

(2018) 01 KAR CK 0127
In the Karnataka High Court
Case No : 31601-31653 of 2017

RATHNAMMA & ORS.

APPELLANT

Vs

STATE OF KARNATAKA & ORS.

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Constitution of India, Article 14, Article 21, Article 19, Article 16 - Appointment of Commission to inquire into and report on the administration of auto

Citation : (2018) 01 KAR CK 0127

Hon'ble Judges : Raghvendra S. Chauhan

Bench : Single Bench

Advocate : N. S. VIJAYANTH BABU, A. S. PONNANNA, R. B. SATHYANARAYANA SINGH

Judgement

1. The petitioners are aggrieved by the recruitment notification dated 29.09.2016, whereby the respondent No.3, the Backward Classes Welfare

Department, has invited application for the post of Cooks and Assistant cooks, for working in the Pre-metric Hostels, Post-metric Hostels, and

Residential Schools (Both Girls and Boys), run by the Social Welfare Department, the respondent No.2, and the Backward Classes Welfare

Department, the respondent No.3.

2. Briefly the facts of the case are that the petitioners were appointed as Cooks and Assistant Cooks, on temporary basis, from 2006 till 2016 in

Chamrajnagar district. Therefore, some of them have worked for over ten years on the said posts. Further, in the year 2013-14, the Hon"ble Chief

Minister announced in the Legislative Council that Group-"D" posts, which include the posts of Cooks and Assistant Cooks, will be filled up by

regular selection process. Therefore, by order dated 05.11.2015, the Government granted the permission for filling up 1547 posts of Cooks, and 2470 posts of Assistant Cooks which were lying vacant in the Backward Classes Welfare Department. The said posts were to be filled up by direct recruitment. On 27.01.2016, the Government framed the guidelines for direct recruitment to the said posts. Subsequently, the Government also constituted the Committees which would carry out the direct recruitment at the district level. Moreover, by order dated 29.09.2016, the Government decided to issue the notification for direct recruitment to the said posts. Hence, these petitions before this court.

3. Mr. N. S. Vijayanth Babu, the learned counsel for petitioners, has raised the following contentions before this Court:-

Firstly, the recruitment to the said posts is covered by the Karnataka Backward Classes and Minorities Department Services (Cadre & Recruitment) Rules, 1977 ("the Rules", for short). According to the Rules, the educational qualification prescribed for the said posts is VIIth Class.

However, the educational qualification prescribed in the impugned notification is Xth Class. Thus, many candidates, including the petitioners, who have merely passed the VIIth Class, would be disqualified due to the new educational qualification prescribed in the impugned notification.

Therefore, the new educational qualification being prescribed is not only against the Rules, but also is being prescribed to deny equal opportunity of employment to the petitioners, and to others.

Secondly, relying on the case of Radhey Shyam Singh and Others v. Union of India and Others [(1997) 1 SCC 60], the learned counsel has pleaded that the respondents are not justified in recruiting the Cooks and Assistant Cooks on district-wise basis. For, such a recruitment denies an equal opportunity of employment to the hopeful candidates. For, a district-wise recruitment may lead to a distinct possibility of less meritorious persons being appointed in certain districts, whereas more meritorious candidates may be rejected in other districts. Thus, the selection should be based on state-wise basis, rather than district-wise.

Thirdly, the petitioners have been working for the respondent department for a large number of years. Therefore, the proposed direct recruitment is a clever ploy to get rid of the petitioners, and to favour others by giving them

an appointment. Therefore, the respondent Nos.2 and 3 are violating the petitioners' fundamental rights under Articles 14, 16, 19 and 21 of the Constitution of India.

Lastly, the notification prescribes an arbitrary method for selecting the candidates. For, according to the notification, the merit list shall be prepared on the basis of the marks obtained in the SSLC level. Yet, the candidates are required to pass a practical test in cooking. However, when it comes to the practical test of cooking, "only a working knowledge of cooking is required". How the "working knowledge" is to be assessed, the same has neither been spelt out in the notification, nor by the Rules. Thus, a grave possibility does exist that favoritism and nepotism may be rampant in the selection process. Hence, the notification and the selection lists should be set aside by this Court.

