

Union of India

Vs

S. R. Dhareshwar and Others

Civil Appeal Nos. 903-922, 959 and 960 of 1966

(K. S. Hegde, A. N. Grover JJ)

05.05.1971

JUDGMENT

MITTER, J. -

1. All these appeals arise out of orders made on different writ petitions in the High Court of Mysore. The first group of appeals is by the Union of India while the State of Mysore is the appellant in the second group. The High Court delivered one common judgment applicable to the writ petitions out of which these appeals arise as also a number of other writ petitions which came up in appeal to this Court separately.

2. The writ petitions before the High Court out of which the present appeals arise were all filed by officers of the State of Mysore in different departments after the reorganisation of States in 1956 praying for the quashing of final inter-State seniority lists prepared by or with the approval of the Government of India and direction for preparation of seniority lists on the basis mentioned. The departments concerned were many including the Agricultural Department and the Forest Department. The petitioning officers stood allotted to the new State of Mysore under Section 115 of the States Reorganisation Act of 1956, hereinafter referred to as the 'Act'. As is well known, the reorganisation of the States resulted, inter alia, in the creation of the new State of Mysore which included the whole of the erstwhile states of Mysore and Coorg and parts of the former States of Bombay, Hyderabad and Madras. Under Section 115(1) of the Act officers serving in the erstwhile States of Mysore and Coorg were deemed to have been allotted to the new State of Mysore. Some of the officers who were serving in the former States of Bombay, Hyderabad and Madras were similarly allotted to this new State. As a result of these changes, it became necessary for the Central Government to divide the services of the former States of Bombay, Hyderabad and Madras and allot some of the service personnel to the new State of Mysore. The personnel so allotted had different conditions of service in their parent States. Their designations were different, their duties were not identical and their pay scales also varied considerably. Naturally the integration of personnel drawn from the different States and the fixing of their seniority became a matter of considerable difficulty and complication. Section 115 of the Act was an attempt to resolve these difficulties according to the procedure therein prescribed. Sub-sections (1) to (4) of Section 115 deal with the question of allotment of officers from one State to another and their continuance in service provisionally in one State unto transferred to another State till their final allotment. To this and sub-sections (2) and (3) of Section 115 confer powers on the Central Government to divide the services of an existing State and allot some of the officers to the successor States. Sub-section (5) provides as follows :

The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to -

(a) the division and integration of the service among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representation made by such persons.

The content of the power contained in that section and the nature and quality of it were canvassed at length before the High Court. The High Court dealt at length with a group of 10 petitions filed by officers of the Forest Department and pronounced judgment thereon after interpreting the scope of Section 115 and the relative functions of the State Government and the Central Government in the matter of integration of the officers hailing from different States and the preparation of their intense seniority lists.

3. The conclusions of the High Court were as follow :

(1) It was the Central Government which was charged with the duty of integrating the services in the new States to ensure fair and equitable treatment to all persons affected by the provisions of Section 115 and to properly consider any representation made by such person;

(2) The power conferred on the Central Government under Section 115 (5) was an original power and an exclusive power. This position according to the judgment, was not challenged at the hearing before the High Court;

(3) The power in question was a quasi judicial power and hence its exercise was open to judicial review. The seniority lists prepared by the State Governments had no legal basis. At best, the information collected by the State Government could only serve as data for the Central Government which was charged with the duty of integrating the services;

(4) The decisions impugned by the petitioners were merely provisional decisions as canvassed for by the learned Attorney - General who appeared for the Central Government in a batch of eight writ petitions.

(5) The persons affected by the decisions had a right to make representations against them. These had to be considered by the Central Government with the assistance of the Advisory Committee in order to arrive at a final decision.

4. In the result, the High Court did not strike down the decision of the Central Government, refused to grant the reliefs prayed for in the petitions and at the same time directed the Central Government to give the petitioners an opportunity to make representations against the equation of posts proposed, consider their objections with the aid of the Advisory Committee and thereafter arrive at a final decision as regards the matters in dispute.

5. The scope of Section 115 (5) came up for consideration by this Court in Union of India v. P. K. Roy. This was an appeal from a judgment of the Madhya Pradesh High Court holding that the preparation of the provisional gradation lists under the relevant provisions of the States Reorganisation Act, 1956 was unwarranted in law and that the final list published on April 6, 1962 prepared by the State Government under instructions from the Central Government with regard to

the integration of officers of the Engineering Department was illegal and ultra vires and as such to be quashed by the grant of a writ.

