

# **MYSORE HIGH COURT**

Govindappa Tirkappa Hirakeri

Vs

Inspector General of Registration

Writ Petn. No. 1979 of 1963, W. P. Nos. 2003, 2009, 2012, 2023 and 2024 of 1963

(K.S. Hegde and G.K. Govinda Bhat, JJ.)

24.04.1964

## **JUDGMENT**

### **G.K. Govinda Bhat, J.**

1. The petitioners in Writ Petition Nos. 1979, 2003 2009, and 2012 of 1963) aggrieved by the Order bearing No. D. 2-Dis. 390/58-59 dated September 12, 1963, of respondent whereby the petitioners were reverted as II Division Clerks from their officiating post of II Grade Sub Registrars, nave sought relief in this court under Article 226 of the Constitution of India and prayed that the order impugned may be quashed. The petitioners in Writ Petition Nos. 2023 and 2024/63 similarly reverted by the order bearing No. D2-Dis. 390/58-59 dated August 22, 1963, of respondent 2 in the said petitions have also prayed that the order of reversion may be quashed. Since the grounds of challenge in all these petitions are common, they can conveniently be disposed of by a common order.

2. The petitioners were appointed as Sub Registry Karkuns in the Department of Registration in the erstwhile Bombay State; on the re-organisation of States, they were allotted to the new Mysore State. Subsequently, they were promoted and appointed temporarily to officiate as II Grade Sub Registrars, pending filling up of the vacancies of Sub Registrars as per the Cadre and Recruitment Rules of the Department. The petitioners have been officiating as temporary II Grade Sub-Registrars since about 1959, until they were ordered to be reverted by the impugned orders. The reason as set out in the counter-affidavit filed on behalf of respondent one for making the impugned orders was, that the petitioners had to be reverted in order to fill up the vacancies by appointing the Probationers recruited by the Divisional Level Recruitment Committee for Belgaum constituted by the Government of Mysore, in their order bearing No. GAD. 23, GOM. 61, dated October 27, 1961 (Annexure-III to the counter-affidavit of respondent-1). The Divisional Level Recruitment Committee, hereinafter called the 'Committee' selected on June 6, 1962, 13 candidates for the post of II Grade Sub Registrars in the Belgaum Division, under Class-III State services. Eleven of the selected candidates were appointed as Sub Registrars by the impugned orders, and consequently, the petitioners were reverted. The persons so appointed have been impleaded as respondents 2 to 7 in Writ Petition Nos. 1979, 2003, 2009 and 2012 of 63, and as respondents 3 to 7 in Writ Petition Nos. 2023 and 2024 of 1963.

3. The contention of the petitioners is that the impugned recruitment contravenes the Cadre and Recruitment Rules made by the Governor under the proviso to Article 309 of the Constitution of India, called "The Mysore State Civil Services Class III (Non-Ministerial posts) Recruitment Rules, 1959, in force at the time of the selection and therefore, the selection made by the Committee is illegal, and the order of reversion of the petitioners made in order to post the persons illegally selected is also invalid. One other ground urged is, that under a Resolution of the Bombay Government dated June 6, 1950, the petitioners after completion of four years of approved service as clerks in the office of the Inspector General of Registration, ought to be sent out as Sub-Registrars on promotion, and such a right is a vested right protected under the proviso to Sub-Section (7) of Section 115 of the States Reorganization Act. But this ground, was abandoned by the learned counsel for the petitioners, as that contention was devoid of any substance.

