

(2007) 07 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No. 8288 of 2007 C/W W.P. No's. 8361, 9786, 10602 and 11819 of 2007

Shrikanth S. Patil and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2008) ILR (Kar) 2719

Hon'ble Judges : Cyriac Joseph, C.J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : S.V. Narasimhan and H.S. Jois, for Vagdevi A/s, S.M. Babu and D.L. Jagadeesh, for the Appellant; Udaya Holla, General, for B. Srinivasa Gowda, GA for R1 and T. Narayanaswamy, for R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In all these writ petitions, petitioners have challenged the order passed by the Karnataka Administrative Tribunal, Bangalore in application Nos. 6432 to 6437/2006 and other connected matters dated 11-4-2007 whereby the applications filed by them for a mandamus directing the respondents to fill up 35 posts of Inspector of Motor Vehicles ("IMV" for short) pursuant to a notification bearing No. PSC.1.RTB/1996, dated 3-1-1997 and to consider their candidature to the said post were dismissed.

2. Petitioners are the holders of Diploma in Automobile Engineering. The second respondent vide notification dated 3-1-1997 invited applications for filling up 35 posts of IMVS in Motor Vehicle Department. Pursuant to the notification, petitioners submitted applications in the prescribed form enclosing copies of the certificates in proof of educational qualification, reservation category and experience certificates along with the prescribed fee by way of demand draft. It is contended that the process of recruitment has been stalled at the instance of Karnataka Motor Vehicles Inspectors' Association which had not only made

representations to the third respondent to keep in abeyance the process of recruitment but also initiated proceedings before the Tribunal in application Nos. 4908 and 5360/ 1998 questioning the validity of the notification dated 3-1-1997. It is further contended that after the submission of the applications, none of the petitioners was intimated by the Karnataka Public Service Commission (for short "Commission") as to the stage of process of selection or action taken on their applications. The association of petitioners, namely, "Unemployed Youth Diploma Holders in Automobile and Mechanical Engineering Forum" submitted representation on 24-12-2004 to the Commission inviting its attention to its earlier representation dated 15-9-2003 pertaining to notification dated 3-1-1997 for recruitment of 35 posts of IMVS and requesting the Commission to issue letters of interview and relieve them of unemployment and hardship. The association renewed its request in the year 2006 to the Commission and other authorities. Despite the said representations, neither the forum nor the petitioners or other candidates, who had submitted their applications were apprised of the factual position. It is contended that succumbing to the external pressure brought upon the Government against the recruitment being processed, the Government kept the process of recruitment vide Notification dated 3-1-1997 in abeyance and there was no cancellation or super session of the Notification. It is the case of the petitioners that they were surprised by a news item appearing in "Vijaya Karnataka" Kannada daily newspaper dated 20-8-2006 in which a Notification dated 17-8-2006 issued by the Commission had been published inviting applications for recruitment of 245 posts of IMVS. Within a span of 8 days from the date of publication of the said Notification, a corrigendum dated 25-8-2006 was issued by the Commission reducing the number of vacancies from 245 posts to 145 posts which included 35 posts of vacancies which were notified vide Notification dated 3-1-1997. It is contended that they were not aware of the cancellation of the Notification dated 3-1-1997 since they had not received any communication from the Commission much less the fee remitted along with their application had not been returned to them. Therefore, petitioners filed the applications before the KAT for the following reliefs:

- a) Call for the records pertaining to Notification No. R(2):147:PSC:2001-02, dated 18-10-2001 (Annexure-A13), Notification No. PSC.I.RTB.1/ 2006 dated 17-8-2006 (Annexure-A11) and Corrigendum No. R(1)79/2006-07/PSC, dated 25-8-2006 (Annexure-A12) of the second respondent-KPSC and peruse the same and declare them as improper and illegal;
- b) As a consequence thereof to quash the Notification No. R(2):147:PSC:2001-02, dated 18-10-2001 (Annexure-A13), of the 2nd respondent-KPSC by issue of a writ in the nature of certiorari or order or direction as the case may be;
- c) Issue of writ or mandamus directing the respondents to segregate and separate 35 posts of Motor Vehicles Inspectors out of 243 posts notified vide Notification dated 17-8-2006-Annexure-A11 and/or 145 posts in corrigendum

dated 25-8-2006-Annexure-A12 and make recruitment to the said posts in terms of the Notification dated 3-1-1997 and consider the candidature of the applicants;

d) Issue a writ in the nature of mandamus directing the respondents to fill up 35 posts of Motor Vehicles Inspectors pursuant to Notification bearing No. PSC. 1.RTB/1996, dated 3-1-1997-Annexure-A 1 and consider the candidature of the applicants and to select them to the said post:

e) To grant such other suitable reliefs as this Hon''ble Tribunal deems fit to grant in the circumstances of the case, in the interest of justice.

