

(2015) 08 KAR CK 0295
In the Karnataka High Court
Case No : Writ Petition No. 112521/2014 (S-RES)

R. Ushadevi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0295

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : K.L. Patil, for the Appellant; K. Vidyavathi, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J—The Petitioner R. Ushadevi called in question the appointment order in No. 31/2014 issued by respondent No. 2 appointing respondent No. 3 for the post of Process Server which was reserved for III-A women category vide notification dated 5.2.2014.

2. After filing of this Writ Petition, notices were ordered to the respondents. The learned Additional Government Advocate took notice for the respondent Nos. 1 & 2 and respondent No. 3 is represented by Sri Sunil S. Desai.

3. I have heard the arguments of the learned Counsel for the petitioner as well as the respondents. Perused the records.

4. It is an undisputed fact that respondent No. 2 issued a recruitment notification dated 24.1.2013 for recruitment of different vacant posts in Karwar District and Sessions Court. In the notification apart from other posts, it was notified for recruitment of 11 posts of Process Servers, out of which 1 post of Process Server was reserved for III-A Women category.

5. It is specifically submitted that Petitioner being a women filed an application specifically mentioning that she claim under III-A category and she has requisite

qualification for the appointment of Process Server. She also submitted her application along with other necessary documents for the said post. The petitioner was also called for viva-voce, and her name was listed in the eligible candidates for interview and she was called to attend the interview on 25.10.2013. It is evident from the records that the petitioner appeared for interview and secured good marks and thereafter, final selection list was prepared and published. In the said list, though III-A category post is reserved for women, respondent No. 3 who is a male was selected and the name of this petitioner was kept in waiting list. The petitioner was shocked to see that though she was eligible and suitable to be appointed for the post of Process Server, the respondent No. 3 is selected, though he is not eligible for appointment under the said category. Therefore, the petitioner is before this Court. It is contended that the order of appointment of respondent No. 3 is void and illegal. It is further submitted that when a post is reserved for III-A Women category, the respondent No. 2 cannot select any other person for the said post without following the rules and regulations. The petitioner sought for a direction to be issued for appointment of the petitioner in the place of respondent No. 3 and also to issue necessary direction to the respondents to re-do the list incorporating the name of the petitioner under III-A category for the post of Process Server appointments.

6. The learned Addl. Government Advocate appearing for the respondent Nos. 1 & 2 has produced before this court the entire process of selection of Process Servers under different categories. The same is perused.

7. I have carefully perused the list of candidates who attended for the interview in the selection of Process Servers appointment. The learned Counsel for the respondent No. 3 submitted before this Court that respondent No. 3 is a meritorious candidate, scored highest marks. Hence, he was selected in the III-A (Others) category because of non-availability of other suitable candidate in the III-A (Women) category. Therefore, there is no mistake or illegality committed by the second respondent in appointing respondent No. 3 to the said post.

8. It is worth to extract here the notification for the post of recruitment of 11 posts of Process Servers category-wise; the list of candidates with marks after the interview and the final list of successful candidates with specific order of respondent No. 2; which are as under:

The list of candidates who attended for the interview for the post of Process Servers III-A (Women) is extracted hereunder:

9. On careful perusal of the notification issued and also the process for having selected respondent No. 3, it reveals that respondent No. 3 was taken out from III-A (Others) category since no suitable candidate was available from III-A (Women) category, the candidate from III-A (Others) is considered and selected since he has secured highest percentage of marks i.e., 74.56%. The records also reveal that, there are as many as five women candidates participated in the

interview and secured marks under III-A Women category. The petitioner has secured 59.52 % of marks in the X class and obtained 6 marks in the interview. The others at Sl. No. 2 Priya S. Lingadalli has obtained 4 marks, Shankramma S. Biradar has obtained 4 marks, R. Jyoti obtained 3 marks and S.G. Lavanya obtained 4 marks in the interview, whereas Sri Shivananda Devendrappa Biradar has obtained 8 marks in the interview. Only two marks are difference between Ushadevi R. and Shivananda Devendrappa Biradar in the interview but petitioner is the lady who obtained highest marks under III-A category. There must be a specific order that should be passed as to how and why suitable candidates who have faced the interview were not available in that particular category. It is not that Ushadevi R. has secured lowest marks and she is not eligible or suitable for the said post under the said category, other wise than respondent No. 3. There is no specific order passed by the second respondent in the list of candidates who attended for the interview. It is only in a mechanical manner it is stated that "since no suitable women is available under III-A (Women) category, and that respondent No. 3 has scored 76.54% he is selected".

10. It is evident from the above said observation that how the second respondent has tested the suitability or the eligibility of the petitioner under that category is not at all narrated. No reasons have been assigned with regard to the suitability or non suitability of the petitioner though she has scored 59.52 % in the X Standard and 6 marks in the viva-voce examination. Further, added to the above said circumstances, it is clear from the final list notified, that petitioner's name is shown in the waiting list.

11. So far as reservation under III-A Women category is concerned, the second respondent had put a note underneath the list, that no suitable or eligible candidate is available for the said post in that category, but petitioner is still available for the said post in the waiting list. List of candidates selected for the post of "Process Servers" is as under:

12. Let me take an instance, suppose for any reason, if the 3rd respondent Shivananda Devendrappa Biradar does not join the duty, invariably in view of the fact that name of the petitioner was shown as candidate in the waiting list, she has to be appointed to the said post. Therefore, it goes without saying that the second respondent had knowledge that she is also eligible and suitable candidate, but for the reason best known to him, he kept her name in the waiting list. If no suitable candidate or eligible candidate are available under III-A (Women) Category as a whole, then only, the second respondent is at liberty to take out the other person from III-A (Others) category, that means to say there should not be even a single candidate from the III-A women category eligible and suitable for the said post. I am astonished to see how this lady, petitioner can be shown as a candidate in the waiting list, if he is really not at all suitable or eligible to the said post, therefore, in my opinion, the notification issued under Notification No. 2/2013 dated 24.01.2013 notifying the appointment of respondent No. 3 to the post of Process Server under III-A Women category is

not based on any sound justifiable reason and the same is illegal and it requires to be quashed and it should be declared that this petitioner Smt. Ushadevi R. is the successful candidate under III-A Women reserved category and appointment order shall be issued to the said lady. Waiting list in the said category also to be modified by selecting the candidate from the same category in accordance with the rules of recruitment.

13. Last but not the least, the learned Counsel for the respondent No. 3 has contended that this respondent No. 3 is also a meritorious candidate, but he has to be accommodated anywhere else, therefore suitable order may be passed in this regard also. In my opinion, he has to make necessary application before the competent authority to work out his remedy if such remedy is available under law. In this Writ Petition when the other category candidates have not challenged the list, this court cannot pass any order with regard to other categories.

14. With these observations, I pass the following:

ORDER

(1) The Writ Petition is hereby allowed.

(2) The appointment order passed by the second respondent vide Order No. 31/2014 dated 5.2.2014 appointing the respondent No. 3 is hereby quashed and it is directed that in the place of respondent No. 3, the petitioner shall be appointed.

(3) Respondent No. 2 is directed to issue fresh order appointing the petitioner to the post of Process Server under III-A Women Category reserved for women.