
(2006) 08 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 54385 of 2003

G. Siddalingaiah

APPELLANT

Vs

Sudha Devi S. J. and Others

RESPONDENT

Date of Decision : 14-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 KAR CK 0065

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Suresh S. Joshi, for the Appellant; V. Prakash, for Respondents 1 to 5 and T.P. Rajendrakumar Sungay, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.

The petitioner had joined the services of the fifth respondent University as a Typist with effect from 24.1.1974 in a clear vacancy. The petitioner by virtue of seniority and qualification was promoted as a Stenographer on 27.4.1984. This promotion was subject to the condition that the petitioner would qualify passing in Senior Shorthand English and Kannada within a period of two years namely 27.4.1984. This condition was extended by a further period of one year from 26.4.1985. The petitioner's seniority was maintained in the cadre of Stenographer and he was ultimately confirmed in the post of Stenographer with effect from 27.11.1984 by virtue of an order passed on 4.8.1986, This was in accordance with the statute 30.3(b) of the sixth respondent University. The confirmation was after taking into consideration the seniority, experience, qualification of the petitioner and other employees along with him. The petitioner had passed all Departmental Examinations and was eligible to be so confirmed. The petitioner was promoted to work as Assistant in the University in terms of a letter dated 7.10.1993. In the meanwhile, one Puttaswamy who was Junior to the petitioner was also promoted as Stenographer subject to a condition that he

should qualify by passing the English Shorthand Examination within one year as per Statute 25.2, by virtue of a letter dated 14.6.1985. But the said Puttaswamy who was promoted as a Stenographer, subject to the condition as aforesaid, was not confirmed by the University authorities. The University issued a seniority list in respect of stenographers as on 1.1.1986. This was dated 20.3.1986. The name of the petitioner was to be found at serial No. 2 and the name of the above said Puttaswamy at serial No. 16 and all others were shown from 13 to 20 as juniors to the petitioner. There was no objection to the seniority list and the ranking thereof. Yet again a provisional seniority list was published as on 24.6.1991. The petitioner was ranked at serial No. 10 and the said Puttaswamy was ranked at serial No. 14 and one Virupaksha at serial No. 13 and all others were shown below the petitioner upto serial No. 25. Though there were no objections to the said seniority list, the University published one more provisional seniority list showing the ranking as on 1.1.1986 and the petitioner's name was found at serial No. 13, Virupaksha at serial No. 14, Puttaswamy at No. 15, Sudha Devi at No. 16, Suvarna at serial No. 17, S. Seetha at serial No. 18 and Gayathri at No. 19. It is the petitioner's case that all the respondents in this petition were ranked below and shown as juniors to the petitioner. The University published a final seniority list pertaining to the cadre of Stenographers and this list was published with the ranking as on 1.1.1986. An official memorandum was issued on 30.1.1997. Therefore the petitioner's name was consistently found as senior to the respondents including Virupaksh and Puttaswamy. The petitioner was placed in independent Charge of the next higher post as was the practice with effect from 15.7.1987 as Senior Assistant. He was thereafter placed in independent charge of the post of Superintendent by an order dated 24.3.2001. The functioning of the petitioner and promotion of the petitioner to the next higher post as Stenographer, Assistant, Senior Assistant and Superintendent were never challenged by any person except Puttaswamy. Puttaswamy had challenged the rank of the petitioner in the seniority list on the ground that Puttaswamy had qualified as Stenographer earlier to the petitioner. The said writ petition in Writ Petition No. 15343/1992 was disposed of by this Court by an order dated 7.4.1999 whereby the University was directed to consider the representation of Puttaswamy and decide the ranking as between the petitioner and Puttaswamy. The University had, pursuant to the said order, published a modified seniority list on 27.7.1999 and by virtue of which the petitioner was ranked at serial No. 15 and Puttaswamy at serial No. 14 and respondent Nos. 1 to 5 were shown at serial Nos. 15 to 20 below the petitioner. No objections were filed to this seniority list nor was it challenged and was in operation. However it transpires that respondents 1 to 3 and 5 had filed a writ petition in Writ Petition Nos. 36822-26/2001 where it was alleged that their case for seniority had not been considered by the University. The petition was disposed of without entering upon the merits of the claim while directing respondent No. 6 to consider the case of the petitioners therein. The petitioner was not a party to the said proceedings and on a representation of the said persons, the University prepared yet another seniority list in terms of which the petitioner was clearly eliminated from the list.