3. The State Government as also the Commission have filed their respective objections before the KAT. The State Government in its objections has contended that applicants have no vested right for selection in pursuance of the Notification. It is contended that the Central Government has amended Motor Vehicles Act in the year 1989 and on that basis, Central Government has issued a Notification dated 12-9-1999 prescribing educational qualification for the post of Inspector to Motor Vehicles. Without amending Cadre and Recruitment Rules (C & R Rules" for short) of the Department, Notification was issued on 3-1-1997, which is contrary to C & R Rules. As the prescription of qualification was without amending the relevant provisions of the C & R Rules, certain applications and writ petitions were filed challenging the Notification dated 3-1-1997. In view of the same, the first respondent has issued an order on 4-10-2001 with drawing the Notification dated 3-1-1997. Now the respondent has prescribed the qualification amending C & R Rules vide Notification dated 24-11-2005 and in view of the amendment, fresh Notification calling for appointment to the post of Inspector of Motor Vehicles is issued which is the consonance with C & R Rules as well as the amended provisions of the Motor Vehicles Act, 1989. The first respondent is not at all influenced by the representation of the Association as alleged. In view of the withdrawal of the earlier Notification dated 3-1-1997, fresh notification has been published in the gazette and once such gazette notification is made by the respondent, it is deemed that the earlier Notification has been withdrawn validly. They prayed for dismissal of the applications. KPSC has filed more or less similar objections.

4. On the basis of the pleadings of the parties, the Tribunal has framed the point for consideration as under:

Whether a candidate who applies for a post in pursuance of a Notification issued by the KPSC has an indefeasible right to be reconsidered for selection?

5. The Tribunal after considering the materials on record, contentions of the parties and various decisions of the Apex Court, has dismissed the applications. Petitioners have challenged the said order in these writ petitions.

6. We have heard Sri H.S. Subramanya Jois, learned Senior Counsel along with Sri S.V. Narasimhan, Sri S.M. Babu and Sri D.L. Jagadeesh, learned Counsel appearing for the petitioners and Sri Udaya Holla, learned Advocate General

along with Sri B. -Sreenivasa Gowda, learned Government Advocate and T. Narayana Swamy, learned Counsel appearing for the respondents.

7. Learned Senior Counsel appearing for the petitioners would contend that divergent reasons have been assigned in the reply statement of the Government and the communication dated 4-10-2001. In the communication dated 4-10-2001 of the Government, it is stated that on a detailed consideration of the matter, the Government was of the view that there is no necessity to fill up 35 posts of IMVS and it desires to recognise the department, whereas in the reply statement, reason for issuing the Government Order dated 4-10-2001 is that without amending the C & R Rules of the Department, in the notification dated 3-1-1997, the educational qualification prescribed for the post was Diploma in Automobile Engineering or Mechanical Engineering. The said prescription of the qualification in the Notification dated 3-1-1997 even though was in consonance with the Motor Vehicles Act, 1989, the same is contrary to C & R Rules. That is why the Notification dated 3-1-1997 has been withdrawn on 4-10-2001. It is contended that the validity of the Notification shall be judged by the reasons so mentioned and cannot be supplemented by fresh reason in the shape of an affidavit. It is further submitted that the reasons assigned by the Tribunal to negate the claim of the petitioners are unjust and improper.

8. On the other hand, learned Advocate General appearing for the respondents submits that the Central Government has amended the Motor Vehicles Act in the year 1989 and on the basis of the new amendment, Central Government has issued a Notification dated 12-9-1999 prescribing the educational qualification for the post of Inspector of Motor Vehicles as Diploma in Automobile or Mechanical Engineering. However, there was no corresponding amendment to C & R Rules. The prescription of qualification in the Notification dated 3-1-1997 even though was in consonance with the Motor Vehicles Act, the same was contrary to C & R Rules. As the qualification prescribed was without amending the relevant provisions of the C & R Rules, certain applications and writ petitions were filed. In view of the same, first respondent has issued the order dated 4-10-2001 withdrawing the Notification dated 3-1-1997. C & R Rules were amended on 24-11-2005. In view of such amendment, fresh notification calling for appointment to the post of Inspector of Motor Vehicles was issued which is in consonance with the C & R Rules. It is further contended that the first respondent is not at all influenced by the representations of the association. The petitioners are not entitled to have any vested right for continuation of the selection process on the basis of the applications invited from eligible candidates for the post of Motor Vehicles Inspectors.

