

Gonal Bihimappa

Vs

State of Karnataka and Others

Writ Petition (Civil) No. 811 of 1986 with Writ Petition No. 804 of 1986 and Civil Appeals Nos. 2902-05, 2906, 2907-09, 2910-11 of 1984

(Ranganath Misra, M. M. Dutt JJ)

11.08.1987

JUDGMENT

RANGANATH MISRA, J. –

1. The obstinate problem of inter se seniority, this time amongst officers in the Karnataka Administrative Service has fallen for determination in this group of appeals by special leave and writ petitions under Article 32 of the Constitution at the instance of both direct recruits and promotees.
2. It is not disputed that under the relevant Recruitment Rules of 1957 in regard to Class I Junior Scale posts there was a quota system - two-thirds of the vacancies had to be filled up by promotion by selection from Class II officers and the remaining one-third by direct recruitment by competitive examination to be held by the Public Service Commission. When direct recruitment had not been made timely as envisaged by the scheme in the Rules officiating promotions were given in respect of posts covered by the direct recruit quota. Such temporary promotions remained effective for a number of years - sometimes varying between 5 and 8 - and later when the vacancies within the direct recruitment quota were filled up, the appointments made in latter years were deemed to carry weightage for seniority on the footing of deemed filling up when vacancies had arise. Thus the dispute as to seniority inter se between those who had manned the promotional posts beyond the two-thirds limit and the direct recruits subsequently appointed has come for judicial determination.
3. A three-Judge Bench of this Court in V. B. Badami v. State of Mysore ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) dealt with a situation of this type with reference to the same set of Rules. A similar dispute came before the Karnataka High Court in a bunch of writ petitions filed both by promotees and direct recruits and in view of common questions of fact and law involved therein, the High Court disposed them by a common leading judgment in the case of M. G. Kadali v. State of Karnataka ((1982) 2 KLJ 453). The High Court noticed the ratio in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) and found that with a view to implementing the rule in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353), the State Government issued an official memorandum on July 5, 1976, laying down guidelines for determination of seniority between the direct recruits and promotees. The Gradation List of Junior Scale officers as on June 30, 1973 was drawn up following such guideline and was notified on August 10, 1976 with the following explanatory cover note :

(i) Between December 2, 1957 and September 10, 1959, the number of substantive vacancies were thirty-nine and of those, twenty-six were promotional and thirteen

were the share of direct recruits. The first fifteen of the promotional posts were given to allottees and the remaining eleven to promotees. In the absence of direct recruitment, these thirteen posts were carried forward.

(ii) Between September 11, 1959 and October 26, 1964 (when 1962 direct recruits because due for promotion), the vacancies were seventy-six, of which fifty-one were available for direct recruits and twenty-five for promotees in view of the change in the proportion in the 1959 Rules. Twenty-three substantive vacancies were given to direct recruits of 1962. The net result, therefore, was thirteen direct recruit posts of the earlier period and twenty-eight of this period were carried forward :

(iii) After October 1964, the vacancies were classified on annual basis. Up to October 7, 1971, sixty vacancies were filled up by promotion. As noticed earlier forty-one direct recruits vacancies had been carried forward and thirty-five fresh vacancies were available to direct recruits. Eleven vacancies were filled up by direct recruitment and sixty-five were carried forward.

4. By a later notification dated February 2, 1977, when a further gradation list was published, the following explanatory note was added :

(i) During the period June 7, 1974 to July 15, 1976 (when direct recruits of 1974 were eligible for confirmation), eleven substantive vacancies were available on the basis of the permanent strength of the cadre;

(ii) Out of one hundred and thirty-three temporary posts available during that period, eighty-nine posts were assigned to promotees. The direct recruitment vacancies were carried forward from the earlier period. The recruits of the 1984 batch were assigned ranks taking into account the direct recruitment vacancies carried forward for the previous period.

5. On a representation by the 1974 batch of direct recruits for re-fixation of inter se seniority in the Gradation List taking into account only the permanent posts in the cadre and by taking into account the carried forward vacancies, the State Government made an order on May 22, 1980, to the effect that the 1974 batch of direct recruits should be shown immediately below serial number 64 and above serial number 65 in the continuation Gradation List published on February 2, 1977.

