

Ramakrishna Kamat & Ors vs State Of Karnataka & Ors on 5 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1530, 2003 (3) SCC 374, 2003 AIR SCW 890, 2003 LAB. I. C. 1196, 2003 AIR - KANT. H. C. R. 702, 2003 (4) SRJ 465, 2003 (61) ALL WC 1098, (2003) 4 ALLINDCAS 667 (SC), 2003 (1) SCALE 638, 2003 (2) ACE 162, 2003 (2) SLT 189, 2003 (4) ALLINDCAS 667, 2003 (1) UPLBEC 831, (2003) 2 ALL WC 1098, (2003) 2 JT 88 (SC), 2003 (1) UJ (SC) 764, (2003) 1 UPLBEC 831, (2003) 1 SCALE 638, 2003 SCC (L&S) 284, (2003) 96 FACLR 1159, (2003) 1 LAB LN 822, (2003) 1 SCT 939, (2003) 2 SERVL R 470, (2003) 3 INDLD 698, (2003) 2 KCCR 1150, (2003) 1 CURLR 803

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, Arijit Pasayat

CASE NO.:

Appeal (civil) 6491-6495 of 1997

PETITIONER:

Ramakrishna Kamat & Ors.

RESPONDENT:

State of Karnataka & Ors.

DATE OF JUDGMENT: 05/02/2003

BENCH:

SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T WITH Civil Appeal Nos. 6547-51/97, 3986-92/99, 4524-25/99, 5690/2000 and 500/99 WITH Civil Appeal No. 1049 of 2003 (Arising out of SLP(C) No. 7669/99) AND Civil Appeal No. 1047-48 of 2003 (Arising out of SLP(C) Nos.9078-79/99) SHIVARAJ V. PATIL J.

Leave granted in special leave petitions. The appellants in these appeals were appointed as teachers for various schools run by Zilla Parishads after being selected by Betterment Committees on payment of honorarium of Rs. 200-300 per month in the year 1988-89. They moved the State Government for regularization of their services in the year 1991. The State Government rejected their claims by the order dated 27.2.1992. Thereafter they filed writ petitions in the High Court for quashing the said Government order and also for direction to treat them as having been regularly appointed in the service of the respective Zilla Parishads and also to pay the arrears of salary and allowances from the date of their initial appointment till the date of payment. In the writ petitions,

they pleaded that they were all working as teachers in primary and high schools on honorarium of Rs. 200-300 per month. According to them, Zilla Parishads of Dakshina Kannada, Kodagu and Shimoga passed resolutions with certain conditions as authorized by the Government by its circular dated 15.10.1987 to open new primary and high schools in rural areas. One of the conditions was that Zilla Parishad will appoint one trained graduate teacher and the remaining teachers shall be appointed by the public. It was also asserted in the writ petitions that in view of the aforesaid conditions it is the School Management Committee presided by Mandal Pradhan that had appointed teachers to teach students in Zilla Parishad primary and high schools. It was their further case that Government granted post facto approval to all these teachers by its communication dated 9.7.1991. To put in nutshell, their case seems to be that they are all qualified to be as teachers; they were appointed at the instance of respective Zilla Parishads in accordance with Government circulars and in accordance with resolutions passed by Zilla Parishads; having taken their services for nearly five to eight years, State Government and Zilla Parishads were bound to regularize their services from the date of their initial appointment and were required to pay arrears of salary on par with that of regularly recruited teachers in both primary and high schools. The writ petitions were resisted on various grounds including that writ petitions were not maintainable. It was contended that writ petitioners were honorary teachers appointed by School Management Committee and some of them by Pradhan of Mandal Panchayat on honorarium of Rs. 200-300 per month; they were neither appointed by Zilla Parishads nor their appointments were approved by the State Government. It was further contended that the appointments of the teachers were not against the sanctioned posts and at no point of time State Government had approved their appointments. Ultimately, it was strongly contended that writ petitioners were all teachers working in the schools on honorary basis and honorarium was paid by School Management Committees; as such they were not entitled to any one of the reliefs sought in the writ petitions.

