

(1990) 07 KAR CK 0101
In the Karnataka High Court
Case No : W.A. No's. 1001 and 1002 of 1988

S. Gundappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1990) ILR (Kar) 2764 : (1990) 2 KarLJ 144

Hon'ble Judges : Mohan, C.J.; Shivaraj Patil, J

Bench : Division Bench

Advocate : S. Vasantha Kumar, for the Appellant; N. Devadas, Government Advocate for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—The appellants were recruited as Lecturers in the various Colleges. They are holders of III Class Master's Degree in the respective subjects. They had served for a period of more than three years as teachers; as such they were eligible for recruitment as Lecturers. On 3-10-1981 the first respondent - State of Karnataka by its Education Secretary - passed an order No. ED 146 UPC 79 consequent to the introduction of the direct payment of salary scheme with effect from 1-10-1977, in the matter of appointments, transfers etc. As far as promotion to the posts of Readers and Professors, the following qualifications were prescribed, as seen from the Annexures to the said Government Order:-

"Readers:

Should be a holder of a Degree not lower than a II Class Master Degree in the respective subject of a University, established by law in India or any other qualification recognised by the Government as equivalent thereto.

OR

Should be holder of Doctorate in the respective subject of a University

established by law in India or any other qualification recognised by the Government as equivalent thereto.

Should have served as Lecturer for not less than eight years in the same college/management.

Note: Pass Class Master Degree holders appointed as Lecturers before 30th September 1977 are also eligible, provided they have improved their qualification by acquiring M.Phil Degree in the subject.

Professors:

Should be a holder of a II Class Masters Degree in the respective subject of a University established by law in India or any other qualification recognised by the Government as equivalent thereto and should have experience of not less than ten years in teaching the respective subject to Degree Classes.

OR

Should be a holder of a Doctorate in the respective subject of University established by law in India or any other qualification recognised by Government as equivalent thereto; and should have experience of not less than seven years in teaching the respective subject to Degree Glasses.

Pass Class Master's Degree holders appointed as Lecturers before 30th September 1977 are also eligible provided they have improved their qualification by holding M.Phil Degree in the subject."

From the above it is clear that persons who have merely passed a Master's Degree and who were appointed as Lecturers before 30th September 1977 were also eligible for promotion as Readers and Professors, as the case may be, provided they had improved their qualification by acquiring M.Phil Degree in the subject. Aggrieved by the said Government Order, the appellants and others made representation to the Education Minister on 19-11-1981 as per Annexure-D, and a further representation on 22-1-1982 as per Annexure-F, requesting to waive the condition prescribed in the said Government Order requiring the acquisition of M.Phil Degree for promotion as Readers and Professors in aided colleges. However, nothing ensued out of the same. Therefore, several Writ Petitions were filed including W.Ps.14567/ 1982 and 13867/1984 filed by the appellants. They came to be dealt with under a common Judgment.

The points raised before the learned Single Judge were:-

(i) Introduction of the additional qualification was discriminatory, arbitrary and violative of Article 14 of the Constitution since the acquisition of M.Phil Degree was not insisted upon as far as the I or II Class Master's Degree Holders are concerned.

(ii) Some of the petitioners were on the verge of retirement and some were awaiting promotions shortly, and at that stage to deprive them of their

promotions would amount to depriving a vested right, and

(iii) The Universities in the State of Karnataka were not imparting M.Phil Degree and therefore it is impossible to acquire such a qualification. To go outside the State and acquire the said degree the petitioners may not be deputed by the Managements.

The learned Single Judge on a consideration of the entire matter, rejected these submissions and came to the conclusion that there was no merit whatever and accordingly dismissed the Writ Petitions.

Thus, these appeals have been preferred before us.

2. Sri S. Vasantha Kumar, learned Counsel for the appellants, reiterates the same points before us and contends that the imposition of such a condition so as to render them eligible for promotion is not only harsh but also impossible of performance, and it does not take note of the realities of the situation. As the appellants are in the evening of their career they are adversely affected by this condition.

3. We have already extracted Annexures I and II to the Government Order dated 3-10-1981. A reading of the same would clearly reveal that normally only a II Class Master's Degree Holder alone would have been entitled for consideration for promotion as a Reader or Professor. But, a Note came to be appended so as to afford an opportunity to persons like the appellants who had obtained a mere pass in Master's Degree in the respective subjects. Therefore, first and foremost, it must be viewed as a concession. It should also be remembered that the State need not have extended such a concession at all. However, it did not want to be harsh to persons like the appellants. Why we are laying little stress on this aspect of the matter is, we heard arguments to the effect that it would constitute discrimination. First of all, where for attaining excellence of education if certain qualifications are prescribed it cannot amount to discrimination at all. In fact, Mr. Vasantha Kumar learned Counsel for the appellants, did not seriously dispute that the State has the power to prescribe such a qualification. However, what he would seriously urge is, there are practical difficulties in the way of the appellants acquiring this qualification because in the State of Karnataka it is not possible to acquire M.Phil Degree. First and foremost, as the learned Single Judge held, this is factually incorrect. Even assuming this to be correct, on that score it cannot ever be urged that excellence of education cannot be attained by the State. As was observed by Lyndon Bains Johnson:

"We have entered an age in which education is not just a luxury permitting some men an advantage over others. It has become a necessity without which a person is defenceless in this complex industrialised society. We have truly entered the century of the educated men."

Therefore, with this object in view, if the State wants to have good teachers, how could it even be complained? For the same reason, we find it difficult to

appreciate that this condition has come to be imposed suddenly when the appellants were on the verge of promotion. Merely because they are on the verge of promotion that does not mean that they get a vested right which had come to be deprived. No person has a right to be promoted. Of course, even now the right of promotion is not denied, but only on the acquisition of an important qualification for the improvement of educational standards. This, we consider to be just and reasonable, more so having regard to the trend of declining standards in education.

4. In the result, we are in entire agreement with the learned Single Judge and we see no case for interference. The appeal stands dismissed. No costs.