

G. Nagendra

Vs

State of Karnataka and Others

Civil Appeal No. 2599 of 1988

(K. Venkataswami, A. P. Mishra JJ)

10.12.1997

ORDER

1. This appeal by special leave is directed against the order of the Karnataka Administrative Tribunal dated 17-12-1987 in Application No. 2684 of 1986(T). The appellant was promoted as Assistant Director of Industries and Commerce on ad hoc basis from the post of Superintendent (Audit) by orders dated 6-3-1981 and 9-2-1984. It is common ground that on the date when the appellant was promoted, the Recruitment Rules did not permit that promotion. Thereafter, the Karnataka Industries and Commerce Service (Recruitment) Rules, 1964 were amended with retrospective effect from 6-3-1981 by a notification dated 4-7-1986 issued under Article 309 of the Constitution of India.
2. The promotion given to the appellant was challenged by the third respondent herein, another Superintendent (Ministerial Section), contending that Superintendent (Audit), to which category the appellant belonged, was not one of the feeder category for promotion to Assistant Director. Before the Tribunal it was contended that the amendment to the Rule with retrospective effect was invalid and unlawful. It was also prayed that he should have been considered for promotion on 6-3-1981. The Tribunal accepted the contention of the third respondent and held in the order under appeal that the amendment of the Rule will be only prospective and cannot be retrospective. The Tribunal quashed the promotion of the appellant and directed the Government to consider the case of the third respondent for promotion.
3. It is seen that the Rules are framed under Article 309 of the Constitution and it is too late in the day to dispute that such Rules cannot be given retrospective effect. Therefore, the Tribunal was not right in holding that the Rules shall be valid only with effect from the date on which it was published. On the premise that the Rules cannot be given retrospective effect the promotion given to the appellant was quashed by the Tribunal. Since we have held that the Rules can be given retrospective effect, that part of the order of the Tribunal quashing the promotion given to the appellant is set aside. We make it clear that the direction given by the Tribunal in para 6 of the order under appeal to consider the case of the third respondent herein (applicant before the Tribunal) for promotion as on 6-3-1981 stands undisturbed. Accordingly, the appeal is partly allowed with no order as to costs.