

Govindaraj Setty (S.) Vs. State of Mysore

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Court : Karnataka

Decided On : Sep-20-1966

Reported in : [1967(15)FLR114]; (1967)IILLJ143Kant

Judge : A.R. Somnath Ayyar and ;Ahmed Ali Khan, JJ.

Acts : Labour law; Cadre and Recruitment Rules; Mysore Civil Services Regulations - Schedule - Article 56; [Constitution of India](#) - Article 14

Appeal No. : Writ Petition No. 882 of 1964

Appellant : Govindaraj Setty (S.)

Respondent : State of Mysore

Judgement :

Somnath Ayyar, J.

1. The petitioner was a first division clerk in the Department of Industries and Commerce in the former State of Mysore, in which, in the year 1941, a separate Department of Labour was constituted. By an order made by the State Government on October 17, 1949, the proposal of the Commissioner of Labour in that separated Labour Department that the petitioner and another should be absorbed as stenographers in that department was sanctioned. The petitioner continued as such stenographer until he was confirmed as such on October 27,

1956, although the confirmation was made retrospective with effect from 17 October 1949.

2. But when the petitioner was working as a stenographer in the Labour Department, which was part of the Department of Industries and Commerce, quite a few persons who were junior to him and who held the post of a first division clerk, were promoted as Assistant Commissioners of Labour. The petitioner then made representations against this supersession but was informed by the Commissioner of Labour in the year 1953, that his request for promotion had been 'turned down' by the Government.

3. But the matter did not rest there, since the petitioner persisted in his representation against his unjust supersession, and, on at least three occasions, three successive Commissioners of Labour gave their complete support to those representations made by him. Sri M. S. Mecci, Sri K. R. Marudeva Gowda and Sri C. S. Seshadri are those three Commissioners of Labour who made a forceful recommendation to the State Government that the petitioner should also be promoted. The first communication was by Sri Mecci, on July 7, 1958, in which he pointed out that according to the gradation list which was prepared in the year 1950, after the transfer of a certain Sri T. A. Sheriff to the Department of Industries and Commerce, the petitioner's rank was the first in the concerned gradation list but that while he was not promoted to the post of an Assistant Commissioner, his juniors were so promoted sometime during the year 1946. Sri Mecci also pointed out that his predecessor had recommended to the Government as early as in January, 1951 that the petitioner who was unjustly refused promotion, should also be given a promotion and that there was a similar recommendation once again in February 1953.

4. In one part of his communication Sri Mecci stated thus :

'Now the official is drawing Rs. 200 in the grade Rs. 75 - 5 - 100 - 8 - 140 - 10 - 250. He has passed the prescribed departmental tests of Accounts (Higher) and labour laws. He is eligible for promotion to administrative posts as per Official Memorandum No. Fl. (B) 5532 - 632 - LFA - 23 - 55 - 6, dated March 20, 1956. There are no higher posts existing in this department either executive or ministerial

above his grade except the gazetted post in the grade Rs. 200-20-400 to which he has been repeatedly representing that all his juniors, as already stated above, were promoted, the latest being Sri A. T. Rangaswami Ayyangar, permanent manager of this office on Rs. 120-6-150 who is now gazetted. Subsequently, Sri K. Subba Rao, an official of the Secretariat working as the Personal Assistant to the then Minister of Law and Labour, was posted as Office Assistant.'

5. He concluded this recommendation thus :

'In view of Sri Setty's case pending undecided since 1948, and in view of the recent order of Government referred to above, taking into consideration his overall seniority and experience and satisfactory work and precedents in this department, I recommended that Sri S. G. Setty may be promoted to the next permanent vacancy in the grade Rs. 200-20-400. I also recommend that while promoting him to the gazetted cadre, his pay may be suitably fixed in the grade to mitigate hardship caused to him on account of supersession of his seniority in the past.'

6. It is not disputed that while the appointment of Sri Rangaswami Ayyangar to which this communication refers was made in the year 1948, that of Sri Subba Rao who was in the Secretariat and who was promoted as an Assistant Commissioner of Labour was made in the year 1951. The reply of the Government to this communication is not before us.

