

(2003) 01 KAR CK 0066
In the Karnataka High Court
Case No : Writ Appeal No. 2213 of 1999

The National Education Society and Another	APPELLANT
Vs	
H. Yogesh and Others	RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Citation : (2003) 5 KarLJ 434 : (2003) 1 KCCR 79 SN

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : K.L. Ashok, for Vagdevi Associates, for the Appellant; M.S. Bhagawath, for Respondent-1 and Nagarajulu Naidu, A.G.A. for Respondent-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The National Education Society and the Headmaster of Dr. H.N.N.H. School, have preferred this writ appeal being aggrieved by the order of the learned Single Judge dated 22-6-1998 in W.P. No. 1558 of 1992.

2. The above writ petition was filed by the 1st respondent herein praying for mandamus, directing the Appellate Authorities to extend the timescale of pay of Rs. 1400-2750 to the petitioner from July 1987 onwards with interest at 10% and to regularise his services in the cadre of "Science Demonstrator" or in the cadre of "Science Teacher" with all consequential benefits.

3. The undisputed facts of the case are as follows:

The 1st respondent was appointed purely on temporary basis as "Science Demonstrator" initially in the year 1987. It appears from the record that the services of the 1st respondent were terminated at the end of every academic year and fresh appointment orders were issued by the management of the appellant/Institute from time to time. A copy of the appointment order dated 19-6-1991 issued to the 1st respondent is produced before us at page 40 of the material papers marked as Annexure-R1 which reads as follows.-

"(National Education Society of Karnataka, Basavanagudi, Bangalore-4)

8/91-92 Dated 19th June, 1991 To

Sri Yogesh, C/o. B.G. Somasekharappa, Hosur, Gowribidanur Taluk.

Dear Sir/Madam,

With reference to your application, I am glad to inform you that you are appointed as Science Demonstrator in Dr. H.N.N.H.S., Hosur on a consolidated salary of Rs. 475/- p.m. with effect from the date of your joining duty subject to the conditions and terms detailed below:

Terms and Conditions of this appointment

1. As this appointment is outside, the purview of Grant-in-Aid Code and other rules prescribed by the Government of Karnataka, this appointment does not in any way confer on you any claim or legal rights either to the post or to the scales of pay paid by the Government of Karnataka.
2. You should note that the consolidated salary indicated in the order is not negotiable nor it can be disputed. You should join only if you are agreeable to work drawing the consolidated salary indicated in this order.
3. This appointment is exigent and purely temporary. Your services are liable to be terminated at any time without assigning any reason whatsoever. Similarly you can leave service at any time giving one week's notice or by remitting one week's salary in lieu of it.
4. You have to give your utmost co-operation to the Headmaster and staff and serve with devotion and zeal.
5. You have to report to the Headmaster for duty only if the above terms and conditions are acceptable to you. Before you join duty you have to give in writing a declaration that you have noted the terms and conditions stated in this order and agree to serve accepting them in full without any reservation whatsoever.
6. If you are willing, you have to join duty within 7 days from the date of this order. This order will be effective from the date of your joining duty till January end 1992.

Yours faithfully Sd/- HON. SECRETARY.

Copy to:

1. The Headmaster,

National High/Higher Primary School. . . .

Dr. H.N. National High School, Hosur. . . .

He is requested to obtain a declaration in para 5 from the above individual before admitting him for duty and file it safely. He is requested to send joining report to

this office. He is requested to verify the Certificate before admitting the person for duty.

2. The Accounts Officer, N.E.S.

3. Office Copy".

1st respondent claimed the above reliefs mainly on the ground that he had put in considerable service as "Science Demonstrator" and therefore, he was entitled to the relief of regularisation as well as timescale of pay.

4. The writ petition was opposed by the 1st appellant herein by filing a detailed statement of objections. In the statement of objections, it was specifically contended that when the 1st respondent was appointed as "Science Demonstrator" there was no sanctioned post as "Science Demonstrator"; he was appointed purely on temporary and ad hoc basis to assist the science teacher; the 1st respondent does not possess the prescribed qualifications for the post of "Science Demonstrator/Physical Education Teacher" and therefore, he is not entitled to seek mandamus to the Appellate Authorities to appoint him either as "Science Demonstrator" or "Science Teacher" or to extend timescale of pay.

