
(2001) 07 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No"s. 24749 to 24753 of 1999

Abdul Mazid Babalal Nadaf and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) ILR (Kar) 3755 : (2001) 6 KarLJ 487 : (2001) 4 KCCR 2203

Hon'ble Judges : Chidananda Ullal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Vigneshwar S. Shastri, for the Appellant; B. Manohar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Aggrieved by the order of the Karnataka Administrative Tribunal (for short, the "Tribunal"), dismissing their Application Nos. 2993 to 3010 of 1996, dated 3-2-1998, the petitioners have filed these writ petitions seeking quashing of the impugned order of the Tribunal and issuing of an appropriate writ, order or direction as the case may be to the effect that the petitioners are entitled to the benefit of seniority in their respective posts with effect from the respective dates their juniors belonging to Scheduled Castes/Scheduled Tribes (SC/STs) and other Backward Tribes were appointed on regular basis under the Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes and Backward Tribes to Class III Posts) (Special) Rules, 1977 (for short, the "1977 Rules") notwithstanding the regular appointment of the petitioners subsequently under the Karnataka State Civil Services (Special Recruitment of Local Candidates) Rules, 1986 (for short, the "1986 Rules") by maintaining the inter se seniority as obtaining between the local candidates and the direct recruits existing prior to the promulgation of the 1977 Rules.

2. Facts.--Petitioners were appointed as Junior Engineers, FDAs, SDAs, etc., as local candidates on different dates between the years 1972-74 in various

departments of the State Government. Likewise several other candidates belonging to SC/ST and Backward Tribes also came to be appointed as such. Several candidates belonging to SC/ST and Backward Tribes were juniors to the petitioners in their respective cadres.

3. State Government promulgated the 1977 Rules providing for regular appointment to Class III posts from amongst the candidates belonging to SC/ST and Backward Tribes. The local candidates who did not belong to any reserved category were excluded for regular appointment under the 1977 Rules.

4. In view of the intendment of the 1977 Rules, petitioners apprehended that their services may be terminated. Petitioners and other candidates similarly situate like them filed Writ Petition No. 5333 of 1977 and connected cases before this Court questioning the validity of 1977 Rules and the intended termination of their service. The Court while issuing notice, granted an interim stay, staying the termination of service of the petitioners and others in pursuance to the 1977 Rules. Accordingly, petitioners continued to work in their respective cadres as local candidates. In the meantime, local candidates including several juniors to the petitioners belonging to SC/ST and Backward Tribes were regularly appointed under the 1977 Rules.

5. By an order dated 15th September, 1978, this Court allowed Writ Petition No. 5333 of 1977 and connected writ petitions and declared that the provisions of 1977 Rules are discriminatory and therefore, violative of "Articles 14 and 16(1) of the Constitution of India. In view of the declaration that 1977 Rules were invalid, this Court restrained the State Government from taking any action against the petitioners and they became entitled to continue as local candidates. Likewise, the candidates belonging to SC/ST and Backward Tribes who were regularised under the 1977 Rules were also required to be treated at par with the local candidates like the petitioners.

6. State Government and other aggrieved officials presented Civil Appeal Nos. 615 to 620 of 1979 and other connected cases before the Supreme Court of India from the order passed by this Court on W.P. No. 5333 of 1977 and connected cases. Supreme Court, while admitting the appeals, granted interim stay of the judgment of the High Court. Supreme Court disposed of the appeals on 27-3-1995 State of Karnataka Vs. Kumari Gowri Narayana Ambiga etc., , Supreme Court agreed with the conclusions and the reasoning arrived at by this Court and dismissed the appeals. In order to protect the rights of SC/ST and Backward Tribe candidates who had been appointed and regularised during the pendency of the appeals, the Supreme Court directed that the operation of the High Court judgment as upheld by the Supreme Court would be prospective from the date of judgment of the Supreme Court i.e., 27-3-1995. Para 11 of the judgment of the Supreme Court reads:

"As mentioned above, this Court while granting special leave stayed the operation of the impugned judgment of the High Court. Since we are upholding

the High Court judgment it would be necessary for us to protect the rights of Scheduled Caste, Scheduled Tribe and Backward Tribe candidates who have been appointed/regularized during the pendency of these appeals. Keeping in view the facts and circumstances of this case, we direct that the High Court judgment, as upheld by this Court, shall be operative prospectively from the date of this judgment.

During the pendency of the appeals in the Supreme Court, the State Government promulgated the 1986 Rules for providing appointment to the local candidates. Accordingly, the petitioners came to be regularly appointed under the 1986 Rules".