7. The second communication was addressed on July 11, 1960 by Sri Marudeva Gowda who was the then Commissioner of Labour. By then, it transpires from the communication addressed by Sri Gowda, that Government were of the opinion that the relevant cadre and recruitment rules which had come into force on February 3, 1959 should be suitably amended so as to enable the promotion of the petitioner. Sri Gowda made a strong recommendation to the Government that the petitioner should be promoted, especially since, in his opinion, the refusal of such promotion, after his juniors had been promoted, was unjust. Referring to the previous recommendations by his predecessors, he said this :

'This office brought to the notice of Government more than once, this question, and their orders requested. As this case is pending over a decade unsettled I feel

that some appropriate orders of Government have to be passed early. This question pertains to old Mysore and, I am afraid, cannot be taken up for settlement in the light of new rules after the reorganization.'

8. Alluding to the suggested amendment of the Cadre and Recruitment Rules, this is what he said :

'Under the circumstances explained above, I have to repeat once again that this old question has no bearing to the rules issued a decade hence and this question will have to be governed under the rules then existing and in the light of the facts repeatedly brought to the notice of Government in the correspondence throughout. I request that early orders of Government may kindly be obtained in the matter.'

9. In reply to this communication, Government pointed out that the Public Service Commission was of the opinion that the promotion of the petitioner could be considered only after suitable provision was made for that purpose in the Cadre and Recruitment Rules. The communication wound up with the following suggestion :

'You may, therefore, consider whether the official can be given relief in any other manner within the nongazetted cadre.'

10. Finally Sri C. S. Seshadri, another Commissioner of Labour, addressed yet another letter on March 15, 1961, to the Government. Pointing out that the suggested amendment to the Cadre and Recruitment Rules was unnecessary, he said this :

'It has all along been brought to the notice of Government, as could be made out by the previous letters of this office, that the question of promotion of S. Govindaraj Setty is pending since a long-time and (sic) purview of the Cadre and Recruitment Rules. As Government is kindly aware, the Cadre and Recruitment Rules were finalized only recently, But the question of promotion of the official under reference has got to be based on his seniority in the department as per the gradation list published by the Public Service Commission and approved by Government in their letter No. L. S. 1987 LW, dated 18 September 1950 ...

The seniority of S. Govindaraj Setty was superseded by the promotion of Sri S. R. Sundaram and Sri H. M. Mahalinganna to the gazetted cadre in G.O. No. S.R. 983/LW 57-45-6, dated August 28, 1946 (copy enclosed), i.e. on a date when S. G. Setty was still a permanent first division clerk, i.e. prior to January 1, 1947. Thus the fact of his supersession is clear and his claim for restoration of seniority valid.'

11. He wound up thus :

'In the light of the facts stated above, I feel that it is but just and fair that the supersession which has taken place in his case is remedied and his claims for promotion favorably considered. Hence, I request you kindly to obtain very early orders of Government in the matter.'

12. But none of the powerful recommendations made by three successive Commissioners of Labour could secure for the petitioner the promotion, which, in their opinion, the petitioner so richly deserved. Eventually, on March 25, 1963, the petitioner was informed by the Assistant Commissioner of Labour that his case had been 'turned down.' The position was again reiterated in the same way by another Government order made on January 10, 1964.

13. The petitioner asks us to quash these orders made against him and to issue a mandamus for his promotion.

14. The forceful appeal made in this writ petition is to the promotion of the petitioner's juniors as Assistant Commissioners in the years 1946 and 1948 and the introduction of a person belonging to the Secretariat into the post of an Assistant Commissioner of Labour in the year 1951. We were asked to say that the petitioner's case was not considered for promotion at all these relevant points of time notwithstanding the fact that he was senior to all those junior first division clerks who were promoted in the year 1946 and 1948. It is not disputed that those first division clerks who were so promoted were all junior to the petitioner as can be gathered from the gradation list which was prepared in the year 1950 and which had the approval of the Government as stated by the Commissioner of Labour in his communication addressed to the Government on July 11, 1960. It

was also urged that Sri Subba Rao who was appointed as an Assistant Commissioner of Labour in the year 1951 was not senior to the petitioner and that even at that stage, there was no ground for supersession.

15. One thing which is undisputed by the respondents is that there was no reason or ground for thinking that the petitioner was unworthy of promotion to the post of an Assistant Commissioner. It is not disputed that if nothing else could be said about it, the petitioner had all the attributes consisting of a multitude of factors which should normally influence promotion to a higher post.

16. Indeed, the best tribute to the worth and attainments of the petitioner is what was given expression to by the Commissioner of Labour on July 7, 1958, in his letter addressed to the Government on that date, wherein he says :

'taking into consideration his overall seniority and experience and satisfactory works and precedents in this department, I recommend that S. G. Setty may be promoted to the next permanent vacancy in the grade Rs. 200 - 20 - 400.'

