

(2007) 08 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 12759 of 2006

Sri B.G. Devarajaiah

APPELLANT

Vs

The Commissioner For Public Instructions and Others

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Karnataka Education Act, 1983 — Section 130

Citation : (2008) 2 KarLJ 234 : (2007) 4 KCCR 2468

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.S. Bhagwat, for the Appellant; R. Balaji, for Laksha law associates, B.N. Shetty, for R4, S.E.A. Khureshi, AGA for R1 to 3 and Kashinath, for C. Jagadish, for R5, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner, an employee of the 4th respondent- S.T.S. Education Society, working as in-charge Head Master at its High School known as Maruthi Rural School at Yeligur, Kunigal taluk, Tumkur, is aggrieved that his functioning/working as Head Master albeit on in-charge basis during the past almost 30 years has not yielded result to the petitioner to regularise him in such post notwithstanding several rounds of litigation before the authorities and before this Court in the earlier two rounds of writ litigation.

2. Petitioner has sought for quashing the order dated 11.9.2006 passed in Appeal No. 11/2004 by the 1st respondent-Commissioner for Public Instructions acting as an Appellate Authority exercising powers u/s 130 of the Karnataka Education Act, (copy produced at Annexure-A to the writ petition) and has sought for issue of further directions to The Commissioner for Public Instructions, the Director (Secondary Education), the Deputy Director of Public Instruction, viz., respondents 1 to 3, to approve the appointment of the petitioner to the post of Head Master from the date of regular selection in terms of the Notification dated 4.6.1983 (copy produced at Annexure-C to the writ petition) and with effect from

13.8.1983 and for grant of all consequential monetary benefits, etc.

3. Petitioner had also sought for an interim order to restrain the respondents from taking any adverse action against the petitioner, who was holding the post of in-charge Head Master, particularly in the wake of the directions that had been issued under the impugned appellate order of the Commissioner in the operative portion of the order which reads as under:

Appeal is dismissed. The 3rd respondent Management is directed to submit a proposal for promotion of the respondent 4 as Head Master as the consequence of applying roster. The 1st and 2nd respondents are directed to take necessary action within one month from the date of receiving the said proposal.

This Court had in terms of the interim order granted on 12.9.2006, stayed the operation of the impugned order dated 11.9.2006 pending further orders in the writ petition.

5. Notices had been issued to respondents, Public Authorities-respondents 1 to 3. Officers of the State Government are represented by Sri. S.Z.A. Khureshi, learned Addl. Government Advocate, 4th respondent-Private Management is represented by Sri. R. Balaji, learned Counsel and 5th respondent, another employee in the Organisation appointed by the 4th respondent is represented by Sri. Kashinath, learned Counsel.

6. Writ petition is on the premise that the petitioner has been working as in-charge Head Master at the Maruthi Rural High School run by the 4th respondent-Management ever since the year 1977; that the proposal to appoint him on regular basis has been turned down by the Educational Department which is unjustly done, that the Authorities have not shown any regard to the directions that have been issued by this Court in the earlier rounds of litigation; that disapproval of the appointment of the petitioner to the post of Head Master on the premise that the post had been reserved in favour of the person belonging to Schedule Caste community is not only unjustified on facts but also not permitted in law for the reason that there being only one post of Head Master in the school where the petitioner is working, permitting that post to be filled up by a person belonging to Schedule Caste amounts to cent percent reservation and even assuming as contended by the Management that they are running two High schools and there are two posts of Head Masters and alternatively one post can be reserved, etc., even then, such reservation to either post amounts to reservation to the extent of 50%; that even a roster point providing for an appointment in favour of a person belonging to Scheduled Caste community, if amounts to reservation to an extent of 50%, such roster point itself is bad as the maximum reservation provided in favour of persons belonging to Scheduled Caste/Scheduled Tribe community is only 18% and in any view of the matter non-approval of the appointment of the petitioner on the premise that the post is reserved in favour of the person belonging to the Schedule Caste community is not tenable and has no legal basis and therefore, the impugned order should be

quashed and directions as prayed for be issued.

7. I have heard Sri. M.S. Bhagawat, learned Counsel for the petitioner, Sri. Khureshi, learned AGA for respondents 1 to 3, Sri. Balaji, learned Counsel for 4th respondent-Management and Sri. Kashinath, learned Counsel for 5th respondent.

