

State of Madhya Pradesh and Another

Vs

Shri Rameshwar Prasad (Dead) By Lrs. and Others

Civil Appeal No. 521 of 1971

(K. K. Mathew, Syed M. Fazal Ali JJ)

10.12.1975

JUDGMENT

FAZAL ALI, J. -

1. This is an appeal by special leave by the State of Madhya Pradesh against the judgment of Madhya Pradesh High Court dated September 20, 1969 by which the final gradation list of seniority of certain officers prepared by the Government following the integration of the Madhya Pradesh State after merging the erstwhile states of Maha Koshal, Madhya Bharat, Vindhya Pradesh and Bhopal has been partially quashed. The respondent in whose favour the High Court decided the case is already dead and has therefore no interest in the result of the proceedings. But as the gradation list has been struck down by the High Court, the Government as also the officers who had been given a particular seniority are undoubtedly affected by the order of the High Court. That is why both the State of Madhya Pradesh and the Union of India have pressed this appeal.

2. The facts of the case lie within a very narrow compass. In 1938 the respondent Rameshwar Prasad was recruited as Excise Sub-Inspector by the then Government of C.P. & Berar. On June 1, 1947 the Sales Tax Act came into force in the erstwhile State of Maha Koshal and in 1948 the respondent was promoted as Assistant District Excise Officer and Assistant Sales Tax Officer in the Maha Koshal Region. In 1949 the States of Vindhya Pradesh and Madhya Bharat were formed. On April 1, 1950 the Sales Tax Act came into force in Vindhya Pradesh and a month later i.e. on May 1, 1950 the Sales Tax Act was enforced in Madhya Bharat. Thereafter in accordance with the report given by the States Reorganization Act was passed by which the new State of Madhya Pradesh was carved out by merging the erstwhile States of Maha Koshal, Madhya Bharat, Vindhya Pradesh and Bhopal. The appellants have produced before us the White Paper issued by the Government regarding the merger and reorganization of the various States referred to above which is not in dispute at all. After the reorganisation, the services of the respondent were allocated to the new state of Madhya Pradesh. We might further mention that prior to the integration of Vindhya Pradesh and Madhya Bharat both the States had their similar Sales Tax Act which was known as internal customs duty and there were number of officers who were manning the tax organisation in those States holding almost ranks equal to the respondent.

3. After the reorganisation of the States it became necessary to prepare a common gradation list of the officers of various departments so that the officers who were allocated to the new State of Madhya Pradesh did not suffer any prejudice. Section 115 of the States Reorganisation Act 1956 provided, amongst others, that the Central Government, by general or special order, was to determine the successor State to which every person referred to in sub-section (2) of Section 115 was to be allotted. Sub-section (5) of Section 115 enjoined on the Central Government to establish

one or more advisory committees for the purpose of division and integration of the services among the new State and ensuring of fair and equitable treatment to all persons affected by provisions of the section and proper consideration of any representation made by such persons. In pursuance of these statutory provisions the Central Government appointed an advisory committee for the newly integrated State of Madhya Pradesh to prepare a gradation list which would reflect the seniority of the officers concerned in a fair and equitable manner so that no prejudice or injustice was caused to any officer by virtue of the integration of the States. According to the appellants on the recommendations of the advisory committee certain principals for determining the seniority of officers coming from the erstwhile States were determined and in accordance with the same a provisional gradation list was prepared showing seniority of the officers as on November 1, 1956. These principles were formulated by virtue of a notification No. 2581/2577/V-ST dated October 28, 1961, which has been quoted in para 3 of the petition for special leave to appeal and may be extracted as follows :

2581/2577/V. ST-WHEREAS, the following principles have been formulated for being observed, as far as may be, in the integration of Government servants allotted for service to the new State of Madhya Pradesh viz :-

1. In the matter of equation of posts -

(i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

(ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts;

(a) nature and duties of a post;

(b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post; and

(d) the salary of the post.

It has not been shown to us that the principles laid down by the government notification in accordance with the recommendations of the advisory committee were in any way unfair or inequitable or worked injustice to the employees concerned. On the other hand we find that the principles formulated by the advisory committee strike a balance vis-a-vis the various employees coming from erstwhile States in order to determine their seniority by classifying the officers into three categories, namely, Assistant Sales Tax Officers of Maha Koshal, Inspectors of Sales Tax of Madhya Bharat and Sales Tax Inspectors including Assistant District Excise and Sales Tax Officers of Vindhya Pradesh. Having classified these officers the seniority has been fixed according to the length of service and the grades held by the officers concerned.

