G. S. Ramaswamy & Ors

Vs

Inspector-General of Police, Mysore

Civil Appeal Nos. 972 - 977 of 1963

(CJI B. P. Gajendragadkar, K. C. Das Gupta, K. N. Wanchoo, J. C. Shah, N. Rajgopala Ayyangar JJ)

21.01.1964

JUDGMENT

WANCHOO J. –

These appeals and writ petitions raise common questions and will be dealt with together. The appeals arise out of six writ petitions filed in the Mysore High Court and six of the writ petitions filed in this Court are by the same petitioners who applied in the Mysore High Court. Two writ petitions (Nos. 173 and 174) have been filed by two others. They also filed writ petitions in the High Court, though they have not filed appeals from the decision of the High Court. They will all be referred to as petitioners hereafter.

The case before the High Court was briefly this. All the petitioners were appointed sub-inspectors in the former Hyderabad State, under s. 6 of the Hyderabad District Police Act (No. X of 1329 Fasli). Under r. 399 of the Hyderabad District Police Manual, issued by the Government of Hyderabad under s. 10 of the Hyderabad District Police Act, post of circle inspectors were to be filled by promotion from the rank of sub-inspectors. The subsequent rules provided for the procedure for this purpose. The names of selected sub-inspectors who were considered fit for promotion were sent by the Deputy Inspectors General of Police and the Commissioner of City Police of Hyderabad to the Inspector General of Police. Thereafter a Board consisting of the Inspector General of Police and all the Deputy Inspectors General of Police, Commissioner of City Police, Hyderabad and Assistant Inspector General of Police interviewed the candidates and prepared an approved list of sub-inspectors fit for promotion. This approved list used to be called the eligibility list and promotions to the post of circle inspector used to be made from this list. The case of the petitioners in the High Court was that their names were included in the eligibility list published in the month of October 1956 before the States Reorganisation Act (No. XXXVII of 1956) came into force on November, 1, 1956. They therefore contended that in view of the entry of their names in the eligibility list they were entitled as of right to promotion to the post of circle inspector as and when vacancies occurred. On the coming into force of the States Reorganisation Act, certain areas from the States of Bombay, Hyderabad, Madras and the whole of Coorg were made part of the new State of Mysore in addition to the existing State of Mysore. In consequence, certain public servants belonging to these States from which areas were added to the old State of Mysore were transferred to the new State of Mysore thus formed out of the old State of Mysore and the areas added to it. Among theses were the petitioners.

Under s. 115 of the States Reorganisation Act, public servants so transferred were deemed to serve in connection with the affairs of the principal successor State. Provision was also made for the establishment of one or more advisory boards for the purpose of assistance in regard to the division

and integration of services amongst the new States and the ensuring of fair and equitable treatment to all persons affected by the State Reorganisation Act. Section 115 further provided that the conditions of service applicable immediately before the appointed day (namely, November 1, 1956) shall not be varied to the disadvantage of any person transferred to the new State except with the previous approval of the Central Government. Section 116(1) provided for the continuance of public servants in the same posts; but sub-s. (2) thereof laid down that nothing in sub-s. (1) shall prevent a competent authority after the appointed day from passing in relation to any such person any order affecting his continuance in such post or office, thereby recognising the right of the successor State inter alia to transfer officers anywhere in the new State after November 1, 1956.

The petitioners continued to serve in the new State and as they were in the eligibility list referred to above they were promoted as circle inspectors on various dates after November 1, 1956. It may be mentioned that eligibility lists were received in the new State of Mysore from all the State from which areas had been transferred to it under the State Reorganisation Act and these lists continued to be acted upon as and when vacancies arose in the cadre of circle inspectors. It also appears that pending integration promotions were made from these eligibility lists ad hoc, or as they were called "out of seniority", and continued to be so made pending integration. The petitioners were thus promoted ad hoc circle inspectors from the eligibility list received from the former Hyderabad State and continued to act for varying periods as such. It appears further that the petitioners were ordered to be reverted when certain confirmed circle inspectors who were on leave or on deputation outside the State returned to the new State. Thereupon the petitioners filed writs before the High Court in which they claimed that as they had been put in the eligibility list be the former Hyderabad State, they were entitled as of right to promotion as circle inspectors and to continue as such thereafter and the order of their reversion amounted to reduction in rank. They therefore prayed for a writ, order or direction quashing the orders dated September 6, 1962, ordering their reversion and directing the State Government to continue them as circle inspectors and to confirm them as such. Further during the course of arguments before the High Court, reliance was placed on r. 2(c) of the Seniority Rules framed by the Governor of Mysore in 1957 and the writ petitions before this Court are mainly based on that seniority rule to which we shall refer in due course.

