

(2015) 10 KAR CK 0157

In the Karnataka High Court

Case No : Writ Petition No. 14224/2015 (S-KAT)

The State of Karnataka and Others

APPELLANT

Vs

Hanumesh and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 10 KAR CK 0157

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : H.B. Mahesh, HCGP, for the Appellant; Showri H.R., Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The State Government has filed this writ petition against the order dated 12 December, 2013 made in Application No. 1833/2013 on the file of the Karnataka Administrative Tribunal, Bangalore, directing the 2nd respondent to consider the case of the 1st respondent/applicant for selection to the post of Secondary School Assistant Master Grade-II in Kannada Language subject under Category 2A (Others) by awarding service weightage of 2 % of marks for each completed year of service rendered by him as Honorary Kannada Teacher at Government Sports School, Vidyanagar, Bangalore with all consequential benefits including seniority and notional fixation of pay except backwages, in case he is appointed.

2. The 1st respondent, who is an applicant before the Karnataka Administrative Tribunal (for short hereinafter referred to as "KAT) filed an application challenging the final selection list bearing No. Nil and dated: Nil published by the 2nd respondent in the official website vide Annexure-A12 in so far as it relates to the selection of the 4th respondent to the post of Secondary School Assistant Master Grade-II in Kannada subject under Category 2A (others) and for a direction to the official/respondents to select and appoint him to the post of

Secondary School Assistant Master Grade-II in Kannada subject under Category 2A etc. He contended that he was appointed on 11.08.2006 as an Honorary Teacher in Kannada subject in the Government Sports School run by the Department of Youth Services and Sports and he was working as Honorary Kannada Teacher since 2006 till date i.e., for more than 6 years. In response to the recruitment notification dated 2.4.20012 issued by the 2nd petitioner herein calling applications from eligible candidates for selection to the Post of Secondary School Assistant Master Grade-II and Physical Education Teacher Grade-I, the applicant submitted his application through online for selection to the post of Secondary School Assistant Master Grade-II in Kannada subject claiming reservation under category 2A plus Kannada Medium; claimed service weightage of 6 years for having worked as Honorary teacher from 2006 till the date of notification.

3. It was further contended that the 3rd respondent conducted the competitive examination and the applicant/1st respondent participated and was successful in securing a total percentage of marks of 37.1%, but in the list, his name was shown at Serial No. 11 and the details of percentage on the basis of bachelor degree, B.Ed. degree, the competitive exam and the total percentage shown therein was 69.3075 including the service weightage for having worked as honorary teacher. The applicant had attended for verification of the original documents on 30.10.2012 and thereafter, a provisional selection list was published and the name of the applicant/respondent No. 1 was not included, though he had secured more marks than the cut-off percentage under category 2A. Therefore, the applicant filed his objections on 2.1.2013. The selection authority released the result in the official website, the subject-wise and category wise the cut-off percentage for provisional selection list. The cut-off percentage for category 2A for Kannada language was fixed at 69.09011 whereas the total merit of the applicant including honorary service weightage would come upto 69.3075% which is more than the cut-off percentage. The selection authority had published in the official website the status of the applicant as "not selected" by assigning the reasons that his percentage is below the cut-off percentage. The selection authority without taking into consideration the objections submitted by the 1st respondent/applicant, skipped off his name while publishing the main select list and while publishing the said list. The selection authority had released the subject wise and cut-off percentage of Kannada language teachers wherein the cut-off percentage of 69.25500 is shown for category 2A. Again a status report of the applicant/1st respondent to the selection process was released as "not selected." It is further case of the applicant that in the said list, at Serial No. 11, the total percentage of him was shown as 58.0075 which excludes the honorary service weightage of 12% (2% for one year of honorary service). If the said weightage had been granted, the total percentage of the applicant would come to 70.0075 whereas the cut-off percentage under category 2A for Kannada Language Teacher was fixed as 69.25500. Thereafter, a final selection list was published by the 2nd respondent in the official website. In the said list, the name

of the 4th respondent under Kannada language subject had been shown at Serial No. 16 under category 2A (others) with a total merit of 69.25500. Therefore, the 1st respondent herein filed an application before KAT for the relief sought for.

4. The present petitioners, who were respondents before the KAT, contested the matter by filing objections by denying the entire averments made in the application. They have admitted that in pursuance of the notification dated 2.4.2012, the applicant applied on line for the post of Secondary School Assistant Master Grade-II Kannada Language. They have also contended that the applicant claims weightage of 2% of marks for each completed year of service as he had served in the Government Sports School, Vidyanagar under the control of Department of Youth Services and Sports, which is functioning under the administration of the State Youth Services and Sports but not under the Department of Public Instructions. Therefore, he is not entitled for the service weightage as claimed by him in view of the Karnataka Education Department (Department of Public Instructions) (Recruitment) (Amendment) Rules, 2002 and prayed for dismissal of the application.

