

(2014) 04 KAR CK 0179

In the Karnataka High Court

Case No : Writ Petition Nos. 5432 and 5481/2014 (S-RES)

Srinivasamurthy K. S.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 04 KAR CK 0179

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

Bench : Single Bench

Advocate : R. Padmanabha, Advocate for the Appellant; M.S. Prathima, HCGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioners are teaching and non-teaching staffs and employees of private aided educational institutions. According to the petitioners, their appointments were approved by respondent No. 1. While approving the appointment, a condition having been imposed that the past service rendered from the date of appointment till the appointee was admitted for salary grant will be counted only for the purpose of leave and pension and thereby denied the notional annual increments, these writ petitions were filed on 30.01.2014, to direct the respondents to reckon and count the past service rendered by the petitioners from the date of their initial appointment up to the date of approval of their appointment with aid respectively for the purpose of fixation of pay scale, seniority, increments, including TBA, pensionary benefits and other consequential service benefits.

2. Sri R. Padmanabha, learned advocate for the petitioners contended that the writ petitions filed by some of the teachers working in different institutions, seeking to reckon their services from the date of their initial appointments up to the date of approval for the purpose of fixation of pay scale, seniority and all other benefits having allowed and the writ appeals and the Special Leave

Petitions filed by the Government having been dismissed, as is evident from Annexures-Z17 to Z22, the respondents have an obligation to extend the same benefits to the petitioners. He submitted that, since the respondent No. 1 has not extended the said benefits to the petitioners, there is violation of Article 14 of the Constitution of India.

3. Perused the writ record.

4. The petitioners have not made a demand with the respondents seeking to perform the legal duty. Annexure-Z16 is a legal notice and not a representation. Submission of Sri R. Padmanabha, to treat Annexure-Z16 as a representation made by the petitioners cannot be accepted. The demand must be in writing by the petitioners with all service particulars, so that the authority can secure the relevant records and take decision in the matter. Since the petitioners have not made the demand with the respondents by furnishing the full service particulars, with regard to the claims made in these writ petitions, petitions for issue of writ of mandamus cannot be entertained.

5. In *A. Prabhakara Reddy Vs. The State of Karnataka and Others*, , with regard to issuance of writ of mandamus to the authorities, it has been held as follows:

9. As a rule this Court exercising its jurisdiction under Article 226 of the Constitution will issue a Writ of mandamus to the Authorities like the 1st and 2nd respondents if they failed to discharge their duties arising out of legal obligations, in spite of a written demand. It is only when such duties are cast on the authorities and they fail to perform them, the right to seek a Writ of Mandamus arises in favour of the citizen.

6. In ILR 2013 Kant 5085 , considering the object of Writ of Mandamus and criteria for issue of Writ of Mandamus, in a case relating to the identical claim, it was held as follows:

2. The object of issue of writ of mandamus is to compel performance of a legal duty. A mandamus will be issued to a person aggrieved who approaches the Court, if he makes out (i) existence of a legal right in him and a corresponding obligation on the respondent to perform a legal duty and (ii) refusal, either express or implied, by the respondent to perform such duty, in spite of a demand. Where a petition seeking mandamus is not preceded by demand for performance of a legal duty, the Court cannot entertain such a petition.

7. In *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, , Apex Court has held as follows:

24.....As a general rule writ of mandamus will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that, that demand was met by a refusal

8. In *The Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Others*, , Apex Court has held that while granting a writ, the Court must make every effort to ensure from the averments of the writ petition, there exists proper pleadings. With regard to the writ of mandamus, it has been held as follows:

24.....In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right.....

The ratio of the above decision was reiterated by the Supreme Court in *The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another*, .

9. Sri R. Padmanabha, conceded that prior to filing of these writ petitions, the petitioners did not submit any written representations to the respondents seeking to extend the service benefits on par with the relief, which the teachers working in other institutions have got by virtue of the orders passed in other cases.

10. The petitioners having not made demand in writing with competent authority having the requisite authority to perform the demand and there being no opportunity for the competent authority to examine the claims and take decision in the matters, these writ petitions for issue of writ mandamus to the respondents, in view of the ratio of law in the decisions, noticed supra, cannot be entertained.

In the result, writ petitions are rejected. However, liberty is reserved to the petitioners to approach office of the authority having the requisite authority to perform the act demanded and for extending benefits. If the competent authority does not act in the matter within a reasonable period, it is open to the petitioners to seek relief, if any, in accordance with law.