

(2017) 03 KAR CK 0296

In the Karnataka High Court

Case No : 100580 of 2015(S-RES)

**SRI RAMESH?S/O SHIVANANDAPPA HALLER Vs KARNATAKA
INSTITUTE OF MEDICAL SCIENCES**

Date of Decision : 31-03-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2017) 03 KAR CK 0296

Hon'ble Judges : Vineet Kothari, H. B. Prabhakara Sastry

Bench : DIVISION BENCH

Advocate : S G KADADAKATTI, LINGESH V KATTIMANE, M Kumar,, T H Avin, R T
Avin, M R Mulla

Final Decision : Allowed

Judgement

Mr.S G Kadadakatti & Mr.Lingesh V Kattimani, Advs for appellant.

Mr.M Kumar, AGA for R2 Mr.T H Avin & R T Avin, Advs for R1 Mr.M R Mulla, Adv
for R3

1. This writ appeal has been filed by Sri.Ramesh, son of
Shivanandappa Haller, aggrieved by the dismissal of his Writ
Petition No.63973/2009 by the learned Single Judge on
07.08.2015.
2. The appellant had challenged the selection for the
post of "Junior Lab Technician" by the respondent - Karnataka
Institute of Medical Sciences, Vidyanagar, Hubli ("KIMS" for
short), for which, advertisement Annexure-A was issued by the
respondent-KIMS on 02.09.2008 for 35 posts of "Junior Lab

Technicians". The criteria for the said post prescribed in the advertisement was as under:

"General merit 33 years, SC/ST/Cat.I 38 years and for other category 36 years. Pass in PUC with Chemistry and Laboratory Technician Training Course or pass in SSLC and 2 years Vocational Diploma Course in Laboratory Technician or Pass PUC with Science and 2 years Laboratory Technician Course conducted by Para Medical Board, Karnataka or Pass in SSLC and 3 years Diploma in Medical Laboratory Technology conducted by Para Medical Board, Karnataka."

3. Part-E of the said advertisement stipulated that the selected candidates will be governed by Karnataka Government Rules and Regulation and of KIMS Rules, Regulations and bye-laws.

4. The petitioner appeared in the said selection process and when the result of the same was announced, to his dismay, he found his name at Sl.No.213 with the percentage of marks obtained by him in academic qualification is shown at 76.28%, whereas the name of respondent No.3 - Srinivasa K Gowda, was shown at Sl.No.170 and his percentage of marks was shown at 66.77%, but overall marks for petitioner was given at 64.84% and that for respondent No.3 at 70.89% and this difference of marks occurred on account of marks given by Selection Committee in "Experience" & Viva-Voce Category. To the petitioner, the Committee gave only 2 marks, 1 mark respectively in each category, but to respondent No.3, who was the person already working with Respondent-KIMS only - 14 marks - 9.50 in "Experience" category and 4.50 in "Viva-Voce" category. No such bifurcation of marks in qualification, experience and viva-voce was given in the advertisement.

5. Even though the respondent No.3 had obtained lesser marks in the academic qualifications but he was still selected and appointed for the said post of "Junior Lab

Technician". The petitioner challenged the said selection of respondent No.3 and his own rejection by way of aforesaid writ petition, which however, came to be dismissed by the learned Single Judge with the following observations in para Nos.3 to 5 of the order, which are quoted below for ready reference:

"3. The respondents have entered appearance and have filed statement of objections to firstly contend that this court would not have jurisdiction to consider the petition as the petitioner would have to approach the Karnataka Administrative Tribunal, seeking any redress. Further, even on merits, the petitioner has not correctly indicated the mode of selection. The percentage of marks scored by a candidate at the written examination is not the sole criteria. The petitioner has deliberately failed to produce the mark sheet of the Selection Committee. The Selection Committee consists of a highly eminent persons including the Secretary, Department of Medical Education, the Medical Director, Vidhana Soudha, Bengaluru, the Director, Karnataka Institute of Medical Sciences, Hubli, the Chief Administrative Officer, Karnataka Institute of Medical Sciences, Hubli and the Superintendent, Karnataka Institute of Medical Sciences, Hubli, which is an expert independent body, which has no interest in a particular candidate. It is not also the case of the petitioner that there was bias on the part of the Selection Committee in favour of respondent no.3. The Committee, while selecting a candidate, awards 85% of the marks secured in Para Medical Course, 10% for experience in a recognised health institution and 5% of viva-voce. Respondent no.3 has passed his Para Medical Course in 2002- 2003 and was found with experience of 3 years in Karnataka Institute of Medical Sciences, Hubli, respondent no.1 and 1 year experience in Bapuji Medical College, Davanagere. The petitioner has passed the Para Medical Course on 9.2.2007 and the experience certificate indicated that he has only six months" experience with a private doctor and not even in a Government hospital.