6. The facts in that case were as follows. Subsequent to the passing of the Act, a meeting of the Chief Secretaries of the various States to be affected by the reorganisation was held at Delhi in May, 1956 at the invitation of the Central Government. In this meeting certain decisions were taken as to the general principles to be observed with regard to the work of integration. The Government of India informed the State Governments that they had decided that the work of integration of services should be dealt with by the State Governments in the light of general principles already decided at the meeting of the Chief Secretaries. The State Governments were also informed that the Central Government was constituting Advisory Committees for assisting them in dealing with the representations from the officers affected by reorganisation. The principle for determining equation of posts and relative seniority fixed upon by the Chief Secretaries were noted (see p. 191). The Government of India constituted a Central Advisory Committee under Section 115 (5) of the Act for the purpose of assisting the Central Government in dealing with the problems arising out of the allocation and integration of the services and the functions of the Committee were outlined. The State Government prepared a provisional gradation list of the department to which the respondents belonged in September, 1959. Representation received from several officers were sent up by the State Government to the Central Government for being dealt with in consultation with the Advisory Committee it had constituted. Thereafter a reference was made by the State Government to the Central Government seeking its directions regarding publication of the final lists. The Central Government conveyed its decision to the State Government on November 11, 1959 as to the procedure to be adopted. In this Court it was contended on behalf of the appellant that the Central Government had improperly delegated its power under Section 115 (5) to the State Government and that in any event a second opportunity to make a representation regarding inter se seniority list of the former Mahakoshal region Assistant Engineers prepared on February 20, 1962 and final inter se seniority list published on April 6, 1962 should have been given.

7. Allowing the appeal in part, this Court observed (p. 196) :

Generally speaking, the work of integration requires the formulation of principles on which the work has to be carried out, the actual preparation of preliminary gradation lists in accordance with the principles so settled, the publication of the lists together with the principles upon which they have been compiled, the invitation of representations by the persons affected thereby, the consideration of representations and decisions upon those representations, and the publication of the final gradation list incorporating the decisions of the Central Government on the representations submitted.

In the opinion of this Court, the procedure adopted did not contravene the provisions of Section 115(5) of the Act because it was the Central Government which had laid down the principles with regard to the equation of posts and determination of relative seniority as between two persons holding posts declared equivalent to each other and drawn from different states. It was the Central Government which had considered the representations and passed final orders and both the preliminary and final lists were prepared and published by the State Government under the directions and with the sanction of the Central Government. The Court held that the preliminary work of preparation of gradation lists on the principles decided upon by the Central Government should be left to the State Governments concerned. The Court also held that the High Court was in error in holding that there was an implied delegation of the powers by the Central Government and that the final gradation list dated April 6, 1962 was therefore ultra vires and illegal. The Court was

of opinion that there was nothing in Section 115 or Section 117 of the Act which prohibited the Central Government in taking the aid and assistance of the State Government in the matter of effecting the integration of the services and so long as the Central Government exercised control over the activities of the State Government the question of improper delegation did not arise. The Court however observed on the facts of the case that the contention raised on behalf of the respondents that they should have been given a second opportunity to make a representation regarding the inter se seniority list prepared on February 20, 1962 and the final inter se seniority list published on April 6, 1962 was not unjustified and directed the Central Government to give an opportunity to the respondents to make a representation in regard to the said two points and thereafter to take steps to finalise and publish the list in accordance with law.

8. As already noted, the Mysore High Court adopted the contention put forward by the learned Attorney-General appearing only in one batch of cases that the lists were provisional and the stage had not been reached which called for the decision on the merits of the petitions individually.

9. Writ Petitions 2186 of 1963 and 121 of 1964 which were disposed of by the said common judgment of the Mysore High Court came up in appeal to this Court in Civil Appeals 1439 and 1446 of 1967. The petitioners in these two cases were, before the reorganisation of States, working as Assistant Conservators of Forests in the erstwhile State of Mysore. In appeals to this Court it was urged on behalf of the Union of India that in stating before the Mysore High Court that the impugned lists were only provisional lists, the learned Attorney-General had only made a concession or admission on a point of law which was not binding on the appellant in appeal. The Court noted that the stand taken by the Government of India in its affidavit before the High Court was that the impugned decision was a final one under Section 115 of the Act and that nothing more remained to be done in connection therewith and that the High Court had allowed the Attorney-General to raise a plea which was factually the case of the Government of India though at variance from the affidavit. Accordingly this Court held that the High Court was right in accepting the case of the Union of India put before it at the time of the hearing and in concluding that the writ petitions were consequently premature and no question of striking down that decision could arise. In this view, it was held that the decision of the High Court could not be challenged in these two appeals by the Union of India as it was given on the acceptance of its own case.

10. This Court also made some observations on the interpretation of Section 115 of the Act as given by the High Court to the effect that the power contained therein was quasi judicial and not administrative and that therefore it had to be discharged in conformity with the principles of natural justice. It was observed that inasmuch as the High Court held that the writ petitions were premature as the impugned decision was only provisional, these observations were not necessary.

11. As the stand taken by the learned Attorney-General before the High Court was confined to the group of cases which were disposed of in Civil Appeals 1438 and 1336 of 1967 and not in the other petitions before the High Court, the latter will have to be examined by the High Court individually on their own merits. The appeals are therefore allowed with a direction that the writ petitions before the High Court not covered by the judgment of this Court in Civil Appeals 1438 and 1446 of 1967, should be heard by the High Court giving opportunity to the parties to file further affidavits if the High Court thinks proper to do so. We have no doubt that in view of the pendency of these matters for a number of years past the High Court will deal with them expeditiously. The costs of these appeals will abide by the ultimate decision of the High Court.

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