

B. Varadha Rao

Vs

State of Karnataka and Another

Civil Appeal No. 679 of 1985

(R. S. Pathak, Sabyasachi Mukharji, S. Natarajan JJ)

28.10.1986

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Karnataka in W.A. No. 493 of 1983 affirming the dismissal of W.P. No. 119 of 1983 filed by the appellant. In the said writ petition the appellant challenged an order dated December 15, 1982 of the Government of Karnataka rejecting the statutory appeal preferred by him regarding the fixation of his seniority in the cadre of "Labour Inspectors" with effect from December 21, 1967 on which date his services as a "Local candidate" came to be regularised under the Karnataka Civil Services (Recruitment of Local Candidates to Class III Posts) Rules, 1966 ("Regularisation Rules" for short). The appellant's grievance is that his seniority should have been reckoned from the date of his temporary appointment viz. October 17, 1960 and that too in a post equivalent to that of Assistant Inspector of Labour in the Madras State Service. The appellant, who appears to have been appearing in person in all his earlier cases, appeared in person before us too and argued his appeal.

2. Following a communication from the Labour Commissioner, Bangalore, the Inspector of Factories, Bangalore issued an order of appointment to the appellant on October 14, 1960 appointing him "tentatively as Assistant Inspector of Labour, Udipi" on a temporary basis on a pay of Rs. 80 p.m. in the scale of Rs. 80 - 200. The order of appointment was in the following terms :

Pending filling up of the post of Assistant Inspector of Labour, Udipi as per P.S.C. Rules, Shri Varadha Rao, B. is appointed tentatively as Assistant Inspector of Labour, Udipi on a pay of Rs. 80 p.m. in the scale of Rs. 80 - 200 plus D.A.

2. His appointment is purely temporary until further orders and subject to termination without assigning any reason therefor.

3. The appellant was treated as a Local candidate and his services regularised in the cadre of "Labour Inspectors" with effect from October 21, 1967 in accordance with the "Regularisation Rules". Ever since the regularisation, it is the admitted position, the appellant was assigned the duties of Labour Inspector and he was also discharging them as such till March 1, 1982 when he was promoted as "Senior Labour Inspector".

4. A gradation list of Labour Inspectors was published on July 30, 1981 pursuant to the review of promotions under the Karnataka Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 in which the appellant's seniority was reckoned from October 21, 1967 (the date of his

regularisation), in the cadre of Labour Inspector, and he was assigned the rank of 99 in the seniority list. Disputing the seniority assigned to him, the appellant preferred an appeal under Rule 19 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and contended that his seniority should be reckoned from the date of his assuming office i.e. October 17, 1960 and furthermore he should have been categorised in a higher post equivalent to Assistant Inspector of Labour - (Madras State Service) instead of "Labour Inspector" - (Mysore State Service). The government held the contentions were untenable and dismissed the appeal and this led to the appellant filing W.P. No. 119 of 1983. His contention in the writ petition and the writ appeal as well as in this appeal before us is that the fixation of his seniority on the basis that his initial appointment was as a "local candidate" is erroneous and secondly, at all events his appointment was to one of the posts of "Assistant Inspector of Labour" transferred from the erstwhile State of Madras to the State of Mysore at the time of reorganisation of States and as such the regularisation of his services in 1967 should have been in a higher category post instead of the category of Labour Inspector.

5. The grounds on which the appellant rests his case for a higher seniority may be set out as below. When the new State of Mysore came into existence on November 1, 1956 following the reorganisation of States, three incumbents in the posts of Assistant Inspector of Labour of Madras area, namely, Shriyuts J. Varadha Bhat, G. Umanath Rao and K. Venkataramana came to be allotted along with their posts to the State of Mysore. Their pay scale was Rs. 120 - 220 and they had been regularly appointed by the State of Madras. During the year 1958-59 those three allottees were promoted to higher posts by virtue of their seniority. The Government of Mysore made arrangements for filling up the posts with local candidates by calling for names from the local Employment Exchange and issuing orders of temporary appointment to the selected candidates. The appellant was one such person to be appointed to one of the three posts. According to the appellant, since he had been appointed to one of the transferred posts, after a list of names was called for from the Employment Exchange, his appointment, although a temporary one, was not as a local candidate but one regularly made to a post in a higher category than the one assigned to him at the time of regularisation. The appellant would therefore say that these special features entitle him to claim seniority immediately below the three transferred Assistant Inspectors of Labour from Madras State and the government and high Court of Karnataka ought to have sustained his grievance and granted him higher seniority.

