MYSORE HIGH COURT

C.K. Appanna

Vs

State of Mysore

Writ Petn. No. 88 of 1962

(B.M. Kalagate and T.K. Tukol, JJ.)

13.01.1964

JUDGMENT

B.M. Kalagate,J.

1. The petitioner who has been officiating as Deputy Superintendent of Police on promotion from his substantive post of Inspector of Police, has filed this writ petition for a writ of certiorari or other appropriate writ to quash the memo dated 15-1-1962 which, in effect, reduces him in rank, on the ground that the provisions of Article 311(2) of the Constitution had not been followed in passing that order. He has complained that the order has not only resulted in loss of Signer pay and allowances but has also the effect of postponement of his future chances of promotion and consequent loss of seniority.

2. The facts relevant to the points raised by the petitioner in the writ petition are few and simple; The petitioner who is a double graduate of the Madras University joined the Police Department in the former Coorg State as Sub-Inspector of Police in 1935 and served in that capacity till 1-11-1949, when he was promoted as Inspector of Police. He was confirmed in the latter grade in 1950 and was the seniormost Inspector of Police on 1-11-1956, when the new State of Mysore came into being under the States Reorganization Act, 1956. The petitioner expressly stated that prior to that date he had been recommended for appointment as Deputy Superintendent of Police on the basis of seniority as there was a clear vacancy in the Coorg State but that the State Government only placed him in charge of the office of Deputy Superintendent of Police in that vacancy with the usual allowances from 1-2-1957. He continued to hold that charge till 19-12-1957, after which he was reverted to the substantive post as Inspector. In the provisional inter-State seniority list of Police Inspectors his rank was 136, while that of G.C. Veeranna was 138 and that of G.P. Sittappa was 141. In due course, all these three, along with one M.T. Abraham, were promoted as Deputy Superintendents of Police in the order of their seniority on 21-12-1961 subject to the approval of the Government. The petitioner assumed charge on 1-1-1962, but the State Government served on him, on 20-1-1962, an order dated 15-1-1962 which he seeks to quash reverting him to the post of Police Inspector even though the two juniors promoted with him were permitted to continue. The petitioner alleged that this order of the State Government amounted to his reduction in rank and was violative of the provisions of Article 311(2) of the

Constitution. He further alleged that he satisfied the qualification of seniority cum-merit which was the basis for the promotion and that the order of the Government retaining his juniors while demoting him amounted to denial of equal opportunity under Article 16(1) of the Constitution.

3. In the counter affidavit filed by Assistant Inspector General of Police there is no specific denial of the fact that the petitioner had been recommended by the erstwhile Coorg Government for promotion. It has been stated that the Government did not approve of the petitioner's promotion as he did not fulfil the qualification prescribed in the Mysore Police Service (Recruitment) Rules 1960, dated 8-7-1960. The material part of the contention in paragraph 7 of the counter affidavit reads thus :

> ".....According to those Rules, an Inspector who is below 52 years of age should only be promoted, in the interest of efficiency of the administration. Hence the petitioner had to revert to his substantive post. It is true that the two other officials were not reverted. The said officials were not over 52 years of age and they fulfill this qualification prescribed under the Mysore Police Services (Recruitment) Rules."

In paragraph 8 it is stated :

> ".....The petitioner was over 52 years of age on the date of such promotion. Hence it is submitted that the petitioner's chance of promotion has been overlooked by virtue of the Service Rule prescribing the qualification for promotion."

4. When this counter affidavit made it clear that the main ground of reversion was that the petitioner was over 52 years of age', the petitioner contended in his supplementary affidavit that the Mysore Police Services (Recruitment) Rules, 1960, were invalid as they violated the provisions contained in Articles 14 and 16 of the Constitution. He also contended that he had been appointed to the post of Deputy Superintendent of Police even after the Rules had come into force and that by promoting him after the Rules came into operation the Government should be deemed to have waived that condition' as regards age. According to him, there was no such restriction for promotion to the post of Superintendent of Police in Coorg State. He cited some instances of promotion of Sub-Inspectors where the rule as regards the age had been relaxed. He submitted that the restriction as regards the age limit for the purpose of promotion was invalid as the consent of the Central Government under Section 115(7) of the States Reorganization Act had not been obtained. He asserted that under the service conditions applicable to the petitioner prior to 1-11-1956 there was no restriction of age limit for the purpose of promotion. In the counter affidavit filed by the Assistant Inspector-General of Police on 21-8-1963 the last statement has not been denied though it was explained that the promotion of the three Sub-Inspectors contrary to the Rules was an irregularity in a different category of service and that it did not help the petitioner.