Therefore, the Selection Committee has awarded voce. Therefore, the petitioner has secured 66.84% in the selection list. It is contended that the petition is misconceived and on merits, the petition would have to fail.

4. The learned counsel for the petitioner however, would contend that the experience prescribed is only in respect of a candidate who has only SSLC, where as the petitioner had passed the PUC and requisite experience is not prescribed for a candidate who has passed PUC.

5. However, it is apparent that the experience prescribed for a candidate who has passed PUC was 2 years and since the petitioner did not have this requisite experience, the marks not having been awarded towards experience is justified and therefore, respondent no.3 had an edge on the petitioner which has been recognised by the selection committee.

There is no fault to be found with the selection. Hence, the petition fails and is dismissed."

6. Being aggrieved by the same, the appellant has preferred this appeal before us.

7. Learned Counsel for the appellant, Mr.S G

Kadadakatti, urged that there was no stipulation of requirement of experience being possessed for the post of "Junior Lab Technician" in the said advertisement, whereas the said requirement of minimum experience was provided for other posts like "Junior Echo Technician" at Sl.No.4 in the advertisement and therefore, the decision taken by the respondent-KIMS that since respondent No.3 was awarded more marks on the basis of experience in the hospital run by respondent-KIMS, Hubli itself, he was given more marks in the category of experience and personal interview, whereas the present appellant was awarded only 1 mark in each of these two categories of experience and viva voce and therefore, he has been arbitrarily and illegally excluded and denied the appointment for the post of "Junior Lab Technician" is beyond the terms and conditions stipulated in the advertisement itself. He therefore, submitted that the entire exercise of selection has been arbitrarily twisted and distorted to suit their own purpose and to favour the insider candidates and therefore, the selection process to the extent of respondent No.3 deserves to be quashed and petitioner be directed to be appointed as "Junior Lab Technician".

8. On the other hand, learned Counsel Mr.T H Avin for the Respondent-KIMS and the learned Counsel Mr.M R Mulla for respondent No.3, vehemently defended the selection process and the order passed by learned Single Judge and relying upon several case laws laying down the parameters, within which, the

Courts can interfere in such matters, has submitted that a high powered selection committee consisting of Additional Secretary, Health & Family Welfare Department (Medical Education) and others was constituted and in terms of bye-law No.10 to select the most suitable candidates, proportionate weightage based on length of experience and or additional training to the extent of 10 marks was decided to be given to the candidates who have work experience in Medical College teaching hospitals, especially those who had worked in the Government/Autonomous Medical College Teaching Hospitals. It was also agreed by the selection committee that such Government Institution working closely resembled the working conditions of respondent-KIMS, Hubli and hence, the candidates who had experience in such Institution like KIMS would be more suitable and the Committee decided to set apart a maximum of 5 marks for the personal interview of the said candidates and his/her presentation performance and the marks obtained in the qualified examination on average basis was decided to be reduced to 85%. He therefore, urged that the selection process has been fair and there are no allegation of bias against the constitution of selection committee, who were independent and highly placed persons and consequently, the learned Single Judge was justified in rejecting the writ petition and the present writ appeal also deserves to be dismissed.

9. Learned Counsel for the respondent-KIMS relied upon the following judgments in support of his submission, which are as under:

- "1. Mukesh Bala Vs State of Haryana [SLR 2015 (1) 290];
2. Om Prakash Shukla Vs Akhilesh Kumar Shukla and Others [AIR 1986 SC 1043];
3. Pradeep Kumar Rai and Others Vs Dinesh Kumar Pandey and Others [(2015)

11 SCC 493];

4. State of Andhra Pradesh and another Vs V Sadanandam and Others [1989 Supp (1) SCC 574];

5. Dr.Krushna Chandra Sahu and Others Vs State of Orissa and Others [(1995) 6 SCC 1];

6. The State Financial Corporation and Another Vs M/s Jagdamba Oil Mills and Another [AIR 2002 SC 834];

7. Dalpat Abasaheb Solunke Vs Dr.B S Mahajan [AIR 1990 SC 434];

8. Madan Lal and Others Vs State of Jammu and Kashmir and Others [AIR 1995 SC 1088]; and 9. Durga Devi and Another Vs State of H P and Others [AIR 1997 SC 2618]."

10. We have heard the learned Counsels at length and perused the records and Judgments cited at the bar.

11. There is no dispute about the principles delineated in the judgments relied upon by the learned Counsel for respondent-KIMS that this Court cannot sit as a Court of appeal and overview the work of selection committee, unless the specific allegations of bias are stated and established and therefore, there is no need to discuss these judgments in detail.

