
(1965) 03 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 2159, 2164, 2198, 2200, 2229, 2236 and 2275 of 1963

Shivogigowda

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 16-03-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (4), 309

Mysore Public Service Commission (Functions) Rules, 1957 — Rule 4 (2), 9

Citation : (1967) 1 LLJ 63

Hon'ble Judges : T.K. Tukol, J;K.S. Hegde, J

Bench : Division Bench

Judgement

Hegde, J.—In these writ petitions, identical relief are prayed for. The petitioners firstly wants this Court to strike down the recommendation made by respondent 2 - The Mysore Public Service Commission - under its No. G. 1365/63/64, dated 21 September, 1963, for appointment of candidates mentioned therein as Assistant Superintendents of Fisheries and Inspectors of Fisheries and further to issue a writ of prohibition to respondent 3 (the Director of Fisheries, Fisheries Department, Government of Mysore, Bangalore), restraining him from giving effect to the recommendation made by respondent 2.

2. On 1 April, 1963 the Director of Fisheries sent a requisition to respondent 2 requesting it to make recommendation for filling up 25 posts of Assistant Superintendents of Fisheries and Inspectors of Fisheries, 4 of whom should belong to the backward classes, 4 from more backward classes, 4 from scheduled castes, 2 from scheduled tribes and the remaining 11 from other classes. The Public Service Commission found it difficult to comply with this requisition in view of the decision of the Supreme Court in M.R. Balaji and Others Vs. State of Mysore, , wherein the Court struck down a Government order issued under Art. 15(4) of the Constitution reserving seats for backward classes, in the technical institutions on the basis of castes and further classifying the backward classes into backward and more backward classes.

3. The ratio of the decision is that a classification made solely on the basis of casts is bad in law and further the State has no right to go into the degrees of backwardness. The rule laid down in this case applied with equal force to reservation of post under Art. 16(4). Evidently, the requisition made by respondent 3 proceeded on the basis of G.O. No. GAD 83 SRR 61, dated 14 July, 1961, whereunder certain posts were reserved to backward and more backward classes of citizens. There can be hardly any doubt that the said reservation was wholly unsustainable. In view of the decision *M.R. Balaji and Others Vs. State of Mysore*, , the Government order in No. GAD 83 SRR 61 should be considered as being wholly invalid and without legal effect. We have no doubt in our mind that if the Public Service Commission had complied with the requisition received from respondent 3, this Court would have struck down its recommendation. Faced with such a situation, respondent 2 wrote back to respondent 3 as well as to the Government pointing out the difficulties in its way in making recommendation on the basis of the requisition received from respondent 3 and soliciting instructions in that behalf. Very curiously, the Government did not give any guidance to the Public Service Commission. Therefore respondent 2 called for application ignoring the reservation made in favour of the backward classes under G.O. No. GAD 63 SRR 61. In other words, it called for application for the 4 posts reserved and scheduled castes, 2 for scheduled tribes and for 19 posts by open competition. In response to that notification, various applications including that of the petitioners herein were received. After interviewing the qualified applicants, the Public Service Commission made its recommendation which were accepted by respondent 3, the appointing authority. The petitioners before us were not recommended by respondent 2 and consequently could not be appointed by respondent 3.

4. Sri Balakrishna, the learned counsel for the petitioners, formulated three grounds of attack against the recommendations made by respondent 2, namely -

(1) respondent 2 had no authority to ignore G.O. No. GAD 83 SRR 61, dated 14 July, 1961; hence its recommendations should have been ignored;

(2) the impugned recommendations were made in contravention of rule 4(2) of the Mysore Public Service Commission (Functions) Rules, 1957; hence the same is unsustainable; and

(3) the interview test adopted by respondent 2 is a highly arbitrary test and therefore the selection made are violative of Art. 14 of the Constitution.

5. We shall now examine each of these contentions.

6. According to the learned counsel for the petitioners whether the Government order in No. GAD 83 SRR 61, dated 14 July, 1961, was a valid order or not, so long as it was not revoked by the Government or struck down by a Court, respondent 2 was bound by it; respondent 2 could not have taken upon itself the responsibility of ignoring that Government order in force. In support of this contention, strong reliance was placed on rule 9 in Mysore State Civil Services

(General Recruitment) Rules, 1957, framed under Art. 309 of the Constitution. The said rule reads :

"In all cases of direct recruitment, vacancies shall be reserved and filled up by members of the schedule castes and scheduled tribes and other backward classes to such extent and in such manner specially provide for in the rules made for that purpose."

