

(2011) 03 KAR CK 0296
In the Karnataka High Court
Case No : Writ Petition No. 20939 of 2004

Sri. Narayanaswamy

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Karnataka Educational Institutions (Recruitment and terms and conditions of services of employees in private Aided Primary and Secondary Educational Institutions) Rules, 1999 — Rule 8

Citation : (2011) 03 KAR CK 0296

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; Raghavendra G. Gayathri, High Court Government Pleader for Respondent Nos. 1 to 5 and T. Narayanaswamy, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Senior Advocate appearing for the Counsel for the Petitioner.

2. The facts are as follows:

The Petitioner had passed his SSLC and after passing the course examination in Physical education had joined the services of the seventh Respondent-school as a Physical Education teacher as per an order of appointment issued to him with effect from 3.1.1995. The management of the school known as Manasa Kannada Higher Primary School also manages yet another institution known as Manasa Kannada High School. This is stated only to clarify that the school was under the management of one Mathrudevo Education Society and thereafter the management was transferred to the present Respondent-6 and the said school was an aided institution having been admitted to grant-in-aid sanctioned by the Government of Karnataka during the year 1992. Since it was admitted to grant much prior to the Petitioner having joined the services he was entitled to receive

regular pay scale, allowance, attached to the post of Physical Education teacher from the date of his appointment. But, however since the Respondent had to formally approve his appointment, he was not paid the regular pay-scale and the allowances. The Petitioner had submitted his application for seeking such appointment as against the advertisement issued by the sixth Respondent trust calling for application and he was thereafter selected and appointed in the said post. The management sent the proposals to the Government for approval of his appointment. It was only after protracted correspondence with the Government of Karnataka, by its letter dated 3.3.2003 approved the appointment, of the Petitioner and accordingly directions were issued for appointment of the Petitioner as a Physical Education Teacher and for grant of regular pay scale and allowances with effect from the date of his initial appointment. The management of the school submitted the necessary bill for sanction and counter signature for grant of regular pay scale and allowances attached to it. However, the Block Education Officer sought certain clarification from the Deputy Director of Public Instructions who in turn had furnished the details sought for by the Block Education Officer and the said officer has by his letter dated 26.11.2003 addressed to the seventh Respondent herein the head master of the school who had returned the advance salary bill stating that since the Petitioner was appointed with effect date 26.4.2003, he was not entitled to arrears of pay and allowances from the date of his appointment namely, 3.1.1995 it is this denial of payment of arrears of salary with effect from the date of his appointment which is the subject matter of challenge in the present petition.

3. The learned Senior Advocate would submit that in identical circumstance, this Court has already formed an opinion based on the several citations of the Supreme Court which are as follows:

- (a) Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another,
- (b) S.S. Anand and Ors. v. The Management of Mahatma Gandhi Vidya Peeta (Regd.) Bangalore and Anr. 1998 (3) K.A.R. L.J. 203,
- (c) Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others,
- (d) State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others, .
- (e) Randhir Singh Vs. Union of India (UOI) and Others, ,
- (f) State of Karnataka v. V.R. Chowdappa and Ors. Writ Petition No-1867/1995 disposed of on 30.5.1998

And the Counsel would submit that in view of series of cases decided by the Supreme Court as well as this Court; the petition deserves to be allowed.

4. The learned Government Pleader, on the other hand, in support of the statement of objections filed, would submit that at best, the appointment having

been approved with effect from 2003, it is only for the purpose of computing seniority, scale of pay, pension and that there can be a notional recognition of the scale of pay of the Petitioner from the date of his initial appointment and not from the date of actual approval of the appointment of the Petitioner. The payment of arrears by the State, in the manner contended by the Petitioner, would result in a drain on the finances of the State and if at all, it is the management which would have to meet the bill insofar as the arrears of salary are concerned and therefore, would submit that the Petitioner has not made out a case for grant of any such benefit, retrospectively, and the Petitioner having been granted approval of his appointment with effect from 2003 would confer substantial benefit on the Petitioner and therefore would submit that there is no warrant for interference.

5. The learned Government Pleader would place reliance on Annexure-I appended to the Karnataka Educational Institutions (Recruitment and terms and conditions of service of employees in Private Aided Primary and Secondary Educational Institutions) Rules, 1999 and would place reliance on Annexure -1 Rule 8 which lays down thus:

(8) In case a candidate selected in the manner specified above is appointed by the appointing authority before the competent authority has conveyed its approval in accordance with Sub-clause (3), the managing committee shall be required to pay salary to the candidate so appointed and the grant-in-aid at the minimum of the scale to the candidate so appointed and grant-in-aid at the minimum of the scale applicable to the post shall be payable only from the date the selection has been approved by the competent authority.

6. It is to be noted that the said Annexure-1 has been substituted by Notification No. ED 17 SLB 2008 dated 22.11.2008 with effect from 22.11.2008. However, in the instant case, the Petitioner was governed by Annexure-I as originally appended to the Karnataka Educational Institutions (Recruitment and terms and conditions of service of employees in Private Aided Primary and Secondary Educational Institutions) Rules, 1999 which reads as follows:

Proposals shall be sent to the Competent Authority in respect of candidates whose names are included in the list published under Sub-clause (1) of clause 6. The Competent Authority shall after verifying that the selection procedure as prescribed under the rules has been complied with, convey approval for appointment of the selected candidates. In case the selection is not in accordance with the procedure prescribed under these rules the competent authority shall convey rejection recoding the reasons for such rejection in writing. Such approval or rejection shall be conveyed by the competent authority within 90 days from the date of receipt of proposal in his office. Candidates shall be appointed by the Appointing Authority only after such approval by the Competent Authority and salary of such candidates shall be payable from the actual date of joining duty. The management shall be liable for payment of salary till the date of admission of such post into grant-in-aid.

From a reading of the said Rule, it is apparent that there is no impediment for payment of arrears of salary at the scales prescribed for the post which was admitted to grant-in-aid in the year 1993 itself and the Petitioner having been appointed in the year 1995, the approval to the post having been granted in the year 2003, would yet entitle the Petitioner to receive the arrears of salary in the scale of pay attached to the post with retrospective effect.

7. Having regard to the fact that this Court has considered a similar contention in an earlier petition in WP 24910/2002 decided on 1.12.2006 and has formed an opinion, the Petitioner, who is similarly situated would also be entitled to the benefit of the same and the Petitioner is therefore held entitled to arrears of salary from the date of his initial appointment notwithstanding that the approval of his appointment has been granted only in the year 2003.

Hence, the petition is allowed. The Respondents are directed to pay the arrears of salary and allowances attached to the post with effect from the date of appointment of the Petitioner within a period of three months, if not earlier, from the date of receipt of a certified copy of this order.