

(1977) 10 KAR CK 0004
In the Karnataka High Court
Case No : WP. 3427 of 1973

Gurushanthappa M. Others

APPELLANT

Vs

Director of Agricultural and Others

RESPONDENT

Date of Decision : 14-10-1977

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1977) 2 KarLJ 440

Hon'ble Judges : Jagannatha Shetty, J

Judgement

1. The petitioners, In in number, are all graduates in agriculture and and they was directly recruited as Agricultural Demonstrators, Grade I, since designated as Assistant Agricultural Officers or Agricultural Extension Officers Respondents 3 to 72 were recurred as Agricultural Demonstrators or Inspectors, Grade II. On 20th October, 1973, the Director of Agriculture prepared and published a common gradation list of the petitioners and respondents 3 to 72, giving them seniority from the date of entry into service. The petitioners in this petition under Art. 226 of the Constitution, haw challenged the validity of the said list on the ground, among others, that it is arbitrary and violative of the fundamental rights guaranteed under Arts. 14 and 16(1) of the Constitution.

2. In order to appreciate the contentions it is necessary to state a few more facts.

Before the Reorganisation of States, the Govt of the former State of Mysore created two grades of Agricultural Inspectors: One tor graduates in the Grade of Rs. 100-8-140-10-200, called Grade I; and another for non-graduates, that is, Diploma holders in the grade of Rs.55-150, termed as Grade II. The first order regulating the recruitment of these grades was made by the Govt of His Highness the Maharaja of Mysore. It was dt.21st Sept, 1949. It prescribed a certain ratio for direct recruitment to Grade I and promotion to that cadre from Grade II. The next G.O. concerned with the matter was made by the Govt of Mysore on 22nd August, 1951. It directed that 1/3rd of the vacancies in Grade of Agricultural Inspectors should be reserved for promotion from Grade II Inspectors The

recruitment to these two cadres, Grade I and Grade II went on in accordance with those Govt Orders till the Reorganisation of States and also thereafter upto 26th Sept, 1961. Accordingly, petitioners 1 to 4 were selected by the Public Service Commission as Agricultural Demonstrators, Grade I, in 1958; petitioners 5 to 7 likewise selected in 1959; and petitioners 8 to 15 were selected in 1961. The Director of Agriculture, following the quota reserved for promotion promoted a number of persons from Grade II to Grade I on different dates. He also appointed direct recruits to Grade II after selection by the Public Service Commission.

3. The difference between Grade I and Grade II was not only found in the matter of recruitment, but also maintained in all the revision of pay scales up to 1961. In the revision of pay scales of 1957 promulgated by the Governor of Mysore, it was provided as follows:

(1) Agricultural Demonstrators, Grade I Agricultural Graduates Rs. 100-8-140-10-250.

(2) Agricultural Demonstrators, Grade II (Inspectors) (L.Ags.) Rs.75-5-90-6-150-10-180.

It was only in 1961 pay revision, a uniform pay scale of Rs. 150-400 was extended to Agricultural Demonstrators. That perhaps was due to the fact that the Cadre and Recruitment Rules, 1961, of the Agricultural Department, which came into force on 26th Sept, 1961, did not provide for promotion from Grade II to Grade I. Under the Cadre and Recruitment Rules, both these Grades were eligible for promotion to Class II Cadre.

4. The necessity, therefore, arose for preparing a common gradation list of the officials belonging to these two grades. In this process, the Director of Agriculture was said to have reported to the Govt that there were no uniform rules of recruitment in the Dept of Agriculture from 1st Nov, 1956 up to the promulgation of the Cadre and Recruitment Rules, and therefore, the appointments made by him to the cadre of Agricultural Demonstrators Agricultural Extension Officers Assistant Agricultural Officers possessing L.Ag., Diploma should be approved. The Govt accordingly made an order dt. 24th Nov, 1972, according post-facto approval to the recruitment made by the Director of Agriculture to the said order. On 29th Nov, 1972, the Secretary to the Govt, Agriculture and Interest Department, wrote to the Director of Agriculture that the Agricultural Demonstrators Agricultural Extension Officers appointed in the new State of Mysore between 1st November, 1956 to 26th Sept, 1961, whether from Agricultural Diploma holders or Graduate constituted a common cadre though they had different pay scales, and therefore all those officials should be brought in one gradation list by giving them seniority from the date of their appointments, irrespective of the fact whether they were in fact appointed to Grade I or Grade II. The Secretary also directed that that seniority list so prepared, should be followed for further promotion.

