
(1971) 09 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 6572 of 1969

Mohammed Ali Tahir and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 01-09-1971

Acts Referred:

Constitution of India, 1950 — Article 226
States Reorganisation Act, 1956 — Section 117

Citation : (1972) 1 LLJ 406 : (1971) 2 MysLJ 396

Hon'ble Judges : M.S. Nesargi, J;A. Narayana Pai, J

Bench : Division Bench

Judgement

Per A. Narayana Pai, C.J.—This is a petition under Art. 226 by two officers of the Public Works Department, allottees from the erstwhile State of Mysore to new State of Mysore under the States Reorganisation Act, praying for the issue of appropriate writs for the quashing of the equation of posts made for purposes of integration falling within the category of Junior Engineers and for re-doing the same in accordance with law.

2. The final inter-State seniority list dated the 26th of December, 1968 incorporating the impugned equation sets out the same at the end as category II. In the said category are set out the several posts which are equated for purposes of integrating service personal coming from different integrating areas and setting their inter-State seniority. The posts listed as equated are the following :

"Supervisor, Mysore (Rs. 116-200), Sub-Engineer, Mysore (Rs. 150-200), Overseer, Mysore (Rs. 100-150), Graduate Overseer, Bombay (Rs. 140-270), Permanent and Temporary Non-graduate Overseer, Bombay (Rs. 80-270), Graduate and Non-graduate Supervisor, Hyderabad (Rs. 176-300 and Rs. 140-300), Junior Engineer, Madras (Rs. 150-250), Non-graduate Supervisor, Madras (Rs. 100-250), Graduate Section Officer, Coorg (Rs. 140-250) and Non-graduate Section Officer, Coorg (Rs. 100-250)."

The nature and the limits of judicial review in matters of this nature are explained in the judgment of this Court in the case of *Dharmaraj v. Union of India* (1970) 2 Mys. L.J. 184. It is pointed out therein that equation of posts has to be done on the basis of four principles formulated by the meeting of Chief Secretaries which have been issued in the form of directions under S. 117 of the States Reorganisation Act. Those principles are :

"that in determining the equation of posts the factors to be borne in mind are :

- (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officers holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post :
- (iv) the salary of the post."

What the Court pointed out in the said decision is that the integrating authority - the Central Government - should apply its mind to the necessity of applying the four principles to the determination of equation of posts, that the decision must be arrived at on an application of all the four principles and not one or more of them to the exclusion of others, and that no irrelevant considerations, i.e., considerations other than those falling within the scope of the four principles, are permitted to operate. As the Central Government acts upon the advice of a committee called the advisory committee constituted for the said purpose, the investigation by a Court is directed towards the question whether there is, in the report of the advisory committee, on which the Central Government has acted, sufficient evidence of the application of the mind to the circumstances and the principles mentioned above.

3. The counsel on behalf of the Central Government and the State Government, have placed before us the relevant proceedings of the advisory committee. Before referring to the same, it is necessary to make a brief reference to certain previous decisions of this Court bearing upon the controversy now before us.

4. Briefly stated the position in the case of officers with whom we are now concerned was that, whereas in the erstwhile State of Bombay, there was a single seniority list of graduates as well as non-graduates, in the other integrating areas, viz., Mysore, Madras, Hyderabad and Coorg, the graduates were placed in a list distinct and different from the list of non-graduates and the graduates were always treated as of superior status and, therefore, in a senior or higher category. There was also clear and large difference between the promotional opportunities of graduates and those of non-graduates.

5. In the earlier stages of preparation of inter-State seniority lists after the reorganisation of States as on 1-11-56, what were called preliminary or draft lists were prepared by different departments. Those were called departmental lists. Later, the State Government, under the instructions of the Central

Government, used to publish what was called a provisional inter-State seniority list. In the earliest of the lists or departmental lists, the distinction between graduates and non-graduates was maintained or indicated; and in accordance with the pattern which prevailed in all the integrating areas other than Bombay, the allottees from Bombay were divided into two categories - those of graduates going into the graduates' categories of other integrating areas and non-graduates going into the non-graduates' categories of other integrating areas.