4. In the provisional gradation list the respondent was shown at No. 22. The gradation list was prepared on October 3, 1961 and published in MADHYA Pradesh Government Gazette on October 28, 1961. Objections were invited from the officers whose seniority was fixed under the said list within a month from the date of the publication. It was common ground that the respondent filed no objection at all within the time fixed. The Government after considering the principles laid down by

the advisory committee and the formula evolved by the gradation list and the consideration of the representations of the officers who had filed their objections in pursuance of the publication of the provisional gradation list prepared a final gradation list on November 7, 1964 and published the same in the Government Gazette on November 11, 1964.

5. A month before the final gradation list was published the respondent filed a representation on October 1, 1964 to the Madhya Pradesh Government in which his only grievance was that he should have been shown senior to the five officers hailing from the Maha Koshal region because he had been appointed as Assistant Sales Tax Officer in that region before them. This representation seemed to overlook the patent fact that the officers who were shown senior to him were holding posts carrying almost equivalent grade of the post which was held by the respondent and those officers were in fact appointed to those grades before the respondent on February 18, 1965. But a few months before this the Madhya Pradesh High Court in *Kanhaiyalal Pandit v. State of M. P.* (Misc. Petition No. 188 of 1974 decided on November 17, 1964 (MP HC) held that the affected employees of the State could make their representations only after the final gradation list was published. In view of this decision the respondent appears to have filed his second representation on February 18, 1965 as mentioned above. In this representation also the respondent contended that the services rendered by the Madhya Bharat and Vindhya Pradesh officers prior to the coming into force of the Sales Tax Acts in the respective States should not have been counted for the purpose of determining the seniority of the respondent.

6. Thereafter, the respondent filed a writ petition in the Madhya Pradesh High Court on February 16, 1966, praying for quashing the gradation list. The appellant filed his return on July 8, 1966 and the High Court by its judgment dated September 20, 1969 allowed the petition and quashed the gradation list insofar as it affected the respondent and the other five officers who were shown above him. The appellant then filed an application for leave to appeal to the Supreme Court which was dismissed on November 21, 1969 and thereafter moved this Court for special leave to appeal which was granted on March 25, 1971.

7. The High Court appears to have quashed a part of the gradation list mainly on two grounds. In the first place it held, following the decision of the High Court in *Kanhaiyalal Pandit's* case (supra) that as the final gradation list was published on November 11, 1964 the respondent had the right to make his representation thereafter and since his representation was not considered the order of the Government sanctioning the final gradation list was legally erroneous. Secondly it was held by the High Court that the contention of the respondent that the services rendered by the other five officers in Madhya Bharat and Vindhya Pradesh ought not to have been considered was valid and should have been given effect to by the Government in preparing the final gradation list. We are satisfied after perusal of the material that the first ground on which the High Court quashed the gradation list was not at all sound and on that ground alone the order of the High Court was liable to be set aside. It is manifest that the object of preparing a tentative or provisional gradation list was to give an opportunity to the officers whose seniority was determined in the list to make their representations in order to satisfy the Government regarding any mistake or error that had crept in the gradation list. If the employee concerned did not file his representation within a month from the date of the publication of the provisional gradation list, then his representation should have been rejected outright. The Madhya Pradesh High Court was in error taking the view that the employee concerned should have waited for filing his representation until the final gradation list was published. The Madhya Pradesh High Court in *Kanhaiyalal Pandit's* case had observed as follows :

According to the view taken in these cases the preparation of combined gradation list

by the State Government is, generally speaking, only an incidental or subsidiary act such as would aid and assist the Central Government in discharging its statutory responsibility of integration of services. If so, the petitioner should wait until the final gradation list is published, for it may well be that he may have no cause for any grievance against that list. On the other hand, if he finds that he is aggrieved thereby, he is entitled to represent against it under Section 115(5) *ibid.* and he has a right to insist that his representation receives 'proper consideration'. There is, in this view, no ground for interfering at present with the order passed by the Government of India on the petitioner's representation dated January 5, 1962.