5. It may be relevant to state in this context that prior to the aforesaid direction from the Govt, the Director had prepared separate gradation lists for officials belonging to Grade I and Grade II, treating Gr.I as superior cadre. In supersession of all those gradation lists, the Director, in obedience to the direction of the Govt, prepared a provisional common gradation list and circulated the same among the concerned officials inviting their objections, if any. The gradation list was prepared giving Grade I and Grade II officials seniority from the date of entry into service. The result was that some of the petitioners were ranked below to some of the respondents and became juniors to Gr.II Officials. The petitioners strongly objected against the preparation of the common gradation list; but overruling the objections, the Director prepared a final gradation list and published the same in his Official Memorandum dt.20th Oct, 1973 (Ext."M") which is impugned herein. This gradation list was as on 26th Sept, 1961 the date on which the Cadre and Recruitment Rules of the Department came into force.

6. Before I refer to the contentions urged for the petitioners, it will be necessary to refer to the relevant portion of the statement of objections filed on behalf of respondents 1 and 2. In para-9 thereunder, it was stated

"There were no Recruitment Rules framed in between 1-11-56 and 26-9-61 to govern the recruitment to the posts of Agricultural Demonstrators. The State Govt has not issued any orders either classifying the posts of Agricultural Demonstrators Grade I and II or indicating the method and manner of recruitment. The State Govt did not issue any instructions during the said period to maintain separate seniority list for Demonstrator Grades I and II as was in vogue in the former State of Mysore prior to 1-11-56. The Rules prevailing prior to 1-11-56 in any integrated area cannot be applied for recruitment made subsequent to 1-11-56. Between 1-11-56 & 26-9-1961, recruitments appointments to the cadre of Agricultural Demonstrators Agricultural Extension Officers were made by candidates selected through the Public Service Commission on requisition of the Director of Agriculture and also by transfer of graduates and Gramsevaks initially recruited in C and D Dept. In addition to this, some local candidates were also appointed to the cadre of Agricultural Graduates and Diploma Holders by the Director of Agriculture and he promoted some persons from the II Grade Agricultural Demonstrators. The services of local candidates were regularised by the Director of Agriculture as per G.O. dt.20-3-60 and 22-9-61. The Director of Agriculture while making these appointments as Grade I and II Agricultural Demonstrators and presumably followed the principles indicated in the Pay Rules of 1957 and 1961. Though there was no mention of Grade I and II in the 1961 pay Rules, he had taken the pay scales to treat the appointment as Grade I and II Demonstrators and he had also been influenced by the practice prevailing in the Old Mysore in regard to the recruitment to the Cadre of Agricultural inspectors. But, it is submitted that there is absolutely no sanction or authority for making appointments as Grade I and II Agricultural Demonstrators in between the period from 1-11-56 and 26-9-61....."

In paragraph 12 it was stated:

