
(1962) 10 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 1169 of 1961

B. Krishna Rai

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 16-10-1962

Acts Referred:

Constitution of India, 1950 — Article 309

Mysore Recruitment of Gazetted Probationers Rules, 1959 — Rule 8

Citation : AIR 1963 Kar 263 : AIR 1962 Kar 263

Hon'ble Judges : Mir Iqbal Husain, J; A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : K. Jagannatha Setty, for the Appellant; D.M. Chandrasekhar, High Court Govt. Pleader, for the Respondent

Judgement

1. The petitioner before us was a Range Forest officer and was one of the applicants to the post of an Assistant Conservator of Forests in response to a notification published by the Mysore Public Service commission under the provisions of the Mysore Recruitment of Gazetted Probationers Rules 1959 made by the Governor under the proviso to Article 309 of the Constitution. The petitioner's application to the Public Service Commission was delivered on the 29th of October 1959. In accordance with the provisions of the Rules he was interviewed on the 29th of December 1960. But the Rules under which the Public Service Commission called for applications which came into force on the 11th of September 1959 stood modified by another set of Rules made by the Governor called the Mysore Recruitment of Gazetted Probationers (Special) Rules, 1960 which came into force on the 25th of August 1960. Under the provisions of these Special Rules it was possible to make appointments to the post of an Assistant Conservator of Forests only in accordance with the special Rules notwithstanding anything to the contrary contained in the old Rules of the year 1959. The effect of the special Rules made by the Governor was that appointments to the posts of Gazetted probationers in the Forest Department could be made only under those special rules and not under 1959 Rules.

2. Although the 1959 Rules prescribed a written examination and a viva voce examination as the basis of selection, the special Rules made in the year 1960 dispensed with the written examination and made the viva voce examination the sole basis for the selection. It was because of this alteration in the scheme of recruitment that the Public Service Commission conducted a viva voce examination on the 29th of December 1960 in which the petitioner also participated. After this viva voce examination was conducted, it was of course the duty of the Public Service Commission to announce the names of the candidates who were successful in the viva voce examination as provided by Rule 8 of the Special Rules, and their appointment was what had to follow under Rule 9 of these Rules. It was in this situation that the Governor made certain amendments to the Special Rules which he had made on August 25, 1960. What he did was to except out of the operation of the Special Rules the appointments of Gazetted probationers in the Forest Department. The effect of this amendment was that the proposed selection of Asstt. Conservator of Forests was no longer possible under the Special Rules; nor was it possible under the 1959 Rules since after the Governor made the Special Rules, the procedure prescribed by the 1959 Rules was not what had been adopted for the selection to the post. So it was that the Public Service Commission did not announce the result of the viva voce examination which it conducted under the Special Rules.

The petitioner who complains against the non-announcement of the result of the viva voce examination conducted by the Public Service Commission, asks for a mandamus directing the Commission to announce the result of the examination: conducted by it and a further mandamus directing the appointment of the candidates who were successful in that examination. The question is whether we can issue that mandamus in this case. It seems to us that the mandamus sought by the petitioner is an impossible mandamus. Although when the viva voce examination was conducted by the Public Service Commission on December 29, 1960 the power under the Special Rules of making a selection to the post of a Gazetted Probationer fully resided in the commission, that power disappeared when the Governor made amendments to the special Rules of 1960 on the 17th of May 1961. Those amendments brought about deprivation of the power of the Commission to make a selection to the post of a Gazetted Probationers in the Forest Department with the result that there was no longer any competence left in the Commission to make any selection of any one to the post of a Gazetted Probationer in the Forest Department under the Special Rules.

If that power which had been bestowed on- the Commission by the Special Rules was taken away by the amendments made to these Rules, it is clearly not open to the petitioner to ask us to direct the commission to announce the names of persons selected by it for appointment to the post of a Gazetted probationer in the Forest Department.

