

(2014) 03 KAR CK 0233

In the Karnataka High Court

Case No : Writ Petition No. 10221 of 2014 (S-Res)

Sri M. Padmanabha

APPELLANT

Vs

State of Karnataka and Bangalore University

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14 141 16 162 309

Citation : (2014) 03 KAR CK 0233

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

Bench : Single Bench

Advocate : Girish Bandi, for the Appellant; M.S. Prathima, H.C.G.P., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner's father, an employee of Bangalore University, while in service, died on 13.09.1999. On an application made, the petitioner was appointed as "Peon" in the University, by an order dated 05.12.2000, vide Annexure-K. He accepted the appointment without any demur. However, after more than three years, he submitted representations to appoint him as "First Division Assistant". Claiming that the University has considered the claims of 15 similarly situated persons and appointed them to the post of FDA, though they were initially appointed to the post of Group-D, by making reference to an Order dated 14.06.2006 passed in W.P. No. 32634/2003, petitioner having submitted further representations on 30.09.2013 and 11.02.2014 and finding no response, this writ petition was filed asking for a mandamus as against respondent No. 2, to consider the representations vide Annexures-L, M, N, P & Q and appoint him to the cadre of FDA and extend all service benefits. Sri Girish Bandi, learned advocate, contended that the 2nd respondent ought to have considered the representations submitted by the petitioner in the light of the Order passed in W.P. No. 32634/2003 on 14.06.2006 and also the appointment orders issued to 15 other employees on 28.02.2007 vide Annexure-R. Learned

counsel submitted that since the petitioner was not given appointment on 05.12.2000, commensurate with the academic qualification possessed by him, on account of the discriminatory treatment, there is violation of Article 14 of the Constitution and hence, interference is called for.

2. Perused the writ record.

3. Undisputedly, the petitioner accepted the appointment to the post of Group-D/ Peon vide Annexure-K without any demur and the first of the representations submitted, even according to the writ petition averments was on 24.01.2003. The petitioner cannot seek subsequent consideration for higher post, in as much as, the petitioner should progress in the ladder and earn promotions to the next higher post/s. Mere possessing of the higher qualification than the one prescribed for the post offered vide Annexure-K, cannot be a criterion for claiming appointment on a subsequent occasion, to a higher post. It is not the case of the petitioner that when he was appointed on 05.12.2000, there was any discriminatory treatment by the 2nd respondent. What has happened subsequently i.e., on 28.02.2007, i.e., more than six years of the petitioner's appointment, cannot have any bearing with regard to the regulation of the petitioner's service conditions.

4. In identical circumstances, considering the order dated 14.06.2006 passed in W.P. No. 32634/2003 and its affirmation in writ appeal, after taking into consideration catena of decisions of the Apex Court in the matter of appointment on compassionate ground and with reference to the qualification possessed by the person, in Smt. Bharati Vs. State of Karnataka and Another, , it was held as follows:

4. 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 (W.P. 32634/2003 DD 14.06.2006).

5. 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.

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)

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 therefore.

7. 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.

8. 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).

9. 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, Mudalagi. 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 posses 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 G.O. dated 24.04.2003 and also the Order and Judgment passed in the case of H.N. Guruprasad (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.

For the reasons recorded in the case noticed supra, this writ petition is devoid of merit. There is no ground to issue Rule Nisi. Consequently the petition is rejected.