



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT PETITION NO. 24455 OF 2023 (S-KSAT)

BETWEEN:

CAPTAIN SANTHOSH KUMAR C
S/O M LATE CHANDRA REDDY
AGED ABOUT 44 YEARS
R/AT NO.126, ANEKAL ROAD
CHANDAPURA CIRCLE,
BANGALORE-560 081

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR
SRI. SIDDAVEER CHAKKI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ITS CHIEF SECRETARY TO GOVT.
VIDHANA SOUDHA
BANGALORE-560 001
2. STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY TO GOVT.
DEPARTMENT OF PERSONNEL
AND ADMINISTRATIVE REFORMS
VIDHANA SOUDHA,
BANGALORE-560 001
3. KARNATAKA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY



PARK HOUSE ROAD
BANGALORE-560 001

...RESPONDENTS

(BY SRI. B. RAVINDRANATH, AGA FOR R1 & R2;
SRI. K.M. PRAKASH, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS ON THE FILE OF KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BENGALURU IN APPLICATION NO.O.A. NO.4990/2022 AND SET ASIDE THE ORDER DATED 13/10/2023 IN APPLICATION NO.O.A. NO.4990/2022 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BENGALURU (ANNEXURE-AX) AND ISSUE WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT TO QUASH THE COMMUNICATION BEARING NO.CAaSuEe 90 SSC 2022 DATED 27/06/2022 AT ANNEXURE-G OF THE RESPONDENT NO.2 AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR



ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Petitioner - an Ex-Serviceman is grieving before the Writ Court against the State Administrative Tribunal's order dated 13.10.2023 whereby, his Application No.4990/2022 has been negatived. In the said Application, he had called in question the communication dated 27.6.2022 by which the second respondent has rejected his claim for issuance of appointment order to the post in question. It is the case of Petitioner that he being immediately next below, should have been appointed to the vacancy that remained unfilled since the selectee did not choose to undergo medical examination which is a pre-condition for appointment.

2. Learned counsel Mr.Sridhar Prabhu appearing for the petitioner banking upon a Co-ordinate Bench decision of this court in WP No.577/2022 (S-KAT) between ***State of Karnataka vs. Sri Nagendra G.K.***, decided on 08.07.2022, submits that when a selected candidate does



not report for duty, the vacancy should eventually go to the candidate immediately next below him. This aspect having not been properly appreciated by the Tribunal, there is error apparent on the face of the order warranting interference of this court for setting the same at right.

3. The learned AGA appearing for the State and learned Sr.Panel Counsel representing the KPSC oppose the petition contending that merely because a person finds his name in the Select List, that does not give him a justiceable right to appointment. When the selected candidate did not join the post in question, it would at the right time go for public advertisement and Petitioner also can stake his claim for selection & appointment. The Panel Counsel in support of his contention draws our attention to Rule 11(3) of Karnataka Recruitment of Gazetted Probationers (appointment by Competitive Examinations) Rules, 1997.



4. Having heard the learned counsel for the parties and having perused petition papers, we are inclined to grant indulgence in the matter agreeing with the submission made on behalf of the Petitioner. Admittedly, the vacancy in the post concerned eventually continues, the selectee not even undergoing medical examination. In a similar circumstance, a Co-ordinate Bench in *NAGENDRA supra* has observed that, the selected candidate immediately next below should be offered appointment. This having not happened, the Tribunal ought to have interfered in the matter. We are amazed, to say the least that Tribunal did not do that.

5. We do not see how Rule 11(3) of 1997 Rules in this circumstance would be attracted. The said Rule reads as under:

"11. List of candidates suitable for appointment:

(1)

2)

3) Candidates whose names are included in the list prepared in accordance with the



provisions of sub-rule (1) shall be considered for appointment to the vacancies notified in each of the services and groups of posts in the order in which their names appear in the list.

Provided that, no candidate shall be appointed unless the Government is satisfied after such enquiry and verification as may be considered necessary that the candidate is suitable for such appointment."

No reason is assigned by the Government as to why one vacancy that remains unfilled should continue indefinitely merely because the selected candidate did not come forward. In such an event, the Rule that inclusion in the Selection List would not give right of appointment is not applicable, because the Government had decided to appoint.

In the above circumstances, this petition is allowed. A Writ of Certiorari issues quashing impugned order of the Tribunal. Petitioner's Application No. having been favoured, the impugned communication is quashed. A Writ of Mandamus issues to the first & second respondents to consider the case of Petitioner for appointment to the post in question and report compliance to the Registrar General of this Court within eight weeks. Non-compliance would be viewed seriously.



Costs are reluctantly made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

SK/Snb
List No.: 1 Sl No.: 38