

(2016) 08 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition Nos. 8118 and 8119 of 2012 (S-KAT)

Dhanalakshmi S.K

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Government Servants (Seniority) Rules, 1957 — Rule 4
Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 — Section 4

Citation : (2017) 2 KantLJ 503

Hon'ble Judges : Jayant Patel and B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : Sri M.R. Rajagopal and Sri H.N. Basavaraju, Advocates, for the Petitioners; Sri H.T. Narendra Prasad, Additional Government Advocate, for the Respondent Nos. 1-5; Sri B.B. Bajentri, Advocate, for the Caveator/Respondent No. 6

Final Decision : Dismissed

Judgement

B. Sreenivase Gowda, J.—These writ petitions are directed against the order dated 23-1-2012 passed in Application No. 5167 of 2009 by the Karnataka Administrative Tribunal (hereinafter referred to as "Tribunal") whereby the Tribunal has allowed the application filed by respondent no. 6 and directed as under:

- (i) Rankings of respondents no. 6 and 7 assigned at SI. Nos. 146 and 151 and the ranking assigned to the applicant at SI. No. 190 in final gradation list of Superintendents in Notification No. EST/13/ECS.11/2007-08, dated 24-8-2009 (Annexure-A10) issued by the second respondent, are hereby quashed;
- (ii) The seniority of the applicant in the final seniority list in the cadre of Superintendents (Annexure-A6) shall be restored taking into consideration her promotion to the cadre of Superintendent as 8-1-2002;

(iii) The respondents no. 6 and 7 shall be given rankings based on their promotions on 7-7-2005 and 30-10-2006 respectively;

(iv) The revised gradation list of Superintendents shall be published within two months from today after following the directions contained in clauses (i) to (iii) above;

(v) Promotions given to the respondents no. 6 and 7 to the cadre of Co-operative Development Officers in Notification No. VERNACULAR MATTER 2009 dated 12-10-2009 (Annexure-All) are hereby quashed. However, they will be entitled to claim promotion to the said cadre based on the revised gradation list that may be published taking into consideration their actual date of promotion to the cadre of Superintendents;

(vi) The claim of the applicant for promotion to the cadre of Co-operative Development Officer with effect from 12-10-2009 be considered within three months from today and if she is found fit shall be promoted from the date her junior in the revised seniority list of Superintendents was promoted. She will be entitled to all consequential benefits.

2. Heard Sri M.R. Rajgopal, learned Counsel appearing for the petitioners, Sri H.T. Narendra Prasad, learned AGA appearing for respondents no. 1 to 5 and Sri B.B. Bajentri, learned Counsel appearing for the contesting private respondent no. 6 and also perused the impugned order passed by the Tribunal.

3. Sri M.R. Rajgopal, learned Counsel appearing for the petitioners submits, petitioners having been appointed as stenographers earlier to respondent no. 6, they are seniors to her in the cadre of Stenographer. As there are no rules regulating the deputation of stenographers to work in the cadre of FDA for a period of not less than one year which is one of the qualifications to become eligible for promotion to the next higher cadre of Superintendent, respondent no. 6 was deputed to work in the cadre of FDA from her division earlier to the petitioners to acquire the requisite qualification and promoted to the cadre of Superintendent earlier to the petitioners.

Learned Counsel submits, due to lapse on the part of respondent no. 1-department in not deputing the petitioners to work in the cadre of FDA, they could not acquire the qualification required for promotion to the post of Superintendent earlier to respondent no. 6. Consequently, respondent no. 6 was promoted to the cadre of Superintendent earlier to the petitioners.

