

(1999) 12 KAR CK 0025
In the Karnataka High Court
Case No : Writ Appeal No. 4185 of 1999

State of Karnataka and another

APPELLANT

Vs

B.S. Manibanakar and others

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 KarLJ 201

Hon'ble Judges : R. Gururajan, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Sri A. Nagarajappa, for the Appellant; Sri T.N. Raghupathy, for the Respondent

Judgement

1. The State Government has come in appeal against the common order passed by the learned Single Judge in W.P. Nos. 11971 to 11973 of 1996, dated 20-10-1998.

2. The brief facts of the case are as under;

Respondents 1 to 3 were the petitioners in W.P. Nos. 11971 to 11973 of 1996. Respondent 1, the petitioner 1 was appointed as a part-time lecturer and he was later on appointed as a full time lecturer in the year 1982. His appointment was approved by the Directorate of Vocational Guidance and he was paid a consolidated pay. His services were regularised on 1-7-1995. Respondent 2/ petitioner 2 was initially appointed as a part-time lecturer in Kannada and he was later appointed as full time lecturer in the year 1984 on a consolidated salary of Rs. 740/- per month. His services were also regularised from 1-7-1994. Respondent 3/petitioner 3 was appointed as lecturer in Sericulture in the year 1984 as a full time lecturer and he was also paid a consolidated salary and later his services were regularised from 1-7-1994 on regular pay scale.

3. It appears that one Mahalinge Gowda (part-time teacher of vocational courses) filed a petition before the Karnataka Administrative Tribunal seeking for

regularisation of services. The Tribunal rejected his petition. Hence they preferred an appeal in Civil Appeal No. 7499 of 1994 and connected appeals aggrieved by the order of the Tribunal before the Supreme Court. Before the Supreme Court the Government had agreed to absorb on regular basis all those part-time lecturers working, in the Government institutions who have served in that capacity teaching number of units for more than 10 years. Annexure-B is the order issued by the State Government in the light of the judgment of the Supreme Court, with regard to regularisation of service of teaching and non-teaching staff of Vocational Educational Section in Government and Aided Colleges and PUC Colleges. The said order provides for regularisation of services on ad hoc basis subject to certain conditions, which were subsequently modified by another order dated 28-3-1995. In the modified order dated 28-3-1995 there are some changes effected as a policy decision of the Government in the matter of regularisation of lecturers, restricting the relief to regularisation only.

(emphasis supplied)

4. The petitioner 1 and others filed petitions before the Karnataka Administrative Tribunal, seeking direction to the respondents for regularisation of their services and for granting consequential benefits. The Tribunal granted the relief and the State had filed appeals in Nos. 7543 and 7545 of 1994. Petitioner 1 was a party to SLP No. 7543 of 1994. The Apex Court following its earlier decision in SLP No. 7499 of 1994 has disposed of the SLP providing the benefits of the directions given in Mahalinge Gowda's case, supra.

5. The petitioners subsequently has now filed writ petitions in W.P. Nos. 11971 to 11973 of 1996 before this Court seeking for the following reliefs:

"14. Wherefore, the petitioners most respectfully pray that this Hon''ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction to the respondents:

(a) To fix the pay scale of the petitioners notionally based on their initial entry into service.

(b) Direct respondents to pay to the applicants arrears of salary on regular basis after 10 years of completion of their services or in any event from 1-7-1994 as per the order at Annexure-A after first refixing the pay of the petitioners notionally based on their initial entry into service.

(c) Allow writ petitions with costs and grant such other reliefs as this Hon''ble Court deems fit in the circumstances of the case, in the interest of justice and equity".

Several grounds have been raised in the writ petition. However, it is seen that insofar as Annexure-C, the policy decisions of the Government, it has not been challenged either by way of grounds or in the prayer column in W.P. Nos. 11971 to 11973 of 1996. It is also their ease that the proposal sent by the management to the Government is in regard to fixation of pay has been returned and the

colleges have again sent their proposal for fixation of pay without taking into consideration the past services rendered by the petitioners.

6. Notices were issued and respondents filed objections before the learned Judge. Respondents have also stated that the question of absorption of part-time employees working in the private institution has to be considered by the respective managements. They have also stated that no undertaking was given in respect of private aided institution because it is the discretion of the respective managements.

7. The matter was heard by a learned Single Judge and the learned Single Judge on a statement made by the Government Pleader that the case of the petitioners will be properly placed before the Government and a decision shall be taken in the matter, has quashed Annexure-C, dated 28-3-1995 and a mandamus has been issued to the respondent to consider the claim of the petitioners and fix the pay scale notionally from the date of entitlement of their appointment as full time lecturers. The respondent 1 need not pay arrears in view of the submission of the learned Counsel upto 1-7-1994 and after 1-7-1994 the Government shall examine the case of the petitioners, consider their claims and fix their pay scales from the date of the receipt of the order.

8. The Government aggrieved by the direction has filed this appeal. Notices were issued to the respondents and they have entered appearance through their Advocates. Matter was heard. After hearing and after perusing the material and the impugned order on record the following order is passed:

Sri Nagarajappa, learned Additional Government Advocate, contended that the impugned order requires reconsideration. Essentially he contended that the petitions are not maintainable in view of the order of this Court in W.P. No. 1833 of 1995 and connected appeals. He further argued that the managements were not made parties in the writ petitions and without their being parties no relief could have been granted by the Court. He also stated that there is no prayer for quashing Annexure-C in the prayer column. It is his further case that a concession made on a question of law is not binding on the Government.

