State of Mysore

Vs

M. H. Bellary

Civil Appeal No. 677 of 1963

(CJI P. B. Gajendragadkara ,A. K. Sarkar, J. C. Shah, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

25.03.1964

JUDGMENT

AYYANGAR, J. –

A very short question regarding the proper construction of Rule 50(b) of the Bombay Civil Services Rules is involved in this appeal which comes before us by a certificate of fitness granted by the High Court of Mysore under Art. 133 of the Constitution.

The facts giving rise to this appeal which are necessary to be narrated to appreciate the only point urged before us were these : The respondent was recruited as an Upper Division Clerk by the Government of Bombay in 1931 and was later appointed substantively as a Junior Assistant in the Political Department. While so, on September 17, 1943 his services were transferred on deputation to the office of the Controller of Rationing, Bombay to work as a Senior Assistant in the newly started Rationing department which was a temporary department. He obtained successive promotions in this department and by March, 1954 he was drawing a pay of Rs. 460/- p.m. in the grade Rs. 350 - 30 - 650 as Rationing Officer. That department was abolished in March, 1954 and thereafter he was reverted to his parent department. Though his parent department was the Political Department, the respondent was, after he ceased to be a Rationing Officer, posted first to the Labour Department and then to the Public Works Department. When this reversion took place his pay was fixed at Rs. 120/- p.m. The petitioner protested against this reversion and this loss of his emoluments on the ground that this fixation of pay was contrary to the Rules framed by Government in regard to the service conditions of a Government servant who was appointed on deputation in another department. He also pointed out that the officer next below him in his parent department had been appointed as an Assistant Secretary by virtue of normal and regular promotion. Before, however, final orders were passed on his representation by the Government of Bombay, the States Reorganisation Act, 1956 came into force and the respondent was allotted to the State of Mysore. On November 27, 1958 the Government of Mysore informed the respondent through an official memorandum that in view of certain communications received by that Government from the Government of Bombay in answer to his representations he should be considered to have held the post of Senior Assistant on June 1, 1954 on a salary of Rs. 225/- in the grade Rs. 210 - 15 - 300. The petitioner's complaint, however, was that even this order was in violation of the conditions of his service and he claimed that when he was reverted to the parent department he was entitled to be posted as an Assistant Secretary - a post which according to him, he would have held on that date had he not been deputed to the department of Civil Supplies on September 17, 1943. There was no dispute that subject to an argument to which we shall refer presently, the respondent would have held the post of Assistant Secretary because the person next below him - one Nadkarni - actually held that post on that day. The respondent claimed that on the basis of the Service Rules to which

we shall immediately make reference he should, on his return to the parent department, have been posted as an Assistant Secretary and been allowed the scale of emoluments applicable to that post. As the Government of Mysore refused to accede to his demand the respondent filed a petition under Art. 226 for inter alia a writ of mandamus directing the appellant - State to include the petitioner in the grade-pay of an Assistant Secretary and fix him above Nadkarni.

The appellant raised a preliminary objection to the writ petition, the objection being that the complaint of the petitioner was not justiciable. This was primarily based upon the fact that the respondent relied upon a circular of the Government of Bombay dated October 31, 1950 in support of his plea that he was entitled to the benefit that he claimed on reversion to the parent department from his service on deputation. The material part of that circular ran :

> "It has come to the notice of Government that Government servants when deputed to other Departments or offices often draw pay in time scales which are identical with the time-scales in their parent Departments. The question therefore, arises on their reversion to their parent Department whether the service rendered in an identical time scale in the Department to which their service had been lent, should be allowed to count for increments in the parent Department under Note 4 below Bombay Civil Service Rule 41. Government is pleased to direct that all such cases should be regulated under Bombay Civil Service Rule 51 and that only that portion of service in the foreign Department or office should be allowed to count for increments in the parent Department during which the person concerned would have drawn pay in the time scale applicable to the post he holds on reversion, but for his deputation to another Department or office, i.e., the case should be so regulated as to restore the position the person concerned would have occupied in his parent Department had he not been deputed."