4. On the other hand, Mr. A. S. Ponnanna, the learned Additional Advocate General, has submitted the following counter-arguments:-

Firstly, the Karnataka Civil Service (General Recruitment) Rules, 1977 (hitherto referred to as "the General Recruitment Rules", for short), had

been amended, wherein, the educational qualification for Group-"D" employees had been enhanced from VIIth Class to the Xth Class. Since the

General Recruitment Rules equally cover direct recruitment to the post of Group-"D", under the respondent Nos.2 and 3, therefore, the impugned

notification legally prescribes the educational qualification as Class Xth. Therefore, by enhancing the educational qualification, it is not a clever ploy

of the Government to deprive the petitioners of their right of employment.

Secondly, cooking at the institutional level has become highly mechanized. Therefore, better educated persons are required for working on the

machines. Hence, the respondent department was justified in enhancing the educational qualification.

Thirdly, even if an educational qualification is prescribed by the Rules, the said Rules merely prescribe the minimum educational qualification

required for the posts. The respondent Nos.2 and 3, as employers, are free to enhance the educational qualification in order to recruit the best

candidates from the open market. Therefore, the respondent Nos. 2 and 3 have not committed any illegality while prescribing a higher educational

qualification.

Fourthly, there are practical difficulties faced by the Government in holding a state-wise selection for Group-"D" employees. Since the Group-"D"

employees are the lowest paid employees, generally they do not like to leave their native places, and resettle in another part of the State. Even if

they were employed, there is unauthorised absenteeism from the work. In such circumstances, it is more practical to hire employees from the same

district, rather than intra-state. Furthermore, the candidates are not prevented from applying for the same post in different districts. Thus, the

decision to have district-wise selection is legally valid. Fifthly, in the practical test, the candidates are assessed on their basic knowledge of

cooking. They are given an option to cook any one of the dishes which are specified in the notification. Since Indian Cuisine is not based on

mathematical precision, the assessment of food quality is more subjective than objective. Furthermore, it is precisely to eliminate the possibility of

favoritism that the final selection is based on the marks obtained by the candidates in the SSLC, rather than on the marks obtained in the practical

test of cooking.

Lastly, out of the thirty districts of the State, in twenty-nine districts, the selection process is over. Therefore, if the notification were to be quashed

by this Court, the entire selection process will have to be done de novo. This would create a huge logistical problem for the Government.

Moreover, since the selection process is completed, the writ petition is hit by delay and laches.

5. In rejoinder, Mr. Babu, the learned counsel, has pleaded that since the respondent department has its own Rules, the provisions of the General

Recruitment Rules, cannot be applied to the selection of Cooks and Assistant Cooks for the Department. Therefore, any amendment made, with

regard to the educational qualification, in the General Recruitment Rules cannot be applied to the present selections.

6. Heard the learned counsel for the parties, and perused the impugned notification.

7. The relevant portion of Rule 1 of the General Recruitment Rules, is as under:-

1. Title, commencement and application - (1) These rules may be called the Karnataka Civil Services (General Recruitment) Rules, 1977.

(2) They shall come into force on the date of their publication in the Official

Gazette.

(3) (a) These rules shall apply to recruitment to all State Services and to all posts in connection with the affairs of the State of Karnataka and to

member of all State Civil Services and to the holders of posts whether temporary or permanent except to the extent otherwise expressly provided:-

(i) by or under any law for the time being in force; or

(ii) in respect of any member of such service by a contract or agreement subsisting between such member and the State Government.

8. A bare perusal of the said provision reveals that Rule 1 (3) (a) clearly states that the General Recruitment Rules shall not apply in those situations

otherwise expressly provided by or under any law for the time being in force". Since the Rules of the Department expressly prescribe the

educational qualification, since the Rules fall within the words "any law for the time being in force", obviously, the General Recruitment Rules do not

apply to the selection being made by the respondent Nos.2 and 3. Therefore, the amendment carried out in the educational qualification in the

General Recruitment Rules is not applicable to a selection carried out under the Rules of the respondent Department. Therefore, the contention

raised by Mr. Ponnanna that the Government is justified in enhancing the educational qualification for the present selection is unacceptable.

