

(2012) 09 KAR CK 0272

In the Karnataka High Court

Case No : W P No's. 1424 - 1427 of 2012

Sri B Gopalakrishna, Sri A Hiriyantha Gowda, Smt Vasanthi J
and Sri C Shivarama Gowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-09-2012

Acts Referred:

Citation : (2013) ILR (Kar) 709 : (2013) 2 KCCR 1534

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Rajashekar HEGDE, for Sri. Chandrakanth R Goulay, in WP Nos. 1424-1427/2012 and WP Nos. 1435-1439/2012 and Sri. Chandrakanth R Goulay, WP Nos. 7863-7872/2012, for the Appellant; Raghavendra G. Gayatri, HCGP in WP Nos. 1424-1427/2012, 7863-7872/2012 and 1435-1439/2012, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi

1. The petitioners in all these petitions have sought for quashing of an endorsement issued by respondent No. 1 dated 30.6.2011, wherein the State Government has rejected the claim of the teachers for one increment for having passed the Kannada language examination working in aided schools. It is stated that, there is no qualification prescribed for the teachers in aided school to pass Kannada language examination and it was prescribed only for the Government servants i.e. Government teachers in these cases. As such, the teachers in aided schools being not the Government servants and there is no prescribed qualification of passing of the Kannada language examination, hence, the teachers in aided schools are not entitled for increment in pursuance of passing of Kannada language examination or having taken Kannada language in the SSLC examination. Learned Government Pleader submitted that the Rules of recruitment or the service conditions of the teachers in aided schools do not

prescribe for passing of Kannada language examination by the teachers in aided schools and it is prescribed for the Government servants. As such, the teachers in aided schools being not the Government servants, said benefit cannot be granted to the teachers in aided schools. He also submitted that the teachers in aided schools are not treated on par with Government servants.

2. To support his contention, he relied on the orders of this Court in WP No. 976/2003 dated 12.1.2005, WP No. 26724/2005 dated 2.2.2006, WP No. 26056/2005 dated 7.2.2006, WP No. 53940/2003 dated 18.7.2006 and WP No. 1072/2006 dated 25.8.2010 and submitted that the State has granted incentives as a generous gesture to the Government servants who have passed the Kannada language departmental examination or who had Kannada language as a subject in the SSLC examination for the purpose of enhancing the administration in Kannada language. As such, said benefit was only extended to the teachers in Government schools. The teachers in aided schools being not the civil servants, are not entitled for the said benefit which is only extended to the civil servants/ Government servants. He further submitted that, if there are two conflicting views taken by this Court., the matter requires consideration by the Division Bench.

3. On the other hand, Sri. Rajashekar Hegde, learned counsel for the petitioners submitted that this Court in WP Nos. 10543-51/2003 dated 8.9.2004 has held that additional increment is given to the Government servants for having passed the Kannada language examination and on the same analogy, there is no reason why the said benefit should not be extended to the teachers who have passed SSLC with Kannada language in aided school. He also relied on an order of the learned Single Judge reported in ILR 2009 KAR 2572 in the matter of "Sumithra P & Ors. v. State of Karnataka & O." and the order of Division Bench in WA Nos. 4255/2009 and connected matters dated 25.3.2010 and WA No. 369/2006 dated 8.11.2010 and submitted that this Court has held that there cannot be any discrimination and distinction between the Government school teachers and teachers of aided schools and both having the similar responsibilities and duties and discharging similar functions and also getting similar emoluments, even in case of incentives and increment, same is applicable to the teachers in aided schools. As such, the Government cannot discriminate amongst the teachers similarly placed only on the ground that one is a Government school teacher and another is a teacher in aided schools. The teacher in aided school is also paid same salary and same emoluments by the Government except for the fact that one works in aided school and another in Government school. Hence, he submits that the learned Single Judge of this Court, recently in WP Nos. 19846-20413/2012 has held that the teachers of aided schools are also entitled for incentive or one increment on par with the teachers of Government school who have passed the Kannada language examination or Kannada language as a subject in SSLC. It was also considered by the Division Bench and it is held that the teachers in aided schools are also entitled for the same benefit. This Court has consistently held that the teachers in aided schools are entitled for similar

benefit. There is no reason why the matter be referred to the Division Bench.

4. In the light of the above submission, the point that arises for consideration is:

Whether the teachers in aided schools are entitled for the benefit of one increment for having passed Kannada language examination or taken Kannada language as a subject in SSLC?

5. The object of prescribing the Kannada language in the departmental examination was with an aim to provide effective administration in the language of the State. Having regard to the same, it is also not in dispute that the State Government provided one increment to the civil servants/ Government servants who had passed Kannada departmental examination or who had taken Kannada as a subject in the SSLC examination.