6. Certain promotees being aggrieved by this government direction approached the High Court under Article 226 for relief claiming protection of their seniority. The High Court classified their contentions into the following five :

(i) The only basis for determination of inter se seniority of officers in a cadre - whether by promotion or direct recruitment - should be the date of entry into the cadre and the quota rule is not available to be used for pushing up or down officers of the cadre;

(ii) Even if there be any 'carry forward' it should not extend beyond three years;

(iii) Quota rule should be applied taking into account both substantive as well as temporary vacancies in the cadre;

(iv) The quota rule did no longer operate in regard to the junior scale officers when the 1959 Rules became operative; at any rate it was clearly so when the 1966 Rules came into force, and

(v) The impugned government order of 1980 was invalid and liable to be quashed on several grounds, one of them being that it was made without providing an opportunity to the promotees who were adversely affected by it.

The High Court analysed the judgment of this Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) and also referred to, and relied upon, the observations in Col. Iyer case (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145) and with reference to the issues catalogued above came to the conclusion as stated below in its own words :

(i) If promotions have taken place in excess of the quota for promotion, pushing down the promotes promoted in excess of their quota or if direct recruitment was done in excess of the quota for direct recruitment, pushing down direct recruits appointed in excess of their quota is a necessary concomitant of the quota rule. Carrying forward of direct recruitment vacancies or promotional vacancies to the next recruitment period is merely the consequence of such pushing down. (What was perhaps intended to be said was that pushing down was the direct outcome of the mandate to carry forward.) We are unable to accept the contention of learned counsel for the promotee-petitioners that there should be no such pushing down or such carry forward.

(ii) In the light of the above ruling of the Supreme Court, it must be held that carry forward of direct recruitment vacancies cannot extend beyond three years. However, this ruling of the Supreme Court (in A. S. Iyer case (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145)) does not affect the finality and binding character of the earlier judgment of the Supreme Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) which specifically dealt with the Gradation List of Junior Scale officers as on January 1, 1972, and gave direction as to how a fresh Gradation List should be prepared. Those directions are bound to be obeyed while preparing such Gradation List of officers who entered that cadre up to January 1, 1972 without any limitation as to the period up to which promotional or direct recruitment vacancies should be carried forward to the next recruitment period. But such carry forward cannot exceed three years after January 1, 1972.

(iii) The above ruling of the Supreme Court (Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353)) is binding on all courts under Article 141 of the Constitution. It is not open to us to speculate what would have been the conclusion of the Supreme Court if it had known the correct factual position that the cadre of Junior Scale officers consisted both of permanent and temporary posts. That the promotee-petitioners in the present writ petitions were not parties to Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353), in no way detracts from the binding character of the law declared by the Supreme Court.

(iv) Hence, we reject the contention that 1959 Rules abrogated the quota rule in

regards to recruitment to the cadre of Junior Scale officers.... We, therefore, reject the contentions of learned counsel for promotee-petitioners that after the 1966 Rules came into force, the quota rule ceased to apply to the recruitment to the cadre of Junior Scale officers and that thereafter the date of entry into the cadre, whether by direct recruitment or by promotion; became the only basis for determining the seniority in that cadre.

(v) The High Court examined the individual cases of both the groups and finally directed dismissal of Kadali's (or promotee) writ application as also of the direct recruits of 1976 and 1977. It further quashed the government order dated May 22, 1980 by which certain modifications were made in the Gradation List of 1976 and called upon the State Government to make appropriate alterations in the Gradation List of August 10, 1976 and the continuation list of February 2, 1977 on the basis that the carry forward rule should operate for a maximum period of three years subsequent to January 1, 1972.

We have before us a batch of appeals by special leave and two writ petitions under Article 32. Both the writ petitions are by direct recruits; Civil Appeal Nos. 2906 to 2910 and 2911 of 1984 are by promotes while Civil Appeal Nos. 2902 to 2905 and 2907 to 2909 to 2909 of 1984 are by direct recruits. The promotees challenge the propriety of the direction of the High Court to modify the Gradation List by applying the quota rule while the direct recruits seek to have full application of the quota rule instead of the limitation of three years and have asked for consequential benefits.

7. This group of cases has been heard at great length and learned counsel for the parties have produced a lot of papers. On looking into the matters objectively in the backdrop of Badami decision ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) we are of the view that if the following aspects are answered all that arose for judicial determination would be appropriately met. Those aspects are :

(i) What is the effect of the quota rule in the matter of fixation of inter se seniority in the Gradation List so far as recruits from different sources are concerned ?

(ii) Though admittedly in 1957 under the relevant rule, a quota existed, was that basis altered or given up during the relevant period ?

(iii) What is the effect of this Court's judgment in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) ? Was the High Court correct in observing that this Court would not have come to the conclusion that quota was confined to substantive vacancies only if the true state of facts was known ?