5. The KAT considering the entire material on record by its impugned order dated 12.12.2013 allowed the application and directed the 2nd petitioner herein to consider the case of the applicant to the post of Secondary School Assistant Master Grade-II in Kannada Language subject under Category-2A (Others) by awarding service weightage of 2% of marks for him for each completed year of service, etc., against which, the present writ petition is filed.

6. We have heard the learned Counsel for the parties to the lis.

7. Sri H.B. Mahesh, learned High Court Government Pleader appearing for the petitioners vehemently contended that the Tribunal failed to appreciate that the specific requirement under the C & R Rules is that one should be working in the Government High School as a part-time teacher or honorary teacher with concerned languages as one of the optional subjects. The Tribunal without considering the said aspect, has passed the impugned order which is unsustainable as the applicant has not worked as a teacher in the Government School. Therefore, his case has not been considered and hence, he sought to set aside the impugned order passed by the KAT.

8. Per Contra, Sri H.R. Showri, learned advocate for respondent No. 1 sought to justify the impugned order and specifically contended that the petitioners are discriminating among the teachers, who are working in the same school, when others have been granted the similar benefit viz., Shivakumar. G.S., Somashekar. M.R., in Application Nos. 2957 to 2958/2005 decided on 13th December, 2005. Therefore, he sought dismissal of the writ petition.

9. We have given our thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record.

10. It is an undisputed fact that the respondent was appointed as an honorary

teacher in Kannada subject on 11.8.2006 in Government Sports School run by the Department of Youth Services and Sports and he has been working for the last more than 6 years. It is also an admitted fact that in response to the notification issued by the 2nd respondent on 2.4.2012, the 1st respondent filed an application for the selection to the post of Secondary School Assistant Master Grade-II. The cut-off percentage for category 2A for Kannada language teacher was fixed at 69.09011 whereas the total percentage of the Original applicant including the honorary service weightage comes to 37.1% i.e., 69.3075% which is more than the cut-off percentage. It is also not in dispute that as per the notification dated 2.4.2012 issued by the 2nd petitioner at Sl. No. 15(d) of the notification, 2% of additional marks by way of weightage will be granted for service rendered by the applicants as honorary teachers. To clarify the said position, relevant condition/Srl. No. 15(d) of the notification dated 2nd April, 2012 is extracted as under:

"(d) As per appointment rules 2% weightage for the each completed year included to the above said total marks (para C) in the case candidates have completed service as a temporary or Honorary teacher/served in Indian Census on tender basis."

11. It is an undisputed fact that the 1st respondent/applicant has worked as honorary teacher in the Government Sport School, Vidyanagar, which is evident as per Annexure-A6 - the certificate issued by the Principal. It is also not in dispute that he has worked as honorary teacher at the Government Sports School, Vidyanagar under the administrative control of the petitioners-Government and in the instant case though the said school is functioning under the Youth Services and Sports Department, nonetheless, it is a Government School where apart from normal subjects of a high school, subjects relating to sports are also taught. It will be a very rigid and restrictive approach, if the petitioners confine themselves to grant service weightage for such of those honorary teachers, who have worked only at the schools which are functioning under the control of the Education Department. Neither the C & R Rules nor the notification expressly or manifestly indicate the said fact. Therefore, the arguments put-forth by the learned Government pleader cannot be accepted.

12. It is also undisputed that the similarly situated persons viz., Shivakumarappa. G.S., and Somashekhar. M.R., who were also working as Assistant Teachers (Science) on honorary posts, Government Sports School, Vidhyanagar, Bangalore-57, had approached the KAT in Application Nos. 2957-2958/2005, and the KAT allowed the said application by an order dated 13th December, 2005 and directed the State Government/Selection Authority to consider the case of the said applicants for granting service weightage of marks on the basis of the certificates issued by the Principal of Government Sports High School, Vidyanagar and if they were found to be meritorious then to select and appoint them within a period of 3 months from the date of receipt of a copy of the order which is final and conclusive and binding on the State. The said

material fact has been suppressed by the present petitioners in the writ petition. On this ground alone, the petition is liable to be dismissed. The State Government cannot discriminate between the teachers of the same school. When the State Government did not challenge the order dated 13th December, 2005 passed by the KAT made in Application No. 2957-2958/2005 in respect of the persons stated supra, who were also working as Assistant Teachers (Science) on honorary posts in the Government Sports High School, Vidyanagar, North Bangalore, it should have considered the case of the present 1st respondent, who is also similarly placed on par with the said applicants. The State Government should not have driven the applicant to the KAT and should not have dragged him to this Court by filing the present writ petition. Such unfair conduct on the part of the State Government is deprecated.

13. In view of the aforesaid reasons, the petitioners/State Government have not made out case to interfere with the well considered impugned order passed by the KAT in exercise of powers under Articles 226 and 227 of the Constitution of India.

14. Accordingly, writ petition is dismissed with costs of Rs. 10,000/-.