6. No doubt, it is true that the petitioners before this Court are teachers of aided schools, however, it is not in dispute that the State which is required to promote basic education, by itself could not do it and where the private institutions are imparting basic education to the children, in recognition of the same if the Government has admitted them to the grant for providing salary and other grants, the corresponding responsibilities assigned to the teachers in aided schools being similar to the responsibilities and functions assigned to the teachers in Government schools, there cannot be any discrimination between the two. The teachers of the aided schools are appointed based on similar qualification on par with the Government teachers as the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided Primary and Secondary Educational Institutions) Rules, 1999 prescribes the same qualification. Further the Recruitment Rules also provide that recruitment of the teachers in private aided schools have the same qualification what is prescribed for the recruitment of teachers in Government school as per Karnataka Government School Teachers (Cadre and Recruitment) Rules, 1967. Both by qualification-wise and responsibility-wise and even as per the functions and duties, there is no distinction between the teachers in Government schools and the teachers in aided schools.

7. No doubt, there is no departmental examination prescribed to the teachers in the private aided schools, however, it is also not in dispute that the departmental examination was prescribed for the Government servants to enable them to administer the functions of the State in the language of the State i.e. Kannada and for their encouragement, one increment was provided. The said benefit is extended even to the teachers in Government schools.

8. The distinction sought to be made between the teachers in Government schools and the teachers in the aided schools is that the teachers in aided schools are not Government servants. May be the teachers in aided schools are not civil servants or Government servants, but this Court, in WP Nos. 10543-551/2003 by order dated 8.9.2004, in case of interpretation of payment of gratuity to the teachers in aided schools on par with the teachers in

Government schools has observed as under:

3.... An additional increment is given to the Government servant for having passed the Kannada Language Examination. On the same analogy, there is no reason why the said benefit should not be extended to the same class of teachers who have passed the SSLC with Kannada language. Therefore, I am of the view that the Government was under obligation to consider the request of the petitioners in the light of the aforesaid Judgment of this Court in the case of V.P. Baba and Others vs. State of Karnataka and Others in Writ Petitions.. No. 32163-32208/1998 disposed of on 27th November, 1998...

9. In a reported judgment in the matter of "Sumithra P & Ors. v. State of Karnataka Rep by its Secretary, Dept of Education and Ors.", on consideration of the interpretation of Rule 3 of the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974, this Court has held that imparting primary and secondary education to students is the bounden duty of the State administration. The private institutions cater to the need of the educational opportunities. Therefore, the corresponding responsibility on the State Government is to ensure that in aided school, the teachers whose appointments have been approved by the Government, are entitled for the same emoluments provided to their counter parts in the Government. The teachers in aided schools are entitled for the similar benefit extended to the teachers of Government schools.

10. Learned Government Pleader had relied on the order passed by the learned Single Judge of this Court in WP No. 967/2003 dated 12.1.2005, wherein the learned Single Judge had distinguished between the teachers in Government schools and teachers in aided schools inter-alia observing that the teachers in aided schools being not Government servants or civil servants, they are not entitled for incentives. In another judgment, the learned Single Judge, in WP No. 26724/2005 has take similar view. In another WP No. 26056/2005 dated 7.2.2006, learned Single Judge has also taken similar view, which was followed by other learned Single Judges in WP Nos. 1072/2006 and 53940/2003.

11. As far as the order passed by the learned Single Judge in WP No. 26056/2005 is concerned, same has been reversed by the Division Bench in WA No. 369/2006 dated 8.11.2010.

12. No doubt, there are two conflicting views of the learned Single Judges of this Court, however, the Division Bench in WA No. 4255/2009 and connected matters dated 25.3.2010 though has remanded the matter to the State Government, however at para 7 of the said order, it has set aside the contention that the teachers in aided schools are not Government servants and had remanded the matter for consideration of the Government for grant of increment on the ground of passing of Kannada language examination.

13. The Division Bench in another WA No. 369/2006 dated 8.11.2010, after considering the rival contention as to whether the teachers in aided schools are

entitled for one increment provided to the teachers in Government school, has observed as under:

7. All that the appellants are seeking through the instant writ appeal is, a direction to the respondents in the nature, as was issued by this Court, while disposing of WP No. 25248/2004, and the order passed by this Court in WA No. 4255/2009 (arising out of WP No. 25248/2004) dated 25.03.2010. We find justification in the instant claim raised at the hands of the appellants, as the appellants herein, have the same claim as the petitioners in WP No. 25248/2004 (and/or the respondents in WA No. 4255/2009).

14. Now, the Division Bench, relying on the order passed in WA No. 25248/2004 has held that the appellant had claimed the same relief.

