

(2014) 01 KAR CK 0097

In the Karnataka High Court

Case No : Writ Petition No. 33955 of 2013 (S-RES)

Mrs. Elize Mascarehnas

APPELLANT

Vs

The Principal District and Sessions Judge, District and
Sessions Court

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 2 AKR 217 : (2014) ILR 1033 : (2014) 1 KCCR 717

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Santhosh S. Nagarale, for the Appellant; Rafeeunisa, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner was appointed as a typist in the SDA cadre, on 21.06.1985, in the District and Sessions Court, Kodagu District, Madikeri. Thereafter, on her own request, the petitioner was transferred to Mysore Unit on 29.09.1994. She has reported to duty at Mysore Unit on 17.10.1994. She was promoted in the Mysore Unit, to the cadre of FDA, on 15.11.2010. She having submitted representation for fixation of her seniority, at the appropriate serial number and cadre, in the seniority list and promote to the cadre to which she was entitled to and the requested having been rejected by the District and Sessions Judge, Mysore, on 27.02.2013, feeling aggrieved, this writ petition was filed to quash the said rejection and to direct the respondent to treat her as senior to Smt. Kavery B.R., whose name appears in the common provisional seniority list of FDA and senior typists, working in Mysore Unit, as on 01.03.2013. Sri Santhosh S. Nagarale, learned advocate, contended that the petitioner having, been appointed as "typist" in SDA cadre on 21.06.1985 at Kodagu Unit and upon transfer to Mysore Unit on 29.09.1994, having been promoted as FDA on 15.11.2010, while preparing the seniority list, the length of

service of the petitioner from 21.06.1985 has not been considered and thus, the impugned decision being arbitrary and illegal is liable to be quashed.

2. The point for consideration is, whether the seniority of the petitioner who was transferred on her own request from Kodagu Unit to Mysore Unit should be reckoned from the date of her initial appointment to the post or from the date on which she joined to new District/Unit?

3. In exercise of the power conferred by the proviso to Article 309 of the Constitution of India and in super-session of all existing rules on the subject, the Governor of Karnataka has made the Rules called, the Karnataka Government Servants" (Seniority), Rules, 1957, published in the Karnataka Gazette, dated 20.02.1958, vide Notification No. GAD(OM) 14 GRR 57, dated 07.02.1958. Rule 6 therein, reads as follows:

6. The transfer of a person in public interest from one class or grade of a service to another class or grade carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority; and the seniority of a person so transferred shall be determined with reference to his first appointment to the class or grade from which he was transferred:

Provided that, where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer.

Provided further, that the seniority of a person transferred in public interest vis-?-vis the persons actually holding the post in the Class or Grade to which he is transferred shall be determined on the date of such transfer with reference to his first appointment to the class or grade from which he was transferred.

(emphasis supplied)

4. A perusal of the first proviso of the aforesaid Rule, shows that, if the transfer is made at the request of the officer, then the transferee officer shall be placed at the bottom of the seniority list of the officers borne on the same cadre or grade of service, on or before the date of the transfer.

5. Order No. LCA-II-76/94, Bangalore, dated 29.09.1994, transferring the petitioner from the Unit of Kodagu-Madikeri, to the Unit of Mysore, in the existing vacancy, reads as follows:

Smt. Elize Mascarenhas, Second Division Assistant working in the Court of Civil Judge, Virajpet is transferred from the Unit of Kodagu - Madikeri to the Unit of Mysore in the existing vacancy.

The above official is not entitled for T.A. and joining time, since the transfer is ordered at her own request. The seniority of the official shall be counted in the Unit of Mysore and she shall become junior to junior most Second Division Assistant in the Unit of Mysore from the date of she reports for duty.