5. At the hearing, Mr. Datar attacked the validity of the rule imposing the age restriction of 52 years on the following grounds :
1. The rule offends Articles 14 and 16 of the Constitution inasmuch as it was not based upon any rational classification and there was no intelligible differentia between it and the legitimate object

which the rule was intended to achieve :

2. The rules framed by the Governor are not valid as Section 2 of the Central Police Act, 1891 empowered the State Government only to frame such rules;

3. The rule offended Section 115(7) of the States Reorganization Act as prior approval of the Central Government has not been taken; and

4. There has been discrimination in the enforcement of rules and therefore the order of the State Government deserves to be struck down.

6. It is unnecessary to decide all the points raised by Mr. Datar, the learned Advocate for the petitioner, since the petitioner can be granted the relief prayed for wholly on the basis of his third contention as stated above.

7. Mr. Radhakrishna, the High Court Government Pleader who appeared for the State, conceded that the consent of the Central Government had not been obtained for the promulgation of the rules. He, however, contended that the right enforceable in a Court of law, that the Governor was fully competent to promulgate the relevant rules of recruitment under the Proviso to Article 309 of the Constitution and that the reversion of the petitioner in accordance with the rules was unassailable.

8. Sub-Sections (1) and (7) of Section 115 of the States Reorganisation Act, which are relevant, read as follows :

> "115 Provisions relating to other Services.
> (i) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, from that day, be deemed to have been to serve in connection with the affairs of the successor State to that existing State.
> * * * * *

7. Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

> Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-Section (1) or Sub-Section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

The petitioner who had been serving in connection with the affairs of the Union under the administrative control of the Chief Commissioner in Coorg and allotted to serve in connection with the affairs of the new State of Mysore, is governed by Sub-Section (1) of Section 115 and

therefore the proviso to Sub-Section (7) of that Section is attracted to his case. While Sub-Section (7) recognizes the power of the Governor of the State to frame rules determining the conditions of service of persons serving in connection with the affairs of the State after 1-11-1956 under proviso to Article 309 which falls under Chapter I of Part XIV of the Constitution, the proviso to that sub-section imposes a restriction on the exercise of his power by laying down that if the conditions of service applicable to any person referred to in Sub-Section (1) or Sub-Section (2) are varied to his disadvantage, then the previous approval of the Central Government should be obtained for the promulgation of such conditions of service. This in the nature of a protection to servants falling under Sub-Section (1) or Sub-Section (2) of Section 115.

9. Whether the rates regulating the promotion of an Inspector of Police to the post of a Deputy Superintendent of Police can be considered to be conditions of service so as to attract the protection afforded by the proviso requires determination. The words

> 'matters relating to employment or appointment to any office under the State ‘occurring in Article 16(1) of the Constitution came up for interpretation before the Supreme Court in *The General Manager, Southern Rly. v. Rangachari*[1], Gajendragadkar, J. who delivered the judgment on behalf of the majority, laid down :
> "In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. We must have regard to the nature of the fundamental right guaranteed and we must seek to ascertain the intention of the Constitution by construing the material words in a broad and general way. If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provisions as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. Those are all matters relating to employment and they are and must be deemed to be included in the expression 'matters relating to employment' in Article 16(1). Similarly, appointment to any office which means appointment to an office like that of the Attorney-General or Comptroller and Auditor-General must mean not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office. What Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us."

