

R.R. Kulkarni and ors. Vs. the State of Mysore and ors.

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Court : Karnataka

Decided On : Aug-24-1966

Reported in : AIR1967Kant225; AIR1967Mys225

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

Acts : [States Reorganisation Act, 1956](#) - Sections 115, 115(2) and 116;
[Constitution of India](#) - Articles 14 and 311

Appeal No. : Writ Petn. Nos. 347 and 348 of 1964 and 2538 of 1965

Appellant : R.R. Kulkarni and ors.

Respondent : The State of Mysore and ors.

Advocate for Def. : M. Rangaswamy, Adv. for High Court Spl. Govt. Pleader and ;B. Venkataswamy, Adv.

Advocate for Pet/Ap. : M. Ramajois, Adv.;B.S. Keshava Iyengar, Central Govt. Pleader

Judgement :

ORDER

1. The petitioners in these three writ petitions were holding the substantive post of a police constable in the State of Bombay. But they were officiating until October 26, 1956 as wireless operators in that State. R.R. Kulkarni who is the petitioner in

W.P. No. 347 of 1964 was appointed to so officiate on September 4, 1956; V.S. Bhandari, the petitioner in W. P. 348 of 1964, was so appointed on April 18, 1966 and joined duty on July 16, 1956; and V.L Mirajkar, the petitioner in WP. 2538 of 1965 was so appointed on July 12, 1956. But by an order made by the Superintendent of Police (Wireless) of the Bombay State in Poona, these three persons were reverted as police Constables.

2. On October 31, 1956, under Section 115(2) of the States Reorganization Act the Central Government allotted all those persona who. immediately before they were allotted, were civil servants in the State of Bombay in the four districts which became part of the new State of Mysore, to the service of the new State of Mysore. In consequence of the order of reversion made on October 26, 1956 by the Superintendent of Police (Wireless) R.R. Kulkarni and V.S. Bhandari were in the District of Dharwar and Y.L. Mirajkar was in the District of Bijapur. Since these two Districts became part of the new State of Mysore, they became on November 1, 1956, in consequence of the allotment made by the Central Government Civil servants of the new State of Mysore. The three petitioners who were dissatisfied with their re version to the post of a police constable made representations to the State of Mysore against it. Their complaint was turned down by that State on March 30 1960 Bv a further communication addressed by the Government to the Petitioners on September 9, 1960. they were advised to represent their case to the Stale Advisory Committee 'for redressed' The petitioners made that representation to the Stale Advisory Committee through the State Government and that Committee forwarded its recommendations in the Government of India who, by their mere order made on February 7, 1963, declined to do anything in the matter. Mirajkar then made an application for a copy of the order of the Government of India, but he was informed on June 4, 1963 that the document was a confidential document and so its copy could not be given.

3. On November 6, 1963 Mirajkar presented Writ Petition No. 2288 of 1963 to this court without, however, impleading the Stale of Maharashtra as a party. The other two petitioners attempted to gel themselves impleaded as parties to that writ petition but on November 18, 1965 that writ petition was withdrawn, and, it is obvious that it was so withdrawn by reason of the Maharashtra State riot having

been made a party to it. Meanwhile R.R Kulkarni and V.S. Bhandari had presented their own writ petitions, namely. Writ Petitions 347 and 348 of 1964. Although they did not implead the Maharashtra State when the writ petitions were presented, they did so there after Mirajkar presented Writ Petition No. 2538 of 1965 with the Maharashtra State as one of the respondents after he withdrew his original writ petition. W.Ps. 347 and 348 of 1964 were presented on February 24, 1964 and W.P. 2538 of 1965 was presented on December 15, 1965. In all these matters the principal prayer is that we should quash the order of the Superintendent of Police (Wireless) in the State of Bombay which he made on October 25, 1956. We are asked to say that the reversion was discriminatory and unsupportable

4. It was asserted on behalf of the petitioners that they were reverted as police constables although when they were so reverted there was no justification for such reversion. It was submitted that on the date of the reversion there were quite a large number of vacant posts of wireless operators in the State of Bombay, and that instead of the petitioners being continued in those vacant posts, they were reverted to their substantive post with the intention of making the vacant posts available to those who remained in Bombay in preference to their being made available to the petitioners it was also pointed out to us that persons who were junior to the petitioners were either subsequently appointed as wireless operators or continued in the posts of wireless operators in which they were officiating. The complaint made on behalf of the petitioners by Mr Jois was that the State of Bombay, as it was then called, made up their mind to send all those persons who belonged to the four Districts which became part of the new State of Mysore for service to that new State, and the three petitioners who could have continued as wireless operators in the State of Bombay, but who could not be appointed to a corresponding post in the new State of Mysore, were reverted to the post of a police constable for the accomplishment of the desire of the State of Bombay to send away those three persons to the new State of Mysore. It was urged that it was this desire which animated the impugned reversion.

5. It is seen from the 'result sheet' prepared in the State of Bombay by the Police Wireless Training Centre in the year 1955 that 32 persons were successful in an examination called the Final Examination, 1955. It is not disputed that this

examination was conducted for appointment to the post of a wireless operator. Amongst the successful candidates are to be found the three petitioners before us. V.L. Mirajkar secured the 16th place. R.R. Kulkarni the 20th place and V.S. Bhandari the 30th place in the 'result sheet' So it was that they were able to get appointed as officiating wireless operators, in the year 1955 in the case of two petitioners, and in the year 1956 in the case of the other

6. It is seen from a proposal which emanated from the Inspector General of Police of Bombay on October 8, 1956 that Mirajkar was directed to be allotted to the new State of Mysore as a wireless operator That communication specifies the names of 19 persons who were proposed to be allotted as wireless operators to the new State of Mysore and Mirajkar's name is the 18th in that enumeration. It is thereafter that the impugned order of reversion was made by the concerned Superintendent of Police on October 25, 1956 and the relevant part of that order reads:

'In view of the revised allotment of wireless personnel of Mysore State, the following transfers and reversions of wireless operators are ordered with immediate effect.'

It is by this order of reversion that the three petitioners stood revealed R.R. Kulkarni and V.S. Bhandari were reverted to their substantive post of police constable in the District of Dharwar and Y.L. Mirajkar to a corresponding post in the District of Bijapur.

7. Although this order of reversion does not state the reason for the reversion, an elucidation is to be found about it in the counter-affidavit produced on behalf of the State of Maharashtra of which the deponent is a Deputy Superintendent of Police (Wireless). Paragraph 8 of that counter-affidavit sets out the ground of reversion, and the relevant part of it reads:

'8 (a). 13 posts of wireless operators were to be allotted to the new State of Mysore. In the erstwhile State of Bombay as it then existed, there were, in addition to the 4 permanent wireless operators. 18 officiating and temporary wireless operators belonging to the four Kannada Districts of the former Bombay State, who held a lien on permanent posts in the cadre of constabulary of the Districts of

Belgaum, Dharwar. Karwar and Bijapur, which Districts were transferred to the new State of Mysore under the provisions of the said Act. The names of the said officiating and temporary wireless operators as arranged according to their seniority in the order of wireless operators, are as under:

(b) Out of the 13 posts of wireless operators to be allotted to the new Mysore State. 4 permanent wireless operators who were already working in the said four districts were to be allotted to the new Mysore State and the remaining 9 were to be allotted out of the 18 seniormost officiating and temporary wireless operators

* * *

(d) The remaining 9 wireless operators namely persons at serial Nos 10 to 18 mentioned above (including the petitioner who is at serial number 11) could neither be absorbed or confirmed in the permanent posts of wireless operators or retained in the Bombay State permanently for want of vacancies nor absorbed in the posts of wireless operators transferred to the Mysore State.'

What is at once discernible from these parts of the counter-affidavit is that the Government of the Maharashtra State appears to have thought that every wireless operator belonging to the four 'Kannad Districts' in the State of Bombay should be sent out of the State of Bombay into the new State of Mysore, whether or not there was in the new State of Mysore a corresponding post of a wireless operator which could be occupied by those who were so allotted. So it was decided by that Government that 22 persons, amongst whom four persons were permanent wireless operators and 18 were either officiating or temporary wireless operators, who belonged to the four 'Kannad Districts' should be sent out of Bombay so that they may become employees of the new State of Mysore. But among those 18 persons who were not permanent wireless operators, were the three petitioners before us. In the enumeration in the counter-affidavit to be found in paragraph 8(a), Mtrajkar is the 11th. R.R. Kulkarni is the 14th and V.S. Bhandari is the 17th.

8. But the Government of the State of Bombay, as explained in the counter-affidavit, discovered that there were only 13 posts of wireless operators in the new State of Mysore which were available for the 22 wireless operators allotted. So

what was done was to reduce the nine persons who could not be provided with the post of a wireless operator in the new State of Mysore to the post of a police constable and to allot them to the new State of Mysore as police constables

9. The complaint made by Mr. Jois is that when those nine persons were so reverted there were as many vacancies in the post of a wireless operator in State of Bombay and that the reversion of the nine officiating wireless operators was made with the object of making available the vacancies only to those persons who remained in the State of Bombay which would become possible only if the nine reverted persons were sent out of that State

10. The submission that there- were vacancies in the State of Bombay in which the petitioners could have continued as wireless operators is controverted in the counter-affidavit in which it is stated in Clause (d) of paragraph 8 that the nine persons who were reverted could not be absorbed or confirmed in permanent posts of wireless operators or retained in the Bombay State 'for want of vacancies'

11. On behalf of the State of Maharashtra Mr. Venkataswamy the Special Government Pleader, urged that there was no vacant post of a wireless operator in the State of Bombay in which the nine reverted persona could have continued, and that, that was the reason why the impugned order of reversion was made. He repudiated the truth of the allegation of the petitioners that there were such vacancies.

12. So, the argument in this court surrounded the question whether there were vacant posts of wireless operators which could have been occupied by the persons reverted, when the impugned order of reversion was made. Mr. Jois on behalf of the petitioners has asked attention to at least four documents which, according to him, establish the truth of the assertion that such vacancies did exist. The first of those is a communication addressed by the concerned Superintendent of Police to the Inspector General of Police in the State of Bombay in the context of an application presented by a reverted wireless operator M.S. Naik. That communication reads:

'2 The applicant is a temporary wireless operator serving at Bijapur wireless station and has now been reverted to his substantive post of constable to his parent district, i.e., Karwar, due to Reorganisation of States.

3. I have no objection to retain him in Bombay State provided his lien as constable is transferred from Karwar to any district of the Bombay State He can be absorbed against the existing vacancies of wireless operators.'

* * *

13. Not unnaturally, the argument constructed on the basis of this communication was that there were indeed existing vacancies of wireless operators in the State of Bombay, one of which was offered by the Superintendent of Police to M.S. Naik in answer to his representation that he had been unjustly reverted. We were asked to say that there were other such vacancies in which the petitioners could have been continued in the State of Bombay.

14. The existence of such vacancies was next sought to be established by the fact that persons who secured lower places in the examination held in the year 1955 and those who were successful in an examination held thereafter were appointed as wireless operators after the petitioners were appointed and were continued in that post after petitioners were reverted.

16. It is seen from the order made by the concerned Superintendent of Police of the State of Bombay on June 30, 1958 that nine persons were appointed to officiate as wireless operators Two amongst them, namely, S.B. Kulkarni and G.S. Pansare, were persons who were successful in the examination held in the year 1956. S.B Kulkarni had secured the 34th position in that examination and was declared having failed in the examination, although his failure was subsequently condoned. G.S. Pansare had secured the 35th position, and it was stated in the 'result sheet' that he would be declared as having passed if he passed in a practical examination.

16. What is obvious from the 'result sheet' is that both S.B. Kulkarni and G.S. Pansare secured lower positions in the examination of 1955, since the positions

secured by the petitioners were respectively the 20th, 30th and the 16th. The other seven persons appointed on June 30, 1956 were obviously those who had passed an examination subsequent to 1955, and so. were clearly junior to the three petitioners.

17. Then again, we find from the order made on July 16, 1956 by the concerned Superintendent of Police that 24 persons went appointed to officiate as wireless operators, and. It is not disputed that all those 24 persons had passed the subsequent examination and so were junior to the petitioners That all these persons and many others were continued in the posts of wireless operators, is clear from yet another order made by the concerned Superintendent of Police on April 14, 1959 By that order, 167 persons were so continued and among them, we are informed, that 55 persons were junior to Mirajkar, and that quite a few were junior to the other two petitioners. That, that is so, is clear from the fact that eight persons were junior to Mirajkar, seven were junior to R.R. Kulkarni and two were junior to V.S. Bhandari. It is seen from the enumeration in the 'result sheet' that those eight persons secured respectively the 17th, 21st. 23rd. 26th. 28th, 34th and 85th ranks, and they are J.P. Panchal, R.B. Rainaik. M.J. Jadhav, M.K. Joshi, M.Y. Thombare. K.T. Nemade. S.B. Kulkarni and G.S. Pansare

18. From what we have said so far what emerges very clearly is that although the three petitioners were reverted on October 25, 1956, those who were junior to them and who had been subsequently appointed, continued to hold the post of a wireless operator in the new State of Bombay, both before and after the reorganization of States Indeed, it would be seen from what was done on April 14, 1959, that, amongst those who were so continued, at least 55 were Junior to Mirajkar and quite a large number junior to the other two petitioners This, is, what completely disestablishes the theory suggested in the counter-affidavit produced on behalf of the Maharashtra State that the three petitioners could not be continued in the State of Bombay by reason of there being no vacant posts of wireless operators in which they could have been so continued. So the position was that, when the petitioners were reverted there were vacant posts of wireless operators in which all the three of them could have been continued in the State of Bombay if there were only 13 posts of wireless operators which were available in

the new State of Mysore for those who were in the four 'Kannad Districts' which became part of the new State of Mysore, what could have been done by the State of Bombay was to allot only 18 wireless operators to the new State of Mysore among those in the 'Kannad Districts' and to retain the remaining nine in their own State.

19. It was surely not the scheme of the States Reorganization Act that every employee belonging to the 'Kannad Districts' should necessarily be sent out of the State of Bombay, whether or not there was a corresponding post in the new State of Mysore which could be held by him under Section 116 of the States Reorganization Act. The purpose of the Act was not to get rid of those persons belonging to the 'Kannad Districts' even though they were not able to secure a corresponding post in the new State of Mysore. So it was that the allotment under Section 115(2) was entrusted to the Central Government from which the employees in the existing State who were allotted to a new State could secure fair and even-handed treatment.

20. But what happened in the case before us was this. The nine persons who were reverted as police constables could have well continued in the State of Bombay as wireless operators. But they belonged to the 'Kannad Districts' which had become part of the new State of Mysore. The belief entertained by the Bombay State was that they should be sent out of the State of Bombay into the new State of Mysore, and, such transportation into the new State of Mysore would have been entirely above reproach if those nine persons had not been reverted to the post of a police constable. The fact that in the case of those nine persons there were no corresponding places of wireless operators available in the new State of Mysore, was surely no ground for their reversion as police constables, so long as there were in the existing State of Bombay vacant posts of wireless operators in which they could have been continued.

21. The recognition of that being the true position is what is implicit in the counter affidavit produced on behalf of the Government of the State of Maharashtra, in which the explanation for the reversion is that, had the petitioners continued in the State of Bombay, they could not have continued as wireless operators, since there

were no vacant posts of wireless operators in which they could have been continued

22. The groundlessness of this assumption has already been sufficiently demonstrated. The communication by the Superintendent of Police to the Inspector General of Police in the State of Bombay of October 31, 1956 makes it more than abundantly clear that such vacancies did exist in which the petitioners could have been continued. The appointments of Juniors as wireless operators on June 30, 1956 and the continuance in the posts of wireless operators of quite a large number of persons who were junior to the petitioners by the order made on April 14, 1959 make it irrefutable that there were such vacancies which could have been made available to the petitioners. Further the order of reversion which was made by the concerned Superintendent of Police on October 25, 1956, did not state that the reversion was attributable to the unavailability of vacant posts.

23. The position which emerges from the discussion made so far is that the petitioners who were officiating wireless operators in the State of Bombay could have continued in that post although their reversion became possible for a justifiable reason if they had remained in the State of Bombay. They had a right to continue in those posts to the exclusion of those who were junior to them, unless it was demonstrated that they had become unworthy of the higher post in which they were officiating. No suggestion was made to us either in the counter-affidavit or otherwise, that there was any such unworthiness on the part of the petitioners. On the contrary, the only ground on which the reversion was defended was the unavailability of vacant posts, and, that ground has been demonstrated to be nonexistent. The question therefore is whether, in that situation, it was permissible for the concerned Superintendent of Police in the State of Bombay to make the impugned order of reversion. It seems to us that it was not.

