

(1987) 02 KAT CK 0001

In the Karnataka Administrative Tribunal

Case No : Application No. 1400/1936(T) (W.P. No. 22092/1980 before High Court)

Sri Siddappa V.S.

APPELLANT

Vs

The Director of Pre-university Education and Others

RESPONDENT

Date of Decision : 05-02-1987

Acts Referred:

Citation : (1987) 1 KarLJ 39

Hon'ble Judges : K. R. Chamayya, J.M.; R. A. Naik, Vice Chairman

Judgement

K.R. Chamayya, Member (Judicial)-The Applicant a peon in a Junior College complains that eventhough he is the senior-most peon and qualified for promotion as Attender his case was not considered for promotion as Attender before appointing the 3rd and 4th Respondents as Attenders after obtaining names from the Employment Exchange.

He has prayed for a direction to the 1st Respondent i.e. the Director of Pre-University Education to consider the Applicant for promotion as Attender and to promote him with effect from the date on which Respondent 3 and Respondent 4 were appointed and to pay him all arrears of salary and allowances after quashing the appointments of Respondent 3 and Respondent 4.

2. The Respondents have not filed any counter in this case.

3. During arguments. It was admitted that no rules of recruitment have been framed by the Pre-University Board in respect of the staff coming under its control. Sri Gangadharappa, Advocate for the Applicant contended that the recruitment rules relating to the Department of Public Instruction so far as they relate to Attenders are applicable for appointment of Attenders in the Junior Colleges. He contended that the Department of Public Instruction is different from the Pre-University Education Board and that his appointing authority is the Director of Pre-University Education. If that is so, how could the Director of Pre-University Education operate the rules of the Department of Public Instruction?

How could recruitment rules of the Department of Public Instruction apply to the Pre-University Education? In the absence of any order or rules declaring that the rules of recruitment of the Department of Public Instruction would apply to the Pre-University Board also it is not legally permissible to apply the recruitment rules of the Department of Public Instruction to the Pre-University Board. It is also admitted that there is no order or rules regulating the method of recruitment to the cadre of Attenders in the Junior Colleges of Pre-University Education. We have therefore to proceed on the basis that there are no rules of recruitment for the Pre-University Education Board.

4. The next question that arises for consideration is how the vacancies are to be filled in the absence of rules of recruitment. The Pre-University Board is not an autonomous Board. It was not constituted by any law. It was created by means of an executive order. Whatever it may be, in the absence of the rules of recruitment specifying the method of recruitment vacancies will have to be filled in such manner as the appointing authority, may, considering all aspects, decide. The appointing authority has full discretion to decide the manner of filling the vacancies. He may decide to fill it either by promoting officers working in the lower cadre or by direct recruitment.

5. It is the contention of the Applicant that the appointing authority for the category of posts of Attenders is the 1st Respondent, the Director of Pre-University Education who has appointed the 3rd and 4th Respondents. There is a Government Circular by which all appointing authorities have been asked to appoint Class-D Officers after obtaining names from the Employment Exchange. That is applicable to the 1st Respondent also.

6. The fact that the 1st Respondent appointed the 3rd and 4th Respondents by obtaining names from the Employment Exchange indicates that the 1st Respondent had decided to fill the vacancies by direct recruitment. It is not legally permissible to take any objection for that decision of the 1st Respondent. The authority which has power to appoint has the power to decide in which manner the vacancy should be filled and what should be the qualification subject however to rules or orders, if any, regulating the recruitment i.e. method of recruitment and qualification. In the absence of such rules or orders the appointing authority has absolute powers to decide the method of recruitment and qualifications having regard to its requirements. In this connection, the following observation of the Supreme Court in *Jagwal Singh v Ramayya* ((1977) 2 SEC 593) may be seen:

"There are thus no rules and regulations which requires the Chandigarh Administration to fill up by deputation the vacancy in the post of the Principal, Government Central Crafts Institute for Women, Chandigarh. The Chandigarh Administration had, therefore, the option to either directly recruit persons to be appointed to the post through Union Public Service Commission or the request either of the State of Punjab or the State of Haryana to send the names of suitable persons whom the Chandigarh Administration might be willing to

appoint. It must, accordingly, be held that the post of Principal of the Institute was not a "deputation post" and, therefore, the appointment of respondent No. 6, Smt. Prem Lata Dewan by the Chandigarh Administration to that post, by direct recruitment through the Commission was not invalid."

7. The Applicant has no legal right to get the vacancies filled only by promotion from the cadre of Peons. Question of giving directions to 1st and 2nd Respondent would arise only if the Respondents have failed to act according to rules and there is a denial of the rights of the Applicant. Since the 1st and 2nd Respondents have not acted contrary to any rule or order denying the legal rights of the Applicant he is not entitled to the direction prayed for.

8. In view of what is stated above question of granting retrospective promotion to the Applicant and quashing the appointments of 3rd and 4th Respondents does not arise. Applicant is not entitled to those reliefs.

9. For reasons stated above the application has no merits. Accordingly it is dismissed.

10. No costs.

Application dismissed.