

D.P. Hirematt and ors. Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Jan-20-1971

Reported in : AIR1971Kant229; AIR1971Mys229

Judge : G.K. Govinda Bhat and ;K. Jagannatha Shetty, JJ.

Acts : Mysore Munsiffs (Recruitment) Rules, 1958 - Rule 3 and 3(2); Mysore Government Servants (Seniority) Rules, 1957 - Rule 3; [Constitution of India](#) - Article 16(1)

Appeal No. : Writ Petn. No. 3702 of 1970

Appellant : D.P. Hirematt and ors.

Respondent : State of Mysore and ors.

Advocate for Def. : Byra Reddy, Govt. Adv., ;H.B. Datar, ;Murlidhar Rao, ;S.D. Chatre, ;Tukaram S. Pai and ;K.N. Haridasan Nambiar, Advs.

Advocate for Pet/Ap. : V.C. Brahmarayappa, Adv.

Disposition : Petition Dismissed

Judgement :

K. Jagannatha Shetty, J.

1. This Writ Petition raises the question of seniority between the petitioners and respondents 8 to 12. The petitioners are direct recruits whereas respondents 3 to 12 are promotees to the cadre of Munsiffs in the judicial Service of the State.

2. Recruitment to the cadre of Munsiffs is regulated by the Rules called 'Mysore Munsiffs' (Recruitment) Rules, 1958' (hereinafter called the 'Recruitment Rules'), made by the Governor of Mysore in exercise of the powers conferred by Article 234 and the proviso to Article 309 of the Constitution. Rule 3 provides two methods of recruitment to the cadre of the Munsiffs (a) by a competitive examination, and (b) by promotion of persons in service in the High Court and courts subordinate to the High Court. For these two methods of appointments vacancies are classified under Rule 8 (2) of the Recruitment Rules, which states that out of every six vacancies to be filled, five shall be filled by candidates selected by a competitive examination and the sixth by a candidate selected by promotion.

For the purpose of direct recruitment, competitive examinations shall be conducted by the Public Service Commission and the names of candidates successful in the examination shall be published in the Mysore Gazette in order of merit and the appointment shall also be made in the order in which the names appear in the list. This list shall be in operation for a period of one year from the date of its publication. The Government may extend the period of operation until the next list of successful candidates becomes available. All appointments other than appointments by promotion within that period, shall be made from candidates included in that list,

3. Appointments by promotion to the cadre of Munsiffs shall be made in the manner prescribed under Rule 9 of the Recruitment Rules. The candidates shall be selected from amongst those possessing the prescribed qualifications on grounds of merit and suitability by the Public Service Commission and a list shall be prepared in the order of seniority in service of the candidates. The list so prepared shall be forwarded to Government who shall 'make the appointments after consulting the High Court.

4. In accordance with the above rules of recruitment, the Public Service Commission selected fifty-two candidates who were successful in the competitive examination held by it for the purpose of appointment as Munsiffs. The list of successful candidates prepared in the order of merit, was published under a Notification dated 6-7-1962 in the Mysore Gazette dated July 12, 1962. The petitioners were amongst those fifty-two persons. Likewise, it is said that the Public Service Commission prepared a list of suitable candidates for promotion as Munsiffs and sent it to the State Government for appointment. Respondents 3 to 12 were amongst those selected officials. These respondents along with the other fifty-two were together appointed as Munsiffs by the Governor in exercise of the powers conferred under Article 234 of the Constitution.

The appointments were made by a Notification dated 22nd August, 1962 which is marked as Exhibit B in the Writ Petition. It is seen therefrom that respondents 3 to 12 are placed at serial numbers, 6, 12, 18, 24, 30, 36, 42, 48, 54 and 60. That is, each one of them has been placed just below a unit of five direct recruits without disturbing their respective rankings in the list published by the Public Service Commission. That list seems to have been accepted as their seniority list both by the State Government and High Court and is being followed for the purpose of promotion to the higher grade. The petitioners feeling aggrieved have preferred the above writ petition questioning the seniority of respondents 3 to 12.

