SUPREME COURT OF INDIA

Raghavendra rao

Vs.

State of Karnataka

C.A.No.907-936 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

12.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellants are before us aggrieved by and dissatisfied with a judgment and order dated 04.09.2002 passed by a Division Bench of the High Court of Karnataka at Bangalore in WP Nos. 38797-38800/1998, 38803/1998, 38808/1998, 38810/1998, 38812-38816/1998, 38828-38830/1998 & 38832/1998 and judgment and order dated 11.10.2002 passed by the said Court in RP Nos. 769-775/2002 and 776-782/2002 respectively whereby and whereunder the writ petitions filed by the respondents herein for quashing the order dated 26.03.1998 passed by the Karnataka Administrative Tribunal were allowed and review petitions filed by the appellants herein for review of the order dated 4.9.2002 passed by the said Court were rejected.

3. Appellants were appointed as Patwaris/Village Accountants. They allegedly had been working for a long time in the Revenue Department. Concededly, they were appointed by the Tahsildar/Assistant Commissioner. They prayed for regularization of their services. As the said prayer was not acceeded to, they filed Writ Applications before the High Court being W.P. Nos. 25695-696 of 1981 and other connected matters seeking for direction upon the State of Karnataka to regularize them in services in terms of the provisions of the *Karnataka State Civil Services (Direct Recruitment to Class-III Posts) (Special) Rules, 1973* (for short, "the 1973 Rules").

4. Indisputably, on constitution of the Karnataka Administrative Tribunal, those writ petitions were transferred to the Tribunal and renumbered as Application Nos. 2318-19/1986 and connected cases. On or about 20.02.1987, the said applications were dismissed by the Tribunal. Special Leave Petitions filed thereagainst in this Court were also dismissed.

5. Relying on or on the basis of the observations made by this Court in SLP (C) Nos. 226-29 of 1988 and 5932-41 of 1987 that it would be open for the appellants to represent before State of Karnataka or to avail any other remedy available to them under law, inter alia, contending that their services should be regularized in terms of the provisions of the *Karnataka Civil Services (Special Recruitment of Local Candidates) Rules, 1986 (for short, "the 1986 Rules")*, which had come into force with effect from 4.7.1986, the appellants requested the State to regularize their services under the 1986 Rules. The State rejected their prayer stating that the 1986 Rules were not applicable to their cases as they had been appointed by the ahsildar /Assistant Commissioners whereas in terms of the 1986 Rules, the appointing authority was the Deputy Commissioner.

6. Indisputably, relying on or on the basis of the observations made by the Karnataka Administrative Tribunal in Application No. 5377 of 1986 that Patwaris do come within the purview of the definition of `local candidates' and therefore were entitled to be considered for regularization in terms of the 1986 rules, appellants again approached the Tribunal by filing Application No. 287 of 1997 and connected cases praying for regularization under the 1986 Rules. The Tribunal by its order dated 26.3.1998 allowed the said applications, directing:

> "(ii) Authorities are directed to regularize the services of the applicants who have passed the SSLC Examinations before 5th July, 1983, under the Karnataka State Civil Services (Special Recruitment of Local Candidates) Rules, 1986 which came into force on 4.7.1986 (wherein sub-rule 2 of rule 3 envisages the definition of Local Candidate) within six months from the date of receipt of the copy of this order; and it is also made clear that the services of the applicants who are in service not to be disturbed till the date of their regularization;
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> (iii) Benefit of this order is not applicable to those who have passed the prescribed SSLC examination on or after 5th July, 1983, since they do not fulfill the eligibility criteria under the Rules in question, for purpose of appointment as Village Accountant since acquisition of qualification subsequently does not render them eligible."

7. Writ Petitions preferred against the said order by the respondents have been allowed by the High Court by reason of the impugned judgment. Review petitions preferred by the appellants have been rejected by the High Court.

8. Appellants are, thus, before us.

9. Mr. S.B. Sanyal, learned Senior Counsel appearing on behalf of the appellants would contend:-

> “i. Appellants having been appointed as local candidates within the meaning of 1986 Rules, the earlier decision of this Court would not operate as res judicata.

ii. This Court in the earlier round of litigation having proceeded on the basis that they were appointed as hereditary candidate and not as directly appointed candidate, the impugned judgment is not sustainable.

iii. Rights having been conferred upon the appellants in terms of the 1986 Rules, the High Court Committed a serious error in passing the impugned judgment."

