

State of Mysore and Another

Vs

R. N. Rajanna and Another

Civil Appeal No. 2162(N) of 1969

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

25.01.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Mysore High Court allowing a petition filed under Article 226 of the Constitution by Respondent No. 1 and granting him certain reliefs.
2. The facts may be briefly stated. Respondent No. 1 joined as a Veterinary Inspector in December, 1953. In September, 1961, he was posted as Lecturer in Clinical Medicine in the Medical College of Bangalore. On October 25, 1961, he was temporarily promoted "without prejudice to the seniority of others" as General Manager, Hubli-Dharwar Milk Supply Scheme in the scale of Rs. 250 - 20 - 360 - 25 - 500 (revised scale) with immediate effect. On December 13, 1962, Respondent No. 2 was promoted as Dairy Extension Officer in the grade of Rs. 175 - 400. On April 2, 1963, Respondent No. 2 was posted as General Manager of the Dharwar Milk Supply Scheme in the grade of Rs. 250 - 500. By another order made on May 15, 1966, in modification of the previous order, Respondent No. 2 was posted as Superintendent, Bangalore Milk Supply Scheme on his own pay and scale of General Manager. That was a Class II post. On October 19, 1968, the grade of Class II was given to Respondent No. 2 in the scale of Rs. 275 - 600. It may be mentioned that all these posting were done in an officiating capacity. In December 1964, the post of General Manager of the Hubli-Dharwar Milk Supply Scheme was upgraded to Class II. The Respondent represented that although he was occupying a Class II post he was drawing salary of Class III post and, therefore, he should be given the salary in the grade of Rs. 275 - 600 being the salary of Class II grade. His claim was negatived by order, dated July 23, 1966. Ultimately, he filed a petition under Article 226 challenging the order negativing his claim and asking for other reliefs.
3. The High Court took the view that when Respondent No. 1 became a Dairy Development Officer in the year 1962 which was a Class II post, he could not be given the emoluments less than those payable to the 'occupant of Class II post'. Rule 32 of the Mysore Civil Services Rules was held to be inapplicable to him. The High Court does not appear to have gone into the question which had been raised in the petition that Respondent No. 2 who was junior to him was given the promotions and other benefits which offended the fundamental right of the equality of opportunity in the matter of promotion. In addition to quashing the impugned order, the High Court issued a direction for payment to Respondent No. 1 of the emoluments of Class II post from the appropriate date.
4. On behalf of the State, which is the appellant before us, it had been pointed out that Respondents Nos. 1 and 2 did not belong to one cadre and that the appointments which had been made from time to time were purely on ad hoc and temporary basis. It was further argued that the real claim of

Respondent No. 1 was that he should be considered as Class II Officer because the post of General Manager, Hubli-Dharwar Milk Supply Scheme, was upgraded in December, 1964. That contention, it is said, is wholly untenable but what has to be seen are the terms of appointment of Respondent No. 1. Although on October 5, 1962, the Respondent No. 1 was transferred and posted as Dairy Development Officer, Headquarters, but that was on his own pay and grade. The mere fact that he was holding a Class II post did not entitle him in these circumstances to claim the emoluments of a person holding a Class II post. There was no order ever made by any competent authority by which the Respondent No. 1 was appointed to Class II service that as per the existing cadre and Recruitment Rules of the Department the gazetted posts were to be filled up in the ratio of 60 per cent. by promotion from the officials in the cadre of Veterinary Assistant Surgeons on seniority-cum-merit basis and 40 per cent. by direct recruitment through the Public Service Commission. The promotion of Respondent No. 1 was only on a temporary basis and he had no lien on the post of General manager. Consequent upon the upgrading of the post, his lien was changed to his original service of Veterinary Assistant Surgeon. When Respondent No. 1 was posted on October 5, 1962, as Dairy Development Officer on his own pay and grade, his temporary promotion to the post of the General Manager ceased as soon as that post was upgraded to Class II. It was emphasised that the lien which the Respondent No. 1 had was on the post of Veterinary Assistant Surgeon. As regards the reliance placed by the Respondent No. 1 on Rule 42 of the Mysore Civil Services Rules, it was averred that he was not entitled to the benefit of that Rule. The reason was that after the post of the General Manager had been upgraded to Class II the lien of Respondent No. 1 on that post had been come to an end and had shifted to that of Veterinary Assistant Surgeon with effect from January 1, 1965.

5. Before us reliance had also been placed on behalf of Respondent No. 1 on Rule 42-B of the Mysore Civil Services Rules. Rule 43 had also been referred to. None of these essential and material matters has been considered by the High Court. We are unable to uphold the judgment of the High Court on the reasoning contained in it. In our judgment certain points which had material bearing on the controversy between the parties did not engage the attention of the High Court fully and no decision was given with regard to them.

6. In the result, we allow this appeal and set aside the judgment of the High Court. The matter is remanded to the High Court for a fresh decision after disposing of all the points raised by both the parties. There will be no order as to costs in this Court.

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