



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

DATED THIS THE 5<sup>TH</sup> DAY OF SEPTEMBER, 2023

PRESENT

**THE HON'BLE MR JUSTICE S.R. KRISHNA KUMAR**

AND

**THE HON'BLE MR JUSTICE G BASAVARAJA**

WRIT PETITION NO. 102554 OF 2022 (S-KAT)

**BETWEEN:**

1. THE STATE OF KARNATAKA  
REP. BY PRL.SECRETARY,  
HOME DEPARTMENT, VIDHANA SOUDHA,  
BENGALURU-560001.
2. THE DIRECTOR INSPECTOR GENERAL OF  
POLICE, RECRUITMENT AND  
CO-ORDINATION, CIVIL POLICE  
CONSTABLE COMMITTEE,  
CARLTON BHAVANA, PALACE ROAD,  
BENGALURU-560001.
3. THE SUPERINTENDENT OF POLICE  
BAGALKOTE, BAGALKOTE DISTRICT,  
BAGALKOTE-587101.
4. THE PRINCIPAL  
KARNATAKA STATE POLICE  
TRAINING SCHOOL, CHANNAPATNA,  
RAMANAGARA DISTRICT-562161.

...PETITIONERS

(BY SRI.G.K.HIREGOUDAR, GOVT. ADVOCATE)

**AND:**

SRI. RAVI KUMAR B. KANKANAMELI  
S/O. SRI. BASALINGAPPA,  
AGED ABOUT 29 YEARS,  
R/AT NO.126/1/3,  
14<sup>TH</sup> CROSS, VIDYAGIRI,  
R/AT NO.126/1/3, 14<sup>TH</sup> CROSS,  
VIDYAGIRI, BAGALKOTE-587101

...RESPONDENT

(BY SRI. T.M.NADAF, ADVOCATE)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER PASSED BY THE HON'BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BELAGAVI BENCH, BELAGAVI IN APPLICATION NO 10436/2021 BY ORDER DATED 10.11.2021 VIDE ANNEXURE-A.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, **S.R.KRISHNA KUMAR J.**, PASSED THE FOLLOWING:

### **ORDER**

This petition by the State is directed against the impugned order dated 10.11.2021 passed in Application No.10436/2021 by the Karnataka State Administrative Tribunal, Belagavi (for short, 'the Tribunal'), whereby the said application filed by the respondent seeking quashing of the impugned suspension order dated 17.04.2021 and for a direction for his reinstatement together with all consequential benefits was allowed by the Tribunal.

2. Heard the learned Government Advocate for the appellants and the learned counsel for the respondent.

3. The material on record discloses that on 21.06.2018, the 2nd petitioner issued a notification for



recruitment to the post of Civil Police Constable in the state including Bagalkot District. The respondent having submitted his application along with documents relating to his educational qualification which was Three Year Diploma in Instrumentation Technology which was equivalent to II PUC, he was called for written examination based on which he underwent successfully the physical standard and endurance tests and after due verification of all his documents on 13.09.2019 including verifying his educational qualification documents, the respondent was selected to the post of Police Constable as per the list/order dated 05.02.2020 and was posted for training. Subsequently, the respondent received a show-cause notice dated 09.02.2021 from the petitioner which carried a reference to a State Government Circular and stated that the respondent should also be successful in a course conducted by NIOS (distance education mode) and should have passed the said course with one language and one subject as held in the PU Board examinations. Though the respondent submitted his reply, the petitioner



proceeded to discharge the respondent from service vide impugned order dated 17.04.2021 which was assailed by him before the Tribunal which proceeded to allow the application, aggrieved by which the petitioner-State is before this Court by way of the present petition.

4. A perusal of the material on record including the impugned order will indicate that it is the specific contention of the petitioner that prior to issuance of the recruitment notification dated 21.06.2018, the State Government had issued a Circular dated 27.02.2018 which required that candidates including the respondent should have passed an additional subject and language in a course conducted by NIOS for the purpose of claiming eligibility for selection. It was therefore contended that since the said circular dated 27.02.2018 was anterior in point of time to the recruitment notification dated 21.06.2018 pursuant to which the respondent was selected and as he had not passed the said course conducted by NIOS, his very



selection was illegal resulting in passing the impugned order which did not warrant interference by the Tribunal.

