

(1968) 11 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1041 of 1966

Bhagwantha Rao Govinda Rao

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 18-11-1968

Acts Referred:

Citation : AIR 1969 Kar 306

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.—On July 5, 1966, Government made an order that the promotions which have been made irregularly on the basis of the provisional Inter State Seniority List which stands superseded by the final Inter State Seniority List should be reviewed. The consequence on one such review was that the petitioner who was an Assistant Director of Public Instruction in the office of the Director of Public Instruction was reverted from that post which was a class II post to a Class III post. It is this reversion which is challenged in this writ petition.

2. It is contended by Mr. Jagannatha Shetty appearing for the petitioner that the misconception which was responsible for the impugned reversion was an erroneous belief that there was a promotion of the petitioner to the post from which he is now reverted, and that that promotion was an irregular promotion which could be reviewed in the context of the final Inter State Seniority List prepared by the Government of India.

3. It appears to us that this submission made by Mr. Shetty is unanswerable. By an order made by Govt. on July 6/14, 1959, sanction was accorded to the creation of the post of a Special Officer for Hindi for the State in Grade Rs. 200-20-400. The creation of this post became necessary, as stated in the Government Order, by reason of the fact that expansion of Hindi Education and its growing importance made it necessary for Government to have a Special Officer for Hindi Education with the necessary staff so that he could supervise the

work of the Hindi organisation and the like. The Government order specified qualifications for the post and it stated that the appointee should be a graduate and should be a graduate and should be the holder of M. A. or B. A. (Hons) degree in Hindi and that he should be B.Ed. or B. T., and, besides possessing experience in the teaching of Hindi, he should also have a good knowledge of Kannada.

4. It was discovered that there was no one belonging to a class II or III post in the concerned division possessing the qualifications specified in the Government Order, save the petitioner. On August 20, 1959, the Deputy Director of Public Instruction, Gulbarga therefore, recommended the petitioner's case. He pointed out that the petitioner who was Assistant Master in the Multipurpose High School in Gulbarga was the holder of a M. A. degree in Hindi and also the holder of a B.Ed. degree. He also enumerated the other qualifications which, according to him, the petitioner possessed. On the basis of this recommendation, Government made an order on December, 17, 1960 by which the petitioner was appointed temporarily to officiate as a Special Officer for Hindi in the office of the Director of Public instruction until further orders. That order reads:

"Government of Mysore.

NO. Ed 200 DTO 59.

Mysore Government Secretariat, Vidhana Soudha, Bangalore, dated 17-12-1960. Aghn. 26 Saka Era 1882.

NOTIFICATION:

Shri Bhagvanth Rao, M. A., B. Ed., Assistant Educational Officer, Bellary, is appointed temporarily to officiate as the Special Officer for Hindi, in the office of the Director of Public Instruction in Mysore, Bangalore until further orders.

By Order and in the name of the Governor of Mysore.

Sd/- S. B. Patil, Under Secretary to Government Education Department."

5. We do not accept the contention of Mr. Shanthraj that by this order there was a transfer of the petitioner from another Class II post held by him to the post of a Special Officer for Hindi. The postulate that there was such a transfer overlooks the background for the appointment and the creation of a special post under the Government Order of July 6/14, 1959. That Government Order, when properly understood, makes it clear that the post created by that order had to be filled by the selection of a person who possessed the eligibility and qualifications enumerated in that Government Order. If Mr. Shanthraj is right in this submission that the petitioner was transferred to the special post which was created, the order by which he was appointed to that post would have stated so, but it did not. On the contrary the correspondence between the Director and the Deputy Director makes it clear that there was a search for a proper incumbent for the special post and that no one but the petitioner was found suitable for it. So, it

was that the petitioner was appointed to that post and that appointment, it is clear, was an appointment by the process of selection.

6. Now, the impugned order of reversion was made not on the basis that there was a transfer of the petitioner from a class II post to another class II post, but on the ground that there was an irregular promotion. That order reads:

"Subject: Review of promotions on the basis of final Inter State Seniority List of Graduate teachers in the tutorial cadre-Reversions Orders.

Read: 1. Government Notification No. GAD 178 INS 65, dated 27-12--1965.

2. Official Memorandum of No. GAD 188 INS 65, dated 4-1-1966.

Preamble:--The final Inter State Seniority List of the teachers in the graduate Tutorial Cadre has been published in the Government Notification dated 27-12-1965 quoted above, Instructions have been issued in the official Memorandum dated 4-1-1966, quoted above to review the irregular, out of turn provisional promotions, soon after the publication of the final Inter State Seniority List. The promotions already made have accordingly been reviewed on the basis of the final Inter State Seniority List of the teachers in the graduate Tutorial Cadre in the Department of Public Instruction.

Order No. ED 103 DPI 66, Bangalore, dated 5-7-1966, Asar 14 S. E. 1883.

The following Class I and Class II Officers of the Department of Public Instruction, are reverted to Class III with effect from the date of issue of this order:

Class I Officers.

*** ** 61. Bhagwantha Rao, Assistant Director of Public Instruction (Hindi Education) Office of the Director of Public Instruction, Bangalore.

* * * * * By Order and in the name of the Governor of Mysore.

Sd/- S. N. Sreenath, Under Secretary to Government, Education Department."

7. It is clear from the Government Order to which the order of reversion refers that the intention of Government was that under its provisions only those who had been irregularly promoted and who could no longer continue in the post to which they were so irregularly promoted by reason of the displacement of the higher rank assigned to them by the provisional Inter State Seniority List, should be reverted to the post which they can properly hold, so, if there was post of a Special Officer for Hindi and to that post he was appointed by the process of selection, the hypothesis that the petitioner had been irregularly promoted to that post becomes unavailable. In consequence, the assignment of a lower rank to the petitioner by the final Inter State Seniority List prepared by the Government of India can have no relevance in that context. The rank if any assigned by that list to the petitioner post which he held before he was appointed as a special officer for Hindi. That appointment did not depend upon the rank

which was properly claimable by him in the antecedent post which he so held. The appointment as a Special Officer was a new appointment made on the basis of eligibility and qualifications which were prescribed by the State Government when it created that special post.

8. Whatever, therefore, might be the impact of the final inter-State seniority list upon the post which the petitioner held before he was appointed as a special officer for Hindi, it could have no impact upon the post of Special Officer to which he was appointed by the process of selection and not because of the higher rank which had been assigned to him by the provisional Inter State Seniority List. The one had nothing to do with the other.

9. So, we quash the impugned order of reversion.

10. No costs.

11. Petition allowed.