State of Mysore

Vs

M. H. Krishna Murthy and Others

Civil Appeal Nos. 193-194 of 1971

(Beg, J.)

05.10.1972

JUDGMENT

BEG, J. -

1. The State of Mysore has come to this Court with two appeals now before us by Special Leave against the common judgment on two writ petitions which were allowed. The High Court of Mysore had quashed three State Government Notifications Numbers G.S.R. 384, and 392 and 393, dated August 30, 1967, amending the Mysore State Accounts Services (Recruitment) Rules, 1959, and the promotions of Respondents 3 to 8 of Writ Petition No. 1416/67. It had directed the State of Mysore to consider the cases of the petitioners with those of Respondents 3 to 8 for promotion before it under the Mysore State Accounts Services (Recruitment) Rules, 1959, made under Article 309 of the Constitution of India, notified on May 26, 1959.

2. The two petitioners before the High Court, who are respondents before us had joined the Accounts services in the Comptroller's office of the former Mysore State as first and second Division Clerks. Consequent upon the abolition of the Comptroller's office, the petitioners began working as Accounts Clerks under the Chief Engineer, P.W.D. On October 31, 1953, a Divisional Accounts Cadre, in the scale of Rs. 130-335 was created by the Mysore Government under the administrative control of the Chief Engineer. Both the petitioners passed the prescribed examinations and were absorbed in the Divisional Accounts Cadre. It appears that in April, 1959, the P.W.D. Reorganisation Committee had recommended the transfer of the P.W.D. Accounts Branch in toto to the newly set up Controller of State Accounts. In accordance with this recommendation, the petitioners came under the administrative control of the Controller and the designation of their office was changed to that of "Accounts Superintendent". On May 15, 1959, the two formerly separate units of the Accounts service, namely the P.W.D. Accounts Unit, under the Chief Engineer of P.W.D., and the Local Fund Audit unit, known also as "the State Accounts' Department", came under the common administrative control of the Controller of State Accounts. On May 26, 1959, the Mysore State Accounts Services Cadre and Recruitment Rules were issued and combined cadre strengths were fixed.

3. The High Court after examining the rules in 1959, in the context of all the orders, preceding and following the promulgation of these rules, concluded : "There cannot be the slightest doubt from these rules that a clear and complete integration was brought about between the two units". It pointed out that the qualifications and status of officers of the formerly separate units were indentical, their work was of the same nature, the recruiting authorities were the same, and the standards observed and tests prescribed for entry into the formerly separate units were identical. The result of the Rules of 1959 was that an artificial distinction based on mere separate control had been

abolished so that both units came under the legally single administrative control of the Accounts' Department incharge of the Controller of State Accounts. The petitioners became absorbed in what was legally a single permanent service regulated by uniform rules.

4. After examining the cases of the petitioners that, in the matter of promotion, they were discriminated against simply because they had worked in the P.W.D. Accounts Unit, which had ceased to exist, the High Court held that the petitioners' grievances were justified. It found that figures showing the number of appointments of members of the same service derived from the formerly separate units indicated "a striking disparity in the promotional opportunities between the officers of the two wings in the same cadres". It said : "White the Rules of 1959 integrated the two wings into one service and provided for promotion on the basis of seniority-cum-merit, the impugned Notifications fixing up to the cadre strengths reduced the number of promotional posts available to the Public Works Accounts Unit to a very low figure as compared with the promotional opportunities open to the officers in the other wing". It had, therefore, struck down the impugned Notifications as violations of the Constitutional guarantees given by Articles 14 and 16(1) of the Constitution.

5. The learned Counsel for the State of Mysore had contended : firstly, that the petitioners, now respondents before us, were never promoted or appointed to offices held by them under the rules of 1959 so that they could not complain of denial of equality of promotional chances; and, secondly, that the amendments made retrospectively in the rules in the 1967, justifying the differences of promotional chances between the two wings of the same service were perfectly legal and bore a rational nexus to the object of the differences made.

6. So far as the first contention is concerned, we are unable to entertain it for the first time in this Court. We do not find any indication that the point, even if such a position was taken on behalf of the State, was argued at all before the Mysore High Court. The submission that the High Court had wrongly proceeded on the assumption that the petitioners were promoted and appointed under the rules of the integrated service although the point was argued before the Mysore High Court, is not borne out even by any assertion in the application made by the appellant under Articles 132 and 133(1)(c) of the Constitution of India before the Mysore High Court. Our attention was invited to a paragraph in that application where it was submitted that the "High Court should have held" that the answering respondents were placed "in independent charge of the duties of Assistant Commissioner without conferring any right or benefit of promotion". But, this submission does not appear to us to meet the objection that the point was not urged, when the petitions were argued before the High Court, that the petitioners were not entitled to the benefit of the Rules of 1959 on the ground that they were not promoted to the posts held by them in the service. It is a well recognised practice of this Court not to allow new points to be raised for the first time in this Court particularly when they involve investigation of questions of fact. We, therefore, do not propose to deal with a controversy which does not arise for consideration before us.

