

(2011) 03 KAR CK 0261
In the Karnataka High Court
Case No : Writ Petition No. 1233 of 2009

Smt. G.N. Bramarambika

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Grant-in-Aid Code Rules — Rule 17C

Citation : (2011) 03 KAR CK 0261

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

Bench : Single Bench

Advocate : N. Devaraj, for M.S. Anandaramu and Associates, for the Appellant; Ramachandra R. Naik, HCGP for R1 and 2, Vighneshwar S. Shastry and Vinod Gowda for R4, for the Respondent

Judgement

A.S. Bopanna, J.—The Petitioners in these two petitions are assailing the endorsement dated 20.11.2008, which are at Annexures-M and G in the respective petitions. The said endorsement is a common endorsement in respect of both the Petitioners.

2. Heard the learned Counsel for the parties and perused the petition papers.

3. For the purpose of narration of facts, the facts pleaded in W.P. 1233/2009 is noticed. The facts in W.P. No. 1234/2009 Is also similar to the facts in W.P. No. 1233/2009. The Petitioners are working as Assistant Teachers in the third Respondent -institution from 15.09.1998 onwards on a consolidated salary of Rs. 750/- per month and they have been thereafter continued from time to time. In view of their long service from 1998 onwards, they had sought for absorption of their service more particularly, keeping in view the fact that the third Respondent is engaged in taking care of the mentally challenged children. According to the Petitioners, they have sufficient experience in handling such children and the same has been appreciated by the management-society and they have been continued in service. The orders appointing them at the earlier instance on 15.09.1998 and continuation thereafter from time to time more particularly, on

13.08.2002, no doubt, indicate that they have been continued on temporary basis, it is in that view of the matter, their absorption was sought. By the impugned endorsement dated 20.11.2008. the second Respondent has indicated two reasons for being unable to absorb the Petitioners into service. Firstly it is stated that the Petitioners at the time of their appointments itself were over aged and secondly, they did not possess the requisite qualification.

4. In order to justify the impugned order, the learned Government Advocate strenuously contended that both the reasons indicated in the said endorsement are the requirements for appointment and since, they did not possess the requisite educational qualification and also since they are over aged at the time of their initial appointment itself, the question of absorbing them in service did not arise. Therefore, the endorsement is justified.

5. In order to dispel the said contention, firstly, with regard to the age as mentioned in the said endorsement, learned Counsel for the Petitioners relied on a decision of this Court in W.P. No. 1939/99 dated 14.01.2000 to point out that as per Rule 17-C of the Grant-in-Aid Code, the appointing authority had the discretion to relax the age limit prescribed. It is therefore contended that the reason assigned is not justified and on that aspect, the endorsement is not sustainable. Insofar as the educational qualification, it is contended that the children are "special children", who are mentally challenged and when the Petitioners have been ably discharging their functions for more than ten years, they could be considered to have possessed the qualification. In any event, they have higher minimum educational qualification than what is required. The special qualification insofar as taking care of the mentally challenged children alone is required to be acquired. In tills regard, the second Respondent himself in his earlier recommendation indicated that a time limit could be provided for them to acquire the said qualification after they are absorbed into service. In this regard, reference is made to the communication dated 16.10.2007 (Annexure-Q).

6. In the light of what has been contended, a perusal of the endorsement dated 20.11.2008 would indicate that the endorsement appears to have been issued more particularly, in pursuance to a direction of the Government dated 06.03.2008. The endorsement does not indicate application of mind to the instant facts of the case. In the instant case, insofar as the age keeping in view the age limit, for recruitment and keeping in view the relaxation that is possible under Rule 17-C of the Grant-in-aid Code, it was incumbent on the appointing authority to take note of the same and arrive at a conclusion as to whether in the facts and circumstances in the instant writ petition, such relaxation is to be made or not and only thereafter an appropriate decision should have been taken.

7. Further, with regard to the educational qualification, keeping in view the peculiar facts and circumstances of the instant case, wherein the Petitioners are discharging their functions of taking care of mentally challenged children and also, keeping in view the recommendation made by the second Respondent himself as far back as on 16.10.2007 and more particularly, since no reference

has been made to such recommendation which was made earlier, the rejection of the case of the Petitioners merely stating that they did not possess the qualification is also indicative of the fact that there is no application of mind. Therefore, for the said limited reason, the endorsement dated 20.11.2008 issued insofar as the Petitioners are concerned cannot be sustained and the same are accordingly quashed.

Respondents No. 1 and 2 are directed to reconsider the case of the Petitioners, keeping in view the above observations and thereafter arrive at a proper conclusion in accordance with law.

In terms of the above, both the petitions stand disposed of, with no order as to costs.