"In the meanwhile, certain L.Ag. Officials who were appointed to the cadre of Agricultural Demonstrators and who have been included in the Agricultural Demonstrators-Grade II made representations to the State Government to treat them on par with Agricultural Graduates and to prepare a common seniority list for the Agricultural Demonstrators. The State Govt called for the reports regarding appointments made in between 1-11-56 and 26-9-61 to the cadre of Demonstrators and on receipt of the reports, the State Govt considered the representations and also considered all aspects on a thorough examination of the matter. In the absence of Cadre and Recruitment Rules during the period from 1-11-56 to 26-9-61 and considering that there is no justification or basis to treat two separate grades of Agricultural Demonstrators for Graduates and Diploma Holders when the incumbents discharge the same duties, functions and responsibilities, except for the difference of pay and except where the statutes require appointment of agricultural Graduates, the State Govt decided to treat the Diploma Holders in Agriculture on par with the Agricultural Graduates in their order dt.24-11-72, the State Govt accorded sanction to the action of the Director of Agriculture in appointing candidates possessing L.Ag. Diploma also to the posts in the category of Agricultural Extension Officers Asst Agricultural Officers during the period from 1-11-56 to 26-9-61 as a special case. By this order, the State Govt did not recognise the Agricultural Demonstrators Grade I and II, but considered as one grade or cadre of Agricultural Demonstrators Agricultural Extension Officers. The State Govt in their letter No.AF 146 AEN 71 dt.29th Nov, 1962 addressed to the Director of Agriculture stated that both L.Ags. and Agricultural Graduates appointed in the case of Agricultural Demonstrators Agricultural Extension Officers between 1-11-56 to 26-9-61 constituted a common cadre and that both L.Ags. and Graduates are discharging the same functions with the same responsibility and the only distinction was in their pay scale though they were taken in Govt service as Agricultural Demonstrators AEO Grade I and II. The Director of Agriculture was asked to prepare a common inter-se gradation list of all posts 1956 entrants who were appointed as Agricultural Demonstrators/AEOs Grade I or II, strictly accordingly to their dates of regular appointment having regard to the Rules of Seniority and Orders passed by the Govt in respect of regularisation of local candidates and the order issued in 1958 and 1960 about the absorption of Gramsevakas and Agricultural Demonstrators AEOs in the Department of Agriculture....."

From the above contentions, the following three points emerge for consideration: (i) that the recruitment made in Grade I and Grade II Agricultural Demonstrators Agricultural Extension Officers in the new Mysore State between 1st Nov, 1956 to 26th Sept, 1961 was without the authority of law; (ii) Grade I could not be treated superior to Gr.II in the absence of specific orders from the Govt; and (iii) the nature of duties and responsibilities of Grade I and Grade II officials were almost common although their pay scales were different.

In my view, there is no substance in any one of these points. Respondents 1 and 2 appear to have overlooked the basic difference that existed between Grade I and Grade II, not only in the matter of recruitment, but also on the then existing law. It must be remembered that prior to Reorganisation of States and also upto 1961, till the Cadre and Recruitment Rules came into force, Grade II Agricultural Demonstrators were eligible for promotion to Grade I, a fact of which has been specifically admitted before me by Sri K.S. Puttaswamy learned High Court Govt Advocate. He also admitted that there was no recruitment of Diploma Holders to Grade I Agricultural Demonstrators before the Cadre and Recruitment Rules came into force. Grade I was exclusively reserved for Graduates and Gr.II was likewise reserved only for Diploma Holders. The two Grades carried different pay scales right-upto 1961. On these admitted positions, I fail to understand how these two grades could be merged into one by giving them seniority by the length of service or date of entry into service. A common seniority list could be prepared for the officiate belonging to the common grade or cadre. Even if there should be one far two different grades for the purpose of further promotion to common cadre, the service rendered in the lower cadre should not as a rule be equated with the service rendered in the higher cadre. Therefore, when Grade II officials were eligible for promotion to Grade I, it will be illegal to take into consideration their length of service in Grade II while preparing a common gradation list of Grades I and II.

7. It is not correct to contend that despite the difference in the pay scales and qualification prescribed for Grade I and Grade II before the Cadre and Recruitment Rules came into force, the nature of duties of these two categories of posts remained the same. The assumption of the Govt in this regard is contrary to the decision of the Central Govt under S. 115 of the States Reorganisation Act. The final Inter-State Seniority List of Agricultural Demonstrators of the Dept of Agriculture has been published by Notification dt. 25th June, 1976, (published in the Karnataka Gazette dt. 3rd July, 1976). The statement showing the equation of posts as decided by the Government of India is as follows:

"Statement showing the Equation of posts as decided by the Government of India.

