

N. Nagaraja

Vs

Vasant K. Gudodagi and Others

With

State of Karnataka and Others

Vs

Vasant K. Gudodagi and Others

Civil Appeal Nos. 977 and 978 of 1988

(Ranganath Misra, K. Ramaswamy JJ)

24.04.1990

JUDGMENT

RANGANATH MISRA, J. -

1. These are appeals by special leave, the first one by Nagaraja, the main contestant, and the second by the State of Karnataka challenging the decision of the Karnataka State Administrative Tribunal by which the Tribunal accepted the claim of inter se seniority of respondent 1.

2. In the Directorate of Youth Services of the State, there are posts of Assistant and Deputy Directors. Appellant Nagaraja joined services under the State Government as a Lecturer on September 6, 1966 and came on deputation as Editor of Youth Karnataka from August 18, 1976. While working as such Editor he has confirmed as an Assistant Director in the Youth Directorate. On March 27, 1978, Nagaraja was temporarily promoted as the Deputy Director for a period of six months. On October 20, 1978, an order was made promoting Nagaraja regularly as Deputy Director and on December 22, 1978 his appointment was made on regular basis with effect from March 27, 1978.

3. Gudodagi, respondent 1, was recruited directly as Deputy Director on July 28, 1978. He joined on August 7, 1978 and was confirmed in the said post on August 7, 1980. The draft Gradation List was published on January 25, 1983 wherein Nagaraja was shown just above Gudodagi. Accordingly, he represented against this placement by claiming seniority over Nagaraja and when that was not accepted and the final gradation List was published on December 14, 1983 maintaining the position shown in the draft list, Gudodagi filed a writ petition before the Karnataka High Court which, on the constitution of the State Administrative Tribunal, was transferred to it.

4. The Tribunal on hearing parties has held that Gudodagi was senior to Nagaraja as the promotion of March 27, 1978 in favour of Nagaraja was a temporary measure and after the six months expired, Nagaraja was really not continuing as Deputy Director. The order of December 22, 1978, could not provide a regular retrospective promotion in view of the special rules obtaining in the State.

Accordingly, the Tribunal directed redrawing up of the seniority list by showing Nagaraja below Gudodagi. Thereupon, these two appeals have been filed - one by Nagaraja and the other by State of Karnataka.

5. The promotional order of March 27, 1978, read thus :

"Pending consultation with the Karnataka Public Service Commission, Shri N. Nagaraja Assistant Director, Youth Services is temporarily promoted to officiate as Deputy director, Youth services in the grade Rs. 900-1750 in the Department of Youth Services for a period of six months with immediate affect from the date of taking over charge of the post or until further orders, whichever is earlier."

6. The Tribunal has found that Nagaraja had taken over charge as Deputy Director on April 13, 1978, and the six month period had expired on October 13, 1978. His regular promotion was notified on October 20, 1978. Therefore, the Tribunal has not accepted Nagaraja as Deputy Director between October 13 and October 20. To meet that situation the Notification of December 22, 1978, had been made, which read thus :

"In continuation of government Notification ... dated March 27, 1978, Sri N. Nagaraja Assistant Director of Youth Services is regularly promoted to officiate as Deputy Director of Youth Services with effect 27from March 27, 1978 (i.e. date from which he was promoted to officiate against the post) ..."

7. The Tribunal has found that under Karnataka State Civil Services (Regulation of Promotion Pay and Pension) Act, 1973, no retrospective promotion is admissible unless the situation comes within the various clauses of Rule 2. The instant case, according to the Tribunal was not covered by Rule 2 and, therefore, the order of December 22, 1978, giving a retrospective promotion from March 27, 1978 was not justified. Once that notification goes, Gudodagi being a direct recruit from August 7, 1978 would be entitled to seniority.

8. We have analytically examined the judgment of the Tribunal with reference to the submission made at the bar. We have also seen the provision of the 1973 act, referred to above and see no justification to take a view different from what has taken by the Tribunal. From the sequence of events with reference to the dates, an impression is available to be formed that attempt was made to place Nagaraja above Gudodagi by making shifting orders between March 27, 1978 and December 22, 1978. Nagaraja was Editor of Youth Karnataka even when he was confirmed as Assistant Director and the Tribunal has recorded that he never worked as Assistant Director. Taking the broad aspects of the matter into consideration we are satisfied that the conclusion reached by the Tribunal cannot be said to be wrong and, therefore, does not call for any interference.

9. The appeals are dismissed. There would be no order as to costs.

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