7. There can be hardly any doubt that if there was a valid order of reservation of posts for backward classes, respondent 2 was bound to comply with the same. It had no choice in the matter. But, in the instant case, in our judgment, the order relied on was a wholly invalid order. It was non est. In the eye of the law it was not existing. It is for the State Government to reserve posts for backward classes or not. It is not the mandate of the Constitution that the Government should invariably reserve some posts for the backward classes. The question whether any post should be reserve for the backward classes is left to the description of the Government. What Art. 16(4) of the Constitution says is :

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments and posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

8. The power conferred under that article is permissive in character. What is states is that it is open for the concerned Government if it thinks fir to reserve certain appointments and posts for backward classes of citizens. This does not mean that it should invariably reserve some seats for those classes. Rule 9 referred to earlier, on a true interpretation means that if there is any valid order of the Government reserving posts for backward classes then the Public Service Commission is bound to make its recommendations in accordance with that Government order. It does not mean that if the Government fails to reserve any posts to the backward classes, then the Public Service Commission has no authority to make recommendations for filling up vacant posts. Hence the steps taken by respondent 2 in the instant cases, in our judgment, is both appropriate as well as legal.

9. Sri Balakrishna contended that though the decision of the Supreme Court in M.R. Balaji and Others Vs. State of Mysore, might have shaken the basis of the order made by the Government in No. GAD 83 SRR 61 it did not invalidate that order; therefore, respondent 2 had no competence to ignore that order. We are unable to accept this contention as correct. The effect of the Supreme Court decision in M.R. Balaji and Others Vs. State of Mysore, is that any reservation made for backward classes solely on the basis of caste is per se invalid; further, the classification of backward classes into backward and more backward is unauthorized by law. Therefore, even though the order No. GAD 83 SRR 61 had not been specifically quashed, quite obviously its invalidity became self-evident.

10. Even if we had found it possible to accept the contention of Sri Balakrishna

that the order in question should be considered to have been in force till the same was either quashed by a Court or rescinded by Government, then also, on the facts of this case, we would have declined to interfere with the steps taken by respondent 2 as, in our opinion, the petitioners did not suffer any injustice. After all the power of this Court while acting under Art. 226 of the Constitution is a discretionary power and its direction will only be exercised if the Court comes to the conclusion that the petitioners are aggrieved by the steps complained of or that there was substantial injustice to the petitioners. This position is now made abundantly clear by several decisions of the Supreme Court and of this Court.

11. In Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , the Supreme Court laid down :

"The High Courts do not and should not act as Court of appeal under Art. 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for though no legislature can impose limitation on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

12. Similar was the view taken by the Supreme Court in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, . This Court took the same view in Dr. P. S. Venkataswamy Setty v. University of Mysore [(1963) 2 Mys. L.J. 383]. In the cases before us, all the petitioners had applied in response to the notification issued by respondent 2; they had been interviewed by respondent 2 but they were not recommended. We are further informed that among the selected candidates there were more backward classes candidates than the posts reserved for them in G.O. No. GAD 83 SRR 61 dated 14 July, 1961. In these circumstances, it cannot be said that there was any injustice caused to those classes termed backward in G. O. No. GAD 83 SRR 61, nor could the petitioners claim to have been aggrieved by the impugned recommendations.

13. It was next urged by Sri Balakrishna, that if we consider that the Government order in No. GAD 83 SRR 61 as being wholly invalid, in that event respondent 2 was bound to follow the Government order in No. GAD 177 SRR 62, dated 16 September, 1963, reserving appointments and posts for backward classes, appointments and posts for backward classes of citizens. Which order came into force 5 days before respondent 2 made its recommendation. We see no force in this contention. Respondent 2 called for applications on the basis of the position prevailing on the date it issued the notification calling for applications. Therefore, what we have to consider is the position prevailing as on

that day. Further, no recommendation could have been made on the basis of the latest Government order as the required data could not have been available.

14. For the reasons mentioned above, we are unable to accept the contention of the learned counsel for the petitioners that the recommendation made by respondent 2 is bad inasmuch as it did not take into consideration, while making its recommendation, the Government order in No. GAD 83 SRR 61 dated 14 July, 1961.

15. We shall now take up the contention that the recommendation in question is bad because of the contravention of rule 4(2) of the Mysore Public Service Commission (Functions) Rules, 1957. As per these rules, there are four kinds of recruitment to posts and appointments, viz. recruitment by examination, recruitment by selection, recruitment by promotion and recruitment by transfer. In this case, we are not concerned with the recruitment by promotion and recruitment by transfer. Rule 3 deals with recruitment by examination. Rule 4 deals with recruitment by selection. Rule 3 states :

"When any competitive examination is to be conducted by the Commissioner for the purpose of direct recruitment to a service the Commission shall -

(1) advise the Government in regard to the rules of regulations to be made for the -

(a) conditions of eligibility of candidates,

(b) Syllabus of the examination;

(2) after the rules or regulations to be made have been approved by Government, and a requisition for recruitment is received, invite applications from intending candidates after giving due publicity to conditions of eligibility, nature of competition, number of vacancies, to be filled wherever possible, and any other relevant matter material;

(3) make all arrangements for the actual conduct of the examination at such centre or centres as may be decided by Government, in consultation with the Commission;

(4) arrange the candidates in order of merit on the results of the examination;

(5) forward a list of the candidates so arranged to the appointing authority for further action;

(6) publish the results of the examination in the Mysore Gazette; and

(7) make necessary arrangements for supplying the marks card showing the marks obtained by any candidates on payment of such fee, not exceeding Rs. 2 in the case of each marks card, as may be prescribed by the Commission."