4. The question for our determination is whether the recruitment of respondents 2 to 7 in Writ petition No. 1979/63 and of respondents 3 to 7 in Writ petition Number 2023/63, to the posts of II Grade Sub Registrars is invalid on the ground that the same was made in contravention of the Cadre and Recruitment Rules made by the Governor. After the reorganization of States the Governor of Mysore in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, has made Rules called the Mysore State Civil Services Class III (Non-Ministerial posts) Recruitment Rules, 1959, which, came into force on June 16, 1959. By order dated March 19, 1959, the strength of the cadres and the number and character of the posts borne thereon in the establishment of the Registration and Stamps Branch of the Mysore General Services, was fixed by the Governor and according to that order, the posts of II Grade Sub-Registrars numbering 119 have been classified as Class III Posts. By another order made by the Governor under the proviso to Article 309, of the Constitution, in GAD. 45 GRR 57 dated March 19, 1959, the method of recruitment of II Grade Sub Registrars and the qualifications for the posts have been prescribed by the Rules called 'The Mysore General Service (Registration and Stamps Branch) (Recruitment) Rules, 1959. Rule 4 of the Mysore State Civil Services Class III (Non-Ministerial Posts) Recruitment Rules 1959 prescribes the procedure for recruitment to Class III posts. According to the said rule it is the Public Service Commission that shall from time to time determine whether recruitment to the technical and non-technical posts shall be made by competitive

"4. Procedure for recruitment :

(1) The Public Service Commission shall from time to time determine whether recruitment to the technical and non-technical posts shall be made by competitive examination or by selection.

(2) When the commission determines that recruitment shall be made by competitive examination, the Commission shall conduct the examination and subject to the provisions of rule 8 of the General Recruitment Rules, shall prepare and publish in order of their merit the names of candidates successful in the examination.

(3) (a) When the Commission determines that recruitment shall be made by selection, the Commission shall if deems it necessary make the selection after a VIVA VOCE examination of the candidates and shall, subject to the provisions of rule 8 of the General

Recruitment Rules prepare and publish in order of their merit, the names of candidates successful in the examination.

(b) If the Commission makes the selection without a VIVA VOCE examination it shall make the selection on the basis of the marks secured by the candidates in the last academic examination passed in order of their merit the names of candidates so selected.

(4) When recruitment is made for filling posts in each division, the list of candidates eligible for appointment shall be prepared and published separately in respect of each such Division.

Provided that when recruitment is made on State-wise basis, a list of candidates eligible for appointment shall be prepared and published for the whole State."

5. On the basis of Rule 4 cited above, the petitioners contend that the Public Service Commission alone was competent to the selection of the candidates to the post of II Grade Sub-Registrars, and that the Committee constituted by the Executive Government had no competence to make the selections. It is conceded in the supplementary counter-affidavit filed on behalf of respondent-1 that the order constituting the Committee was issued by the Government in exercise of its executive power under Article 162 of the Constitution of India. The stand taken by respondent-1 in his supplementary counter-affidavit was, that the Governor by Notification bearing No. GAD. 33 SSC 61 dated October 23, 1961 issued under the proviso to clause (3) of Article 320 of the Constitution of India, had amended annexure-II to the Mysore Public Service Commission (Consultation) Regulations, 1958, so as to exclude all class III and Class IV posts from the Commission and consequently the Government was competent to appoint the Committee to make recruitment to Class III services of the State. But the stand taken in the main counter-affidavit filed by respondent-1 was that the Committee was constituted under the Mysore State Civil Services Class III Posts Recruitment Committee (Constitution and Functions) Rules of 1962, published on December 27, 1962 and which are deemed to have come into force with effect from October 23, 1961. This is what respondent-1 in paragraph-7 of his counter affidavit states :-

"That the Mysore State Civil Services Class III Posts Recruitment Committee (Constitution and Functions) Rules of 1962 were notified on 27-12-1962 and deemed to have come into force with effect from 23-10-1961. Under the said Rules, the Divisional Level Recruitment Committees for Bangalore, Mysore, Belgaum and Gulbarga were constituted."

6. The petitioners have challenged the validity of sub-rule 2 of Rule I of the Mysore States Civil Service Class III Posts Recruitment Committee (Constitution and Functions) Rules, of 1962, which states that "these rules shall be deemed to have come into force with effect from October 23, 1961", on the ground that the said rule is ultra vires of the powers of the Governor, and that the Governor has no power to give retrospectivity to the rules made under the proviso to Article 309, as held by this Court in *Govindaraja v. State of Mysore*<sup>5</sup>,