8. Sri. Bhagawat, learned Counsel for the petitioner has very vehemently urged that the petitioner is unnecessarily made to run from pillar to post, that he has been made to languish in the Courts, Tribunals and Departmental authorities for the past more than 25 years; that the reasons for not approving the petitioner's appointment to the post of Head Master at Karuthi Rural High School, which is no doubt an aided school, admitted to such aid since the year 1992, is clearly in contravention of the enabling constitutional provisions of not only the rulings of this Court in *Dalvoy Anglo-Sanskrit School Committee Vs. K.S. Narasappaiah*, , but also the rulings of the Supreme Court in *R.S. Garg Vs. State of U.P. and Others*, , as also the order of the Division Bench of this Court in *C.R.P.504/1994* (copy produced at Annexure-R to the writ petition at page 85), submits that the impugned order at Annexure-A is not sustainable and is to be quashed. In support of the submission for issuing mandamus, learned Counsel has drawn attention to the Government Order dated 21.4.1995 (copy produced at Annexure-O to the writ petition) and points out that the Government having realised the incongruity, inequality and hardship that was being faced by the employees of the Private Management in the matter of implementation of reservation policy, had relaxed the rigour of earlier Government Orders providing for reservation at 18% in favour of persons belonging to Schedule Caste/Scheduled Tribe community by indicating that appointments made upto 1.6.1992 even bypassing the reservation policy are permitted to be regularised subject to the Managements of such institutions where such appointments have been made, fulfilling certain conditions and in the light of such relaxation made by the Government, the appointment of the petitioner in the year 1983, which is much prior to the year 1992 should have been regularised and not to be disapproved by the authorities and therefore, a writ of mandamus is justified for the consequential prayer, etc.

9. Statement of objections have been filed by the 4th respondent-Private Management and it is contended inter alia that the reservation is in respect of the cadre of Head Master and not to the single post; that Management is running two High schools and there are two posts of Head Masters and therefore, it is not as though the cadre of Head Masters comprise of only one post and the reservation can be worked as between these two posts and in terms of the Government Orders provided for such reservations. It is also indicated that the petitioner had never been appointed to the post of Head Master on a regular basis, but has been working on in-charge basis as the post could not be filled up due to non availability of reserved category candidate. It is also averred that there is no question of regularising adhoc appointment or in-charge appointment contrary to the rules and regulations and the relevant service conditions and provisions

applicable to the recruitment to the post. Sri. Balaji, learned Counsel for the Private Management has submitted that it is a fact that the petitioner has never been appointed nor had any such appointment been forwarded to the Government seeking for approval of the appointment, but it was only a resolution which had been passed by the school management which had been forwarded and not any appointment order.

10. Sri. Khureshi, learned Addl. Government Advocate appearing for respondents 1 to 3, the Governmental functionaries submits that in the first instance there was never any order of appointment in favour of the petitioner by the School management, that the petitioner had never been appointed on a regular basis to the post of Head Master at the school where he is working; that it is a fact that the Government had permitted the school management to make, adhoc appointment against the posts reserved for S.C/S.T Category due to non-availability of candidates and in terms of the reservation policy, had approved the filling up of certain vacant posts at the schools under the 4th respondent-Management in terms of an approval order dated 4.6.1983 (copy at Annexure-C) and had clearly indicated that the post of Head Master was to be filled up by appointing a person belonging to Schedule Caste community, that the post itself had been notified to be filled up by persons belonging to Scheduled Caste community and that the petitioner assuming he had been appointed, was not one eligible to the post as the petitioner did not belong to the S.C. Category that in fact he had never been appointed to the post and therefore, further question of Departmental Authorities approving or disapproving his appointment did not arise. It is also submitted that even the Government Order of the year 1995 is also not applicable to the case of the petitioner as in the first instance there was neither any order of appointment nor a proposal nor any such conditions being fulfilled by the Management and therefore, no directions can be issued based on the Government Order. Learned AGA submits that none of the decisions cited and relied upon on behalf of the petitioner by his learned Counsel are attracted to the facts of the present case and that there is no need for this Court to examine the question as to whether the post was a single post and therefore, whether there could have been reservation in terms of the roster point. Further, It is submitted that the argument of 50% reservation even if there are two posts in the cadre of Head Master in the institutions run by the 4th respondent-Management also do not apply or arise in the present context and therefore, the writ petition deserves to be dismissed.

11. Sri. Kashinath, learned Counsel appearing for the 5th respondent supports the submission made by the learned AGA and Sri. Balaji, learned Counsel for the 4th respondent-School Management.

12. It is true that the petitioner has been fighting litigation for the past more than two decades and has been in Court and it may be true that he had been working as an in-charge Head Master at Maruthi Rural High School run by the 4th respondent-management. Though considerable reliance was sought to be placed

on the resolution of the School Management passed on 13.8.1983 by Sri. Bhagawat, learned Counsel for the petitioner to substantiate that the petitioner had been appointed to the post of Head Master and the School Management had also forwarded the proposal for the approval of the appointment by drawing attention to resolution dated 13.8.1983, and has also drawn attention to the contents of the Government Order permitting the filling up of the posts as per the endorsement dated 4.6.1983 (copy at Annexure-C) and also submits that the very endorsement had permitted filling up of the posts in the event of suitable candidates in the reserved categories being not available and as in the present case, there was no suitable candidates available and the continuation of the petitioner's services in the post of Head Master on in-charge basis should be taken as act of appointment of the petitioner to the post on a regular basis, I am unable to accept this submission for the reason that no appointment order had ever been issued in favour of the petitioner to implement the resolution. A mere continuation of the petitioner as in-charge Head master even for a long period cannot be taken as an appointment to the post on a regular basis.