It would of course, be the duty of the Commission to announce the names of persons selected by it if the power to make that selection which was conferred on

it by the Special Rules continued to vest in it. But if after the conduct of the viva voce examination by the Commission for the purpose of making a selection the power to make the selection itself came to an end by reason of the amendments made to the Special Rules, there would be small reason for thinking that the Commission was still under a duty to make a purposeless announcement of the names of certain persons who could no longer claim to be appointees as Gazetted probationers.

Mr. Jagannatha Shetty argued before us that the amendments made by the Governor to the Special Rules on the 17th of May 1961 were retrospective in character and therefore not within the competence of the Governor. It does not appear to us that this argument can succeed. The amendments made by the Governor could be regarded as retrospective amendments not within his competence only if they brought about deprivation or impairment of any vested right acquired under the existing laws or created a new obligation or imposed a new obligation or imposed a new duty. Mr. Shetty had to admit that none of these was the consequence of any of the amendments made by the Governor to the Special Rules. He did not dispute that the petitioner had not acquired any vested right under the Special Rules or under the 1959 Rules. Nor did he contend that the amendments made by the Governor created a new obligation or imposed a new duty.

But the main stress of the argument advanced before us by Mr. Shetty was that since the amendments made by the Governor created a new disability for the petitioner or to persons similarly situated, those amendments were retrospective in character and therefore incompetent. The way in which Mr. Shetty developed this argument was that while it was previously possible for the petitioner who is now 30 years of age to be directly recruited to the post of a Gazetted probationer, under the new scheme which is likely to be brought into existence by the Governor under a new set of Rules which he may make under the proviso to Article 309 of the Constitution prescribing the maximum age limit under which, according to the fear of Mr. Shetty, is likely to be 24 years, it would be impossible for the petitioner to ever aspire to become an Assistant Conservator of Forests by direct recruitment. This is not the kind of disability which, in our opinion, can clothe the amendment made by the Governor with the character of a retrospective amendment.

3. Mr. Shetty relied upon a passage in the book "Craies on Statute Law" at page 357 which reads:

"Retrospective enactments.

2. Meaning of "retrospective". A Statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past."

The category into which Mr. Shetty sought to bring the amendment made by the

Governor was the last one which refers to "a new disability in respect of transactions or considerations already past." It is, we think, impossible for Mr. Shetty to bring the amendments made by the Governor within this category which refers only to the creation of some new disadvantage in respect of past transactions or past considerations. Mr. Shetty cannot surely contend that there was any past transaction or consideration in respect of which any new disability was created by the amendments made by the Governor. If as Mr. Shetty had to admit, the petitioner had not acquired any right to the post of a Gazetted Probationer when the Governor made amendments to the Special Rules, the possibility of the petitioner not being able to attain the post of a Gazetted probationer hereafter, by direct recruitment, by reason of the maximum age limit being lowered cannot amount to the creation of a new disability in respect of a past transaction or consideration.

In our opinion, the amendments made by the Governor on the 17th of May 1961 are clearly amendments which are purely prospective in operation not having any retrospective character or feature about them. When those amendments were made, the Public Service Commission had made no selection and all that it had done was to conduct the viva voce examination. If selection had been made by the Commission that selection was what would have vested in the successful candidates the right to be appointed under Rule 8 of the Special Rules. But so long as the selection was still in the melting pot, it was, in our opinion, clearly within the power of the Governor to so amend the Rules of Recruitment as to make that selection no longer possible. What indeed the Governor did in this case was to make it impossible for the Commission to proceed with the selection, with the result that those amendments made a prospective act namely, the selection which was still in the process of being made, no longer possible.

4. This is therefore a case in which the mandamus sought by the petitioner cannot issue. Any mandamus such as the one sought by him is a purposeless mandamus. If the Public Service Commission had no power to make any selection of the persons to be appointed as Gazetted Probationers after the Governor amended the Special Rules it could hardly be said that after that power came to an end that there was any statutory duty on the part of the Commission to make a selection, the performance of which could be compelled by mandamus. In our opinion, this Writ petition cannot succeed and has to be and is dismissed. In the circumstances no costs.