

Vasant Krishnarao Paturkar and Another

Vs

D. R. Majramkar, and Others

Civil Appeal No. 1227 of 1972

(H. R. Khanna, P. K. Goswami JJ)

08.04.1974

JUDGMENT

GOSWAMI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Bombay of December 9, 1971, in Special Civil Application (S.C.A.) No. 1354 of 1970 under Article 226 of the Constitution. The appellants and Respondents 1 to 19 and Respondents 22 to 24 are at present the employees in the Agriculture Departments of the State of Maharashtra following reorganisation of States on November 1, 1956.

2. Respondents 1 to 19 were the original petitioners in S. C.A. No. 1354 of 1970. They were officers from the former Hyderabad State prior to the States Reorganisation Act, 1956, (briefly called the Act). They prayed in their said application for a writ to set aside the Bombay Government's Resolutions of February 17, 1958 and May 16, 1969 and the provisional gradation list of September 27, 1969 and the promotion orders of June 5 and 6, 1970 and other consequential reliefs. They had impleaded in the said application five respondents, the first two being the State of Maharashtra and the Director of three Agricultural Officers impleaded in representative capacity by leave of the High Court under Order 1, Rule 8, Civil Procedure Code. These respondents (Nos. 3 to 5) did not appear to contest the application in the Bombay High Court and it is alleged that they had no interest in the matter and were in collusion with the appellants. Even Respondents Nos. 1 and 2, namely, the State of Maharashtra and the Director of Agriculture, went by default, although a belated prayer to enter appearance had been made through counsel on behalf of the State of Maharashtra after commencement of arguments, on the day of final hearing, which was, however, rejected by the High Court. The application was then disposed of, ex parte, on merits by the High Court in favour of the applicants. It is not disputed that the order of the High Court directly affects the interests of the present appellants, who are Agricultural Officers from the Madhya Pradesh region.

3. From Bombay we may now turn to the Nagpur Bench of the said High Court. There the Appellant No. 1 and three other Agricultural Officers lodged a Special Civil Application No. 361 of 1964 impleading the State of Maharashtra and 88 other respondents, including the present Respondents 1 to 19. Respondents 1 to 19 and others contested the application before the Nagpur Bench unsuccessfully. The Nagpur Bench of the High Court allowed the writ application by its judgment and order dated December 6, 1967 and the operative part of the same may be quoted :

Accordingly, we allow the petition and quash the resolution of the Government dated September 9, 1960 and combined seniority list issued by the Government on August 22, 1962. If the State

Government wants to alter the basis of equation originally fixed on February 17, 1958, an opportunity to make representation against the proposed alteration has to be given to the person likely to be affected. The State Government will now take an appropriate action. The necessary consequence of quashing of these two orders is that the intermediate order of absorption which is a necessary step after inter se seniority and gradation list can be compiled is also to be quashed. Accordingly, we quash the order of absorption, so far as these 1962.

4. The respondents, who were Agricultural Officers from Hyderabad region, preferred an appeal against the judgment of the Nagpur Bench being No. 1366 of 1968 in this Court. They were, however, allowed by this Court on January 23, 1969, to withdraw the same "without prejudice to all parties affected to make representations to the Government in accordance with Section 115 of the States Reorganisation Act 1956."

5. After the above order of this Court, it is said that many Agricultural Officers made representations to the Government of India under Section 115 of the Act. The Government of Maharashtra passed a Resolution of May 16, 1969, purporting to be an order giving new equation of posts in the Agriculture Department in pursuance of which a gradation list was made on September 27, 1969. Then followed certain consequential orders of promotion of June 5 and 6, 1970. This, is already noticed, led to the Special Civil Application No. 1354 of 1970 at the instance of Respondents 1 to 19 and the operative part of this impugned order of December 9, 1971, is in the following terms :

For the reasons stated in the accompanying judgment, the Court makes absolute with costs the rule granted by it on June 30, 1970 in terms of the prayer (a) of the petition. The Court further directs that if Respondent No. 1 fails to decide the question of equation of posts held by the petitioners in the former Hyderabad State in accordance with law and the observations in this Judgment within three months from December 9, 1971, Respondents No. 1 shall equate the posts of Agricultural Assistant of the former Hyderabad State in the scale of Rs. 176-300 with posts of Agricultural Officer, Grade I of the former Bombay State in the scale of Rs. 210-10-300 and to absorb the petitioners and to fix their seniority on that basis with effect from November 1, 1956.