5. On behalf of the petitioners it was argued that the order in which the petitioners and the respondents were appointed, cannot be regarded their seniority list and that must be prepared due regard being had to the provisions of the Mysore Government Servants' (Seniority) Rules, 1957 (hereinafter called the Seniority Rules'). In support of this submission, reliance was placed on Rule 3 of the Seniority Rules, which reads as follows:--

'3. Where officers are recruited to any service or a class of post by promotion and by direct recruitment, the officers directly recruited will take precedence over the promoted officers in cases where the date of appointment is the same.' In order to apply the principles of this rule, the officers should be recruited to any service or class of posts by promotion and by direct recruitment. When such appointments

are made on the same date, the officers directly recruited will take precedence over the promoted officers. The petitioners' case is that they being the direct recruits to the cadre of the Munsiffs and respondents 3 to 12 being promotees, to the same class of posts, and the appointments having been made on the same date by a single notification, they should be ranked above respondents 3 to 12. Their case in effect is that in the seniority list of the Munsiffs, respondents 3 to 12 must take their places immediately below the fifty-two persons who are directly recruited as Munsiffs.

6. The State of Mysore, in their counter-affidavit, have contested the claim of the petitioners and other respondents also support the stand taken by the State. Shortly stated, their case is that while making the appointments the Government had before them the two lists, one consisting of the candidates selected by competitive examination and another of those selected for promotion. Both lists were prepared by the Public Service Commission. Keeping in view Rule 3 (2) of the Recruitment Rules, the Government classified the posts of Munsiffs, in the ratio of five to one, for direct recruitment and promotion and appointed candidates drawn from the two lists in the same ratio in every unit of six vacancies.

Thus, out of the total of sixty-two vacancies in the cadre of Munsiffs in that year, ten were filled up by promotion and fifty-two by direct recruitment. For maintaining the ratio of five to one, they had to interpose the promotees at every sixth post of Munsiffs in the order of appointment. The list thus prepared and published has been accepted as their seniority list. It is also stated that the Recruitment Rules are in the nature of special rules which must prevail over the Seniority Rules which are in the nature of general rules.

7. In order to appreciate the rival contentions of the parties, it is necessary to state the intendment of the rule-making authority while fixing a quota for direct recruits and promotees in the cadre of Munsiffs. To recall, Clause (2) of Rule 3 of the Recruitment Rules provides that out of every six vacancies five shall be filled by candidates selected in a competitive examination and the sixth by a candidate selected for promotion. In other words, every sixth post in the cadre of the Munsiffs, has to be allotted to a candidate to be promoted and not any other post.

This is what is called a rotational system, for which the appointing authority must always maintain a roster classifying the vacancies for the direct recruits and promotees as and when they arise, In a given year, the first five vacancies must be allotted for the direct recruits and the sixth one for the promotee; and again, the immediate next five for the direct recruits and the following sixth for the promotee.

This system shall not be deviated from while making regular appointments.

In a given batch of six vacancies, in the cadre of Munsiffs, five direct recruits must always find their places above the one promotee. In other words, this quota confers a right on the selected candidates to get appointed in that order against those classified vacancies and a further right for the appointed persons to continue to retain their respective ranks. If that right is recognised, we fail to see how any seniority rule can arbitrarily take away that right. In our opinion, if the seniority rule is not in conformity with the rotational system, it may offend the equality of opportunity guaranteed under Article 16(1) of the Constitution. In this connection, reference may be made to the following decisions of the Supreme Court.

8. In *S. G. Jaisinghani v. Union of India*, : [1967]65ITR34(SC) the Supreme Court had to consider the effect of the quota rule and seniority rule regulating the recruitment to the cadre of Income-tax Service Class I, Grade II. The Government of India, in their letter dated October, 18, 1951, fixed for a period of five years in the first instance, 66.2/3 per cent, vacancies in Class I, Grade II to be filled up by direct recruitment and the remaining 33.1/3 per cent, vacancies to be filled up on the basis of promotion and any surplus vacancies which cannot be filled for want of suitable candidates, to be added to the quota of vacancies, to be filled by direct recruitment. The relevant rule governing the relative seniority of the direct recruits and promotees, was as follows:--

Rule 1 (f) (iii), as revised in 1952 read:

'Officers promoted in accordance with the recommendation of the Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the results of the examinations held by the Union Public Service Commission during the calendar

year in which the Departmental Promotion Committee met and the three previous years.' Ramaswami, J., speaking for the Court observed at p. 1434, as follows:-- 'Having fixed the quota in that letter under Rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation (see para 24 of the counter-affidavit of respondents 1 to 3 in Writ Petition No. 5 of 1966). We are of opinion that having fixed the quota in exercise of their power under Rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e., Rule 1 (f) (in) and (iv), is not unreasonable and does not offend Article 16 of the Constitution. We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents 1 to 3 to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota rule prescribed in the letter of the Government of India No. F-24 (2) Admn. I.T./51 dated October 18, 1951.'

