**(2013) 07 KAR CK 0029**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 4939 of 2013 (GM-CC)

Smt. Aruna Kumari N.N. APPELLANT

Vs

The Commissioner and Others RESPONDENT

**Date of Decision :** 10-07-2013

**Acts Referred:**

**Citation :** (2013) 07 KAR CK 0029

**Hon'ble Judges :** A.S. Bopanna, J

**Bench :** Single Bench

**Advocate :** H.N. Nanjunda Reddy for Sri P. Changalaraya Reddy, for the Appellant; Vijayakumar A. Patil, HCGP for R1, 3, 5-7 and Sri Reuben Jacob, for R4, for the Respondent

**Final Decision :** Allowed

# Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking for the following reliefs:

a. Call for records pertaining to the impugned Order No. Him Va Ka Ni/Maa Sha/CR-11/2,012-13 dated 28.12.2012 of the First Respondent (Annexure-AC) and proceedings of the Second Respondent Committee dated 31.07.2012 (Vide Annexure-M) and the impugned Order No. Him VaE/B-4/CR 13/2012-13, dated: 31.07.2012 (vide Annexure-L) passed by the second Respondent and set aside the aforesaid order of the First Respondent and proceedings and the order of the second Respondent; and

b. Direct the first and second Respondents to consider the claim of the petitioner under Category 3B by taking into consideration of the aforesaid provisions relating to reservation and to issue the validity Certificate under Category 3B for the aforesaid post on that basis.

The case in brief is that the petitioner was appointed as Assistant Teacher in Department of Public Instructions, Government of Karnataka, vide office order dated 23.04.2007. While the petitioner was in service, the fourth respondent had invited applications for the Gazetted Probationers'' Group-A and B Officers for the year 2010, vide notification dated 27.01.2010. The petitioner had applied in response to the same. In that regard, the petitioner had also claimed benefit of reservation under Category-3B and had obtained caste and income certificates: from the Thasildar, Chickmagalore, on 18.02.2010. ''/The petitioner had thereafter succeeded in securing the job as Assistant Controller in the State Accounts Department. It is at this juncture the verification of the said document was required to be made by the Authorities concerned. In that regard, the question that arises for consideration is as to whether the pay that is received by the petitioner as Assistant Teacher Grade-II should also be included to consider the income limit of Rs. 2 lakhs provided for issue of such Category-3B certificate while taking into consideration the income of the family. The circular dated 14.2.2000 (Annexure-N) is relied on by the petitioner to contend that the salary derived from her employment as Assistant Mistress is to be excluded from the income to be taken into consideration for the purpose of issue of certificate. In the instant case, it is not in dispute that the salary if excluded, the income would be within the limit of Rs. 2 lakhs as provided for issue of certificate.

2. The respondents, however, contend that the circular dated 14.2.2000 would not apply to the case of the petitioner inasmuch as the application made by the petitioner to the fourth respondent is in respect of open selection and not as an in-service candidate in the same department. It is therefore contended that the said circular would be applicable only to persons who are ''in-service'' and would apply for selection to a higher posts in the same Department and not otherwise. The said consideration in fact has been made by the Original Authority as well as the Appellate Authority. It is in that circumstance, the petitioner being aggrieved by the same is before this Court.

3. Heard Sri H.N. Nanjunda Reddy, learned senior counsel appearing for Sri P. Changalaraya Reddy, learned counsel for the petitioner, Sri. Vijayakumar A. Patil, learned Government advocate for respondents No.1 to 3 & 5 to 7 and Sri. Reuben Jacob, learned counsel for respondent No. 4 and perused the writ papers.

4. Having noticed the rival contentions, in fact all other aspects appears to be the admitted case except the position as to whether the circular dated 14.2.2000 would be applicable to the case of the petitioner or not. It is not in dispute that if the salary earned by the petitioner as a teacher is excluded, the income of the petitioner''s family would be within the limit of Rs. 2 lakhs that is provided for issue of a certificate to be classified as Category - 3(B) and entitle her for reservation. Hence, all that is required to be noticed by this Court is the purport and scope of the circular dated 14.2.2000 and thereafter arrive at a conclusion as to whether the Original Authority and the Appellate Authority have construed the same in an appropriate manner to arrive at their conclusion.

5. In that view of the matter, it is necessary to notice the circular dated 14.02.2000 which is produced at Annexure - N to the petition. A bare reading of the circular would indicate that the income derived from Government services

 

and the services rendered in the other authorities under the Government or aided institutions is to be excluded and thereafter the income, if any, derived from other sources is to be taken into consideration before the income of the family is to be decided. As noticed, the learned Government Advocate would however contend that the said benefit of exclusion of the salary would not be available to the petitioner inasmuch as she was working as a teacher and presently she has applied for the appointment in an open selection which was notified by the fourth respondent and not for a higher post in the same: Department. In order to consider the said contention, a detailed reading of the circular would indicate that in the preamble portion, it has referred to an earlier circular dated 03.08.1985 which provides that such benefit is available to in-service candidates who would apply for the higher post and if the benefit of reservation under Category-3B is sought, the salary earned in the lower post is to be excluded. If this aspect of the matter is kept in view, it is clear that the circular dated 14.2.2000 (Annexure-N) has in fact clarified the said position and it has been issued to make it applicable to the other employees who are serving in the other Departments of the Government as also the other institutions as indicated therein and has granted the benefit of Category - 3B certificate in the case of such employees, if their income is below the prescribed limit after excluding the salary.

6. Therefore, in my view, the circular dated 14.2.2000 would be applicable to the case of the petitioner inasmuch as the said circular provides for exclusion of the salary earned in any other posts in the Government and the petitioner having worked as Assistant Teacher the salary earned therefrom cannot be taken into consideration, while considering the eligibility for the certificate to be issued to claim employment under Category-3B. In that view of the matter the view taken by the Original Authority as well as the Appellate Authority that the circular dated 14.2.2000 would not be applicable to the case of the petitioner cannot be accepted. The impugned order dated 28.12.2012 passed by the first respondent and the order dated 31.07.2012 passed by the second respondent are accordingly quashed. The respondents are directed to grant the benefit of the circular dated 14.2.2000 to the petitioner and thereafter verify the validity of the said Category - 3B certificate issued in favour of the petitioner and proceed further in the matter in accordance with law. The further process shall be completed as expeditiously as possible but not later than two months from the date on which the certified copy is made available to the respondents.

In terms of the above directions, writ petition stands allowed.

 