(iv) What is the effect of the observation in Iyer case (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145) and does it supersede the rule in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) ?

(v) Does the situation highlighted in this case require any other direction ?

8. It is a well settled position in law that where recruitment is from two sources to a service, a quota rule can be applied fixing the limits of recruitment from the two sources. (H. C. Sharma v. MCD ((1983) 3 SCR 372 : (1983) 3 SCC 567 : 1983 SCC (L&S) 433).)

First Aspect

9. In *S. G. Jaisinghani v. Union of India* ((1967) 2 SCR 703, 717 : AIR 1967 SC 1427), a Constitution Bench of this Court observed :

The Solicitor-General on behalf of respondents 1, 2 and 3 submitted that the quota rule was merely an administrative direction to determine recruitment from two different sources in the proportion stated in the rule and a breach of that quota rule was not a justifiable issue. The Solicitor-General said that there was, however, substantial compliance with the quota rule.... We are unable to accept the argument of the Solicitor-General that the quota rule was not legally binding on the government. It is not disputed that Rule 4 of the Income Tax Officers (Class I, Grade II) Service Recruitment Rules is a statutory rule and there is a statutory duty cast on the government under this rule to determine the method or methods to be employed for the purpose of filling the vacancies and the number of candidates to be recruited by each method. In the letter of the Government of India dated October 18, 1951 there is no specific reference to Rule 4, but the quota fixed in their letter must be deemed to have been fixed by the Government of India in exercise of the statutory power given under Rule 4. Having fixed the quota in that letter under Rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation.... We are of opinion that having fixed the quota in exercise of their power under Rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e., Rule 1(f)(ii) and (iv), is not unreasonable and does not offend Article 16 of the Constitution.

In *Badami* case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) this aspect was examined by the court. The learned Chief Justice spoke for the three-Judge Bench thus : (SCC pp. 908-11, SCC (L&S) pp. 360-63, paras 29, 34, 36-39)

In working out the quota rule, these principles are generally followed. First, where rules prescribe quota between direct recruits and promotees, confirmation or substantive appointment can only be in respect of clear vacancies in the permanent strength of the cadre. Second, confirmed persons are senior to those who are officiating. Third, as between persons appointed in officiating capacity,, seniority is to be counted on the length of continuous service. Fourth, direct recruitment is possible only by competitive examination which is the prescribed procedure under the rules. In promotional vacancies, the promotion is either by selection or on the principle of seniority-cum-merit. A promotion could be made in respect of a temporary post or for a specified period but a direct recruitment has generally to be made only in respect of clear permanent vacancy either existing or anticipated to arise at or about the period of probation is expected to be completed. Fifth, if promotions are made to vacancies in excess of the promotional quota, the promotions may not be totally illegal but would be irregular. The promotees cannot claim any right to hold the promotional posts unless the vacancies fall within their quota. If the promotees occupy any vacancies which are within the quota of direct recruits, when direct recruitment takes place, the direct recruits will occupy the vacancies within their quota. Promotees who were occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the vacancies within their quota in the facts and circumstances of a case.

Thus important principle is that as long as the quota rule remains neither promotees can be allotted

to any of the substantive vacancies of the quota of direct recruits nor recruits can be allotted to promotional vacancies. The result is that direct recruitment vacancies between September 11, 1959 and October 26, 1964 cannot be occupied by any promotees. The fact that direct recruits were confirmed on October 26, 1964 will not rob the direct recruits of their quota which remained unfilled from December 2, 1957.

In *S. G. Jaisinghani v. Union of India* ((1967) 2 SCR 703, 717 : AIR 1967 SC 1427) it was said that when the quota was fixed for the two sources of recruitment the quota could not be altered according to exigencies of the situation. It was held there that the promotees who had been promoted in excess of the prescribed quota should be held to have been illegally promoted. In *Bishan Sarup Gupta v. Union of India*, 1975 Supp SCR 491 : (1973) 3 SCC 1 : 1973 SCC (L&S) 1) it was held that when it was ascertained that not more than one-third of the vacancies were to go to the promotees and the rest to the direct recruits, the ratio was not made dependent on whether any direct recruit was appointed in any particular year or not. The promotees were entitled to one-third of the vacancies in any particular year, whether or not there was direct recruitment by competitive examination in that year.

