

N. T. Devin Katti Others

Vs

Karnataka Public Service Commission & Others

Civil Appeals Nos. 2270-73 of 1987 and 1713 of 1990

(K. N. Singh, N. M. Kasliwal JJ)

30.03.1990

JUDGMENT

SINGH, J. -

1. Special leave granted.

2. These appeals are directed against the judgment of a Division Bench of the High Court of Karnataka dated 11th August, 1978 dismissing the appellants' writ petition under Art. 226 of the Constitution of India challenging validity of the revised select list prepared by the Karnataka Public Service Commission for appointment to the posts of Tehsildars.

3. In the State of Karnataka recruitment to the posts of Tehsildars is regulated by the Karnataka Administrative Services (Tehsildars) Recruitment (Special) Rules 1975 (hereinafter referred to as '1975 Rules'). The Karnataka Public Service Commission (hereinafter referred to as 'the Commission') issued a Notification on 23rd May, 1975 (published on May 29, 1975) inviting applications from in-service candidates for recruitment to 50 posts of Tehsildars. Paragraph 3 of the Notification specified details of the post reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes including 10% of posts set apart for Ex-Military Personnel. According to the figures specified, therein, out of 60 posts of Tehsildars, 5 posts were reserved for Ex-Military Personnel, 7 post for Scheduled Castes, 1 post for Scheduled Tribes and 13 posts for other backward classes. Paragraph 3 of the advertisement stated that in the event of non-availability of sufficient number of candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes or Ex-Military Personnel, for filling up the reserved vacancies, such vacancies shall be filled up as per Rules in force. The Notification further gave details of the written and viva-voice examinations. Para 14 of the Notification stated that the provisions of 1975 Rules and Rules 7 to 14 of the Karnataka Recruitment of Gazetted Probationers (Class I and II posts Appointed by Competitive Examination) Rules 1966 (hereinafter referred to as '1966 Rules'), shall mutatis mutandis apply to the conduct of the competitive examination and the provisions of the Karnataka State Civil Services (General Recruitment) Rules 1957 (hereinafter referred to as '1957 Rules') shall apply in respect of matters for which no provision is made in the Rules. Pursuant to the advertisement, the appellants who were in service of the State Government applied for their selection and appointment to the posts of Tehsildars. After the written examination and viva voce test the Commission finalised the list of successful candidates and published the same in the Karnataka Gazette dated March 18, 1975. The Commission also notified an additional list of successful candidates for appointment to the posts of Tehsildars in accordance with 1975 Rules, which included the names of the appellants. In preparing the select list and making reservation to the various categories, the Commission followed the directions and the procedure as contained in

the Government Order dated 6th September 6, 1969. The State Government refused to approve the list prepared by the Commission as in its opinion the reservation for the Scheduled Castes, Scheduled Tribes and other Backward Classes should have been made in accordance with the directions and procedure contained in the Government Order dated July 9, 1975. The State Government by its order dated 23rd April 1976 directed the Commission to prepare a fresh list of successful candidates by making reservations in accordance with the procedure contained in the Government Order dated July 9, 1975. Pursuant to the directions of the State Government the Commission prepared the select list afresh, after making reservations in accordance with the procedure prescribed by the Government Order dated July 9, 1975, and published the same on May 27, 1976. The appellants' names did not figure in the revised list of candidates. The appellants challenged validity of the Government Order dated April 23, 1976 as well as the revised list prepared by the Commission and also the validity of the Government Order dated July 9, 1975, by means of writ petitions before the High Court on a number of grounds. A Division Bench of the High Court by its order dated August 11, 1976 dismissed the petitions. Hence these appeals.

4. The appellants had challenged validity of the Government Order dated July 9, 1975, prescribed mode for preparing the select list by making reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes, on the ground that the same was inconsistent with the statutory Rule 10 of 1966 Rules and further on the ground that the directions contained therein were violative of Arts. 16(1) and 16(4) of the Constitution of India. The High Court rejected both the contentions holding that the directions contained in the Government Order dated July 9, 1975 were not violative of Rule 10(2) and there was no violation of Article 16 of the Constitution. The High Court upheld the Government Order dated April 23, 1976 directing the Commission to prepare the select set afresh in accordance with the mode prescribed under the Government Order dated July 9, 1975. Learned counsel for the appellants did not pursue the challenge relating the validity of the Government Order dated July 9, 1975 before us, instead he assailed the validity of the State Government's Order dated April 23, 1976 directing the Commission to prepare a revised list in accordance with the Government Order dated July 9, 1975, on the found that the government order was not applicable to the selection.

