

The State of Maharashtra and Another

Vs

Vinayak

Civil Appeal No. 651 of 1976

(V.V. Chandrachud, P.N. Shinghal JJ )

06.01.1977

JUDGMENT

CHANDRACHUD, J. –

1. On the reorganisation of States on November 1, 1956 the respondent who was working as an Agricultural Overseer in the then State of Madhya Pradesh was allocated first to the State of Madhya Pradesh was allocated first to the State of Bombay and later to the State of Maharashtra. By a resolution dated February 17, 1958 the Government of Bombay equated the post of Agricultural Overseer with that of an Agricultural Assistant, Grade II. In July 1958 the respondent was promoted as an Agricultural supervisor and in April 1967 he was appointed to the post of an Agricultural Officer.

2. On the reorganisation of States, a provisional combined seniority list of Agricultural Assistants, Grade II, was published by the Government of Maharashtra in 1961. That list was revised from time to time, and ultimately the Government of India approved the final seniority list which came to be published on May 29, 1973. The respondent has no grievance against his placement in that list, but his case is that under the seniority lists prepared from time to time by the State Government, he was erroneously accorded a lower place of seniority with the result that persons who were in face junior to him came to be promoted on the assumption that they were senior to him. The respondent therefore filed the present writ petition on October 14, 1970 asking for due recognition of his seniority. He later amended that petition and asked for arrears of pay and allowance retrospectively from the date on which he ought to have been promoted in accordance with the seniority list approved by the Central Government. The writ petition having been allowed by the Nagpur Bench of the Bombay High Court, the State of Maharashtra has filed this appeal by special leave.

3. The sole question which arises for determination in this appeal is whether the respondent is entitled to arrears of pay with effect from the date on which he would, in the normal course, have been promoted if his seniority were recognised as it eventually came to be recognised under the seniority list approved by the Central Government in 1973. The answer to this question depends on whether the rights of the respondent are governed by the circulated dated March 10, 1960 or by the circular dated February 25, 1965. The case of the State Government is that the former, and not the latter circular, applies whereas the respondent contends that he is entitled to arrears of salary for the entire period under the latter circular.

4. We find it impossible to accept the respondent's contention, which has found favour with the High Court, that the circular of February 25 1965 governs the matter. That circular reads thus :

# Retrospective promotions of those who had been superseded earlier  
GOVERNMENT OF MAHARASHTRA GENERAL ADMINISTRATION  
DEPARTMENT Circular Memorandum No. SRV-1064-D.Sachivalaya, Bombay 32  
(B. R.) 25th February, 1965 Falguna 6, 1886 CIRCULAR MEMORANDUM OF  
GOVERNMENT##

A question has been raised whether in case in which Government servants who were superseded for promotion to the higher post are later promoted on the orders of higher authorities who consider the supersessions unjustified and who having powers to set aside the order of supersession, do so, their promotion should be effective from the date on which they are actually promoted or from the date Government has, considered this question and decided that in such cases, the Government servant concerned, should be deemed to have been promoted, but for their wrongful supersession, i.e. from the date from which their juniors who were promoted by superseding them started to officiate in such posts and they should be allowed pay in such post as if they were promoted on the dates on which their juniors were promoted and also paid arrears of pay and allowances from such dates.

(2) Orders in paragraph 1 above apply also the cases of persons, who are superseded for promotion to gazetted post within the purview of the Public Service Commission ordered by Government but are later promoted when their earlier supersessions is considered in consultation with the Commission unjustified.

(3) Pending cases should be regulated in accordance with these orders in paragraphs 1 and 2 above, and arrears of pay and allowances should be paid to the persons concerned provided that if the arrears relate to pay period prior to the 1st May, 1960, the payment is restricted to the period after that date, i.e. after the 1st May, 1960.

(4) This Circular Memorandum issues with the concurrence of the Finance Department VIDE that department unofficial reference No. 581/V, dated the 2nd February, 1965.

By Order and in the name of Government of Maharashtra.

