

(1990) 01 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition Nos. 5568 to 5585 of 1989

Sathyanaravana Murthy and Others

APPELLANT

Vs

Bangalore University, Bangalore and Another

RESPONDENT

Date of Decision : 30-01-1990

Acts Referred:

Bangalore University Regulations Admission To B.Ed. Course — Regulation 3

Citation : (1992) 4 KarLJ 71

Hon'ble Judges : H. G. Balakrishna, J

Judgement

1. It is submitted by the learned counsel appearing for the petitioners that in Writ Petition Nos. 5580 of 1989, 5581 of 1989, 5582 of 1989 and 5584 of 1989 that the students are claiming the benefits as members belonging to backward classes. The learned standing counsel appearing for the university countered by asserting that the benefit which flows to the backward classes is not available to these petitioners in as much as they do not belong to the State of Karnataka and in this regard reliance is placed on the case reported in 1981 Short Notes Item No. 19 of Bangalore Law Journal in W.Ps. 7365-7383 of 1986 decided on 1-12-1986 in the case of Ashok Kumar and Others v Bangalore University and Others. It was held in the said cases that castes or communities of other States cannot claim status of backward classes in the State of Karnataka.

2. Similar principle was followed in the case of Asgar Hussain v University of Bangalore, 1984(1) Kar. L.J. 579 and it was held that the benefit of belonging to the Backward Classes is not available to persons not belonging to the State of Karnataka coming from outside. I am in respectful agreement with the said views and therefore, these writ petitions are liable to be dismissed.

3. An improvement was sought to be made by the learned counsel for the petitioners that though the petitioners came from out side the Slate of Karnataka, they are actually residing inside the State. There is no material on record to support the assertion. Hence, it is rejected.

4. For the above reasons, I pass the following order. Writ Petition Nos. 5580 of

1989, 5581 of 1989, 5582 of 1989 and 5584 of 1989 are dismissed.

5. In Writ Petition Nos. 5583 of 1989 and 5585 of 1989 it was strongly contended by the learned counsel appearing for the petitioners that all the petitioners are inservice candidates and therefore, the university was not justified in insisting upon the percentage of marks as 45% as applicable to other categories. In the statement of admissions (original) produced on behalf of the Bangalore University by the learned standing counsel, I find that there is no claim registered by the petitioners in the statement furnished by the college to the university that the petitioners are inservice candidates. In the absence of such a categorical claim, I do not think it is open to the petitioners to make a belated bid in this behalf for the first time before this court. It is necessary that such a claim is made before the college and the college incorporates the claim in the statement of admissions forwarded to the Bangalore University. But in the absence of such a claim, no favourable presumption could be drawn. I therefore, hold that the petitioners cannot be regarded as inservice candidates and it is imperative that they secure atleast 45% marks as prescribed under the regulation. Non-fulfilment of the statutory regulations of the management entails dismissal of the writ petitions inasmuch as the petitioners are not entitled to the benefits they have sought. It was further contended by the learned counsel appearing for the petitioners that a ground has been taken in the writ petitions and a certificate also has been furnished as an annexure to the effect that the petitioners are inservice candidates. It is difficult to accept such pieces of evidence, in the circumstances of the case since at the earliest instance no such claim was made by the very same petitioners and their assertion is that they are inservice candidates though they belong to places outside the State of Karnataka. Proposition appears to be too dubious to be accepted.

6. It was further submitted by the learned counsel appearing for the petitioners that on account of dissatisfaction among two rival managements of the college endeavours made in vain by the petitioners to obtain the original certificates that they are inservice candidates. The record does not contain any reference in this regard. I do not see any merit in the submissions made and it was always open to the students (petitioners) to produce documentary evidence to show that such an effort was made before the college and notwithstanding their submission the college made a wrong submission of the statement of admissions to the university. There is no basis to assume that the college, in the circumstances of the case has made the statement of admissions wrongly or negligently. Hence I pass the following order:

The writ petitions are dismissed.

7. In W.P. No. 5569 of 1989, the relief sought by the petitioner is for a mandamus to the first respondent to approve his admission to the B.Ed. degree course for the academic year 1989-90.

8. In W.P. No. 5569 of 1989 according to the petitioner, he has obtained 44.8%

marks in the qualifying degree examination. It is also claimed that he is an inservice candidate.