5. Learned counsel for the appellants urged at the Commission had rightly prepared the of successful candidates published on May 13, 1975 in accordance with the directions contained in the Government Order dated 6th September 1969 by making reservation of posts for Scheduled Castes, Scheduled Tribes and other Backward Classes but the State Government wrongly refused to approve the said list. He urged that the mode of selection and procedure for making reservation as prescribed by the Government Order dated July 9, 1975 was not applicable to the selection as advertisement had been issued in May 1975, and the process of selection had already commenced prior to the issue of the Government Order dated July 9, 1975. The revised list of successful candidates prepared by the Commission pursuant to the government's directions dated April 23, 1976 was illegal and contrary to the Rules. Learned counsel for the respondents submitted that the Government Order dated July 9, 1975 prescribed mode of selection and it also prescribed procedure for making reservations for Scheduled Castes, Scheduled Tribes and other Backward Classes in supersession of the earlier Government Orders including the Government Order dated September 6, 1969 therefore the Commission was bound to follow the procedure as prescribed in the aforesaid order in preparing the select list. Since the list of successful candidates had not been prepared in accordance with the Government Order dated July 9, 1975 the State Government was justified in insisting upon the Commission to prepare the list afresh in accordance with the directions contained in the aforesaid government order.

6. The question which requires determination is, which of the two Government Orders, namely, September 6, 1969 and July 9, 1975, the Commission was required to be followed in preparing the select list for appointment to the post of Tehsildars, as both the government orders contained directions for making reservations in preparing the select list. In order to determine the question, it would be necessary to refer to the directions contained in the two government orders. There is no dispute that the recruitment of in-service candidates for the 50 posts of Tehsildars in dispute, was regulated by the 1975 Rules framed under Art. 309 of the Constitution as published in the gazette on March 20, 1976. Rule 5 laid down that the provisions of Rules 7 to 14 of 1966 Rules shall mutatis mutandis apply to conduct of competitive examination and the provisions of Karnataka State Civil Services (General Recruitment) Rules 1967 shall apply in respect of matters for which no provision is made in the Rules. The aforesaid Rules do not prescribe any procedure for preparation of select list or for making reservations but in view of Rule 5 the provisions of other rules are made applicable. Rule 10 of the Karnataka Rules, 1966 which provides for reservations for Scheduled Castes, Scheduled Tribes, and other backward classes was applicable in view of Rule 5 of 1975 Rules. Rule 10 of 1966 Rules is as under :

"10. Reservation for Scheduled Castes, Scheduled Tribes and other backward classes
- (1) There shall be reservation of vacancies for candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes to the extent provided for by the government by any general or special orders.

(2) In filling the vacancies so reserved, candidates who are members of the Scheduled Castes and Scheduled Tribes and other backward classes shall be considered for appointment in the order of merit in which their names appear in the list of successful candidates irrespective of their relative rank as compared with other candidates and to services according to the reservation made for them in such services.

(3) If a sufficient number of candidates who are members of the Scheduled Castes, Scheduled Tribes and other backward classes are not available for filling up the vacancies reserved for them, such vacancies shall be filled up by the appointment of other candidates in the list."

Pursuant to clause (1) of Rule 10 the State Government has been providing for reservation of vacancies in favour of candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes by means of executive orders issued from time to time. The Government order dated September 6, 1969, was issued under Rule 10(1) which provided that reservations for appointment to post in the State Civil Service shall continue to be made in favour of Scheduled Tribes, Scheduled Castes and other Backward Classes to the extent of 3%, 15% and 30% respectively, where the posts are filled up by direct recruitment. Para 5 of the government order directed that the Commission and other recruiting authorities shall follow the procedure prescribed in Annexure 2 to the government order in making reservations and preparing list of selected candidates. There is no dispute that the Commission had prepared the select list which was published on March 18, 1976 in accordance with the procedure laid down In Annexure 2 to the Government Order dated September 6, 1969.

7. During the pendency of selection, the State Government issued the order July 9, 1975 revising the extent of reservation and also prescribing different mode of selection. Para 4 of that government order laid down that while making appointment to the State Civil Services, reservation in favour of

Scheduled Castes, Scheduled Tribes, Backward Tribes, and other backward classes shall be made to the extent of 15%, 3% and 28% respectively, in case of direct recruitment. Para 6 of the Order further directed that in case of direct recruitment, where the selection is made by the Public Service Commission or any other recruiting authority, the procedure as prescribed in Annexure 2 to the order shall be followed in preparing the list of selected candidates. Annexure 2 to the Order prescribed mode of selection, which is quite different than that contained in Annexure 2 to the Government Order dated September 6, 1969. It is not necessary to go into the details of the two modes as there is no dispute that the Commission had followed the procedure as prescribed under Annexure 2 to the Government Order Dated September 6, 1969 and the list, so prepared was not approved by the State Government as it was of the opinion that the Commission should have followed the mode of selection as contained in Annexure 2 to the Government Order dated July 9, 1975 in preparing the select list.

