

N. Chandramouli

Vs

Chikkalakkaiyah and Others

Civil Appeal No. 1143 of 1979

(O. Chinnappa Reddy, V. R. Krishna Iyer JJ)

18.03.1980

JUDGMENT

KRISHNA IYER, J. –

1. The only question raised in this appeal relates to the seniority of one of two groups of candidates in the Karnataka State. We must make it perfectly plain that we are concerned only with the specific rules placed before us and limit the operation of our observations to these rules and orders - no wider import or impact is available nor do we intend to affect other States and other services governed by other systems or rules.

2. The Karnataka State, on State Reorganisation, was composed of various territories drawn from various former States including what is known as the old Mysore State. Many government servants from those States were allotted to the Karnataka State on November 1, 1956, the date of the States Reorganisation. There was a gradation list prepared in regard to the allottees coming from various former States, and the Central Government, acting under its powers under Section 115(7), sanctioned a final gradation list for the Karnataka State also. As per that list, the employees already regularized before November 1, 1956 were put above temporary servants for the obvious reason that temporary hands would take their place below the regular hands. Nevertheless, those temporary hands were also included in the gradation list of the Karnataka State, because they had rendered continuous service, although on an officiating basis.

3. Subsequently, new appointments were made to service by the Karnataka State and those appointees, who came by recruitment through the Public Service Commission, were undoubtedly regular hands. The question arose whether those subsequent recruits, coming into the public services after November 1, 1956 could claim seniority over those who had been included in the gradation list as on November 1, 1956. The government passed an order dated September 22, 1961, the material part of which runs thus :

2. (i) All appointments to Class-III direct recruitment posts made by the local appointing authorities, both in the old Mysore area (including Bellary District) and in the other integrated areas up to December 31, 1959 (inclusive) may be regularised subject to the condition that the candidates were within the prescribed age limits and had the requisite qualifications at the time of their initial appointment;

(ii) The services of local candidates shall be regularised with effect from the date of their appointment from which their service is continuous provided they were in service on January 1, 1960 and continued to be in service at the time of (sic) their

services are regularised;

(iii) The local service will count for purposes of leave, pension and increments subject to the relevant provisions of the Mysore Civil Services Rules, but not for purposes of seniority; only the service from the date of regularisation of their appointments in the particular department will count for seniority; and

(iv) Breaks in service will not be condoned even if such breaks are only for short periods.

4. The construction of this rule regulating seniority is important for the decision of this case. It is apparent from Rule 2(ii) that the services of local candidates (by this expression is meant "servants of the old Mysore State") shall be regularised with effect from the date of their appointment subject to three conditions. Continuous service was one condition. The second condition was that they should be in service on January 1, 1960 and the third that their service must continue right up to the time of regularisation. When these three conditions were fulfilled, regularisation was the result. However, the State by its order of September 1961 made a qualification in regard to the length of service for purposes of seniority. For all purposes except for purposes of seniority, the entire "local service" was to be counted, but so far as seniority was concerned, service was to be reckoned only from the date of regularisation of their appointment in the particular department. Broken service for short periods was, of course, to be condoned.

5. The crucial question that survived for consideration was the fixation of the date of regularisation. It is apparent to those conversant with the affairs of inter se seniority questions in this country, on reorganisation of States, that the decisive date, ordinarily, was November 1, 1956. Even so, the order of September 1961 did not mention that date specifically. Consequently, there was litigation between the two groups, namely, those who were allottees or local candidates, and those who had been appointed subsequent to the formation of the Karnataka State. The writ petition was allowed by a learned Single Judge who held that officiation would not help the allottee in the matter of seniority and his construction of the order of September 1961 was in favour of the later appointees. An appeal was inevitably carried to a Division Bench which was later referred to a Full Bench. During the pendency of the appeal, government thought that it would clarify its intention and passed the following order :

In amplification of the Government Order No. GAD 67 INS 71, dated December 14, 1971 government hereby direct that the appointments of Temporary/Local/Emergency candidates who were appointed prior to November 1, 1956 and who were allotted to the new State on November 1, 1956 and whose names are included as such in the respective inter-state seniority lists published under Section 115(5) of the State Reorganisation Act shall, with effect from November 2, 1956 be deemed to have been regularised and be treated as such and that their seniority vis-a-vis the persons appointed in the new State after November 2, 1956 be determined on that basis.

6. This amplification or clarification puts the matter beyond doubt because it states that the regularisation of the services of the allottees provided they answer the conditions referred to earlier, shall take effect from November 2, 1956. Unfortunately, the High Court did not advert to this order. Had this been brought to the notice of the High Court and been given full effect, there would have been no difficulty in reaching the conclusion that those who were appointed into the Karnataka State

service after November 2, 1956 could not claim seniority over those allotted on account of the State Reorganisation. The High Court, therefore, came to a conclusion contrary to the orders of September 1961 and of 1976 which we have extracted above.

7. Shri Nagaraja, appearing for the respondents, who had won in the High Court, tried to circumvent the effect of the 1976 order by arguing that it was just an executive order passed when the appeal was pending could not have any effect in the light of the statutory prescription regarding conditions of service. He could not point out any specific rule which contradicted the clarification or amplification of 1976. In that view, we are unable to accept his submission. The conclusion necessarily follows that the respondents' submissions are disallowed and those of the appellants allowed, namely, that, for the purposes of seniority, service must be counted with effect from November 2, 1956 so far as allottees are concerned. The appeal is, therefore, allowed.

8. Parties will bear their own costs throughout.

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