9. The learned standing counsel appearing for the university submitted that the petitioner took his B.A. degree examination of the Andhra Pradesh University in April 1987 but he claims to be inservice for the purpose of admission for a period of three years in this State. In such a circumstance, the learned counsel submitted that the claim of the petitioner is less than true and since the marks secured by him fall short of 45% which is mandatory, he is not entitled to approval of B.Ed. degree course for the academic year 1988-89. The learned counsel for the petitioner argued that even though he might not have acquired a degree at the time when he was an inservice candidate, it is not improbable that he has served for three years as an inservice candidate before acquiring the degree.

10. I have considered the contentions of both the learned counsel.

11. I am not convinced that the petitioner has put in three years of service as an inservice candidate in the State and further since the petitioner has not secured a minimum qualifying marks of 45%, he is not entitled to admission. Hence the writ petition is dismissed.

12. In Writ Petition Nos. 5572 of 1989, 5573 of 1989 and 5575 of 1989, the main contention of the petitioners is that they are all inservice candidates and there is no regulation which provides that inservice candidates should have secured minimum of 40% qualifying marks for admission of B.Ed. degree course. In the statement of admissions made available by the learned standing counsel appearing for the university, it is seen that the petitioners in W.P. Nos. 5572 of 1989, 5573 of 1989 and 5575 of 1989 have registered their claim as inservice candidates without being supported by necessary service certificates, whereas the petitioner in W.P. No. 5572 of 1989 passed his degree examination in April, 1988, the petitioner in W.P. No. 5573 of 1989 took his degree in April 1986 from Kerala University and the petitioner in W.P. 5575 of 1989 took his degree from Calicut University in April 1985. All these petitioners have secured marks below 40%. These are undisputed facts. But it is contended by the learned counsel for the petitioners that in the absence of any regulation prescribing the minimum percentage of marks at 40%, the petitioners cannot be denied the relief and the fact that their claim is recorded in the statement of admissions submitted by the college to the university is sufficient ground for holding that the petitioners have a legitimate claim to be considered as inservice candidates.

13. The learned standing counsel for the university however contended that merely because the petitioners have preferred a claim to be considered as inservice candidates, it cannot be conclusive unless the claims were supported by necessary certificates at the time when they made the claim before the college. It was secondly contended that the minimum percentage of marks even for inservice candidates is 40%, and this has to be so in the light of the guidelines

issued by the Bangalore University dated 1-7-1987 for the determination of the eligibility for admission of students to B.Ed. degree course in the colleges affiliated to the Bangalore University during 1987-88 and the same guidelines continued thereafter. Regulation 2 lays down a minimum of 40% for the purpose of relaxation in respect of members of Schedule Castes and Scheduled Tribes. Regulation 3 deals with minimum percentage for inservice candidates. All that it states is the minimum percentage viz., 45% need not be insisted upon in the case of inservice teachers of the State of Karnataka who want to join the B.Ed. degree course and also in the case of officers and teachers on probation who may be deputed by the department of public instruction. There is no material or indication in Regulation (3) to believe that the minimum percentage will be carried downwards below 40%. It would be rather difficult to reconcile the position with regard to relaxation of percentage of marks between members of Scheduled Castes and Scheduled Tribes in comparison with the members belonging to inservice category. It would lead to a fallacy. However, it has to be considered that whereas for members of Scheduled Castes and Scheduled Tribes, the minimum is 40%, whether for the inservice candidates the minimum could be less than 40% unless the regulation says so. I am unable to subscribe to the view that the minimum marks for the inservice candidates could be less than 40%. It is in this context, the guidelines issued by the Bangalore University dated 1-7-1987 become relevant and I do not see any reason to discard the guidelines issued by the Bangalore University in the matter of interpretation of Regulation 3. In the said guidelines at page 5 it is provided that the "relaxation in percentage of marks for inservice candidates should not go below 40%". I do not see that the university has acted without jurisdiction or exceeded its jurisdiction. The petitioners in my opinion are not entitled to the benefit or approval of their admission to B.Ed. degree course for the academic year 1988-89. I therefore, dismiss the writ petitions.