12. But the question and the facts in present case are glaring and speak otherwise and we feel that if we were not to take up and decide the appeal on merits and facts, a serious miscarriage of justice would result.

13. The bye-law No.10, which was relied upon by the learned Counsel for the respondent-KIMS is quoted below for ready reference:

"10) QUALIFICATION FOR APPOINTMENT: i) Age, experience and other qualification for appointment of all posts shall be prescribed under the cadre and recruitments rules. But the wisdom that was acquired out of past academics service should not be neglected

as the very purpose of treating autonomous Institution is only to utilize the best talented and experiences in getting effective service without any reservations. Therefore, it is of paramount necessity to relax in deserving cases the age limits

and other conditions in the appointment so that wisdom of talented persons can be utilized properly in the larger interest of the Institution persons can be utilized properly in the larger interest of the institution. So the relaxation of the age and other conditions can be given in the appointment at the discretion of the appointing authority.

14. Not only the advertisement (Annexure-A) did not make any reference to the applicability of this bye-law in Annexure-A nor any requirement of experience was made as the eligibility criteria for the post of "Junior Lab Technician", Part E of the advertisement, on the other hand, stated that the selected candidate after their selection will be governed inter alia by the bye-laws of respondent-KIMS. The selection process itself will be subject to this bye law was never stated in the advertisement.

15. A perusal of the aforesaid quoted bye-law No.10 also leaves much to be desired. It is vaguely worded to its core. It has not laid down any criteria or guidelines about the process of evaluation of criteria for the candidates in the selection process adopted by the respondent-KIMS. It is more to state that motto and objective of the respondent institution that in deserving cases, it can relax the age and other conditions in the appointment, so that wisdom of talented persons can be utilized properly in a larger interest of the institution. But it does not tell how respondent-KIMS intends to do it and whether they can relax these conditions without pre-notifying the same in the advertisement. It appears that in the present case, for the first time when the said Selection Committee sat down to make the final selections, it evolved this criteria of bifurcating the maximum marks of 100 in the said categories of 85% for qualified examination, 10% for experience and 5% for viva voce and the Minutes of selection committee proceedings dated 22.08.2008 produced before us indicates this and it is quoted

below for ready reference.

"The selection committee consisting of the Additional Secretary, Health & Family Welfare Department (Medical Education), Director of Medical Education, representative of the Rajiv Gandhi University of Health Sciences, Director, Principal and CAO of KIMS, Hubli held a meeting on 22.12.2008 at 11.30 a.m. to discuss the modalities of selection (Advertisement is dtd. 02.09.2008, prior to this). It was decided that in order to select the most suitable candidates, proportionate weightage based on the length of experience and/or additional training to the extent of 10 marks be given to those candidates who had work experience and/or additional training in Medical college teaching hospitals and especially those who had worked in Government/Autonomous Medical College Teaching Hospitals. It was agreed that the type of work in these institutions most closely resembled the working conditions at Karnataka Institute of Medical Sciences, Hubli and hence the candidates who had experience in such institutions would be the most suitable. It was also decided to set apart a maximum of 5 marks for the personality of the candidate and his/her presentation and performance. The marks obtained in the interview (maximum 15) would be added to the average percentage obtained in the qualifying examination reduced to 85%. The total marks thus obtained by the candidates would be tabulated in the order of merit and final list would be prepared based on the roster system.

The Governing Council of Karnataka Institute of Medical Sciences in its meeting held on 27.03.2008, instructed the Director, KIMS to fill up the posts of Lab Technicians, X-Ray Technicians and other Para Medical personnel. Consequently, the various posts were advertised in the leading news papers on 03.09.2008. A total of nearly 900 application were received for various posts. The applications were processed and the candidates were called for interview for which permission was obtained in the Governing Council meeting held on 15.10.2008. The interview was held for 3 days on 22nd, 23rd and 24th December 2008 at KIMS, Hubli and 853 candidates appeared for the interview. The selection committee included the Additional Secretary to Government, Health & Family Welfare (Medical Education), Director of Medical Education and a representative of Rajiv Gandhi University of Health Sciences, apart from the Director, Principal and Chief Administrative Officer, KIMS, Hubli. The selection committee decided to interview all the eligible candidates. The Committee decided to give proportionate weightage based on the length of experience to extent of the ten marks to all candidates who had work experience and/or additional training in Medical College teaching hospitals especially those attached to Government/Autonomous Medical Colleges. Five marks were set apart for the personality of the candidate and his/her presentation and performance. The marks obtained in the interview (maximum fifteen) were added to the average percentage obtained in the qualifying examination reduced to 85%. The totals were tabulated and the final list was prepared following the roster system."

