
(2014) 03 KAR CK 0120

In the Karnataka High Court

Case No : Writ Petition No's. 2654-2660 of 2014 (S-RES)

Sri M.S. Hanumanthe Gowda and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14 226

Citation : (2014) 03 KAR CK 0120

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

Bench : Single Bench

Advocate : Maruthi G.B, for the Appellant; M.S. Prathima, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner No. 1 is working as Head Master, petitioner Nos. 2 to 5 are working as Assistant Teachers, petitioner No. 6 is working as P.E. Teacher and petitioner No. 7 is working as SDA, in Shree Basaveshwara High School, Ikanahalli, Krishnarajapete Taluk, Mandya District. According to the petitioners, their appointments were approved by respondent No. 1. While approving the appointment, a condition having been imposed that the past service rendered from the date of appointment till the appointee was admitted for salary grant will be counted only for the purpose of leave and pension and thereby denied the notional annual increments, these writ petitions were filed on 17.01.2014, to direct respondents to take into account the service of the petitioners from the date of their initial entry i.e., from the date of appointment, instead of from the date of their posts being admitted to grant-in-aid for the purpose of computing the pay scale, seniority, increment and other consequential service benefits. Sri G.B. Maruthi, learned advocate for the petitioners contended that the writ petitions filed by some of the Teachers working in different institutions, seeking to reckon their services from the date of their initial appointments up to the date of approval for the purpose of fixation of

pay scale, seniority and all other benefits having allowed and the writ appeals and the Special Leave Petitions filed by the Government having been dismissed, as is evident from Annexure - C, the respondents have an obligation to extend the same benefit to the petitioners. He submitted that, since the respondent No. 1 has not extended the said benefits to the petitioners, there is violation of Article 14 of the Constitution of India.

2. Perused the writ record.

3. The petitioners have not made a demand with the respondents, to perform the legal duty. Annexure-C is a legal notice and not a representation. The full service particulars of the petitioners, with the copies of related service records has not been furnished to the respondents, i.e., along with Annexure-C. In the circumstances, submission of Sri G.B. Maruthi, to treat Annexure-C as a representation by the petitioners cannot be accepted. The demand must be in writing by the petitioners with all service particulars, so that the competent authority can secure the relevant records and take decision in the matter. Since the petitioners have not made the demand with the respondents, with regard to the claims made in these writ petitions, these writ petitions for issue of writ of mandamus cannot be entertained.

4. In *A. Prabhakara Reddy Vs. The State of Karnataka and Others*, , with regard to issuance of writ of mandamus to the authorities, it has been held as follows:

9. As a rule this Court exercising its jurisdiction under Article 226 of the Constitution will issue a Writ of mandamus to the Authorities like the 1st and 2nd respondents if they failed to discharge their duties arising out of legal Obligations, in spite of a written demand it is only when such duties are cast on the authorities and they fail to perform them, the right to seek a Writ of Mandamus arises in favour of the citizen.

5. In ILR 2013 Kant 5085 , considering the object of Writ of Mandamus and criteria for issue of Writ of Mandamus, in a case relating to the identical claim, it was held as follows:

2. The object of issue of writ of mandamus is to compel performance of a legal duty. A mandamus will be issued to a person aggrieved who approaches the Court, if he makes out (i) existence of a legal right in him and a corresponding obligation on the respondent to perform a legal duty and (ii) refusal, either express or implied, by the respondent to perform such duty, in spite of a demand. Where a petition seeking mandamus is not preceded by demand for performance of a legal duty, the Court cannot entertain such a petition.

6. In *The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another*, , Apex Court has held that while granting a writ, the Court must make every effort to ensure from the averments of the writ petition, there exists proper pleadings. With regard to the writ of mandamus, it has been held as follows:-

22.....In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right.

7. Sri G.B. Maruthi, conceded that except sending the notice vide Annexure-C, prior to filing of these writ petitions, the petitioners did not approach the respondents to extend the service benefits on par with the relief, which the staff working in other institutions have got by virtue of the order passed. The petitioners having not made a demand with competent authority having the requisite authority to perform the demand and there being no opportunity for the competent authority to examine the claim and take a decision in the matter, these writ petitions for issue of writ mandamus to the respondents, in view of the ratio of law in the decisions, noticed supra, cannot be entertained.

In the result writ petitions are rejected. However, liberty is reserved to the petitioners to approach office of the authority having the requisite authority to perform the act demanded and for extending benefits. If the competent authority does not act in the matter, within a reasonable period, it is open to the petitioners to seek relief, if any, in accordance with law.