[1](1961) 2 Mad LJ (SC) 71 : AIR 1962 SC 36

Referring to Articles 14, 15(1), 16(1) and 16(2) his Lordship observed :

> "The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so there would be no difficulty in holding that the

matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment :
X X X X"

Therefore, we are satisfied that Mr. Sen is right when on behalf of the Attorney-General he conceded that promotion to selection posts is included both under Articles 16(1) and (2). x x x"

10. There are other decisions of the Supreme Court which recognize seniority and promotion to higher posts in the ordinary course as conditions of service and reduction to a lower post as punishment, if effected without compliance with the provisions contained in Article 311(2) of the Constitution. An exhaustive discussion of this question is to be found in *P.L. Dhingra v. Union of India*[2], The majority judgment was delivered by S.R. Das, C.J. and his Lordship laid down :

"Shortly, put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto....."

The principle of this decision was followed by the Supreme Court in *Madhav Lakshman Vaikunte v. State of Mysore*[3], The appellant before their Lordships had been reduced in rank; The order of reduction was subsequently set aside. In the meanwhile., persons who were junior to the appellant in the grade of Mamlatdar had been promoted as District Deputy Collectors in the former Bombay State. The appellant had sued for recovery of arrears of salary due to him in the higher post. In dealing with the case their Lordships observed :

".....From the facts of this case it is clear that the appellant was on the upward move in the cadre of his service and but for this aberration in his progress to a higher post, he would have, in ordinary course been promoted as he actually was sometime later when the authorities realised perhaps that he had not been justly treated, as is clear from the order of the Government, dated March 26, 1951, promoting him to the higher rank with effect from August, 1, 1950. x x"

Their Lordships recognized that the appellant's reduction without compliance with the provisions of Section 240(3) of the Government of India Act, 1935 corresponding to

[2] AIR 1958 SC 36

[3] 39 Mys LJ 775 : AIR 1962 SC 775

Article 311(2) of the Constitution was bad in law and decreed his claim for arrears of salary to the extent of the difference between the salary already drawn and that due to him had he been promoted in the ordinary course. In *Kishori Mohanlal v. Union of India*[4], their Lordships affirmed that the words, "appointment to any office" in Article 16(1) are wide enough to include the matter of promotion and that equality of opportunity for promotion as between citizens holding out posts in the grade was guaranteed by Article 16. The petitioner before their

Lordships had been appointed as an Income-tax Inspector in the Income-tax Department of the Government of India in 1914 and had become an Income-tax Officer in 1946 on promotion in the same department. The Income-tax services were reconstituted by an order of the Central Government in September 1944. One of the features of the reconstitution was that in the place of one class of Income-tax Officers, two classes came into existence, one consisting of Income-tax Officers of class I service and the other in which all the then existing Income-tax Officers were placed as forming Class II Officers. Class I officers were eligible to be promoted to the higher post of Commissioners and Assistant Commissioners while Class II Officers were not however eligible for direct promotion to these higher posts. They could obtain such promotion having first reached the status of Class I officers. The petitioner contended before their Lordships that the rules as framed were violative of Article 16 of the Constitution. Their Lordships dismissed the petition holding that there was no denial of equality of opportunity at all officers in Class II posts were eligible for Class I post and those in the latter for promotion to the higher posts of Commissioners and Assistant Commissioners. Similarly in *The High Court of Calcutta v. Amal Kumar*[5], their Lordships recognized that promotion to the post of a subordinate Judge from the post of a Munsiff was a condition of service but that the High Court was vested with the power of promotion subject to the conditions to service laid down by the Governor. It is clear from these decisions that promotion to a higher cadre is a condition of service and the rules defining the qualifications and suitability for promotion form the terms and conditions of service.

11. We have next to see whether the terms and conditions which prescribe eligibility for promotion to the post of Deputy Superintendent of Police adversely affect the petitioner. The Governor of Mysore promulgated rules called the Mysore Police Service (Recruitment) Rules 1960, with effect from 8th July 1960. The rules prescribe the method of recruitment, the minimum qualification and the period of probation etc., for the various posts in the Police Department commencing from that of the Inspector General of Police and ending with that of a constable. Two methods are prescribed for recruitment to the post of Deputy Superintendent of Police. 50 per cent, of the seats are reserved for direct recruitment and 50 per cent, are to be filled by promotion from the cadre of Inspectors. The conditions prescribed for the promotion are :

> "Must have been in five years service as Inspector and must not be above 52 years of age."

