



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO.6426 OF 2021 (S-RES)

BETWEEN:

1. DYAVAPPA

... PETITIONER

(BY SRI. A.G. SHIVANNA, SENIOR ADVOCATE FOR
SRI RAHAMATHULLA KOTHWAL, ADVOCATE)

AND:

1. BANGALORE UNIVERSITY
REPRESENTED BY ITS VICE CHANCELLOR
JNANABHARATHI CAMPUS
BANGALORE - 560 056.
2. BANGALORE UNIVERSITY
REPRESENTED BY ITS REGISTRAR
JNANABHARATHI CAMPUS
BANGALORE - 560 056.

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by VIJAYA P
Location: High
Court of
Karnataka



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3. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF HIGHER EDUCATION
VIDHANA SOUDHA
BANGALORE - 560 001.
4. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTEMNT OF PERSONAL AND
ADMINISTRATIVE REFORMS(DPAR)
VIDHANA SOUDHA
BANGALORE - 560 001.
5. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMNET OF SOCIAL WELFARE
VIKASA SOUDHA
BANGALORE - 560 001.

... RESPONDENTS

(BY SRI. T.P. RAJENDRA KUMAR SUNGAY, ADVOCATE
FOR R1 & R2;
SMT. M.C. NAGASHREE, AGA FOR R3 TO R5)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-1 AND 2 TO CONSIDER THE REPRESENTATIONS OF THE PETITIONER VIDE ANNEX-J AND J1 AND DIRECT THE R-1 AND 2 TO ISSUE THE ORDER OF APPOINTMENT FOR THE POST OF ASSISTANT PROFESSOR-DEPARTMENT OF ARCHITECTURE IN THE BANGALORE UNIVERSITY WHICH IS VACANT UNDER THE CATEGORY OF ST(W) AND ETC.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:



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ORDER

The petitioner has sought for issuance of writ in the nature of mandamus directing respondent nos.1 and 2 to consider the representation at Annexure-'J' and 'J1' and direct respondent nos.1 and 2 to issue an order of appointment to the post of Assistant Professor, Department of Architecture in Bangalore University as regards the vacant post under the category ST (Women).

2. It is submitted that the respondent University had invited applications for recruitment as per the Notification at Annexure-'C' dated 21.03.2018. Insofar as the specific post which is the subject matter of the present writ petition ie., Assistant Professor, Department of Architecture, the appropriate reservation as indicated in the notification was two posts for Scheduled Tribe (Other Candidate) and (Women) [ST (O) & (W) for brevity]. It is submitted that insofar as recruitment to the Open category is concerned, recruitment was completed however, the recruitment for the category of ST (W) could not be concluded as no candidates has applied for the post earmarked for the particular category. It is further submitted that in the



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event recruitment could not be concluded, respondent-authority ought to have taken note of the Government Order at Annexure-'H' which provides at Clause (7) that in the event as regards to the post, eligible women are not available, such reserved post could be filled up by eligible male candidates of the same category.

3. It is submitted that the petitioner came to know regarding non-submission of application with respect to the post of Assistant Professor (Women) under the category of ST by virtue of the communication of the Bangalore University at Annexure-'G' on 08.01.2021 and soon thereafter petitioner has made a representation on 09.01.2021 as per Annexure-'J'.

4. It is further submitted by the learned Senior Counsel Sri.A.G.Shivanna appearing for the petitioner that subsequent notification by the University does not make any provision for filling of this post as notified on 14.06.2021. Accordingly, it is submitted that in terms of Section 53 (8) of the Karnataka State Universities Act, the Board of Appointment shall follow the orders issued by the State Government from time to time and the Government Order at Annexure-'H' must be construed to be an



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order issued by the State Government in terms of Section 53 (8) of the Act.

5. It is further submitted that the vertical reservation is the category of ST while the horizontal reservation is that of woman and taking note of the applicable Government Order, in the event suitable woman candidate as regards vertical reservation of ST is not found, in terms of the Government Order if the horizontal reservation is shifted to the men, there would be no prejudice that would be caused to the vertical reservation.

6. The learned Government Advocate upon direction by the court has filed an affidavit of the Under Secretary, Department of Personnel and Administrative Reforms, Vidhana Soudha and the stand taken by the Government is that the Government Order at Annexure-'H' dated 22.11.2002 is required to be adhered to by the appointing authority 'in all the cadres'. It is further observed that sub-rule (1B) of Rule 9 of the Karnataka Civil Service (General Recruitment) Rules, 1977 ("the Rules", for short) points out that vacancies set apart to the extent of 33% shall be filled up from amongst the category of General Merit, Scheduled Castes, Scheduled Tribes and each of



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the categories among the other backward classes by women. However, it is submitted that the said Recruitment Rule has a proviso which states that if sufficient number of eligible women candidates are not available, to the extent of thirty-three percent, the unfilled vacancies shall be filled by men candidates belonging to the same category.

7. It is further submitted by the learned AGA that sub-rule (1B) of Rule 9 of the Karnataka Civil Service (General Recruitment) Rules, 1977 must be read along with Annexure-'H'. Accordingly, it is submitted that the University is required to follow the Government Order at Annexure-'H'.

8. Learned Counsel Sri.Rajendrakumar Sungay appearing for the University has contended that the Government Order at Annexure-'H' is not applicable insofar as the present recruitment notification is in terms of the Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging to the Scheduled castes and the Scheduled tribes) (Special Recruitment) Rules, 2001 and also the Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging



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to the Scheduled castes and the Scheduled tribes) (Special Recruitment) (First Amendment) Rules, 2002.