8. It appears that the Commission insisted before the State Government that in view of Para 11 of the Government Order dated July 9, 1975 reservations made in favour of Scheduled Castes, Scheduled Tribes and other backward classes already notified before the issue of Government Order dated July 9, 1975 remain unchanged, therefore the provisions of the Government Order dated September 6, 1969 had to be followed both in regard to reservations and the mode of selection. The State Government by its order dated April 23, 1976 refused to accept the Commission's plea and it directed the Commission to prepare a revised list in accordance with the provisions of Government Order dated July 9, 1975. The State Government while rejecting the Commission's plea and issuing the aforesaid direction made observations as under :

"Para 11 of the GO dated July 9, 1975 supersedes all the previous government orders cited in the preamble to that order, including the GO dated September 6, 1969. The same para states that the order came into force with immediate effect, but makes only one exception i.e. in the matter of reservations already made in the cases of posts and services, for which advertisement had been issued prior to the coming into force of the GO dated July 9, 1975. This means that except in the matter of reservations made in posts for which applications had already been called for, in all other matters the provisions of the GO dated July 9, 1975 would apply. The words are clear that the intention is also clearly spelt out. Hence so far as the mode of selection is concerned, the one prescribed in Annexure II to the GO dated July 9, 1975 will have to be followed in respect of all selections made after that date either a literal construction or a harmonious construction of the various clauses of the GO dated July 9, 1975 leads to the above conclusion. For these reasons the Commission's view that in respect of posts already advertised prior to the issue of the Government Order dated July 9, 1975, the mode of selection prescribed in the earlier government orders (sic had) to be followed is not acceptable to government."

9. In our opinion the State Government's view was contrary to the directions contained in para 11 of its Order dated July 9, 1975, which is as under :

"11. This government order supersedes the government order cited in the preamble and shall come into force with immediate effect, subject to the provision that the reservation already made for any category of posts or service and advertised before the issue of this government order shall remain unchanged and shall be deemed to have been validly made. All official memoranda, circulars and instructions issued in pursuance of the government orders superseded by this government order shall also

be deemed to have been superseded if such instructions are contrary to the provisions of this government order."

Indisputably the aforesaid government order superseded all earlier government orders on the subject including the Government Order dated September 6, 1969, but while superseding those orders provision was made in para 11 to save the selection which was pending. Para 11 clearly stated that though earlier government orders laying down percentage of reservation required to be made in favour of Scheduled Casts, Scheduled Tribes and other backward classes including the mode of selection in preparing the select list, stood superseded, but it saved the reservations made for any category of posts or service in respect of which advertisement had already been issued before the issue of the Government Order dated July 9, 1975. This follows from the expression "reservations already made for any category of posts or service advertised before the issue of this government order shall be deemed to have been validly made". These directions stipulated that where reservations were already made and advertisement had been issued, and the selection was pending on July 9, 1975, the same shall remain unaffected and the selection shall be made in accordance with the earlier government orders, and the same shall be treated to have been made validly. Para 11 is in the nature of a saving clause, its object and purpose was to save the selections in respect of which proceedings had already been initiated by issuing advertisement. In view of the government's own directions, as contained in para 11 of its order, the amended mode of selection was not applicable, therefore the Commission rightly followed the mode of selection prescribed under the Government Order dated September 6, 1969 as admittedly the said order was in force prior to July 9, 1975.

10. The State Government's Interpretation of para 11 of its order dated July 9, 1975 was incorrect and wrong. It failed to appreciate that in the instant case reservations had already been made and notified under the advertisement published on May 18, 1975. Therefore the conditions precedent contemplated in para 11 were fully satisfied. In this view the selection made by the Commissioner by following the reservations and the mode of selection as prescribed under the provisions of the Government Order dated September 6, 1969 were deemed to have been made validly in accordance with the provisions of para 11 of the government order. It is relevant to point out that the Government Orders dated September 6, 1969 (sic) and July 9, 1975 both had been issued by the government in exercise of its statutory power under Rule 10 of 1975 Rules, making provisions for reservations and prescribing mode of selection. A government order issued in exercise of statutory powers acquired statutory force, therefore, the provisions contained in the aforesaid government orders including the provisions of para 11 of the Government Order dated July 9, 1975 also acquired statutory character. Though para 11 superseded earlier government orders but it expressly saved the pending selections where reservations were already made and advertisement had been issued. Para 11 being statutory in nature was binding on the government and the government had no authority to direct the Commission by means of administrative order to revive the Select List in accordance with the amended mode of selection as prescribed under the Government's Order dated July 9, 1975. In our opinion the State Government was bound to give full effect to the provisions of para 11 of the Government Order dated 9th July 1975 and therefore directions contained in its order dated April 23, 1976 were illegal.