The case of the State Government was briefly this. It was admitted that after November 1, 1956, these officers were transferred to the new State of Mysore and eligibility lists were received from all the States from which territories and officers were transferred to the new State of Mysore. As however integration of various services was bound to take time, the new State, by virtue of the powers conferred on it under the State Reorganisation Act, started acting on the eligibility lists received from the various States in anticipation of integration and promoting sub-inspectors to the rank of circle inspectors from those eligibility lists on an ad hoc basis and this was made clear in the various orders that were passed from time to time by using the words "out of seniority" when such promotions were made. Eventually a provisional integrated seniority list of all sub-inspectors including those who were officiating as circle inspector (hereinafter referred to as the provisional list) was prepared in February 1958. In 1962 when senior circle inspectors returned to the State from deputation, some officiating circle inspectors (other than the petitioners) were reverted. They filed writ petitions before the High Court in 1962 contending that even though they had been promoted later, they should not have been reverted in view of their position in the provisional list and that list should have been adhered to and those junior to them in the provisional list should have been reverted. This contention was accepted by the High Court and in consequence reversions began to be made in accordance with the provisional list in compliance with the view taken by the High Court. That was why the junior most sub-inspectors according to the provisional list who were in the eligibility list and who were officiating as Circle Inspectors were reverted. In consequence the

petitioners were also reverted when senior officers came back to the State. It was further urged that the eligibility lists gave no right other sub-inspectors whose names were borne on those lists to promotion as circle inspectors, though it was not disputed that only those who were in the eligibility lists could be promoted as circle inspectors. But the fact that a sub-inspector's name was in the eligibility list did not confer any right on him to promotion in view of the Rules. Further it was contended that officiating circle inspectors could not claim confirmation as an automatic right after they had worked for a certain number of years as such and that they could only become confirmed circle inspectors when orders to that effect were expressly made by the Government. In the present cases the petitioners were never confirmed by the Government as inspectors. There was therefore no question of any reduction in rank. It is not in dispute that the petitioners were not reverted on account of any fault on their part; they had to be reverted only because of exigencies of service as senior inspectors had come back to the State from deputation or had returned from leave. It was urged that the reversion in the present case could not amount to reduction in rank and was in ordinary course due to exigencies of service. As to r. 2(c) of the Seniority Rules, the case of the Government was that rule governed the seniority of inspectors while they were acting as such and had nothing to do with the question of reversion, and in any case considering that promotions had been made after November 1, 1956 on ad hoc basis, the rule would not confer any right on the petitioners and the Government was justified in following the provisional list in view of the observations of the High Court referred to above. It was therefore contended that the petitioners had no right to the posts from which they were reverted and there was no reduction in rank and they were not entitled to any benefit of r. 2(c).

The High Court accepted the contentions raised on behalf of the State and dismissed the petitions. Thereupon special leave was obtained by six of the petitioners in the High Court and that is how we have six appeals before us. These six appellants have also filed six writ petitions before this Court in addition to two other writ petitions filed by two other petitioners in the High Court who had not filed appeals.

