

(2004) 10 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No"s. 39650-666 of 2001 and 2760/02

S.B. Halappanavar and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Civil Services (Absorption of Persons Appointed as RMPs/SMPs/AMPs in the Indian System of Medicines and Homoeopathy Department (Special) Rules, 1992 — Rule 4, 5

Karnataka Civil Services Rules, 1974 — Rule 235

Citation : (2005) 104 FLR 633 : (2005) ILR (Kar) 57 : (2005) 2 KCCR 149 SN

Hon'ble Judges : V. Gopala Gowda, J;H. Billappa, J

Bench : Division Bench

Advocate : Vigneshwar S. Shastri, for the Appellant; V.Y. Kumar, AGA, for the Respondent

Judgement

V. Gopala Gowda, J.—The petitioners were initially appointed either as Rural Medical Practitioners (RMPs) or Subsidised Medical Practitioners (SMPs) or Aided Medical Practitioners (AMPs) on ad hoc basis under different Rules. The State Government promulgated Karnataka State Civil Services (Absorption of persons appointed as RMPs/SMPs/ AMPs in the Indian System of Medicines and Homoeopathy Department) (Special) Rules, 1992 (hereinafter referred to as "the Special Rules") The Special Rules provided absorption of RMPs, SMPs and AMPs in regular posts. Accordingly, the petitioners had been absorbed to regular posts.

2. The Special Rules provided for fixation of pay. of absorbed persons at the minimum of the pay scale of Rs. 1720-3170. Rule 5 provides that the services rendered by the absorbed persons shall be subject to Rule 235 of the Karnataka Civil Services Rules which stipulates that if the previous service rendered is not covered by contributory Provident Fund, the absorbed Government Servant shall pay pensionary contribution. Rules 4 and 5 of the Special Rules reads as under:-

"4 FIXATION OF PAY OF PERSONS ABSORBED UNDER THESE RULES-

The pay of the persons absorbed under these Rules shall be fixed at the minimum of the pay scale specified in Column 4 of the Schedule.

5. LEAVE, SENIORITY AND PENSION OF PERSONS ABSORBED:

The service rendered as RMP, SMP and AMP shall subject to Rule 235 of the KCSR. be taken into consideration for determining pension and leave of a person absorbed under these Rules". (underlining supplied)

3. The petitioners filed Application No. 857/2001 before the Karnataka Administrative Tribunal (hereinafter referred to as "the Tribunal") to strike down the words ""at the minimum": in Rule 4 and the words "subject to Rule 235 of K.C.S.R" in Rule 5 of the Special Rules which are underlined above in the extract. A direction was also sought to fix their pay scale taking into consideration the services rendered by them before absorption. The application was resisted by the State and sought for dismissal of the same. The Tribunal in the impugned order at Annexure-A dated 26-6-2001 though declined to condone the delay in filing the Application, in view of the pendency of the case for 5 years, proceeded to consider the same on merits.

4. The Tribunal not at all considered the prayers made in the Application to strike down the words "at the minimum" in Rule 4 and the words "subject to Rule 235 of the K.C.S.R" in Rule 5 of the Special Rules. It has dismissed the applications holding that the petitioners were not initially appointed to any post carrying a definite scale of pay. The Tribunal failed to note that had they been appointed against such posts carrying definite pay scale, there was no need for them to approach the Tribunal. That apart, the Services rendered by them before absorption cannot be ignored. The principle of "equal pay for equal work" shall have to be applied. The claim of the petitioners was required to be considered keeping in view Article 14 of the Constitution of India. In order to do so, the prayers made to strike down the words are necessarily to be considered. The Tribunal failed to consider the same. The decision of the Tribunal is contrary to the law laid down in the case reported in A. I. R 1997 SC 1327.

5. For the reasons stated above, these Writ Petitions are allowed and the impugned order is quashed. The matter is remanded to the Tribunal with a direction to examine the prayers made in the Application to strike down the words mentioned therein and pass appropriate orders within a period of three months. All contentions are kept open.