

Y.H. PAWAR

v.

STATE OF KARNATAKA AND ANR.

MARCH 14, 1996

[K. RAMASWAMY, S.P. BHARUCHA AND
K.S. PARIPOORNAN, JJ]

Service Law :

Seniority—Reckoning of—Ad-hoc appointment—Coming into force of recruitment rules—Regularisation of service as per rules—Claim of seniority from date of initial appointment—Held not permissible—Held seniority should be reckoned from the date of regularisation as per statutory rules.

Excise Commissioner, Karnataka & Anr. v. Sreekanta, [1993] Supp. 3 SCC 53, relied on.

Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors., [1990] 2 SCC 715, held inapplicable.

Gurulingaswamy v. State, Application No. 663 of 1989, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6882 of 1996.

From the Judgment and Order dated 30.4.93 of the Karnataka High Court in A. No. 1007 of 1993.

R.S. Hegde and P.P. Singh for the Appellant.

P. Mahale for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

Appellant was appointed as a Class III employee on *ad hoc* basis on March 22, 1960, after his name was called from the Employment Exchange,

in the Directorate of Public Health. In 1960, the Ministerial Recruitment Rules had come into force but the appellant was not regularised in the service. He came to be regularised on May 6, 1968 giving him seniority with effect from the date on which the selection was made. The appellant challenged the action in O.A. No. 1007/93 in the Karnataka Administrative Tribunal which by the impugned order dated April 30, 1993 dismissed the application. Thus this appeal by special leave.

It is contended by learned counsel for the appellant that no statutory rules were in existence when he was appointed. Government issued orders that if the appointments were made by the Government or with the sanction of the Government the appointments would be regular appointments. Therefore, he must be deemed to have been appointed on regular basis with effect from the initial date of appointment. His seniority has thus to be reckoned from that date. It is contended, on the other hand, by learned counsel for the respondents that at the relevant time no regular recruitment was sought to be made. Local candidates were appointed on *ad hoc* basis. After the statutory Rules came to be made, their services have been regularised with effect from the date of coming into force of the Rules. The action taken by the Government was upheld by the Administrative Tribunal following decision in *Gurulingaswamy v. State*, (Application No. 663 of 1989) which was followed in this petition. Therefore, when the earlier candidates have been regularised according to the statutory Rules, the appellant cannot claim higher rank.

It is contended by the learned counsel for the appellant that in view of the judgment of the Constitution Bench of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.*, [1990] 2 SCC 715 where appointment was made on regular basis, the seniority was required to be determined with effect from the initial date of appointment. We find no force in the contentions. As seen, the appointments are made on *ad hoc* basis without conducting any competitive examination. As and when vacancy had arisen local candidates were called from Employment Exchange and were appointed. Therefore, the appointments cannot be considered to have been made on regular basis. When the Rules came to be made, all the appointments are sought to be regularised. The sanction given by the Government for such an appointment is only to enable the candidates to continue till the statutory Rules are made to regularise the services.

This Court in *Excise Commissioner, Karnataka & Anr. v. V. Sreekanta*, [1993] Supp. 3 SCC 53, in similar circumstances had considered the effect of such an appointment in paragraph 14 which reads thus :

"After giving our anxious consideration to the respective contentions of the parties it appears to us that the writ petitioner/respondent, Sri V. Sreekanta, was appointed as a local candidate through Employment Exchange in view of the specific sanction of the Government for such *ad hoc* appointment. The terms of appointment in the context of sanction of the said posts by the Government, in our view, clearly demonstrates that such appointment of the said respondent and other employees in 1968 was *ad hoc* appointment given to local candidates being sponsored by the local Employment Exchange. It was only on October 26, 1971, the said respondent became eligible to be recruited in the said Class III post, and such appointment or regularisation of his *ad hoc* appointment was made possible because of the framing of the said Special Rules of Recruitment in 1970. In our view, Mr. Narasimha Murthy is justified in his submission that the respondent was not entitled to claim seniority from the date of his initial appointment on *ad hoc* basis but he was only entitled to claim seniority from the date of his subsequent appointment or regularisation under the said Special Rules of Recruitment in 1970. It appears to us that under Rule 3 of the said Special Rules of Recruitment of 1970, the respondent, having possessed the minimum qualifications prescribed by the said Special Rules of Recruitment for recruitment to Class III posts and the said respondent having been appointed on or after January 1, 1965 as a local candidate to a Class III post and having put in a continuous service of one year prior to October 1, 1970, was eligible to be appointed under the said Special Rules of Recruitment and the respondent was given such appointment with effect from October 26, 1971 under the said Special Rules of Recruitment of 1970. The said respondent was entitled to be treated as direct recruit properly made under the said Special Rules of 1970 only from October 26, 1971 and the service rendered by him prior to the said date was only on the basis of *ad hoc* employment not made in accordance with the rules of recruitment. In the aforesaid circumstances, the decision of the Division Bench of the Karnataka High Court appears to be clearly

erroneous and we have hesitation in setting aside the same. Learned Single Bench of the Karnataka High Court, in our view, has rightly dismissed the writ petition and we affirm the said decision. The appeal is accordingly allowed without any order as to costs."

In that view of the matter, we hold that the appointment of the appellant is only an *ad hoc* appointment. Accordingly, his seniority is to be determined with effect from the date on which the statutory Rules came into force.

The appeal is dismissed accordingly. No costs.

Appeal dismissed.