

(2000) 08 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition Nos. 8914 to 8916 of 1998 (S-KAT)

Soudagar I.S. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Civil Services Act, 1978 — Section 3(1)

Citation : (2000) 8 KarLJ 61

Hon'ble Judges : Mrs. Manjula Chellur, J;G. C. Bharuka, J

Judgement

G.C. Bharuka, J.-The present writ petitions have been filed for quashing the order dated 6-11-1997 passed by the Karnataka Administrative Tribunal. The petitioners had moved the Tribunal inter alia with the prayer that the respondents herein should be directed to consider their names for appointment to the post of primary school teachers, since according to them, they are all eligible for the post in all respects. One of the grounds which made the Tribunal not to grant any relief to the petitioners was that they had registered themselves with employment exchanges of more than one district which, as per the Government instructions, is impermissible.

2. The Secretary to the Government of Karnataka, Education Department, has filed an affidavit today on certain material issues having a bearing on the merits of the present case. The facts disclosed by him regarding the present petitioners has not been disputed. It appears to be a matter of record that petitioners 1 and 2 had registered their names in the District Employment Exchange, Bijapur, in the year 1995 and had also registered with the Employment Exchange, Belgaum District. Similarly, the 3rd petitioner got his name registered in the Employment Exchange, Bijapur, in the year 1994 and subsequently got his name registered in the Employment Exchange, Uttar Kannada District, as well.

3. It further appears that the Government, in order to accommodate and appoint eligible candidates who had attained the age of 29 years but were still below the

age of 45 years, on the post of assistant teachers in primary schools, had framed rules called "The Karnataka Education Department Services (Recruitment of Primary Schools Assistants Cadre) (Special Recruitment) Rules, 1995. These rules were framed under Section 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978.

4. Rule 5 of the Rules provides for calling of the list of all eligible candidates from the district Employment Exchange. It reads as under:

"List of candidates for recruitment.-The recruiting authority taking into consideration the number of vacancies available in each district, shall call for a list of all eligible candidates in each medium of instruction from District Employment Exchange for the purpose of recruitment, under these rules".

Pursuant to the said recruitment rules and the provisions contained therein, the appointing authority called for the list of all eligible candidates to the post. But, since subsequently, it was found that the petitioners herein had got themselves registered in more than one employment exchange, therefore appointment were denied to them.

5. A similar question as appearing in the present writ petitions was attended by the Administrative Tribunal in Application No. 1170 of 1996 and analogous cases which was decided by a Common order dated 30th August, 1996, wherein on consideration of all the relevant statutory provisions and the orders issued by the Government from time to time, it was held that:

"The applicants have obtained double advantage of getting their names registered in two or more district employment exchanges and it is not permissible to do the same as per National Employment Service Manual which could be construed as instructions issued in the exercise of executive power. Hence, the action taken by the authorities in annulling the selections on the mere ground of double registration/multiple registration not only withstands the test of reasonableness, but the same is not violative of Articles 14 and 16 of the Constitution of India".

The law so declared by the Administrative Tribunal not being challenged before the Supreme Court, has attained its finality. Accordingly, all the vacancies on the post in question were filled up by the Appointing Authorities across the State by following the said law.

6. In paragraph 6 of the affidavit, the learned Education Secretary has very clearly stated that pursuant to the notification issued in 1995, all the posts of teachers have been filled up in the year 1996 itself, and as on date, there is no post vacant. He has further stated that as and when posts are notified, if the petitioners file applications and are found to be eligible, their case will be considered along with the cases of other eligible candidates.

7. Therefore, in our opinion, the petitioners are not entitled to any relief as claimed, and we find no ground to interfere with the impugned order of the

Administrative Tribunal.

8. Before parting, We may notice here that keeping in view the judgment of the Supreme Court in the case of Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh v K.B.N. Visweshwara Rao, (1996)6 SCC 216, the Education Secretary has further stated that steps are being taken by the district recruitment authorities to invite applications from candidates directly by giving wide publicity through newspapers and employment news bulletins, without solely relying on the names sponsored through the district Employment Exchange, from 1998-99 recruitment. According to him, presently recruitments are being done keeping in mind the directions of this Court and the order passed by the Supreme Court in the case referred to above.

9. In the case of Excise Superintendent, Malkapatnam, it has been held that:

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair-play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair-play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates".

In view of the declaration of law by the Supreme Court and as has been rightly conceded to by the Education Secretary, we feel that the relevant rules should also be properly amended forthwith. We hope it will be so done before initiating any recruitment process to the public posts.

10. We may further notice here that in the case of Girija and Others v State of Karnataka and Others, W.P.Nos. 16023 to 16072 of 1999, DD: 28-7-1999, this Court has further held that:

"20. In view of the above, these petitions are allowed as follows:

(a) The requirement in the notification dated 25-2-1999 (Annexure-A) that the

candidates should be ordinary residents of the district and that the applications should be presented in person are quashed.

(b) It is declared that the respondents cannot discriminate on the ground of residence. Nor can they restrict the applicants to file applications only in their district and not elsewhere.

(c) The 4th respondent (Deputy Director of Public Instructions, (Mandya) is directed to notify that further applications will be received without insisting upon the condition relating to residence in the district and condition regarding submission of application in person. He shall give an opportunity to any other applicants who may want to apply against the notification within a prescribed time. If that is done and processing of the applications already received is finalised after receiving the additional applications, there will be no need to nullify the process which has already undergone".

11. We are sure that the above directions issued by this Court will be borne in mind while making further recruitments to the Civil posts including the post in question.

12. Subject to the said observations and directions, these writ petitions are dismissed. However, there is no order as to costs.