

Shiva Kumar vs The State Of Karnataka on 28 February, 2022

Bench: G.Narendar, M.G.S. Kamal

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2022

PRESENT

THE HON'BLE MR.JUSTICE G.NARENDAR

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

WRIT PETITION NO.6901 OF 2021 (S-KSAT)

C/W

WRIT PETITION NO.13528 OF 2020 (S-KSAT)

IN WRIT PETITION NO.6901 OF 2021

BETWEEN:

H.N. SATHISH
S/O LATE NEELA SHEKAR
AGED ABOUT 50 YEARS
FOOD SAFETY OFFICER AND INCHARGE
DESIGNATED OFFICER, MYSORE
R/AT HANAGODU VILLAGE & POST
HUNSUR POST
MYSORE DISTRICT - 20.

....PETITIONER

(BY SMT. A. MANJULA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY PRINCIPLE SECRETARY TO
GOVERNMENT, DEPARTMENT OF
HEALTH AND FAMILY WELFARE SERVICE
VIKASA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU - 560 001.

2. THE COMMISSIONER FOR
FOOD SAFETY AND STANDARD AUTHORITY
COMMISSIONER FOR HEALTH AND
FAMILY WELFARE SERVICES
3RD FLOOR IPP BUILDING
ANAND RAO CIRCLE
BENGALURU - 560 009.

....RESPONDENTS

(BY SMT. SHILPA S GOGI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO (A) SET-ASIDE THE
APPLICATION NO.800/2017 KARNATAKA ADMINISTRATIVE
TRIBUNAL ORDER DATED:02.11.2020 VIDE ANNEXURE - A (B)
CALL FOR THE RECORDS APPLICATION NO.800/2017 KARNATAKA
ADMINISTRATIVE TRIBUNAL (C) GRANT SUCH OTHER ORDERS.

IN WRIT PETITION NO.13528 OF 2020

BETWEEN:

SHIVA KUMAR
S/O LATE H. HANUMANTHAIAH
AGED ABOUT 56 YEARS
HUBLI-DHARWAD MAHANAGARA PALIKE
(AREA), HUBLI-DHRAWA DISTRICT
CHITRADURGA TOWN
DOOR NO.107
CHITRADURGA DIST - 570 002.

....PETITIONER

(BY SMT. A. MANJULA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY PRINCIPLE SECRETARY TO
GOVERNMENT, DEPARTMENT OF
HEALTH AND FAMILY WELFARE SERVICE
VIKASA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU - 560 001.

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2. THE COMMISSIONER FOR
FOOD SAFETY AND STANDARD AUTHORITY
COMMISSIONER FOR HEALTH AND
FAMILY WELFARE SERVICES

3RD FLOOR IPP BUILDING
ANAND RAO CIRCLE
BENGALURU - 560 009.

3. DR. DEEPAK KUMAR SUKKE
AGED ABOUT 55 YEARS
S/O LATE NAGENDRA SUKKE
WORKING AS DESIGNATED OFFICER
OF FOOD SAFETY AND STANDARD
HUBLI-DHARWAD MAHANAGARA PALIKE
P.B. ROAD, KIMS CAMPUS
HUBLI - 580 021.

....RESPONDENTS

(BY SMT. SHILPA S GOGI, HCGP;
SRI. V.R. SARATHY, ADVOCATE FOR IMPEADING APPLICANT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO SET-ASIDE THE
APPLICATION NO.802/2017 KARNATAKA ADMINISTRATIVE
TRIBUNAL ORDER DATED:02.11.2020 VIDE ANNEXURE-A CALL
FOR THE RECORDS IN APPLICATION NO.802/2017 KARNATAKA
ADMINISTRATIVE TRIBUNAL AND ETC.

THESE WRIT PETITIONS COMING ON FOR HEARING, THIS
DAY, M.G.S.KAMAL, J, MADE THE FOLLOWING:

ORDER

These two writ petitions are filed by the petitioners seeking to set aside a common order dated 02.11.2020 passed by the Karnataka Administrative Tribunal in Application Nos.800/2017 and 802/2017 along with other connected matters, in and by which, the Tribunal dismissed the applications filed by the petitioners challenging the notification dated 24.01.2017 issued by the 2nd respondent appointing 36 district level officers as designated officers.

2. It is the case of the petitioners that they joined Karnataka Food Safety and Standards Department under the Health and Family Welfare Services initially as Food Inspectors by way of direct recruitment in the year 2003. That the 2nd Respondent had issued notification dated 30.07.2011 appointing the petitioners as 'Food Safety Officers' for implementation of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

3. That the 1st Respondent had placed some Senior Medical Officers as in-charge Designated Officers in the district to implement the Act. Thereafter, by a notification dated 20.06.2014, the 1st Respondent had withdrawn the said notification and had directed them to work as Health Officers at the places mentioned opposite to their names in the said notification. Aggrieved by the same, Medical Officers had filed applications before the Karnataka Administrative Tribunal in Application No.5253/2014 c/w. Application Nos.5036-5055/2014 which were dismissed as per order dated 15.12.2014. Aggrieved by the same, writ petitions were filed in W.P.Nos.60255-60265/2014 (S-KAT) before this Court which were also dismissed by order dated 22.01.2015.