17. That this view in regard to the petitioner's eligibility for promotion was shared by two successive Commissioners of Labour is equally clear from the fact that they concurred in the recommendation of their predecessor and urged that the promotion which had been withheld over a long tract of time should now be given to him.

18. The Government Pleader contends that the promotions made in the years 1946 and 1948 have no relevance since they were pre-Constitution promotions, at a time when the petitioner was not entitled to any equality of opportunity in regard to a claim for promotion. It was similarly contended that since Sri Subba Rao who was promoted in the year 1951 came from the Secretariat, there was no basis for a comparison between the petitioner and him.

19. It was further contended that the petitioner deprived himself of his right to promotion by reason of his having opted to become a stenographer in the Labour Department in consequence of which his lien in the post of a first division clerk perished. We are asked to say that since all those other persons except Sri Subba

Rao who were promoted as Assistant Commissioners of Labour were first division clerks, and, the petitioner had ceased to be a first division clerk in consequence of his absorption as a stenographer in the Labour Department, whatever seniority in rank was enjoyed by him in the post of a first division clerk, ceased to have any materiality after absorption.

20. Although it is clear that no question of the transgression of a fundamental right such as that created by Art. 14 can arise in consequence of the pre-Constitution promotions, it cannot be overlooked that even after the commencement of the Constitution the petitioner who was the seniormost first division clerk had a superior claim to promotion as an Assistant Commissioner of Labour, there being nothing against him which made him unworthy of such promotion. Normally, therefore, when Sri Subba Rao was appointed in the year 1951, as Assistant Commissioner of Labour, the petitioner should have been promoted to the exclusion of Sri Subba Rao. In traversing this part of the petitioner's claim, the counter-affidavit, beyond stating that Sri Subba Rao came from the Secretariat, does not assert that judged from any point of view, Sri Subba Rao had a superior claim to be promoted.

21. But it was pressed on us that when the petitioner became a stenographer in the year 1949, he was no longer a first division clerk and since promotions could be made only of a first division clerk, the petitioner could not claim it. But Sri Subba Rao who was not a first division clerk in the Labour Department, was nevertheless promoted. But what is completely destructive of the argument presented in justification of the supersession is Art. 56 of the Mysore Civil Services Regulations which were in force at the relevant point of time. That rule reads :

'56. Unless his lien is suspended under Art. 57 or transferred under Art. 57(h), a Government servant holding substantively a permanent post retains a lien on that post -

(a) while performing the duties of that post;

(b) while on foreign service, or holding a temporary post, or officiating in another post : * * * ' '

22. It is not controverted that the petitioner held substantively a permanent post as a first division clerk when he was absorbed as a stenographer in the Department of Labour. It is also undisputed that he was confirmed as such stenographer only on October 27, 1956. So it was that Sri Seshadri, the then Commissioner of Labour, asked attention of Government of the fact that under Art. 56(b) of the relevant Mysore Services Regulations, the petitioner who was holding the temporary post of a stenographer in the Department of Labour and who was officiating in that post, retained his lien in the substantive post of a first division clerk until October 27, 1956, when he was confirmed. We are of the opinion that Sri Seshadri was right in taking that view. We are not impressed by the argument advanced by the Government Pleader that since the order of confirmation was made retrospective, the lien also perished retrospectively. In our opinion, the petitioner continued to retain his lien until October 27, 1956, and, in consequence, his substantive post continued to be that of a first division clerk until October 27, 1956.

23. If that is the true position, the retrospective order of confirmation did not have any relevance, since, in fact, until October 27, 1956, all advantages flowing from the substantive post and all claims which could be made for promotion by the holder of that post, continued to be available to the petitioner. If, therefore, the only promotion that could have been made was in respect of one who was a first division clerk, the petitioner who held a lien over that post could equally claim to be entitled to such promotion. That, indeed, was the powerful foundation on which three successive Commissioners of Labour sponsored the petitioner's cause.

24. We are not concerned in this case with Art. 14 of the Constitution in the context of the pre-Constitution promotions. What is really of importance is the fact that the petitioner was refused promotion because of the groundless impression that he was no longer a first division clerk after he began to officiate as a stenographer in the same department. We have no doubt in our mind that had not this impression influenced the decision, the petitioner would have got his promotion quite a long time ago, backed as he was by a spate of recommendations by almost each head of the department whose recommendations commenced in the year 1952 and continued till the year 1961.

