

CASE NO.:
Appeal (civil) 2288-2290 of 2002

PETITIONER:
Sri M. Purandara & Ors.

RESPONDENT:
Mahadesha S. and Ors.

DATE OF JUDGMENT: 23/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
J U D G M E N T
[With Civil Appeal Nos.2291-2293/2002, 2294-2315/2002 and 2316-2318/2002)

ARIJIT PASAYAT, J.

Challenge in these appeals is to the judgment of a Division Bench of the Karnataka High Court. The basic grievance of the appellants is that the High Court adjudicated an issue which was not the subject-matter of challenge before the High Court and in any event persons who are affected by the decision were not impleaded as parties.

Factual background which is almost undisputed needs to be noted in brief.

By notification dated 25.2.1999 the Deputy Director for Public Instruction, Mandya District, Mandya called for applications from qualified candidates for filling up 918 posts of Assistant Master/Primary school teachers in Mandya district and fixed 31.3.1999 as the last date for receipt of applications. The notification stipulated that the application should be presented in person by the candidate on or before 5 p.m. on 31.3.1999 and the applicant should be ordinarily resident of Mandya district. Writ petitions were filed by some persons belonging to Mandya district (Writ petition nos.16023-16072/1999 Smt. H. Girija and Ors. vs. Stat of Karnataka and Ors.) challenging the aforesaid stipulations. The High Court by order dated 28.7.1999 set aside the aforesaid conditions. During pendency of the writ petitions a provisional list of candidates selected was prepared and published on 14.6.1999. In view of the judgment passed in writ petition nos.16023-16072/1999 a notification was issued extending the time for making applications upto 31.10.1999. In the meantime the Karnataka High Court held that 10% weightage given to the rural candidates was unconstitutional. Judgment was rendered by a learned Single Judge. A Division Bench of the High Court clarified on 16.12.1999 that the decision would not affect any appointment or selection during the pendency of the writ appeal. A Circular dated 22.12.1979 was issued giving the instructions as to the manner of implementation of the Division Bench's decision. On 23.5.2000 it was clarified that candidates in the provisional list dated 14.6.1999 would be entitled to rural weightage and candidates who applied pursuant to the decision in writ petitions nos. 16023-16072/1999 dated 28.7.1999 would not be entitled to

rural weightage. The select list was published on 4.7.2000. Several Original Applications were filed before the Karnataka Administrative Tribunal, Bangalore (in short the 'Tribunal') questioning correctness of the clarification dated 23.5.2000 and the select list published. Prayer was made to direct re-doing of selection process by considering all the applicants awarding rural weightage, inviting objections from the affected candidates and thereafter publish the final select list. The State and its functionaries contended that the procedure followed was in order. The rural weightage was modified, the provisional list dated 14.6.1999 was kept in tact and after examining the applications filed during the extended time the final list was published which was in accordance with the High Court's judgment in Girja's case referred to above. It was also contended that there was not much difference between the provisional list and the list published on 4.7.2000. A large number of candidates applied to the Tribunal for being impleaded as respondents and they supported the stand of State and its functionaries.

According to the Tribunal the issues which required examination were:

- (a) whether the rural weightage can be extended to any selection made after 26.11.1999 i.e. the date of the judgment in writ appeal nos.5807 of 1998.
- (b) whether the list dated 14.6.1999 could be regarded as a selection list entitling the candidates mentioned therein to rural weightage.
- (c) whether in an incomplete selection process, two standards could be adopted for selection of candidates.
- (d) whether the selection list dated 4.7.2000 can be maintained.

