

A M.T. PUTTALINGAPPA, MAJOR AND ORS. ETC.
v.
STATE OF KARNATAKA AND ORS. ETC.

APRIL 19, 1995

B [R.M. SAHAI AND B.L. HANSARIA, JJ.]

Service Law : Mysore State Government Service (Recruitment of Local Candidates to Class III Posts) Rules, 1966 :

C *Mysore Labour Service (Recruitment) Rules 1966*

Seniority—Inspector of Factories—Promotees—Direct Recruits—On initial appointment, promotees not possessing requisite qualifications prescribed under Rules—Regularisation order—Held initial infirmity was not removed—Promotees held not senior to direct recruits.

The appellants holding only diploma qualifications were appointed as Assistant Inspector (Factories) in 1963, because persons with prescribed minimum qualifications viz. degree in Engineering were not available. Subsequently, when Mysore State Government Service (Recruitment of Local Candidates to Class III Posts) Rules, 1966 and Mysore Labour Service (Recruitment) Rules, 1966, came into force, whereunder the qualification was relaxed and diploma in Engineering was prescribed as minimum qualification, the Labour Commissioner passed an order dated 15.12.1967 regularising the services of the appellants. The appellants were further promoted as Inspectors between 1969 and 1970 while the respondents were directly recruited as Inspectors in 1971. As in the gradation list published in 1975, the appellant-promotees were shown as senior to the respondent- direct appointees, the latter challenged the initial appointment of the appellants before the Tribunal. During the pendency of these proceedings, the Government amended the rules retrospectively in 1984 and provided diploma as qualification for Assistant Inspector of Factories. The Tribunal struck down the retrospective amendment of Rules as unconstitutional and held the regularisation order invalid and quashed the gradation list published in 1975. However, it regularised the services of the appellant, under Karnataka State Civil Services (Direct Recruitment to class III Post) Special Rules, 1970.

In appeals to this Court, it was contended for the appellants that (i) they having been regularised on 15.12.1967 the infirmity in their initial appointment stood removed and (ii) after the enforcement of 1966 Rules the appellants should be deemed to have been appointed in 1966. A

Dismissing the appeal, this Court

HELD : 1. The regularisation order dated 15.12.1967 depended on the Notification issued by the State Government on 17.8.1966 which permitted a local candidate to be regularised provided he was not disqualified for appointment under Mysore State Civil Service (General Recruitment) Rules, 1957 on the date of his appointment as local candidate. Since the appellants were not possessed of the requisite qualification and were disqualified from being appointed as Assistant Inspector on the date they were appointed, this order did not come to their rescue and consequently they could not have been regularised by the Government. [547-G, H, 548-A] B C

2. The Rules were framed for direct appointment. It could not be so construed that a person appointed in 1963 may be deemed to have been appointed in 1966. The Tribunal has upheld the regularisation of the appellants in 1970. But an Assistant Inspector could be promoted as Inspector only if he had completed three years' regular service. The Tribunal, therefore, did not commit any error of law in recording the finding that the appellants could not have been promoted either in 1969 and in any case they could not be treated as senior to the respondents. [548-B, C] D E

T.R. Kapur v. State of Haryana, [1986] Supp. SCC 584, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1953-55 of 1989. F

From the Judgment and Order dated 21.12.88 of the Karnataka Administrative Tribunal, Bangalore in A.Nos. 1938-40 of 1986.

M. Veerappa for the Appellant in C.A.No. 1950-52/89. G

S. Ravindra Bhat, Ms Kiran Jethanand and Naveen R. Nath for the Appellant in C.A.No. 1953-55/89.

S.S. Javeli and Ranjit Kumar for the Respondents. H

A The following Order of the Court was delivered :

