

S. C. Mandakki and Others

Vs

Director of Health and Family Welfare Service and Others

Civil Appeals No. 3497 of 1996 with No. 3498 of 1996

(K. Ramswamy, G. B. Pattanaik JJ)

29.01.1996

ORDER

1. Leave granted.

2. We have heard the counsel on both sides. The appellant was appointed as a Junior Laboratory Technician in the Department of Family Health and Family Welfare Service on 3-5-1979. He had applied on 16-9-1986 for transfer and posting him as Ist Divisional Assistant in the same Department. By proceedings dated 28-10-1986, he was posted as a Ist Divisional Assistant in the same department. Karnataka Civil Services (Time-Bound Advancement) Rules, 1983 provide for giving advance increment, under Rule 16 thereof to the candidate who has completed 10 years of service but was not promoted to a higher post. The appellant had applied for grant of the said benefit in 1989. By proceedings dated 15-10-1989, the same was rejected. Consequently, he filed a representation in the Administrative Tribunal which by its order dated 13-1-1993 in Application No. 1545 of 1992 dismissed the same. Thus this appeal by special leave.

3. Shri P.R. Ramasesh, learned counsel for the appellant, contended that the descriptive criteria prescribed in Rule 3 clause (a) of the Rules must be read analogous to the work-charged service or the service put up by a local candidate which would only be excluded. Since the appellant has been discharging his duties from 3-5-1979 carrying the same scale of pay though of descriptive nature of the post, the appellant had completed ten years of service as on 19-5-1989 and that, therefore, he is eligible to the increment under the Rules, Shri Veerappa, learned counsel for the State, contended that proviso to Rule 6 of the Karnataka Government Servants' (Seniority) Rules, 1957 as amended in 1976 is applicable to the facts of this case. By its operation, the appellant having voluntarily opted to get posted as a Junior Assistant, though in the same department, for the purpose of promotion, he having become juniormost, unless he completes 10 years of service along with his companions, he is not eligible to be promoted. Thereafter, he becomes eligible to be considered. The Tribunal, therefore, was right in rejecting the claim of the appellant.

4. Having regard to the facts and respective conditions, the only question is that whether the appellant is entitled to tag his service from 3-5-1979 to 28-10-1986 for the computation of the 10 years' period under the Rules for getting advance increment. Rule 3 of the Rules reads this :

"3. Grant of time-bound advancement and conditions of eligibility. - The Appointing Authority shall grant to a government servant who is holding a post carrying pay scale specified in column (2) of the Schedule the selection time-scale of pay specified in the corresponding column (3) thereof, if :

(a) he has put in a service of not less than ten years in the post held by him excluding his service as a local candidate, work-charged employees or any other service which does not count for the purpose of determining seniority for promotion;"

Rule 6 of the Seniority Rules reads thus :

"The transfer of a person in public interest from one class or grade of a service to another class or grade carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority; and the seniority of a person so transferred shall be determined with reference to his first appointment to the class or grade from which he was transferred :

Provided that, where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade or service to which he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer :

Provided further, that the seniority of a person transferred in public interest vis-a-vis the person actually holding the post in the class or grade to which he is transferred shall be determined on the date of such transfer with reference to his first appointment to the class or grade from which he was transferred."

5. A combined reading of these rules would clearly indicate that the appointing authority shall grant to a government servant who holds a post carrying pay scale specified in column (2) of the Schedule the selection time-scale of pay specified in the corresponding column (3) thereof, if he has put in a service of not less than 10 years in the post held by him excluding his service as a local candidates, work-charged employees or any other service which does not count for the purpose of determining seniority for promotion. Under the proviso to Seniority Rules on account of his request for transfer from the post of Junior Technician to Ist Divisional Assistant and assuming the charge he holds the post as Ist Divisional Assistant with effect from 10-10-1986, he becomes juniormost among Ist Assistants in the seniority list as on that date. If more than one joins on that date, in the order of respective dates of seniority in the transferred serial. He holds the post as Ist Divisional Assistant with effect from 28-10-1986 and his 10 years' service would be reckoned from the date on which he holds the post for the purpose of his seniority for promotion to the higher post. It would appear that the Single Judge of the High Court of Karnataka had taken a contrary view and the Tribunal has pointed that the learned Single Judge had not considered the effect of the words "for promotion". We think that the Tribunal is correct in the interpretation of the Rules. Under these circumstances, we do not find any illegality in the judgment of the Tribunal.

6. Accordingly the appeal is dismissed. No costs.

Civil Appeal No. ... of 1996 (Arising out of SLP (C) No. 3252 of 1994)

7. Leave granted.

8. In this case though the appellant has claimed his right for increment in the time-bound promotion in the category as Sheristedar in view of the fact that his seniority was determined in the list published on 23-1-1992 and became final, obviously, seniority had to be reckoned and with reference to the date with effect from which seniority for promotion to the cadre of Taluk Sheristedar was ultimately determined. As it became final, it forms basis for fixing 10 years' service

and time-bound increment. Under this seniority list, obviously, he had not completed ten years of service. Therefore, proceedings were issued to recover the amount which he was wrongly paid. The Tribunal by the impugned order dated 5-11-1992 made in Application No. 3367 of 1992 dismissed his petition. Though in view of the above reasoning, the appellant is not entitled to the payment of the increment, however, the arrears paid so far need not be recovered. He will be considered for increment as soon as he completed his ten years of service unless and otherwise he becomes eligible for promotion in the meanwhile.