15. The learned single Judge in W.P. Nos. 25248 to 25301 of 2004 disposed of on 18th December 2004, has observed as above and has held at para 5 as under:-

5. This Court had an occasion to consider the question "Whether the retired employees of a private aided educational institutions who have retired after 28.11.1995 and who have received the retirement benefits, are entitled to the benefits extended to the Government employees by the Government Order dated 28.11.1995 by which the Government order, the dearness allowance as indicated in the table mentioned therein, shall be reckoned as emoluments for the purpose of retirement Gratuity/Death Gratuity under the Karnataka Civil Services Rules in respect of the State Government employees, who retire on or after 28.11.1995." So also, it was contended that the said benefit is only to the Government employees and not available to the employees who were working in Aided Institutions. After referring to series of Judgments of the Supreme Court, this Court held relying on a letter dated 19.10.1981 addressed by the Commissioner for Public Instructions, Karnataka, to all Deputy Directors of Public Instructions wherein it was stated that the "Government have extended the benefit of DCRG to the employee of State Aided Educational Institutions with effect from 1.1.1981 in the Government Order E 18 UPC 81, dated 29.4.1981 on par with the Government Servants" held "the use of the words "on the scale admissible to State Government Employees" in the Government Order dated 29.4.1981 would mean when the Government servants were extended certain additional benefit relating to gratuity as per order dated 28.11.1995, the same automatically stands extended and applicable to the employees of the aided institutions." They further held that "in consonance with the avowed policy of the Government and the decisions of the Supreme Court that the employees of aided institutions should be treated equal to corresponding Government Servants, in matter of pay and allowances." Therefore, direction was issued to the Government to consider the claims of petitioners for addition of dearness allowance to the basic pay, as provided in Government Order dated 28.11.1995 for the purpose of calculation of gratuity payable to them. An additional increment is given to the Government servant for having passed the Kannada language Examination. On the same analogy, there is no reason why the said benefit should not be extended to the

said clause of teachers who have passed the S.S.L.C. with Kannada language. Therefore, I am of the view that the Government was under an obligation to consider the request of the petitioners in the light of the aforesaid Judgment of this Court in the case of V.P. Baba & Others vs. State of Karnataka & Others in W.P. Nos. 321 (33-32208/1998, disposed of on 27th November, 1998.

16. A reading of the observations of the learned single Judge makes it clear that there is no distinction between the Teachers in Government Schools and Teachers in Aided School as far as emoluments are concerned and the learned single Judge has reiterated that the Teachers in Aided Schools are entitled for the similar benefit including the increment for having passed the Kannada language examination and the Division Bench has affirmed the view taken by the learned single Judge. May be the Division Bench has remanded the matter for consideration, but the consideration is in the light of the observations made in the said writ petitions.

17. Apart from this, the learned single Judge in W.P. Nos. 10543 to 10551 of 2003 disposed of on 08.09.2004 in the matter of payment of gratuity to Teachers in Aided Schools on par with the Teachers in Government Schools has held that there is no distinction and further, has observed as under:

An additional increment is given to the Government servant for having passed the Kannada Language Examination. On the same analogy, there is no reason why the said benefit should not be extended to the same class of teachers who have passed the S.S.L.C. with Kannada Language. Therefore, I am of the view that the Government was under an obligation to consider the request of the petitioners in the light of the aforesaid Judgment of this Court in the case of V.P. Baba and Others vs. State of Karnataka and Others in writ petitions No. 32163-32208/1998 disposed of on 27th November, 1998.

18. The order passed by the learned single Judge has been affirmed by the Division Bench and thereafter, it has been followed by another learned single Judge in W.P. Nos. 19846 to 20413 of 2012 dated 10th August 2012, wherein, it is held at para 10 as under:

Hence, I am of the opinion that apart from the fact that this Court in the earlier writ petitions has repeatedly held that such benefits, which are made applicable to the Government Teachers and non-teaching staff in Government Schools should also be made applicable to the teaching and non-teaching staff in private aided institution has the approval of the Division Bench of this Court. Hence, I am fortified in the opinion expressed above.

19. Thus, from the order passed by the learned single Judge in several writ petitions, affirmed by the Division Bench and followed by another learned single Judge, I have no hesitation to hold that there cannot be any distinction in the matter of payment of one increment for passing Kannada language examination or Kannada as language in SSLC, for the period from 1974 to 1987 between the Teachers in Government Schools and Teachers in Aided Schools.

20. Hence, I am of the opinion that, the petitioners are entitled for similar benefit on par with the Teachers in the Government School. If the idea of the Government is to promote Kannada language in Government Schools, then no discrimination can be made between the Teachers working in Aided Schools and the Government schools. For the above reasons, I allow these writ petitions. Accordingly, the impugned order passed by the Government in No. ED 276 PMC 2006 dated 30.06.2011 stands quashed. The Government is directed to extend the benefit of one increment for Teachers in Aided Schools, who have passed Kannada language examination or Kannada as a subject in SSLC examination on par with the Teachers working in the Government Schools for the period for which, it was granted to the Teachers in Government Schools.