The aforesaid view taken by the High Court is not at all intelligible. In fact the purport of Section 115(5)(b) of the States Reorganisation Act, 1956 was that there should be a fair and equitable treatment of all persons affected by the provisions of that section. This could only be done if before a final gradation list was prepared the officers were given an opportunity to acquaint the Government with their respective points of view. It was indeed a strange view to take that the provisional gradation list was absolutely of no consequence and after the said list was finalised and the time for filing representation expired, then alone the employees concerned should have been asked to file their representations. This is really putting the cart before the horse. Once the list was finalised, it would be difficult for the Government to review its orders which would lead to serious complications and dislocation to the service structure of the State. It appears from a perusal of the various clauses of Section 115 of the States Reorganisation Act that the statute contemplated three stages for determining the seniority of the officers - (i) the formation of advisory committees and determination of principles on the basis of which the seniority was determined; (ii) the preparation of a provisional gradation list so as to give an opportunity to the employees concerned to file their objections; and (iii) the publication of the final gradation list after consideration of the objections filed by the employees concerned and taking an overall view of the matter. In these circumstances, therefore, the view of the Madhya Pradesh High Court that the representation filed by the respondent was premature is legally erroneous and we are unable to agree with the same. We are, therefore, of the opinion that the judgment of the Madhya Pradesh High Court in Kanahyalal Pandit's case decided on November 17, 1964 was not correctly decided (*sic*). The High Court in the instant case has based its order mainly on the judgment of the Madhya Pradesh Court in Kanahyalal Pandit's case which being incorrectly decided, the judgment of the High Court in this case must be quashed on this ground alone, and the representation filed by the respondent long after the expiry of the time mentioned in the gazette publishing the provisional gradation list would have to be rejected as belated.

8. Even on merits a cursory glance of the principals and the formula formulated by the Government in preparing the gradation list would reveal that no injustice or prejudice was caused to the respondent. In paragraph 3 of the counter-affidavit by the appellants it has been averred as follows :

It is further submitted that the inter se seniority in Madhya Bharat and Vindhya Pradesh units had become final after taking into consideration the service rendered in the princely States and cannot now be challenged. After the seniority in the units of Madhya Bharat and Vindhya Pradesh was finally determined, the posts of Assistant Sales Tax Officers of Maha Koshal were equated with Inspectors of Sales Tax of Madhya Bharat and Sales Tax Inspectors including Assistant District Excise and Sales Tax Officers of Vindhya Pradesh region. According to the principles adopted for determining the seniority, the length of continuous service on equated post was considered. The seniority of a person is determined with reference to a particular date

allotted to him for this purpose. When once the seniority in the integrating units was determined in this manner by the Governments of those units, it is submitted that the seniority of the incumbents from the reorganisation of States under Section 115 of that Act to the detriment of the incumbents.

It has thus been explained by the appellants that as the sales tax department in the integrating States of Madhya Pradesh was new, the persons absorbed in the department brought with them the seniority already assigned to them. It was also pointed out in the counter-affidavit that in these circumstances it cannot be said that as the sales tax department came into existence in 1950 in Madhya Bharat and Vindhya Pradesh regions, the personnel of these regions ipso facto became junior to those in Maha Koshal region where the Act had come into force in 1947. We fully agree with the explanation given by the appellants in the counter-affidavit as the same appears to be reasonable and convincing, and seeks to chalk out an objective formula so that the least prejudice is caused to the employees concerned. It is manifest that the services rendered in the erstwhile princely States by the officers who were put above the respondent were taken into account in the equated posts. Thus the equation of the posts was in conformity with the principles laid down in Section 115 of the States Reorganisation Act and was done in consultation with the advisory committee and was finally approved by the Central Government. To accept the prayer of the respondent would be to set at naught the services rendered by the officers who were put above the respondent in the erstwhile princely State in grades which were more or less similar to the one held by the respondent. In these circumstances we find ourselves unable to agree, even on merits, with the view taken by the High Court.

9. In *Union of India v. P. K. Roy* ((1968) 2 SCR 186, 198 : AIR 1968 SC 850 : (1970) 1 LLJ 633) a similar argument made by some of the employees coming from erstwhile princely States were repelled and this Court observed as follows :

In our opinion, the procedure adopted in this case does not contravene the provisions of Section 115(5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government.

10. Similarly in *N. Subba Rao v. Union of India* ((1973) 1 SCR 945 : (1972) 2 SCC 862 : 1973 SCC (L & S) 38) this Court laid down that under Section 115 of the States Reorganisation Act two requirements were necessary - (i) that there should be a division and integration of the services among the new States; and (ii) that a fair and equitable treatment should be ensured to all persons affected by the integration. In that case also the Conference of the Chief Secretaries had preceded the drawing up of the provisional gradation list formulating four principles, namely, (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officers holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for the two posts; and (iv) the salary of the post. These principles were approved by the Court in that case.

11. In the instant case also the appellants have stated in their counter-affidavit that the principles mentioned above were duly taken into consideration and in addition to this the equated grades held by the respondent and the other officers were also taken into consideration in order to fix the seniority of the respondent.

12. In these circumstances we are satisfied that the Government had prepared the final gradation list after an objective and thorough consideration of the various aspects of the career of the employees and the principles which governed the list were wholly in consonance with the provisions of Section 115 of the States Reorganisation Act, 1956.

13. For these reasons, therefore, the appeal is allowed and the judgment of the High Court dated September 20, 1969 is set aside. As the respondent is already dead we make no order as to costs.

</html