

State of Mysore and Another

Vs

H. Srinivasmurthy

Civil Appeal No. 722 of 1968

(R.S. Sarkaria, Syed M. Fazal Ali JJ)

29.01.1976

JUDGMENT

SARKARIA, J. -

1. The circumstances leading to this appeal, directed against a judgment of the High Court of Mysore, are as follows.
2. The respondent herein entered the service of the princely State of Mysore in 1935 as Instructor of Tailoring in the Department of Public Instructions. In 1949, three occupational institutes (polytechnics) at Hassan, Devangere and Chintamani were started in the State. The respondent was sent on deputation to serve in the polytechnic at Devangere as Instructor in Tailoring and he joined the new post on November 28, 1949. One Sri K. Narayanaswamy Chetty who was also an Instructor in Tailoring in the Department of public Instruction was also deputed to the occupational institute at Hassan and joined duty there on December 1, 1949. This K. N. Chetty was far junior to the respondent in service. Special Officer-in-Charge of the three occupational institutes considered the names of the respondents and K. N. Chetty for absorption as Instructors in Tailoring and recommended for their absorption with effect from the respective dates of their joining duty, after deputation, in the institutes. Accordingly, K. N. Chetty was absorbed with effect from December 1, 1949, but no order was passed in the case of the respondent, despite repeated representations made by the latter.
3. In 1953, the then State of Mysore set up Department of Technical Education and the polytechnic at Devangere became part of that department. The respondent continued to serve on deputation in that department. In 1955, for no fault of the respondent, the Government passed orders reverting him to his parent department. On June 11, 1956, the respondent was again posted on deputation as Instructor in Tailoring in the polytechnic at Bellary "on provisional basis". The intervening period between his reversion and reposting to the polytechnic was treated as leave. On the reorganisation of States with effect from November 1, 1956, his services were allotted to the new State of Mysore. The respondent continued to make representations to the effect that like other employees who were taken on deputation from other departments, he should also be absorbed in the Department of Technical Education with effect from November 28, 1949, which was the date on which he initially came on deputation. His specific grievance was that in any case, he could not be discriminated against and treated differently from K. N. Chetty who was junior to him in the parent department and came on deputation to the polytechnic establishment subsequently. The State Government referred the respondent's case to the Public Service Commission who examined it and by a communication, dated February 2, 1960, made these recommendations in favour of the respondent :

It is stated in the Government letter dated 26-10-1959 that Director who was the Unit Officer for both the departments ordered the transfer of Sri Srinivasamurthy who was fully qualified as Tailoring Instructor in the Technical Education Department and there was no need to classify the vacancy post to which he was transferred under the then existing rules. Along with him Sri K. Narayanaswamy Chetty who was his junior and possessing similar qualifications was transferred as Tailoring Instructor in the Technical Education Department and was absorbed in the same department by Government in consultation with the Public Service Commission. The case of Sri Srinivasamurthy is on all fours with that of Sri Narayanaswamy Chetty and he is deserving of similar treatment.

In view of the above, and since Sri Srinivasamurthy, who was fully qualified was transferred in 1949 by the Director and appointed as Tailoring Instructor under the rules then in force, and as his reversion at this distance of time for no fault of his would cause a great hardship to him, the Commission are of the opinion that he may be absorbed as Tailoring Instructor from the date of his appointment as such as has been ordered in the case of Sri K. Narayanaswamy Chetty.

4. In the Opinion of the Commission, the temporary reversion of the respondent to his parent department in 1955-56, was not justified.

5. Ultimately, the Government by order, dated February 19, 1964, ordered the absorption of the respondent in the Department of Technical Education in the grade of Rs. 150-250 with effect from the date of the order, in the vacancy in which he was working, subject to these conditions :

(a) that he would not be entitled to the benefit of revision of scales of pay that had been effected in 1957 and 1961 by way of increments or weightage benefit accruing thereunder;

(b) that he would not be given any more financial benefit or revision of pay or additional increments for his previous service.