It is at this point of time that the petitioner gave a representation to contend that his name has been unreasonably deleted without any basis from the list of Stenographers which was consistently maintained from the year 1986. Though the petitioner's representation was followed with a legal notice, the respondents did not take any action on the claim of the petitioner to have issued a final seniority list on 18.12.2003 in which the petitioner's name is not to be found. It is this which is under challenge.

2. The Counsel for the petitioner would argue that the final seniority list at Annexure T is without jurisdiction and without authority of law and contrary to the University Statutes and against the principles of natural justice. The promotion to the post of Stenographers is governed by the amendments issued to the Statute from time to time. The appointment and promotion to the post of Stenographers of the University is published in the Schedule 25.2. and there is provision whereby the University has to fill the post of Stenographer by promotion from the cadre of typist who has put in five years of service and the person who is qualified as typist has to pass senior short hand within a period of one year and the University may extend the period in deserving cases by more than one year and accordingly the time for passing senior short hand was extended in the case of the petitioner and the petitioner having passed the same he was qualified in all respects and the petitioner has been confirmed in the post of Stenographer retrospectively with effect from 27.4.1984. On the other hand, the respondents 1 to 5 were appointed according to a resolution of the syndicate and since they were recruited through the Employment Exchange, their services came to be regularised with effect from 1.6.1985 and it is clear from the order recognising their services that they would have no claim for retrospective benefits of any kind. Hence it cannot be in dispute that they were regularly appointed from 1.6.1985 and if the petitioner's claim as on 27.4.1984 is taken into account, the petitioner having been regularly appointed from the said date, it cannot be said that the respondents could have claimed any seniority whatsoever nor could it be said that the seniority list as on 1.1.1986 which was consistently adopted for over 16 years could not be modified at the behest of respondents 1 to 5. The ranking of the petitioner was approved and accepted by all concerned for all these years and there was no action or reason for the respondent No. 6 nor did the respondent No. 6 have any authority to change the said seniority list. The tampering in the year 2003 without notifying the ranking of the petitioner and without giving opportunity to the petitioner was wholly unreasonably and in violation of the principles of natural justice. The respondents 1 to 5 being temporarily appointed as Stenographers and their appointment having been regularised only from 1.6.1985 whereas the petitioner was a confirmed employee from the year 1984 would afford no ground for tampering the said seniority list which was in force for over 16 years. In this regard, he would place reliance on a judgment of the Supreme Court in case of B.S. Bajwa and Anr. v. State of Punjab and Ors. reported in 1998(1) SLR 461 where the name of the appellant and one another were shown in the gradation list issued

with reference to the dates of joining from 1971 to 1972. However in the year 1984 Bajwa and the other had filed a writ petition before the High Court claiming a much earlier date of appointment in the Department. The petition was allowed and the aggrieved persons whose seniority was claimed had approached the Division Bench. The Division Bench having allowed the appeal, the aggrieved appellant was before the Supreme Court. The Supreme Court held that the undisputed facts appearing from the record were sufficient to dismiss the writ petition on the ground of laches because the grievance made by the appellant were only in the year 1984 which was long after they entered the Department in the year 1971-72. They were all along having been treated junior to other persons, the rights inters had crystallized which ought not to have been reopened after lapse of such a long period and at every stage were to the knowledge of the appellant and the other, and the Supreme Court held that in service matters the question of seniority should not be reopened in such circumstances after a lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. When there is inordinate delay for such a grievance, there should be reason to decline under Article 226 of the Constitution.