9. Per contra Sri T.N. Raghupathy, learned Counsel vehemently contended that the writ petitions are maintainable since he has questioned the governmental action in the petitions. It is also his case that in view of the concession the Government cannot maintain this appeal. He also argued that in the light of the order of the Apex Court in the earlier litigation the respondent cannot deny the benefits to the respondents. He further argued that he has orally sought for permission to challenge Annexure-C before the learned Single Judge.

10. After giving our anxious consideration to the rival pleas we are of the view that this appeal has to be allowed on the short ground of maintainability of the writ petitions filed by private educational teachers under Article 226 of the Constitution of India. This point is fully covered by a judgment of a Division Bench in W.A. Nos. 1833 to 1836 of 1995 decided on 30-5-1998. A Division

Bench of this Court considered various aspects including aid granted by the Government and after noticing all facts this Court ruled in paras 29 and 30 reading as under:

"29. It follows that if a private educational institution is admitted to grant and the appointment of any staff of such an institution is approved, the State is bound to release salary grant in respect of such staff. On the other hand, if the appointment of the staff is made by the managements contrary to the provisions of Code, Education Act and the Rules or in excess of the strength prescribed or ineligible staff is appointed and such appointments are not approved by the Government, it is the primary duty and responsibility of the management of such institution to pay the salary of such staff whose appointments have not been approved. The reason is, while making the appointment of staff, the managements are duty bound to strictly adhere to the eligibility criteria, roster system, approved cadre strength and other relevant factors. If appointments are made deviating any of these or contrary to the provisions governing the appointment of staff, the Managements have to bear the salary and other expenditure of such staff for the mistake committed by them.

30. For the reasons stated above, the writ petitions filed by the teaching and non-teaching of private educational institutions are dismissed as not maintainable reserving liberty to them to avail the alternative remedy available under law".

11. Admittedly, even according to the writ averments and the material available on record the petitioners are employees of the private educational institutions and therefore they cannot maintain the writ petition. They have also not chosen to implead their respective management as parties since they are necessary and proper parties in terms of decision referred to above. The contention of Sri Raghupathy, learned Counsel for respondents that writ petitions are maintainable against the State cannot be accepted in the light of the clear pronouncement of law by the Division Bench of this Court. Aggrieved party if at all is the respective managements of the petitioner and they have not chosen to file any petition whatsoever. In the circumstances we hold that writ petitions are not maintainable and therefore the impugned order is liable to be set aside on the ground of maintainability only. However, we reserve liberty to the petitioners to avail alternative remedy available in law in terms of the order of this Court in W.A. Nos. 1833 and 1834 of 1995 and connected matters.

12. The Counsel for respondent Sri T.N. Raghupathy, further argued that a concession has been made by the Counsel and therefore no appeal can be maintained by the State. This argument also is not acceptable for the simple reason that all that Government Advocate has stated is that a decision will be taken by the Government in the matter. That does not mean that the Government has given a concession with regard to the payment of arrears as sought to be made out by the Counsel. As a matter of fact even the writ averments show that the management have sent proposal to the Government and they are under consideration. In the light of the averments made therein it is

not possible to hold that the Government has conceded as contended by the respondent's Counsel. The statement made by the Government Counsel is nothing but reiteration of the writ averment. It cannot be taken as a concession to grant reliefs. In the circumstances we reject this argument.

13. In this connection it is necessary to observe what the Supreme Court has stated with regard to concession in the judgment in Tripura Goods Transport Association and Another Vs. Commissioner of Taxes and Others, , in paras 9 and 10, which is as under:

"9. The assurance given by the Counsel of the State in Court was "whether the applicants are dealers or not, he assures that if and when the applicants approach the Commissioner of Taxes, he shall ensure that these forms are supplied to the petitioners". This assurance was clearly against the law. Form 18-A cannot be issued to the transporters.

10. Although the order dated 3-3-1997 was based on the assurance given by the Senior Advocate appearing for the State the order will have to be recalled. An Advocate appearing on behalf of the State cannot undertake that the State will do something contrary to the statute. Therefore, this application is allowed. We will recall the order passed on 3-3-1997 and restore the LA. II of 1996 for hearing and disposal. These applications are disposed of as above. There will be no order as to costs".

When the writ itself is not maintainable and when there is a policy decision of the Government as per Annexure-C an Advocate appearing on behalf of the State cannot undertake that the State will do something contrary to its policy, Annexure-C. Hence, the argument of concession by the State cannot be accepted. Moreover, there is neither a prayer nor any grounds of attack on Annexure-C, notification dated 28-3-1995 in the writ petition. In the circumstances quashing of Annexure-C also is liable to be set aside for want of grounds/prayers. In the circumstances without expressing any opinion on merits we allow this appeal, set aside the order of the learned Single Judge and hold that the writ petitions are not maintainable, under Article 226 of the Constitution of India. However, as mentioned earlier, liberty is reserved to petitioners to avail alternative remedy in accordance with law. Parties are to bear their own costs.