

(1979) 12 KAR CK 0008
In the Karnataka High Court
Case No : W.P. 17166/79

Nanjundaswamy N. and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 03-12-1979

Acts Referred:

Constitution of India, 1950 — Article 16(1)

Citation : (1980) 1 KarLJ 306

Hon'ble Judges : Rama Jois, J

Judgement

1. The two petitioners in this writ petition have sought for issue of a writ of Mandamus to the State Government to make direct recruitment against the quota of posts reserved for direct recruitment in the cadre of Assistant Director of Fisheries of the State of Karnataka in obedience to the provisions of the Recruitment Rules.

2. The method of recruitment to the posts of Assistant Director of Fisheries in the Fisheries Department to the State of Karnataka is regulated by the Rules called the Karnataka General Services (Fisheries Branch) Recruitment Rules, 1960, framed by the Governor in exercise of the powers under proviso to Art-309 of the Constitution. According to the said rules 66 2/3% of the posts of the Assistant Directors of Fisheries were required to be filled up by direct recruitment and 33 1/3% by promotions. The Rules were amended on 5-1-1975 by the Karnataka General Services (Fisheries Branch) (Recruitment) (Amendment) Rules, 1974 According to this amendment also the ratio as between the direct recruitment and promotion is the same as previously. However, the minimum qualification for direct recruitment prescribed according to the amendment is a Bachelors Degree in Fisheries. Science (B.F.Sc., Degree) Science Degree with Zoology as one of the subjects, of any recognised University, but a person possessing B.F.Sc., Degree is given preference over other graduates. The petitioners have secured Fisheries Degree in the year 1974. Their grievance is, though the Recruitment Rules earmarked 66 2/3% of the posts of Assistant Director of Fisheries for being filled up by direct recruitment to which they are eligible, all the posts are being filled up

by promotion and consequently the petitioners have been denied the equality of opportunity in the matter relating to employment guaranteed to them under clause (1) to Art. 16 of the Constitution. They also complain violation of the statutory rule which is binding on the State Government

3. In support of the above submissions, the petitioners have produced the following notifications;

(1) Notification dated 8-7-1975 by which seven persons were promoted to the posts of Assistant Director of Fisheries (Ext-"A")

(2) Notification dated 8-9-1975 (Ext-B) by which as many as 18 persons were promoted as against the post of Assistant Director of Fisheries.

(3) Notification dated 25-5-1976 (Ext-D) by which as many as 11 persons have been promoted to the cadre of Assistant Director of Fisheries.

4. Learned counsel for the petitioner also invited my attention to the specific conditions imposed in these notifications to the effect that the persons promoted in the respective orders have been promoted expressly subject to reversion after the recruitment of candidates selected by the Public Service Commission.

5. Learned counsel for the petitioner contended as follows:

(i) That as the Rules of Recruitment prescribe two sources of recruitment namely, direct recruitment and promotion to the cadre of Assistant Director, it is obligatory on the part of the State Government, who is the appointing authority to take prompt steps to advertise the posts through the Public Service Commission and give opportunity to the eligible candidates to compete for selection to those posts and failure on the part of the State Government to advertise the direct recruitment vacancies of Assistant Directors of Fisheries through the Public Service Commission is a clear contravention of Rules of Recruitment.

(ii) The failure to advertise also results in the denial of the fundamental rights guaranteed to the petitioners under clause (1) of Art. 16 of the Constitution, as by such inaction on the part of the Government, the petitioners stand deprived of the equal opportunity. In this behalf he also pointed out that if the posts to be filled by direct recruitment are filled up by promotion subject to replacement after direct recruitment even so the persons who have acquired qualification and are awaiting to compete for direct recruitment, would suffer as they would become age barred, if the posts are advertised after some time and they would be deprived of the opportunity to compete for selection.

6. In my view, both the contentions urged for the petitioners are well founded. The rules framed under proviso to Art. 309 of the Constitution regulating the services of the State servants have statutory force and the State Government is under a statutory duty to act in accordance with the quota rules. See *Jaisinghani v. Union of India*, AIR 1967 SC 1427 and *H.M. Chikkabasavaiah v. State of Karnataka*, ILR (1979) 1 Kar. 250. Further, if prompt steps are not taken to make

direct recruitment, the very object of attracting and having younger persons with higher academic qualifications and experienced officials promoted from the lower cadres in the prescribed proportion in a given cadre at all times, which is the object and purpose of prescribing recruitment from these two sources would be defeated. Moreover, unless direct recruitment vacancies are advertised as and when they become available, the candidates who have acquired the necessary academic qualifications are likely to become disqualified on the ground of age if for a number of years the vacancies are not advertised resulting in deprivation of equality of opportunity for employment guaranteed under clause (1) of Art. 16 of the Constitution.

7. Sri B.B. Mandappa, learned High Court Government Pleader appearing for the State has submitted that the Government has undertaken a comprehensive review of the Recruitment Rules and the question of framing new Recruitment Rules are under active consideration of the State Government in, consultation with the Public Service Commission as required under Art. 320 of the Constitution. He submitted that it is for that reason, action has not been taken by the Government to fill up the posts earmarked for direct recruitment in accordance with rules. I am unable to agree with this submission,. The Recruitment Rules were amended as late as 5-1-1975 prescribing the Bachelors Degree in Fisheries Science and Degree in Science with Zoology as minimum qualification and further giving preference to persons possessing Fisheries Degree in Science, in the matter of recruitment. Therefore on and after 5-1-1975 it was obligatory on the part of the Government to have sent the resolution to the Public Service Commission for advertising the posts reserved for direct recruitment and to make selection in accordance with law. Without taking any steps shortly after the recruitment Rules were amended, the Government issued the first Notification dated 8-7-1975 promonng as many as seven persons and thereafter a large number of persons were promoted as indicated earlier. Any proposal pending before the Government for amendment of the Recruitment Rules does not give sufficient basis for not taking action in accordance with the recruitment rules which are in force for the last four years.

8. For the reasons aforesaid, I make the following order: (1) The writ petition is allowed. A writ in the nature of mandamus shall issue to the 1st respondent to send a requisition to the Public Service Commission forthwith to call for applications from qualified candidates for recruitment for the posts of Assistant Directors of Fisheries to the extent of the vacancies reserved in the Recruitment Rules for direct recruitment and to make selection in accordance with law and the State Government is directed to make appointments in accordance with the list so prepared.

No costs.

9. Sri B.B.Mandappa, learned Government Advocate is permitted to file his memo of appearance within two weeks.