3. Per contra the Counsel for respondents 1 to 5 would vehemently contest this petition and submit that as per the statutes of the Bangalore University post of Stenographers has to be filled up as follows: 66 2/3% by direct recruitment and 33 1/3% by promotion from the cadre of typists. Respondents 1 to 5 were appointed as Stenographers considering them as local candidates in terms of order dated 17.8.1981 and 1.4.1982 and their services were regularised by an order dated 4.7.1985 with effect from 4.7.1985. The petitioner who was initially appointed as a Typist on 24.1.1974 was promoted as Stenographer on 27.4.1984 and admittedly the petitioner was qualified for promotion only upon his having passed the examination in May 1986. The petitioner being aggrieved by the seniority list as on 22.7.1989 approached this Court and as stated by the petitioner the respondent University having been directed to consider the case of the petitioner, the University has accordingly taken into account the fact that the petitioner had passed the qualifying examination only in the month of May 1986 and therefore his name is correctly shown in the list under challenge. He would submit that the petition deserves to fail on this very contention and since the services of the respondents were regularised even before the petitioner obtained the required qualification, there was no room for consideration of the case of the petitioner and this Court having found in the writ petition filed by the said Puttaswamy referred to herein above, this Court has taken judicial notice of the fact that petitioner not having obtained the necessary qualification vis-a-vis Puttaswamy insofar as his seniority was considered over and above that of Puttaswamy. By the same token of reasoning the respondents who had been regularised even before the petitioner obtained required qualification did not entitle the petitioner to claim seniority over the respondents. In this regard he would place reliance on the judgment in the case of S.P. Badrinath Vs. Govt. of

A.P. and Others etc. etc., wherein the appellant who was appointed in the year 1984 as a Junior Assistant under the respondent and he having been promoted as Senior Assistant subject to passing the Accounts test within a period of two years and the appellant having passed the examination after the expiry of the said period in respect of the same having been promoted to the post of Senior Assistant on 12.12.1989 and having been further promoted as Superintendent, the Court held that the above passing of the examination would be the date relevant for the purpose of reckoning the seniority of the employees concerned vis-a-vis the other employees and hence he would not be entitled to be shown as senior to the respondents. The Counsel would submit that this judgment would apply on all fours to the present case since the statutes clearly prescribe at 25.4 that no one shall be considered eligible for appointment until he acquires the qualification prescribed for the post in question. The petitioner's seniority could not be reckoned from 27.4.1984 since he did not possess the qualification as on that date and it was only subsequently, much after the respondents' services were regularised, that he obtained the qualification and therefore the seniority of the respondents should prevail over that of petitioner.

4. By way of reply counsel for the petitioner would point out that the respondents services were regularised with effect from 1.6.1985 and they were entitled to regular pay only from that date. There was no retrospective effect insofar as their services were concerned whereas the petitioner was regularly appointed in the year 1984 itself and the length of service would have to be counted from the date of his appointment. The fact that he had passed the examination by virtue of the University having granted time and extended time did not by itself render the respondents to claim seniority over and above the petitioner only by virtue of the fact that he obtained necessary qualifications subsequent to regularisation of the services of the respondents. Secondly the long lapse of time in the respondents seeking to challenge the seniority of the petitioner and this Court having addressed the merits of the claim, the respondent No. 6 had acted without any basis and in violation of principles of law in having tampered with the seniority list which had remained in force without any challenge for over 16 years and he would reiterate that the respondent No. 6 was precluded from disturbing the settled position and if the present petition is not allowed it would result in illegal action of respondent No. 6 being sustained.

5. On these rival contentions the sequence of events not being in serious dispute the contention of the respondents that they claimed seniority over the petitioner by virtue of their services having been regularised much before the petitioner attained qualification cannot be sustained. The second contention that by virtue of this Court having taken a view insofar as the petition filed by Puttaswamy is concerned should apply to the respondents as well is also not tenable for the respondents cannot claim to stand on the same footing as Puttaswamy since he was a regularly appointed employee and who had qualification for promotion much earlier to the petitioner and therefore the contention that the petitioner was not qualified for promotion unless he possessed the necessary qualification

is subject to the condition that respondent No. 6 University did have a discretion to provide extended time within which such qualification could be obtained and upon such qualification having been obtained and retrospective effect being given to such a qualification to the benefit of the petitioner again would not render the seniority list prepared earlier incorrect or which required correction by the impugned list. Therefore the writ petition is allowed. Annexures- T and U are quashed. The respondent No. 6 University is directed to include the name of the petitioner which would be considered with the seniority list that was prepared subsequent to the petition of Puttaswamy having been allowed by this Court and the above said respondents 1 to 5 in this petition.