

(1969) 06 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 2247 of 1966

B.M. Ramalingappa

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 26-06-1969

Acts Referred:

Constitution of India, 1950 — Article 309
Governors Rules — Rule 3

Citation : AIR 1970 Kar 160 : AIR 1969 Kar 160 : (1969) ILR (Kar) 269

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; P.K. Shyamasunder, High Court Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.—On September 4. 1962, the petitioner was appointed as a Motor Vehicles Inspector as a local candidate in the department of Motor Vehicles of the State. But from that post there was a displacement when, on May 16, 1964 the State Level Recruitment Committee made a selection of other persons to various posts in the State. So, by an order made on May 23, 1964, the petitioner's services were terminated.

2. The selection made by the State Level Recruitment Committee was challenged in more than one writ petition before this Court and one of them was W.P. No. 903 of 1964. That writ petition and the companion matters succeeded, and, by an order made on June 3, 1955, the selection made by the State Level Recruitment Committee was quashed on the ground that that body had not been properly constituted.

3. But, during the pendency of those writ petitions some persons whose services had also been terminated in the same way in which the petitioner's service had been terminated, continued in the concerned writ petition, but in writ petition 919 of 1964 which was the writ petition presented by the petitioner, he was not able to get an order of stay, and so, the person selected by the State Level

Recruitment Committee took charge of the post from and there was discontinuance in the service of the petitioner.

4. But, the selection made by the State Level Recruitment Committee stood validated by an Ordinance dated September 24, 1965 and by subsequent legislation.

5. Having regard to the serious consequences emanating from the displacement of a large number of persons affected by the validating Act, Government promulgated a notification on April 1, 1965 directing the continuance in service of all the local candidates. Subsequently, on August 17, 1966, rules were made by the Governor under the proviso to Article 309 of the Constitution and Rule 3 of those rules directed regularisation of all local candidates who had been appointed before December 31, 1964 and who were still in service when the Governor's rules commenced to operate.

6. But it was thought that neither the Government Order nor the Rules made by the Governor could be useful to the petitioner for the reason that although he had been appointed before December 31, 1964 which is the date to which the Governor's Rules refer, he had not continued Inservice after his services were terminated on May 23, 1964 and he was no longer in service when the Governor's Rules commenced to operate. So, the petitioner's representations that the benefit of the Governor's Rules may also be made available to him produced no useful results.

7. In this writ petition the petitioner asks for a direction for the regularisation of his service. There is also another prayer for a declaration that some of the Governor's Rules to which we have referred are void but that prayer was not pressed before us.

8. It seems to us that regularisation of the petitioner's appointment under the Governor's Rules could not have been refused.

9. It is an uncontroverted fact that all the local candidates who were able to get the State Level Recruitment Committee's selection quashed did have the benefit of regularisation by reason of the fact that there was no interruption in their services notwithstanding the selection made by the Recruitment Committee. They were able to continue In service because of the order of stay made by this court In the respective writ petitions filed by those persons. So, it is indisputable that if petitioner also had been able to get an order of stay from this court, he would have also continued in service in the same way in which the other persons were able to continue and the only reason for which he was not able to continue in service in that way was that the State Level Recruitment Committee made a selection and some one so selected displaced the petitioner from his post.

10. But the selection, which discontinued the petitioner's service, was, according to the pronouncement of this Court an incompetent selection and so the interruption in service was in the eye of law no interruption. The clear effect of

that pronouncement was that no one selected by the Recruitment Committee acquired the right to hold the post which was already held by another. And if nonetheless the petitioner's service was terminated to make his post available to the person chosen by an incompetent group of persons, such termination has no validity and the petitioner should be deemed to have continued in service,

11. If continuance in service at a specified point of time is what earns regularisation, the authority which has to make the regularisation cannot refuse it on the basis of an interruption caused by its own illegal act. Any appeal to such discontinuance cannot claim the support of reason and is plainly unjust.

12. If the others who got an order of stay continued in their posts and the petitioner would also have so continued if he had got an order of stay, it would be incongruous for any one to suggest that the others who got an order of stay should get regularised in their posts and he who was not able to get an order of stay could not claim a similar benefit. In every way they were equals and the accidental fact that there was no stay in the case of someone does not make them unequal.

13. Moreover, there is an uncontroverted allegation in the affidavit that a certain Nararajappa and several others who were appointed as local candidate after the petitioner was appointed are continuing in their posts after they for the benefit of regularisation. So, it would be extremely unreasonable to refuse the benefit of regularisation in the case of the petitioner who, for no fault of his and for the reason that he was prevented from continuing in service by an illegal selection by the State Level Recruitment Committee could not be in service at the relevant point of time.

14. We must understand the Governor's Rules and the Government Order which preceded it in a rational way and the interpretation which we place on it must be one which promotes their purpose and that purpose was to confer a benefit on persons like the petitioner who were affected by the validating Act subsequently made, and, so, the petitioner could not be excluded from their operation.

15. The subsequent validation of the Recruitment Committee's selection on which Mr. Shamsunder depended could not impair a right which the Governor's Rules created when they commenced to operate. "

16. We do not also accede to the submission made by Mr. Government Pleader that the prayer for mandamus was not preceded by a demand. There is an uncontroverted allegation in the affidavit of the petitioner that he did make one.

17. So, we make a declaration for regularisation of petitioner's services under Rule 3 of the Governor's Rules with effect from the date on which such regularisation was directed by those Rules. No costs.

18. Petition allowed.