9. It is further contended that in the recruitment notification at Annexure-'C', there is a reference to the Special Recruitment Rules and there is no reference to the Government Order at Annexure-'H'. Accordingly, it cannot be submitted that Annexure-'H' is not applicable insofar as filling up of post under the Special Recruitment Rules of 2001.

10. It is further submitted that the direction by the Government need not be followed if it is not backed by any statute. Reliance is placed on the judgment reported in ***Dr.Parappa Shankarappa & Others v. The Secretary to Government, Education Department & Others (ILR 1999 KAR 282)***. It is further submitted that filling up of the post by ST (Men) would result in injustice to the women category.

11. Heard both sides.

12. It must be noted that sub-rule (1B) of Rule 9 of the Karnataka Civil Service (General Recruitment) Rules, 1977 is as follows:



"(1B). Notwithstanding anything contained in the rules of recruitment specially made in respect of any service or post, in all direct recruitment [thirty three percent] of vacancies set apart for that method of each of the categories of General Merit, Scheduled Castes, Scheduled Tribes and each of the categories among the other Backward Classes shall, subject to any general instructions that may be issued by the Government regarding the manner of appointment, be filled from among women candidates;

Provided, that if sufficient number of eligible women candidates are not available, to the extent of thirty three percent, the unfilled vacancies shall be filled by men candidates belonging to the same category;

Provided further that nothing in this rule shall prevent the women candidates from competing and for being considered against Sixty Seven percent of direct recruitment vacancies, if selected on the basis of merit.

Provided also that the Government may, by Notification exclude any service or post from the application of the provision of this sub-rule.

13. The Government Order at Annexure-'H' makes it clear at Clause 7 as follows:



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ಮಹಿಳೆಯರಿಗೆ ಮೀಸಲಿರಿಸಿದ ರಿಕ್ತ ಸ್ಥಾನಗಳಿಗೆ ಅರ್ಹ ಮಹಿಳಾ ಅಭ್ಯರ್ಥಿಗಳು ಲಭ್ಯವಾಗದಿದ್ದಲ್ಲಿ ಅಂತಹ ರಿಕ್ತ ಸ್ಥಾನಗಳನ್ನು ಆಯಾ ವರ್ಗಕ್ಕೆ ಸೇರಿದ ಪುರುಷ ಅಭ್ಯರ್ಥಿಗಳಿಂದ ಭರ್ತಿಮಾಡತಕ್ಕದ್ದು.

14. It must be noted that as per Recruitment Notification at Annexure-'C' the post of Assistant Professor of Department of Architecture is to be filled up under the main Category of vertical reservation of Scheduled Tribe (ST) and horizontal reservation as regards one post with respect to women and the other post is reserved 'Open' for the same category. It is accordingly to be construed that the vertical reservation is of ST while horizontal reservation is as regards category of women. The Government Order at Annexure-'H' as rightly contended by the learned Senior Counsel appearing for the petitioner is to be treated to be a direction of the State Government under Section 53 (8) of the Karnataka State Universities Act, 2000.

Section 53 (8) reads as hereunder:

(8) In preparing the list under sub-section (7), the Board of Appointment shall follow the orders issued by the State Government from time to time in the matter of reservation appointments and posts, for the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.



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15. It must be noted that reliance is placed also on a letter dated 09.01.2021 whereby the Government as regards the matter pending in W.P.No.21973/2019 had referred to the same Government Order and observed that the said Government Order was applicable even with respect to recruitment in the case of Karnataka State Civil Services (Unfilled Vacancies Reserved for the Persons belonging to the Scheduled Castes and the Scheduled Tribes) (Special Recruitment) Rules, 2001. The said submission and reference requires to be accepted which is also the same stand of the State Government.

16. Though the learned counsel for the University has contended that the Government Order at Annexure-'H' is not applicable insofar as recruitment under the Special Recruitment Rules is concerned, we find that such submission deserves to be rejected as the Government Order at Annexure-'H' does not make any such distinction and would be applicable whether it is recruitment under the General Recruitment Rules or Recruitment as regards backlog vacancies under the Special Recruitment Rules. The direction under the notification at Annexure-'H' being a direction under Section 53 (8) requires to be accepted by the



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University. The reliance on the judgment in ***Dr.Parappa Shankarappa & Others (supra)*** is misplaced as the present direction by the State finds its origin in the relevant recruitment rules referred to in Para 12. It must also be noted that recruitment to other post having been completed and as contended by the petitioner a subsequent notification for recruitment also having been made, there is no notification for recruitment as regards category of ST (Women). If that being so, non-filling of the post for ST under the vertical reservation of ST by other eligible women or in the absence by men would prejudice the rights of those under ST Category. Wherever the horizontal reservation of eligible candidates are not found and as provided under the recruitment Rule 9 (b) referred to above as well as Government Order at Annexure-'H', it is the duty of the authorities concerned to then have a vertical reservation filled in terms of the Government Order by ST (Women).

17. Accordingly, the respondent No.1 University is directed to take note of the Government Order at Annexure-'H' and proceed forthwith to make an order of appointment. The said



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process is to be completed within a period of three months from the date of receipt of certified copy of this order.

18. Accordingly, the petition is disposed off.

**Sd/-
JUDGE**

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