# Sd/- K. P. Nadkarni, Deputy Secretary to Government.##

The language of this circular is singularly inappropriate to cover cases concerning equation and seniority consequent upon formation of new States. The circular deals with cases where government servants who are superseded for promotion to the higher post are later promoted on orders of higher authorities who considered an supersession unjustified and who, having powers to set aside orders of supersession, have set aside such orders. In such cases, the circular provides, the government servant concerned should be deemed to have been promoted to the higher post from the date from which he would have been promoted but for his wrongful supersession. There is no question in the present case of the respondent being promoted on the basis of any order passed by a higher authority. Nor indeed did any higher authority consider the so-called supersession of the respondent as unjustified. While approving the revised seniority list in which the respondent occupied a much higher place than previously, the Central Government did not set aside any order of the respondent's supersession nor did it pass any order directing that the respondent be promoted to a

higher post. We are clear that the circular of February 25, 1965, on which the judgment of the High Court rests, is not intended to govern questions of seniority and supersession arising as a result of reorganisation of States. That circular, by its language, is designed to meet cases in which a government servant, apart from the provisions of the States Reorganisation Act and apart from problems arising out of reorganisation of States, was denied his rightful seniority list. Paragraph 2 of the circular which speaks also of posts within the purview of the Public Service Commission affords some indication that the circular is intended to apply only to cases of routine supersessions in the normal course of a service career.

5. If the circular of February 25, 1965 were intended to apply to a case like the present, it would have at least referred to the circular of March 10, 1960 which specifically governs matters relating to fixation of seniority consequent upon the reorganisation of States. That circular, in so far as relevant, reads thus :

# Fixation of Seniority and pay on promotion according to final gradation lists  
GOVERNMENT OF BOMBAY Political and Services Department Circular No. SR-INT-1059-VI Sachivalaya, Bombay, 10th March, 1960 CIRCULAR OF GOVERNMENT##

Promotions made on and after the 1st November, 1956, have been treated as provisional pending absorption of the personnel and finalisation of gradation lists in accordance with the allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957. They are also subject to review in the light of the changes that may be made in the gradation lists as a result of the decisions on the representations submitted by the Government servants concerned. Questions has been raised as to how seniority and pay in the promotion post should be fixed in the case of a Government servant who in the light of the final gradation list, is promoted later than the date on which he was due for promotion. Government is pleased to direct that seniority and initial pay on promotion according to the final gradation list should be fixed as if the Government servant had been promoted on the date on which he would have been promoted had the gradation list been finalised on the 1st November, 1956. The date on which he would have been promoted should be admitted on the basis of a certificate given by the appointing authority specifying the date. No arrears of pay should, however, be paid for the period prior to the date of actual promotion.

Under this circular, the seniority and initial pay of the respondent has to be fixed as if he was promoted on the date on which he would have been promoted if the gradation list had been finalised on November 1, 1956. But no arrears of pay can be paid to him for the period prior to the date of actual promotion. The State Government relied upon this circular by their counter affidavit filed in the High Court but no challenge was made by the respondent to the vires or the validity of that circular even though he had his petition amended in order to ask for arrears of salary. On the assumption that the circular is within the powers of the State Government, we have no doubt that the respondent's case must fall within that circular, in which case he would not be entitled to the arrears of salary for the period prior to the date of his actual promotion.

6. Mr. Gupte appearing on behalf of the respondent relies upon Rule 21 of "The Allocated

Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957" and argues that since under that rule the respondent is entitled to draw his pay and allowances with effect from the date of his promotion to the higher post including the deemed date of promotion, the Government of Maharashtra has no power, in view of the proviso to Section 115 (7) of the States Reorganisation Act, to alter his conditions of service to his prejudice. This argument is being advanced for the first time in this Court, but, apart from that, we are unable to agree either that Rule 21 has the effect contended for or that the circular issued by the State Government falls within the mischief of the proviso to Section 115 (7). By Rule 21, the arrears of pay and allowances "which may become due to an allocated government servant" on the fixation of his pay as on November 1, 1956 shall be payable only with effect from the date from which he became available but for the causes mentioned in Rule 2 (d). Rule 21 is not in the nature of an entitlement. On the other hand, it restricts the right of the allocated government servant to receive pay and allowances "only with effect from the date" from which he became available for service in the State of Bombay or would have been so available for service in the State of Bombay or would have been so available except for the causes mentioned in Rule 2 (d). The circular issued by the Government of Maharashtra on February 25, 1965 does not take away from the respondent the right if any, which was available to him under Rule 21.

7. For these reasons we set aside the judgment of the High Court, allow this appeal and direct that the respondent's writ petition shall stand dismissed. In view of the order passed at the time when special leave was granted, appellant shall pay the costs of the appeal to the respondent.

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