Two principles are established in the decision referred to. One is that quotas which are fixed are unalterable according to exigencies of situation. Quotas which are fixed can only be altered by fresh determination of quotas under the relevant rule. The other is that one group cannot claim the quota fixed for the other group either on the ground that the quotas are not filled up or on the ground that because there has been a number in excess of quota the same should be absorbed depriving the other group of quota.

In *Bachan Singh v. Union of India* ((1972) 3 SCR 898 : (1972) 3 SCC 489 : AIR 1973 SC 441) the two appellants were promoted in the years 1958 and 1959. The respondents were appointed by direct recruitment in 1962, 1963 and 1964. The respondents were confirmed in their posts before the appellants. The appellants contended that the respondents who were directly appointed after the appellants had been promoted were not to be confirmed in permanent posts before the appellants. It was held that the direct recruits were confirmed against permanent vacancies within their quota. The earlier confirmation of direct recruits though appointed later was upheld on the ground that they fell within their quota of permanent vacancies.

Subraman case (*A. K. Subraman v. Union of India*, (1975) 2 SCR 979 : (1975) 1 SCC 319 : 1975 SCC (L&S) 36) on which the appellants relied also held that each quota would have to be worked independently on its own force. In that case the Assistant Executive Engineers who were initially entitled to three-fourth and subsequently to two-third of the vacancies while Assistant Engineers who were entitled initially to one-fourth and subsequently to one-third of such vacancies were held to be entitled to their respective quotas independent of the fact that whether any person from one class or the other was promoted or not. It was illustrated by saying that if there were three vacancies in a year, two would go to the Assistant Executive Engineers and one would go to the Assistant Engineers and even if there were not eligible Assistant Executive Engineers who could be promoted to fill in two vacancies belonging to their quota, one vacancy is to be filled up by promotion of an Assistant Engineer, if he was eligible. Similarly, if two vacancies belonging to the quota of Assistant Executive Engineers are to be filled by Assistant Engineers for want of availability of eligible Assistant Executive Engineers the appointment of Assistant Engineers to fill in those two vacancies would be irregular because they would have to be pushed down to later years when their appointment could be regularised as a result of absorption in their lawful quota for those years.

10. Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) referred to several authorities of the court and clearly drew out the judicial consensus on the point in issue by concluding that the quota rule had to be strictly enforced and it was not open to the authorities to meddle with it on the ground of administrative exigencies.

11. The scheme in force relating to the services for fixing inter se seniority takes into account the filling up of the vacancies in the service from the two sources on the basis of the quota and, therefore, fixation of inter se seniority in the Gradation List has to be worked out on the basis of quota.

Second Aspect

12. There was no dispute either before the High Court or before us that in the 1957 Rules there existed a quota for filling up vacancies in the Class I Junior Scale posts. The High Court found that the quota continued throughout during the relevant period. Before us Mr. Nariman supported that finding while Mr. Kacker maintained that the quota had in later years been given up. Rule 3 of Mysore Recruitment of Gazetted Probationers Rules, 1959 made the following provisions :

(1) The provisions of these rules shall be applicable in respect of direct recruitment to the cadres in State Civil Services Class I and Class II specified in column 3 of the Schedule to these rules relating to the Services specified in the corresponding entries of column 2 of the said Schedule.

(2) These rules shall have effect notwithstanding anything contrary contained in the Cadre and Recruitment Rules for the time being in force applicable to the cadres in the State Civil Services referred to in sub-rule (i) and (ii) in the Mysore State Civil Service (General Recruitment) Rules, 1957.

(3) During the period of five years from the date of commencement of these rules, as nearly as may be two-thirds of the number of vacancies arising in the cadres in the State Civil Services referred to in sub-rule (i) shall be filled by appointment of candidates (hereinafter in these rules referred to as probationers) selected in accordance with the provisions of these rules and the actual number of vacancies to be so filled shall be determined by the Government.

Admittedly these rules related only to direct recruitment and as it appears, sub-rule (3) remained in force for five years (said to have been extended for one more year); with the lapse of a total period of six years from the date when these rules came into force, they cease to have effect. In 1966 rules were made under the proviso to Article 309 known as the Karnataka Government Gazetted Probationers Posts (Appointment by Competitive Examination) Rules, 1966 and sub-rule (3) of Rule 3 thereof provided inter alia :

That notwithstanding anything contrary in the rules of recruitment to the Karnataka Administrative Service the number of vacancies as determined by the government in that service should be filled by direct recruitment after holding a competitive examination by the Commission.