6. One Narayana Murthy, who was a non-graduate allottee from Bombay, filed W.P. No. 1431 of 1961 questioning the said splitting of the combined cadre of graduates and non-graduate overseers of Bombay. The Court accepted his grievance to be warranted and quashed the relevant notification of the State Government to the extent it operated to bring about a division in the cadre of overseers from the Bombay area, and directed that "the State Government will make a fresh equation as may be necessary, on an appropriate and valid basis and in accordance with such directions as the Government of India might have issued in the matter".

7. The order of this Court is reported (1965) 1 Mys. L.J. 435

8. In W.P. No. 2439 of 1963 filed by temporary non-graduate overseers from Bombay area and W.P. No. 68 of 1965 filed by non-graduate supervisors of Madras, the previous decision was referred to and followed. Similar order was made in W.P. No. 2399 of 1963 filed by four non-graduate supervisors from Hyderabad.

9. It was, however, pointed out in effect that the ultimate decision must be taken by the Central Government as the integrating authority having, under the State Reorganisation Act, exclusive jurisdiction of integrating services under S. 115 of the said Act.

10. Graduates of old Mysore sought review of all these orders on the ground that they had not been made parties to the said writ petitions and had not been heard before orders adverse to their interests were made in the said writ petitions.

11. In the petition filed for review of the order in W.P. No. 2399 of 1963, a preliminary order was made recalling the previous order and directing further proceedings thereon.

12. In other cases, however, review was refused on the ground that the petitioner (in the review petition) cannot be regarded as a necessary party to the previous writ petitions. In one of the orders dated the 27th of June, 1969, the Court has stated that in petitions raising questions relating to equations for the purposes of inter-State seniority list, only the State Government, which was acting under the directions of the Central Government for the purpose, would be a necessary party, and proceeded to observe as follows :

"We are told that the Central Government has since published the final inter-State seniority list of junior Engineers. If the petitioner is aggrieved by the rank

assigned to him therein, it is open to him to challenge the same in appropriate proceedings and if necessary, substantiate therein the law as stated in W.Ps. 1431/61 and 63/1965 (to which he was not a party) is not correct."

13. The last observation makes it perfectly clear that what the Court has stated or may state with reference to a provisional list is not so completely binding and final as to prevent a departure therefrom for good grounds at the time of finalising the inter-State seniority list. We might also point out that in an earlier decision of a Bench of this Court in *Shankar Ganesh Joshi v. State of Mysore* (1962) Mys. L.J. 62, it was pointed out that a provisional inter-State seniority list, prepared whether by the State Government or by any of its departments, was no more than mere material for the integrating authority - the Central Government - in preparing an inter-State seniority list, - that any objection to the said list by persons aggrieved by the equation suggested by it or even a case of departure from binding instructions of the Central Government as the integrating authority, should be presented to the Central Government, that it was not proper for the aggrieved person to approach a High Court under Art. 226, and that it is best for the Court not to interfere at the stage of provisional integration at all.

14. We may now look into the relevant portions of the proceedings of the advisory committee in this case. The proceedings contain a detailed reference to the differences in regard to categorisation of officers in the various integrating areas and then refer to the various writ petitions already mentioned by us above. Ultimately the committee says :

"It can be seen from the above that while in Bombay, Hyderabad and Madras, there was only one common seniority list for two officers holding the post with duties of Supervisors or Overseers, there was separate seniority list for such officer in Mysore based on educational qualifications possessed by the officers. The committee considered whether the pattern in Mysore could be adopted and two lists of Overseers based on educational qualifications of the officers prepared. It considered that such a course of action would not only be open to objection on the ground brought out in the judgment of the High Court and would not also be quite appropriate in the new set up. The Government of every integrating unit did make a distinction between graduates and non-graduates in the matter of promotion to higher cadres. They stipulated certain particularly onerous conditions for the promotion of non-graduates. But, that also could be effected even within the framework of a single seniority list of such officers. The committee, therefore, considered that in respect of the officers in the new set up in Mysore also a single seniority list of all officers holding the post of Overseers and Supervisors by whatever designation they may be called should be prepared."

