

State of Mysore

Vs

P. R. Kulkarni and Others, Etc.

Civil Appeals Nos. 1168-1170 of 1967

(A. N. Ray, M. H. Beg JJ)

24.07.1972

JUDGMENT

BEG, J. –

1. The State of Mysore has appealed by Special Leave to this Court against a judgment of a Division Bench of the Mysore High Court allowing three writ petitions raising common questions of law and fact. There are thus three connected appeals before us against a common judgment which will be dealt with by us in a single judgment.

2. Each of the three petitioners before the High Court, now respondents before us, has challenged the validity of reversion orders passed against them on October 25, 1956, by the Superintendent of Police (Wireless), in the then State of Bombay, a few days before the Central Government, by an order, dated October 31, 1956, made under Section 115, sub-section (2) of the State Reorganisation Act, 1956 (hereinafter referred to as the Act), allotted the respondent to the newly formed State of Mysore. The respondents had been officiating, before their reversion, as wireless operators on a pay scale of Rs. 80-5-100, after successfully passing an examination held in 1955 by the Police Wireless Training Centre at which the respondent Y. L. Mirajkar secured the 16th place, the respondent R. R. Kulkarni, the 20th place, and respondent V. S. Bhandari the 30 place. They were reverted, by the impugned orders, to the posts of police constables on pay scales of Rs. 35-1/2-40. It is obvious that the reversion to the lower posts with lesser payment a serious loss to each of the three contesting respondents. The respondents had, therefore, challenged the reversion orders, passed practically on the eve of their allotment to the State of Mysore, on the ground, inter alia, that these orders amounted to punishment in violation of the provision of Article 311(2) of the Constitution. As the respondents were only officiating Wireless Operators they could be reverted, without infringing Article 311, provided their reversion did not amount to punishment. As no case of punishment, in the eye of law, could be made out, no violation of Article 311 could be put forward.

3. The petitioners had a right of representation under Section 115, sub-section (5) to an Advisory Committee, which they did avail themselves of, but their representations to that Committee were rejected on the ground that they could not complain of reversion orders which were passed before the order allotting them to the new State of Mysore. Thus, the petitioners' grievances against the reversion orders had not even been considered by the Advisory Committee which seems to have acted on the erroneous assumption that the reversion orders were quite disconnected with the Reorganisation of States, one of the consequences of which was that services of persons serving in one State were transferred to another under the provisions of Section 115, sub-section (2) of the Act.

4. The Mysore High Court had quashed the reversion orders passed before the allotment orders of

the Central Government, partly because the reversion was held to have been ordered for a collateral or extraneous purpose and partly because it had resulted in a discrimination against the respondents struck by Articles 14 and 16 of the Constitution. Even whether Section 311 is inapplicable, a reversion order may be vitiated on these grounds. We, therefore, proceed to consider the merits of this double pronged attack on reversion orders.

5. The High Court had found that the reversion orders against the respondents were passed under the erroneous belief entertained by the authorities concerned in the former State of Bombay that all police officers belonging to the constabulary of the 4 'Kannad' Districts, (i.e. Belgaum, Dharmar, Bijapur and Kanara), which were transferred from the former State of Bombay to the new State of Mysore, must necessarily be sent to the new State of Mysore and could not serve in the new State of Bombay. It seems that the authorities concerned came to the conclusion, for reasons which are not very clear, that, unless the petitioners were reverted, the number of Wireless Operators would exceed the number required in the new State of Mysore. It was nowhere stated on behalf of the Mysore State that it required only a certain number of Wireless Operators and could not absorb more. It appears that the officials of Bombay took it upon themselves to assess the needs of the New Mysore State although this was not their function at all. No provision of law could be shown to us which could enable any authorities or officials of the former State of Bombay to gauge the needs of the Mysore State and to make reversion orders against employees of the State of Bombay in anticipation of their transfers to satisfy the needs of the State of Mysore. On the other hand, Section 115(2) of the Act conferred the power on the Central Government to make provisional and then final allotments, and, until the Central Government passes its order, the employees of an existing State, a part of whose territory was transferred to another State, had to continue to serve the parent or principal successor State.