13. On August 11, 1977, the Karnataka Administrative Service (Recruitment) (Amendment) Rules, 1977 came into force. Rule 2 thereof provided :

Amendment to Schedule. - In the Schedule to the Karnataka Administrative Service

(Recruitment) Rules, 1957 for the entries at the Item (b) the following entries shall be substituted, namely :

#----- 1 2 3-----
------(b) All Class I (i) 50 per cent of For promotion :
Junior Scale) vacancies to be Posts filled by promotion Class II Officers from Class
II must have worked officers; and for at least a period of four (ii) 50 per cent by
years including Direct Recruitment the period of in accordance with officiation or the
Karnataka probation Recruitment of Gazetted Probationers (Appointment etc.) Rules,
1966-----##

Unless the 1957 Rules remained in force till 1977, there would have been really no necessity to refer to them for the purpose of amendment. Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) did proceed on the footing that the quota system in the Recruitment Rules continued till 1971-72. It is not Mr. Kacker's case that anything happened after 1972 which brought about dissolution of the quota. We reject the contention of Mr. Kacker that the quota system had been abandoned and confirm the finding of the High Court in that regard. It is, however, a fact that the ratio has been changed from time to time.

Third Aspect

14. As already pointed out, Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) was concerned with these very rules and a similar situation though for a different period. It is a decision of three-Judge Bench and we proceed on the footing that it is binding on us. The High Court has pointed out in the leading judgment in Kadali case ((1982) 2 KLJ 453) :

There are numerous government orders sanctioning, from time to time, temporary posts of Assistants Commissioners which are the same as the posts of Junior Scale Officers and extending the tenure of these temporary posts from time to time.. Though the Karnataka Administrative Service Cadre Rules mention only permanent posts and not temporary posts in the cadre of Junior Scale Officers, the material produced before us clearly establishes that the cadre of Junior Scale Officers consisted of a considerable number of temporary posts at all material times. In para 6 of the statement of objections filed on behalf of the State in these petitions, the State has admitted thus :

The cadre strength of KAS Class I Junior Scale Officers had itself undergone revision and figures showed that 152 permanent posts and 133 temporary posts were available as is clear from the Notification No. GAD 590 SMC 74 dated March 3, 1976.

However learned counsel for direct recruits on the following observations of the Supreme Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) at page 1564 of the report : (SCC p. 908, SCC (L&S) p. 360, para 28)

In E. P. Royappa v. State of Tamil Nadu ((1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165) this Court said on the construction of Rule 4(2) of the relevant Cadre Rules in that case that the State Government might add for a period to the cadre one or more posts. But, the posts so added could not become cadre posts. The temporary posts which are created due to exigencies of the service are posts which are outside the cadre.

From the above observations, it would appear that the Supreme Court took the view that temporary

posts which were created due to exigencies of service, were posts which were outside the cadre. In other words, the Supreme Court seems to have thought that temporary posts added to the Cadre were ex cadre posts. The attention of the Supreme Court does not appear to have been drawn to Note 2 to Rule 49 of the KCSR which classifies temporary posts into two categories, namely, posts created to perform the ordinary work for which permanent posts already exist in the cadre, and isolated posts created for the performance of special task unconnected with the ordinary work which a service is called upon to perform.

15. The conclusion indicated in the decision of the learned Chief Justice of this Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) had been supported by reasons. As it would appear at page 819 of the Reports, this aspect was raised as the first of the six contentions formulated for consideration of the court. Keeping the facts of the case in the background, three reasons were indicated in the judgment for the conclusion that quota covered permanent posts. Reference was made to certain decisions of this Court as also to Rule 9 of the Probation Rules of 1959. It was held that Rule 9 establishes the exclusion of temporary posts from the cadre. Royappa case ((1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165) was relied upon for the same conclusion by saying that posts temporarily added to the cadre by exercise of power under a permissive rule would not become cadre posts and temporary posts created due to exigencies of the service should be treated as posts outside the cadre. The High Court in the judgment in Kadali case ((1982) 2 KLJ 453) relied upon Note 2 of Rule 49 of the KCSR and thought that this Court was not properly informed of the factual situation when in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) it said that temporary posts were not to be taken into consideration for the purpose of working out the quota. The note to Rule 49 has indeed no bearing on the point and we are of the view that there was really no justification for the doubt indicated by the High Court. Apart from the fact that the conclusion of this Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) on this score is a binding authority on us from an examination of the matter we also reiterate that conclusion to be correct.

