

(1988) 11 KAT CK 0001
In the Karnataka Administrative Tribunal
Case No : Application No. 4017 of 1988

N. Krishnan

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 09-11-1988

Acts Referred:

Citation : (1990) 1 KarLJ 5

Hon'ble Judges : B. N. Garudachar, J;N. D. VenkateshChairman, J

Judgement

N.D. Venkatesh, Chairman-The applicant had joined service in the second respondent-Directorate as a Typist-He has been promoted as a stenographer subject to the condition that he should pass Senior Shorthand Examination within a period of five years as per rules. On the ground he did not fulfill that condition the second respondent-Director, having sought the views of the State Government as found at Annexure A-9 dated 13-12-1978 bearing No. HUD 42 MNT 78 which is a letter of the State Government to the Director, ordered as per Memo at Annexure A-10 dated 11-1-1979 in No. TP/EC2/2318/78-79 reversion of the applicant from the post of Stenographer to his original cadre of Typists with effect from 3-12-1978. However, he was subsequently promoted on 21-12-1981 to the cadre of Stenographers.

2. The request of the official in this proceeding is to declare, ignoring Annexure A-10, which, according to him, is null and void, that he had continued as Stenographer even after his reversion from 13th December 1978 to 21st December 1981-the date on which he had again been promoted.

3. The cause of action for redressal of the applicant's grievance in the matter of his reversion had arisen when that event took place i.e. 13-12-1978. He has approached the Tribunal on 29-9-1988, about ten years later. The Tribunal being of opinion that this application apparently is barred by time and suffers from laches, brought the same to the notice of the Learned Counsel for the applicant. He sought to explain away the same stating that Annexure A-10 and also Annexure A-11 on which it is based, both were null and void, did not deserve to

be taken note of, and therefore, the action which at its very inception was null and void, could not be said to have given rise to any cause of action for redressal for the simple reason that the same does not exist in the eye of law. He pleads that ignoring that event the Tribunal is being requested to grant a declaration as sought for, and to grant such a relief the question of delay would not come in the way.

4. In this connection, while pleading that the decision of the Government and the Director were null and void, the learned counsel places reliance on some decisions of the Karnataka High Court; the same being- (i) B. Prahlad v The Advocate General, Karnataka and Another, Writ Appeal No. 390 of 1974, disposed of on 8-8-1978.

(ii) P. Sadasivan v The State of Mysore and Others, W.P.No. 1187 of 1968, disposed of on 10-7-1972.

(iii) B.M. Chandrakant v The State of Mysore and another, W.P.No. 1660 of 1968, disposed of on 17-7-1972.

(iv) M.V. Seshachalam v The Registrar of Co-Operative Societies in Karnataka and others, W.P.No. 6246 of 1977 and connected cases, disposed of on 21-11-1979.

5. Few more facts be noted.

The Director's Order promoting the applicant as a Stenographer, which is at Annexure A-1 dated 3-12-1971 in No. TP/EST/68/71-72, reads thus:

"No. TP/EST/68/71-72. Office of the Director of Town Planning in Mysore, PWD Office, Bangalore-1 Dated: 3-12-1971

Read:

Letter No. TPRG/EST/500/71-72 dated 19-11-1971 of the Assistant Director of Town Planning, KGF submitting the representation of Sri N. Krishna, Typist for transfer and also for promotion as a Stenographer.

Orders

Sri N. Krishna, Typist, Office of the Assistant Director of Town Planning, K.G.F. is promoted as a Stenographer in the scale of Rs. 130-5-140-8-190-EB-10-260-15-290 subject to condition to pass the Senior Shorthand examination within a period of five years from 29-11-1971 and posted to work in the Office of the Director of Town Planning, Bangalore, against the post of Stenographer caused due to the relief of Sri R.K. Rao from the independent charge of the Stenographer.

The T.A. admissible for the Journey.

