

K. V. Rajalakshmiah Setty & Anr.

Vs

State of Mysore and Anr.

Civil Appeals Nos. 2174 and 2175 of 1966

(K. N. Wanchoo, G. K. Mitter, C. A. Vaidialingam JJ)

07.11.1966

JUDGMENT

MITTER, J. –

These are two appeals from a common judgment and order of the High Court of Mysore covering a number of Writ Petitions filed in that Court on special leave granted by this Court.

The appellants are two out of a total number of 43 persons who filed separate petitions under Art. 226 of the Constitution before the Mysore High Court on October 1, 1964. The main prayer in all the petitions was that a writ of mandamus should be issued commanding the State of Mysore to promote each petitioner to the cadre of Assistant Engineers from the date on which the petitioner was placed in charge of a sub-division with all consequential benefits. To put in short, the demand of the petitioners was that they should all receive benefits which others promoted before and after them had received. According to the petitions, some of these persons had received such benefits before the petitioners and some had been accorded similar advantages although they were promoted as Assistant Engineers long after the petitioners, but the State of Mysore had, without any reason, declined to give similar benefits to the petitioners.

The facts as they emerge from the affidavits and the documents referred to therein are as follows. The State of Mysore, before the States Reorganisation Act 1956, used to employ engineering graduates for a long time past designating them as surveyors. The State had another cadre of engineers known as Assistant engineers. Surveyors who were posted as officers in charge of sub-divisions were from time to time promoted to the cadre of Assistant Engineers. Between March 24, 1944 and December 15, 1944, a batch of 27 surveyors were placed in charge of different sub-divisions in the State. This batch was promoted to the cadre of Assistant Engineers with effect from May 21, 1945. Another batch of officers who were placed in charge of sub-divisions between May 11, 1945 and January 2, 1946 were similarly promoted with effect from January 17, 1947. By a notification dated May 17, 1950 the Government of Mysore decided to give all these 41 persons the benefit of promotion as Assistant Engineers with effect from the dates of occurrence of vacancies according to seniority. They were further to have the benefit of the grant of initial pay with weightage from October 1, 1948 in the revised scale of pay. The petitioners comprising a batch of 63 surveyors were placed in charge of sub-divisions on diverse dates between December 28, 1945 and November 13, 1949. With regard to most of these, the Chief Engineer of the State recommended to the Government of Mysore that they should be promoted as Assistant Engineers with retrospective effect from the dates they were placed in charge of sub-divisions. By a letter dated December 5, 1948 addressed by the Secretary to the Government of Mysore to the Chief Engineer, the latter was requested to post most of this batch of surveyors including one

Siddaveerappa in charge of sub-divisions as shown in the accompanying statement pending issue of orders on the question of filling up vacancies existing in the Assistant Engineers' cadre. By notification dated December 21, 1949 these 63 persons were directed to be promoted as temporary Assistant Engineers in the Public Works Department against existing vacancies. On the same date, the Chief Engineer was requested to forward to Government an allocation statement showing the vacancies against which the newly promoted Assistant Engineers were counted, the dates from which the posts were vacant and the dates on which they had been in charge of sub-divisions. On March 7, 1950 the Chief Engineer by his communication No. 1839-40 Est. supplied particulars to Government of the dates on which each of these 63 persons had assumed charge of a sub-division. On September 28, 1953, the Chief Engineer addressed D.O. letters to all the 63 Assistant Engineers for particulars of dates on which each of them had taken such charge. This was complied with by all the addressees. By a letter dated December 13, 1956, the Chief Engineer drew the attention of the State Government to the fact that these 63 persons had been promoted in respect of vacancies which had existed long prior to December 21, 1949 (the date of notification mentioned above) and that some of the vacancies had existed for over four years prior to that date. According to the Chief Engineer, had these persons been promoted as and when vacancies occurred, they would not only have been in receipt of a much higher pay in their progressive grade but also would have been senior to many of the Assistant Engineers who had come in from the newly merged areas of Hyderabad, Bombay and Madras. The Chief Engineer also commented that in addition to this double disadvantage to which these persons had been exposed, they were also going to lose all chances of promotion to the higher ranks because the Assistant Engineers from the merged areas were all younger to them in age. The attention of the Government was drawn to the promotion of a previous batch of 41 supervisors already mentioned. The letter ended with a recommendation that a similar consideration should be extended to these 63 persons and their ranks in the common civil list be fixed with reference to the date of occurrence of the vacancies. It appears that the Chief Engineer pursued this subject from time to time making his recommendation about these persons. By letter dated July 10, 1957 the Chief Engineer pointed out that as the Inter-State seniority list of Assistant Engineers was soon to be finalised and the service in the cadre was to be the criterion for fixing relative ranks, it was right that these 63 persons should be reckoned as promoted from the dates of occurrence of the vacancies and their relative ranks in the integrated seniority list be fixed accordingly. Another letter on the subject was addressed by the Chief Engineer to the State Government on December 28, 1957. With regard to the recommendation already made by him, the Chief Engineer enclosed a modified Inter-State seniority list from serial numbers 28 to 92 to show that only a few Deputy Engineers of Bombay who were far junior in age and service would be ranked below these 63 persons of the erstwhile Mysore State and this would not affect these men from Bombay inasmuch as the 63 Mysore Engineers were very much older and would not bar the prospects of promotion of the juniors.

There was another batch of 107 persons who were promoted to the cadre of Assistant Engineers by notification dated November 15, 1958. Their appointments were given retrospective effect not from the dates on which they had assumed charge but from November 1, 1956. Although these officers did not receive the benefit of promotion from the dates on which the vacancies had occurred, they certainly received some benefit which had been denied to these 63 persons. Similarly, two batches of 32 surveyors and 124 surveyors were promoted by notifications dated July 3, 1963 and October 9, 1963.