Fourth Aspect

16. The High Court in these cases has taken the view that the quota could be carried forward for a maximum period of three years and not beyond. This has been done by placing reliance on the Constitution Bench judgment of this Court in the case of Col. A. S. Iyer v. Balasubramanyam (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145). Krishna Iyer, J. speaking for the Court at page 1058 of the Reports stated : (SCC p. 653, SCC (L&S) p. 163, para 41)

The total number of vacancies at the DSS level for each year shall be divided in the ratio of 2 : 1 (50 per cent for the Army Corps and 25 per cent for direct recruits). The 50 per cent reserved for the army corps shall be available to be filled by those candidates. The 25 per cent seats to be filled by direct recruits shall be filled only by such recruits. Even if enough direct recruits are not available they will not be filled up by the army nominees but shall be kept vacant to be carried forward and filled in later years by such direct recruits. A reasonable period for the carry forward scheme will be three years, not more. Likewise, military vacancies at the DSS level each year shall be filled only by such nominees. If enough such hands are not available, a similar procedure of carry forward will govern. For the SS posts 25 per cent belongs to promotees from Class II officers. The total number will be worked out by adding all the posts of SS. Deputy Directors and Directors and Surveyor General and allotting one-fourth of it as the quota for Class II promotees for appointment as SS. Such is the reasonable interpretation of the rule.

The court in that case had been called upon to decide the dispute of seniority between the direct recruits and promotees within the civilian quota in the Survey of India service. Survey of India (Recruitment) Corps of Engineer Officers Rules, 1950 came for consideration of the court. The opinion expressed by this Court in the extracted paragraph was with reference to the rules before the court. The provisions as indicated in the extracted paragraph were somewhat peculiar. After the quota was provided, there was a prohibition against filling up of the vacancies in the respective quotas from other categories even when suitable candidates were not available from within the reserved sphere. This meant that the posts were allowed to go vacant even though in public interest the same should have been filled up on account of the bar in the rule. It is in that background that this Court indicated that a reasonable period for the carry forward scheme would be three years and at the end of the paragraph indicated that that would be a reasonable interpretation of that rule. Obviously nothing of general application was intended to be said and this Court did not certainly intend to lay down a time limit of general application. The Mysore State Civil Service (General Recruitment) Rules, 1957 which admittedly applied to the services in question by Rule 17 provided :

Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post, the appointing authority may -

(a) recruit by direct recruitment to a post reserved to be filled by promotion when it is satisfied that the person eligible to be considered for appointment by promotion is not fit to be so appointed, or

(b) fill up by promotion any vacancy relating to a post which is required to be filled by direct recruitment when such vacancy is not likely to last for more than one year....

In exercise of the powers conferred under this rule the appointments in excess of the quota limit appear to have been made. It is conceded that every appointment to the promotional post made in excess of the quota was at the commencement a temporary one. The 1957 Rules were substituted in 1977 by the Karnataka Civil Services (General Recruitment) Rules, 1977. As far as relevant Rule 17 thereof provides :

Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post, the appointing authority may -

(c) fill by promotion temporarily on the basis of seniority-cum-merit a vacancy required to be filled by direct recruitment where selection to the post has not been finally made and there is likelihood of delay in making direct recruitment. No such promotion shall be made unless a requisition has been sent to the Commission or to the appropriate recruiting authority for selection of a suitable candidate. A candidate temporarily promoted under this sub-rule shall not have any preferential claim for regular promotion and also shall not count the period of service in the promoted post for seniority; he shall revert to his original post on the expiry of one year or on the appointment of a direct recruit whichever is earlier....

The scheme in the Rules of 1977 clearly indicates that the transgression of the quota rule was a deviation of a temporary nature and was intended to be balanced in good time. The conclusion of Ray, C.J. is fortified by the spirit of Rule 17 of the 1957 Rules as clarified in clause (c) of that rule

in 1977. The presence of such a rule in the fields excludes the application of the ratio of Col. Iyer case (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145) to the facts hereof. We do not think the High Court was right in overlooking the binding judgment of this Court in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) and preferring to apply the observations of Iyer, J. in the latter decision (Col. A. S. Iyer v. V. Balasubramanyam, (1980) 1 SCR 1036 : (1980) 1 SCC 634 : 1980 SCC (L&S) 145) made with reference to a different set of rules containing a different scheme of implementing quota. The rule on this aspect of Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) was quoted with approval by a two two-Judge Bench of this Court in P. S. Mahal v. Union of India ((1984) 3 SCR 874 : (1984) 4 SCC 545 : 1985 SCC (L&S) 61).

