

The Director Vs. k.ravi

The Director Vs. k.ravi

SooperKanoon Citation : sooperkanoon.com/1227204

Court : Karnataka

Decided On : Jan-03-2020

Judge : Ravi Malimath and Nataraj Rangaswamy Presided by ,Nrj

Appeal No. : WA 4008/2019

Appellant : The Director

Respondent : k.ravi

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU ON THE 3D DAY OF JANUARY, 2020 BEFORE THE HON'BLE MR. JUSTICE RAVI MALIMATH AND THE HONBLE MR. JUSTICE NATARAJ RANGASWAMY WRIT APPEAL No.4008 OF 2019(S-REG)

BETWEEN :

THE DIRECTOR, MUNICIPAL ADMINISTRATION DEPARTMENT, 9TH FLOOR, VISHVESHWARIAH TOWERS, DR. AMBEDKAR VEEDHI, BENGALURU-560001. ...APPELLANT (BY SRI. LAXMINARAYAN, ADDITIONAL GOVERNMENT ADVOCATE)

AND:

1. SRI. K.RAVI SON OF KENCHIAIAH, AGED ABOUT 50 YEARS, BILL COLLECTOR, OFFICE OF THE ASSISTANT REVENUE OFFICER,

VIDYARANAYAPURA SUB-DIVISION, YELAHANKA ZONE, BRUHAT BENGALURU MAHANAGARA PALIKE, BENGALURU-560 097. 2 2. SRI. DEVARAJA, SON OF MUDDAIAH, AGED ABOUT 57 YEARS, BILL COLLECTOR, OFFICE OF THE ASSISTANT REVENUE OFFICER, YELACHENAHALLI SUB-DIVISION, BOMMANAHALLI ZONE, BRUHAT BENGALURU MAHANAGARA PALIKE, BENGALURU-560 097. RESPONDENTS THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO A) ALLOW THE WRIT APPEAL AND B) SET ASIDE THE ORDER DATED 24.09.2018 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT IN WRIT PETITION NOS. 58808 TO 58809 OF 2013 (S-RES). THIS WRIT APPEAL COMING ON FOR THIS DAY, NATARAJ PRELIMINARY HEARING RANGASWAMY J., DELIVERED THE FOLLOWING: JUDGMENT This Writ Appeal is filed by the respondent in Writ Petition Nos. 58808 to 58809 of 2013 assailing the Order dated 24.09.2018 passed by the learned Single Judge of this Court by which the learned Single Judge allowed the Writ Petitions and directed the respondent 3 to reconsider the services of the petitioners and absorb/regularize their services from the date of their appointment and on par with the similarly situated employees who were regularized as per the Government Order dated 22.12.2012 and extend all monetary benefits to the petitioners.

2. The facts as stated in W.P. Nos. 58808 to 58809 of 2013 are that the petitioners were employed as Bill Collectors at Kacharakanahalli and Subramanyapura Gram Panchayat respectively in terms of the resolutions dated 30.10.1989 and 30.12.1992. At the time of their appointment as Bill Collectors, there were no recruitment Rules that were framed specifying the qualification for the post of Bill Collector. The Government of Karnataka in exercise of its powers under Section 349 of the Karnataka Municipalities Act, 1964, issued a notification dated 29.12.1993 declaring the villages lying within Bengaluru District as Notified Area Committees with effect from 15.12.1993. 4 Consequently, the Grama Panchayats where the petitioners were working were amalgamated into Devarajeevanahalli Notified Area Committee and Sarakki Notified Area Committee respectively. It is stated that the Government of Karnataka issued an order on 10.01.1994 determining the staffing pattern and mode of recruitment of employees in Panchayats including qualification to post of Bill Collectors. During the year 1995,

the Government issued notification whereby the Notified Area Committees were constituted as City Municipal Councils and consequently, the Devarajeevanahalli Notified Area Committee in which the petitioner No.1 was working was merged with the City Municipal Council, Byatarayanapura while the Sarakki Notified Area Committee where the petitioner No.2 was working was amalgamated with the City Municipal Council, Pattanagere. The Government thereafter issued an official memorandum dated 19.04.1996 redeploying the 5 staff of the erstwhile Notified Area Committees stipulating that the staff of the erstwhile Devarajeevanahalli and Sarakki Notified Areas Committees would be merged with the City Municipal Council, Byatarayanapura and Pattanagere respectively. As a result, the petitioners continued in the respective City Municipal Councils as Bill Collectors. The petitioners were provided with equal pay in terms of the orders dated 06.08.1999 and 30.09.1999.

3. The Government issued an order dated 15.11.2006, following the judgment of the Hon`ble Apex Court in the case of SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI AND OTHERS reported in (2006) 4 SCC1 relating to regularization of daily wage employees working in various municipalities in the State of Karnataka. Pursuant to the said Government order, the service particulars of the petitioners were sent to the respondent No.2 by the respective City Municipal Councils for regularization of 6 the services. When the case of the petitioners was not considered, the petitioners were constrained to file Writ Petition No.19823 of 2007 before this Court for consideration of their claim for regularization and this Court disposed off the writ petition by order dated 14.12.2007 directing the respondent to consider the representation of the petitioners within four months from the date of receipt of copy of the said order. The appellant herein without considering the request of the petitioners, passed an order dated 28.04.2008 rejecting the claim of the petitioners stating that they did not possess the requisite qualification as on the date of appointment as Bill Collectors in their respective Grama Panchayats. The petitioners were therefore, constrained to again challenge the aforesaid endorsement in Writ Petition No.13532 of 2008. This Court in terms of the order dated 11.06.2009, directed the respondent appellant herein to reconsider the case by taking into consideration the Government 7 Order dated 10.01.1994 and directed that the suitable orders be

