

(2017) 03 KAR CK 0022
In the Karnataka High Court
Case No : W. P. No. 103662 of 2015

Sujata Shivanand Giriyan

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Citation : (2017) 2 AirKarR 653

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : C.R. Coulay and Sunil S. Desai, Advocates, for the Petitioner; Ravi G. Sabhahit, Advocate, for the Respondent No. 4; Ravi V. Hosamani, AGA, for the Respondent Nos. 1 and 3; Dattatreya T. Hebbar, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

L. Narayana Swamy, J.—Petitioner and fourth respondent have been working as Professors at the relevant point of time. The relevant point of time is, the date of notification issued by the Government calling for applications from in-service candidates to fill up the post of Director to Karnataka Institute of Medical Sciences, Hubballi (hereinafter referred to as "the KIMS- for brevity). The petitioner as also the fourth respondent were aspirants for the said post and their respective candidature was before the Committee for consideration to the post of Director. Under the Cadre and Recruitment Rules of the second respondent, the post of Director is to be filled from among the cadre of Professors. The eligible qualification under the Cadre and Recruitment Rules is that one should have completed five years in the cadre of Professor; and secondly, among the five eligible candidates, the Screening Committee has to short-list one person. Further, the selection/promotion is on the basis of the seniority-cum-merit.

2.The Screening Committee, having considered the comparative merit of the petitioner and the fourth respondent, selected and appointed the fourth respondent and promoted him to the post of Director by its order Annexure-F

dated 22nd January, 2015. The same has been challenged by the petitioner in this petition on the following grounds:

That as on the date of issuance of Annexure-A dated 25th September, 2014, the fourth respondent was not qualified and he got promotion as Professor on 6th September, 2011. If that is taken into account, the effective date for the purpose of computation of five years of qualifying service, the fourth respondent would not have completed five years of qualifying service; and on this ground alone, the selection of the fourth respondent is to be set aside.

The second submission of the learned counsel is on the ground of seniority. It is submitted that the petitioner was promoted as Professor on 25th August, 2004. She possesses the qualified service of five years on the date of notification for the post of Director and she is the senior-most. The fourth respondent got selected and was promoted as Director whose seniority in the seniority list is at Sl.No.17. Considering the length of service, at the time of Notification Annexure-A, the petitioner has put in more than ten years of service, whereas the fourth respondent had not even completed five years. Hence, on these grounds also, the learned counsel for the petitioner seeks quashing of the selection and promotion given to the fourth respondent.

3. Per contra, the learned Counsel appearing for the fourth respondent submits to dismiss the petition on the following counts. It is submitted that the petitioner and the fourth respondent have participated in the proceedings for the post of Director before the Screening Committee. Once, having appeared for interview, and after not getting selected, the petitioner shall not question the selection of the fourth respondent. Since the petitioner has not taken any objection at the time of appearing for interview before the Screening Committee, it is not open for the petitioner to present this petition at this juncture. In support of his submissions, the learned Counsel referred the judgment of the Hon'ble Supreme Court in the case of Madras Institute of Development Studies and another and another civil appeal reported in (2016)1 SCC 454 : (AIR 2015 SC 3643) wherein allowing the appeals the Hon'ble Supreme Court observed that it was only after first respondent was not selected for appointment that he turned around and challenged the very selection process. Further, with regard to the submission of the petitioner that the fourth respondent got promotion as Professor in the year 2011, the learned counsel refers to the Service Register in which he has been referred that his promotion is with effect from 2006 and since then he was working as Professor till his date of promotion. It is also submitted that as Director, he has drawn the salary attached to the cadre of Professor. Further, it is submitted that the date of entry into service or effective date of the Professor is wrongly shown in the Promotion List as per Annexure-G. The same is required to be rectified, and it is for the respondent to get it rectified.

4. Heard the learned counsel for the parties. The post of Director, KIMS is a selection post based on seniority-cum-merit and it is to be filled up from among the in-service candidates of the second respondent. No doubt, the petitioner and

the fourth respondents were in-service candidates on the date of selection. The date of promotion to the post of Professor of the petitioner was in the year 2004. Whereas, in respect of the fourth respondent, as per Annexure-J, the fourth respondent appeared before the Committee for promotion to the post of Professor on 6th September, 2011. If the case of the fourth respondent is accepted that he was promoted in the year 2006, how could he appear before the Screening Committee for the post of Professor on 6th September, 2011 is not forthcoming. The proceedings dated 6th September, 2011 before the Screening Committee consisted the Hon'ble Minister then for Medical Education; Principal Secretary to the Government, Medical Education Department; Director, Department of Health and Family Welfare Department; and Deputy Secretary of Medical Education; Vice Chancellor of Rajiv Gandhi University for Health Sciences; Principal Secretary (Expenditure), Finance Department; Director of Medical Education; and other invitees. In total, before the Committee consisting of twelve persons, the fourth respondent appeared for consideration of his candidature for promotion to the post of Professor, makes it undisputedly clear that as on the date of petitioner appeared before the Screening Committee in the year 2006 the fourth respondent was not promoted as Professor for the simple reason that he had appeared before the Screening Committee for promotion to the post of Professor and his promotion has been considered to the said cadre with effect from 6th September, 2011. Accordingly, the said date would be the date that is to be taken into consideration for the promotion to the further cadre. Having taken the said date for promotion, if it is computed for the purpose of calculating the qualifying service of five years as per Notification Annexure-A, it goes without any ambiguity that the fourth respondent has not completed five years of service as Professor as on the date of Notification Annexure-A. Accordingly, the selection of the fourth respondent to the post of Director requires to be set aside for want of requirement of qualifying service of five years.

5. Secondly, the fourth respondent is also not senior to the petitioner in the length of service. The service of petitioner is with effect from 2004 compared to that of the fourth respondent who has put in about five years of service. As per the Provisional seniority list of Professors Annexure-J dated 16th January, 2014, submitted to Principal Secretary to Health and Family Welfare Services, shows that the fourth respondent's name is at Sl.No.23, whereas the name of the petitioner is at Sl.No.8, who admittedly is senior to the fourth respondent. Hence, on more than one counts, it is to be held that the selection and appointment of the fourth respondent to the post of Director is contrary to Cadre and Recruitment Rules of the second respondent.

6. For the foregoing reasons, the selection of fourth respondent is to be set aside and accordingly it is set aside. Further, it is directed to the respondents to look into the matter and take a decision to fill-up the post of Director in the light of the observations made above.