of India, to the effect that the caste going by the name of "Korava" or "Koravar" was synonyms of sub-caste of "Korama", which had been declared as Scheduled Caste in the Presidential Order issued under Arts. 341 and 342 of the Constitution. After the aforesaid order was issued, the petitioner submitted a certificate issued by the Tahsildar, Bangalore South Taluk, to the effect that the petitioner belonged to "Korama" caste, which was a Scheduled Caste. According to the petitioner, he also produced a similar certificate issued by the Tahsildar, Haveri Taluk, from which area the petitioner

hailed, on or about 12-6-1981. The Commission interviewed the petitioner on 20-9-81. The list of selected candidates was prepared on 20-10-1981. The petitioner was not selected. In these circumstances the petitioner has preferred this writ petition.

3. The stand taken on behalf of the Commission is that, as in the application the petitioner had claimed that he belonged to Backward Tribe and had produced the necessary certificate in support thereof, his case was considered as against a post reserved for Backward Tribe and as respondent 4, who also belonged to Backward Caste, had a better claim than the petitioner, he was selected.

4. Sri K. Chennabasappa, learned counsel appearing for the petitioner, contends that in view of the clarification issued by the State Government in its order dated 27-3-1980 and the subsequent production of the certificate by the petitioner to the effect that he belonged to Scheduled Caste, it was obligatory on the part of the Commission to have considered the case of the petitioner as against a post reserved for Scheduled Caste and if it was so considered he had every chance of being selected.

5. The original records of the Commission have been produced. The records disclose that on 6-6-1981 the petitioner produced a certificate issued by the Tahsildar, Bangalore South Taluk, dated 8-6-1981 to the effect that he belonged to Korama caste, which is recognised as Scheduled Caste under the Presidential Order. On the application, a note was put up seeking orders as to whether the certificate be placed in his application and there was an order "yes" below that. In the records there is also decision dated 28-11-1980 to the effect that as the petitioner had along with his application produced a certificate to the effect that he belonged to Koragar community and therefore he was a Backward Tribe candidate and as the caste "Koraga" was not in the list of synonyms and sub-castes of Korama caste, his claim cannot be considered and he be treated only as a Backward Tribe candidate.

6. Learned counsel for the petitioner submitted that there was no difference between "Korava" and "Koravar" and in some of the certificates, namely, Annexures-A to A-3 and B, he pointed out, the persons, who are members of the family of the petitioner, are described as belonging to "Koravar", "Koraga" and "Koragar". He submitted that when the Tahsildar had issued a certificate to the effect that the petitioner belongs to "Korama" caste, the Commission could not have rejected the said certificate.

7. As stated earlier, the certificate issued by the Tahsildar, Bangalore South Taluk, is on record; the certificate issued by the Tahsildar, Haveri which the petitioner is said to have produced before the Commission on or about 12-6-1981 is not readily available. The certificate issued by the Tahsildar, Bangalore South Taluk, is clear and specific. It states that the petitioner belongs to "Korama" caste and that was a recognised Scheduled Caste. When the Tahsildar, who is the competent authority, issued the said certificate, prima facie, (he Commission was

required to act on the basis of the said certificate. Undoubtedly the Commission has the power and duty to verify the genuineness of a certificate even if issued by a competent authority in order to ensure that persons, who belonged to Scheduled Caste or Scheduled Tribes, as the case may be, alone get the benefit of the reservation and that persons not belonging to these categories are not selected against reserved posts by producing false certificates. Therefore, in the present case, if the Commission felt that the certificate issued by the Tahsildar, Bangalore South Taluk, was open to doubt and could not be acted upon in view of the difference as to the description of the caste to which the petitioner belonged in the documents produced by the petitioner or for any other reason, the Commission should have brought these facts to the notice of the petitioner and should have taken a final decision regarding his claim only after giving an opportunity to him to explain the discrepancies, as the rejection would result in the denial of the status of Scheduled Caste to the petitioner, and consequently denial of Selection for appointment to the post of Chief Librarian. Having regard to rules of natural justice the Commission could not have rejected the certificate issued by the Tahsildar without giving an opportunity to the petitioner. In this behalf it is necessary to point out that the Government Order dt. 27-3-1980 which clarified that "Korava" and "Koravar" were synonyms of "Korama" provided that the certifying authority should issue certificates in the name of caste included in the Presidential Order (in this case the "Korama" caste) and not in the name of synonyms. Therefore, it should be presumed that before issuing the certificate, the Tahsildar was satisfied that the caste to which the petitioner belonged was one of the synonyms set out in the aforesaid Government Order against column-3 and therefore he certified that the petitioner belonged to "Korama" caste. That certificate, as pointed out earlier, could have been rejected only after holding an inquiry in conformity with the rules of natural justice, if found to be inaccurate.

8. W.K. Joshi, learned counsel appearing for respondent 4, submitted that he had been impleaded as a party to the petition though the petitioner was claiming selection against a post reserved for Scheduled Caste and as a result of an interim order made by this Court directing that a post should be kept vacant, he had been denied appointment for more than one year and, therefore, a writ in the nature of mandamus should be issued to the State Government to appoint him to the post with retrospective effect.

9. It is true that as a consequence of the interim order made by this Court, respondent 4, who was legitimately entitled to an appointment one year before, has been denied of the appointment. I fully appreciate the injury and hardship caused to respondent 4 by the interim order. But unfortunately it is irreparable. The petitioner prayed for and secured an interim order to keep a post vacant, which constituted no interim relief to him, but only has resulted in irreparable injury to respondent 4. It is true, as pointed out by the learned counsel for respondent 4, that the securing of an interim direction to keep a post vacant was unnecessary, because if the petitioner succeeded in the petition and thereafter

selected, the State was bound to make available a post to him. But the difficulty is that on no principle of law can I issue a writ of mandamus directing the 1st respondent to appoint respondent 4 with retrospective effect, because the petitioner had secured an interim order, which prevented his appointment. The situation brought about indicates that an interim order of the type secured by the petitioner in this case constituted no interim relief to him but caused irreparable injury to respondent 4 and this has to be taken note of for future guidance. I could impose heavy costs on the petitioner as payable to respondent 4, to compensate him for the loss, but I refrain from doing so as the petitioner is only a Class III employee. The only relief that can be granted to respondent 4 is that on his appointment his ranking as determined by the Commission shall remain undisturbed.

10. For the reason aforesaid, I make the following order:

(i) Rule made absolute.

(ii) A writ in the nature of mandamus shall issue to the Karnataka Public Service Commission directing it to reconsider the case of the petitioner for selection as against one of the posts of Chief Librarians reserved in favour of Scheduled Caste on the basis of the certificate issued by the Tahsildar, Bangalore South Taluk, to the effect that the petitioner belonged to Scheduled Caste.

(iii) (a) The Commission shall however be at liberty to hold an inquiry in conformity with rules of natural justice to find out as to whether the petitioner really belonged to Scheduled Caste.

(b) If the Commission decides to hold such inquiry, and after such inquiry the Commission comes to the conclusion that the petitioner belongs to Scheduled Caste, then the Commission will include the name of the petitioner in the list of selected candidates.

(c) If on the other band the Commission records a finding to the effect that the petitioner does not belong to the Scheduled Caste, it shall record its reasons and communicate its decision to the petitioner.

(iv) Seniority of respondent 4, who could not be appointed on account of the interim order made by this Court, shall, on his appointment, be determined on the basis of the ranking assigned to him in the list of selected candidates published by the Commission read with R. 5 of the Karnataka Government Seniority Rules and not on the basis of his actual date of appointment.

(v) No costs.