
(2013) 02 KAR CK 0135

In the Karnataka High Court

Case No : Writ Petition No. 75144 of 2013 (S-RES)

Smt. Bharati

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 —
Rule 6(4)

Citation : (2013) 4 AKR 847 : (2013) ILR (Kar) 2055

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : R.K. Kulkarni, for the Appellant; Megha C. Kolekar, HCGP, for the Respondent

Judgement

Venugopala Gowda, J.—The petitioner is a widow of one Sadanand Gundappa Gadad, who was working as a waterman in the office of the Town Municipal Council, Mudalgi, Taluk: Gokak and died in harness on 11.02.2000. Petitioner being a graduate, submitted an application for appointment on compassionate grounds. She was appointed as a Second Division Assistant on 14.12.2000. She accepted the said appointment without any demur. She, however, after more than a decade, submitted a representation dated 26.03.2011, to reconsider and appoint her as a First Division Assistant. Alleging inaction on the part of the respondents, this writ petition has been filed, to direct the respondents to appoint her in the cadre of FDA instead of the appointment made on 14.12.2000 in the cadre of SDA. Sri R.K. Kulkarni, Learned Advocate, contended that the respondents ought to have considered the representation submitted by the petitioner in the light of an order passed in the case of H.N. Guruprasad vs. The Director of Municipal Corporation and Others W.P. 32634/2003, dated 14.06.2006, which was upheld by a judgment passed on 28.01.2009 in W.A. 2060/2006. He submitted that the petitioner possessed the qualification of a Degree as on the date on which she submitted the application for grant of

appointment on compassionate grounds and contended that the appointment made on 14.12.2000 is not commensurate with the academic qualification possessed by the petitioner and that the inaction of the respondents in taking a decision on the representation is arbitrary. He further contended that there is violation of Article 14 of the Constitution, since the respondents have granted appointments commensurate to the educational qualification to similarly placed persons and have unjustly meted discriminatory treatment to the petitioner.

2. Smt. Megha C. Kolekar, Learned High Court Government Pleader, on the other hand submitted that the petitioner having accepted the post of SDA on 14.12.2000 and having worked for more than a decade is estopped from claiming the higher post of FDA, which is a promotional post based on seniority cum fitness. She contended that appointment once made under Rule 6 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 ("Rules" for short), shall be final and no fresh appointment to a different post or higher post is permissible. She submitted that while deciding W.P. 32634/2003, sub-Rule (4) of Rule 6 has not been brought to the notice of the Court and hence, the petitioner cannot claim support on the basis of the order passed in the said case. She further submitted that the principles of acquiescence are attracted and that the petitioner has no legal right and the respondents having no corresponding legal obligation, the petition for issue of writ of mandamus is not maintainable.

3. Grant of appointment to a dependent of an employee who died in harness is governed by the scheme of the Rules. Petitioner's husband died in harness on 11.02.2000. Petitioner being a graduate, applied for grant of appointment on compassionate grounds. Considering the claim, respondent No. 2 issued an order of appointment dated 14.12.2000, whereby, the petitioner was appointed as SDA. The petitioner having worked in the said post, after lapse of 10 years, submitted a representation dated 26.03.2011, to appoint her in the cadre of FDA, instead of SDA. In support of the claim, reliance was placed on the order passed in the case of H.N. GURUPRASAD (Supra).

4. In the case of H.N. GURUPRASAD, noticing that the Government by an order dated 24.04.2003 had directed all cases for appointment on compassionate grounds to be considered on the basis of educational qualification of the candidates and, if, the candidate is a graduate, appointment shall be made to the post of FDA, finding the action of the respondents to be arbitrary and discriminatory, a direction was issued to consider the case for appointment as FDA in the available vacancy. The said order when questioned in W.A. No. 2060/2006, by making reference to R. 6(4), it was held as follows:

In our considered opinion, the above rule is not attracted to the facts of this case at all. If the authorities had overlooked the qualification the applicant already possessed at the time of his appointment and also ignored the representation of the applicant mainly because the authorities have passed an appointment order to a lower post, will not take away the right of the petitioner to claim the higher

post. Therefore, in our considered opinion Section 6(4) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 is not applicable to the facts of the present case. Therefore, we do not find any justification to interfere with the order of the Learned Single Judge.

