

(2004) 11 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 34064/04

State of Karnataka and Others

APPELLANT

Vs

Shabbiruddin Nawaz

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Karnataka Education Tribunal Services (Department of Public Instruction)
(Recruitment) (Amendment) Rules, 2001 — Rule 66

Citation : (2005) ILR (Kar) 535 : (2005) 1 KCCR 352

Hon'ble Judges : V. Gopala Gowda, J;H. Billappa, J

Bench : Division Bench

Advocate : V.Y. Kumar, AGA, for the Appellant; P. Rajashekar, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The 3rd respondent applied for the post of Assistant Teacher in Hindi. The 3rd respondent did not consider the candidature on the ground that Petitioner did not possess the requisite qualification. Aggrieved by the same the 3rd respondent filed Application before the Karnataka Administrative Tribunal. The Tribunal by the impugned order at Annexure-A held that non-consideration of the case of the respondent is bad in law and directed the petitioners herein to consider his case for selection. The said order is challenged in this Writ Petition.

2. The impugned order is challenged placing reliance upon the Note to Rule 66 of the Karnataka Education Tribunal Services (Department of Public Instruction) (Recruitment) (Amendment) Rules, 2001. It is the case of the petitioners that respondent has not studied Kannada medium or language as first or second language and therefore he is not eligible for the post.

3. The Administrative Tribunal considered the contention of the petitioners and rejected the same. The Tribunal referred to its earlier decision in similar case in NOORJAHAN v. STATE AND ANR. Application Nos. 1799 and 1971/2002 disposed

of on 12.9.2003. In both the cases the Tribunal set aside the order rejecting the order that applicant must have passed Kannada language as first or second language.

4. In Noorjahan's case referred to supra, the Tribunal also referred to the order passed in Application Nos. 666, 1084 and 1446/ 2002 disposed of on 29-7-2002. Thus, the impugned order is consistent with the orders passed in similar cases by the Tribunal. Therefore, inconsistency cannot be brought by interfering with the order impugned in this case.

5. We have pursued the Recruitment Rules also. When the Recruitment Rule prescribes the qualification and eligibility, the Note cannot over-take the same. In effect, the Note takes away the qualification prescribed for the post and leads to anomalous situation. That apart, the Note, as extracted in the Writ Petition, reads thus;-

NOTE; Primary School Assistant Master/ Mistress (Science) (English) (Hindi) in Primary, Higher Primary and Model Higher Primary Schools shall form part of the General Cadre and they shall teach other subjects also in addition to Science/ English/ Hindi to make up the normal work load for the teachers.

From the above, it is clear that it does not prescribe pass in Kannada first or second language. Therefore, the rejection of candidature of respondent is not correct and the Tribunal was justified in directing to consider his case for selection on merits.

6. For the reasons stated above, the Writ Petition is dismissed.