14. In W.P. No. 5574 of 1989, the petitioner graduated from Calicut University in April 1987 and secured 338 out of 800 marks in the qualifying degree examination. The statement of admissions submitted by the college to the university shows that the petitioner has not sought for relaxation on any ground whatever and having secured less than 45% when the prescribed minimum itself is 45% marks, has no legitimate claim for admission to the B.Ed. degree course for the academic year 1988-89. The facts are not disputed and I find that there is no merit in the claim of the petitioner for admission to the B.Ed. degree course. Hence the writ petition is dismissed.

15. In W.P. No. 5568 of 1989, it is submitted that the facts of this case are covered by the decision in the case of W.P. No. 6331 of 1989 dismissed by this court on 10-1-1990. In this case also, the petitioner graduated from Usmania University as an external candidate and he has not satisfied the requirement of 10 + 2 + 3 syllabus. Being an external candidate he is not qualified with the necessary eligibility for admission to the B.Ed. course. Hence the writ petition is dismissed.

16. In W.P. No. 5579 of 1989 the petitioner has secured 41.25% marks in the qualifying B.A. degree examination of the Kerala University and appeared for the degree examination in April 1987. The petitioner has not made any claim for consideration as belonging to the category of inservice candidate. The statement of admissions submitted by the college to the university does not disclose that the petitioner has made any claim for the benefit arising out of being an inservice candidate. The minimum percentage in the qualifying examination for the purpose of admission to the B.Ed. degree course is 45%. In the light of the undisputed facts, the petitioner is not entitled for admission to the B.Ed. degree course for the academic year 1988-89. Hence the writ petition is dismissed.

17. In W.P. No. 5578 of 1989, the petitioner took his B.A. degree in the year April 1986 from Kerala University having scored 37.5% marks in the qualifying examination which is much less than the required minimum percentage of 45%. Though the petitioner has claimed as an inservice teacher in the State of Karnataka, the claim is not supported by any services certificate as contemplated under the regulation. However, there is no entry to the effect that the petitioner had preferred a claim as an inservice candidate and for the benefits flowing from it. The regulations clearly do not permit grant of the relief sought by the petitioner for two reasons, viz., that the marks obtained by the petitioner in the qualifying degree examination is less than 45% and secondly, the petitioner has not proved of his belonging to inservice category. Hence the writ petition is dismissed.

18. In Writ Petition Nos. 5576 of 1989 and 5577 of 1989, both the petitioners have secured less than 45% marks, and have preferred claim as inservice teachers in the State of Karnataka. However, their claims are not supported by any service certificates as contemplated under the regulations. In W.P. No. 5577 of 1989, the petitioner has taken B.Sc. degree in the year April 1988 from Kerala University whereas in W.P. No. 5576 of 1989, the petitioner took the degree in the year April 1983 from Kerala University. It is submitted on behalf of the Bangalore University that the petitioners are not eligible for admission to B.Ed. degree course for the reason that their claim of being inservice candidates in the Karnataka State is not proved by production of the valid certificate as contemplated under the regulations and hence they are not entitled to be admitted to B.Ed. degree course. Similarly, it has to be held that mere assertion cannot amount to proof. There was sufficient time and scope for the petitioners to make available and produce to the satisfaction of the University if the petitioners did possess the inservice certificates. It is because of non-production of the same, their cases have been rejected and at this distance of time, if the petitioners are claiming the benefit of the opportunity to prove that they are inservice candidates before the University, I do not think any useful purpose would be served. Hence, writ petitions are dismissed.

19. In W.P. No. 5570 of 1989, the petitioner passed B.A. degree examination in March 1987 from Andhra University having secured 43% of marks. It is difficult

to believe that the petitioner was an inservice candidate having served as a teacher in the State of Karnataka. Even assuming, that such a claim is made, the petitioner has failed to produce the service certificate and further the marks obtained falls short of the prescribed minimum of 45% in the qualifying examination. In these circumstances, there is no alternative, than to dismiss the writ petition.

20. In W.P. No. 5571 of 1989, the petitioner no doubt passed B.A. degree examination in 1982 from Calicut University having secured 40.58% marks in the qualifying examination, the petitioner also claims to be an inservice teacher in the State of Karnataka. But the claim is not supported by any service certificate as envisaged under the regulations. In these circumstances, since the petitioner has not secured the prescribed qualifying marks (minimum marks of 45%) and since it is not proved that the petitioner belongs to the class of inservice teachers of the State of Karnataka, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed.