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Court : Karnataka

Decided On : Oct-05-2001

Reported in : ILR2002KAR1082; 2002(1)KarLJ12

Judge : M.F. Saldanha and ;D.V. Shylendra Kumar, JJ.

Acts : [Karnataka Service Examinations Act, 1976](#) - Sections 4; Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 - Rule 4

Appeal No. : Writ Petition Nos. 14756 to 14779 of 1998, 24534 to 24538 of 1999 and 12264 of 2001

Appellant : Krishna and ors.

Respondent : Superintendent of Police, Gulbarga District and ors.

Advocate for Def. : Gopalakrishnan Kurandwad, ;D. Somashekara and ;Ranganath Jois, Advs. and ;M. Madhusudan, Advocate for Caveator

Advocate for Pet/Ap. : G. Nagarajulu Naidu, Additional Government Adv., ;Praveenkumar Raikote, ;M.R. Shailendra and ;P.V. Cheluva Murthy, Advs.

Disposition : Petition dismissed

Judgement :

1. The common point of law that is involved in this group of writ petitions centers around the question that has really been set at rest by the Apex Court in the

decision in State of Karnataka and Ors. V. B.V. Thimmappa and Ors. As far as the present group of petitions are concerned, we are simplifying the issue to the extent of pointing out that the question arose as to whether police constables who have been accorded concession of promotions on their having passed the qualifying examination in relation to their proficiency in Kannada language who do not pass the requisite examination within the prescribed period of time are liable to be reverted. The State Government had proceeded on the assumption that since the Government had made a concession and allowed certain categories of employees to avail of their promotions provided they pass the qualifying examination within the prescribed period of time, and who defaulted were liable to be penalized or in other words, that they were liable to be relegated to the original position by virtue of the fact that they had not acquired the requisite qualification and the Apex Court had occasion to consider the point of law and has laid down in no uncertain terms that the relevant rules do not prescribe for reversion and that consequently, the only disadvantage which the employee may incur is in relation to the prospective benefits but that it would be impermissible to revert the employee despite the fact that the qualification has not been acquired. The law on the point has virtually been set at rest and it is really the ratio of this judgment which applies to the present set of petitions.

2. We need to record here that the impugned orders do undoubtedly state that the promotion was conditional, a time period was set and that the order before us prescribes that it would be self-operative insofar as the employee was put on notice of the fact that if he did not acquire the qualification within the prescribed period of time that he would go back to his original post. The Government accordingly passed an order reverting the employees in question and they challenged the action before the KAT. The Tribunal upheld the Government's action, against which order the present set of writ petitions have been directed. The only submission canvassed by the learned Counsel who represents the petitioners and all that is necessary from their point of view is to place reliance on the decision of the Supreme Court whereby they have contended that the order of reversion is bad in law, that the law as laid down by the Supreme Court binds the State Government and that consequently the order of the KAT is liable to be quashed and set aside and that the orders of reversion are also liable to be

quashed,

3. The learned Government Advocate did vehemently try to defend the orders even to the extent of submitting that when the earlier cases went upto the Supreme Court, that there were not clean and clear-cut orders of reversion and that the present cases are distinguishable insofar as the promotions were conditional and that consequently, it would have to be held that the petitioners were only promoted, occupied the higher position for a prescribed period of time and that the order would be self-operative and that consequently there is no positive act of sending the employee in the reverse direction which is an essential ingredient of a reversion order. We have considered the submissions canvassed by the learned Government Advocate very carefully but we find that no hair splitting can be indulged insofar as the point of law is concerned insofar as once the Supreme Court has very clearly laid down that a reversion on these grounds is impermissible, what cannot be done directly cannot be achieved indirectly by any such means. Consequently, applying the dictum of the Supreme Court the orders passed by the Tribunal in the earlier two sets of writ petitions before us are quashed and set aside. The orders of reversion passed by the State in relation to these petitioners are accordingly quashed and the petitioners would be entitled to the consequential benefits.

4. We need to draw a distinction as far as W.P. No. 12264 of 2001 is concerned because in this case, a diametrically opposite position has emerged. The respondent-employee before us was served with an order of reversion which was dated 3 days prior to the date of his retirement but served on him on the date of his retirement. Effectively, this order sought to put the clock back by 18 years and the respondent challenged the order before the KAT. The KAT allowed the application and directed the State to compute the terminal benefits, pensionary benefits etc., without giving effect to that order and the Tribunal also awarded interest as prescribed by the State Government itself. In addition to this obviously, because the order passed by the Department virtually flew in the face of the law as laid down by the Supreme Court, the Tribunal awarded a sum of Rs. 5,000/- as costs to the respondent before us. Even there, the Tribunal has virtually showed its indulgence to the Department/State by prescribing that if the order of the

Tribunal is complied with within a period of 3 months that then the order of costs would not become effective. It is this order that has been challenged in W.P. No. 12264 of 2001. The learned Government Advocate submitted that even though the question of reversion may have been settled by the judgment of the Supreme Court that as far as the question of emoluments, allowances and the like are concerned, that there is no express bar to the Department giving effect to the backward movement insofar as the rules do prescribe for this to be done. We have heard the learned Government Advocate and the respondent's learned Advocate and we need to dispose of this petition with the short observation that the principle enunciated by the Supreme Court will prohibit the Government from giving retrospective effect to the rules in question. Even the Supreme Court had occasion in the judgment referred to by us supra, to examine the relevant provisions in the rules and to observe that these penalties are disincentives and can only be applied prospectively. Had the respondent continued in service then the penalty/disadvantage could certainly have applied to him but the State was certainly in error in having sought to give effect to an order passed on the date of retirement and effectively making it retrospectively effective. We see no ground on which the order passed by the Tribunal in this petition can be interfered with. The learned Government Advocate submitted that at least, on the question of interest and costs that some intervention is called for. Our limited observation is that as far as the interest is concerned it has been awarded by virtue of the Government notification itself because the payment was delayed and there is no ground on which this part of the order calls for interference. On the question of costs, we have taken notice of the fact that the Department passed the order despite the law on the point having been settled by the Supreme Court in the year 1993 and if the Government even after seven years does not give effect to the Supreme Court order then they will have to take the consequences. , There again, the Tribunal was indulgent insofar as the respondents were given the grace period of three months within which to comply with the Tribunal's order and since there was default that the order for costs became effective. We see no ground on which the later part of the order awarding costs in the facts and circumstances as enunciated, can be interfered with. It is also brought to our notice by the learned Counsels for the respondents that the greater part of the order has already been

implemented and it is only the order as far as interest and costs are concerned that has been stayed in the petition. That interim order is vacated and the petitioners are directed to give effect to the Tribunal's order within an outer limit of three months from today. We make it clear that if there is any further default, that the petitioners will be liable from the date on which 3 months expire to pay interest at the rate of 18% compounded.

5. In view of the aforesaid position, the earlier two groups of writ petitions are allowed and disposed off with no order as to costs. As far as W.P. No. 12264 of 2001 is concerned, the writ petition fails and stands dismissed. No order as to costs.

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