6. The High Court had also held that proved facts supported the assertions made on behalf of the respondents that the real object of the reversion was to make available vacancies thus caused in the posts of officiating Wireless Operators in the Bombay cadre to other employees who subsequently, secured these posts although they had obtained lower marks than the petitioners and were junior to the petitioners as Wireless Operators. Even if this was not the real object, but, as the Mysore High Court also concluded from the assertions made in the affidavit before it, the reversion orders against the respondents were based merely on a mis-apprehension of the purposes and the effect of the Act, such a mis-apprehension could not provide a reasonable or valid ground for the reversion. The High Court could and did hold that the power of reversion was not utilised for a purpose for which it could properly be said to have been meant. The exercise of every power, whatever its nature, lodged in Government authorities, is controlled by the need to confine it to the ambit within which it could justly and reasonably be expected to take place. A power used under the mis-apprehension that it was needed for effectuating a purpose, which was really outside the law or the proper scope of the power, could be said to be an exercise for an extraneous or collateral purpose.

7. It was objected that the High Court of Mysore had erroneously characterised such a use of the power of reversion as a "misuse of power" which "invited the criticism" that it was an "artifice" to eliminate the respondents from the field of officiating operators in order that others left in the State of Bombay might get their places. In other words, the reversion orders may have sprung from an oblique motive in addition to having resulted from the mis-apprehension that officers on the constabulary of certain District had necessarily to be allocated to Mysore and that officials of the Bombay State could gauge the needs of the Mysore State. Learned Counsel for the State of Mysore has not been able to show us that the findings of the Mysore High Court, which meant that the power of reversion had been used for a purpose for which it could not have been intended, were

erroneous. "Misuse of power" or "mis-application of power" or a "Detournement de Puvoir" (as it is called in French Administrative Law), are terms correctly employed to describe the use of a power in this illegal fashion. It was not necessary for the respondents to go so far as to establish that such misuse took place with the deliberate object of benefiting others at the expense of the respondents, although learned judges of the High Court were inclined to hold, not without good reasons, that such an object may also be there. It was enough to prove, as the respondents succeeded in doing, that the power of reversion was used for a collateral or legally extraneous purpose.

8. The second ground of attack upon the reversion orders, was that they resulted in an unjustifiable discrimination struck by Articles 14 and 16 of the Constitution. This ground had also been fully substantiated on the findings recorded by the Mysore High Court. It was held by it that the facts disclosed by the records of the Police Department of the former State of Bombay made it abundantly clear that the respondents could have continued in the State of Bombay as Wireless Operators but for the mis-apprehension mentioned above because vacancies existed there which were filled up by persons very much junior to the respondents. Some of these juniors were appointed by orders made on April 14, 1959, in the State of Bombay. They included candidates who had secured places far below the respondents in the examination of 1955. One of them was even declared in 1955 to have failed, but he was accepted later by relaxation of the rules. Another, who had also failed in 1955, was appointed after passing a practical examination. All these juniors were working in the State of Bombay as Wireless Operators while the respondents continued to serve officially as mere constables in Mysore State. Respondents had been denied their chance of continuing as operators in Bombay State simply because they had to leave the Service of the State of Bombay after they had been reverted without any reason apart from those indicated above. The effect of it was that their juniors and less meritorious officers obtained preference over them.

9. We are unable to accept the submission of the learned Counsel for the Mysore State that the subsequent orders passed in Bombay, State appointing others, who were clearly junior to and less meritorious than the respondents, must be held to irrelevant in deciding whether the impugned reversion orders had resulted in violations of Articles 14 and 16 of the Constitution in the case of the Respondents. If, as a consequence of reversion orders, the respondents were denied the opportunities which their juniors in service, who were also below them in order of merit, secured in their stead, we think that the conclusions reached by the Mysore High Court, on the strength of relevant data before it, were unassailable.

10. It has also been shown to us, by the learned Counsel for the respondents, that, although the respondents were allotted, after illegal reversion, as mere constables to the newly formed State of Mysore, yet, they had been working throughout the period of their service in Mysore as Wireless Operators, because of their proficiency and experience in this work. Assertions made by the respondents that they had been assigned and were doing the work of Wireless Operators in Mysore, had not been controverted by the State of Mysore. It is, therefore, only just and proper that they should be treated as Wireless Operators and deemed to have been allotted in that capacity to the State of Mysore. In fact, this is the result of the orders of the Mysore High Court which had quashed the reversion orders while leaving the allotment intact. We see no grounds for interference with the orders of the Mysore High Court.

11. Consequently, these appeals are dismissed with one set of costs.

</html