

State of Mysore and Another

Vs

P. N. Nanjundiah and Another

Civil Appeal No. 1004 of 1966

(Ramaswami JJ)

07.03.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Mysore High Court, dated the 15th July, 1963 in writ petition No. 1114 of 1963.
2. The respondent No. 1 joined service in the Government Central Press, Bangalore as a Compositor in the year 1941. He was promoted as a Computer in 1945. On July 1, 1950 he was deputed to work in the Central Jail Press, Bangalore as officiating Foreman. On November 13, 1967 the Mysore Public Service Commission selected respondent No. 1 as a Foreman. Thereafter he was relieved from his post as Foreman in the Central jail Press and he joined Government Central Press on December 5, 1957 as Foreman. Two posts of Overseer fell, vacant in the Government Central Press on December 1, 1961. Out of these two posts one was being reserved to be filled up by promotion. The case of the first respondent was that he should have been promoted to this post in preference to the second respondent who joined service as a Work Clerk on April 20, 1955. The second respondent was promoted as an Overseer by Office Order No. 394/61-62, dated the 21st of November, 1961. The first respondent was promoted as Supervisor by Office Order No. 727/62-63, dated March 29, 1963. The first respondent made several representations to the Government regarding the promotion of respondent No. 2, but no satisfactory reply was given. Thereafter respondent No. 1 filed a writ petition in the Mysore High Court praying for the grant of a writ of certiorari to quash the Office Order No. 727/62-63, dated March 29, 1963 issued by the appellants promoting the second respondent as Supervisor and also the Office Order No. 394/61-62, dated November 21, 1961 promoting the second respondent as Overseer with effect from December 1, 1963. The writ petition was opposed by the appellants. It was said that the respondent No. 1 was not entitled to promotion as he had been working as a Foreman in the Central Jail Press which post was not borne on the cadre of the Printing Department and his service as officiating Foreman in the Central Jail Press could not be counted for the purpose of promotion. According to the appellants respondent No. 1 was not eligible for promotion according to rules, as he has not put in five years service in the Department and there was no question of any violation of a statutory rule. By its judgment, dated August 2, 1964 the High Court allowed the writ Petition filed by respondent No. 1 and issued a writ of mandamus to the appellants directing them "to promote respondent No. 1 as an Overseer with effect from 1-12-1961 and as a Supervisor with effect from 1-4-1963 and to give him all consequential benefits".
3. It was contended on behalf of the appellants that in computing the length of service of respondent No. 1 as Foreman his service as Foreman in the Central jail Press could not be taken into

consideration and it that service is left out respondent No. 1 had not the required qualification on December 11, 1961 for being promoted as an Overseer. In other words the argument was that the respondent No. 1 was not promoted because he did not possess the requisite qualification. In our opinion there is no justification for this argument. Mysore General Service (Printing, Stationery and Publications Branch) Cadre and Recruitment Rules, 1950 framed under Article 309 of the Constitution provide that the posts of Overseers should be filled up partly by direct recruitment and partly by promotion. 50% of the posts is reserved for promotees from the cadre of Foreman and the other 50% is available for direct recruitment. The qualifications prescribed for the promotees are : (1) a pass in all the Higher Grade Examinations in printing [Madras) or a Diploma in printing and allied subjects; (2) five years service as Foreman in the Department. It is not disputed that the respondent No. 1 possessed on the relevant date the first of two qualifications. The question for determination is whether on that date respondent No. 1 had five years service as a Foreman in the Department. If the service of respondent No. 1 as a Foreman in the Press attached to the Central Jail is taken into consideration there is no dispute that respondent No. 1 was qualified to be promoted as an Overseer on December 1, 1961. But it was urged on behalf of the appellants that the service cannot be taken into consideration as it was not the service rendered "within the Department" in other words, in the Department of Printing, Stationery and Publications. It is not possible to accept this argument because it is apparent from the Mysore jail Service Cadre Recruitment Rules, 1960 that the post of Foreman attached to the Central jail Press is required to be filled up by deputation from the Government Press and the officer recruited has to be borne on the cadre of the Printing, Stationery and Publications Branch though he was depicted at the same time to serve in the Department of Mysore Tail Services. Rule 53 (b) (i) of the Mysore Service Rules provides as follows :

"Service in another post other than a post carrying less pay referred to in clause (i) of Rule 20(a), whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than a Medical Certificate shall count or increments in the, time-scale applicable to the post on which the Government servant holds, a lien, as well as in the time scale applicable to the posts or posts, if any, on which he would hold a lien had his lien not been suspended."

It is clear from this rule that services of an officer on deputation to another Department is treated as equivalent to the service in the parent department and it is this equation between the service in the two Departments that forms the basis of Rule 53(b)(i) of the Mysore Jail Service Rules. So long as the service of the employee in the new Department is satisfactory and lie is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent Department. Also so as to entitle him to promotion which are seniority-cum-merit basis. This view is borne out by the decision of this Court in State of Mysore v. M. H. Bellary, (1964 7 SCR 471) in which the true scope of Rule 50(b) of the Bombay Civil Service Rules was considered. The language of Rule 50(b) of the Bombay Civil Services Rules is similar to that of Rule of 50(b)(i) of the Mysore Civil Service Rules. The ratio of the decision in Ballary's case (supra) is hence applicable to the present case. We are, therefor, of opinion that the appellants were wrong in not taking into consideration the service of respondent as Foreman in the Central jail Press while considering the question of promotion to the post of Overseer.

4. The argument was stressed on behalf of the appellants that in any event the High Court was not right in issuing a writ of mandamus "directing the appellants to promote respondent No. 1 as

Overseer with effect from February 1, 1961 and as Supervisor with effect from April 1, 1963 and to give him all consequential benefits". In our opinion there is justification for this argument. It has been pointed out by this Court in *The State of Mysore v. Syed Mahmood and Others*, (AIR 1968 SC 1113) that in matters of this description the High Court ought not to issue writs directing the State Government to promote the aggrieved officers with retrospective effect. The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant date and so what consequential benefits should be allowed to him. In the present case we are informed that both respondent No. 1 and respondent No. 2 have been promoted as Overseers after the filing of the writ petition. In the circumstances we consider that proper course is to issue a direction to the appellants to consider whether the respondent No. 1 should have been promoted to the post of Overseer with effect from December 1, 1961 and as a Supervisor with effect from April 1, 1963, what should be the relative seniority as between respondent No. 1 and respondent No. 2 and what consequential benefits should be allowed to respondent No. 1.

5. Subject to this modification we affirm the order of the High Court and dismiss the appeal. While granting special leave this Court directed that the appellants shall pay the costs of respondent No. 1 in any event. Accordingly appellants are directed to pay the costs of this appeal to respondent No. 1.

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