The first two questions that fall for consideration are whether the fact that a sub-inspector's name is put in the eligibility list gives an indefeasible right to him to promotion, and whether after such promotion on a temporary officiating basis he gets a right not to be reverted under any circumstances. We are of opinion that the fact that a sub-inspector's name is in the eligibility list gives him no right of the kind urged on behalf on the petitioners. The rules in that behalf that are relevant are 399 to 403 of the Hyderabad District Police Manual. Rule 399 provides that vacancies in the rank of circle inspector are to be filled by the promotion of selected sub-inspectors and r. 403 lays down that "no direct appointments to the rank of Circle Inspector will be made". Rule 400 prescribes the procedure for putting the names in the eligibility list. Rule 102 refers to sub-inspectors serving in the C.I.D. Rule 401 lays down that sub-inspectors whose names are entered in the approved list will be interviewed by the Deputy Inspector General of Police in the course of his cold weather tour and each sub-inspector's work during the year will be examined and report will then be made to the Inspector General of Police whether the officer had maintained his fitness for promotion or not. Thus r. 401 makes it clear that even after the sub-inspector's name is put in the eligibility list, his fitness for promotion is to be decided year by year and a report has to be made whether has maintained his fitness for promotion or not. This obviously means that where a sub-inspector has not maintained his fitness his name can be removed from the eligibility list. It follows therefore that the mere fact that a sub-inspector's name is once put in the eligibility list does not give him an indefeasible right to promotion as a circle inspector. Then there is r. 486 which governs promotions generally. It lays down that promotion cannot be claimed as a matter of right, though officers and men of all ranks are entitled to expect promotion if they have good records, and if they

are smart and efficient and have a thorough knowledge of their duties. This again clearly shows that merely because a sub-inspector's name is put in the eligibility list, he cannot claim promotion as a matter of right. Rule 486 further provides that all officers who are promoted will be on probation for a period of two years. They may be reverted at any time during this period by the authority competent to promote them, if their conduct and work are not satisfactory, or if they are found unsuitable for the appointment to which they have been promoted. This clearly shows that even where a sub-inspector has actually been promoted as circle inspector he remains on probation for two years and during that period he is likely to be reverted if his work and conduct are not found satisfactory. This again negatives the contention on behalf of the petitioners that they had an indefeasible right to promotion because their names had been put on the eligibility list and that they could not be reverted after they had once started acting as circle inspectors. Lastly, r. 486 provides that promoted officers will be confirmed at the end of their probationary period if they have given satisfaction. This clearly shows that it is only when the probationary period is over and the promoted officer has even satisfaction during the whole of that period that he will be confirmed. It is clear therefore reading rr. 401 and 486 together that the mere fact that a sub-inspector's name is put in the eligibility list dies not give him any indefeasible right to promotion. Further the fact that he is actually promoted, temporarily or as officiating, does not give him any right to continuance even during the period of two years' probation and he is liable to be reverted at any time even during those two years if his work is found unsatisfactory; it is only when the authority concerned has found that his work and conduct are satisfactory during the probation period that he can be confirmed. The contention of the petitioners that they had any right under the eligibility list for promotion or that after they had actually been promoted, they had a right to continue in the post of circle inspector, therefore, must be negatived.

It has further been urged on the basis of r. 486 that as the petitioners had worked for more than two years on probation, they became automatically confirmed under the said rule, and reliance is placed on the following sentence in r. 486, namely, "promoted officers will be confirmed at the end of their probationary period if they have given satisfaction". The law on the question has been settled by this Court in Sukhbans Singh v. State of Punjab (A.I.R. 1962 S.C. 1711). It has been held in that case that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. Therefore even though a probationer may have continued to act in the post to which he is on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the Rules of service which govern him specifically lay down that the probationer will; be automatically confirmed after the initial period of probation is over. It is contended on behalf of the petitioners before us that the part of r. 486 (which we have set out above) expressly provides for automatic confirmation after the period of probation is over. We are of opinion that there is no force in this contention. It is true that the words used in the sentence set out above are not that promoted officers will be enable or qualified for promotion at the end of their probationary period which are the words to be often found in the rules in such eases; even so, though this part of r. 486 says that "promoted officers will be confirmed at the end of their probationary period", it is qualified by the words "if they have given satisfaction". Clearly therefore the rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this rule if he has given satisfaction. This condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under this rule and this condition obviously means that the authority competent to confirm him must pass an order to the effect that the probationary officer has given satisfaction and is therefore confirmed. The petitioners therefore cannot claim that they must be

treated as confirmed circle inspectors simply because they have worked for more than two years on probation; they can only become confirmed circle inspectors if an order to that effect has been passed even under this rule by the competent authority. The first contention therefore that the petitioners before us have an indefeasible right to promotion once their names are put in the eligibility list and that they are entitled to continue as circle inspectors thereafter if they have once been promoted, on temporary or officiating basis, cannot be sustained.

