

The Karnataka State Seeds Development ... vs H. L. Kaveri on 21 January, 2020

Equivalent citations: AIR ONLINE 2020 SC 63, (2020) 1 SCT 725 (2020) 2 SCALE 246, (2020) 2 SCALE 246

Author: Ajay Rastogi

Bench: Ajay Rastogi, Dhananjaya Y Chandrachud

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 344 OF 2020
(Arising out of SLP(Civil) No(s). 9394 of 2019)

THE KARNATAKA STATE SEEDS DEVELOPMENT
CORPORATION LIMITED & ANR ... APPELLANT(S)

VERSUS

SMT. H.L. KAVERI & ORS. ... RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. The instant appeal is directed against the judgment passed by the Division Bench of the High Court of Karnataka dated 1 st February, 2019 directing the appellant Corporation to consider the claim of 1st respondent taking note of the work experience certificate for appointment in accordance with law with a caveat that the order has been passed in the peculiar facts and circumstances of the case and shall not be treated as a precedent.

2. The brief facts of the case in nutshell relevant for the purpose are that the appellant Corporation invited applications for various posts against the backlog vacancies including two vacancies of Senior Assistant and ten vacancies of Junior Assistant pursuant to an advertisement dated 11th

November, 2013. Apart from the academic and professional qualifications, the applicant was required to furnish a certificate of work experience of 3 years/2 years in a reputed company for the post of Senior Assistant/Junior Assistant. It was further indicated in the advertisement that separate application has to be furnished for each post and incomplete application shall be rejected without assigning any reasons. The 1st respondent applied for both the posts, i.e. Senior Assistant and Junior Assistant on a separate application, and indeed was holding academic/professional qualification but it reveals from the record that she had not enclosed the experience certificate of the requisite period along with the application form which was required at the time of submitting the application.

3. The select list of the candidates was to be prepared in terms of Rule 6 of the Karnataka State Civil Services(Unfilled Vacancies reserved for the persons belonging to the Scheduled Castes and Scheduled Tribes) (Special Recruitment) Rules, 2001(hereinafter being referred to as “Rules”) based on the percentage of marks secured by the candidate in the qualification examination taking into consideration the reservation for women, ex-servicemen, physically handicapped and project displaced persons in accordance with the Karnataka Civil Services (General Recruitment) Rules, 1977.

4. The 1st Respondent is a women and member of Scheduled caste category and secured 65.43% of marks in the qualifying examination and still when her name was not included in the select list, made representation but when failed to get satisfactory response, she approached the High Court by filing of a writ petition under Article 226 of the Constitution. In reply to the writ petition filed by the Corporation, the specific case pleaded was that the 1 st respondent had applied for both the posts of Senior Assistant/Junior Assistant, but she failed to enclose the experience certificate which was the condition of eligibility in terms of the advertisement and at the stage of scrutiny, her application was rejected without assigning any reason. For satisfaction of the Court, the learned Single Judge of the High Court called for the original records and recorded a finding in paragraph 7 of the judgment that experience certificate was not enclosed by her with the application form which is reproduced hereunder: “On perused of the original records, it is clear that petitioner has not enclosed experience certificate while applying to the posts. This is evident from the application submitted, which contains other enclosures except the experience certificate. The scrutiny of application that has been made and maintained by respondent Corporation reveals that several applications have been rejected noting the reasons for such rejection. The reason for rejecting the application filed by petitioner is stated as ‘non-enclosure of experience certificate’. Incidentally, it has to be noticed that other candidates who had not enclosed the experience certificate also suffered similar consequences”.

5. The Single Judge of the High Court, taking note of the factual statement, was not inclined to consider the claim of the 1 st respondent and accordingly dismissed the writ petition vide judgment dated 11th July, 2016 that came to be challenged by the 1st respondent in Letters Patent Appeal before the Division Bench of the High Court. The Division Bench of the High Court took note of the statement of facts recorded by the learned Single Judge, but taking note of the fact that the 1 st respondent has secured higher marks in the qualifying examination for the post of Senior/Junior Assistant and mere non-enclosure of the experience certificate with the application, should not

deny her claim of fair consideration for appointment and noticing the alleged peculiar facts allowed the LPA with a direction to the appellant Corporation to consider the claim of the 1st respondent taking note of the experience certificate for consideration and appointment with a caveat that the order passed by the Division Bench would not be treated as a precedent which is a subject matter of challenge in appeal before us.

6. Learned counsel for the appellants submits that experience certificate of a reputed Company of 3 years and 2 years for the post of Senior Assistant and Junior Assistant is a condition of eligibility under the terms of advertisement dated 11th November, 2013 and this fact remain undisputed from the original records as perused by the Single Judge of the High Court holding that the 1st respondent has failed to enclose experience certificate of 3 years/2 years in a reputed Company and 31 applications of women candidates for the post of Senior Assistant and 106 applications for Junior Assistant of such nature which were incomplete, were rejected by the Corporation and seven women candidates listed as valid applications for Senior Assistant against one women category remain awaited and the 1st respondent would not be entitled for any preference over the successful candidates who were considered eligible and placed in the select list in the order of merit for appointment to the post of Senior/Junior Assistant prepared in terms of advertisement dated 11th November, 2013.

7. Learned counsel further submits that the judgment on which the Division Bench has placed reliance in the case of Seema Kumari Sharma Vs. State of Himachal Pradesh and Others 1998(9) SCC 128 is of no assistance on the facts of the present case and in the given circumstances, the Division Bench has committed a manifest error in directing the Corporation to take on record the experience certificate of the 1st respondent and consider her for appointment and that needs to be interfered by this Court.