Group "A" Group "B"

Agricultural Inspectors Gr. I and other posts in the scale of Rs. 100-200 from Mysore. Agricultural Inspectors Gr. II and other posts in the scale of Rs. 55-150 from Mysore.

Agricultural Officers Grade I and other posts in scale of Rs. 210-300 from Bombay. Agricultural Demonstrators and other posts in the scale of Rs. 80-220 from Coorg.

Agricultural Officers Grade II and other posts in scale of Rs. 80-200 from Bombay. Agricultural Officers and other posts of Rs. 160-330, Rs. 100-300, Rs.

100-250, Rs. 140-250, Rs. 120-220, Rs. 100-250, Rs. 150 fixed and Rs. 100-200 from Coorg.

Agricultural Assistants and other posts in the scale of Rs. 176-300 from Hyderabad. Agricultural Demonstrators and other posts in the scale of Rs. 100-200 from Madras. Agricultural Assistants and other posts in the scale of Rs. 150-210 from Hyderabad.

It is seen therefrom that Grade I Agricultural Inspector of the old Mysore have been equated with Grade I Agricultural Officers of Bombay and placed under Group "A", whereas Grade II Agricultural Inspectors of old Mysore have been equated to different posts of the other integrating areas and placed under a separate class called Group "B". In the seniority list, Group "A" has been placed above Group "B", that means Grade I has been accepted as superior in rank to Grade II Officials. This decision of the Central Govt was based on the consideration of four relevant factors out of which the duties and responsibilities of the posts was one. The said decision of the Central Govt is binding on the State Govt and therefore it would be impermissible for the State Govt to hold that the duties and responsibilities of Grade I and Grade II were not different.

8. It is also not correct to contend that there was no legal sanction for recruitment to Grade I and Grade II from 1956 upto 26th Sept, 1961. The order of the Govt of His Highness the Maharaja of Mysore dated 21st Sept, 1949, regulated the recruitment to two different grades. The order dt. 21st August, 1951, made by the Govt of Mysore also regulated the recruitment to the said grades providing that 1/3rd of the vacancies in the Grade I Inspectors should be reserved for promotion of Grade II Inspectors. the first order made by the Govt of His Highness the Maharaja of Mysore had statutory force and sanctity of law. The second order made by the State Govt may be an executive order, but nevertheless it regulated the recruitment to Grade I and Grade II. The State, in the absence of statutory Rules framed under the proviso to Art. 309 of the Constitution could regulate the recruitment by executive orders, subject to affording equality of opportunity to all persona in the matter of employment, although the State cannot make any executive order inconsistent with or contrary to statutory rules. Therefore, the recruitment to Grade I and Grade II made during the period from 1st Nov, 1956 to 26th Sep, 1961, was valid and in accordance with the then existing law.

9. I cannot, however, agree with the petitioners contention that there should be two seniority lists, one for Grade II Agricultural Demonstrators/Agricultural Extension Officers, and another for Grade I Agricultural Officers even after 26th Sep, 1961. Since the Cadre and Recruitment Rules provided one avenue for promotion for both these Grades, it will be proper for the Department to prepare one seniority list for these two grades. But case must be taken not to equate the length of service rendered in Grade II with the service rendered in Grade I. If a Grade II Official had been promoted to Grade I, his service in the common seniority list, should be counted only from the date of his promotion to Grade I.

It Grade II persons have not been promoted, they must naturally be ranked below all Grade I Officials. If these two principles are followed in the preparation of gradation list, then the petitioners can have no grievance.

But the impugned gradation list has not been prepared on these lines. That is why the petitioners have been seriously prejudiced and their right to further promotion has been greatly affected, contrary to the protection guaranteed to them under Articles 14 & 16(1) of the Constitution.

10. In the result, the rule is made absolute, the ranking assigned to the petitioners and respondents 3 to 72 in the impugned gradation list Ext."M" are quashed with liberty to respondents 1 and 2 to prepare a fresh gradation list in accordance with law and in the light of the observations made in this order.

The petitioners are entitled to their costs. Advocate's fee Rs. 100.