

G. RABINATHAN

v.

STATE OF KARNATAKA AND ORS.

APRIL 3, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law

Karnataka Government Servants (Seniority) Rules, 1957:

Rule 6A—Seniority—Defence Officer—Appointment to NCC and later to State Service—Service rendered in defence and NCC—Computation of for seniority in State Service—Held for benefit under Rule 6A there should be continuity of service—Matter remitted to State for consideration whether NCC service is defence service.

The appellant joined service as Emergency Commissioned Officer on June 30, 1963 and was released therefrom on 16.9.1967. Thereafter, he joined NCC on 30.12.1967 where he continued upto 21st June 1972. From 27th June 1972 he was appointed as Probationary Commercial Tax Officer by the State of Karnataka. He requested the Government for condonation of the break in service between the Defence and the NCC and the Government gave him continuity for the purpose of his seniority with effect from October 13, 1963. The appellant claimed seniority from 1963 but the same was denied. He filed an application before the State Administrative Tribunal which was rejected.

In appeals to this Court on the question whether the appellant was entitled to the benefit of Rule 6-A of the Karnataka Government Servants (Seniority) Rules, 1957:

Allowing the appeals and setting aside the orders of Tribunal, this Court

HELD: 1. A reading of Rule 6A of the Karnataka Government Servants (Seniority) Rules, 1957 would clearly indicate that the transfer or appointment of an officer of the Defence Services to an All India Service or a Civil Service of the Union or the Civil Service of any other State to any equivalent class or grade of service in the State Civil Services shall

not be treated as first appointment to that class or grade of service for purpose of seniority. The Rule indicates that there should be continuity of the service. [132-D]

2. If there is no break in service, certainly the appellant would be entitled to fixation of seniority with effect from 30.6.1963. However, he was given continuity for the purpose of seniority with effect from October 13, 1963 but the larger question whether the service in the NCC was a Defence Service was not decided and the Tribunal observed that, that would be eminently a matter to be decided by the Government. Under these circumstances, Court cannot make any such declaration. Accordingly, the matter is remitted to the Government for consideration of the case. In the event the Government comes to the conclusion that the NCC Service would be part of the Defence Service, the appellant would be entitled to the continuity of the service with effect from 30.6.1963. [132-E to H, 133-A]

State of Karnataka v. B.S.N. Reddy and Ors., [1995] Suppl. 3 SCC 657, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4430-31 of 1995.

From the Judgment and Order dated 25.4.1994 of the Karnataka Administrative Tribunal, Bangalore in A. Nos. 1875 and 1710 of 1990.

Raju Ramachandran, Joseph Pookkatt and R.A. Perumal Advs. for the Appellant.

Dr. R.B. Masodkar and K.L. Taneja for the Respondents No. 1-9.

The following Order of the Court was delivered :

Leave granted.

Heard both the counsel on merits. The only question is whether the appellant is entitled to the benefit of Rule 6-A of the Karnataka Government Servants (Seniority) Rules, 1957, for short the Rules, amended with effect from November 13, 1969. The factual matrix lie in a short compass.

The appellant was appointed in the defence service as an Emergency Commissioned Officer with effect from June 30, 1963 and he was released

from defence service on 16.9.1967 after noon. Thereafter, he was again granted commission in NCC and he joined the service on 30.12.1967. He continued in NCC upto 21.6.1972 after-noon. In the meanwhile, he had applied for the recruitment in the Karnataka State Civil Service as a Probationary Commercial Tax Officer. He was selected and appointed with effect from 27.6.1972 Forenoon. On its basis, he claimed seniority from 1963 and when denied, he approached the Tribunal in Application Nos. 1875/90 and 4720/90. When there was a difference of opinion between the two members of the Tribunal, on reference, the Full Bench held that the matter is covered by the orders of this Court in *State of Karnataka v. B.S.N. Reddy & Ors.*, [1995] Suppl. 3 SCC 657 and rejected the relief. Thus this appeal by special leave.

Rule 6-A reads thus:

"Rule 6-A: The transfer or appointment of an officer of the Defence Services, an All India Service or a Civil Service of the Union or the Civil Service of any other State to any equivalent class or grade of service in the State Civil Services shall not be treated as first appointment to that class or grade of service in the State Civil Services shall not be treated as first appointment to that class or grade of service for purpose of seniority; and the seniority of an officer so transferred or appointed shall be determined with reference to his first appointment to the class or grade of service or services to which he belonged prior to such transfer or appointment.

Provided that, where such transfer or appointment is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which he is transferred or appointed below the persons borne on that class or grade of service immediately prior to the date of such transfer or appointment.

Provided further, that the seniority of a person transferred in public interest via a vis the person actually holding the post in the class or grade to which he is transferred shall be determined on the date of such transfer with reference to his first appointment to the class or grade from which he was transferred."

Explanation is not relevant, hence omitted. In *B.S.N. Reddy's* case

(supra) this Court had specifically left this point open thus:

"In the present case it is not necessary to examine the impact of that Rule on the question of fixation of seniority of any person who while in the Defence Service or an All India Service named in the Rule came to be appointed to the State Service without any break in the continuity of his services."

In that case since there was a break in service, it was held that Rule 6-A did not apply to the respondents therein. Thus, it could be seen that question of seniority of a person, who had the continuity of service in the Defence as well as State Civil Services, was left open. Therefore, the point is at large and is available to the appellant for consideration in this case.

A reading of the Rule would clearly indicate that the transfer or appointment of an officer of the Defence Services to an All India Service or a Civil Service of the Union or the Civil Service of any other State to any equivalent class or grade of service in the State Civil Services shall not be treated as first appointment to that class or grade of service for purpose of seniority. Therefore, the Rule indicates that there should be continuity of the service. In other words, there would not be any break in service.

If there is no break in service, certainly the appellant is entitled to fixation of seniority with effect from 30.6.1963. But the question is whether he had the continuity of service. It would appear that when he requested for condonation of the break in service between the Defence and the NCC, the Government of India in its proceedings dated 18.12.1972 stated thus:

Granted seniority with effect from 13th Oct., 1963 for the previous commissioned service rendered in the Armed Forces vide Dte. Gen. NCC letter No. 5110/68/NCC-PRES(A)/VOL VIII dated 20 Nov. 68."

In other words, the continuity was given for the purpose of seniority w.e.f. October 13, 1963. But the larger question is whether the service in the NCC is a Defence Service? By way of an amendment, the appellant sought for relief in the petition but that was not decided and the tribunal observed that, that would be eminently a matter to be decided by the Government.

Under these circumstances, we cannot make any declaration whether the service rendered by the appellant in the NCC would be a part of

Defence Service. In the event, the Government comes to the conclusion that the service rendered by the appellant in NCC would be a part of the Defence Service, certainly, he would be entitled to the continuity of the service w.e.f. 30.6.1963.

The appeals are, therefore, allowed. The orders of the Tribunal are set aside. The matter is remitted to the Government for consideration of the case of the appellant whether the service rendered by him in NCC would be considered to be a Defence Service for the purpose of applying Rule 6-A of the Rules. The Government is directed to dispose of the matter within a period of six months from the date of the receipt of this order.

No costs.

Appeals allowed.