Learned Counsel submits, if date of initial entry into service as stenographer is taken into consideration, the petitioners are seniors to respondent no. 6. Therefore, respondent no. 2 realising the mistake crept in the final seniority list of the cadre of Superintendent dated 3-1-2006 prepared for the period from 1-1-1998 to 31-12-2004, revised the earlier final seniority lists of the cadre of Superintendent dated 19-10-1998 and 3-1-2006 and published a comprehensive provisional seniority list of the said cadre on 4-8-2007 inciting objections from

the concerned persons. As no objections were received from anybody including M.R. Manohar and respondent no. 6, it was finalised and final seniority list of the said cadre was published on 7-7-2008. However, the Tribunal on an earlier occasion in Application Nos. 5739 and 5750 of 2008 filed by one M.R. Manohar and respondent no. 6 respectively set aside the final seniority list of the cadre of Superintendent dated 7-7-2008 and directed respondent no. 2 to treat the said list as provisional list and redo the same after inviting objections from the persons who are likely to be affected. Accordingly, respondent no. 2 treated the final seniority list of the cadre of Superintendent dated 7-7-2008 as provisional seniority list and invited objections from the concerned persons and published the final seniority list of the said cadre on 24-8-2009. He submits, the Tribunal without considering the background of the matter has committed an error in setting aside the final seniority list dated 24-8-2009 and directing the official respondents to restore the seniority of respondent no. 6 by considering her promotion in the cadre of Superintendent as 8-1-2002 and that of petitioners 1 and 2 as 7-7-2005 and 30-10-2006 respectively.

Learned Counsel submits, the decision of the Tribunal is contrary to the Karnataka Government Servants' (Seniority) Rules, 1957 and Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 and to the decision of the Hon'ble Apex Court in the case of Mohan Dutt Sharma v. Chief Justice, Punjab and Haryana High Court, AIR 1997 SC 3094.

With the above grounds and relying upon the decision cited above, he prays for allowing the petitions as prayed for.

4. Per contra, Sri B.B. Bajentri, learned Counsel appearing for respondent no. 6 submits, admittedly respondent no. 6 was promoted to the cadre of Superintendent on 8-1-2002. Whereas petitioners were promoted to the said cadre on 7-7-2005 and 30-10-2006 respectively and that entry of respondent no. 6 to the cadre of Superintendent is three to four years earlier to the petitioners. Considering this, the Tribunal was justified in setting aside the final gradation list of the cadre of Superintendent dated 24-8-2009 and directing the official respondents to restore the seniority of the applicant (respondent 6 herein) in the final seniority list of the cadre of Superintendent taking into consideration of her promotion to the said cadre as 8-1-2002 and to assign the seniority of the petitioners based on their promotion on 7-7-2005 and 30-10-2006 respectively.

Learned Counsel submits, respondent no. 2 has committed a grave error in promoting the petitioners to the cadre of Superintendent from the date when they have not even borne in the said cadre and postponing the promotion of respondent no. 6 from 2001-2002 to 2005-2006. Considering the above illegality committed by respondent no. 2, the Tribunal was justified in setting aside the final seniority list of the cadre of Superintendent dated 24-8-2009 and directing the official respondents to correct the seniority of the petitioners and respondent no. 6. As such, there is no illegality or infirmity in the order of the Tribunal warranting interference of this Court and he prays for dismissal of the writ

petitions.

5. Though official respondents tried to defend the final seniority list of the cadre of the Superintendent dated 24-8-2009 before the Tribunal in Application No. 5167 of 2009 filed by respondent no. 6, but after the Tribunal allowed the application and set aside the seniority list dated 24-8-2009, they did not choose to carry the matter further and thereby they accepted the order and kept silent in the matter.

6. After hearing the learned Counsel appearing for the parties and perusing the impugned order passed by the Tribunal, the point that arises for consideration is:

"Whether the order passed by the Tribunal in allowing the application filed by respondent no. 6 and setting aside the final seniority list of the cadre of the Superintendent dated 24-8-2009 at Annexure-U is sustainable in law?"

7. Petitioners 1 and 2 and respondent no. 6 joined for service as stenographers in the Department of Co-operation, Government of Karnataka on 18-11-1995, 30-9-1995 and 21-11-1995 respectively.