10. Mr. Sanjay R. Hedge, learned counsel appearing on behalf of the respondents, on the other hand, would urge:

"i Appellants' case does not come within the purview of the 1986 Rules.

ii. They having claimed themselves to be entitled to hold the post of Patwaris/Village Accountant on hereditary basis are now estopped and precluded from contending that they were `local candidates' within the meaning of the provisions of 1986 Rules as the Deputy Commissioner and not the Tahsildar was the Appointing Authority, thus, even the 1986 Rules were not applicable.

iii. In view of the decision of this Court in *Secretary, State of Karnataka & ors. vs. Umadevi (3) & ors.*[1], regularization of the employees is impermissible in law."

11. Indisputably, the post of Patwari/Village Accountant could be filled up on hereditary basis. Appellants indisputably claimed their right to be appointed on those pots on that basis. This Court in its judgment and order dated 24.2.1994 rejected the said contention of the appellants, stating:

"Sri Sridharan maintained that even before the later Rules came into force the right under proviso to rule-10 of the earlier rules had accrued to the appellants - petitioners and that therefore the coming into force of the later Rules did not take away such right. Assuming for the sake of arguments that the above contention of Sri Sridharan is well-founded, the appellants - petitioners did not approach this Court within a reasonable time after their claim under the proviso to rule-10 had not been conceded. On account of such delay, the rights of party respondents who have been appointed to the posts of Village Accountants have intervened. Hence, we do not see any ground to dissent from the decision of the learned Single Judge. In the result, we dismiss these appeals without admitting it."

12. The purported leave to avail any other remedy was granted only to the petitioners in SLP (C) Nos. 226-29 of 1988 and 5932-41 of 1987, which is in the following terms:

"S.L.P. (C) Nos. 226-29/1988 and 5932- 41/1987 Mr. Ranjit Kumar, learned counsel for the petitioners states that his clients have not been paid the salary for the period for which they actually worked as Accountants. It will be open to the petitioners to represent before State of Karnataka to avail any other remedy available to them under law. Special Leave Petitions are dismissed."

It is, therefore, not correct to contend that in terms of the leave granted by this Court appellants were entitled to institute a separate application relying on or on the basis of the provisions contained in the 1986 Rules or otherwise. As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants.

13. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier judgment having attained finality. It is now a well settled principle of law that the principle of res judicata applies also to the writ proceedings. This Court in *State of Karnataka & ors. vs. P.M. Bhaskara Gowda & ors*[2] relying on *Gazula Dasaratha Rama Rao vs. State of A.P.*[3] held that any claim in a public service on the basis of a hereditary claim is unconstitutional.

14. Rule 2(b) of the 1986 Rules reads as under:

> "2(b) "Local Candidate" means a local candidate as defined in clause (27-A) of Rule 8 of the Karnataka Civil Services Rules; Rule 8(27A) of the Karnataka Civil Services Rules referred to therein reads as under:
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> "8(27-A) Local Candidate.- A "Local Candidate" in service means a temporary Government servant not appointed regularly as per rules of recruitment to that service."

15. As indicated hereinbefore, appellants claimed their right to be appointed and/or consequential regularization in the services on the basis of the hereditary right. They had rightly been held to be not entitled thereto. Before us, an endeavour had been made to show that appellants were appointed by Tahsildar. It has, however, not been denied or disputed that the Tahsildar had no jurisdiction to appoint in terms of the Civil Services Rules. They, thus, having been appointed by a person who had no authority, the offers of appointment made in their favour must be held to be nullities. Such illegal appointments cannot be brought within the purview of Rule 3(2) of the 1986 Rules. In terms thereof onlyappointment not made in accordance with the Rules would attract Rule 3 (2). The same would not mean that any appointment made by any other authority would also come within the purview thereof.

16. It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. This Court in Uma Devi (3) (supra), held as under:

> "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily

to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

Recently in *Official Liquidator vs. Dayanand & ors.*[4], this Court has reiterated the same view.

17. For the reasons aforementioned, there is no merit in the appeals. They are dismissed accordingly. We have been informed at the Bar that the appellants pursuant to or in furtherance of interim orders passed by the courts continued in service; and, thus, if any amount has been paid to them, the same may not be recovered. No costs.

[1]*[(2006) 4 SCC 1]*
[2]*[(2004) 1 SCC 106]*
[3]*[AIR 1961 SC 564]*
[4]*[(2008) 10 SCC 1]*