7. It was held by a Bench of this court in the above cited decision that the Governor has no power to give retrospectivity to his rules issued under the proviso to Article 309; though the ambit of the

rule making power of Governor is identical with the power of the Legislature as to the subject-matter, it does not follow that the power of the Governor and that of the Legislature is equal as regards the power of making retrospective provisions, the reason being that the Legislature's power to make retrospective laws is not derived from Article 309 but from the basic principle of Constitutional law, that the powers of the Legislature is plenary, and with regard to the subject matters allotted to it, it has absolute powers of legislation to enact laws operating prospectively as well as retrospectively; and that power of the Legislature follows from the principle of the supremacy of the Legislature within its allotted sphere; but such power to make retrospective legislation cannot be claimed by any authority other than the Legislature. In view of that decision, it is clear that sub-rule (2) of Rule I of the Mysore State Civil Service Class III Posts Recruitment Committee (Constitution and Functions) Rules 1962, is clearly ultra vires, and therefore, invalid and inoperative and the said Rule cannot be relied upon to support the selections made by the "Committee". Clause (2) of Rule I of the Mysore State Civil Services Class III Posts Recruitment Committee (Constitution and Functions) Rules 1962 cannot be relied upon by respondent-1, or the other respondents, to support the selections made by the "Committee" before December 27, 1962. The selections made in the instant cases clearly contravene Rule 4 of the Mysore State Civil Services Class III (Non-Ministerial Posts) Recruitment Rules, 1959, under which it is only the public Service Commission that is competent to make the selection.

8. Sri R.B. Guttal, the learned counsel for respondent-6 in Writ Petition No. 2023/63 and for respondent-4 in Writ Petition No. 2024/ 63 sought to support the selections made by examination or by selection. Sub Rule (3) of Rule 4 provided that the selection shall be made by the Public Service Commission. Rule 4 reads the Committee on the ground that by virtue of the notification issued by the Governor under the proviso to clause (3) of Article 320 of the Constitution of India, on October 23, 1961 recruitment to all class III and Class IV posts have been excluded from the purview of the Public Service Commission, and therefore, the Government was competent to appoint the "committee" to make the selections. We are unable to accept the argument advanced by Sri Guttal. The notification issued by the Governor under the proviso to clause (3) of Article 320, is concerned with the method of recruitment to class III posts. Clause (a) of Article 320(3) of the Constitution requires the Service Commission to be consulted on all matters relating to the methods of recruitment, and the proviso to that Article empowers the Governor (to make regulations whereby ?) consultation is not necessary. The method of recruitment to the posts of II Grade Sub-Registrars is laid down by the rules called the Mysore General Service (Registration and Stamps Branch) Cadre and Recruitment Rules, 1959, made on March 19, 1959. The said Rules under the head of "Method of Recruitment" prescribed the percentages for direct recruitment and for promotion by selection. Article 309 deals with the rules regulating the recruitment. Under the Rules made by the Governor under the proviso

<sup>5</sup> AIR 1963 Mys, 265

to Article 309 it was only the Public Service Commission that was competent to make the recruitment, until that rule was amended by the Governor, which he actually did on December 27, 1962. Therefore, we hold that the selection of respondents 2 to 7 in Writ Petition No. 1979 of 63 and, of respondents 3 to 7 in Writ Petition No. 2023/63, made by the "committee", was made in contravention of the Rules made by the Governor under the proviso to Article 309, and the orders of appointment of the said persons to the posts of II grade Sub-Registrars, made by respondent-1 (Inspector General of Registration and Commissioner of Stamps) are illegal.

9. The petitioners, as stated earlier, have been reverted to yield their places to the persons selected by the Committee. Under their orders of appointment, they were appointed, though temporarily, to officiate pending filling up of the vacancies as per rules of recruitment of their Department. The vacancies not having been filled up as per rules of recruitment, as already held by us, the reversion of the petitioners is clearly illegal.

10. We, therefore, allow these Writ Petitions and make an order quashing the impugned orders bearing Nos. D2. Dis. 390/58-59 dated August 22, 1963 and September 12, 1963. Respondent-1 will pay the costs of the petitioners. Advocate's fee ₹ 100/- one set.

Petition allowed.