9. We have carefully considered the arguments of the learned Counsel made at the bar and perused the materials placed on record.

10. Admittedly, the applications relate to direct recruitment and not promotion. The Notification dated 3-1-1997 issued for filling up 35 posts of Inspector of Motor Vehicles was earlier stayed and later withdrawn in the year 2001, much

earlier to the Notification issued for inviting applications for filling up 145 posts of Inspector of Motor Vehicles in the year 2006. The old Rules, which were in force on 3-1-1997, came to be amended in the year 2005. So it cannot be said that even after the amendment of the Rules in the year 2005, 35 posts for which applications were invited earlier and are included in the 145 posts notified now, required to be filled up according to the Rules of 1976 which were no more in force in the year 2006. The submission of the petitioners that after issuing the Notification calling for applications from intending candidates for a post or posts, such Notification cannot be cancelled or withdrawn is without any merit.

11. It is well established that a notification calling for applications from intending candidates for a post or posts merely amounts to an invitation to the qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant Recruitment Rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. It is true that the State does not have the licence to act in an arbitrary manner. At the same time, the State is under no legal duty to fill up all or any of the vacancies. The applicants have no vested right for selection in pursuance of the notification. If the decision not to fill up the vacancies is to be taken bonafide for appropriate reasons, the same cannot be found fault with. When it was found that the qualifications mentioned in the Notification were not the qualifications required under the C & R Rules, the Government decided to withdraw the Notification. Later, Government amended the C & R Rules to make it in conformity with the Motor Vehicles Act as far as the qualifications are concerned. After such amendment, fresh Notification has been issued inviting applications. The above actions of the Government cannot be said to be malafide or arbitrary.

12. In the case of *Shankarsan Dash Vs. Union of India*, , the Apex Court has held as under:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhas Chander Marwaha*, *Neelima Shangla v. State of Haryana*, or *Jatendra Kumar v. State of Punjab*.

13. In *Jai Singh Dalal and Ors. v. State of Haryana and Anr.* 1993 Suppl (2) SCC

600, the Apex Court again has held that a Notification inviting the applications merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. It has been further held that the petitioners had no right to claim that the selection process once started must be completed.

14. In *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*, , the Supreme Court has held that the Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. It has been further held that no candidate acquire any vested right against the State. Therefore, the State is entitled to withdraw the Notification by which it had previously notified recruitment and to issue fresh Notification in that regard on the basis of the amended rules.

15. In *State of A.P. and Others Vs. D. Dastagiri and Others*, , the Apex Court has held as under:

4. ...the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constables....

16. In *Pitta Naveen Kumar and Ors. v. Raja Narasaiah Zangiti and Ors.* (2007) 1 SCC 92, the Apex Court has held that a candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor.

17. The contention of the petitioners that divergent reasons have been assigned in the reply statement of the Government and the Notification dated 4-10-2001 for withdrawal of notification dated 3-1-1997 is also without any merit. The Tribunal has examined the records in detail in this regard. The Tribunal has examined the various correspondences and nothings made in the file and has come to the conclusion that when the decision was taken and communicated, the Department did not feel the necessity to fill up the notified posts then. Undue importance should not be given to the letter addressed for the withdrawal/cancellation of the Notification in which all the grounds have not been spelt out. One of the reasons, namely, the amendment required under C & R Regulations with regard to qualification has been mentioned in the withdrawal Notification.

The Tribunal has pointed out various reasons found in the records for withdrawal of the Notification dated 3-1-1997. Having regard to the facts and circumstances of the case, no fault can be found with the finding of the Tribunal in this regard. It is also clear that the decision not to fill up vacancies pursuant to the Notification dated 3-1-1997 has been taken bonafide and for valid reasons.

18. Learned Counsel for the respondents have also contended that the applications were barred by time, as the applicants had not approached the Tribunal within the period of limitation. Petitioners challenged the Notification dated 18-10-2001 in the year 2006. It is their case that individual notices had not been issued to them intimating the issuance of withdrawal Notification. It is not in dispute that notification dated 18-10-2001 was published in the Karnataka Gazette on 13-12-2001 and the said Notification is a notice to one and all in the State. Therefore, the petitioners are not right in contending that in the absence of notice to them about the withdrawal of the Notification dated 18-10-2001 they had no knowledge of the withdrawal till they made enquiry in the year 2006. Having given our anxious consideration to the rival contentions made by the learned Counsel at the bar, we do not find any merit in these writ petitions. Accordingly, they are dismissed. No costs.