The learned Single Judge, after considering the respective contentions and keeping in view the decisions of the High Court as well as of this Court, disposed of the writ petitions giving the following directions:-

- "i) That if the petitioners apply for appointment at the time of making regular appointment, their application will be considered subject to suitability, eligibility and reservation policy, giving due weightage for the period of service said to have been rendered by them and deducting the period of their honorary service from their age, for determining the question of age bar.
- ii) If for any reason, the schools in which petitioners are working have been approved by the State Govt. in their subsequent orders, the Selection Committee while selecting teachers for regular appointment will give whatever possible weightage to those teachers keeping in view their selfless service for nearly 5 to 8 years in those institutions.
- iii) Before parting with the case, it should be mentioned that this Court fully sympathises with the cruel fate of these unfortunate teachers but this court is helpless in view of the earlier decisions of this Court and the Apex Court.

iv) Respondents are restrained from terminating the services of the petitioner till regular appointments are made in the institution in which petitioners are working.

v) In the facts and circumstances of the case, parties are directed to bear their own costs."

Not being satisfied with and aggrieved by the order of the learned Single Judge, the writ petitioners filed writ appeals before the Division Bench of the High Court. The Division Bench of the High Court, finding no merit in the appeals, dismissed them by the impugned order affirming the order of the learned Single Judge. Hence, these appeals.

The learned counsel for the appellants in their arguments reiterated the submissions that were made before the High Court. They contended that having regard to the facts and circumstances of the case and taking note of length of service the appellants have already put in, they ought to have been granted reliefs by the High Court. The learned counsel also added that in view of the amendments to Rules in 1997 even honorary or part time teachers are entitled to the benefit.

In opposition, the learned counsel for the respondents made submissions supporting the impugned order. Pointing out to certain statements made in the counter, the learned counsel submitted that keeping in view the directions given by the High Court, their cases were considered. According to the learned counsel, having regard to the facts of these cases and the legal position as stated in the order of the learned Single Judge, the impugned order does not call for any interference. The learned counsel for the respondents further submitted that the State Government accepting the directions given by the High Court and keeping in view the amended rules considered the cases of the appellants and few of them even got the benefit.

It is not in dispute that the appellants were appointed on payment of honorarium of Rs. 200-300 per month by School Betterment Committees and in some cases by the Presidents of Mandal Panchayats; the appointment orders do not indicate that they were made either by Zilla Parishad or officers of the State Government against any sanctioned post. We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularization and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zilla Parishads in view of the Government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned single Judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment. The learned Single Judge in this view, rightly so in our opinion, held that "in such situation it is difficult to accept the plea of the petitioners that they were appointed against regular post and appointment orders would clearly indicate that the appointment of the teachers was purely temporary and on honorarium basis subject to its approval by the State Government and petitioners have not

produced any document to show that their appointment has been approved by State Government. Hence, petitioners are not entitled to regularization. Since petitioners have worked continuously as teachers, the services rendered by them is entitled to be considered at the time of regular appointment."

The learned Single Judge, having noticed a few decisions of the High Court held that the plea of the appellants could not be accepted. It appears to us that the learned Single Judge, taking a sympathetic view, gave the directions while disposing of the writ petitions, which are already extracted above. The decision of this Court in *Union of India and Ors. vs. Tejram Parashramji Bombhate & Ors.* [(1991) 3 SCC 11] is almost on similar facts. In the said judgment, this Court observed that the teachers who were paid honorarium from out of fees from children and other donations, not by or on behalf of Central Government, were not entitled for regularization on par with Government teachers and the court or tribunal cannot compel the Government to change its policy and accord sanction to the schools which involves financial burden on the Government. Para 5 of the said judgment reads:-

"5. Secondly, the respondents are not paid by the Central Government. They are not holding any appointment under the Central Government. There is no relationship of master and servant between the Central Government and the respondents. The respondents are employed in the Secondary School by local arrangement made by the officers of the ordnance factory. It is not proved that how the Central Government is accountable to such arrangement made by the local officers."

The respondents, accepting the directions given by the learned Single Judge as affirmed by the Division Bench, followed them and in that process some persons got benefit of the directions. Many of the appellants could not get the benefits of the directions in spite of giving consideration and weightage to the services rendered by them. As is clear from the directions of the learned Single Judge, sympathizing with the appellants, their services were also protected till regular appointments were made. Under these circumstances, we do not find any good or valid ground to interfere with the impugned order. This Court had passed interim orders in these matters directing the Zilla Parishads to pay the basic pay of Rs. 1520/- per month to the appellants from November, 1995 upto-date and continue to pay till the disposal of these appeals. The learned counsel for the respondents submitted that the payment made pursuant to the interim orders passed by this Court to the appellants shall not be recovered. In this view, we make it clear that the respondents shall not make any recovery of amount from the appellants paid to them by way of salary pursuant to the interim orders passed by this Court. Thus finding no merit, the appeals are dismissed subject to what is stated above. No costs.