It is the latter portion of this rule viz., an Inspector with five years' service in that post

[4] AIR 1962 SC 1139
[5] AIR 1962 SC 1704

must mot be above 52 years of age that is impugned as being invalid on the ground
that the prior approval of the Central Government had not been obtained as required by the proviso to Section 115(7) of the States Reorganization Act. It is common ground that there were two posts of Deputy Superintendents of Police in Coorg State prior to the Reorganization of States. It is also conceded in paragraph 3 of the counter affidavit filed for the respondents that proposals had been sent to Government by the Inspector-General of Police in his office letter No. CB 305/56 dated 3rd December 1956, i.e., soon after the reorganization, recommending the petitioner's promotion as officiating Deputy Superintendent of Police. It is also not denied that the officiating appointment of the petitioner had been made on the basis of seniority cum merit. The petitioner expressly stated in paragraph 8 of the supplementary affidavit that under the

service conditions applicable to him prior to 1-11-1956 there was no restriction of age limit for the purpose of promotion. This has not been denied in the supplementary counter affidavit filed on 21-8-1963. It is therefore obvious from these undisputed facts that but for new rule imposing the age restriction of 52 years the petitioner was eligible for promotion and would have continued to officiate as Deputy Superintendent of Police. It is conceded on behalf of the State that there was no such restriction of age limit in the terms and conditions of service framed in the respective Police Acts by the former Governments of Bombay, Hyderabad and Mysore. The rule framed by the former Madras Government prescribing the terms and conditions of service for the Madras Police provided that

> "No Inspector of Police shall, except in very special case be eligible for appointment as Deputy Superintendent of Police unless he has completed five years of service in the rank of Inspector officiating or permanent and has not exceeded the age of 52 years on the first day of July of the year in which the selection is made."

Even this rule was not inflexible and the Government seem to have reserved the right to promote Inspectors in Special cases in spite of the age limit imposed by it. The impugned rule has been framed by the Governor in exercise of the power conferred by the proviso to Article 309 of the Constitution read with the relevant provisions of the Police Acts operating in the different areas empowering the Government of the State to frame rules for the purpose. Mr. Datar for the petitioner has submitted that the rules of recruitment framed under the different Police enactments are laws operating in the areas within the definition of Article 13 of the Constitution and that by virtue of Article 313 all the laws in force immediately before the commencement of the Constitution and applicable to any service or post which continues to exist after the commencement of the Constitution as an all India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of the Constitution, until other provision is made in that behalf. This submission has to be upheld. As laid down by the Supreme Court in *State of Uttar Pradesh v. Babu Ram*[6]*,*

> ".....the Police Act and the Police Regulations, made in exercise of the powers conferred on the Government under that Act which were preserved under

[6] AIR 1961 SC 751

> Section 243 of the Government of India Act, 1935, continue to be in force after the constitution so far as they are consistent with the provisions of the Constitution."

12. Since we are of the opinion that the rules have the force of law, they will continue to operate until they are superseded after the reorganization by the rules framed by the Governor. The Governor's powers to frame rules regulating the terms and conditions of service applicable to the different services allotted to the new State of Mysore in exercise of his powers under the proviso to Article 309 of the Constitution cannot be disputed; but the only restriction imposed by Sub-Section (7) of Section 115 of the States Reorganization Act is that for the valid operation of the rule which adversely affects a public servant falling either under Sub-Section (1) or Sub-Section (2) of Section 115, the consent of the Central Government prior to its promulgation is necessary.

13. An identical question came up for consideration before the Supreme Court in the *State of*

Rajasthan v. Ram Saran[7] There, Ram Saran had been appointed a Constable in 1947 in the Ajmer District Police Force. Two years later, he was promoted to the rank of Head Constable and was confirmed in that post. On 29th June, 1956, he was appointed to officiate as Sub-Inspector. As a result of the reorganisation of States the former State of Ajmer was merged in the State of Rajasthan and a formal order appointing him as officiating Sub-Inspector in the Rajasthan State Police Force was passed on 1-11-1956. On 6th April 1957 he was reverted to his substantive post of Head Constable and he filed the writ petition before the High Court complaining that his reversion to his subtantive post was in effect an order of supersession as there were some juniors in that new State who were still Officiating as Sub-Inspectors. In support of his contention, he relied upon a Standing Order (No. 46) issued by the Inspector-General of Police of Ajmer in 1949 which provided for preference being given to persons on the approved list in making Officiating promotions. In considering how far the petitioner could rest his claim on the Standing Order, their Lordships addressed themselves to the question whether that Standing Order had any legal efficacy as a service condition". In that connection his Lordship Mr. Justice N. Rajagopala Ayyangar who spoke for the Bench, stated :

> "..... .This would depend upon the Standing Orders having been issued by a competent authority under the provisions of a statute which empowered that authority to prescribe 'conditions of service'".