5. After hearing both sides, the Tribunal came to the conclusion that the said circular dated 27.02.2018 was not an amendment to the government order dated 27.01.2015 which treated that a Three Year Diploma course after SSLC was equivalent to PUC for the purpose recruitment/selection to the post of a Police Constable and consequently, the subsequent circular dated 27.02.2018 did not override or supercede the earlier government order dated 27.01.2015 and could not be made the basis to prescribe additional eligibility criteria not contained in the Government Order. The Tribunal also noticed that the circular dated 27.02.2018 did not find a place in the recruitment notification dated 21.06.2018 and in the absence of the same, the eligibility criteria prescribed in the circular dated 27.01.2018 could not be incorporated into the recruitment notification dated 21.06.2018 nor be made the basis to come to the conclusion that only persons



who passed the additional course conducted by NIOS were eligible to get recruited under the recruitment notification dated 21.06.2018. The Tribunal also referred to judgments of the Apex Court in order to hold that the selection procedure having been stipulated in the recruitment notification dated 21.06.2018, the selection process has to be conducted strictly in accordance with the same which has to be scrupulously maintained without any power to relax or add to the said procedure. It was further held by the Tribunal that even in the event that the said procedure can be changed, it was incumbent upon the petitioner to not only give due publicity to the same but also intimate the candidate about the additional eligibility criteria. In the facts of the instant case, the Tribunal recorded a finding that neither under the recruitment notification dated 21.06.2018 nor subsequently, the respondent and other candidates were never informed about the circular dated 27.02.2018 which prescribed the additional eligibility criteria of passing NIOS course. Under these circumstances, the Tribunal upheld the claim of the



respondent and quashed the impugned suspension order and directed reinstatement of the respondent together with all consequential benefits by holding as under:

"6. We have heard the learned counsel for the applicant and government advocate for respondents and perused the pleadings and the documents produced along with pleadings. From the pleading it is clear that the applicant challenged the order dated 17.04.2021 issued by the 3rd respondent discharging the applicant from service on the ground that applicant has not produced the documents to show that he has passed the course conducted by the NIOS (Distance education mode) as specified in the circular dated 27.02.2018.

7. The 2nd respondent has issued notification inviting the applications for recruitment to the post of Civil Police Constable for the year 2018-19 as per Annexure A1. The eligibility with regard to educational qualification at para 6 as follows.

"6, ವಿದ್ಯಾರ್ಹತೆ: ಪೊಲೀಸ್ ಕಾನ್ಸ್ಟಬಲ್ ನಾಗರಿಕ (ಪುರುಷ ಮತ್ತು ಮಹಿಳಾ) ಹುದ್ದೆಗಳ ಆಯ್ಕೆಯ ಸಲುವಾಗಿ ಕಂಡಿದೆ ೧೨ನೇ ನಮೂದಿಸಿರುವ ವೃಂದ ಮತ್ತು ನೇಮಕಾತಿ (ತಿದ್ದುಪಡಿ) ನಿಯಮ 2009ರ ಪ್ರಕಾರ ಅಭ್ಯರ್ಥಿಗಳು ಪಿಯುಸಿ ಅಥವಾ ತತ್ಸಮಾನ ವಿದ್ಯಾರ್ಹತೆಯನ್ನು ಅರ್ಜಿ ಸಲ್ಲಿಸಲು ನಿಗದಿಪಡಿಸಿರುವ ಕೊನೆಯ ದಿನಾಂಕ ಅಜಿರರೆ 30.6.2018ಕ್ಕೆ ಹೊಂದಿರಬೇಕು (ಮಾಜಿ ಸೈನಿಕ ಅಭ್ಯರ್ಥಿಗಳು ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ದಿನಾಂಕ 30.6.2018ರೊಳಗೆ ಹೊಂದಿದ್ದರೆ, ಅಂತಹ ಅಭ್ಯರ್ಥಿಗಳು, ಅಭ್ಯರ್ಥಿತನವನ್ನು ಮಾತ್ರ ಪರಿಗಣಿಸಲಾಗುವುದು."



8. The qualification prescribed in the notification as specified under Cadre and Recruitment Rules of 2009 is also pass in PUC or equivalent examination. In view of qualification prescribed for the post is pass in PUC or an equivalent qualification, and the government order No DPAR 147 SeAaNe 2014 dated 27.01.2015 states that candidates with three years Diploma course after SSLC be considered as equivalent to Pre University Certificate, as such the 2nd respondent has considered the applicant initially as eligible. But later has taken a different view. It is a settled law that eligibility for consideration has to be specifically mentioned and made known to the candidates. The decision of Hon'ble Supreme court of India in the case of State of Punjab vs Dr. Vinay Kumar Khullar(2010)13 SCC 481 at para15.

