

SUPREME COURT OF INDIA

Sreedhara S.

Vs.

State of Karnataka

C.A.No.7105 of 2001

(G. B. Pattanaik and Ruma Pal JJ.)

11.10.2001

ORDER

1. Permission granted to file the SLPs.
2. Delay condoned.
3. Leave granted.
4. These appeals are directed against the directions of the Division Bench of the High Court of Karnataka while dismissing the appeals filed by the State Government. The present appellants had filed writ petitions challenging the validity of Rule 3(b) of the *Karnataka Civil Services (General Recruitment) Rules, 1976*, which rule was intended to confer weightage in favour of a rural candidate.
5. A learned single Judge held the said rule to be ultra vires and struck down the same by judgment dated 11-11-1998. But, while allowing the writ petition and striking down the rule, it was observed that the appointments already made in accordance with the rule, which is being struck down, shall not be disturbed. Obviously, therefore, the learned single Judge has applied the principle of prospective effect of the invalidation of the rule in question. The State Government assailed the legality of the judgment of the learned single Judge by filing a writ appeal. The Division Bench passed an interim order while entertaining the appeal to the following effect.

"Operation of the impugned order is stayed with the stipulation that hereinafter selections/appointments shall be made subject to the decision of the appeal. Appointing authority before giving order of appointment' to a candidate having rural weightage, shall, obtain an undertaking from the candidate that the appointment given shall be subject to the decision in these proceedings and that the candidate shall have no right to the post in the event of the order of the single Judge being upheld."

6. The appeals in question were finally heard and disposed of by the impugned judgment dated 26-11-1999. The Division Bench dismissed the appeal and came to the conclusion that the learned single Judge was right in striking down the impugned rules, but further added that the observations made by the learned single Judge that candidates who have already been appointed by giving rural weightage should not be disturbed. No lacuna can be said to have occurred until this stage of the order. But, the Division Bench went further and added the following direction :

"and also the persons who have been appointed during the pendency of these appeals until now on the basis of the Rural Weightage."

7. On a further application being filed, the Division Bench modified the aforesaid direction and further ordered as follows :

"At para (22) of the Judgment delivered by this Court on 26-11-1999 at line 5, in the place of "already been appointed" it has to be substituted as "already selected and appointed" and also at lines 6 and 7, in place of "who have been appointed," it has to be substituted as "appointed or selected" during the pendency of these appeals."

8. These two directions are the subject matter of challenge in these appeals, Mr. Rama Jois, the learned senior counsel appearing for the appellants, contends that in view of the positive direction in the interim order of the Division Bench and the fact that the State Government also took appropriate undertakings from the appointees, who were appointed during the pendency of the appeals, the Court, neither in law nor in equity, was entitled to pass the aforesaid observations and directions so as to nullify the effect of the interim order and conferring rights on the persons who could be appointed on account of the fact that certain weightage had been given to them on the basis of Rule 3(B) as it stood before being nullified. Mr. Bhat, the learned counsel appearing for the respondents raised two contentions in resisting the aforesaid contention of Mr. Rama Jois. One, the judgment of the Division Bench having been assailed by the State Government by filing SLP and that SLP having been dismissed, it must be held that this Court has given its approval to the judgment of the Division Bench including the impugned direction and, therefore, the same should not be interfered with at the behest of the affected persons, who were writ petitioners in the High Court, and two, that this Court has all along been taking an approach in such matters in protecting the appointments already made, as was done in the cases of *V.N. Sunanda Reddy and others v. State of A.P. and others*¹ and *Ashok v. State of Karnataka*².

9. Having considered the rival submissions and on examining the facts and circumstances of the present case as also the orders which had been passed by the Division Bench while entertaining the appeal against the judgment of the learned single Judge, we find sufficient force in the contention of Mr. Rama Jois and we are unable to persuade ourselves to agree with submissions made by Mr. Bhat appearing for the respondents. Ordinarily, the rule having been struck down, all selections on the basis of such invalid rule should have been nullified. The learned single Judge however protected the appointments already made till the rule was struck down. The ambit of that direction cannot be however amplified and extended

as has been done by the Division Bench in the case in hand while passing the final judgment. The Division Bench committed an error in not considering the interim order that had been passed while entertaining the appeals. In that interim order, it was unequivocally indicated that any appointments to be made thereafter would be subject to the final decision in the appeals and the State Government would obtain an undertaking from the appointees so that they cannot claim any equity on the basis of such appointments. In fact, it is conceded that such undertaking have been obtained by the State Government from all those who were appointed subsequent to the order passed by the learned single Judge. In that view of the matter, the two directions of the Division Bench referred to earlier, i.e., dated 26-11-1999 and 16-12-1999 must be held to be unsustainable in law. We therefore, set aside those directions of the Division Bench of the High Court of Karnataka in relation to appointments made during the pendency of appeal and also the selection made. These appeals are accordingly allowed.

10. We make it clear that if any of these appointees are otherwise entitled to be appointed even after excluding the weightage given under Rule 3(B), this judgment will not operate to debar them from being appointed.

11. Application for impleadment stands withdrawn.
WP(C) No. 356/2000

12. In view of the decision rendered in SLP(C) No. 3914/2000 and batch, the petitioner seeks permission to withdraw the writ petition. It is accordingly dismissed as withdrawn.
Appeal allowed.

¹(1995 Supp (2) SCC 235

²(1992) 1 SCC 28