

(1980) 09 KAR CK 0044
In the Karnataka High Court
Case No : WP 3039/79

Anantaramiah T.S.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-09-1980

Acts Referred:

Citation : (1981) 1 KarLJ 160

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. In this writ petition, the petitioner has assailed the legality and correctness of the rank assigned to him in the Final Gradation List of I Division Clerks and I Grade Revenue Inspectors of Mandya District as on 1-1-1978. The Gradation List in question is produced along with the petition at Ext-J. Similarly, he has impugned the correctness and legality of the rank assigned to him in the Final Inter State Seniority List of II Division Clerks as on 1-11-1956 of Mandya District published by the 2nd respondent State of Karnataka. The Final Inter State Seniority List published in the Gazette dated 28th November, 1977 is also produced at Ext-H to the petition.

2. Simply stated, the petitioner's claim is that respondents 5, 6, 7, 9 and 10 (respondent No. 8 was deleted during the pendency of this writ petition) were all juniors to him if respondents 2, 3 and 4 had properly assigned him the correct date of confirmation in service. It is also his grievance that in spite of earlier writ petitions and several representations, the said respondents have persistently over-looked his claim to be confirmed in the Cadre of II Division Clerks with effect from the date on which he passed the qualifying examinations which was earlier than the date on which respondents 5, 6, 7, 9 and 10 were confirmed. The date of confirmation of the said respondents was 25-10-1956.

3. The respondents over whom the petitioner claims seniority, though served, have remained absent and unrepresented. The Union of India under whose authority the Final Inter State Seniority List was published is represented by the Senior Standing Counsel for Central Government while respondents 2, 3 and 4

are represented by Shri S.G. Doddakalegowda, learned Government Advocate in the High Court.

4. In so far as the Union of India is concerned, it has been candidly stated by the learned Counsel that the Union of India would carry out the necessary alteration in the Inter State Seniority List according to the decision and directions of this Court in this writ petition and that the Union of India has no intention to enter into the controversy between the petitioner and the other respondents. For respondents 2, 3 and 4 it is contended on the basis of records that the petitioner was given a later date of confirmation on the ground that he had not passed all the departmental examinations prescribed for confirmation in the post of II Division Clerks prior to respondents 5,6,7,9 & 10. In this view of the matter, the controversy in this writ petition lies within a very narrow compass.

5. For the State of Karnataka, it is contended that II Division Clerks were required of pass both revenue lower and accounts lower for purpose of confirmation in that Cadre after the initial recruitment Reliance was placed by the learned Government Advocate to support this contention on some earlier writ petitions in which this Court had occasion to consider similar or identical question. But in the light of the firm assertions made by the petitioner that in the earlier batch of writ petitions the relevant Government Order of the erstwhile State of Mysore was not correctly reproduced leading to the confusion as to the tests required to be passed for confirmation, I directed the learned Counsel for the petitioner to produce a copy of the Government Order as published in the Gazette and the same has been done. It is, therefore, necessary to set out the operative portion of that Government Order relevant for the purpose.

"Order No. R. 6755-58-L.R. 459-

48-2, Dated Bangalore, The 11th January, 1950.

The tests prescribed in the Government Orders read above for the several classes of appointments in the Revenue Department in the old grades have been reported by the Revenue Commissioner to be somewhat low in view of the revised (higher) scales of pay recently sanctioned and the higher general qualification prescribed for the several appointments in the Department. He has accordingly made proposals for prescribing higher tests to be passed by the officials of the different grades and classes for purposes of confirmation and earning increments. The public Service Commissioner, who was consulted in the matter, agrees in general with the Revenue Commissioner.

After considering all the aspects of the proposal Government direct that the following tests may be prescribed for purposes of earning increments, confirmation and promotion in and to the several appointments noted therein:

Tests to be passed for earning Increments and for confirmation. Tests to be passed before crossing the Efficiency Bar.

1. Second Division Clerks. Revenue Lower Accounts Lower

(a) In the case of officials in the Revenue Establishments.

(b) In the case of officials in Criminal Courts. Criminal Lower Do

6. From the above extraction, it is clear that a II Division Clerk for the sole purpose of getting confirmation in his post was required to pass only revenue lower and not both revenue lower and accounts lower. If the State acted on the assumption that he was required to pass both the tests that assumption was erroneous and impermissible. As it is not disputed that the petitioner passed revenue lower as early as in the year 1952, he was entitled to confirmation from such date in that year in which the result of his having passed the test was published. If he is so entitled to be confirmed from that date, it follows that respondents who were confirmed in the Cadre of II Division Clerks later than that date cannot be held to be seniors to him.

7. The petitioner was in service when this writ petition was filed. But he has since retired. He has persisted in pressing the petition only on account of the consequential benefits that may enure to his benefit. If his date of confirmation in the Cadre of II Division Clerk is assigned to him in accordance with the Government Order extracted above, he would be entitled to proforma promotions right through and thus be eligible for financial benefits if law otherwise permits him such benefits. For the reason already stated, the petitioner must succeed on the short ground that he was required to pass only revenue lower for confirmation and having passed the same in the year 1952, his date of confirmation vis-a-vis the respondents 5, 6, 7, 9 and 10 must be worked out afresh. The present rank assigned to him in the Lists Exts. J and H being far lower than that of respondents 5, 6, 7, 9 and 10 he has to go immediately above the rank assigned to respondent No. 6. Accordingly, the Lists at Ext-J and H in so far as they pertain to the petitioner and respondent's 5, 6, 7, 9 and 10 are hereby quashed and I direct that the petitioner may be placed in the said Lists above respondent No. 6. It is further directed that respondents 2, 3, and 4 shall work out the pro forma promotions to which the petitioner would be entitled to on his date of confirmation in the Cadre of II Division Clerks being in the year 1952 and give him all consequential and monetary benefits to which he is entitled to in law. In the above terms, the writ petition is allowed. Rule issued earlier is made absolute. But, in the circumstances of the case, there will be no order as to costs.

8. The learned Counsel who produced the Gazette copy of the Government Order made by the State of Mysore has also made available the photostat copy. The same shall be made part of the records.

9. Respondents 1, 2 and 4 shall make the necessary corrections in the relevant Lists within three months from today.