8. Per contra, learned counsel for the 1st respondent, while supporting judgment of the Division Bench of the High Court, further submits that the select list was to be prepared of the candidates based on the percentage of marks secured in the qualifying examination and there is no other consideration/evaluation in the process of selection for appointment to the post of Senior/Junior Assistant under the advertisement dated 11th November, 2013 and further submits that to the best of her knowledge, the 1st respondent had enclosed her experience certificate along with the application form, but even if there was a deficiency in the application form filled by the 1st respondent, it was at the best be construed to be a bonafide mistake and as she was holding the experience certificate of 3 years even on the date when the advertisement came to be published dated 11th November, 2013, she at least should not be deprived from fair consideration for such technical reasons against a woman who is member of Scheduled Caste category and for whom the post was reserved, in the given circumstances, denial from consideration for appointment after her suitability being adjudged has certainly caused a great prejudice to her and this what the Division Bench has observed and that needs no interference by this Court.

9. We have heard learned counsel for the parties and perused the material available on record with their assistance.

10. The appellant Corporation notified the backlog vacancies in a daily newspaper vide its advertisement dated 11 th November, 2013 inviting applications from the eligible candidates to fill up the vacancies of Senior Assistant/Junior Assistant including other posts. The academic qualification and work experience which was required for the purpose of Senior Assistant/Junior Assistant is indicated hereunder: □“Senior Assistant :

Qualification: 1) Degree of recognized University

2) Preference to B. Com graduate with Accountancy as a subject.

3) Computer knowledge with MS Office and Tally or any other accounting package.

Experience : Must have worked in a similar capacity for three years in a reputed company.

Junior Assistant :

Qualification : 1) Degree of recognized University.
2) Preference to B. Com graduate with Accountancy as a subject.
3) Computer knowledge with MS Office and Tally or any other accounting package.

Experience : Must have worked in a similar capacity for TWO years in a reputed Company.”

11. Under its advertisement dated 11 th November 2013, it was specifically indicated that separate application should be submitted for each post accompanied with various requirements including qualification, experience, etc. and incomplete application, if any, is liable for rejection without assigning any reason. The 1 st respondent applied for the post of Senior Assistant/Junior Assistant vide application dated 29th November, 2013. After scrutiny of the applications, the select list of backlog vacancies was published on 16th January, 2015 and it reveals from the record that impleaded 3rd respondent in the writ petition (Smt. Priyanka A. Chanchalkar) was provisionally selected as Senior Assistant securing 64.65% marks. At the same time, the 1 st respondent secured 65.43% marks but since the 1st respondent failed to submit experience certificate along with the application form, her application at the stage of scrutiny itself was rejected.

12. The Corporation in IA No. 3457 of 2020 has indicated that total 31 applications for the post of Senior Assistant were rejected in view of not enclosing of self-attested documents and there are 7 women candidates listed as valid applicant for Senior Assistant against the single post of female (Scheduled Caste) which remain unfilled because of the orders of the Court. At the same time, the Corporation rejected 106 number of applications for the post of Junior Assistant for not enclosing the documents required including self-attested copies of experience certificate/caste certificate/computer tally certificate/graduation certificate/birth certificate, etc.

13. It remains undisputed as recorded by the learned Single Judge of the High Court in the order after perusal of the original records of which reference has been made that the 1st respondent had not enclosed her experience certificate along with the application and her statement on oath was found to be factually incorrect and the rejection of her application was indeed in terms of the advertisement dated 11th November, 2013 for which the Corporation was not required to assign any reasons which although was disclosed before the Court and noticed by the learned Single Judge in its judgment.

14. In the given circumstances, we do not find any error being committed by the Corporation in its decision making process while rejecting the application of the 1st respondent for non-fulfilment of the necessary experience certificate which was to be enclosed along with the application as required in terms of the advertisement dated 11th November, 2013.

15. That apart, the post of Senior Assistant which remained vacant, as informed to this Court, even if it is considered that there is a reasonable justification for which the certificate could not have been enclosed by the 1st respondent along with the application, there are several other candidates who have obtained higher percentage in qualifying examination compared to the 1st respondent whose applications have been rejected in view of not enclosing of self-attested documents and there are 7 women candidates listed as valid applicants for the post of Senior Assistant against the single post of women(SC) category, at least no indefensible right in the present circumstances, could have been claimed by the 1st respondent for her inclusion in the select list for appointment to the post of Senior Assistant. At the same time, for the post of Junior Assistant, 106 applications of the applicants were rejected by the Corporation for not enclosing self-attested copies including that of the experience certificate and this fact has come on record that out of 10 vacancies advertised, only one post for physically handicapped remain vacant as the suitable candidate was not available, which indeed could not be converted to open/other reserved categories.

16. The Division Bench of the High Court has relied upon the judgment in Seema Kumar Sharma case(supra) in extending relief to the 1st respondent which, in our view, is of no assistance and, in our view, the Division Bench has committed a manifest error by taking note of the experience certificate to support her claim for

appointment without even indicating the post for which her claim could be considered in terms of the advertisement dated 11 th November, 2013.

17. We would further like to observe that merely because the 1 st respondent had approached the High Court by filing of a writ petition, that would not be sufficient to exercise jurisdiction under Article 226 of the Constitution in overruling the rights of the candidates who were otherwise eligible for appointment.

18. The appeal is accordingly allowed and the judgment of the High Court dated 1st February, 2019 is hereby set aside. No costs.

19. Pending application(s), if any, stand disposed of.

.....J. [DR DHANANJAYA Y CHANDRACHUD]
.....J. [AJAY RASTOGI] New Delhi January 21, 2020