This brings us to the next question whither the reversion in the present cases can be said to amount to reduction in rank. In view of what we have said above on the first point raised on behalf of the petitioners, it is clear that the petitioners cannot be treated as confirmed circle inspectors. It is not disputed that they have never been confirmed as such. It is also not disputed that they have not been reverted on account of any fault in their work. The reversion has been made simply because senior circle inspectors have come back to the State either from deputation or from leave and they have to be accommodated. Such reversion therefore cannot amount to reduction in rank for two reasons, firstly, because the petitioners before us were never confirmed as circle inspectors and had no right to that post, and secondly, because the reversion is on account of exigencies of service and not on account of any fault on their part. Reversion on account of exigencies of service, as senior officers have come back from deputation or from leave, cannot in our opinion amount to reduction in rank. The contention of the petitioner that by this reversion they have been reduced in rank therefore fails.

The next point that has been urged is that in any case till final integration of service was made, the State Government was not entitled to take into account the provisional list of sub-inspectors and could only proceed to give promotions and to make transfers regionwise according to the eligibility lists of former State from which the territories came to the new State and if that was done the petitioners being senior in their region could not be reverted. We are of opinion that there is no force in this contention. It is true that for some time the State Government did proceed on this basis for there was no integrated list, whether provisional or final, available; but that does not mean that under the law it could not act on the provisional list once it was made till it was made final or that there was any estoppel against the State Government view of its having acted regionwise for sometime. We have already indicated that territories from four States came to the old State of Mysore to form the new State of Mysore and that necessarily raised difficult question of integration, and so the State Government made ad hoc promotions regionwise or out of seniority as was stated by it in various government orders. But the State is bound to be treated as one unit for purposes of administration. We may also refer to s. 116(2) of the State Reorganisation Act, which makes it clear that after the appointed day the whole State will be treated as one unit and nothing would prevent the competent authority after the appointed day from passing in relation to any such officer allotted to the new State any order affecting his continuance in such post or office. We cannot therefore accept the contention that the State Government was bound till the final list of integration was made, to make transfers only regionwise. We can see nothing in law which prevents the State Government from proceeding according to the provisional list after such list was prepared. We are of opinion that the view taken by the Mysore High Court in the earlier writ petitions after the framing of the provisional seniority list is correct and the State Government would be entitled to act on that list subject of course to this that if the provisional list is in any way altered when the final list is prepared, the State Government would give effect to the final list. The contention of the petitioners that the State Government should have continued to make promotions and transfers regionwise only even after the provisional list was made therefore must fail. It may be added that the State Government would be entitled and bound after the appointed day to treat the State as one whole unit and make such orders of transfer, as it thought fit, treating the whole State as one unit.

Lastly, we come to the contention based on r. 2(c) of the Mysore Seniority Rules which was argued before the High Court at the hearing though was not specifically raised in the petitions there and this is the main basis of the writ petitions before us. The rule was promulgated by the Governor of Mysore from February 1958 and is in these terms :-

> "Seniority inter se of persons appointed on temporary basis will be determined by dates of their continuous officiating in that grade and where the period of officiation is the same the seniority inter se in the lower grade shall prevail."

The contention on behalf of the petitioners is that in view of this rule, they should be considered senior to other circle inspectors who were promoted after they were promoted as circle inspectors and therefore they should not have been reverted but the other circle inspectors who were promoted after them as circle inspectors should have been reverted, on the principle that junior-most officiating person must be reverted.