9. Similar is the view taken in *Mervyn Continho v. Collector of Customs, Bombay*, : (1967)ILLJ749SC . That was a case relating to the seniority list of direct recruits and promotees to the cadre of Appraisers in Customs Department. The system that prevails for recruitment to the post of Appraisers is that 50 per cent, is reserved for direct recruits while the remaining 50 per cent, is filled up by promotion from subordinates in the Customs Department. The seniority was determined in the cadre by the system of rotation, i.e., the list was arranged in such a way that there was one person from the direct recruits and one from the promotees alternatively. That seniority list was prepared on the basis of a circular of 1959 in which the Government of India said that the relative seniority of direct

recruits and promotees shall be determined according to the rotation of vacancies between the two methods of recruitment as per the quota of reservation in the recruitment rules.

It was further explained that a roster should be maintained based on the reservation for the direct recruitment and promotion, in the recruitment rules. Where, for example, the reservation for such method is fifty per cent, the roster will run as follows:-- (1) Promotion, (2) direct recruitment, (3) Promotion, (4) direct recruit, and so on. Appointments should be made in accordance with this roster and seniority determined accordingly. The seniority list thus prepared was challenged in a petition, under Article 32 of the Constitution on the ground that this system had resulted in discriminatory treatment with the consequence that promotees of much longer service in the cadre of Appraisers were put in the seniority list below direct recruits with much shorter service. While repelling the contention, Wanchoo, J., (as he then was) speaking for the constitution of Bench, observed thus:--

'Where, therefore, recruitment to a cadre is from two sources, namely direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in Government service.'

10. But Sri Bhrahmarayappa, learned counsel for petitioners, contended that the facts of the above two decisions are different from the instant case. According to him, Recruitment Rules do not lay down any principle of determining the relative seniority of the direct recruits and the promotees. The 'Seniority Rules' do not say that the relative seniority of the Munsiffs appointed on the same day, should be on the basis of the quota reserved for direct recruits and promotees. In the absence of such a provision, Rule 3 of the Seniority Rules must be given effect to and all the direct recruits must take precedence over the promotees.

We are unable to accede to this contention. We have earlier pointed out that as per the quota reserved for the two methods of recruitment, under the Recruitment Rules, the appointing authority must follow the rotational system by maintaining a roster for the purpose and that confers a right on the selected candidates to get appointed to those classified vacancies. The rule-making authority has made a valid classification of direct recruits and promotees and a quota has been reserved for these two methods of recruitment. When once they are appointed as per the said quota, there is no further justification for disturbing them from their positions to which they are entitled.

If Rule 3 of the Seniority Rules is literally given effect to, the whole basis of the rotational system will be nullified and, for no valid reason, all the ten promotees will be kicked down to the bottom of the seniority list. They will be arbitrarily denied of their statutory right to retain their positions and probably get confirmed in those classified vacancies as per the quota reserved under the Recruitment Rules. In our opinion, the validity of the Rule 3 of the Seniority Rules, so far as it is applicable to the petitioners and the respondents, is open to a serious doubt.

In fact, Mr. Byra Reddy, learned High Court Special Government Pleader has frankly submitted that the principles of the said rule, if made applicable to arrange the relative seniority of the petitioners and the respondents, would be violative of Article 10(1) of the Constitution. In the premises, we are not justified in commanding the State of Mysore to disturb the impugned seniority list of petitioners and the respondents which has been prepared on the basis of the quota prescribed under the Recruitment Rules.

11. Before we part with this case, we may observe that the Seniority Rules must be so amended so as to link the same with the quota prescribed under the Rules of Recruitment and we hope the State would take early steps in this regard.

12. In the result, the writ petition fails and is dismissed. Under the circumstances, the costs shall be borne as incurred.