The question as to whether this circular which was treated as an administrative instruction could confer rights enforceable in a court on a Government servant was referred to a Full Bench for its opinion. Before the learned Judges of the Full Bench the learned Advocate-General, however, brought to the notice of the Court that this circular merely gave effect to a statutory rule framed by the Government of Bombay. The relevant rule in this respect was rule 50(b) of the Bombay Civil Services Rules which ran :

> "50(b) Service in another post, other than a post carrying less pay referred to in clause (a) of rule 22 whether in a substantive or officiating capacity, service on deputation and leave other than extraordinary leave counts for increments in the time scale applicable to the post on which the Government servant holds a lien as well as in time scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended :
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> Provided that Government may, in any case in which they are satisfied that the leave was taken on account of illness or for any other cause beyond the Government servant's control, direct that extraordinary leave shall be counted for increment under this clause."

The position, therefore, that emerged after this was whether an infraction of a statutory rule could give rise to a cause of action to an aggrieved Government servant. The learned Judges answered this question in the affirmative and thereafter the Division Bench which heard the petition allowed the

writ and granted the respondent the relief that he sought. It might be mentioned that even by the date of the pendency of these proceedings in the High Court the respondent had retired on account of superannuation and the only question, therefore, was whether he would be entitled to the remuneration to which he would have been entitled under the rule in question. The appellant-State applied to the High Court for a certificate to enable an appeal to be filed to this Court and on this having been granted the appeal is now before us.

In view of the decisions of this Court of which it is sufficient to refer to State of U.P. v. Babu Ram Upadhya [[1961] 2 S.C.R. 679] it was not disputed that if there was a breach of a statutory rule framed under Art. 309 or which was continued under Art. 313 in relation to the conditions of service the aggrieved Government servant could have recourse to the Court for redress.

Learned Counsel for the appellant, however, urged two contentions in support of the stand that the respondent was not entitled to be appointed to any higher post than as a Senior Assistant or to receive a salary higher than Rs. 225/- in the scale Rs. 210 - 15 - 300 which had been granted to him by the impugned order of November, 1958. The first was that on a proper construction of Rule 50(b), an officer who after serving on deputation in another department is reverted to his parent department is entitled to nothing more than the increments allowable in the time scale applicable to the substantive appointment which he held at the time of the transfer. In this connection stress was laid on the words "increments in the time scale applicable to the post on which the Government servant holds a lien" occurring in the sub-rule. We are unable to accept this contention. In the first place, it is not clear whether the case of the respondent was one where he held a lien or one where the lien was suspended, and no material was placed before the Court in this regard, the point in this form not being urged in the High Court. But even assuming that it was a case where the respondent had a lien and his lien had not been suspended it is difficult to see what logic there could be in interpreting the rule as providing different criteria in the two cases. Where the lien is suspended the rule speaks of the "post or posts, if any he would have held if his lien had not been suspended". By the use of the plural, it is clear that the rule contemplated the suspended lien being transferred from one post to another - in other words, to a promotion from one post to another during the period of the service in another department. If there was any ambiguity in what the rule meant it is wholly dispelled by reference to the circular which ensures to the officer on deputation in another department that he shall be restored to the position be "would have occupied in his parent department had he not been deputed". It was not suggested that there was any ambiguity in the wording of this circular which, in our opinion, gives proper effect to the provisions of Rule 50(b).

The other submission of learned Counsel was that a Government servant though he had a right to increments in a time scale applicable to the post that he held on the date of his transfer on deputation and on which he had a lien, had no legal right to be promoted to a higher post and that the construction adopted by the High Court virtually conceded or guaranteed to officers on deputation a right to an automatic promotion which they would not have had if they had not been posted on deputation. We see no force in this contention either. Learned Counsel is right only in so far as the promotion involved relates to a selection post. But where it is based on seniority-cum-merit, those considerations are not relevant. The service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services in the two departments that forms the basis of Rule 50(b). So long therefore as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be tendered in the parent department also so as to entitle him to promotions, which are often on seniority-cum-merit basis. What is indicated

here is precisely what is termed in official language the "next below rule" under which an officer on deputation is given a paper-promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted. If there are adverse remarks against him in the new department or punishments inflicted on him there, different considerations would arise and these adverse remarks etc. would and could certainly be taken into account in the parent department also, but that is not the position here. In view of the facts of the case it is not necessary to discuss this aspect in any detail or any further.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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