The appellants, who are promotees in the cadre of Inspectors and even higher posts in the Department under Factories and Boilers Branch in the State of Karnataka are aggrieved by the decision of the Tribunal quashing the gradation list as published in 1975. They were appointed as Assistant Inspectors (Factories) in 1963. The minimum qualification for appointment as Assistant Inspector then was a Degree in Science. The appellants were only diploma holders. They were appointed probably, because qualified persons were not available. The Chief Inspector of Factories, therefore, wrote to the Government that their service be regularised. While the correspondence was pending, the State Government framed two Rules, one Mysore State Government Service (Recruitment of Local Candidates to Class III Posts) Rules, 1966 and Mysore Labour Service (Recruitment) Rules, 1966. The latter Rules relaxed the qualification and the minimum qualification became diploma in Engineering. The Commissioner of Labour took recourse to these Rules specially the Rules relating to the local candidates and purported to regularise the services of appellants by regularly appointing them. They were promoted as Inspectors between December 1969 to September 1970. In May 1971 the respondents were appointed as Inspectors of Factories by direct selection. The final gradation list was published in 1975. The appellants- promotees were shown as senior to respondents-direct appointees. The respondents represented against it. In the mean time, one of the appellants was promoted as Senior Inspector Class I. The respondents then challenged the initial appointment of appellants. When no relief came from the Government, they approached the High Court but the petitions were transferred to Tribunal. During pendency of these proceedings, further promotions were, also, made. The Government realised the difficulty of the appellants, therefore, it amended 1959 Rules retrospectively in 1984 and provided diploma as one of the qualifications for Assistant Inspector of Factories. The Tribunal held that 1986 Rules were invalid as they attempted to divest the respondents of their vested right which was contrary to decision of this Court in *T.R. Kapur v. State of Haryana*, [1986] Supp. SCC 584. It held that there was no power to, retrospectively, amend the Rules so as to affect or impair the vested rights of the respondents. The Tribunal held that on the date when Local Candidates Regularisation Rules of 1966 were issued the appellants did not have the requisite qualification which they could take advantage of. Consequently the order of the Labour Commissioner

regularising the services of the appellants on 15.12.1967 was not in accordance with law. The Tribunal, however, held that the appellants stood regularised under Karnataka State Civil Services (Direct Recruitment to Class III Post) (Special Rules), 1970. A

As a result of these findings the Tribunal issued following directions:- B

"(i) We allow these applications;

(ii) We declare the Amendment Rule of 1984 as violative of Articles 14 and 16 of the Constitution of India and strike them down; C

(iii) We direct respondents 1 to 3 to redo the impugned seniority list placing respondents 4 to 6 below the third applicant K.G. Krishnappa and the same shall be done within three months from the date respondents 1 to 3 receive copies of this order; D

(iv) After the gradation list is redone, the cases of the applicants and respondents 4 to 6 be reviewed and each of them may be allotted the deemed eligibility dates of promotions to the next higher cadres and also granted all consequential benefits".

No exception can be taken to the striking down of the Rules. The learned counsel Sri Bhatt realising it advanced two submissions, one that the appellants having been regularised on 15.12.1967 the infirmity, if any, in their appointment as Assistant Labour Inspector stood removed. In the alternative the learned counsel urged that in any case once the 1966 Rules were enforced they should be deemed to have been appointed from that date and that being substantive date of appointment and they having completed three years before 1971 their promotion to the posts of Inspectors did not suffer from any illegality. The learned counsel urged that in any case they were senior to the respondents who entered into service sometime in May, 1971. Neither submission appears to have any merit. So far as the regularisation by Order dated 15.12.1967 is concerned, that depended on the Notification issued by the State Government on 17.8.1966 which permitted a local candidate to be regularised provided he was not disqualified for appointment under Mysore State Civil Service (General Recruitment) Rules, 1957 on the date of his appointment as local candidate. Since the appellants were not possessed of the requisite qualifica- H

- A tion and were disqualified from being appointed as Assistant Inspector on the date they were appointed, this Order did not come to their rescue and consequently they could not have been regularised under 1967 Order issued by the Government. As regards the argument that the appellants should be deemed to have been appointed in 1966 there is no such order.
- B The Rules were framed for direct appointment. It could not be so construed that a person appointed in 1963 may be deemed to have been appointed in 1966. The Tribunal has upheld the regularisation of the appellants in 1970. But an Assistant Inspector could be promoted as Inspector only if he had completed three years' regular service. The Tribunal, therefore, did not commit any error of law in recording the
- C finding that the appellants could not be have been promoted either in 1969 and in any case they could not be treated as senior to respondents.

The appeals filed by the appellants and the State consequently fail and are dismissed.

T.N.A.

Appeal dismissed.