

**(2015) 04 KAR CK 0325**

**In the Karnataka High Court**

**Case No : Writ Petition No. 12500/2006 (S-RES)**

Yogesh

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

---

**Date of Decision : 10-04-2015**

**Acts Referred:**

**Citation : (2015) 04 KAR CK 0325**

**Hon'ble Judges : B.S. Patil, J**

**Bench : Single Bench**

**Advocate : Vinay S. Koujalagi, Advocate for V.M. Sheelvant, for the Appellant;  
Veena Hegde, HCGP, Advocates for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

B.S. Patil, J.

1. This is the second time petitioner is before this Court in connection with his request for compassionate appointment in the 3rd respondent - G.S. Science College, Tilakwadi, Belagavi.

2. Father of the petitioner late Vaman Joshi was working in the 3rd respondent-College as First Division Assistant. He died on 20.02.2001 while in service, leaving behind his widow and three sons. Petitioner being the eldest son submitted application to the 3rd respondent-College on 12.05.2001 for appointment on compassionate ground. The 3rd respondent-College which is an aided institution recommended the case of the petitioner for appointment and sought approval of the Commissioner for Collegiate Education, Bengaluru, against the existing vacancy. The Regional Director, Collegiate Education, Dharwad, issued an endorsement dated 17.06.2002 stating that in terms of the correspondence dated 01.02.2002, the case of the petitioner could not be considered. Petitioner challenged the endorsement dated 17.06.2002 by filing W.P. No. 28305/2002. This Court vide order dated 22.03.2005 partly allowed the writ petition with a direction to the College to forward the application filed by the

petitioner to the Joint Regional Director, Collegiate Education, Dharwad, within four weeks from the date of receipt of a copy of the order, whereupon the Joint Regional Director, Collegiate Education, Dharwad, and the Commissioner for Collegiate Education, Bengaluru (respondents 2 and 3 in the said writ petition) were directed to consider the same in accordance with law and pass appropriate orders within a period of three months, thereafter. While disposing of the said writ petition, the effect of the correspondence dated 01.02.2002 based on which the endorsement impugned in the said writ petition had been issued was considered. In paragraphs 7 to 10 of the order, this Court has observed as under:

"7. A perusal of the said Government Order, makes it very clear that the benefit of compassionate appointment provided to the Government servant as per 1996 Rules has been extended to the Private Aided Institutions also. This Government Order is still in force and holds the field as on today. However, as per the correspondence produced at Annexure-K dated 01.02.2002, issued by the Department of Education addressed to the Commissioner for Collegiate Education, it is informed that no application seeking compassionate appointment in aided institutions shall be considered and the said application have to be rejected at the departmental level itself. Certain reasons are assigned in the correspondence dated 01.02.2002 as to why such conclusion has been arrived. The said reasons assigned are:

1. In Government departments, compassionate appointment can be extended upto the post of F.D.A. or to the equivalent posts.
2. If the employee dies while in service, his dependants will have to be given compassionate appointment and if no vacancy is available, it will result in complications as there is no provision for creating additional posts.
3. That other aided institutions will not come forward to accommodate such applicant by appointing him on compassionate ground.
4. Once permission is given for compassionate appointment in private aided institutions, there will be considerable pressure to create additional posts to accommodate such candidates and this will come in the way of the policy of the Government and would add burden on the exchequer.
8. The reasons for issuing direction to reject the application received by the aided institution for appointment on compassionate grounds, are totally unsustainable in law. It is one thing to say that no additional post can be created and the application can be considered only as against existing vacancies, but it is yet another thing to state that no application at all be entertained whether there exists vacancy or not.
9. In a given case, the authorities may be justified in giving certain guidelines so as to avoid undue burden on the exchequer. To issue general direction, of the type that is resorted to by the correspondence dated 01.02.2002 produced at Annexure-K is totally unsustainable.

10. The application filed by the petitioner is returned only on the ground that the Government has taken such decision to reject all applications. The rejection/return of the application of the petitioner is therefore illegal. Petitioner's application is required to be considered in accordance with law. The respondent-authorities are however entitled to issue guidelines that are consistent with the rules and regulations for the information to all the concerned authorities. In this view of the matter and in the light of the discussion made above, I pass the following order:

#### ORDER

The respondent No. 1-College is permitted to forward the application filed by the petitioner seeking compassionate appointment to the 2nd respondent within four weeks from the date of receipt of copy of this order. Respondents 2 and 3, in turn, are directed to consider the same in accordance with law and as per the rules in force, made applicable to the aided institutions and pass appropriate orders in this regard within a period of three months thereafter."