4. Thereafter, by notification dated 08.07.2014 and 28.09.2015, the 2nd Respondent appointed the petitioners as Designated Officers on Additional Charge.

5. That the 1st Respondent for the first time framed cadre and recruitment rules, viz., the Health and Family Welfare Service (Food Safety and Standard Department) (Recruitment) Rules, 2015 with effect from 05.01.2017. The said rules provide mode of filling up of post of designated officers, i.e., 50% by way of direct recruitment, 50% by way of promotion from cadre of Senior Food Safety Officer and that the rules do not permit any other mode of appointment to the post of designated officer.

6. That yet again, the 2nd respondent issued notification dated 24.01.2017 appointing Medical Officers to the post of Designated Officers.

7. Aggrieved by the same, petitioners and others filed applications before the Karnataka State Appellate Tribunal seeking quash of the said notification dated 24.01.2017 on the grounds inter alia that the said order appointing 36 district level officers as Designated Officers was contrary to rules and same was in contempt of the earlier orders passed in Application Nos.5036- 5055/2014 and 5253/2014 and in the writ petitions in W.P.Nos.60255-60265/2015 (S-KAT).

8. The Tribunal, by its common order dated 02.11.2020, dismissed the said applications. Aggrieved by the same, the petitioners are before this Court.

9. Learned counsel for the petitioners reiterating the grounds urged in the writ petitions submits that the issuance of notification dated 24.01.2017 appointing 36 district level officers as Designated Officers was contrary to the rules providing for filling up of the post of Designated Officers, i.e., 50% by direct recruitment and 50% by promotion from the cadre of Food Safety Officer. She further submits that the said notification is also against the Judgment passed by this Court in the Writ Petition Nos.60255-60265/2014 dated 22.01.2015. She submits that the Tribunal has not taken this aspect of the matter while dismissing the Applications. Hence, seeks for allowing of the petitions.

10. Smt.Shilpa S.Gogi, learned HCGP submits that the notification dated 24.01.2017 was issued in the public interest considering the less number of enforcement authorities working at the field level. She also submits that the said order was only an adhoc and giving additional charge of designated officers till implementation of rules and regulations for better administration. She further submits that the Government has taken a stand not to appoint Medical Officers from the clinical side as Designated Officers and posted only Public Health Medical Officers in the interest of public health. That placing the Public Health Medical Officers on additional charge would not prejudice the Public Health. She further submits that the interest of the petitioners would not get affected in any manner whatsoever. As such the order passed by the Tribunal does not warrant any interference. Hence, seeks for dismissal of the petitions.

11. Heard learned counsel for the parties. Perused the records.

12. A perusal of the notification dated 24.01.2017 produced at Annexure-A12 issued by the respondents appointing 32 officers in different cadres of Health Department with additional charge of Designated Officers was on adhoc basis in the public interest as sufficient staff was not available. The said notification also clarifies that Cadre and Recruitment Rules have already been framed providing mode and method of recruitment which would take some time for its complete implementation and in the mean while, in order to meet the requirement, this adhoc arrangement has been made.

13. The Tribunal on consideration of the grounds urged by the applicants and also taking into consideration the objections of the respondents and also taking note of its earlier order dated 15.12.2014 passed in Application No.5253/2014 c/w.Application No.5036- 5055/2014 and the order dated 22.01.2015 passed by this Court in W.P.Nos.60255-20265/2014 (S-KAT), has held that the Government had not erred in issuing the impugned notification dated 24.01.2017 and the same was in the public interest. It further noted the said order was an adhoc arrangement by the Government till implementation of Cadre and Recruitment Rules. It has also taken note of the fact that the status of the petitioners, their designations, their salary including their promotion aspect are not affected by the aforesaid notification and as such, dismissed the application being devoid of merits.

14. In view of the aforesaid facts and circumstances of the matter and since the order in question not having any adverse affect on the designation, the salary including the promotional aspects of the petitioner and also in view of the fact that the said order is an adhoc arrangement, no infirmity or illegality can be found in the order passed by the Tribunal, warranting any interference.

15. However, this Court, by its order dated 13.07.2021, while staying the operation of the impugned notification dated 24.01.2017 had observed that the order on record though provides that the posting is being made temporarily, but the temporary phase has not ended till 2021 and that no statutory provisions of law has been pointed out by State making such postings. While taking note of framing of Recruitment Rules, 2015 by the Government, this Court made it clear that the State shall be free to fill up a post in accordance with the statutory provisions as contained under the Food, Safety and Standards Act, 2006 read with rules framed thereunder and the recruitment rules governing the field. In view of the above order, this Court hopes that the State Government would endeavour to fill up the post strictly in accordance with the act and the rules made thereunder as admittedly the appointments are only on adhoc basis.

16. Though writ petitions lack merit warranting interference with the order passed by the Tribunal, the same are disposed of with the above observations.

Sd/-

JUDGE Sd/-

JUDGE bnv