"15. A candidate must be made known about the requirements to be fulfilled by him and cannot be exposed to unknown liabilities or limitations. If the intention was to make the amendment Notification dated 30.7.2007 applicable to the 2008 PG admissions, the Prospectus should have referred to that amendment Circular dated 30.7.2007, while mentioning the Circular dated 13.5.1996. Nothing prevented the Government from stating that the NOC should be subject to the conditions mentioned in the Circular dated 13.5.1996 as amended by the Circular dated 30.7.2007. It





should be noted that the amendment Circular dated 30.7.2007 was issued after the 2007 admissions and was sought to be made applicable for the first time in respect of the 2008 admissions. Therefore, the candidates for 2008 admissions would not know about the said amendment Circular dated 30.7.2007 unless it was mentioned in the Prospectus. The candidates would have bona fide proceeded on the basis that eligibility for the NOC was in terms of the Government Circular dated 13.5.1996. The fact that provisional NOCS had been issued to them also would have led them to believe that prima facie they were eligible to get the NOCS. ..."

9. The Hon'ble Supreme Court in *Bendanga Talukdar vs. Saifudaullah Khan & Others* has after referring that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India observed that "... Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. When a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained and there cannot be any relaxation in the terms and conditions of the advertisement unless such power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it



must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete.

10. From the observations quoted above, it is clear that in the absence of Notification for recruitment not mentioning the conditions of eligibility it is not permissible for the authorities to insist upon the candidates to comply with the same and later disqualify them for not possessing the qualifications which are not notified. It is also clear from the Circular dated 27.02.2018 produced as Annexure A19 that the government by issuing the order dated 27.01.2015 has declared certain qualifications as equivalent to degree and PUC and as such the qualification of three year diploma after SSLC was equivalent to PUC at the time of appointment of the applicant. The said government order is not amended or withdrawn. On the other hand a Circular dated 27.02.2018 is issued clarifying that the candidates who have studied three-year diploma should be successful in a course conducted by NIOS (Distance Education Mode) and should have passed



the said course with one language and one subject. The circular is not an amendment to the government order dated 27.01.2015 issued declaring the equivalence as such. The effect of the Circular can also be only prospective and without mentioning the Circular in the recruitment Notification, the selection authority cannot take a stand retrospectively and deny the applicant his rightful selection. Therefore the action of the respondent in disqualifying and discharging the applicant becomes erroneous.

11. It is relevant to observe that equivalence of qualification as per Circular of 27.2.2018 is not notified in the notification for the year 2018-19, which is clear from para 6 of Notification at Annexure A1. Whereas the notification issued for the subsequent recruitment for the year 2019-20 as at Annexure A20, clearly mentions the equivalence of qualification as per the Circular of 27.2.2018, which is as follows:

“ 1. ಸಿಬಿಇಸ್.ಇ ಮತ್ತು ಐ.ಸಿಎಸ್.ಇ ಮಂಡಳಿಯು ನಡೆಸುವ ಕ್ಲಾಸ್ 12 ಪರೀಕ್ಷೆ,

2. ಇತರೆ ರಾಜ್ಯ ಸರ್ಕಾರದ ಪರೀಕ್ಷಾ ಮಂಡಳಿಗಳಿಂದ ನಡೆಸುವ ಕ್ಲಾಸ್ 12 ಪರೀಕ್ಷೆ

3. ನ್ಯಾಷನಲ್ ಇನ್ಸ್ಟಿಟ್ಯೂಟ್ ಆಫ್ ಒಪನ್ ಸ್ಕೂಲಿಂಗ್ (ಎನ್.ಐ.ಒ ಎನ್) ವತಿಯಿಂದ ನಡೆಸುವ ಉನ್ನತ ಪಾಠ ಶಿಕ್ಷಣ ಕೋರ್ಸ್ /ಹೆಚ್.ಎಸ್.ಸಿ.