Now r. 2(c) as it stands merely provides for seniority between persons officiating in a higher rank when they are officiating as such; it is not an express rule as to the manner in which reversion should be made where reversions are necessary on account of exigencies of service. The rule therefore cannot be held as expressly providing for the principle of "last come first go" with which one is familiar in industrial law. Strictly speaking therefore the petitioners cannot claim that r. 2(c) has been violated by their reversion, for it dose not provide for reversion and only provides for the seniority of officers who are officiating in a higher grade. Even so, it may be conceded that when reversion takes place on account of exigencies of public service, the usual principle is that the junior-most persons among those officiating in clear of long term vacancies are generally reverted to make room for the senior officers coming back from deputation or from leave etc. Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion, the junior-most person reverted is usually the person promoted last. This state of affairs prevails ordinarily unless there are extraordinary circumstances, as in the present case. We have already set out above that the new State of Mysore was formed of the territories of the old State of Mysore and the territories of four other States. The consequence of this was that officers from the other States as well as from the old State of Mysore became officers of the new State and the question of their integration inter se had to be decided in accordance with s. 115 of the States Reorganisation Act. That matter had to take time and therefore in the interest of administration ad hoc promotions continued to be made by the new State of Mysore after November 1, 1956. The result of this ad hoc promotion was that the normal principle of promotion based on seniority subject to fitness in a State where there is no question of integration could not work and that is why we find that orders were passed by the new State promoting sub-inspectors from various eligibility lists with regard to seniority inter se of officers from various States. It was only in 1958 that the provisional list of sub-inspectors was prepared. When this provisional list was prepared it was found that the promotions which had will then been made out of eligibility lists received from various States were not in accordance with the provisional list and it so happened in many cases that sub-inspectors who were seniors in the provisional list and who were also in the eligibility lists of the various States were promoted after sub-inspectors who were junior in the provisional list though they were also in the eligibility lists. It was because of these special circumstances arising out of the provisional list which began to be put into effect after 1958 that the situation arose that officiating inspectors who had been officiating for a longer time had to be reverted before officiating inspectors who had been officiating for a shorter time because of the seniority in the provisional list. We are therefore of opinion that it was because of the special circumstances after November 1, 1956 that the petitioners and those like them who were really junior to other sub-inspectors in the eligibility

lists came to be promoted earlier because there was no provisional list available or in actual force when the promotions were made ad hoc and out of seniority. It was only when the provisional list was made that inter se seniority of officers coming from various States became prima facie known. Therefore when reversions had to be made on account of exigencies of service in accordance with the provisional list it was bound to happen in view of the earlier ad hoc promotions that some officiating inspectors who had been promoted earlier had to be reverted in preference to others who had been promoted later in these circumstances. It cannot therefore be said in view of the special circumstances prevailing in the State consequent on the States Reorganisation Act that the departure from the normal method of reversion was unjustified after the making of the provisional list. The petitioners therefore cannot rely on r. 2(c) in the peculiar circumstances prevailing in the State after the reorganisation because promotions were made ad hoc without regard to inter se seniority of officers from different States. It is only because of this special circumstance that it appears as if r. 2(c) is being disregarded in the matter of reversion for the promotions were made without regard to integrated seniority and resulted in sub-inspectors who were juniors in integrated seniority being promoted earlier. We are therefore of opinion that r. 2(c) does not strictly apply in the present case. But even on the basis that the junior-most should first be reverted in case reversion has to take place on account of exigencies of service, it cannot be said that the reversion of the petitioners is an act of discrimination, for the affidavit on behalf of the State Government shows that they are really junior-most in the provisional list though they might have in the exceptional circumstances indicated above acted longer as officiating circle inspector than others who have not been reverted. We are therefore of opinion that the charge of discrimination based on the violation of r. 2(c) cannot in the special circumstances of this case be sustained, for it is not in dispute that they were the junior-most according to the provisional list, when the orders of reversion were made.

The appeals and the writ petitions therefore fail and are hereby dismissed. In the circumstances of this case, we make no order as to costs.

Appeals and petitions dismissed.

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