
(1986) 10 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 11552 of 1986

R. Lakshmikantan

APPELLANT

Vs

Commissioner for Public Instruction

RESPONDENT

Date of Decision : 22-10-1986

Acts Referred:

Citation : (1987) ILR (Kar) 882

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : S.K. Joshi, for the Appellant; N. Devadas, HCGP for R-1 to 3 and M.S. Bhagawath, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—The petitioner who had been appointed as the Principal of the Vidyodaya Junior College, T. Narasipura, has presented this petition questioning the legality of the order of the Joint Director of Public Instruction, Mysore Division, Mysore, issuing a direction to the Management of the College to appoint Respondent-4 as the Principal of the College, displacing the petitioner.

2. The facts of the case, in brief, are as follow : Both respondent-4 and the petitioner were Teachers in the High School established by the same Management. Both of them secured Master's Degrees, which is the minimum qualification for appointment to the post of Lecturer in a Junior College. After the Management established a Junior College, the petitioner and Respondent-4 were appointed as Lecturers on 1-6-1972. Both of them were continuing in the post of Lecturer. When the post of Principal of the Junior College became vacant, the Management appointed the petitioner as the Principal on temporary basis by order dated 26-5-1984. The relevant portion of the order reads :

"With reference to the above, Sri R. Lakshmikanthan, M.A., B.Ed., Lecturer, Vidyodaya Junior College, T. Narasipur, is temporarily appointed as Principal, Vidyodaya Junior College, T. Narasipur, with effect from 26th May 1984, since Sri

T.N. Krishna Rao, retired. He is directed to take charge immediately,

Sd/- K.N. Shivalingaiah Hon. Secretary."

Subsequently, by an order dated 18-5-1985, the Management appointed the petitioner as permanent Principal of the same college. A copy of the order is produced as Annexure-D. The relevant portion of it reads :

As the Institution is receiving Grant-in-Aid, it was required to secure the approval of the Joint Director to the appointment of the petitioner as Principal. Accordingly, the Management sought the approval of the Joint Director through its letter dated 1-6-1985 (Annexure-E). The Joint Director it appears, has in turn, sought the instructions of the Commissioner. The Commissioner by his letter dated 26-8-1985 (Annexure-F) informed the Joint Director that the appointment of the post of Principal must be strictly according to seniority. The said letter reads :

When the said letter was communicated to the Management, the Management furnished its reply by its letter dated 3-10-1985 (Annexure-G). The relevant part of the letter reads :

In the above communication, the Management made it clear that firstly it was wrong on the part of the Joint Director and Director to say that Respondent-4 was senior to the petitioner. It was pointed out that though in the High School respondent-4 was appointed earlier, as far as the appointment to the cadre of Lecturer was concerned, both were appointed on the same day i.e. 1-6-1972. Therefore, there was no basis to say that respondent-4 was senior to the petitioner. Further, the Management pointed out that it was not correct to say that the case of 4th Respondent had not been considered or that he had been excluded just because he was a third class Master's Degree holder, but it was on consideration of the cases of both the petitioner and the 4th respondent, the Management was of the view that the petitioner should be appointed and that the relevant Government Order did not require that the Management must appoint the senior-most Lecturer irrespective of the merits to the post of Principal, even assuming respondent-4 was senior.

3. The Joint Director, however decided that respondent-4 should be appointed as the Principal and accordingly issued a direction to the Management to appoint the 4th respondent as the Principal replacing the petitioner. The said direction was dated 23-5-1986 (Annexure-H). The relevant portion of it reads :

Aggrieved by the said order, the petitioner has presented this petition.

4. Sri S. K. Joshi, Learned Counsel for the petitioner, urged the following contentions :

(1) When the Management on consideration of the case of the petitioner and the 4th Respondent considered that the petitioner was suitable for appointment as Principal and decided to appoint the petitioner, who was eligible for being

appointed to the post, the Joint Director ought to have accorded approval to it.

(2) The Joint Director had no authority to say that the 4th respondent should be appointed as the right to make appointment of suitable person belongs to the management

(3) If the 4th respondent considered that by appointing the petitioner as the Principal any of his conditions of service were affected, the only course open to him was to prefer an appeal to the Educational Appellate Tribunal u/s 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and when the field was occupied by law, the Joint Director could not entertain the representation of the petitioner and to direct the Management to appoint the 4th respondent as the Principal.

(4) In any event, the view taken by the Joint Director that the 4th respondent was senior to the petitioner was untenable and in view of the Government Order dated 11-5-1982 he was entitled to be appointed as Principal was untenable.

5. Learned Counsel for respondent-4 strenuously contended that according to the Government Order, the Management was bound to appoint the 4th respondent as Principal as he was senior to the petitioner taking the High School service also and as the Management contravened the Government Order regulating the conditions of service of lecturers in private colleges, the Joint Director was right in issuing the direction.