The Tribunal held that if the final list was not published on or before 26.11.1999, there was no way by which the select list could be published with the eligible selected candidates being given rural weightage. With reference to Girja's case (supra) it was held that in the said case all that was said was that processing undergone shall not be nullified. But, it did say that rural weightage can be given to any of the candidates. Grant of rural weightage was not in issue in Girja's case (supra) and, therefore, there was no question of any rural weightage, and adopting two standards for selection of candidates. Finally, it was held that the clarification dated 23.5.2000 was contrary to the decision of the Division Bench in Basavraj Nagoor's case and was without authority of law. The selecting authority was directed to prepare a fresh provisional list, call for objections as contemplated in clause 11 of the notification dated 25.2.1999, and thereafter publish the select list. Exercise was directed to be undertaken within six months. Writ petitions were filed before the High Court questioning Tribunal's decision. The High Court after hearing the parties noted two questions, firstly, the question of rural weightage and secondly whether provisional list published on 14.6.1999 to be treated as final list. The correctness of the view expressed by the Tribunal on these issues was the subject-matter of challenge in the writ petitions. It was held that the Tribunal's view was in order.

However, it was urged before the High Court by the writ petitioners that the selection process was vitiated and some

persons who were otherwise ineligible had been selected and their names have been placed in the select list. On behalf of the respondents before the High Court it was urged that such a plea was not raised before the Tribunal and there was specific pleading to this effect and in any event this was a fresh cause of action emanating from the final selection and that had nothing to do with the controversy before the Tribunal. The High Court felt that there was some justification in the objection. It, however, felt that in the broader interests of justice, keeping in view need to avoid litigations certain directions were necessary to be given to do complete justice. It gave certain directions which the appellants submit were not sustainable. They were not parties in the writ petitions, were not heard but orders which prejudicially and adversely affect their selection were passed.

In response, learned counsel for the respondents who are writ petitioner before the High Court submitted that the High Court is not justified in saying that there was no specific challenge and in any event the High Court kept in view the law laid down by the High Court in the connected matters and in view of the decision of this Court. Therefore, merely because they were not parties they cannot make any grievance particularly when the directions given were with a view to shorten litigations and to effectuate the ultimate purpose for which the notifications were issued and were intended to give full effect to the earlier decisions of the High Court.

We find that the writ petitioners had not questioned the selection of the persons who are affected by the High Court's impugned order. They were not applicants before the Tribunal. On the contrary they questioned correctness of the view expressed by the Tribunal allowing the original applications filed by some of the respondents. Therefore, the subject-matter of adjudication before the High Court could not have been enlarged by the High Court at the instance of the writ petitioners.

In V.K. Majotra v. Union of India (2003 (8) SCC 40) this Court observed as under:

"....Counsel for the parties are right in submitting that the point on which the writ petition has been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court....."

In State of Maharashtra v. Jalgaon Municipal Council (2003 (9) SCC 731) this Court at page 757 observed as under:

"..In the absence of any challenge having been laid, the constitutional validity of the amendment cannot be gone into....."

Recently, in The President, Poornathrayisha Seva Sangham, Thripunithura v. K. Thilakan Kavenal & Ors. (2005 (2) SCALE 1) in para 9 it was observed as under:

"Above being the position, we feel that nothing further remains to be done in this appeal except noticing that certain observations made, as regards the functioning of the appellant-society and its credibility were unnecessary. For the purpose of adjudication of the dispute before the High Court which only related to the permission granted to use Oottupura, other observations and views expressed by the Division Bench are, therefore, treated as inoperative. Since disputed facts were involved, the High Court should not have gone into them even in respect of the primary grievances of the writ petitioner".

The aforesaid position was recently highlighted in Secretary to the Govt. and Another v. M. Senthil Kumar (2005 (3) SCC 451).

Therefore, the direction given for filing affidavits and the consequential action to be taken thereon cannot be maintained and are vacated. We make it clear that we have not expressed any opinion on the correctness or otherwise of the view expressed by the High Court. We have interfered only on the ground that such an issue was not before the Tribunal and nobody had questioned in this regard before the Tribunal. It is pointed out by learned counsel for the appellants that some of them have got employment elsewhere and have no interest in those appeals. The appellants shall file a list of such persons before the concerned authorities within three weeks from today. The cases of all those who are eligible shall be considered in respect of the consequential vacancies. Cases of the respondents shall be taken up on the basis of their merit to decide whether they can be appointed.

The appeals are accordingly disposed of with no order as to costs.