13. Sri. Kashinath, learned Counsel for 5th respondent has pointed out that relaxation was not in favour of posts reserved for Schedule Caste and Schedule Tribe candidates, but only in respect of posts reserved for B.C.M.B.S.G.T.CT. Categories and as such is the position, even in terms of the Government Order dated 4.6.1983, there is no relaxation for diverting the post reserved in favour of Schedule Caste/Scheduled Tribe candidates. This is the real position on a perusal of the Government Order dated 4.6.1983 which reads as under:

14. Though Sri. Bhagawat, learned Counsel for the petitioner has placed considerable reliance on the decisions cited and referred to above, the present situation is not one to which the ratio of these decisions are applicable and in the present case while I find that there was never any appointment in favour of the petitioner by the School Management to the post of Head Master which had been forwarded to the Educational department for approval, on the other hand, the resolution by itself is not an appointment order and if at all the petitioner is said to be aggrieved, it can only be with the notification issued pursuant to the permission granted in terms of endorsement dt. 4.6.1983. Petitioner had not questioned the notification inviting applications to fill up the post of Head Master as the post was reserved in favour of persons belonging to Schedule Caste community, that had been notified way back in the year 1983. The petitioner assuming that he had worked on an adhoc basis or in an incharge arrangement, that in itself will not give any right to the petitioner for seeking appointment on a regular basis. Though learned Counsel for the petitioner has submitted that he is questioning the very reservation and the basis for reservation on the strength of law as declared by this Court and the Supreme Court in the cases referred to supra, I find that such an examination is not necessary in this case, particularly for holding the notification inviting applications from reserved candidates issued in the year 1983 to be declared as bad at this point of time. The challenge is too late in the day.

15. While it is true that the Supreme Court has ruled that there cannot be reservation in a cadre where there is only one post, what is undisputedly pointed out in the present situation is that the cadre is that of Head Master and there are two posts.

16. The decision of the Supreme Court in Garg's case referred to above, is no doubt an authority for the proposition that when there is conflict between the percentage and the roster point, percentage should prevail. In the present case, such a conflict is not made out in the sense that the roster point provides for reservation at more than 18% in favour of candidates belonging to Schedule Caste/Schedule Tribe persons. 18% reservation is one which is provided in the reservation policy and as notified by the Government Orders and even if the roster point appointments are worked out, it does not exceed 18% reservation as the reservation by working the roster point is less than exceeding 18%, as the roster point repeats in favour of a reserved candidate only once in every 6th point in the circle of rotation. Once in 6th portion is a reservation which is less than 18% (about 16.38%) and therefore, the roster point cannot be said to be one providing for reservation in excess of the percentage provided. It is for this reason that the learned Counsel for the petitioner has placed reliance on the decision of this Court in *Dalvoo Anglo-Sanskrit School Committee Vs. K.S. Narasappaiah*, and also the decision of the Division Bench of this Court in *C.R.P.504/1994*, submission based on such decisions is that the post of Head Master cannot be reserved to be worked in terms of the roster point, etc., as it amounts to 100% or 50% as the case may be depending on the posts being one or two. If the reservation is one reaching an extent of 50%, it is undoubtedly contrary to the reservation provided under the constitutional provision and is far in excess. In the present case, the reservation provided in respect of the cadre of Head Masters comprising of two posts as being as discussed above within the 18%, the logic that it amounts to 50% reservation does not apply to the present case. The ratio in the cases referred to and relied upon by Sri. Bhagawat is that reservation cannot reach an extent of 50% and not that reservation should not be provided in a particular post or in particular institution. The present situation does not indicate a reservation far in excess of 18% and if such is the factual position in the present case, the decisions relied upon by the learned Counsel for the petitioner cannot advance the case of the petitioner for the purpose of invalidating the notification providing for reservation for the post of Head Master in favour of persons belonging to the Schedule Caste community.

17. Admittedly, the petitioner is not one belonging to this category and having been put in place as an in-charge Head Master all along it cannot be said that the petitioner had been appointed to the post of Head Master on a regular basis at any point of time. If so, the petitioner is not entitled to claim the post of Head Master as a matter of right. It is for this reason, I am not inclined to either quash the order passed by the 1st respondent in terms of Annexure-A nor can a writ of mandamus be issued in favour of the petitioner to approve the appointment of the petitioner with consequential benefits, etc. as in the first instance there was

no appointment at all.

Accordingly, this writ petition is dismissed. No order as to costs.