

(1982) 02 KAR CK 0031
In the Karnataka High Court
Case No : WA 1667 to 1691/81

State of Karnataka and Another

APPELLANT

Vs

Shankaraiah and Others

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 8(15)

Citation : (1982) 1 KarLJ 503

Hon'ble Judges : D. M. Chandrashekhar, C.J.;N. Venkatachala, J

Judgement

D.M. Chandrashekhar, C.J.-By consent of learned Counsel these appeals are treated as having been posted for hearing and we have heard them.

These appeals are from the common order of Malimath, J., in WPs Nos. 6672 to 6676 of 1981. The respondents therein, i.e., the State of Karnataka and the Commissioner for Public Instruction in Karnataka, have presented these appeals. For the sake of convenience, the writ petitioners will hereinafter be referred to as the petitioners.

The petitioners are teachers in Primary Schools. They claimed the benefit of the selection time scale of pay under the Government Order, GO No. ED 199 PMC 11 dated 13-10-1972, on the ground that they had completed 10 years" service as Primary School Teachers. The appellants did not accede to their claim on the ground that the petitioners had been initially appointed as local candidates, that subsequently their services were regularised and that their services after such regularisation, were less than 10 years.

In the writ petitions, the petitioners claimed that their services as local candidates should also be taken into account in computing the qualifying service for the purpose of eligibility for the selection time scale of pay. Following the earlier decision of this Court in WP No. 10169 of 1977, the learned single Judge upheld the the claim of the petitioners and allowed the petitions and issued a writ in the nature of mandamus directing the authorities to extend the benefit of the selection time scale of pay to the petitioners.

In these appeals, the correctness of the decision of the learned single Judge has been impugned.

The learned Government Advocate contended that the Government order providing for grant of the selection time scale of pay expressly provided for excluding the period of service rendered by Primary School Teachers as local candidates in computing the period of qualifying service for getting the benefit of such scale of pay.

The relevant portion of the Government Order dated 13-10-1972, reads:

(a)

(b) For computing the period of services prescribed for promotion to the selection time scale of pay, service rendered by a teacher as a local candidate, leave without allowance and suspension adjudged as penalty shall not be counted.

No doubt, the Government Order specifically provides for excluding the period of service rendered by a teacher as a local candidate in reckoning the qualifying service for the selection time scale of pay. But, the question is whether such exclusion of the period of service as local candidates, violates Arts. 14 and 16 of the Constitution.

R. 8 of the Kar. CSR, 1958, contains definitions. Sub rule (15) of the Rule defines the word "duty". Note 4 of that sub rule states that service as local candidates has to be treated as officiating or temporary service for purpose of granting increments, leave pay, etc.,

Once the service as a local candidate is treated as officiating and temporary service for the purpose of granting increments, leave, pay, etc., there is no rational basis for excluding the period of such local service in reckoning the period of qualifying service for the purpose of eligibility for the selection time scale of pay. In our opinion, the stipulation contained in cl. (b) of the Government Order dated 13-10-72 that the period of service rendered as a local candidate by a teacher should be excluded for computing the qualifying service for selection time scale of pay, is arbitrary and offends Arts. 14 and 16 of the Constitution. The learned single Judge has rightly held that the service rendered by a teacher as a local candidate, should also be taken into account for computing the qualifying service for the purpose of eligibility for the selection time scale of pay. It is not disputed that if such services of the petitioners as local candidate is taken into account, they would be eligible for the selection time scale of pay.

The learned Government Advocate submitted that the writ petitions were filed more than 3 years after the Government Order was made providing for selection time scale of pay and that hence the petitioners should be denied the difference between the selection time scale of pay and the usual pay for the period of 3 years.

Sri M. Narayanaswamy, learned Counsel for the petitioners, submitted that the petitioners had been making representations to the authorities and that it was only when such representations were not heeded, they, filed writ petitions. In the circumstances, we do not find any justification for denying the petitioners such difference in salary for any past period.

We do not find any good ground to interfere with the order of the learned single Judge.

In the result, we dismiss these appeals.

In the circumstances of the cases, we direct the parties to bear their own costs.