

State of Mysore & Anr.

Vs

S. V. Narayanappa.

Civil Appeal No. 1420 of 1966

(CJI K. Subha Rao, J. M. Shelat JJ)

22.08.1966

JUDGMENT

SHELAT, J.

This appeal by special leave is against the Judgment and Order of the High Court of Mysore quashing the memorandum dated July 4, 1963 whereby the State Government terminated the service of the respondent. The only question arising in this appeal is one of interpretation of the Government Order No. GAD 46 SRR, dated September 22, 1961.

The respondent entered government service as an officiating Computer in the Government Press on March 11, 1958 and continued in that post until September 1, 1958. He was thereafter appointed from time to time in officiating capacity in different posts though in the same department until December 3, 1959 when he was appointed as a proof examiner. He continued in that post until February 28, 1961. According to the appellants there was break in his service on March 1, 1961 as his service was terminated on February 28, 1961 and he was once again appointed on March 2, 1961 as a second division clerk (Industrial). He continued in that post until July 4, 1963 when the impugned order terminating his service was passed. The first of March 1961 on which it was said there was break in his service was a holiday.

There is no dispute that the respondent was throughout working in officiating capacity and was a "local candidate" like several other such employees appointed by direct recruitment by Government instead of regular recruitment by the Public Service Commission of the State as required by the rules of Recruitment.

Rule 8(27A) of the Mysore, Civil Service Rules, 1958 defines a "local candidate" as meaning a temporary Government servant not appointed regularly in accordance with the Rules of Recruitment to that service. Rule 1(A) of the Mysore Government Servants' (Seniority) Rules, 1957 provides that those rules do not apply to a person appointed as a local candidate so long as he is treated as such. It further provides that where his appointment is treated as regularised from any date, his seniority in the service shall be determined in accordance with these rules as if he had been appointed regularly in accordance with the Rules of Recruitment to the post held by him on that day. Since the appointment of local candidates as in the case of the respondent was not made by or through the Public Service Commission as required by the Rules, the State Government with a view to regularise such appointments passed the said order dated September 22, 1961.

The material portion of the said order runs as follows :-

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(i) All appointments to Class III Direct Recruitment Posts made by the local appointing authorities, both in the old Mysore area (including Bellary District) and in the other integrating areas up to 31st December 1959 (inclusive) may be regularised subject to the condition that the candidates were within the prescribed age limits and had the requisite qualifications at the time of their initial appointments;

(ii) The services of local candidates shall be regularised with effect from the date of their appointment, from which their service is continuous provided they were in service on 1st January 1960 and continue to be in service at the time their services are regularised.

(iii) The local service will count for purposes of leave, pension and increments..... but not for purposes of seniority; only the service from the date of regularisation of their appointments in the particular department will count for seniority;

(iv) Breaks in service will not be condoned even if such breaks are only for short periods.

In the Writ Petition filed by the respondent against the impugned order dated July 4, 1963 terminating his service the respondent raised two points :- (i) that though he was a local candidate appointed from time to time to the aforesaid posts he was entitled to have his service regularised under the said order and (ii) that as he was entitled to be so regularised he was also entitled to the protection of Article 311(2) of the Constitution. consequently, his service could not be terminated in the manner it was done by the impugned order. The contention of the State Government on the other hand was that the order of regularisation did not apply to the respondent as his service was not continuous as required by the said order and therefore there was no question of Article 311 being applicable to his case and the State Government was entitled therefore to terminate his service by the said order of July 4, 1963.

The High Court on an interpretation of the Order dated September 22, 1961 repelled the Government's contentions and held that the respondent was entitled to have his service regularised with effect from the date his service was continuous prior to December 31, 1959 and that being so, the order terminating his service on the erroneous basis that he was a temporary government servant not entitled to the benefit of the aforesaid regularisation order was violative of Article 311. This interpretation meant that the appointment and service of the respondent were not only to be regularised but as a result of such regularisation the respondent had to be treated as a permanent servant being entitled to the protection of Article 311(2). The High Court arrived at this result on the interpretation it gave to the portion of the said Order which we have set out above. The High Court observed that sub clause (2) of clause 2 of the said Order provided for the fixation of the date with effect from which the appointment was deemed to have been made permanent and that the second part of that sub-clause laid down the conditions which if satisfied entitled the respondent for regularisation. According to the High Court the necessary conditions for such regularisation were :- (a) that the local candidate should be in service on January 1, 1960 and (b) that he should continue to be in service at the time his service was to be regularised. The High Court further observed that what sub-clause (2) required was "not continuity of service but that the service be continued at the time of the regularisation" and that the intention of the Government was not to lay down the condition of continuous service between December 31, 1959 and the date of the said Government

order. It then observed :-

"When the Government order by a fiction of the law provided for regularisation of services with effect from a date anterior to 31-12-1959, the local candidates who satisfy the qualifications and conditions prescribed by sub-paras (i) and (ii) are deemed to have been permanently appointed with effect from a date anterior to 31-12-1959. Whether the local candidate possesses the qualifications prescribed in sub-para (i) of para 2, if his initial appointment was made before 31-12-1959, he is entitled to have his appointment regularised provided he was in service on 1st January 1960 and is continued in service at the time of the G.O., notwithstanding any break in service between 31-12-1959 and 22-9-1961."