On the facts of that case their Lordships came to the conclusion that the Standing Order was in the nature of an administrative instruction and proceeded to consider the contention of the petitioner regarding the scope of Section 115(7) of the States Reorganization Act. His Lordship observed –

> ".....What is really crucial for the determination of this appeal is the proviso to Sub-Section (7) by which there was a guarantee that the conditions of service applicable before the appointed day would not be varied to the disadvantage of persons in the position of the respondent except with the previous approval of

[7] Civil Appeal No. 453 of 1962, D/-10-4-1963 : AIR 1964 SC 1361

> the Central Government. The question arising under this proviso would be whether it is any condition of service applicable to the holder of an officiating post that he shall not be reverted to his substantive post.
> * * * * * * * * * * * *"
>
> .....The argument, however was that since officers holding merely officiating posts had been mentioned in this directive, the right to continue in that post became a service condition and that no reversion could be ordered without the sanction of the Central Government. We do not find it possible to read the direction contained in the clause extracted earlier as having any such effect. No doubt, to the extent to which it protects the pay of certain officers it might have effect under Section 117 of the Act but beyond its subject to the proviso to Sub-Section (7) of Section 115, the powers of the State Government are not intended to be curtailed and in fact, they are expressly saved by Sub-Section (2) of Section 116 which permits a competent authority to pass in relation to such persons any order affecting his continuance in such post or office."

In our opinion, the rule imposing the age restriction of 52 years for promotion to the post of Deputy Superintendent of Police without the prior approval of the Central Government, is inoperative as against the petitioner and consequently the order reverting him on that ground will not be valid.

14. The view that we have taken is in no way inconsistent with the view taken in the other decisions of this Court. A Division Bench of this Court in *A.R. Viraktamath v. The State of Mysore*[8] had to deal with the legal efficacy of two resolutions of the former Government of Bombay in regard to 50% of the vacancies of Tahsildars occurring in the Belgaum Division being made available to persons included in the list of qualified Aval Karkuns. After considering the rules, their Lordships came to the conclusion that the rules did not indicate either that the revenue qualifying examination mentioned therein was anything more than a departmental examination which merely removed one of the impediments in the way of persons being considered for promotion or that the mere entry of a person's name in the list necessarily conferred any right upon such person for being straightaway promoted as Mamlatdar (Tahsildar) by disentitling the Divisional Commissioner from removing the name from the said list if he was of the opinion that the person did not satisfy the positive test of merit contemplated by one of the clauses of the rule. Their Lordships referred to the decision of this Court in Writ Petns. No. 1512 of 1960 and 32 and 48 of 1961, D/d. 1-10-1962 (Mys), and summarized the ratio of that decision as follows :

> "....(i) that the legal position now well established in regard to promotions is that no civil servant can claim promotion as of right unless by virtue of any statutory provisions he has acquired a right as an enforceable condition of service to be promoted to a particular post; and (2) that if any person had not acquired any such right arising out of an enforceable condition of service on or before his allotment under the States-Reorganization Act on 1-11-1956, he cannot complain that any condition of service applicable to him immediately before the said appointed date has been varied to his disadvantage by the Government of the new State of Mysore in contravention of the proviso to

[8] Writ Petn. No. 67 of 1961, D/-23-10-1962 (Mys)

> Sub-Section (7) of Section 115 of the-States Reorganisation Act".