8. As per Karnataka Co-operative Services (Recruitment) Rules, 1960 (hereinafter referred to as "Rules") produced at Annexure-R1 along with the statement of objections of respondent no. 6, the next higher cadre to the cadre of Stenographer is "Superintendent". Method of recruitment and minimum qualification prescribed for the cadre of Superintendent are as under:

(a) Eighty per cent by promotion from the cadre of First Division Assistant; and

(b) Twenty per cent by promotion from the cadre of stenographer. In the case of stenographer with which we are concerned with, one must have worked as First Division Assistant (for short, "FDA") for a period of not less than one year in addition to five years of service as stenographer:

Provided that, if candidates who have put in the minimum qualifying service are not available, candidates who have put in three years of service may be considered.

9. The Joint Registrar of Co-operative Society, Belgaum, within whose jurisdiction respondent no. 6 was working as stenographer at the relevant point of time, by order dated 22-12-1999 deputed respondent no. 6 to work in the cadre of FDA to facilitate her to acquire the qualification required for promotion to the next higher cadre of Superintendent. Accordingly, respondent no. 6 had worked in the cadre of FDA from 22-12-1999 to 15-6-2001 as evident from Annexure-C. Whereas petitioners 1 and 2 were deputed to work in the cadre of FDA on 8-3-2001 and 18-12-2001 respectively as evident from Annexures-T3 and T4 respectively.

10. As respondent no. 6 had acquired the requisite qualifications and become eligible for promotion to the post of Superintendent, she was promoted to the cadre of Superintendent temporarily on 8-1-2002 as evident from Annexure-D

and her name is figured at SI. No. 35.

11. As seen from Annexure-E, dated 4-8-2005, respondent no. 2-the Registrar of Co-operative Societies by notification dated 19-10-1998 had published the final gradation list of the cadre of Superintendent for the period from 18-7-1989 to 31-12-1997 and by notification dated 4-8-2005 at Annexure-E, published the provisional seniority list of the cadre of Superintendent for the period from 1-1-1998 to 31-12-2004 existed as on 1-1-2005. It is mentioned in Annexure-E that the list has included all those persons who were promoted to the cadre of Superintendent between 1-1-1998 to 31-12-2004. In that list, name of respondent no. 6 was figured at SI. No. 61.

12. Respondent no. 2 having not received any objections to the provisional seniority list at Annexure-E had finalised the list and published the final seniority list of the cadre of Superintendent on 3-1-2006 as per Annexure-F. The name of respondent no. 6 was figured at SI. No. 61 as appeared in the provisional seniority list.

13. We may record that names of petitioners did not find place either in the provisional or in the final gradation list of the cadre of Superintendent prepared for the period from 1-1-1998 to 31-12-2004 existed as on 1-1-2005 for the simple reason that they were not promoted to the cadre of Superintendent between 1-1-1998 to 31-12-2004.

14. We may also record that petitioners did not choose to file objections to the provisional seniority list of the cadre of Superintendent at Annexure-E nor they chose to challenge the final seniority list of the cadre of Superintendent published at Annexure-F, nor they challenged the promotion given to respondent no. 6 to the cadre of Superintendent on 8-1-2002. In spite of that, respondent no. 2 by notification dated 3-1-2006 at Annexure-G published the final seniority list of the cadre of Stenographer existed as on 1-1-2005 showing the names of petitioners 1 and 2 at SI. Nos. 10 and 11 and name of respondent no. 6 at SI. No. 12 and thereafter, respondent no. 2 revised the promotion list of those persons who were promoted to the cadre of Superintendent for the period from 1-1-1998 to 31-12-2006 and by notification dated 7-8-2007 published the provisional seniority list of the cadre of the Superintendent showing the seniority of the petitioners at SI. Nos. 175 and 189 and respondent no. 6 at SI. No. 150. As seniority of respondent no. 6 was placed above the petitioners and her seniority was not affected, she did not file objections to the said provisional list. respondent no. 2 without considering the above aspect of the matter and the fact that he has no power to revive the earlier finalised seniority lists of the cadre of Superintendent, by notification dated 7-7-2008 at Annexure-H published the revised final seniority list of the cadre of Superintendent showing the seniority of the petitioners at SI. Nos. 146 and 151 and pushed down the seniority of respondent no. 6 to SI. No. 190 and seniority of one M.R. Manohar to SI. No. 176 without giving them an opportunity of hearing as to why their seniority should not be altered or modified. By doing so, respondent no. 2 has unsettled