6. The appellant and another person had also filed Special Civil Application No. 1126 of 1971 in the Nagpur Bench for quashing the Resolution of the Bombay Government of May 16, 1969, on certain grounds. That matter is still pending in the Nagpur Bench. The Respondents 1 to 19 were impleaded as respondents in that application and although they had been served, they did not file any return when the said application came up for hearing at Nagpur on February 2, 1972. The learned Government Advocate, however, mentioned to the Court that another petition on the same subject had already decided by the Bombay High Court. It is said that this was the first time when the appellants came to know of the impugned judgment and took immediate steps in the Bombay High Court to set aside the order for rehearing the writ petition, but failed to obtain favourable orders.

7. The problem is indeed ticklish and sensitive concerning integration, gradation and fixation of appropriate seniority of the officers throwing by act of the State their common lot from different areas, namely, the former State of Madhya Pradesh, former State of Hyderabad and the former State of Bombay allotted to the new bilingual State of Bombay under the provisions of the States Reorganisation Act. It is, however, clear that there is sufficient guideline in Part X of the States Reorganisation Act, 1956 as also later in Part VIII of the Bombay Reorganisation Act, 1960 and it is reserved for the Government of India, advisedly, to be the final authority in the matter of division and integration of services among the new State to ensure a fair and equitable treatment to all

persons affected by the reorganisation including proper consideration of any representation made by concerned persons. (See Section 115 and Section 117 of the Act and Sections 81 and 83 of the Bombay Reorganisation Act, 1960).

8. It is well settled that the Central Government under Section 115 of the Act has to determine the principles governing equation of posts and prepare common gradation lists by integration of services and in doing so to ensure fair and equitable treatment to all persons concerned. The Central Government is also required to give opportunities to the parties affected to make their representations. (See *D. Rajiah Raj v. Union of India* ((1973) 1 SCC : 61 : 1973 SCC (L&S) 71); *N. Subba Rao v. Union of India* ((1972) 2 SCC 862 : 1973 SCC (L&S) 38); and *Union of India v. P. K. Roy* ((1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 Lab LJ 633)).

9. The High Court cannot clothe upon itself the authority for performing the functions which are specifically and expressly intended to be the obligation and duty of the Central Government under the Act. The High Court is, therefore, not right in two matters, namely in directing the State Government to do that which under the provisions of the Act is within the domain of the Central Government and secondly in fixing a time limit for action and, if the same is exceeded, directing an automatic entitlement to the second relief as to equation, absorption and fixation of seniority as prayed for by Respondents 1 to 19. This view of the High Court is clearly erroneous in view of the provisions of the Act.

10. That, however, does not dispose of this matter. Mr. Phadke, learned Counsel for the appellants, raises several questions before us. Firstly, that the Division Bench of the High Court could not sit in appeal against the Division Bench decision of the Nagpur Bench which is binding on the Respondents 1 to 19. Secondly, that there is clear violation of the principles of natural justice in disposing of the writ petition by the High Court, ex parte, and in not reviewing its order when sufficient cause was shown by the appellants herein. Thirdly, that the High Court should not have allowed the application under Order 1, Rule 8, Civil Procedure Code, and should have insisted upon personal service of the rule nisi on the affected petitioners in a service matter of such implications.

11. Mr. Bhandare, learned Counsel for the State of Maharashtra, also, inter alia, took the point that the Central Government was a necessary party and the petition should have been dismissed by the High Court for non-joinder of that Government.

12. It is not necessary for us to go into these questions in view of the High Court's order of December 24, 1971, in Civil Application No. 3262 of 1971, of the State of Maharashtra and the Director of Agriculture praying for permission to file an affidavit in reply to the writ petition and for contesting the petition on merits. The High Court observed "we are satisfied on reading these affidavits that there was sufficient cause for rehearing the Special Civil Application", but on perusal of the affidavit in reply and hearing counsel for the State rejected the said petition. The High Court also dismissed the petitioners' application for rehearing the writ application.

13. We are not satisfied that the High Court was right in not allowing an opportunity to the petitioners as well as to the State to canvass their respective points of view before it against the writ application, particularly so when the matter had been heard in a representative writ application and not one of the actually affected persons had been impleaded as a respondent even to represent their category. The High Court itself observed, therefore, as noticed above, "there was sufficient cause for rehearing". Without, therefore, going into the various points raised before us, we set aside the impugned judgment and order of the Bombay High Court of December 9, 1971 and direct

restoration of the Special Civil Application No. 1354 of 1970 to its file for disposal of the same in accordance with law after giving opportunity to all the parties concerned. We further direct that Respondents 1 to 19 shall take steps in the High Court to implead the Central Government as well as the present appellants and all other officers affected by the orders sought to be quashed in the Special Civil Application No. 1354 of 1970.

14. The appeal is allowed on the terms indicated above. There will be no order as to costs in this appeal.

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