

**SUPREME COURT OF INDIA**

K. Narayani Hegde (Dead) By Lrs.

Vs.

State of Karnataka

(M.Jagannadha Rao and A.P. Misra JJ.)

03.02.2000

**ORDER**

**M. JAGANNADHA, J.**

1. This appeal is preferred against the judgment of the Karnataka Administrative Tribunal in application No. 612 of 1990 dated 10.10.1990. After the filing of the special leave petition but before the grant of leave, the Petitioner in the special leave petition died and her legal representatives were brought on record. Thereafter, leave was granted limited to the question whether the Appellants could be granted any money compensation. The Appellants should be allowed to recover money compensation if the same could have been allowed to the deceased-Appellant, if she had been alive.

2. Initially, the Appellant was appointed in the office of the Block Development Officer as Mukhya Sevika. The said Office was part of the Department of Rural Development and Panchayatraj in the State of Karnataka. Consequent to reorganization of the Department, Government of Karnataka passed an order on 3.1.1979 consequent to which, 175 posts of Mukhya Sevikas (a post to which the Appellant was appointed in the Department of Rural Development) were abolished. Simultaneously, 117 posts of Mukhya Sevikas were created in a new Department called the Department of Women and Children's Welfare. The existing incumbents in the cadre of Mukhya Sevikas numbering 117, in the Department of Rural Development were, by the aforesaid order, deemed to have been "transferred" to the Department of Women and Children's Welfare. It so happened, that while there was a promotional avenue from the post of Mukhya Sevikas to the post of Probation Officer Grade II in the Department of Rural Development in which the Appellant was initially appointed, there was no such promotional post in the Department of Women and Children's Welfare. The result was that the Appellant could not get any promotion whatsoever.

3. The Appellant made a representation and thereafter filed a Writ Petition in the High Court which Writ Petition was transferred to the Administrative Tribunal in the year 1984. The Tribunal in its judgment dated 11.12.1987 took up for consideration the question relating to the absence of promotional avenues in the Department to which the Appellant was transferred. Before the said Tribunal, a counter affidavit was filed by the State of Karnataka to the effect that the Government proposed an amendment to the Rules by creation of post of Probation Officer Grade II in the Women and Children's Welfare Department to the extent of 35% of the post, so far as Mukhya Sevikas were concerned. The Tribunal disposed of the Writ Petition directing that the amendments

might be carried out within a period of three months.

4. Thereafter, the Appellant filed a Contempt Petition in the Tribunal. The Government came forward with an amendment to the Rules in 1989 and the amendment was effective from 28.12.1989 and it provided for a 55% quota in the post of Probation Officer Grade II for Mukhya Sevikas. It was not retrospective.

5. After the amendment of the Rules creating a promotional avenue, the deceased Appellant was promoted prospectively on 6.12.1990. She filed application No. 612/1990 once again before the Administrative Tribunal questioning the above-mentioned amendment of the Rules and seeking a direction that the amendment should be given retrospective effect from 3.1.1979, the date when the new Department of Women and Children's Welfare was formed. The Tribunal dismissed the application and against the said judgment the present appeal has been preferred. She died during the pendency of the matter in this Court and her legal representatives have come on record.

6. We have heard learned Counsel for the Appellants and the learned Counsel for the Respondents.

7. The crucial issue is as to the effect of order dated 3.1.1979 under which the deceased Appellant stood transferred from the Department of Rural Development to the Department of Women and Children's Welfare. The relevant portion of the order dated 3.1.1979 clearly indicates that 175 posts of Mukhya Sevikas were abolished in the Department of Rural Development and 117 posts of Mukhya Sevikas were created in the new Department of Women and Children's Welfare. It is not, therefore, a case of the posts being transferred from the Department of Rural Development to the Department of Women and Children's Welfare along with the promotional avenues which were available in the former Department. In respect of the abolition of the posts of Mukhya Sevikas held by the Appellant in the Department of Rural Development there has been no challenge. The right of promotion to the posts of Probation Officer Grade II, in our view, came to an end along with the abolition of the posts of Mukhya Sevikas in the Department of Rural Development. It would have, in fact, been open to the Government not to have "transferred" the erstwhile incumbents to the new posts of Mukhya Sevikas created in the Department of Women and Children's Welfare. But the Government appears to have thought that instead of going for fresh recruitment in the new Department, it would be fair and just to re-appoint those who were holding the posts of Mukhya Sevikas in the Department of Rural Development and they were treated as persons "transferred" to the new Department under the relevant Rules. This was obviously done to maintain continuity in service and with a view to count the previous service for the purpose of pension and other benefits. If there was no promotional avenue in the new Department to which the Appellant was regarded, it obviously would not be permissible to the Tribunal or to this Court to issue a direction that the promotional avenue should stand created with retrospective effect from 3.1.1979, the date on which the posts were abolished in the Rural Development Department.

8. Inasmuch as no direction could be given on the judicial side directing the Government to make rules by way of subordinate legislation with retrospective effect, the plea of the Appellant that the promotional avenue should have been created with effect from would have to be rejected. We are, therefore, not able to issue any direction nor even for monetary compensation to the legal representatives of the deceased Appellant. The appeal is dismissed with no order as to costs.