7. Karnataka State Civil Services (Special Recruitment of Local Candidates) Rules, 1986 which came into effect from 4th of July, 1986 provided for the regularisation of local candidates appointed to Group A, B, C and D posts, on or before 5th of July, 1983. Under the rules, service rendered by the local candidates prior to the coming into force of the rules was to be counted for the purpose of leave and pension and not for the purpose of seniority and for the purpose of promotion to selection timescale of pay.

8. Realising that the persons regularised under the 1986 Rules, though seniors to some of the candidates from the continuous date of joining, would become juniors to the persons who had been regularised under the 1977 Rules, persons similarly situate like the petitioners and others filed Application Nos. 2404 to 2446 of 1990 before the Karnataka Administrative Tribunal (for short, the "Tribunal"), questioning the said action and sought for declaring that they be assigned seniority from the initial dates of their appointment or in the alternative to declare that they would rank senior to the local candidates regularly appointed under the 1977 Rules notwithstanding their regular appointment under the 1986 Rules.

9. Tribunal disposed of Application Nos. 2404 to 2446 of 1990 on 11-12-1992. Tribunal felt that since the matter was pending before the Supreme Court, it may not be necessary to keep the said applications pending till the Supreme Court of India finally disposes of the appeals pending before it. Applications were disposed of by observing:

"Keeping open all the rights of the applicants to reagitate the matter after the appeals pending before the Supreme Court of India are decided".

10. After disposal of the appeals by the Supreme Court, Application Nos. 302 to 305 of 1994 connected with R.A. Nos. 30 and 31 of 1995 were filed. After detailed discussion, the said applications were dismissed. Petitioners thereafter filed Application Nos. 2993 to 3010 of 1996 which have been dismissed by the Tribunal, by the impugned order, relying upon its earlier decision in Application Nos. 302 to 305 of 1994 and R.A. Nos. 30 and 31 of 1995 referred to above.

11. Counsel for the petitioners strenuously contended that though the 1977

Rules were struck down by the Supreme Court as being discriminatory and arbitrary, still the petitioners who had waited for all these days did not get the benefit of the striking down of 1977 Rules. That the decision given by the Apex Court has been given a go-by thereby denying the petitioners of the benefit of the judgment of this Court as well as the Supreme Court of India.

12. We do not find any substance in the submission made by the Counsel for the petitioner.

13. 1977 Rules would be deemed to have been struck down with effect from 27th March, 1995 i.e., from the date of the judgment, as the Supreme Court has categorically stated in para 11 of its order that the striking down of the rules would operate prospectively from the date of the judgment of the Supreme Court and not the date on which the High Court has struck down the rules. Effect of the judgment of the Supreme Court is that regularisation granted to the SC/ST and Backward Tribe candidates under the 1977 Rules shall continue from the date they were regularised treating the 1977 Rules to be valid as on that date. 1977 Rules provide for regularisation of service of candidates belonging to SC/ST and Backward Tribes. Under Rule 6 of the said Rules, service rendered by a candidate on or after the date of his appointment to category of post under Rule 4 shall count for the purposes of determination of seniority of such person with reference to persons who are appointed to such category of posts. Although the rules were quashed being discriminatory and arbitrary, its operation has been made prospective from the date of the judgment of the Supreme Court, meaning thereby that the seniority of the SC/ST and Backward candidates who have been appointed/regularized under the rules till the date of the judgment was required to be reckoned from the date they were appointed in the service.

14. 1986 Rules came into force with effect from 4th July, 1986 which provides for regularisation of local candidates appointed to Group A, B, C and D posts, on or before 5th July, 1983 and who have been in service as on the date of commencement of the rules. Sub-rule (2) of Rule 5 provides that:

"The continuous service rendered by a person as local candidate prior to the date of his appointment under these rules, shall count for purposes of leave and pension in the same manner and to the same extent and subject to the same conditions applicable to a temporary Government servant but shall not count for purposes of seniority and for the purpose of promotion to selection timescale of pay".

Meaning thereby that seniority and promotion to selection timescale has to be reckoned from the date on which their services were regularised and not from the date of entry into service. Date of entry into service is to be counted only for the purpose of leave and pension as are applicable to a temporary Government servant.

15. Petitioners were regularised under the 1986 Rules. Those rules provide that the service rendered by them prior to the regularisation of their service would

not be counted for the purpose of seniority and for the purpose of promotion to selection timescale of pay. Petitioners have not challenged the validity of the 1986 Rules. In the absence of challenge to the 1986 Rules, the plea of the petitioners that they be given seniority from the date of their entry into service cannot be accepted. Tribunal was therefore right in rejecting the claim put forth by the petitioners in their applications.

16. No merit. Dismissed.