24. An allotment under Section 115 of the States Reorganization Act is not possible in derogation of the right of a civil servant to hold in the State to which he is allotted, a post corresponding to that which he holds in the parent State. If he could continue in the parent State in that higher post, and if there be no available corresponding post in the other, it would be plain misuse of power to demote him

to a smaller post to accomplish his transportation to a corresponding smaller post available in that other State. Such demotion invites the criticism that It is an artifice for elimination.

25. We are not, in the cases before us, concerned with the question whether the allotment made by the Central Government is for any reason unsupportable That question does not arise by reason of the fact that the allotment which was made on October 31, 1956 by the Central Government, did not make any individual allotment, but made a comprehensive allotment of all persons who were serving in the State of Bombay in the territories which became part of the new State of Mysore, for service in that State. It is clear that the Central Government had then no knowledge that six days earlier, the State of Bombay had reverted the petitioners to overcome the impediment to their induction into smaller posts in the new State of Mysore, retaining their juniors in the higher post in their own State. That State inverted the rule and cut down the petitioners to the size of the available post in the neighbouring State If that reversion was bad and incompetent, the petitioners carried with them the right to occupy in the new State of Mysore a post corresponding to that from which there was an indefensible reversion A successful challenge to the reversion would have ensured their continuance in the higher post in the State of Bombay had they remained there, and their migration on allotment to the State of Mysore cannot produce a different result

26. The impugned reversion in the cases before us invites the additional reproach that it is manifestly discriminatory. What is obvious from the subsequent events to which we have alluded in the course of this judgment, is, that many persons who secured lower positions in the examination of 1955, and, who were subsequently appointed, and quite a large number of persons who passed the examination subsequently, or were subsequently appointed, continued to hold the post of a wireless operator, while to the great misfortune of the three petitioners, what was responsible for their reversion was their proposed allotment to the new State of Mysore, which, could not find for them, the corresponding post of a wireless operator. These events lend great support to the theory constructed by Mr Jois that the intendment of the reversion was to make available the existing vacancies

to those who remained in the State of Bombay after the allotment, although they were junior to the petitioners, to the exclusion of the petitioners who had a preferential right to occupy them.

27. It is seen from the representations made by the petitioners that at every relevant point of time they complained against an allotment which produced results so prejudicial to them

28. In our opinion the impugned reversion cannot be sustained and so. we quash it. We are not impressed by the argument advanced by Mr Rangaswamy, the learned Special Government Pleader, that there was any dilatoriness on the part of the petitioners in approaching this Court. As we have already observed, the petitioners made a representation to the Government of the new State of Mysore immediately after their reversion was made. The petitioners having been advised by the State Government to make an appeal to the Advisory Committee, they made it. And, the Central Government to whom the Advisory Board sent up its recommendations, declined to do anything in the matter in the year 1963, on the ground that the reversion was antecedent to the allotment. One of the petitioners thereafter made an unsuccessful attempt to secure a copy of the decision of the Government of India, and, these writ petitions were presented without any undue delay or laches thereafter We cannot therefore decline to exercise our jurisdiction on the ground of delay.

29. In consequence of our order quashing the reversion of the petitioners to the substantive post of a police constable, the petitioners must be regarded to have held the post of an officiating wireless operator at all relevant points of time, both in the State of Bombay and in the new State of Mysore which, under Section 116 of the States Reorganization Act, was as rightly contended by Mr Keshava Iyengar, the Central Government Pleader under a duty to provide the petitioners with a post corresponding in the posts which the petitioners held in the State of Bombay prior to their allotment That. is the post which they should be deemed to be occupying even to-day and in consequence they would be entitled to all the benefits flowing from that position.

30. We do not accede to the view pressed on us by Mr. Rangaswamy, the learned Special Government Pleader, that the Central Government should now make a new allotment of the petitioners in the role of officiating wireless operators, since, our judgment in these matters and the provisions of Section 116 of the States Reorganization Act make such fresh allotment superfluous and unnecessary

31. It was at one stage suggested to us by Mr. Venkataswaray the learned Government Pleader, that the petitioners should have asked for their reinstatement in a particular post and the removal of another who had already occupied that post He submitted that 'since those others who so occupied the post are not before us, we cannot disturb the order of reversion We do not agree. If the reversion of the petitioners was without justification and impermissible, all that we need do is to quash the reversion, and in consequence of the order of reversion disappearing in that way appropriate consequences must necessarily ensue.

32. In the circumstances we make no direction in regard to costs

33. Order accordingly.

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