Therefore, the education qualification should have been maintained as VII Class till the Rules of the respondent department are amended.

9. In the case of Radheshyam Singh and Others (supra), the Hon"ble Supreme Court has observed as under:-

It is needless to emphasise that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the

lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other

hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are

selected from other zones would be deprived of their selection resulting into great injustice and consequent discrimination. Thus there can be said

to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates.

That being so the process of selection as envisaged in paragraph 16 of the

advertisement in question and reproduced in the earlier part of this judgment would lead to discriminatory results because by adopting the said process of zone-wise selection would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated. Such a process would not only be against the principles enunciated in Article 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the advertisement in question is violative of Article 14 and 16 of the Constitution of India as it has been demonstrated from the marks list of the appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the selected candidates.

10. There can be no quarrel with the principle enunciated by the Apex Court. However, while selecting persons for Group-"D", certain practical factors need to be kept in mind: the employees of Group -"D" posts work on the lowest pay- scales of the department. Thus, ordinarily they are reluctant to leave their hearth and home and to resettle in another part of the State. In case they are forced to resettle away from their native place, their efficiency, and output is, generally, adversely affected. They are also likely to be absent from their work. Since the duty of the Cook and the Assistant Cook is to provide food to the hostel inmates on a daily basis, their absence cannot be afforded by the respondent department. Thus, out of sheer necessity, it is imperative that a candidate should be chosen from the local population, rather than intra-state. Furthermore, the notification does not prevent any candidate from applying to two or more other districts for the post of Cook and Assistant Cook. Hence, the right of equal opportunity is not violated by the impugned notification.

11. In the case of *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1] the Apex Court has deprecated the practice of hiring persons on

contractual basis. The Hon'ble Supreme Court has emphasised the need for regular selection of the employees. Therefore, the learned counsel for

petitioners is unjustified in claiming that the regular selection process initiated by the respondent Nos.2 and 3 is a clever ploy to get rid of the

petitioners. The regular selection process, in fact, is an attempt by the Government to implement the directions issued by the Apex Court in the

case of *Umadevi* (supra). Hence, the selection process cannot be faulted.

12. The quality of the food or the taste of the food cannot be analysed scientifically. For, both the quality, and the taste depend on various factors,

which cannot be duplicated like a scientific experiment. Thus, the assessment has to be more subjective than objective in its nature. Hence, the

basis of such an assessment cannot be spelt out in the recruitment notification or in the Rules. Therefore, the last contention raised by the learned

counsel for petitioner that the parameters for passing a practical test in cooking are undefined cannot be accepted by this Court.

13. Moreover, since the final selection list is based on the marks obtained in the SSLC, the possibility of nepotism and corruption is minimized.

Hence, the contention raised by the learned counsel for the petitioner with regard to this point is also unacceptable.

14. Since the selection is already completed in twenty-nine districts of the State, considering this peculiar fact, it is too late in the day for this court

to interfere with the selection process. After all, to disturb the selection at such a belated stage is to jeopardize the food being prepared in the pre-

metric hostels, post-metric hostels, residential schools for both boys and girls being run by the respondent Nos.2 and 3 across the State.

Moreover, since persons have already been appointed under the Notification dated 29.09.2016, third party rights have been created. The rights of

those who have been appointed cannot be disturbed by this Court. Furthermore, in case this court were to strike down the Notification dated

29.09.2016, for the particular District of Chamarajanagar, a rather anomalous situation would arise, namely while the Notification dated

29.09.2016 is struck down for a particular district, it continues to be valid for the rest of the State. Thus, by now, the writ petition is hit by delay

and latches.

15. For the reasons stated above, this court does not find any merit in these writ petitions. They are hereby dismissed. No order as to costs.