(underlined by me)

The condition imposed, extracted supra, has remained unchallenged. Petitioner having voluntarily sought transfer from Kodagu Unit - Madikeri, to Mysore Unit, her seniority in Mysore Unit, if maintained, there may be heartburning to the officers borne in the cadre i.e., in the transferee unit, who were not granted any kind of opportunity of hearing when the request for transfer made by the petitioner was accepted and the order dated 29.09.1994 was issued. The first proviso to the Rule, noticed supra, has been made to the officers, who apply for voluntary transfer from one Unit to another Unit and such transfer can only be ordered by placing the officer concerned at the bottom of the seniority list of the officers serving in the same cadre and category, in the transferee Unit.

6. In the case of A.P. SRTC and Others Vs. V. Veeraiah, , the transfer order passed by the employer clearly indicated that the employee had made an application seeking his transfer due to certain personal problems and taking a sympathetic view, the transfer order was passed, with a condition that the employee's seniority at the new place would be reckoned in the manner stated therein. Employee having questioned and sought relief, the High Court held that the transfer was on account of administrative exigencies or creation of a new division and that, therefore, the employee's seniority should not be affected to his disadvantage. The management having questioned the said order before the Apex Court, finding that pursuant to an application made by the employee, which clearly indicated that he had certain personal problems, and therefore, opted for transfer and the transfer having been allowed taking a sympathetic view of the matter, it was held that the High Court was unjustified in granting the relief. The writ appeal was allowed and the transfer having taken place on request, it was held that the employee is not entitled to relief.

7. In the case of K.P. Sudhakaran and Another Vs. State of Kerala and Others, , in the matter of determination of seniority of an employee transferred to another Department/Unit, on his own request, it has been held as follows:

11. In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his transfer in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre

and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules.

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13. The following facts are not in dispute: (i) the contesting private respondents are transferee LDCs who were transferred from the district in which they were appointed to another district, in the same department on their own request, (ii) the appellants are the existing employees, that is local LDCs of the said department in the district to which the transferee LDCs were transferred, (iii) the transferred LDCs (contesting private respondents) were senior to the appellants with reference to their date of appointment as LDCs. But with reference to the date on which they were transferred to the new district, they will become juniors to the local LDCs (the appellants). When the proviso to Rule 27(a) of the Service Rules is applied, as rightly held by the learned Single Judge and the Division Bench, the seniority of the transferred LDCs has to be reckoned only from the date of their joining duty in the new unit (or district) and they are not entitled to count their service prior to the date of their transfer on their request.

(emphasis supplied)

8. In the case of P. Satyanarayana Rao and Another Vs. S.V.P. Sarvani and Others, , the appellant, a junior assistant, in sub-ordinate office, transferred on his own request, as junior assistant in the office of the Head of the Department - Posts, though bearing same nomenclature were of different categories and prescribed educational qualifications were also different. Appellant's plea that service rendered by him as junior assistant in sub-ordinate office should also be taken into account for seniority in new office i.e., seniority from the date of appointment, was rejected by observing as follows:

5.....Once he makes a request for transfer to the office of Head of Department, then, he must undergo the consequences of such transfer and he cannot claim that his service in the subordinate office must be added to his service in the office of the Head of Department for the purpose of seniority. He will be deemed to have been given a fresh appointment on his joining in the office of the Head of Department for the purposes of seniority, in view of Rule 27(1)(iii) of the Rules.

9. In this case, the petitioner having voluntarily opted for transfer from Kodagu Unit to Mysore Unit, her request was considered and by subjecting her to the condition, that her seniority shall be counted in the Unit of Mysore District and she shall become junior to junior most SDA in the Unit of Mysore from the date she reports for duty, the transfer order dated 29.09.1994 was passed. Petitioner having joined Mysore Unit with open eyes and by accepting the said condition, it is not open to her to claim that for the purpose of reckoning seniority, her service at Kodagu Unit should also be reckoned. The claim being opposed to Rule 6, extracted supra and the settled position of law, the respondent is justified in issuing Annexure-G and rejected the claim.

In view of the above, the writ petition being devoid of merit is rejected.

No costs.