25. That this was recognized to be the true position by even the Government is clear from the fact that Government made a suggestion to the Commissioner of Labour for a recommendation for a suitable amendment of the relevant Cadre and Recruitment Rules which came into force on February 3, 1959, to enable the petitioner's promotion. That suggestion appears to have emanated from Government for the first time in reply to the Commissioner's letter addressed on July 7, 1958. Even from the subsequent communication of December 9, 1960, which was addressed by Government to the Commissioner, it emerges that the Public Service Commission was consulted by Government on that matter but that the Public Services Commission was of the opinion that there should be an amendment of the rules. So it was that the Government suggested to the Commissioner that some other relief may be made available to the petitioner.

26. But the insistence upon an amendment to the Cadre and Recruitment Rules overlooked, in our opinion, the fact that those rules began to operate only on February 3, 1959, and the claim of the petitioner for promotion was an antecedent claim. Those rules which were made by the Governor on February 3, 1959, make no provision for the promotion of a member of the subordinate staff in the Labour Department. But the Fact that recruitment is regulated in that manner from the year 1959 does not defeat an earlier claim for promotion which was irresistible as it was in the case of the petitioner.

27. That indeed was what was pointed out both by Sri Marudeva Gowda and by Sri C. S. Seshadri who were right in our opinion in thinking that the old claim could not be governed by the new rules. They thought that the postponement of the consideration of the petitioner's claim until the relevant Cadre and Recruitment Rules came into force would not defeat an otherwise just and irrefutable claim for promotion. In our opinion, they were right in thinking so.

28. From what has been said by us so far, it emerges very clearly that what was responsible for the refusal of the petitioner's promotion was the impression that the petitioner was no longer a first division clerk after he became an officiating stenographer. It was that error committed in the comprehension of the true legal position that was responsible for the inordinate postponement of the consideration

of the petitioner's claim in regard to which he had been making persistent representations.

29. That being so, the petitioner, in our opinion, is entitled to a direction that he should be promoted.

30. So this writ petition should succeed. But the Government Pleader urges that there has been such great dilatoriness in the presentation of this writ petition that we should refuse the exercise of our jurisdiction. He pointed out that as long ago as on March 25, 1953, the petitioner's claims were turned down by Government and that there was a similar refusal of promotion in the year 1963, and that this writ petition is presented inordinately late. We do not think so. Notwithstanding the order made by Government in the year 1953, the matter stood reopened in consequence of the recommendations made by the then Commissioner of Labour in the year 1953. As can be seen from the subsequent correspondence, the matter was pending even in the years 1958, 1960 and 1961. No one should feel surprised that the petitioner, who had the unreserved support of every Commissioner of Labour under whom he served, bona fide believed that their recommendations would yield results. It was only when he was informed finally by the Government on January 10, 1964, that he could not be promoted, that it became necessary for him to seek redress in this Court. This, in our opinion, is a case in which it would not be proper for us to refuse to exercise our jurisdiction on the ground suggested.

31. We accordingly set aside the impugned order made by the Government on January 10, 1964, by which the petitioner's request for promotion and other reliefs was refused.

32. The question to be next considered is as to the relief which we should make available to the petitioner. We have no doubt that the petitioner should be promoted as an Assistant Commissioner of Labour and we make a direction accordingly. But, taking all the circumstances of the case into consideration, we are of the opinion that he should be promoted as such Assistant Commissioner of Labour with effect from February 2, 1959, when there were no Cadre and Recruitment Rules regulating promotions. We are informed by Sri Hegde for the petitioner that the petitioner's juniors have become Class I Assistant

Commissioners of Labour in October 1960. If the petitioner had been promoted when he should have been promoted, it is obvious that he would also have become a Class I Assistant Commissioner of Labour when his juniors were promoted to Class I. Our direction, therefore, is that with effect from the date on which the petitioner's juniors, namely, Sri I. Nagappa and Sri T. Sadasivayya, were promoted as Class I Assistant Commissioner of Labour. The petitioner will be entitled to all the other benefits flowing from the promotions which we have directed by this order.

33. Sri Hegde tells us that no determination in regard to seniority in the post of an Assistant Commissioner of Labour has so far been made. We say nothing in regard to that matter since the assignment of ranks and the determination of seniority have to be made in accordance with law on a consideration of all relevant circumstances.

34. We make no direction in regard to costs.

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