6. Before we proceed to examine the contentions of the appellant we may refer to some of the relevant proceedings in the plethora of actions taken earlier by him for obtaining reliefs similar to those claimed in this appeal. As early as in 1966, i.e. even before his services were regularised, the appellant filed W.P. No. 153/66 for issue of a mandamus to the State Government to place him in the pay scale of Rs. 120 - 220 from the date of his appointment viz. October 17, 1960 and in the revised scale of Rs. 150 - 270 from January 1, 1961. The High Court of Karnataka dismissed the writ petition. The appellant filed S.C.L.A.P. No. 61/69 and the appeal too was dismissed by a Division Bench of the High Court. The appellant then sought the leave of this Court to prefer an appeal and filed S.L.P. No. 1471 of 1969 but this Court declined to grant leave and dismissed the petition.

7. When the Chief Inspector of Factories and Boilers circulated a letter on January 1, 1979 calling upon the officials of his department to opt to remain either in the same department or to go over to the Labour Department, on account of the proposed bifurcation of the two departments, the appellant who was in the Labour Department and to whom the circular did not apply, filed W.P. No. 860/79 for a direction that the bifurcation of departments should be made on the basis of the initial appointments or in the alternative that he be declared to be entitled to opt for the Factories and

Boilers Department. The petition was dismissed on February 4, 1980 on the ground that under Rule 15 of the Karnataka Civil Services (General Recruitment) Rules, 1957 the government was empowered to transfer an official from one department to another and that the appellant's temporary appointment as Assistant Inspector of Labour by the Inspector of Factories, Bangalore did not confer on him a vested right to opt for inclusion in the Factories and Boilers Department.

8. In 1980, the appellant filed W.P. No. 4018 of 1980 for a review of the order passed in W.P. No. 153/66 on the footing that the Special Government Pleader had misrepresented facts to the court regarding the post to which he was initially appointed and as such the decision rendered in the said writ petition was vitiated by fraud. This petition was also dismissed and it was pointed out that the order sought to be reviewed had become final by reason of the dismissal of the writ appeal and the special leave petition filed by the appellant.

9. Unrelentingly the appellant filed a suit O.S. No. 1875 of 1981 in the City Civil Court, Bangalore to seek a declaration that the order passed in W.P. No. 153/66 was a nullity. When the suit was dismissed on September 3, 1983 he filed R.F.A. No. 409/83.

10. In the meanwhile the appellant had filed another petition viz W.P. No. 119/83 for a declaration that his initial appointment was to a higher post and his seniority should be reckoned on that basis. The writ petition was dismissed in limine and thereupon the appellant filed Writ Appeal No. 493/83, the dismissal of which has given rise to this appeal by special leave.

11. The appellant sought a joint hearing of R.F.A. Number 409/83 and W.A. Number 493/83 and in addition he also sought a transfer of the two appeals to another High Court on the ground that the Special Government Pleader who had appeared for the State of Mysore in W.P. Number 153/66 had since become a judge of the High Court of Karnataka and therefore, he was apprehensive that he would not get a fair consideration of the appeals in the High Court of Karnataka. The Transfer Petitions Numbers 120 and 121 of 1984 were dismissed by this Court on March 5, 1984. Subsequently the writ appeal and the regular first appeal were heard by the High Court and were dismissed on June 7, 1984 and July 24, 1984 respectively.

12. The appellant then reverted back to his attack on the dismissal of W.P. Number 153/66 and filed a Review Petition C.P. Number 400/84. That petition was dismissed on September 17, 1984 as being barred by limitation. The appellant then filed a review petition before this Court for review of the dismissal of S.L.P. Number 1471/69. According to the appellant the result of this review petition has not been communicated to him so far.

13. Yet another petition W.P. Number 18535 of 1984 was also filed by him for seeking the very reliefs claimed in the earlier petitions and that petition was dismissed on November 7, 1984 on the ground that the dismissal of the earlier petitions acted as *res judicata*. Even so the appellant is said to have filed another petition W.P. Number 17646/84 and the result of the same is not known.

14. From what has been set out above, it may be seen that the appellant, whose services came to be regularised only in 1967, has been contending, even from 1966 onwards, over and over again that he is not a local candidate appointed on a temporary basis to a cadre post but on the contrary he is a candidate regularly appointed either to a post transferred from the Madras State Service or to an "out-of-the-cadre post" in Mysore State Service and as such he should have been categorised along with the three allottees from Madras State Service in category I and ranked next to them in the seniority list. Though his contentions have been fully considered and rejected time and again, the

appellant has again come forward with this appeal to persuade us to accept his contentions and direct the respondents to accord him seniority in the manner claimed by him.

