

(2012) 11 KAR CK 0093

In the Karnataka High Court

Case No : Writ Petition No's. 47554-47559 of 2012 (S-RES)

Sri Vishwanath V.R. Gowda and Others

APPELLANT

Vs

State of Karnataka and Karnataka Public Service Commission

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 19 (1), 28
Constitution of India, 1950 — Article 136, 226, 323A

Citation : (2012) 11 KAR CK 0093

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

Bench : Single Bench

Advocate : K.N. Putte Gowda, for the Appellant; Manjula R. Kamadolli, HCGP for R1;, Sri P.S. Rajagopal, for Sri Reuben Jacob, for R2, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The 2nd respondent - Karnataka Public Service Commission (for short "Commission") issued a Notification on 3.11.2011 inviting applications for 362 Gazetted Probationers Posts. Last date of receipt of applications was 12.12.2011. 1,38,807 applications were received in response to the said notification. Preliminary examination was conducted on 22.4.2012. List of eligible candidates for main examination was published on 6.6.2012. 7,188 candidates became eligible for the main examination, to whom the applications were sent from 12.6.2012 to 15.6.2012. The last date fixed for receipt of filled application from the candidates was 30.6.2012. Main examination was scheduled to be held between 25.8.2012 to 14.9.2012. Main examination schedule was published in the website of the Commission on 9.7.2012. The examination process was stayed on 2.8.2012 in W.P. No. 10223/2012. The said order was vacated on 16.11.2012. The main examination was re-scheduled and has been processed to be held on 15.12.2012 to 6.1.2013. The time table of the main examination was uploaded in the website of the Commission on 17.11.2012 (Annexure -A). The petitioners who have successfully passed the KAS preliminary examination and having applied to the other posts available in other

departments, having submitted a representation dated 19.11.2012 (Annexure-L), to re-schedule or postpone the examination announced vide Annexure -A, have filed these writ petitions to quash the time table uploaded in the website of the Commission on 17.11.2012 (Annexure-A) and to direct the Commission to consider the representation as at Annexure - L.

2. Sri K. N. Puttegowda, learned advocate, in support of the writ petitions contended that the petitioners had applied for other posts available in other departments and now the dates already announced for these examinations clash with the time table - Annexure-A announced by the Commission and though a representation was submitted explaining the difficulties of the petitioners and large number of similarly affected candidates, the Commission has not considered the representation as at Annexure -L and has put the petitioners in a fix. He submitted that the impugned action of 2nd respondent - Commission is arbitrary and illegal and hence, interference is warranted.

3. Sri P. S. Rajagopal, learned Senior advocate, appearing for the 2nd respondent, on the other hand, by inviting my attention to the provisions under Ss. 15 and 28 of the Administrative Tribunals Act, 1985, firstly contended that, there is no jurisdiction to entertain the writ petitions. Reliance was placed on an order in the case of S.M. Pattanaik Vs. Secretary to Government of India, . Secondly, the prayer for rescheduling/postponement of the examination is unreasonable, since, more than 6,700 eligible candidates would face hardship. He submitted that the admission tickets and other examination materials have already been printed and the admission tickets are ready to dispatch and that necessary arrangement to conduct the examination has been undertaken. He submitted that, for convenience of the petitioners, large number of eligible applicants cannot be made to suffer. He submitted that, if, the request of the petitioners were to be accommodated, number of other eligible candidates who would be taking one or the other examination/s at a given point of time would encounter similar problems and it will be impossible to publish a time table, wherein, no other examinations by the Government Departments or the Universities would be conducting. He submitted that the Commission having held deliberations has found it impossible to accede to the request for postponement of the notified examination, since the postponement, if any, would bring in multiple problems.

4. The primary point for consideration is, whether in a matter relating to the conduct of competitive examination by the Commission for recruitment to the Gazetted posts in the Civil Services of the State, the writ petitions are maintainable?

5. In the case of G.M. Kumar Vs. Karnataka Public Service Commission, , the appellants, who had staked their claims for Group-A posts had filed writ petitions questioning the rejection of their applications on account of non-payment of the requisite fee by the Commission. Writ petitions were entertained in the first instance and interim directions were issued to the Commission to interview the

appellants. The appellants were in fact interviewed also. Their results was not announced. The writ petitions were dismissed in view of the provisions under Ss. 15 and 28 of the Act. The order when questioned in writ appeals on the ground that the Tribunal constituted under the Act is non-functional and hence, this Court can entertain the matters, while observing that "hard cases make bad law" the contention was negated by holding as follows:

3... we fully appreciate the piquant situation under which the appellants are placed. But, we are afraid the appellants are knocking at the wrong door. We have not the slightest hesitation in holding that having regard to the comprehensive language employed in Section 15 of the Act, we will have no jurisdiction to entertain the Writ Petition itself much less the Writ Appeal. We may at once look at Section 15 of the Act. That states in clause (a) of sub-section (1) of Section 15 as follows:

Recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State.

Section 28 of the Act reads as under:

Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution - On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members, of any Service or persons appointed to any Service or post, no Court (Except the Supreme Court under Article 136 of the Constitution), shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

As a matter of fact, the constitution of the Tribunal is traceable to Article 323A of the Constitution. Article 323A(2)(d) states as follows:

Excluded the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the dispute or complaint referred to in clause (1)."

Therefore, there is a constitutional bar. We cannot exercise our power under Article 226 of the Constitution in the teeth of the bar. However, what has happened in this case as we have stated above is that both appellants have been interviewed by the Service Commission by a direction of this Court. Strictly speaking that directions without jurisdiction, since as we stated above, the entertaining of Writ Petitions itself was not warranted. On that score the appellants should not suffer. It is one of the axiomatic principle of law that no man could be prejudiced by the Act of the Court. Accordingly, we could only expect the Service Commission to come to the rescue of the appellants. More than this, it is neither desirable nor permissible for us to say. Dismissed.

The conducting of competitive examination by the Commission is a matter in

relation to recruitment and also matter concerning recruitment to Civil Posts under the State. The subject matter in these writ petitions - time table for the Gazetted Probationers 2011 main examination to be held from 15.12.2012 to 6.1.2013, published by the Commission being in relation to the recruitment and the matters concerning recruitment to the Gazetted Posts in the State, the writ petitions are not maintainable, since, the same would fall within the meaning of "an order" under S. 19(1) of the Act. Consequently, the petitioners, if aggrieved, should first approach the Karnataka Administrative Tribunal, in view of the mandate of the decision in the case of L. Chandra Kumar Vs. Union of India and others, , wherein it has been held as follows:

93 ? we may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for the litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

(Emphasis supplied by me)

In the result, writ petitions being not maintainable are rejected. However, it is open to the petitioners to approach the competent forum, for relief, if any.