17. A lot of argument was advanced at the Bar particularly on the side of the promotees that serious prejudice was being caused to them by enforcing the quota rule. Reliance was placed on a number of authorities of this Court beginning with the case of A. Janardhana v. Union of India ((1983) 2 SCR 936 : (1983) 3 SCC 601 : 1983 SCC (L&S) 467); G. S. Lamba v. Union of India ((1985) 3 SCR 431 : (1985) 2 SCC 604 : 1985 SCC (L&S) 491); G. P. Doval v. Chief Secretary, Government of U.P. ((1985) 1 SCR 70 : (1984) 4 SCC 329 : 1984 SCC (L&S) 767); O. P. Singla v. Union of India ((1985) 1 SCR 351 : (1984) 4 SCC 450 : 1984 SCC (L&S) 657) and D. S. Nakara v. Union of India ((1983) 2 SCR 165 : (1983) 1 SCC 305 : 1983 SCC (L&S) 145).

18. In Lamba cases ((1985) 3 SCR 431 : (1985) 2 SCC 604 : 1985 SCC (L&S) 491) the court found that the promotion was not styled as temporary or ad hoc or stop-gap; on the other hand, the court at page 459 of the judgment in the Reports (SCC p. 628, SCC (L&S) p. 515, para 27) referred to the case of N. K. Chauhan v. State of Gujarat ((1977) 1 SCR 1037 : (1977) 1 SCC 308 : 1977 SCC (L&S) 127) where on the basis of a power of relaxation the court had held such promotion to be regular. The court further held : (SCC p. 628, SCC (L&S) p. 515, para 28)

Once the promotees were promoted regularly to substantive vacancies even if temporary unless there was a chance of their demotion to the lower cadre, their, continuous officiation confers on them an advantage of being senior to the later recruits under Rule 21(4). If as stated earlier by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter se seniority as prescribed in Section 25(1)(ii) cannot be given effect to. In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority.

This principle appears to have been followed in this Court in some cases during the last two years or so. The exceptional circumstances indicated in Lamba cases ((1985) 3 SCR 431 : (1985) 2 SCC 604 : 1985 SCC (L&S) 491) for supporting the departure in the judicial opinion has been overlooked in some of these cases and resultant benevolent approach to protect the promotees in their claim for seniority has been accepted without considering the special circumstances in which the ratio had been inducted in support of the departure.

19. In a precedent-bound judicial system binding authorities have got to be respected and the procedure for developing the law has to be one of evolution. It is not necessary for disposal of these matters before us to go into that aspect except noticing the existence of distortion in the field. The rationalisation of the view in a way known to law is perhaps to be attempted some day in future. In the present batch of cases the law being clear and particularly the mandate in the rule being that when recruitment takes place the promotee has to make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a

promotional post not due to him but yet filled by him in the absence of a direct recruit. One aspect which we consider relevant to bear in mind is that the promoted officer has got the advantage of having been promoted before it became his due and is not being made to lose his promotional position. The dispute is confined to one of seniority only. The advantage received by the promotee before his chance opened should be balanced against his forfeiture of claim to seniority. If the matter is looked at from that angle there would be no scope for heart-burning or at any rates dissatisfaction is expected to be reduced so far as the promotees are concerned.

Last Aspect

20. In *Karam Pal v. Union of India* ((1985) 3 SCR 271 : (1985) 2 SCC 457 : 1985 SCC (L&S) 471 : AIR 1985 SC 774) a three-Judge Bench of this Court to which one of us was a party indicated as follows : (SCC p. 465, SCC (L&S) p. 479, para 18)

In a vast country such as ours, strong and independent bureaucratic set up is indispensable. At the same time it is equally necessary that the service from top to bottom must be alive to the fact that it is its obligation to maintain proper attitudes, discipline and duty-oriented working. While it is the right of every person in the service set-up to expect just and fair treatment in regard to his employment, frequent litigation between him and the State involving countless other co-employees in the service in the battle is a deviation from the right direction. It is true that very often instances come to light where the grievance is genuine and the treatment meted is unwarranted and uncalled for. Government in a democratic policy runs on impersonal basis but on the cardinal code that everyone shall perform his duty.

This Court further observed : (SCC p. 466, SCC (L&S) p. 480, para 19)

There has been a phenomenal rise in service disputes in the last three decades. It is time that serious attention is devoted to discover the reason for it and take effective steps to ensure curtailment thereof. Whether such litigations come before courts or tribunals is of no consequence here. Frequent litigations between the State and its employees ultimately affect the efficiency of service and bring about indiscipline, lack of loyalty and an attitude of indifference.