5. In the case of *State of Orissa and Others Vs. Prasana Kumar Sahoo*, Apex Court has held that the State is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Articles 14 & 16 of the Constitution of India and even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso to Article 309 of the Constitution of India. It has been further held that, a purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions. It has been further held that, if by reason of some misconception or otherwise the Tribunal had granted some relief in favour of some employees, the same by itself would not confer any legal right upon a person for being absorbed in the State services without compliance of the mandatory provisions of the recruitment rules and the constitutional scheme adumbrated under Article 16 of the Constitution of India. At para 20 of the judgment, it has been held as follows:

It may be that some other persons similarly situated have been appointed. But Article 14 as is well known contains a positive concept. A writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated by a court of law.

In the light of the said enunciation of law, the Government order dated 24.04.2003 being subservient to the Rules, cannot override the provisions made in the Rules.

6. Respondents have not brought to the notice of the Court, when the case in *H.N. GURUPRASAD (Supra)* was decided, the decision of the Apex Court, in the case of *State of Rajasthan Vs. Umrao Singh*, wherein, in identical circumstances, it has been held as follows:

8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector of LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14.12.1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion ". Eligibility to be appointed as Sub-Inspector of

Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case".

9. Since both the sides relied on Naresh Kumar Bali's case, we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under:

Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed

(emphasis supplied)

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise.

(emphasis supplied by me)

7. In the case of I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, in almost identical circumstances, it has been held as follows:

12. Furthermore, the respondent accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor.

8. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all the Courts within the territory of India. The principle underlying the said Article is salutary in the interest of administration of justice and the Article promotes certainty and consistency. It is trite that, if there is divergence of opinion between the decisions of the High Courts and the Supreme Court, the decision of the Supreme Court is binding on the point. The decision in the case UMRAO SINGH (Supra) has not been brought to the notice of the Court, when the case of H.N. GURUPRASAD (Supra) was decided. The law on the point has been categorically declared by the Apex Court. Hence, with due respect, the order and the judgment in the case of H.N. GURUPRASAD (Supra), need not be applied and followed, in view of the mandate of Article 141 of the Constitution of India. The ratio of law in the case of UMRAO SINGH (Supra), squarely applies to this case.

9. Rule 6 confers the power on the competent authority to issue an order of appointment on receipt of application under Rule 5 from a dependent of a deceased Government servant seeking appointment under the Rules. Sub-Rule

(4) of Rule 6 being material the same is reproduced hereunder;

Appointment once made under these rules shall be final and no fresh appointment to a different post or higher post under these rules shall be permissible.

(underlining is by me)

10. Concededly, Sadanand Gundappa Gadad, husband of the petitioner died in harness on 11.02.2000 while working as a waterman in the office of the Town Municipal Council, Mudalgi. The petitioner filed an application to appoint her on compassionate grounds. On a consideration of the claim, she was appointed to the post of SDA by an order dated 14.12.2000, which she accepted and joined duty and has been working in the said post. Merely because petitioner has gained experience and possesses the qualification, her appointment cannot be changed to FDA Cadre and if the request of the petitioner made in the representation dated 26.03.2011 is directed to be considered, the same would be in violation of sub-Rule (4) of Rule 6, noticed supra. The right of the petitioner for appointment on compassionate grounds has consummated on 14.12.2000 and there cannot be any further or second consideration for a higher post, after the lapse of more than a decade of the first appointment. The petitioner should progress in the ladder and earn promotion to the post of FDA. The last contention of Sri R.K. Kulkarni, that the action of the respondents is discriminatory, since some similarly situated persons have been appointed to the higher posts based on the GO. dated 24.04.2003 and also the Order and Judgment passed in the case of H.N. GURU PRASAD (Supra), has no merit. In this connection, suffice to make a reference to the Union of India (UOI) and Another Vs. Arulmozhi Iniarasu and Others, wherein it has been held as follows:

26. Lastly as regards the submission that the action of the appellants is highly discriminatory inasmuch as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected. It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality.

(emphasis supplied by me)

In the circumstances, the petitioner having no legal right and the respondents having no corresponding obligation, the claim of the petitioner put forth in the representation dated 26.03.2011 being contrary to sub-Rule (4) of Rule 6 and also the ratio of law in the decisions of the Apex Court, noticed supra, writ of mandamus prayed by the petitioner cannot be issued to the respondents. The petition is devoid of merit and hence, is rejected, with no orders as to costs.