6. Against this order the respondent made representation to the Government praying that his absorption should be related back to 1949 and he be given the benefit of the revision of pay scales, including weightage benefit. The Government did not accept the representation.

7. On April 21, 1965, the respondents filed a writ petition under Article 226 of the Constitution in the High Court, for the issue of a writ of mandamus directing his absorption in the Department of Technical Education from the date of his initial appointment therein, namely, November 28, 1949, and to give him benefits of the revisions of pay scales effected in 1957 and 1961 and weightage benefits thereunder. The order dated February 19, 1964, was impugned on the ground that he had been invidiously discriminated against in the matter of absorption and appointment, while his junior K. Narayanaswamy Chetty, whose case was identical in all respects, and six other officers who were similarly situated, were absorbed in the Department of Technical Education with effect from the initial date of joining duty on deputation. It was contended that in making the impugned order, contrary to the recommendations of the State Public Service Commission, the State Government had acted arbitrarily and in violation of Articles 14 and 16 of the Constitution.

8. The petition was opposed by the appellant, who in its counter affidavit, contended that the respondent had no legal right to be absorbed in the service of the Department of Technical Education from a particular anterior date, or to be given the revised pay scales applicable to those borne permanently in the service of that department. It was further contended that the case of the

respondent did not stand on the same footing as that of Narayanaswamy Chetty because the order of Chetty's absorption was passed in 1951 and that of the respondent's absorption in 1964, and there was a break in the service of the respondent in the Department of Technical Education in 1955-56. It was stated that the absorption of the employees which came on deputation from a particular date, was a concession which could not be claimed as of right, and consequently, a writ of mandamus, as prayed for by the respondent, should not be issued.

9. The High Court allowed the writ petition and issued a direction that the absorption of the respondent in the Department of Technical Education, be given effect from November 28, 1949 when he initially resumed duty on deputation to the polytechnic at Devangere. The High Court further declared that he will be entitled to all consequential benefit from such absorption including the benefit of revision of pay scales in the years 1957 and 1961 and also weightage benefits.

10. Hence this appeal by the State.

11. Mr. Nettar appearing for the appellant contends that this case is fully covered by this Court's decision in *K. V. Rajalakshmiiah Setty v. State of Mysore* ((1967) 2 SCR 70 : AIR 1967 SC 993 : (1967) 2 LLJ 434). The point canvassed by the Counsel is, that the absorption of K. N. Chetty and five others, with effect from particular anterior dates, was not made in pursuance of any principle of policy or statutory rule, but was done as a matter of concession. It is urged that Articles 14 and 16 of the Constitution cannot be invoked to enforce a mere concession. Counsel has further made an attempt to show that the respondent and K. N. Chetty were not similarly situated because there was a break in the respondent's service with the Department of Technical Education.

12. As against this, Mrs. Shyamla Pappu submits that in *Rajalakshmiiah Setty's* case (*supra*), the facts were entirely different. It is emphasised that in the present case, seven employees had come on deputation from other departments to the polytechnics and all of them, excepting the respondent, were absorbed permanently in the Department of Technical Education with effect from the dates on which they came on deputation. Even Narayanaswamy Chetty, who was admittedly junior to the respondent, and was identically situated, was accorded the same treatment. It is urged that this principle of policy was ignored in the case of the respondent, and he was without reason, singled out for unfair discriminatory treatment. It is pointed out that his so-called "reversion" to the parent department in 1955 for a short period, was a misnomer. It was not a reduction in rank, nor a break in the continuity of his service. Moreover, it was, as the Public Service Commission found, undeserved and could not, by any stretch of reasoning, be considered a ground for meting out discriminatory treatment to the respondent.