11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and government orders. Candidates who

apply and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement; however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospectively in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

12. In *B. N. Nagarajan v. State of Mysore*, ((1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 LLJ 698), the dispute related to the validity of appointment of Assistant Engineers. The Public Service Commission invited applications by issuing notifications for appointment to the post of Assistant Engineers in October 1958, May 1959 and April 1960. The Commission made selection interviewed the candidates and sent the select list to the government in October/November 1960. But before the appointment could be made the Mysore Public Works Engineering Department Services (Recruitment) Rules 1960 came into force which prescribed different provisions than those prescribed in the earlier notifications in pursuance whereof the Public Service Commission had made the selection. The validity of the appointments made by the government on the basis of the selection made by the Commission was challenged. The High Court quashed the selection and appointment made in pursuance thereof. On appeal before this Court, validity of the appointments was assailed on the ground that since the appointments had been made after the amendment of the Rules the appointments should have been made in accordance with the amended Rules. A Constitution Bench of this Court rejected the contention holding that since the whole procedure of issuing advertisement, holding interviews and recommending the names having been followed in accordance with the then existing Rules prior to the enforcement of the amended Rules the appointments made on the basis of the recommendation made by the Public Service Commission could not be rendered invalid.

13. In *Y. V. Rangaiah v. J. Sreenivasa Rao* ((1983) 3 SCC : 1983 SCC (L&S) 382) similar question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the Rules, in force on the date the vacancies occurred or in accordance with the amended Rules. The Court observed as under (SCC p. 289, para 9)

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there

was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

The same view was taken in *P. Ganeshwar Rao v. State of Andhra Pradesh* (1988 Supp SCC 740 : 1989 SCC (L&S) 123 : (1988) 8 ATC 957). Similar view was taken in *A. A. Calton v. Director of Education* ((1983) 3 SCC 33 : 1983 SCC (L&S) 365). It is a well accepted principle of construction that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended government orders, issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selection. See : *P. Mahendran v. State of Karnataka* ((1990) 1 SCC 411 : JT (1989) 4 SC 459).

14. In the instant case, para 11 of the Government Order dated July 6, 1975 made the government's intention clear that the revised directions which were contained in that government order would not apply to the selections in respect of which advertisement had already been issued, therefore the mode of selection as contained in Annexure 2 to the Government Order dated July 9, 1975 was not applicable to the selection for filling the 50 posts of Tehsildars pending before the Public Service Commission. We are, therefore, of the opinion that the select list including the additional list as prepared by the Commission and published in March 1976 was legal and valid and the State Government wrongly refused to approve the same. The State Government's order dated April 23, 1976 directing the Commission to prepare fresh list in accordance with the mode of selection as contained in Annexure 2 to the Government Order dated July 9, 1975 was illegal, consequently the select list prepared afresh by the Commission pursuant to the directions of the State Government is not sustainable in law. Since the additional list prepared by the Commission contained the names of the appellants, they were entitled to appointment to the posts of Tehsildars. We accordingly allow the appeals set aside the order of the High Court and direct the State Government to appoint the appellants to the posts of Tehsildars, on the basis of additional list published by the Commission on March 18, 1976.

15. During the pendency of the writ petition before the High Court, appointments were made to the posts of Tehsildars on the basis of the revised list prepared by the Commission in accordance with the directions of the State government dated April 23, 1976. Pursuant to the interim direction of the High Court the appointment orders contained a specific term that the appointments would be subject to the result of the writ petition filed by the appellants. Since the appellants have succeeded, the respondents' appointment is liable to be set aside. The respondents have been working for a period of about 14 years, it would cause great hardship to them if their appointment is quashed, and they are directed to vacate the office which they have been holding during all these years. At the same time the appellants have been wrongly denied their right to the posts of Tehsildars. Having regard to these fact and circumstances, we are of the opinion that it would be expedient in the interest of justice not to interfere with the respondents' appointment but at the same time steps should be taken to enforce the appellants' right to the posts of Tehsildars. In this view, we direct the State Government to appoint the appellants on the posts of Tehsildars with retrospective effect, but if no vacancies are available the State Government will create supernumerary posts of Tehsildars for

appointing the appellants against those posts. We further direct that for purposes of seniority the appellants should be placed below the last candidate appointed in 1976, but they will not be entitled to any back wages. The appellants will be entitled to promotion if otherwise found suitable.

16. In the circumstances of the case, parties shall bear their own costs.

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