6. In support of this, be relied upon the Government Order dated 11-5-1982. The relevant portion of the Government Order reads :

"Preamble :

In order to have common criteria and uniformity in the mode of recruitment of Lecturers, the Commissioner for Public Instruction has made the following proposals to Government :-

i) The posts of Principals in aided Junior Colleges may be filled by way of promotion as per the seniority of the Assistant Masters.

ii) The posts of Lecturers in aided Junior Colleges may be filled in the ratio of 50% by promotion and 50% by Direct Recruitment in conformity with the practice prevailing in the Government Junior Colleges.

iii) The above provisions may be made applicable from the starting of the Junior Colleges.

ORDER No. ED 173 SLB 80, BANGALORE, DATED THE 11TH MAY 1982

Taking into consideration all the facts, Government are pleased to order as follows :

1) All tenure appointments of Assistant Masters as Lecturers in aided Junior Colleges approved by the Joint Director of Public Instruction, Belgaum, are

regularised from the date of their appointment. The names of Lecturers approved is furnished in the annexure appended to his order.

2) The posts of Principals in aided Junior Colleges shall be filled by way of promotion from the cadre of Lecturers on the basis of seniority-cum-merit.

3) The posts of Lecturers in aided Junior Colleges shall be filled in the ratio of 50% by promotion and 50% by direct recruitment on par with the Government Junior Colleges."

(Underlining by me)

7. The learned Counsel for the petitioner pointed out that though the Commissioner had proposed to make a provision to the effect that the posts of Principals of Junior Colleges should be filled up by promotion as per the seniority of Assistant Masters, the Government did not agree with it as is evident from paragraph-2 of the order. It specifically provided that the post of Principal may be filled up by way of promotion from the cadre of Lecturers on the basis of seniority-cum-merit and not merely according to seniority. Therefore, he submitted that even according to paragraph-2 of the Government Order there was no obligation on the part of the Management to promote the senior-most person even assuming respondent-4 could be regarded as senior to the petitioner. The only duty of the Management was to consider the case of the 4th respondent even assuming he was senior to the petitioner and the only right of the 4th respondent was to have his case considered. Undisputedly, the cases of both had been considered and the Management was of the view that having due regard to seniority and merit, the petitioner should be appointed as Principal. This was in conformity with the above Government Order. The order of the Joint Director clearly amounted to an unreasonable interference in the right of the Management of the institution, which it has under Articles 19 and 21 of the Constitution as held by this Court in *Bapuji Educational Association Vs. State*,

8. I proceed to consider the contentions one to three. With reference to the first and the second contentions, it should be observed that irrespective of the question as to whether the Management was right in superseding the claims of the 4th respondent ; even on the assumption that he was senior to the petitioner ; in the matters of appointments, the Management has the right to adjudge the suitability of persons for the post concerned and to make the appointment. That is one of the basic rights of the Management of the Institution concerned. It cannot be interfered with by the Department. Undoubtedly, the Joint Director could refuse to approve the appointment made by the Management if the person appointed did not possess the prescribed qualification or otherwise ineligible to be appointed as Principal. The refusal to approve the appointment was not on any such ground. Therefore, the first and second contention urged for the petitioner is sound.

9. The third contention urged for the petitioner is also sound. If the fourth respondent considered that by the appointment of the petitioner as Principal, his

conditions of service were adversely affected, he had to resort to the remedy provided u/s 8 read with Section 7 of the Act. It is for the Educational Appellate Tribunal, on such appeal under the Act, to decide as to whether respondent-4 was senior to the petitioner and whether any conditions of service of the appellant before it was violated. When a statutory remedy is provided by way of appeal to the Educational Appellate Tribunal, the Joint Director could not exercise such a power under the Grant-in Aid Code which is only an executive order. Therefore, the petitioner is entitled to succeed on contentions one to three. As far as the fourth contention is concerned, it is a matter to be considered by the Appellate Tribunal, if and when the 4th respondent prefers an appeal to it.

10. In the result, I make the following order:

- i) The Writ Petition is allowed ;
- ii) The direction issued under Annexure-F dated 23-6-1985 and Annexure-H dated 23-5-1986 are set aside ;
- iii) The petitioner is entitled to continue in the post of Principal ;
- iv) The Joint Director-Respondent No. 3 shall approve the appointment of the petitioner which shall be subject to any order of the Educational Appellate Tribunal, on the appeal of the 4th Respondent if he chooses to prefer an appeal before the Educational Appellate Tribunal against the appointment of the petitioner as the Principal ;
- v) All other contentions of the petitioner and Respondent-4 are left open.