the settled seniority of the cadre of the Superintendent contrary to the judgment of the Hon"ble Apex Court in the case of State of Bihar and Others v. Akhouri Sachindra Nath and Others, 1991 Supp. (1) SCC 334 wherein it has been held as under:

"It is well-settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others."

15. One M.R. Manohar who was similarly placed like that of respondent no. 6 and respondent no. 6 aggrieved by the final seniority list of the cadre of Superintendent dated 7-7-2008 published at Annexure-H, challenged the same by preferring applications in Application Nos. 5739 and 5750 of 2008 before the Tribunal. The Tribunal by placing reliance on the decision of the Supreme Court in the case of Union of India and Another v. P.K. Roy and Others, AIR 1968 SC 850 has taken the view that when a person could not file any objections to the provisional list because of a particular ranking, he shall have to be heard in case his ranking is to be affected by the final list, when he is to be pushed down in the list and for the reasons stated in its order dated 26-6-2009 allowed the applications as under:

(i) Applications are allowed.

(ii) The impugned seniority list dated 7-7-2008 pertaining to the cadre of Superintendents is ordered to be treated as provisional seniority list. The official respondents shall call for objections from the persons who are likely to be affected within thirty days from today and thereafter within two months the list shall be finalised.

16. Accordingly, respondent no. 2 treated the final seniority list of the cadre of Superintendent dated 7-7-2008 as provisional seniority list of the cadre of Superintendent and published the same on 6-7-2009 inviting objections from the concerned persons, pursuant to which M.R. Manohar and respondent no. 6 had filed their objections contending that since they were promoted from the cadre of stenographer to the cadre of Superintendent much earlier to that of the petitioners 1 and 2, their seniority should be determined from the date of their promotion i.e., 18-6-2001 and 8-1-2002 respectively. However, respondent no. 2 without considering that M.R. Manohar and respondent no. 6 were promoted to the cadre of Superintendent on 18-6-2001 and 8-1-2002 respectively much earlier to the petitioners who were promoted to the said cadre on 7-7-2005 and 30-10-2006 respectively, rejected the objections filed by M.R. Manohar and respondent no. 6 and by notification dated 24-8-2009 at Annexure-K published the final seniority list of the cadre of the Superintendent as per Annexure-K1 showing the seniority of the petitioners 1 and 2 at SI. Nos. 146 and 151 respectively and pushing down the seniority of M.R. Manohar and respondent no. 6 to SI. Nos. 176 and 190 respectively. In the meanwhile, respondent no. 2 by notification dated 12-10-2009 at Annexure-L promoted petitioners, M.R. Manohar and respondent no. 6 to the next higher cadre of Co-operative Development

Officers showing petitioners above M.R. Manohar and respondent no. 6 in the said cadre. Respondent no. 6 aggrieved by the final seniority list of the cadre of Superintendent published at Annexures-K and K1 and her promotion to the next cadre of CDO showing her below the rank of the petitioners challenged the same by preferring an application in Application No. 5167 of 2009 before the Tribunal. The Tribunal by impugned order and for the reasons stated therein allowed the application and set aside the final seniority list of the cadre of Superintendent dated 24-8-2009 at Annexures-K and K1 and directed the official respondents to restore the seniority of respondent no. 6 in the final seniority list in the cadre of Superintendent taking into consideration of her promotion to the said cadre as 8-1-2002 and assign the seniority of the petitioners based on their promotion on 7-7-2005 and 30-10-2006 respectively.