16. We were also taken through the list of 35 candidates

selected, which is produced along with memo by the respondent-KIMS dated 09.01.2017 before the Court. We find that most of the selected candidates have been given very high marks of 9 or 9.5 out of 10 in the said category for "Experience" in column No.8 and 4.50 out of 5 in the "personal interview". The candidate at Sl.No.35 with only as little as four months of experience has been given 2 marks for experience and 4.50 in the interview and with total of 70.72%, he has been selected and appointed. The petitioner and others alike who were excluded in the said selection process as per the list produced by respondent along with the memo dated 09.01.2017, it is clear that most of the non-selected candidates have been uniformly given 1 mark each in the category of experience and 1 mark in viva voce. Thus, only 2 marks in this discretionary marks category, which the Selection Committee evolved only on 22.08.2008, and such marks were awarded by the Selection Committee have been given to the said candidates, while their academic marks were squeezed down to 85% of the actual marks obtained by them in SSLC or PUC examination. For what good reasons, the academic marks were squeezed is not explained at all and on what criteria the marks were divided in qualification, experience and viva voce and awarded marks were given is also not at all explained by the respondent-KIMS. The gap between the minimal marks given for the experience and viva voce to the excluded candidates at the level of 1 mark in each category and at the highest level of 9.5 in the experience category and 4.50 out of 5 in viva voce category to the selected candidates is also not explained. The gap between the discretionary marks in these two categories at very minimal level to the rejected candidate and very high level to the selected candidates leads much to guess and motives to be

attributed to the respondents. There were several such examples in the said list, which smack of a foul play on the part of respondents.

17. The appellant undisputedly got very high marks in the academics as per the marks sheet produced before us at Annexure-C and had also produced his Experience certificate from Dr.Aravind Patel, Laproscopic and Endoscopist Surgeon, for a period more than 6 months, who has appreciated his service as he being sincere, responsible and hard working person and his conduct and character as good. Why the experience certificate of a reputed Doctor was discarded, ignored or not given the same weightage as the selected candidate - respondent No.3 who was a in-house candidate, is also not explained by the Respondent-KIMS. It is more so, when the criteria of work experience itself was never mentioned in the advertisement Annexure-A, which is the only public document which the petitioner-appellant and his likes would come across. The subsequent change of bifurcation of the marks by Selection Committee is like changing the rules of games or changing the goal posts itself for their own convenience. It appears to this Court that, though the Selection Committee may be comprising of highly placed persons, but they ignored this material aspect of the matter that for appointment of Junior Lab Technicians, this criteria of awarding marks and requirement of experience at all was never stipulated in the advertisement itself and therefore, by evolving this criteria at the time of final selection, the bifurcation of marks would be open to a serious challenge.

18. It is undisputed that the respondent is a Government Institution or a Government funded Institution and in the matters of public employment, the criteria of fairness, transparency and

uniformity cannot be given a go-bye by the competent authorities, be that high powered Selection Committee or another person sitting singly. We are satisfied that in the present case, on the basis of material on record placed before us that the respondent-KIMS has failed to adhere to the principles of fairness, transparency and uniformity in the present case and has unfairly done the selection of most of the in-house candidates widening the gap between the eligible and meritorious peoples by reserving the margin of 15 marks on the basis of experience (10) and viva voce (5) with them, while squeezing the academic qualification marks arbitrarily down to 85%. We cannot appreciate and countenance the selection of respondent No.3 on such ill-founded criteria. If Courts were to shut their eyes to such glaringly arbitrary selections, it would be failing in its duty to do justice in the face of such arbitrariness on the part of respondents, which is violative of Article 14 of the Constitution of India.

19. We are conscious that quashing of the entire selection process of "Junior Lab Technician" in pursuance of the advertisement Annexure-A may cause removal of several such selected candidates in the selection process which was undertaken way-back in the year 2008 and all those persons are not before us, therefore, we are restricting the relief in the present case only by quashing the selection of respondent No.3, who was the beneficiary of said illegal procedure of selection and for quashing of his appointment, a prayer has been made in the writ petition and he is also represented and heard by us. Therefore, while refusing to quash the entire selection list dated 20.04.2009 of Junior Lab Technician, we are quashing the same to the extent of appointment of respondent No.3 - Mr.Srinivas K

Gowda and direct the respondent-KIMS to consider the case of present appellant for appointment in the post of said "Junior Lab Technician" within a period of two months from today and issue appropriate orders.

The appeal of petitioner is allowed. The order of learned Single Judge dated 07.08.2015 is set aside. No order as to costs.