16. Rule 4 reads :

"When recruitment to a service or posts is to be made by selection, and consultation with the Commission is required, the Commission shall -

- (1) advise the Government in regard to the conditions of eligibility of candidates;
- (2) after the rules to be made have been approved by Government and a requisition for recruitment is received, notify applications from intending candidates after giving due publicity to conditions of eligibility, nature of competition, number of vacancies to be filled wherever possible and any other relevant material;
- (3) consider all applications received, and when necessary interview such candidates as fulfil the prescribed conditions and whom it considers most suitable for appointment;

Note. - Nothing contained herein shall preclude the Commission from considering the case of any candidate possessing the prescribed qualification brought to its notice by Government, even if such a candidate has not applied in response to the advertisement of the Commission;

- (4) forward to the appointing authority a list consisting of such number as it may fix, of the candidates whom the Commission considers must be suitable for appointment in the order of preference :

Provided that the Commission may invite Government to nominate an officer to represent the services or departments for which recruitment is being made to be present at the interview referred to in Clause (3) to assist the Commission in its work of selection."

17. From the foregoing, it is clear that in the case of recruitment by examination, there should be examinations, written or oral, the syllabus for the examinations should be fixed and the examinations should be conducted in such centres as provided in sub-rule (3) of rule 3. Further when recruitment by examinations is made the Public Service Commission is required to arrange the candidates in order of merit on the basis of the result of the examination, whereas, in the case of recruitment by selection, all that the rule contemplates is that the selected candidates must possess the qualifications prescribed, the Public Service Commission should be satisfied about their suitability to the appointments or posts in question. Under rule 4, no examination, oral or written is contemplated. While under rule 3 the Public Service Commission has to arrange the list of candidates recommended on the basis of merit in accordance with the marks obtained at the examinations, in the case of recruitment by selection what the Public Service Commission has to do is, firstly to find out whether the candidates possessed the required qualifications, secondly to see whether they are suitable and lastly to recommend the most suitable candidates in the order of preference. On an examination of the scheme of rule 4, it is clear that no other test than the test of interview is contemplated by that rule. Therefore, when rule 4(2) speaks of "nature of competition" it merely refers to the interview by the Commission

and nothing else. In the notification issued by respondent 2 - Clause (10) thereof - it is mentioned that the Public Service Commission reserves itself to call for interview only such candidates as it considers suitable. That is all that could have been done by the Public Service Commission while making recruitment by selection.

18. It was urged by Sri Balakrishna that when rule 4(2) speaks of "nature of competition," it should be held that it requires some form of competition and that form of competition can only be either by means of a written examination or by viva voce; otherwise, according to him, there can be no competition whatsoever at all. This argument is unacceptable to us. The competition contemplated under rule 4 is one for the finding out the most suitable candidates for the appointments or posts advertised. The suitability of the candidates is determined on the basis of interview. Therefore, in our opinion, there was no contravention of rule 4(2).

19. Now, coming to the last contention of Sri Balakrishna, namely, the test of interview is an arbitrary test having no relationship to the object intended to be achieved and hence the said test is violative under Art. 14 of the Constitution. It was not his contention that rule 4(2) of the Mysore Public Service Commission (Functions) Rules, 1957, is an invalid rule. Hence we have to proceed on the basis that the said rule is a valid rule. If that be so, the only test contemplated by that rule is one of interview. It must be remembered that the interview in question was held by the Public Service Commission, a constitutional authority - an authority that is entitled to respect. The ratio of the decision of this Court in *D. C. Viswanatha v. Chief Secretary, Government of Mysore* [(1963)] 2 Mys. L.J. 302], does not bear on the point under consideration. Therein, the Government prescribed five objective tests for the purpose of interview. The question that fell for decision by this Court was as to how the total marks allotted for interview should be distributed. The tests prescribed therein were held to be objective tests. In the instant case, no specific tests for interview had been prescribed. But all the same it cannot be said that the interview held was not governed by objective tests. Respondent 2 was required to find out the suitability of the candidates for the posts advertised. In other words, respondent 2 was required to determine, what were all the qualities required by those who are to man those posts, which of the applicants possessed those qualities and prefer the most suitable amongst them. In so doing, we understand, they had the assistance of the head of the department. We are unable to agree with the contention that the test of interview is an arbitrary test.

20. In the affidavit filed in support of the writ petitions, the petitioners had made allegations of bias against the members of the Public Service Commission. These allegations were later withdrawn. We wish that those allegations had not been made. In view of the unconditional apology tendered by the petitioners for making those allegations, we did not think it fit to dismiss these petitioners in limine.

21. In the result, these petitions fail and they are dismissed. No costs.