17. As admitted by the petitioners themselves M.R. Manohar and respondent no. 6 had acquired the qualification required for promotion to the post of Superintendent earlier to the petitioners and they were promoted to the cadre of Superintendent on 18-6-2001 and 8-1-2002 respectively. Whereas petitioners were promoted to the said cadre on 7-7-2005 and 30-10-2006 almost 3 to 4 years after the promotion of M.R. Manohar and respondent no. 6. Thus, entry of M.R. Manohar and respondent no. 6 to the cadre of Superintendent is 3 to 4 years earlier to the petitioners. As on the date M.R. Manohar and respondent no. 6 entered into the cadre of Superintendent, the petitioners were not borne in the said cadre and they were borne in the cadre of Superintendent for the first time on 7-7-2005 and 30-10-2006 respectively. As seen from Annexure-E, respondent no. 2 had published the final seniority list of the cadre of Superintendent in the Department of Co-operation, Government of Karnataka on 19-10-1998 for the period from 18-7-1989 to 31-12-1997 and by notification at Annexure-E, he published the provisional seniority list of the cadre of Superintendent for the period from 1-1-1998 to 31-12-2004 comprising of those persons who were promoted to the said cadre between 1-1-1998 to 31-12-2004 and respondent no. 6 was shown in the said list at SI. No. 61. No one including the petitioners had filed any objections to the provisional seniority list of the cadre of Superintendent at Annexure-E. Therefore, it was finalised and final seniority list of the cadre of Superintendent was published on 3-1-2006 showing the name of M.R. Manohar and respondent no. 6 at SI. Nos. 26 and 61 respectively. Copies of the provisional and final seniority list of the cadre of Superintendent were published in the notice boards kept at all the Divisional Offices of the Joint Registrars of Co-operative Societies, at all the Offices of the Deputy Registrars Co-operative Societies at District level and at all the Offices of the Assistant Registrars of Co-operative Societies at sub-divisional level as could be seen from Annexures-E and F in order to enable the concerned persons to file objections if any. As such, there is no merit in the contention of the petitioners that they were not aware of the promotions of respondent no. 6 and M.R. Manohar to the cadre of Superintendent on 8-1-2002 and 18-6-2001 respectively and publication of the provisional and final seniority lists of the cadre of Superintendent at Annexures-E