Reference may also be made to the official memorandum of the Central Government called for by us recording the results of the discussion between the representatives of the Central Government and State Government regarding the conditions of service which should be protected in the light of Sub-Section (7) of Section 115 of the States. Reorganization Act. Though there has been no express reference to promotion, it has been expressly mentioned that the Central Government had come to the conclusion that –

> "It would be equitable to allow every person affected by reorganization, the limited protection of drawing pay on promotion to a post one stage above the one held by him in a substantive capacity or on which he had officiated continuously for a minimum period of three years immediately before the date of reorganization, on the scale of pay that would have been admissible to him on such promotion in his parent State before

reorganization if such scale is more favorable than the scale attached to the post in the new or reorganized State to which he is allotted x x x x".

The material portion which supports the view that the State Government ought to have taken the consent of the Central Government in imposing the restriction as regards the age link is contained in paragraph 6, and reads thus –

> "In respect of such conditions of service as have been specifically dealt with in the preceding paragraphs, it will be open to the State Governments to take action in accordance with the decisions conveyed therein, and so long as State Governments act in conformity with these decisions they may assume the Central Government's approval in terms of the proviso to Sub-Section (7) of Section 115 in the States Reorganisation Act. In all other cases involving conditions of service not specifically covered in the preceding paragraphs, it will be necessary for the State Governments concerned to obtain the prior approval of the Central Government in terms of the above provision before any action is taken to vary the previous conditions of service of an employee to his disadvantage."
> * * * * *"

In Writ Petition No. 1245 of 1962 and other companion petitions of 1962, D/-3-4-1963, (Mys), by a Division Bench of this Court their Lordships held that the mere inclusion of the names of the ten petitioners in the approved list for promotion to the post of Sub Inspectors did not confer on them any enforceable right. Their Lordships did not express any opinion about the alleged transgression of the proviso to Section 115 of the States Reorganization Act, as in their opinion the inclusion in the list did not constitute an enforceable condition of service for promotion. No new proposition of law has been laid down in the decision of this Court in *N. Srinivasan v. State of Mysore*[9],

[9] Writ Petn. No. 1374 of 1961, D/-19-3-1962

15. We may also refer to some of the reported decisions of this Court. In *Padmanabhacharya v. State of Mysore*[10] this Court had to deal with the validity of a Notification issued by the Government of the New State of Mysore, on August 225 1957, prescribing 55 years as the age of retirement for trained teachers in the Education Department. The Writ petition was filed by an Assistant Professor in the Sanskrit College complaining that the age of retirement under the rules made on April 29, 1955 was 58 years and that the State Government could not vary that condition of service to his prejudice without the consent of the Central Government. Their Lordships observed that –

> "The provision contained in the rule enacted by the Rajpramukh that the petitioner's age of retirement should be fifty-eight years is undoubtedly a condition of service applicable to his post and that condition of service was created by a rule made under the Constitution by the then Rajpramukh before the petitioner was statutorily allotted to the New State of Mysore. After the petitioner became a civil servant of the State of Mysore on and from November 1, 1956, it is clear that that condition of service which was applicable to his post could not have been altered to his prejudice or disadvantage even by the enactment

of a rule made by the Governor of the new State of Mysore without the previous approval of the Central Government".

In *K.H. Joshi v. State of Mysore*[11], a Division Bench of this High Court had to consider a scheme brought into effect by the Government of Bombay by its resolution of 23 December 1953, providing for the method by which promotion to the post of Sub Inspectors could be made from the posts of Head Constables. It provided that every Head Constable who sat for the Examination and succeeded in it was entitled to the post of Sub-Inspector in the order of the rank in that examination. The Inspector General of Police in the new State of Mysore varied that rank in the examination held in 1959. Their Lordships held that the new rules for the promotion of Assistant Sub-Inspectors and Head Constables as Sub-Inspectors of Police framed by the new State of Mysore on July 20, 1960 could not defeat that right.

16. For the reasons stated above, we hold that the portion of the rule imposing the age restriction 52 years for promotion to the post of Deputy Superintendent of Police is bad in law and the order reverting the petitioner on the strength of that rule is inoperative. We accordingly allow the writ petition and quash the order dated 15-1-1962. The petitioner shall get his costs from the respondents. Advocate's fee ₹ 100/-.

Petition allowed.

[10]40 Mys LJ 146 : AIR 1962 Mys 280

[11]40 Mys. LJ 536