3. It is thus clear from the above, that the reasons assigned for rejecting the application for appointment on compassionate ground referring to the correspondence dated 01.02.2002 were held unsustainable and rejection of the application filed by the petitioner solely on the said basis was found erroneous. It is in the wake of these findings, that the matter was directed to be re-considered. Thereafter, 2nd respondent - Commissioner for Collegiate Education, Bengaluru, has re-considered the matter and issued the impugned endorsement dated 13.07.2006 produced at Annexure-N.

4. A perusal of the impugned endorsement discloses that three reasons are assigned in support of the rejection of the request. They are,

"(i) as per the Government Order dated 01.03.2001, all vacancies of non-teaching staff in private unaided institutions have to be treated as unaided;

(ii) as per the Government Circular dated 01.02.2002, no request for appointment on compassionate grounds could be considered in aided colleges; and

(iii) as per the relevant rules in Karnataka Educational Institutions (Collegiate Education) Rules, 2003, vacancies of non-teaching staff that occurred prior to 01.03.2001 or after 01.03.2001 shall be treated as unaided, and therefore, approval could not be granted for appointment of petitioner on compassionate grounds as there was no provision in law."

5. It is relevant to notice here that father of the petitioner died on 20.02.2001. Admittedly, the provisions for appointment on compassionate grounds as framed by the State Government were extended to the aided institutions. The Government Order dated 01.03.2001 was not in force when the father of the petitioner died and when a right accrued to the petitioner to seek appointment. Karnataka Educational Institutions (Collegiate Education) Rules, 2003, were

published in the Karnataka Gazette on 07.08.2003. As per Rule 8(2) of the said Rules, vacant and unapproved posts of non-teaching staff as on 01.03.2001 shall be permanently unaided and any vacancies in the non-teaching posts which had arisen after 01.03.2001 on account of retirement, resignation, removal, dismissal and death, etc., are to remain permanently unaided and such vacancies shall be filled by the management and salary and other allowances shall be paid from its own resources. The vacancy in the post of the father of the petitioner has arisen prior to 01.03.2001. It is nobody's case that there was no other vacancy which had arisen prior to 01.03.2001 against which the petitioner could have been accommodated.

6. This Court has held in the earlier round of litigation in W.P. No. 28305/2002 that the general direction issued as per the Circular/correspondence dated 01.02.2002 to reject all the applications for appointment on compassionate ground in private aided institutions was unsustainable. Despite the same, the same ground is again stated as one of the grounds for rejection of the request in the impugned endorsement. Therefore, none of the grounds stated in the impugned endorsement are legally tenable.

7. Here is a case where petitioner who has been struggling to get appointment on compassionate grounds on account of the death of his father in service is being rejected by the State and its authorities without any justification. Petitioner had approached this Court earlier during the year 2002 itself. A direction was issued in the month of March 2005 to consider the case of the petitioner by specifically disagreeing with the reasons assigned in the correspondence dated 01.02.2002. This time another ground is added to the very same ground to reject the request of the petitioner by referring to the 2003 Rules and also by referring to the Government Order dated 01.03.2001. The Government Order dated 01.03.2001 which is now placed on record by the learned Government Pleader by filing a memo deals with the subject of reducing aid by 15% to the private aided institutions. In Clause 3 of the said Government Order, it has been specifically stated that as regards vacancies in teaching and non-teaching staffs due to retirement, resignation and death of the teacher in a aided institution where they should be treated and continued as unaided vacancies would be decided at the Government level. The Government Order does not declare that even such posts shall be treated as unaided posts. At any rate, nothing has been stated in the Government Order regarding consideration of applications for compassionate appointments for which a right has accrued to the Government Order dated 01.03.2001.

8. As already referred to above, in the instant case, death of the father of the petitioner has occurred on 20.02.2001. Therefore, neither the Government Order dated 01.03.2001 nor the Rules which are framed in the year 2003 nor the correspondence dated 01.02.2002 have any application to the case of the petitioner. Petitioner, therefore, is entitled for being considered for appointment on compassionate grounds as per the Rules that were in force at the time of

death of the father of the petitioner.

9. Hence, this writ petition is allowed. A direction is issued to consider the request of the petitioner for appointment on compassionate grounds based on the Rules that were in force as on the date of the death of the father of the petitioner on 20.02.2001 and not by referring to any subsequent Government Orders, Circulars or Rules. Respondents 1 and 2 shall comply with this direction within three months from the date of receipt of a copy of this order.