and F respectively. Petitioners neither chose to file objections to the provisional seniority list at Annexure-E, nor challenged the final gradation list at Annexure-F, nor they challenged the promotions of M.R. Manohar and respondent no. 6 to the cadre of Superintendent effected on 18-6-2001 and 8-1-2002 respectively. In spite of that, respondent no. 2 has committed an error in revising the promotional lists of the cadre of Superintendent for the period from 1-1-1998 to 31-12-2006 and from 12-7-1998 to 31-12-2006 and published the revised final seniority list of the said cadre on 4-8-2007 as evident from Annexure-H and as referred in paras 6 and 7 of the order of the KAT produced at Annexure-J. As in the list at Annexure-H, names of M.R. Manohar and respondent no. 6 were shown above the rank of the petitioners and they were not affected by the same, they did not choose to file objections to the said provisional seniority list of the cadre of Superintendent published on 4-8-2007. respondent no. 2 finalised the said provisional list and published the final revised seniority list of the cadre of Superintendent on 7-7-2008 at Annexure-H solely on the ground that no one has filed objections to the provisional list. respondent no. 2 even after coming to know that the final revised seniority list dated 7-7-2008 alters the seniority of M.R. Manohar and respondent no. 6 failed to give an opportunity of hearing to those affected persons including M.R. Manohar and respondent no. 6 as to why their seniority should not be altered. Considering this aspect of the matter, the Tribunal on an earlier occasion rightly allowed the applications filed by M.R. Manohar and respondent no. 6 in Application Nos. 5739 and 5750 of 2008 and set aside the final seniority list of the cadre of Superintendent dated 7-7-2008 and directed the official respondents to treat the final seniority list of the cadre of Superintendent dated 7-7-2008 as provisional list and redo the list after providing opportunity to the concerned persons. Accordingly, the official respondents treated the final seniority list dated 7-7-2008 as provisional list and published it on 6-7-2009 inviting objections from the concerned persons, pursuant to which M.R. Manohar and respondent no. 6 filed their objections pointing out that as they were not aggrieved by the revised provisional seniority list of the cadre of the Superintendent dated 4-8-2007, they did not file objection and further pointed out that they entered the cadre of Superintendent 3 to 4 years earlier to the petitioners and when they were promoted to the cadre of Superintendent, petitioners were not even borne in the said cadre and requested to set right the error crept in the revised provisional seniority list of the cadre of Superintendent dated 6-7-2009. However, respondent no. 2 has repeated the same mistake by publishing the revised final seniority list of the cadre of Superintendent on 24-8-2009 showing the names of the petitioners above M.R. Manohar and respondent no. 6. Considering the above aspect of the matter, the Tribunal by impugned order and for the reasons stated at paras 10 and 11 has rightly allowed the application filed by respondent no. 6 and directed the official respondents to restore the seniority of respondent no. 6 in the final seniority list in the cadre of Superintendent considering her promotion to the said cadre as 8-1-2002 and assign the seniority of the petitioners based on their promotion on 7-7-2005 and 30-10-2006 respectively.

18. The Hon"ble Apex Court in the case of Uttaranchal Forest Rangers" Association (Direct Recruit) and Others v. State of Uttar Pradesh and Others, (2006) 10 SCC 346, has held as under:

"C. Service Law - Seniority - Determination of seniority-Retrospective seniority - To promotee from a date when he had not even been borne in the cadre - Held, cannot be given, particularly when that would adversely affect seniority of direct recruits appointed in the meantime."

19. In the case of H.S. Vankani and Others v. State of Gujarat and Others, (2010) 4 SCC 301 the Hon"ble Apex Court has held as under:

"B. Service Law - Seniority - Finality - Seniority once settled should not be unsettled at the instance of juniors in service."

20. The revised final seniority list of the cadre of Superintendent dated 24-8-2009 published by respondent no. 2-Registrar of Co-operative Societies is contrary to the law laid down in the aforesaid judgments of the Hon"ble Apex Court. Therefore, the Tribunal was justified in allowing the application of respondent no. 6 and setting aside the said revised final seniority list of the cadre of Superintendent dated 24-8-2009. Further, the decision of the Tribunal is not contrary to the Karnataka Government Servants" (Seniority) Rules, 1957 and Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 and to the decision of the Hon"ble Apex Court in the case of Mohan Diitt Sharma v. Chief Justice, Punjab and Haryana High Court reported in AIR 1997 SC 3094, as contended by the learned Counsel for the petitioners.

21. The point formulated for consideration is answered accordingly.

22. The writ petitions deserve to be dismissed. However, considering the facts, we find that, as the interim order was granted by this Court pending the writ petitions and is continued until the final disposal of the present proceedings, the same will be required to be vacated but, it is observed that, as a result of the present judgment read with the judgment of the Tribunal, when the effect is to be given regarding seniority of the respective petitioners, it may result into alteration of their seniority and consequently, they may be required to be pushed down in the matter of relevant date of promotional post or otherwise. All such aspects will be required to be done by the Competent Authority but suffice it to observe that since pending the proceedings, the petitioners had worked on the post in question, if by way of the implementation of the order of the Tribunal read with the judgment of this Court, the recovery of difference of remuneration is required to be made, the same shall not be made from petitioners until the date of the present judgment.

23. Hence, subject to the aforesaid observation and direction, the petitions are dismissed.

24. No order as to costs.