

SUPREME COURT OF INDIA

State of Karnataka

Vs.

Gadilingappa

C.A.Nos. 819-851 _of 2010

(V.S. Sirpurkar and Dr. Mukundakam Sharma JJ.)

22.01.2010

JUDGEMENT

DR. MUKUNDAKAM SHARMA, J.

1. Leave Granted.

2. By this appeal, the appellants herein have challenged the Order dated 26.07.2004 passed by the Division Bench of the High Court of Karnataka at Bangalore allowing the Writ Petitions filed by the respondents herein. The High Court had, by the said Order, set aside the decision of the KAT and allowed the claim of the respondents for regularization of their services.

3. The relevant facts in brief are set out here. The respondents herein were appointed as Primary School Teachers on honorary basis in the Government run schools. The respondents, however, did not possess the T.C.H. qualification, which was the minimum prescribed qualification for the post of

a teacher. The respondents, in view of the fact that they had rendered long continuous service as honorary teachers without any break, claimed regularization of their services.

The appellant no.1 rejected the claim of the respondents on the ground that any consideration for regularization or absorption can be made only in regard to those candidates who possessed the minimum prescribed qualification for the post of the teachers and as the respondents did not possess the minimum prescribed qualifications of T.C.H., they could not be considered for regularization or absorption and that if they were regularized or absorbed despite their not possessing the minimum prescribed qualifications, it would amount to hostile discrimination and would be in violation of Articles 14 and 16 of the Constitution.

4. Feeling aggrieved, the respondents herein approached the KAT. Their applications were, however, rejected by the KAT. Against the decision of the KAT, the respondents herein filed Writ Petition Nos. 45859- 891 of 2003 (S-KAT) before the Division Bench of the High Court of Karnataka at Bangalore. The Division Bench disposed of the aforesaid Writ Petitions in terms of a judgment of that Court in Writ Petitions 33173-33220 of 2003 (S-KAT) thereby allowing the Writ Petitions filed by the respondents herein.

5. We have heard the learned counsel appearing for the parties and carefully perused the documents on record before us. The crux of the submissions of the learned counsel appearing for the appellants is that the High Court had erred in allowing the claims of the respondents for regularization of their services, for the respondents herein did not fulfill the minimum required qualification for being appointed as Primary School Teachers as they did not possess the T.C.H. qualification.

6. On the other hand, the learned counsel appearing for the respondents supported the decision of the High Court and endeavoured to persuade us to uphold it by dismissing the present appeal.

7. Admittedly, the respondents herein were working as Primary School Teachers for a long period of time and they had rendered service as such continuously without any break. However, after perusing the relevant documents on record what comes to light is the fact that none of the respondents had undergone the T.C.H. course, which was the minimum prescribed qualification at the relevant time for being appointed to the post of a teacher. Since the respondents did not possess the minimum prescribed qualification and because of which their appointment was in contravention of the Cadre and recruitment Rules, we are of the considered view that their appointments were illegal appointments. Furthermore, neither has it been brought to our notice nor was it specifically stated before the High Court by the respondents in the Writ Petition Nos. 45859-891 of 2003 that the respondents belonged to the Scheduled Castes or Scheduled Tribes category, which was the case of the petitioners in Writ Petitions Nos. 33173-33220 of 2003 (S-KAT) as well the main factor taken into consideration by the High Court of Karnataka while allowing the claims of the petitioners therein for regularization of their services. Besides, the Constitutional Bench had, in *Secretary, State of Karnataka and Others v. Umadevi (3) and Others* reported in (2006) 4 SCC 1, clarified in explicit terms that the decisions which run counter to the principles settled and the directions given in the

Uma Devi's (supra) case will stand denuded of their status as precedents. Here, we also wish to point out that it is a well settled principle of law that even if a wrong committed in an earlier case, the same cannot be allowed to be perpetuated.

8. Thus, in view of the aforesaid facts and circumstances, together with the decisions of this Court in Uma Devi's case (supra) and Official Liquidator v. Dayanand and Others reported in (2008) 10 SCC 1, the claim of the respondents for regularization cannot be sustained.

We are, therefore, of the considered view that the present appeals are entitled to be allowed, which we hereby do. Liberty is, however, granted to the respondents to seek any other remedy under any other law, if such a remedy and right is available to the respondents.