

(2015) 11 KAR CK 0349
In the Karnataka High Court
Case No : Writ Petition No. 203150/2015 (S-RES)

Tarakanth

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0349

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Huleppa Heroor, Advocate, for the Appellant; Archana P. Tiwari, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 08.06.2007 at Annexure-R and the order dated 27.04.2015 at Annexure-S to the petition. The petitioner in that view is seeking that the respondents No. 3 and 4 be directed to approve the promotion of the petitioner and pass necessary order for approval of the promotion of the petitioner as Head Master from the date of promotion and grant promotional benefits from 01.03.2001 till retirement and in that light grant pensionary benefits.

2. The petitioner was appointed as an Assistant Teacher in sixth respondent-school. His appointment was confirmed by the Government and was admitted to aid. He was thereafter promoted and ultimately when one Sri Heeralal Mishra who was working as Head Master in the High School had retired on 28.02.2001, the petitioner was appointed by the School management to work as Head Master with effect from 01.03.2001. The appointment of the petitioner as Head Master by the school management was sent for approval by the communication dated 03.12.2001. The Deputy Director had forwarded the same to the Public Instructions Department for consideration of the approval of the appointment as Head Master.

3. When the process was underway, the Government by an order dated 17.01.2004 had withdrawn the powers which was vested with the authorities with regard to consideration for approval of such appointments. In that light, though the petitioner was continuing to work as a Head Master and was discharging his functions in that regard, the process of approval had not concluded one way or the other. It is in that light, the petitioner was seeking that the appointment as Head Master be approved. When this was the position and the process of approval had not been completed, the petitioner retired from service with effect from 31.03.2005. It is in that view, the respondents have issued endorsement dated 08.06.2007 indicating the petitioner that his request cannot be considered since he has already retired from service with effect from 31.03.2005. The petitioner claiming to be aggrieved by the same had preferred a Revision Petition No. 43/2010. The Revisional Authority has dismissed the revision petition of the petitioner. It is in that view, the petitioner is before this Court assailing the endorsement dated 08.06.2007 and the order passed in the revision petition on 27.04.2015.

4. Having heard the learned counsel for the petitioner and the learned Government Advocate, I have perused the petition papers.

5. The very sequence as noticed above would disclose that the management of the school through their proceedings dated 22.02.2001 had resolved and appointed the petitioner as the Head Master with effect from 01.03.2001. The decision taken by the management had also been forwarded for approval of the Government. The communication dated 03.12.2001 at Annexure-D would disclose that the matter was being processed by the authorities concerned. The petitioner no doubt contends that the appointment of the petitioner as Head Master should be deemed to have been considered to be approved by the respondents since the subsequent action taken by the petitioner as the Head Master to appoint teachers has not been taken exception and such appointments made had been forwarded for approval and the same has been approved by the respondents.

6. That apart, learned counsel for the petitioner would in fact rely on the very portion of the Rules which has been extracted by the Revisional Authority in the course of the order to point out that when such proposal for approval of the petitioner was sent, the consideration is to be concluded one way or the other within 90 days from the date of receipt of proposal failing which the disciplinary action is to be taken against such Authority and a person whose name has been recommended cannot be penalised for inaction of the respondents. That apart, learned counsel for the petitioner has also placed reliance on the decision of this Court in W.P. No. 24910/2002 dated 01.12.2006 and the decision of the Division Bench of this Court in the case of The State of Karnataka and Others Vs. N.G. Shivalingappa and K.R. Manjappa and Others, to contend that in the said cases, this Court has considered that the employee concerned is entitled for the benefits for the period he has discharged his services in a particular post.

7. Having taken into consideration these aspects of the matter, there can be no dispute to the fact that the petitioner was discharging his functions as a Head Master from 01.03.2001 and the proposal sent from the management of the school has been received in the office of the Deputy Director, Kalaburagi, and it was also forwarded for consideration. However, the said consideration had been kept pending only due to the fact that since at that point in time the power which had been vested with the authorities had been withdrawn by the Government. The fact that the withdrawal which had been made by the order dated 17.01.2004 has been modified by the order dated 12.04.2006 is the admitted position. The question therefore is as to whether merely because the petitioner had retired during the interregnum on 31.03.2005, could he be denied the benefit of consideration of the approval of the appointment to the post of Head Master, the functions of which he had discharged and the recommendation had already been forwarded to the respondents, which had not been concluded in view of the powers being withdrawn at that stage.

8. In that light, what cannot be lost sight is that the petitioner had worked as the Head Master from 01.03.2001 to 31.03.2005. It is only because the approval had not been materialised, the benefit in that regard has not been considered in favour of the petitioner. When the earlier order dated 17.01.2004 by which the powers had been withdrawn has been restored, even if the petitioner had retired on 31.03.2005, a duty is cast on the respondents to take note of the proposal that had been sent earlier and to take a decision as to whether the appointment as made by the management was in accordance with the Regulations and in that light, as to whether a post facto approval is required to be granted for appointment of the petitioner as Head Master since the benefit for the work discharged cannot be denied, if the appointment was in order if the decisions cited supra are kept in perspective.

9. Therefore the endorsement dated 08.06.2007 denying the benefit to the petitioner only on the ground that as on such date he had already retired from services i.e., on 31.03.2005 would not be justified. For the same reason, the order dated 27.04.2015 upholding such reason indicated in the endorsement cannot also be sustained. Accordingly, the endorsement dated 08.06.2007 and the order dated 27.04.2015 are quashed. A direction is issued to respondent No. 3 to consider the recommendation which had been made by the management and had been forwarded from the Office of respondent No. 4, keep in view the Regulations with regard to appointment of Head Master and take a decision as to whether the appointment of the petitioner is to be approved. In that regard, if it is found that the appointment and the recommendation sent was in accordance with law and the approval is to be granted, the same shall be granted. In such event, the respondents shall also take a decision with regard to the benefits that is payable to the petitioner on approving the promotion of the petitioner to the post of Head Master in terms of the decision to be taken with regard to approval. The said process shall be completed and a decision be taken by respondent No. 3 as expeditiously as possible, but not later than eight weeks from the date on

which a copy of this order is furnished.

In terms of the above, the petition stands disposed of.