4. ಮೂರು ವರ್ಷಗಳ ಡಿಪ್ಲೋಮಾ ಅಥವಾ ಎರಡು ವರ್ಷಗಳ ಎ.ಟಿ.ಐ ಕೋ ಅಥವಾ ಎರಡು ವರ್ಷಗಳ ಅಥವಾ ಎರಡು ವರ್ಷಗಳ ವೃತ್ತಿ ಶಿಕ್ಷಣ ಡೊಪ್ಲಮಾ (ಜೆ.ಟಿ.ಸಿ ಜೆಡಿ ಸಿ ಜೆಎಲ್ ಡಿಸಿ) ಅಭ್ಯರ್ಥಿಗಳು ಎನ್‌ಐಓಎಸ್ ನ ವತಿಯಿಂದ ನಡೆಸುವ ಒಂದು ಭಾಷಾ ಕೋರ್ಸ್ ಮತ್ತು ಒಂದು ಶೈಕ್ಷಣಿಕ ವಿಷಯದಲ್ಲಿ (ದೂರ ಕಲಿಕೆ: ಮಾದರಿಯಲ್ಲಿ ಅಥವಾ ದವಿಪೂರ್ವ ಮಂಡಳಿಯೂ ನಡೆಸುವ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಒಂದು ಭಾಷೆ ಮತ್ತು ಒಂದು ವಿಷಯದಲ್ಲಿ ಪರಿಗಣಿಸಬಹುದು. ಉತ್ತೀರ್ಣರಾದಲ್ಲಿ ಮಾತ್ರ ಪಿಯುಸಿಗೆ ತತ್ಸಮಾನವೆಂದು ಪರಿಗಣಿಸಬಹುದು.

12. From the above extract it is clear that the earlier Notification of 2018-19 was not specific about the equivalence of qualification. The above stipulation as per the Circular dated 27.8.2018 is specifically made applicable to the candidates participating in the subsequent notification but not the earlier Notification of 2018. In view of the decision of the Apex court in the case of state of Punjab vs Dr Viney Kumar Khullar and others s and also Bedanga Talukdar's case, supra, the action of the respondent No 3 in passing the impugned order is illegal and contrary law.

13. Another aspect required to be considered is that even though passing of course conducted by the NIOS is not a requirement since it is not notified during the selection of the applicant, his case needs to be considered with reference to the government order dated 27.01.2015. Based on merit he was selected and appointed to the post of civil police constable and he was sent for training. After



selection, since the applicant was working earlier as warder in the prison department he sought for permission from the authorities to relive him to enable him to report as concerned civil police constable. In view of the said request the competent authority imposed the penalty of Rs 2,30,619/- as the said request for reliving from the post of warder is contrary to terms of his earlier appointment which required that reliving from the post before 5 years was not permissible but for payment of penalty. The applicant deposited the said penalty amount to the concerned authority. The said fact was brought to the notice in the explanation submitted to the show cause notice. Urging all those grounds the applicant sought time to study the course and to furnish the document. Yet, the 3rd respondent without considering any of the grounds in the explanation mechanically passed the impugned order. The said action is against the principles of natural justice in view of the decisions of the Hon'ble Apex Court supra.

14. Therefore, to meet the ends of justice, we are of the view that the order passed by the respondent is illegal and contrary to law and same is violative of Articles 14 and 16 of constitution of India. Hence, we pass following;



## ORDER

- (i) Application is allowed.
- (ii) The order bearing no Sibbandi-I.CR-18.1.2018 dated 17.04.2021 Annexure A17 passed by the 3rd respondent is set aside and the 3rd respondent is directed to reinstate the applicant as civil police constable with in a period of 30 days from the date of receipt of copy of this order with all the consequential benefits."

6. Upon re-appreciation, re-evaluation and reconsideration of the entire material on record, we are of the view that the impugned order passed by the Tribunal does not suffer from any illegality nor infirmity nor can the same be said to be capricious or perverse warranting interference by this Court in the present petition, particularly, when the circular dated 27.02.2018 was never intimated or brought to the notice of any candidate including the respondent either before, during or after the recruitment process and, on the other hand, the petitioner selected/recruited the respondent after due verification of



all his documents and being satisfied with his eligibility on 05.02.2020, almost two years after issuance of the aforesaid circular dated 27.02.2018. Under these circumstances, we do not find any merit in the petition and the petition is accordingly dismissed.

**Sd**  
**JUDGE**

**Sd**  
**JUDGE**

KMS/JTR  
List No.: 1 Sl No.: 25