

(1997) 03 SC CK 0169

In the Supreme Court Of India

Case No : Civil Appeal No's. 2710-15 of 1997

Dr S.C.V. Reddy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1997) 4 JT 575 : (1997) 3 SCALE 503 : (1997) 4 SCC 337 : (1997) 3 SCR 397

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : D.D. Thakur, V. Laxminarayan, Rakhi Ray, Bina Gupta and T. Sudha, for the Appellant; S.R. Bhat, K.K. Tyagi, K.R. Nagaraja and P. Mahale, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted. We have heard learned Counsel on both sides.
2. These appeals by special leave arise from the order of the Karnataka Administrative Tribunal, Bangalore Bench, made on January 24, 1996 in Application Nos. 1405 & 1564 of 1992 and batch.
3. The admitted position is that the Governor, in exercise of the power under proviso to Article 309 of the Constitution has constituted, for the first time, the Mysore Agricultural State Service Cadre. Therein, Class II posts consist of Assistant Directors, District Agricultural Officers, Cotton Development Officers, Horticultural Development Officer, Senior Assistant of Research Section, Professors-Class II, Superintendents of Agricultural Research Stations and Agronomists and Assistant Soil Conservation Officers and Apiarist. The method of recruitment from different sources has been prescribed by the rules called Mysore Agricultural Department Service (Recruitment) Rules, 1961 issued by the Governor in exercise of the power under proviso to Article 309 of the Constitution which came into effect from September 26, 1961. Therein, 25% posts of

Assistant Directors are reserved for direct recruitment and 75% for promotees from Extension Officers (Agriculture). The method of direct recruitment has been provided in column 3. Similarly, 50% posts of Senior Assistant of Research Sections & Professors Class-II are reserved for by direct recruitment and 50% by promotion of Scientific Assistants, Equally, for Superintendents of Agricultural Research Stations and Agronomists, 50% is by direct recruitment and 50% is by promotion from the cadre of Agricultural Extension Officers and Scientific Assistants. For the posts of Assistant Soil Conservation Officers, 33-1/3% is by direct recruitment and 66-2/3% by promotion from the post of Extension Officer (Agriculture) N.E.S. Blocks who have undergone training in Soil Conservation. For Apiarist, by direct recruitment or by promotion of Research and Teaching Assistants in Entomology who have undergone training in Agriculture for which is no quota. Subsequently, these designations of the officers have been changed by the proceedings as a result of the Mysore Pay Commission report of 1968. The redesignated posts have come into effect from September 23, 1970. As many as 31 categories of posts have been enumerated with re-designations in Class II posts. Subsequently, the question of inter-se seniority cropped up at different stages and pursuant to the directions issued by the Tribunal also. In exercise of the power by the Governor by Notification dated March 11, 1992, the Government have issued seniority list working out the respective ratio between the direct recruitment and the promotees, as enumerated in Annexure I to the Notification. Clause 1 read as under:

The C & R Rules of Agriculture Department came into effect on 26.9.1961 and subsequently superseded by Notification No. AF 39 ADO 72(h), dated 18th August, 1976 which came into effect from 26th August 1976. It was herein provided for recruitment to the cadre of Agriculture Officers to the extent of 50% by promotion and 50% by Direct Recruitment. However, the said 1976 Rules have been amended vide Notification No. AAH 161 ADO 77, dated 8.9.1978 altering the ratio to 25% by direct recruitment and 75% by promotion. Therefore, quota for direct recruitment and promotion during the periods from 26.9.1961 to 25.8.1976 and 26.8.1976 to 7.9.1978 is taken at 1 : 1 respectively and at 1 : 4 from 8.9.1978 onwards.

Clause 5 says:

Vacancies occurred and their regular utilisation for direct recruitment and promotion has been taken into account while computing vacancies.

In Clause 6 it is stated that:

interest seniority between direct recruitment and promotion in the block period is determined based on length of continuous officiation.

Clause 9 says:

A gradation list of Assistant Agriculture Officers as on 28.9.1961 was published by the Director of Agriculture on 5th January 1979. Subsequently another

rectified gradation list published on 16th January 1989 has been set aside by the Government in G.O. No. AHD 45 AGP 89, dated 19th June 1990 and consequently the list dated 5.1.1979 stands restored and has been taken into consideration while preparing the gradation list of Agriculture Officers as on 1.1.1989.

4. Clause 11 postulates the existence of various vacancies required to be filled up by direct recruitment and by promotion, as enumerated therein.

The vacancies utilised have been re-worked and quotas fixed. The Block-wise vacancies and quotas for direct recruitment and promotions are as under:

5. On the basis thereof, in paragraph 12 it is stated that as against the quota of 456 for direct recruitment, 35 have been utilised and 421 vacancies have been carried forward. In paragraph 13, it is stated that as against the quota of 770 for promotees, 1195 promotions have been effected including ISS lists. Thereby, 420 promoted persons have been occupying the posts reserved for direct recruitment in excess of their quota.

6. The question, therefore, is what is that ratio in which the inter se seniority required to be determined and the posts filled up. As stated earlier, from 1961 to 1976, the promotion in the existing vacancies between direct recruits and the promotees had to be given as per the respective ratio which, for the first time, was charged for Class II posts by proceedings of the year 1976. The Notification was issued on August 18, 1976 which became effective from August 26, 1976. Therein, the ratio was 50% for direct recruitment and 50% for promotees. Subsequently, it was again changed into 25% and 75% w.e.f. 8.9.1978 with which we are not concerned. We are concerned only with the vacancies that were required to be apportioned between direct recruits and the promotees between 1961 to 1976. The Tribunal in the order has held that it is "no-rule period". In view of the above position, the conclusion reached by the Tribunal that there was no rule in operation between direct recruit and promotees during that period in question is obviously incorrect.

7. Shri S.R. Bhat, learned Counsel for the respondents, sought to support the impugned order on the ground that only a few out 31 categories, enumerated later, contain the specific enumeration done 1961 Rules and, therefore, the Tribunal was right in its conclusion that no ratio was in operation between the direct recruit and the promotees in the respective posts during no rule period. We are unable to agree with his contention. It is not his case that posts were abolished and new posts have been created. It is seen that previously existing posts were designated by giving new nomenclatures to various posts. Under these circumstances, merely because nomenclature have been changed those posts do not stand abolished. It would be obvious that the posts were existing and on that premise the Government worked out the existing posts and apportioned them between the direct recruitment and the promotees on the basis of the percentage prescribed at the relevant time. Under these

circumstances, we are of the view that the Tribunal was incorrect in its conclusion that there was no rule operating during that period for reservation of the direct recruit and the promotees in the proportion enumerated hereinbefore. The Government is, therefore, directed to work out the proportion of the posts, in the ratios, as indicated earlier, between the direct recruit and the promotees and then determine the inter se seniority on that basis, within a period of six months from the date of receipt of the order.

8. The appeals are, accordingly allowed. No costs.