15. The paragraph cited above contains what may be regarded as the decision of the committee. In the earlier part of the proceedings, as already stated, there is only a summary of facts and the decisions of this Court. There is no reference to

the necessity of applying the four principles before deciding upon the equation of posts nor is there any evidence of the said principles having been applied in coming to the final conclusion that there should be a single list of both graduates and non-graduates. The paragraph cited above also makes it clear that the committee was proceeding upon the footing that what has been stated by this Court in the earlier writ petitions was in the nature of a decision with some finality attached to it, which, for the reasons already indicated by us and already expressed by this Court in earlier cases, is not the correct view to take. We might also point out that the statement in the first sentence in the above extract that there were two lists only in Mysore and not in other integrating areas, is not correct on facts. Both Hyderabad and Madras had separate lists. This fact, however, was not brought to the notice of this Court in the earlier writ petitions, but could not, in our opinion, have been beyond the scope of enquiry or actual knowledge on the part of the Government themselves.

16. For all these reasons, there is no alternative but to hold that the equation now impugned has been arrived at without acting upon and applying the four principles expressly laid down for purposes of equations.

17. But, before making our final order in this case, it is necessary to deal with one matter, viz., the necessity or otherwise of impleading other persons in matters of this nature and the grounds, if any, on which review may be claimed or granted.

18. It is now well-settled in this Court that where the review of a decision in a writ petition is sought by a person, who had not been impleaded therein, he should first establish that he was a necessary party, in the sense that the decision in the previous writ petition affects his interests adversely and that, therefore, it should not have been taken without first giving him an opportunity of being heard, and that if he establishes that position, the previous order should be recalled, new party impleaded and the entire writ petition heard again after giving opportunity to all parties to file further affidavits, if necessary.

19. In cases of this nature where the equation of posts alone in the course of integration is questioned, the limit of judicial review, as already set out in Dharmaraj's case (1970) 2 Mys. L.J. 184, makes it impossible for this Court to come to any final decision on the question of equation, much less a decision adverse to any party. At the preliminary or provisional stage, as already stated, this Court will never interfere with provisional equation. At the final stage, all that this Court can examine is whether the integrating authority has applied its mind to the necessity of applying the four principles and acted upon those principles. If the integrating authority had in fact applied its mind and came to a conclusion on the question of equation after applying those principles, there is no more any jurisdiction for this Court to interfere with that equation. Where this Court finds that there has not been such application of the mind on the part of the integrating authority, all that it can do is to quash the equation and ask the integrating authority to re-do the equation after giving an opportunity to all

person concerned and likely to be affected, of making representations.

20. So far as the final list based on the equation is concerned, the quashing of the equation or even the list itself will not have any immediate effect upon the administration because, as pointed out by this Court in the case of *Kyategowda v. State of Mysore* (1970) 2 Mys. L.J. 407, the final list will continue to be the current list for day-to-day administration until it is replaced by a corrected list. The final corrected list cannot be published until, according to the directions issued in the appropriate writ, all the persons affected are given an opportunity of making representations. Hence, there is no question of any decision adverse to any party being taken without his being given an opportunity of making representations within the framework of the statute.

21. Hence, there is no question of anybody being heard and much less, therefore, entitled to ask for review of decisions in writ petitions of this nature.

22. We, therefore, issue a writ quashing the impugned equation of posts set out as Category No. II in the final inter-State seniority list of Non-Gazette Officers of the Public Works Department in the cadre of Junior Engineers as on 1st November, 1956, published in Notification No. G.A.D. 32 I.N.S. 68 dated 26th December, 1968, in the Mysore Gazette (Extraordinary) dated 30th December, 1968, and directing the Union Government as the integrating authority to re-do the equation after giving an opportunity to the petitioners and all persons likely to be affected by the ultimate decision of the Central Government of making representations.

23. Time nine months.