The High Court also held that sub-clause (iv) on which reliance was placed by the Government had reference to break in service before December 31, 1959 and not during the period subsequent to that date. Thus, according to the High Court if a local candidate was initially appointed prior to December 31, 1959 and was in service on January 1, 1960 and also on September 22, 1961 he was entitled to the benefit of the regularisation order. So long as he was in service on the two termini his service would have to be regularised irrespective of whether his service during the interval was continuous or not. The High Court also equated regularisation with permanence of service and therefore held that once a local candidate's service was regularised he had to be treated as a permanent servant.

Before we proceed to consider the construction placed by the High Court on the provisions of the said order we may mention that in the High Court both the parties appear to have proceeded on an assumption that regularisation meant permanence. Consequently it was never contended before the High Court that the effect of the application of the said order would mean only regularising the appointment and no more and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. It seems that on account of this assumption on the part of both the parties the High Court equated regularisation with permanence.

We are however not called upon in this appeal to decide and we do not decide that question as Mr. Desai on behalf of the State Government assured us that the Government had come in appeal only in its anxiety to have the order interpreted by this Court as the construction placed by the High Court on the said order, if upheld, would have considerable repercussions on the prospects of other State employees. He also assured us on behalf of the State Government that since the break in the service of the respondent during the material time was only of one day, viz., March 1, 1961, assuming there was such a break, the government would not do anything to adversely affect his service and would not take away the benefit which he acquired as a result of the High Court's Judgment, even if we were to disagree with the interpretation placed by the High Court on the said Order

Coming now to the Order, sub clause (i) of clause 2 provides that all appointments to Class III posts by direct recruitment made up to December 31, 1959 should be regularised provided the candidates satisfied the conditions as to age and qualifications at the time of their initial appointment. The controversy arises on the construction of sub-clause (ii). That sub-clause provides that the services of such candidates shall be regularised with effect from the date of their appointment from which their services are continuous provided they were in service on January 1, 1960 and continue to be in service at the time their services are regularised. It is clear from the express words used in this sub-clause that continuity of service from January 1, 1960 until the date of the order is a condition

prescribed for regularisation. In other words, a candidate claiming the benefit of this order has to satisfy that he was initially appointed prior to December 31, 1959, that he was in service on January 1, 1960 and continued in that service till the date of the order, i.e., September 22, 1961. This construction finds support from sub-clause (iii) which provides that local service prior to regularisation would be counted for the purposes of leave, pension and increments though not for seniority as seniority was to be fixed from the length of service calculated from the date of regularisation. It is manifest that unless the local service was continuous such service could not be taken into account for the purposes, in particular of pension and increments. How would increments, for example, be granted unless the service prior to such increments was continuous ? The same consideration would also apply in the case of pension. It had therefore to be provided as has been done in sub-clause (iv) that a break in service would not be condoned for a period howsoever short. Continuity of service is thus a condition for both sub-clauses 2 and 3. The High Court was therefore in error when it said that sub-clause (iv) did not relate to considerations under sub-clause (ii) or that it had reference only to a break in service before December 31, 1959. The High Court was also in error when it construed sub-clause (ii) to mean that the only thing it required was that the candidate had to be appointed initially prior to December 31, 1959 and that he had to be in service on the two dates, viz., January 1, 1960 and September 22, 1961 and that the service during the interval need not be continuous. If that construction were to be upheld it would result in injustice, for local candidates not recruited regularly and not in continuous service provided they were in service on the two relevant dates, viz., January 1, 1960 and September 22, 1961, would get seniority over candidates regularly appointed after December 31, 1959 and whose service is continuous. Such a result would manifestly be both unjust and improper and could hardly have been contemplated. Therefore the proper interpretation would be that in order that the regularisation order may apply to a particular case the local candidate must be initially appointed prior to December 31, 1959, he must be in service on January 1, 1960 and continue to be in service without any break till the date of the said order. If his service is regularised, his service from the date of such regularisation would be counted for seniority as against others who were recruited properly under the Rules of Recruitment. Under sub-clause (iii) however if the service is continuous from January 1, 1960 to September 22, 1961, such service is to be taken into account for purposes of leave, pension and increments but not for purposes of seniority. The construction which we are inclined to adopt thus harmonises all the provisions of the Order and besides results in fairness to all the local candidates appointed by direct recruitment whether regularly or otherwise. For the reasons aforesaid the construction placed by the High Court cannot be sustained.

Though the construction which we are inclined to adopt is in support of the stand taken by the State Government, in view of the assurance given by counsel on behalf of the Government that this construction should not affect the regularisation of the respondent's service and its having been considered by the High Court as permanent, it is not necessary to interfere with the order passed by the High Court. The appeal consequently is dismissed. There will however be no order as to costs.

G.C.

Appeal dismissed.

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