passed. Pursuant to the aforesaid direction of this Court, the respondent again in terms of its order dated 22.12.2012 rejected the claim of the petitioners for regularization holding that the petitioners did not possess the requisite educational qualification as on the date of appointment as Bill Collectors. The petitioners, therefore, are before this Court in the present writ petitions challenging the impugned order dated 22.12.2012 passed by the respondent and for a writ in the nature of Mandamus to direct the respondent to regularize their services as was done in the case of 62 other Bill Collectors, with effect from the date of they completing 10 years of service as daily wagers. The respondent countenanced the writ petitions by contending that the Government is entitled to prescribe qualification with prospective or retrospective effect and that the petitioners who do not possess the qualification prescribed cannot seek absorption or regularization. It was also countered that the notification impugned was in consonance with the Rules and Regulations for deploying the posts.

4. The Learned Single Judge of this Court in terms of the order dated 24.09.2018, allowed the writ petitions and held that when the petitioners were appointed, there was no qualification prescribed for the post of Bill Collector in the respective Grama Panchayats and therefore, insisting that the petitioners must have had the qualification and rejecting the case of the petitioners on the ground that they did not possess the requisite qualification is bad in law. The respondent in writ petitions is in appeal against the aforesaid order.

5. It is clear from the Government Order dated 10.01.1994 (Annexure C to the writ appeal) that till the date the Government order was issued, there was no recruitment rules specifying the mode of recruitment of its employees. The petitioners were employed pursuant to the corresponding resolutions passed by the respective Panchayats. Such recruitments made in the absence of Cadre and Recruitment Rules are held to be valid by the Hon`ble Apex Court. In this regard, it is profitable to refer to the judgment rendered by the Hon`ble Apex Court in the case of THE MYSORE STATE ROAD TRANSPORT CORPORATION vs. GOPINATH GUNDACHAR CHAR reported in AIR 1968 SC464 and the relevant portion of para No.3 of the said judgment reads as under: The conjoint effect of Ss.14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and

their conditions of service must conform to the directions, if any, given by the State Government under S.34 and the regulations, if any, framed under S.45(2)(c). But until such regulations are framed or directions are given, the Corporation may appoint such officers or 10 servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit. There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under S.45(2)(c). During the intervening period, the Corporation must carry on the administration of its affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulations under S.45(2)(c) are framed. The Apex Court in its judgment rendered in the case of RAMESH PRASAD SINGH v. STATE OF BIHAR AND OTHERS reported in AIR 1978 SC327 has held as under:

5. Regarding the observation of the High Court that in the absence of rules 11 laying down qualifications for appointment and promotion to the post of Executive Engineer (Tele-Communication), respondents 3 to 28 could not be excluded from consideration for appointment to that post, we would like to say that though it cannot be gainsaid that before initiation of the proposal for creation of post of Executive Engineer (Tele-Communication), respondents 1 and 2 had not framed any rules prescribing qualifications for that post, it cannot be overlooked that it is not obligatory to make rules of recruitment etc. before a service is constituted or a post is created or filled up. As is well known, the process of rule-making is a protracted and complicated one involving consultation with various authorities and compliance with manifold formalities. It cannot also be disputed that exigencies of administration at times require immediate creation of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of public departments. 12 In such like situations, the authorities concerned would have the power to appoint or terminate administrative personnel under the general power of administration vested in them as observed by this Court in B.N.Nagarajan v. State of Mysore, (1966) 3 SCR682 (AIR 1966 SC1942 and T. Cajee v. U. Jormanik Siem (1961) 1 SCR750at p.7

(AIR 1964 SC276at p.281).

6. In the instant case, the petitioners are recruited and are continued as Bill Collectors in the Grama Panchayats based on corresponding resolutions of the Panchayath. After these Grama Panchayats were merged into the Notified Area Committees and subsequently into the City Municipal Councils, the petitioners are continued as Bill Collectors in the City Municipal Councils and are provided with equal pay as that of other Bill Collectors, who were employed. The petitioners are continued in the said City Municipal Councils as Bill Collectors in terms of the official 13 memorandum dated 19.04.1996 and as such they have been working continuously from the year 1989 till date. The appellant cannot now reject the representation of the petitioners for regularization on the ground that they did not possess the requisite qualification (as prescribed in the Government Order dated 10.01.1994) when they were appointed as Bill Collectors. As a matter of fact, the Rules prescribing the staffing pattern were framed by the Government for the first time on 10.01.1994 i.e., subsequent to the appointment of the petitioners as Bill Collectors. Therefore, the claim of the petitioners for regularization cannot be rejected on the ground that they did not possess the requisite qualification when they were first appointed. Yet another mitigating fact which furthers their case is that the petitioners have during their service completed their Secondary School Leaving Certificate (SSLC) and therefore, they possess the requisite qualification.

14 7. In view of the above, we do not find any infirmity in the order of the learned Single Judge and we, therefore, do not feel it appropriate to interfere with the order of the learned Single Judge. Hence, the following: ORDER Writ Appeal is dismissed. Pending interlocutory applications do not survive for consideration and the same stand dismissed. Sd/- JUDGE Sd/- JUDGE sma