5. Learned Single Judge, as could be seen from para 3 of the order, has opined that in the absence of a post of "Science Demonstrator" the 1st respondent was appointed in the year 1987 and therefore, the 1st respondent is not entitled to seek direction to the Appellate Authorities to regularise his services. Having so opined, learned Judge however issued a direction to the Appellate Authorities to consider the case of the 1st respondent for regularisation of his services in any equivalent post and to pay the salary payable to the regularly appointed teachers. We suppose, the above direction was issued by the learned Single Judge in view of the fact that the 1st respondent/National Education Society is running number of educational institutions in the State.

6. The management of the Society being aggrieved by the order of the learned Single Judge has come up with this writ appeal.

7. We have heard learned Counsels for the parties and perused the order of the learned Single Judge. Having heard the learned Counsels, we are of the considered opinion that the 1st respondent has utterly failed to establish his legal right to seek mandamus to the Appellate Authorities either to regularise his services in the post of "Science Demonstrator" or in the post of "Assistant Teacher" or to seek timescale of pay of Rs. 1400-2750. The undisputed facts disclose that 1st respondent was initially appointed in the year 1987 as "Science Demonstrator" which is a post created by the management itself on its own and it is nobody's case that the said post was created with the prior approval of the Government or that the action of the management was subsequently approved/ratified by the Government or that the Grant-in-Aid was extended in respect of that post by the State authorities. Further, as could be seen from Annexure-R1, the 1st respondent was appointed on a consolidated pay of Rs. 475/- p.m. and

he was in unmistakable terms informed that his appointment as "Science Demonstrator" is "outside the purview of Grant-in-Aid Code and other Rules prescribed by the Government of Karnataka". The appointment order also informs the 1st respondent that his appointment as "Science Demonstrator" would not confer any legal right either to the post or to the timescale of pay. The 1st respondent with his eyes wide open and without any demur, accepted the appointment in a newly created post by the management and worked as "Science Demonstrator", of course, for a considerable time. The simple question that arises for decision is, whether the 1st respondent could be granted the relief of regularisation of service in the post of "Science Demonstrator" or in the post of "Science Teacher" and whether the appellant/authorities could be commanded to extend timescale of pay to the post held by him. The answer should be in the negative. The law relating to regularisation of services of an employee in the absence of any scheme framed by the employer has been crystallized by the judgment of the Supreme Court in the case of Ashwani Kumar and Others Vs. State of Bihar and Others, In order to grant the relief of regularisation to an applicant, in terms of the above judgment of the Apex Court, two conditions regarded as conditions precedent should be established to the satisfaction of the Court. They are, (i) that the appointment of the applicant must be against a clear vacancy in the sanctioned post, and that, (ii) such appointment should have been in accordance with the rules governing recruitment of the concerned post. In such case, the only flaw on the part of the employer would be that opportunity to apply for the post was not offered to all the eligible candidates. Further, in the same judgment, the Apex Court proceeded to state that even in a case where the above noted two conditions precedent co-exist, even then, he/she cannot seek mandamus to regularise his services as a matter of course or as a matter of right, and in such situation, whether the relief could or should be granted to the applicant, would be very much within the domain of discretion of the Courts. It is not that the 1st respondent has sought regularisation of his services in terms of any scheme framed by the appellant/Society. Therefore, having regard to the law laid down by the three-Judge Bench of the Supreme Court in Ashwani Kumar's case, supra, it is trite that the 1st respondent has utterly failed to show his right for the kind of reliefs sought by him in the writ petition. In that view of the matter, the petitioner is not entitled to the reliefs.

8. However, Sri Bhagawath, learned Counsel for the 1st respondent submitted that no prejudice is caused to the Society in issuing a direction to the management to consider the case of the 1st respondent for regularisation of services in the post of "Science Demonstrator" or any equivalent post. The said submission is not acceptable to us. The right to consider for appointment to a post must be traceable to a law and unless the Court finds that right to consider for appointment to a post is traceable to a law, the Court will not be justified in issuing mandamus even to consider an applicant's case for appointment to a post. The request of the writ petitioner falls outside the purview of law.

9. In that view of the matter, we are of the considered view that the learned

Single Judge was not justified in directing the management of the Society to consider the claim of the respondent for regularisation of his services and on parity of the pay scale, either in the post of "Assistant Teacher" or in any equivalent post.

10. In conclusion, with respect, we cannot sustain the order of the learned Single Judge.

11. In the result, we allow the writ appeal and set aside the order of the learned Single Judge and dismiss the Writ Petition No, 1558 of 1992 with no order as to costs. However, this order shall not come in the way of the management of the Society in its discretion to consider the request of the 1st respondent in any suitable post in future, but in accordance with law.