13. We find a good deal of force in the arguments of the learned Counsel for the respondent.

14. *Rajalakshmiiah Setty v. State of Mysore* is clearly distinguishable from the facts of the present case. In that case, the Government of the then State of Mysore, by a notification dated December 12, 1949, directed that the promotions of 63 petitioners therein, from the post of Surveyors as Assistant Engineers were to take effect from that date irrespective of the dates on which they were put in charge of sub-divisions. But by a notification dated May 17, 1950, the Government showed a concession to a different batch of 41 Surveyors, who had been placed in charge of different sub-divisions between March, 1944 and January, 1946, by promoting them as Assistant Engineers, with effect from the dates of occurrence of vacancies, according to seniority. In November, 1958, another batch of 107 persons were similarly promoted as Assistant Engineers with retrospective effect from November 1, 1956, when the new State of Mysore emerged under the State Reorganisation Act. The

petitioner therein filed a writ petition prying for the issue of mandamus directing the State of fix their seniority, also, on the basis of that they had become Assistant Engineers from the dates on which the vacancies to which they had been posted had occurred.

15. The High Court dismissed the petition. On appeal, this Court held that the concession shown to the batch of 41 persons who had been appointed before the petitioners and to the batch of 107 persons who had been appointed thereafter, were mere ad hoc concessions and not something which they could claim as of right. It was observed that there was no service rule which the State Government had transgressed, nor the State had evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from Surveyors.

16. It may be noted that the grant of the relief prayed for by the 63 petitioners, would have unsettled and caused wholesale alterations of the seniority list with regard to entire cadre of engineers thus affecting persons who were not before the court and who would have been condemned unheard. Further, acceptance of the petitioners' contentions would have unsettled pre-Constitution matters, and it would have been directly productive of results going against Section 115(7) of the States Reorganization Act. Furthermore, the petitioners in that case claimed to be promoted with effect from past dates. There was no principle of policy or service rule on the basis of which they could claim such promotions as of right. Lastly, the petitioners in that case were found guilty of serious laches.

17. Such impediments in the way of the relief claimed by the respondent, do not exist in the present case. It appears to us that the acceptance of the respondent's contentions in the present case cannot lead to any untoward results such as were apprehended in Rajalakshmi's case. Indeed, it has not been shown that the absorption of the respondent with effect from November, 1949, would adversely affect even Narayanaswamy Chetty, who was admittedly junior to him in the parent department.

18. On other hand, it is an undisputed fact that six other employees, who were similarly situated, were absorbed from the dates on which they initially joined duty, after deputation to the polytechnics. It is not the case of the appellant that this principle whereby the absorption in the Department of Technical Education was related back to the date on which a person initially came on deputation, was ever departed from, excepting in the case of the respondent. This being the case, the High Court was right in holding that the State Government had evolved a principle.

that if a person was deputed to the Department of Technical Educational from another department and he stayed on in that other department for a reasonable long time his absorption in that department should be made to relate back to the date on which he was initially sent.

There was no justification whatever to depart from this principle of policy in the case of respondent, who was, in all material respects, in the same situation as K. N. Chetty.

19. Very rightly, the High Court has held that his "impermissible reversion" for a short while in 1955 to the parent department was no ground to hold that he was not similarly situated as K. Narayanaswamy Chetty. This so-called reversion to the parent department for a short period in 1955-56, could not by any reckoning, be treated as a break in his service, this period having been treated as leave. Nor did it amount to reduction in rank. In any case, this 'reversion' was not ordered owing to any fault of the respondent. It is not the appellant's case that the respondent's work in the Department of Technical Education was found unsatisfactory or that he was not otherwise suitable

or qualified to hold the post of Tailoring Instructor in that department. That he was suitable to be absorbed in that post, is manifest from the recommendation of the Public Service Commission and is implicit in the impugned order, itself.

20. For the reasons aforesaid, we are of opinion that in the special circumstances of this case, the High Court was fully justified in granting the relief, it did, to the respondent.

21. The appeal fails and is dismissed with costs.

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