7. The question which remains for consideration by us is the one relating to the validity of a division into two classes of members of the same service, belonging to the same cadres, for purposes of a difference to be made in their promotional chances. Learned Counsel for the State has sought to justify this difference in promotional chances by a reference to differences in the historical backgrounds and to the practice of making the distinction in promotional chances. The Mysore High Court had very righty observed that neither a fortuitous artificial division in the past nor the unconstitutional practice of makings an unjustifiable discrimination in promotional chances of Government servants belonging to what was really a single category, without any reference either to

merit or seniority, or educational qualifications, could justify the differences in promotional chances. We think that it had rightly declared the purported amendments in the rules of 1959, which sought to disintegrate a service which had been integrated, to be ultra vires. Such amendments made for the purpose of justifying the illegal promotions made, in the teeth of the protection conferred by Articles 14 and 16(1) of the Constitution of India upon Indian citizens in Government service, could not be upheld.

8. The High Court rightly relied on State of Mysore v. Padmanaghacharya, (AIR 1966 SC 602 : (1966) 1 SCR 1 SCR 994 : (1967) 1 SCJ 256) to hold that the power of making rules relating to recruitment and conditions of service under the proviso to Article 309 could not be used to validate unconstitutional discrimination in promotional chances of Government servants who belong to the same category. It must be understood that a Government servant whose case is considered for promotion but who fails to be selected on an application of just and reasonable criteria, such as that found in the merit-cum-seniority rule found in the Rules of 1959, cannot complain of discrimination. But, what the petitioners had complained of and established was that their cases for promotion were not considered at all under these Rules on the false premise that they belong to a class which disables them from obtaining equal consideration for promotion to the offices to which they considered themselves entitled. The effect of the order of the Mysore High Court was only that cases of the petitioners, now respondents before us, will be considered, in accordance with Rules of 1959, in preparing the seniority list on merit-cum-seniority basis. All that the order of the High Court enjoins is that the petitioners before it must not be ignored simply on the assumption that the source of their initial recruitment debars the consideration of their merits for promotion.

9. Learned Counsel for the State of Mysore had attempted to rely strongly on Ram Lal Wadhwa and Another v. The State of Haryana and Others, ([1972] 2 SCC 275) and S. G. Jaisinghani v. Union of India. ([1967] 2 SCR 703 : AIR 1967 SC 1927 : (1967) 2 SCJ 612 : 65 ITR 381) In Ram Lal Wadhwa's case (supra), the majority of learned Judges of this Court had reached the conclusion that the historical and other special reasons existing, on the facts of that particular case, justified the difference made in promotional chances of the teachers coming from two different sources. We think that Wadhwa's case (supra), was decided on its own facts, the most important of which was that, after full consideration of the pros and cons of various alternatives before it, the Government concerned had come to the conclusion that the provincialised cadre must be gradually and not suddenly eliminated. In that case, there was no actual formal decision to integrate the two branches as is the case before us. The rules before us levy no doubt whatsoever, as we have already pointed out, that a complete integration of the service whose members came originally from two sources had been actually accomplished. That was not the position in Wadhwa's case (supra), which could not, therefore, help the appellant.

10. Similarly, Jaisinghani's case (supra) was also distinguishable as it has been rightly distinguished by the Mysore High Court, on facts of that particular case. There quotas for promotion had been fixed by the Government in exercise of a statutory power on rational and reasonable criteria. In the case before us, the amendments in existing rules were sought to be made for the purpose of validating what, as the Mysore High Court had rightly held, were violations of Articles 14 and 16 of the Constitution.

11. Other cases mentioned by the Mysore High Court i.e. State of Punjab v. Joginder Singh, (AIR 1963 SC 913 : 1963 Supp 1 SCR 169 : (1964) 1 SCJ 627) and K. M. Bakshi v. Union of India, (AIR 1963 SC 1139 : (1963) 2 SCR 169) also show that inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria co-related to the

object for which the difference is made. In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different classes or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose on such a rational distinction between members of what is found to be really a single class no class distinctions can be made in selecting the best. Articles 14 and 16(1) of the Constitution must be held to be violated when members of one class are not even considered for promotion. The case before us falls, in our opinion, in the latter type of cases where the difference in promotional opportunities of those who were wrongly divided into two classes for this purpose only could not be justified on any rational grounds. Learned Counsel for the State was unable to indicate any such ground to us. We, therefore, think that the Mysore High Court rightly held that the impugned notifications were unconstitutional.

12. Consequently, we dismiss these appeals with one set of costs.

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