

Karnataka High Court

S.P. Raghunath vs The Karnataka State Small ... on 2 December, 1997

Equivalent citations: ILR 1998 KAR 2449, 1998 (5) KarLJ 218

Bench: T S Thakur

ORDER

1. The petitioner is working as a Deputy Chief Manager in the respondent-Corporation. He was considered for promotion to the post of Chief Manager (C & M) alongwith respondent 2. The Corporation promoted the second respondent in the process ignoring the petitioner's claim. Aggrieved, the petitioner filed writ petition, in S.P. Raghunath v K.S.S.I.D.C. Limited, in this Court in which he assailed the promotion of the second respondent on five distinct grounds. These were (i) that the Selection Committee had not followed the procedure prescribed by Rule 6 of the Cadre and Recruitment Rules; (ii) since Departmental enquiries are pending against the second respondent he could not have been selected or appointed; (iii) that the Selection Committee was not properly constituted; (iv) that the Committee had while making the selection ignored the relevant material which it was bound to take into consideration; and (v) that the recommendations of the committee was contrary to Articles of Association of the Corporation according to which any appointment against a post carrying a maximum pay scale of Rs. 4,550/- or more was compulsorily reserved for the approval of the Government.

2. Insofar as the first two grounds were concerned, this Court by its order dated 11th March, 1996, rejected the same holding that there was no merit in them. The challenge to the appointment of the second respondent however succeeded on the third and the 4th ground urged by the petitioner. This Court held that the Selection Committee was not properly constituted nor had the Committee considered all the relevant material which it ought to have considered while making the promotions. Having said so, the challenge to the selection of the second respondent was on the 5th and last ground urged by the petitioner left open as consideration of the same was found unnecessary. The second respondent as also the Corporation preferred W.A. Nos. 1225 of 1996 and 1527 of 1996 which were heard by a Division Bench and allowed by its order in KM. Nagendra and Another v S.P. Raghunath and Another . The Division Bench found that the view taken by this Court in regard to the 3rd and the 4th grounds urged by the petitioners was not tenable. The Selection Committee was held to have been properly constituted and all the material that was required to be considered was held to have been considered by it. Consequently, the appeal succeeded and the writ petition filed by the petitioner dismissed. The petitioner has in the present writ petition assailed the very same order of promotion of the second respondent on the 5th ground urged in the earlier round. It is argued on his behalf by Mr. Acharya, learned Senior Counsel that since this Court had left the question covered by ground No. (v) open, it was permissible for the petitioner to maintain the present writ petition and challenge the selection and promotion of the second respondent on that ground once again. I am not however impressed by that submission. The reason why this Court had expressed no opinion on the merits of ground No. (v) urged by the petitioner in the earlier round was that the petitioner was succeeding in the petition on ground Nos. (iii) and (iv). Since the promotion order of the second respondent was being quashed in the light of the findings returned by this Court on the said two grounds, it was considered unnecessary to examine in depth the merits of the submissions made at the Bar in regard to ground No. (v). In the appeals filed against the said order it was open to the

petitioner to support the view taken by this Court not only on the grounds that had been held in his favour but also on grounds which had been rejected or left open by this Court. This proposition of law was not disputed by Mr. Acharya. What he argued was that the order of this Court allowing the writ petition must be deemed to have merged in that passed by the Division Bench and since the Division Bench had not struck a discordant note as regards treatment given to ground No. (v) it must be understood to have left that ground open in the same fashion as was done by this Court. I am unable to subscribe to this line of reasoning. The reason behind leaving ground No. (v) open as pointed out earlier was available to this Court alone. There was no reason or occasion for the Division Bench to have left the challenge to the promotion order on ground No. (v) open for a possible second round of litigation. While this Court could say that it was unnecessary to go into the merits of ground No. (v), the Division Bench could not possibly do so unless the ground was not pressed before it. It is therefore difficult to apply the principle of merger to the instant case. The petitioner having failed to urge the ground available to him in appeal, against the order passed by this Court, he is not entitled to maintain a second writ petition on the basis of any such ground or on any other ground that was open to him but was not urged. Principles of constructive res judicata would prevent him from doing so. It is fairly well settled that an appeal is only continuation of the original proceedings. If that be so, the petitioner was entitled to urge all the grounds whether decided for or against him including those left open by the first Court in an appeal against its order. He cannot start a fresh round only because he had failed to avail the opportunity that he had in the first round. Law does not encourage multiplicity of judicial proceedings; while Courts lean in favour of finality of decisions. The petitioner's attempt to reopen the issue falls foul of both these principles.

3. There is no merit in this writ petition which fails and is accordingly dismissed but in the circumstances without any orders as to costs.