

(2007) 01 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 371 of 2007

Sri. R.B. Vrishabharaju

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Karnataka Civil Services Rules, 1974 — Rule 53

Citation : (2008) 3 KCCR 1856

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : Ranganatha S. Jois, for the Appellant; A.N. Venugopala Gowda, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The Petitioner joined service as a Typist in the Department of Commercial Taxes on 30.10.1976. He appeared in the Stenography/Shorthand examination conducted by the Karnataka Secondary Education Examination Board (Commerce Examinations) in the month of May, 1983. The results of the said examination were announced in the month of July, 1983. Before the announcement of the results of the examination held in May, 1983, some of the juniors of the Petitioner were promoted to the post of Stenographer on 30.6.1983. The said juniors were promoted in preference to the Petitioner on the ground that they had already passed the Stenography/Shorthand examination which was an essential qualification for the post of Stenographer in the Department of Commercial Taxes. On the basis of the earlier promotions of the Juniors of the Petitioner, they were ranked above the Petitioner in the seniority list of Stenographers. Aggrieved by the higher ranking of the juniors in the seniority list of Stenographers, the Petitioner filed Application No. 4064/2001 in the Karnataka Administrative Tribunal. The Petitioner contended before the Tribunal that since he had appeared in Stenography examination conducted in May, 1983, his juniors could not have been preferred for promotion on the

ground that they had already acquired the qualification of Stenography/Shorthand examination. According to the Petitioner, the Petitioner should be deemed to have been qualified on the last date of the Stenography/Shorthand examination instead of the date of announcement of the results of the examination. If the last date of the examination is taken as the relevant date, the Petitioner was qualified on 30.6.1983 when his juniors were promoted to the cadre of Stenographer. Hence it was contended by the Petitioner before the Tribunal that the seniority list should be quashed and the Respondents should be directed to assign the Petitioner proper ranking in the seniority list taking into account the last date of the examination as the date of acquisition of qualification by the Petitioner. The claim of the Petitioner was rejected by the Tribunal which dismissed the Application on 22.3.2005. Thereafter, the Petitioner filed Review Application No. 43/2005 before the Karnataka Administrative Tribunal and the said Review Petition also was rejected by the Tribunal as per Annexure-"E" order dated 15.12.2006. Aggrieved by Annexure-"E" order, the Petitioner has filed this Writ Petition praying to quash the orders dated 22.3.2005 and 15.12.2006 passed by the Karnataka Administrative Tribunal.

2. Having heard learned Counsel for the Petitioner and having considered the pleadings in the Writ Petition and the materials placed on record, we do not find nay merit in the Writ Petition.

3. The basis question that arises for consideration is whether the last date of examination or the date of announcement of the results of the examination should be taken as the date of acquisition of qualification by a candidate appearing in the examination. Unless otherwise provided under any specific Rule, only the date of announcement of the result of the examination can be taken as the date of acquisition of qualification by the candidate who appeared in the examination. As rightly held by a learned Single Judge of this Court in N. Ravishankar Vs. State of Karnataka, , it is the declaration of the results of the examination that the examinees have passed the examination, that enables them to claim that they have passed the examination. Only the date of announcement of the result of the Examination can be treated as the date of acquisition of qualification unless otherwise provided in any specific rule. Learned Counsel for the Petitioner candidly in any specific rule. Learned Counsel for the Petitioner candidly admitted that there is no such Rule. The Petitioner has not pointed out any Rule applicable to the employees of the Department of Commercial Taxes which stipulates that the last date of examination should be or can be treated as the date of acquisition of the qualification. In the absence of such a Rule, the Petitioner is not entitled to claim that on the date of promotion of his juniors, he was qualified for promotion to the post of Stenographer or that he should be deemed to have qualified for such promotion. Hence the Tribunal was perfectly right and fully justified in passing the impugned orders.

4. Learned Counsel for the Petitioner pointed out that even though the Petitioner relied on an earlier decision of the Karnataka Administrative Tribunal in Meera

C.G. v. State and Ors. 1994 K.S.L.J. 201, the Tribunal refused to follow the earlier view taken by the Tribunal and preferred to follow the judgment of the learned Single Judge of the High Court in N. Ravishankar Vs. State of Karnataka, . According to the Petitioner, if the Tribunal did not agree with the earlier decision of the Tribunal, the Tribunal should have placed the matter before a larger Bench. We find it difficult to accept this contention. Even if the judgment of the High Court is by a Single Bench, the Karnataka Administrative Tribunal is bound by the judgment. Hence the Tribunal was right and justified in following the decision of the learned Single Judge of the High Court instead of placing the matter before a larger Bench. Moreover the view taken by the Tribunal in Meera C.G. v. State and Ors. 1994 K.S.L.J. 201 was wrong. In Meera's case, the Tribunal took the view that a person passes the examination on the date he took it and not when the results are announced. According to the Tribunal, it was natural that in the course of holding examination, valuing answer books and assessing the merit, time lapses and therefore, the date of result cannot form the basis for assessing the merit and further, if any other view is taken, then whole scheme of holding examinations will have no meaning. The above view taken by the Tribunal is absolutely wrong and perverse. In our view, the Karnataka Administrative Tribunal was right in not following the decision in Meera's case.

5. Learned Counsel for the Petitioner invited our attention to Note-3 under Rule 53 of the Karnataka Civil Services Rules. Rule 53 of the said Rules deals with the conditions under which service counts for increments in a time scale. In Note-3 under the said Rule, it is stated as follows:

In cases where the passing of an examination or test confers on Government servant the title to increments such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in more than one instalment, the title to increments will be deemed to have accrued on the last day following the last day of the last instalment of the examination or test which he is required to pass.

Learned Counsel for the Petitioner contended that the above principle should be adopted in determining the claim of the Petitioner for promotion to the post of Stenographer. In our view, the contention is devoid of merit. The Note under Rule 53 quoted above is an exception to the general rule that the relevant date for determining the acquisition of qualification is the date of announcement of the result and not the date of the examination. A specific exception made in a particular Rule can be applied only for the specific purpose for which the provision is made in the Rule. In all other cases, it is the general rule that should be applied. It is clear that the provision contained in Note-3 under Rule 53 is specifically made only for the purpose of granting increments in a time scale. Therefore, the principle stated in Note-3 under Rule 53 of the Karnataka Civil Services Rules cannot support the case of the Petitioner.

6. Learned Counsel for the Petitioner contended that the decision of the High Court in N. Ravishankar v. State of Karnataka ILR 1984 Kar 847 was rendered in a case relating to direct recruitment, whereas, the case in hand relates to promotion from a lower cadre to a higher cadre in the Department and therefore, the principle stated in the judgment is not applicable to the present case. The contention is only to be rejected. Even though the decision in N. Ravishankar Vs. State of Karnataka, was in a case relating to direct recruitment, the principle laid down in the said judgment is the general principle relating to the date of acquisition of qualification based on the passing of an examination. Therefore, the said decision squarely applies to the facts of this case also.

7. In the light of the discussion above, we hold that there is no merit in the Writ Petition. Accordingly, the Writ Petition is dismissed.