15. On an examination of the contentions of the appellant we find the whole edifice of his case to be built on non-existent foundation and all the arguments to stem from fallacious assumptions. The three Assistant Inspectors of Labour who were allotted to the State of Mysore, with whom the appellant claims parity, had been regularly appointed by the State of Madras on a higher scale of pay viz. Rs. 120-220 and they were permanent employees. Hence when they stood transferred to the State of Mysore they also stood protected under the States Reorganisation Act and were entitled to pay protection and other service benefits. Those allottees were provisionally equated with the C.M.I. Inspectors of Mysore on the basis of their scale of pay and the equation was confirmed when the final equation of posts was made in the year 1968. The equation, it is needless to say, had been made with reference to the scales of pay and as such the higher equation given to the allottees was confined to them alone. It was in such circumstances they were assigned higher seniority ranks in the final inter-State seniority list published in 1968 but effective from November 1, 1956.

16. The appellant's position is entirely different as may be seen from what follows. Even during 1958 i.e. well before the appellant was issued an order of temporary appointment, the posts of Assistant Inspector of Labour had been equated with the posts of Inspectors of Shops and Establishments and Investigators in the scale of Rs. 80-200 in the State of Mysore. As a result when the appellant was issued an order of temporary appointment for the post of Assistant Inspector of Labour in October 1960, his appointment was to a different category in a pay scale of Rs. 80-200. Nevertheless in order to enforce the provisions of the Madras Shops and Establishments Act and other labour laws, which were in force in erstwhile Madras area, the designation of the posts as Assistant Inspector of Labour was allowed to be continued. In such circumstances the mere continuance of the nomenclature of the post would not have the effect of making it equivalent to the posts transferred from Madras State Service.

17. It is also pertinent to note that the posts of Assistant Inspector of Labour were not borne on the cadre of the Labour Department in the State of Mysore. As such the appointment of the appellant as Assistant Inspector of Labour was not to any cadre post but to an "out-of-the-cadre post". A finding to this effect has been rendered by the High Court of Karnataka in W.P. Number 153/66 in the following terms :

5. ... It would thus be seen that neither the Cadre and Recruitment Rules of the Factories and Boilers Branch nor the corresponding Rules of the Branch of the Labour Service make mention of the posts, in which the petitioners were appointed viz. Assistant Inspectors of Labour. If any appointment is made by the state Government or any other competent authority to a post which is not mentioned in the cadre and Recruitment Rules, it has got to be regarded as an out-of-the-cadre post. To such a post, it is open to the competent authority to fix an ad hoc scale of pay pending sanction of government and framing of Cadre and Recruitment Rules. That seems to be the position in which the petitioners stand.

18. This finding, which has become final, disentitles the appellant in further measure, from contending that his appointment was to a cadre post transferred from the state of Madras.

19. Turning now to the question whether the appellant ought not to have been treated as a "local candidate" at the time of regularisation of his services in 1967 the appellant's argument is that since

he was appointed to one of the posts of Assistant Inspector of Labour transferred from Madras State he would not fall within the category of a local candidate as defined in Rule 8(27-A) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. It is further urged that even if the post of "Assistant Inspector of Labour" was an "out-of-the-cadre post" the appointment would not be governed by the statutory Rules of 1959 and as such his appointment, albeit on a temporary basis must be construed as one regularly made. Having regard to the earlier admissions of the appellant himself at material times, that he was appointed only as a local candidate and that the "Regularisation Rules" would govern his appointment, we find no merit in the contentions now put forward by the appellant. The entry in the service register of the appellant clearly recited that his appointment was "Temporary (Local Candidate)". The appellant has accepted this position and affixed his signature in the service register. When orders of transfer were issued to him he raised protest on the ground that he was a local candidate and should not therefore be transferred. His protest, as extracted in the counter-affidavit of the respondents, is in the following terms :

As I still continued to be a local candidate I am of the opinion that in view of the instructions contained in the abovementioned Memorandum, I am not liable for transfer.

20. Over and above these things, the appellant has given a solemn declaration at the time of the regularisation of his services in 1967 that he was only a local candidate and that he was fully eligible for being regularised in the service under the "Regularisation Rules". The declaration extracted in the counter affidavit, is in the following terms :

I do hereby declare that I have not been selected by any recruitment body for any post in the service of the Government of Mysore and further I have not received any appointment in such post.

Having obtained regularisation of service in terms of the Regularisation Rules and after having given a solemn declaration regarding the nature of his initial appointment, in order to obtain regularisation of service, the appellant cannot make a volte face and raise a plea that he was not a local candidate and as such his seniority ought to be reckoned from the date of his initial appointment and not from the date of his regularisation.,

21. Conveniently overlooking his earlier declarations that he was appointed as a local candidate, the appellant attempted to contend before that a fraudulent representation had been made on behalf of the government in W.P. Number 153 of 1966 and on the basis of such representation the writ petition came to be dismissed but subsequently the fraudulent stand was given up and the correct nature of his appointment was acknowledged in the return filed in W.P. Number 860/79 and hence he is not precluded from asking for re-fixation of seniority from the date of his initial appointment. On a scrutiny of the matter we find the argument to be wholly devoid of merit. In W.P. Number 153/66 it was observed as under :

5. What is urged on behalf of the government (respondents) is that the appointments of the petitioners were not made against any of the posts which had been allotted from Madras area and that they were appointed temporarily Assistant Inspector of Labour and not as Assistant Inspectors of Factories on a specific scale of Rs. 80-200.