We are struck by the innumerable rules that have been framed within a period of about thirty years to cover the field relating to constitution, recruitment and provision for other conditions of service. It is proper that service rules should be simple making reasonable provision for necessary aspects. While framing such rules, the relevant provisions of the Constitution and laws in force have to be kept in view. There should be no frequent alteration of the service rules though exigencies of circumstances and unforeseen situations will certainly justify alterations. Those will be indeed rare occasions.

21. Experience shows that legal battles are fought in court between government servants - whether individual pitched against individual or group against group; this embitters relationship inter se and often results in a switch over of attention from public duty to personal cause. Frequent litigations against the State or higher authorities in the hierarchies of administration, wipe out reverence, loyalty and the sense of discipline and substitute those by anger, disrespect and rancour. In the process fellow feeling is lost, the sense of brotherhood vanishes. The net resultant of all is deprivation of the efficiency of the bureaucratic community to serve the society. The undue growth of service litigation within these four decades of independence clearly calls for these observations. As and when occasion has arisen the court has sought to draw the attention of the State as the

employer as also the government servants to this aspect of the matter. This has been done not with a view to subjecting any litigant to undue criticism but with the fond hope that it would help the problem to receive adequate attention. We are surprised that the words spelt out in the different judgments have fallen on deaf ears and created no stir. Thereby the most powerful wing in the administrative set up is gradually moving away from its designated path. We have come across cases where officers have been in court litigating over service disputes for about twenty-five to thirty years of their career which would mean almost three-fourths of their service period. What would be the contribution of such officers to the public service can well be imagined. Very often a public officer is forced into litigation as he gets no justice in the hands of the superior. There are also several instances where an officer drags the employer into litigation without a cause of action. These are matters which must be taken into account without further loss of time and with fortitude so that the most effective wing of the administration does not further lose its serviceability.

22. A public servant - whatever his status be - is in the position of a trustee. Social power vests in him for the purpose of rendering service to the community. Every public servant has to be cognizant of that obligation. Once the level of that consciousness grows up there is bound to be a corresponding fall in the attitude to litigate over small issues. What this Court said in the case of Dr. G. Marulasiddaiah v. Dr. T. G. Siddapparadhya ((1971) 1 SCR 621 : (1971) 1 SCC 568 : (1971) 2 LLJ 349) has to be borne in mind. These were the words then said : (SCC p. 573, para 16)

(T)he canker of litigiousness has spread even to a sphere of life where discipline should check ambition concerning personal preferment. A teacher is justified in taking legal action when he feels that a stigma or punishment is undeserved but he is expected to bear with fortitude and reconcile himself to his lot suppressing disappointment when he finds a co-worker raised to a position which he himself aspired after.

What applies to a teacher may perhaps well apply to everyone in positions of social trust. It is for the privileged public servant as also his employer to share this philosophy.

23. The net result of the discussion above requires that rule in Badami case ((1976) 1 SCR 815 : (1976) 2 SCC 901 : 1976 SCC (L&S) 353) has to be given full effect. The appeals and writ petitions of the direct recruits have to succeed and those by the promotees have to fail. We hope and trust that the State of Karnataka will not demote anyone who has been in a promotional post for several years to the Class II service as a consequence of this decision but the Gradation List has got to be adjusted to fit into the principles indicated in the judgment. No justification was shown to us as to why the State of Karnataka failed to comply with its obligation of making recruitment in terms of the quota. Once the State frames rules they are binding on the State and like individuals the State has got to regulate its conduct in accordance with the rules - nay, the State has to observe it all the more. We hope and trust that the State of Karnataka in the years ahead will comply with the quota rule with regularity so that a litigation of this type may not arise again. If any party has to be directed for payment of costs in this bunch of litigation it must be the State. We, however, do not want to saddle the State with costs for two reasons - firstly, we do not want the employees to have a feeling that in the fight their employer has been vanquished and secondly we entertain a fond hope that there will be no recurrence.

24. In course of arguments we had suggested to learned counsel for the parties to furnish recast Gradation List on the basis of claims advanced before us - (1) showing how it would be when full claim of the promotees is granted and (2) how different it would look when the total claim of the direct recruits is allowed. Such charts have been prepared and furnished and we find that the process

of pushing up and down would be inevitable but would be within reasonable limits and no irreparable prejudice was apparent.

25. The appeals and writ petitions of the direct recruits are allowed and the appeals by the promotees are dismissed. There shall be no order for costs throughout.

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