During the argument, our attention was drawn by the learned Solicitor-General appearing for the appellants to another instance where some clerks had received benefit of promotion with retrospective effect.

According to the appellants, they had been clearly discriminated against considering the case of 41 persons who had been appointed before them as well as the subsequent batches of surveyors who had been promoted after them. The petitioners' complaint was that the order of May 17, 1950 gave special concession to these 41 officers to which they were not entitled under the rules. At the same time, it was argued that there was nothing in the service rules which prevented the Government from granting such concessions to the petitioners and the sum and substance of the argument of the learned Solicitor-General was that if such concessions could be given to persons who had been appointed before these 63 persons as well as persons who had been appointed subsequently, there was no reason why such concessions should have been withheld from his clients. In conclusion, it was urged that it was just and proper that the State of Mysore should be directed to fix the scale of seniority of these 63 persons on the basis that they had become Assistant Engineers from the dates on which the vacancies to which they had been posted had occurred so that they would not lose their chances of promotion in higher posts, for if the seniority list was allowed to remain as it is, persons who were younger in age and junior in service to this batch of 63 persons would receive promotions ahead of them for no fault of theirs.

According to the counter affidavit of the State of Mysore used before the High Court, the idea behind giving some concession to the batch of 41 persons was to give them some financial benefit as from a particular date, viz., 1-10-1948 and no more. This does not appear to be strictly accurate in view of the order dated May 17, 1950. With regard to the batch of 63 persons, it was said that the necessary details regarding their seniority and dates of occurrence of vacancies were not available when the notification dated December 12, 1949 was published. According to Government, these people could not be given promotion with retrospective effect as the dates of assumption of charge in sub-divisions by them was not strictly in accordance with the seniority. Antedating their promotions to the dates on which they had taken charge would result in some junior officers being ranked above some senior persons and it was for this reason that Government had ordered the promotion of these 63 persons to take effect from the date of notification irrespective of the dates from which they were put in charge of the sub-divisions. It was also said that the promotion of this batch was subject to the condition that they should be ranked in the order of seniority as per gradation list that obtained just before promotion. This state of affairs continued right up to the date of Reorganisation of the States in November 1956. The affidavit goes on to state that

".... in view of the Re-organisation of the State.... and the statutory recognition of the position of several officers as on 31-10-1956, it was no longer open to the new Mysore Government to re-open the issue settled in 1949."

With regard to the batch of 107 persons it was said that Government had ordered their promotion only from November 1, 1956 and it was not competent to order the same from an earlier date. In regard to the two batches of 32 surveyors and 124 surveyors promoted in 1963, it was said that they were all in charge of sub-divisions from the dates subsequent to November 1, 1956 and there was no difficulty in promoting them from the dates on which they had assumed charge of sub-divisions. According to the State as :

".... these incidents occurred after the Reorganisation and the formation of a new State, the new State of Mysore was perfectly justified in giving effect to their promotions accordingly."

With regard to the 63 persons, the point of view of the State of Mysore is that the new State which emerged after the Reorganisation of States in 1956 was not competent to interfere with the state of

affairs prior to 1-11-1956 and Government had no power to re-open their cases.

According to Mr. Iyengar who appeared for the State, assuming that law included executive directions for the purpose of Art. 14 of the Constitution, we have to see : (a) whether there is a rule which has been unevenly applied as among equals; (b) if a principle has been evolved, whether it has been unevenly applied; and (c) whether there has been an equal treatment in applying executive orders.

Mr. Iyengar argued that there was no rule which had been violated in this case nor any principle had been evolved which could be said to have been unevenly applied nor was there any executive order which has been given effect to in different ways in different cases. Mr. Iyengar's second submission was that if the 63 persons were to be fixed in the cadre with respect to the dates on which they were first put in charge of sub-divisions, the seniority list with regard to the whole cadre of engineers would have to be altered thus affecting persons who are not before us and who would be condemned unheard. His third submission was that giving effect to the contention of the appellants would be projecting Art. 14 to a date before the Constitution came into force and this could not be allowed. He also argued that the appellants had been guilty of laches in making their applications in 1964 when they were really complaining of an order which had been passed as far back as May 17, 1950. It was contended that the appellants had been able to give no explanation as to why they did not apply in between the date of the impugned order and the 1st of November 1956 when the Reorganisation of States became effective.

Mr. Iyengar further contended that in reality a concession had been shown to some persons and the petitioner/appellants had no legal right to claim such concession. He also argued that giving effect to the contention of the petitioners would be going against section 115 sub-s. (7) of the States Reorganisation Act, 1956.

There is some force in some of the contentions put forward on behalf of the State of Mysore. It is not necessary to test them as we find ourselves unable to uphold the contention of the appellants. No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession, but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so. There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from surveyors. The indulgences shown to the different batches of persons were really ad hoc and we are not in a position to say what, if any, ad hoc indulgence should be meted out to the appellants before us.

There is also a good deal of force behind the contention that the appellants are guilty of laches. After the passing of the order of May 17, 1950, they should have made an application within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that they could rest upon their oars if they were really being discriminated against. As we cannot hold that the appellants were entitled to any particular indulgence or concession, the only way of meting out equality to all surveyors who had been promoted to the cadre of Assistant Engineers would be to say that promotions should in all cases be effective from the date of the notification. This is obviously beyond our powers.

In the result, the appeal fails and is dismissed, but on the facts of this case, we make no order as to costs of this appeal. This order will also govern the case of S. A. Muni Reddy who alone out of 37 persons was allowed to intervene in this appeal by our order made on 11th October, 1966.

Appeal dismissed.

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