In W.P. Number 860/79 it was stated in the counter-affidavit as follows :

2. At the time of integration of States, there were three posts of Assistant Inspectors of Labour, two at Mangalore and one at Udipi in the scale of Rs. 150-200 (old Madras Area) under the control of Inspector of Factories, Mangalore. These posts fell vacant during 1958 when the incumbents by virtue of their seniority were posted against the higher posts. The petitioner whose name was sponsored through the Employment Exchange, was appointed against one of these posts....

2. ... It is also to note that the petitioner was originally appointed as Assistant Inspector of Labour in the Factories and Boilers wing, which was regarded as a separate department. It is only in the year 1963 that the petitioner came to be transferred from the Factories and Boilers Department to the Department of Labour.....

22. On a close reading of the statements made in the two writ petitions we do not find any conflict in the stand of the government in those petitions or any suppression of material facts in the earlier petition. The consistent stand of the government has been that the appellant was no doubt issued an order of appointment to the post of Assistant Inspector of Labour but the post was not equitable with the posts held by the allottees from the Madras State Service. There is no admission in the later petition that the appellant was appointed to a post equivalent in all respects to the posts held by the allottees. As regards the appellant's claim that he was appointed in the Factories and Boilers wing, nothing much turns upon it because the appellant himself has stated in his affidavit that "the second respondent, Labour Commissioner continued to function as the ex officio Chief Inspector of Factories and Boilers and Director of National Employment Service till the Employment Exchange Department got its own full time Director during 1963-64 and the Factories and Boilers Department got its own full time Chief Inspector of Factories and Boilers during 1979". He has further stated in his affidavit that because the second respondent was having both the departments under his control he was mixing up the official in the two departments and posting them in one section or the other. The appellant cannot, therefore, claim that he had been regularly appointed to the Factories and Boilers wing in the year 1960. Besides he was posted in the year 1963 as a Labour Inspector and his regularisation in the service was also to the post of Labour Inspector. On account of these factors the appellant's attempt to disown his regularisation in the Labour Department in 1967 and to claim a berth in the Factories and Boilers Department is thoroughly misconceived.

23. Yet another infirmity in the case of the appellant is that he claims a right of placement in a promotional post at the very commencement of his service. When the appellant's services were regularised in 1967 he was placed in the category of Labour Inspector and it is only in 1982 he has been promoted to the post of senior Inspector of Labour. His seniority can, therefore, be reckoned only with reference to the date of regularisation of service and the date of his promotion viz. March 1, 1982 as Senior Labour Inspector. On the basis of relevant materials, he has been assigned serial Number 99. By no stretch of imagination can the appellant claim seniority along with the transferred officers, Varadha Bhat, Umanath Rao and Venkataramana in the final seniority list because they were holding regular posts on a higher scale of pay even on November 1, 1956 when the Mysore State was formed. Being a regular appointee in 1967 and a promotee to the senior post only in 1982 the appellant has no right whatever to claim seniority along with the officers transferred from Madras State. We, therefore, find all the contentions of the appellant to be without merit or substance. The High Court has rightly dismissed the writ appeal and this appeal too deservedly fails.

24. Before concluding the judgment we would like to express not only our disapproval but also our

deprecation of certain averments made by the appellant in his special leave petition. In page 31 of his petition the appellant has stated that the High Court had not only failed to correctly interpret the observation of this court in T.P. Numbers 120-121 of 1984 and direct the hearing of Writ Appeal Number 493 of 1983 and RFA Number 409 of 1983 together but the High Court had persuaded itself to take such a stand "because of the involvement of one of the sitting Judges of the High Court as the then Special Government Pleader in OS and RFA". We express our strong condemnation of the reckless allegation made by the appellant. The appellant's obsession with the merits of his case on the basis of wrong assumptions appears to have impelled him to make such reckless averments in the special leave petition. In the circumstances of the case we would be justified in mulcting the appellant with costs in the appeal. Even so we think we should give an opportunity to the appellant to realise his mistake and feel contrite for his reapproachable conduct especially when he has chosen to be a counsel in his own cause and has not had the benefit of advice from competent legal minds.

25. With these observations, we dismiss the appeal with no order as to costs.

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