Sd/- 2-12-71 Director of Town Planning"

At the time of issuance of Annexure A-1 the relevant rule, known as the Mysore (Karnataka) General Services (Town Planning Department) (Recruitment) Rules, 1966, rules framed under the proviso to Article 309 of the Constitution of India, governing appointment to the cadre of Stenographers in the second respondent-Directorate, reads thus:

"SCHEDULE

Category of posts	Method of recruitment	Minimum qualification & period of probation
-------------------	-----------------------	---

1	2	3
---	---	---

xxx	xxx	
-----	-----	--

Stenographer	66 & 2/3 per cent by direct recruitment as per the Mysore State Civil Services (Recruitment to the post of Stenographers, Junior Stenographers and Typists) Rules, 1966, and 33 1/3 per cent by promotion from the cadre of Typists. For direct recruitment: Probation: One year For promotion: The same qualification as required for direct recruitment.	
--------------	--	--

xxx	xxx	xxx
-----	-----	-----

Note: A Typist who has passed Junior Shorthand examination may be promoted as a Stenographer subject to the condition that should qualify himself by passing the prescribed examination within a period of five years from the date of such promotion, the said period being extended by Government in its discretion in special cases by two more years."

Under the rules 33 ? per cent of the posts of Stenographers were earmarked for promotion from the cadre of Typists.

As provided in the Note to the Cadre and Recruitment Rules "a Typist who has passed Junior Shorthand Examination," such as this official then, could have been promoted as a Stenographer subject to the condition that he gets qualified himself by passing "the prescribed examination within a period of five years from the date of his promotion."

For promotion from the cadre of Typist to the cadre of Stenographers, the qualification prescribed under the rules is "the same qualification as required for direct recruitment." What was the qualification required for direct recruitment? The Rules say that for direct recruitment the same qualification as provided in the Mysore (Karnataka) State Civil Services (Recruitment to the Posts of Stenographers, Junior Stenographers and Typists) Rules, 1966.

What did those rules provide? The said rules, also rules framed under the proviso to Article 309 of the Constitution, provided for direct recruitment to the cadres of Stenographers, Junior Stenographers and Typists. The Mysore (Karnataka) State Civil Services (Recruitment to the Posts of Stenographers, Junior Stenographers and Typists) Rules, 1966, the recruitment was to be by competitive

examinations, and, so far as the academic qualifications of the candidates for being eligible to sit in the competitive examination for recruitment to the cadre of Stenographers were concerned, he should have "passed the SSLC Examination or any other examination recognised by the Government as equivalent thereto, and should have passed the Senior Typewriting and Senior Shorthand examinations conducted by the Government or any other examinations recognised by the Government as equivalent thereto." So also, under the said rules, a candidate for being eligible admission to the competitive examination for recruitment to the cadre of Junior Stenographers, should have "passed the SSLC examination or any other examination recognised by the Government as equivalent thereto and also have passed the Senior Typewriting and Junior Shorthand examinations conducted by the Government or any other examinations recognised by the Government as equivalent thereto.

The said rules also prescribed that a person to be entitled to sit for the competitive examination for the post of English Typist, should have passed the SSLC or equivalent examination and Senior Typewriting examination in English or Junior Typewriting and Junior Shorthand examinations in English.

This applicant who was a Typist had been promoted under Annexure A-1 (already extracted above) as a Stenographer and that order (Annexure A-1) provided that he should pass the Senior Shorthand Examination within a period of five years. Since the applicant was a Typist it necessarily follows that he should have passed the Senior Typewriting Examination. For the post of Stenographer, for direct recruitment, as already stated, the prescribed qualifications were SSLC + pass in Senior Typewriting and Senior Shorthand examinations. Since this Typist had already passed Senior Shorthand examination within the time stipulated in the impugned order.

Senior Shorthand examination, undoubtedly, was one of the examinations prescribed for direct recruitment to the post of Stenographer, and as seen from the Cadre and Recruitment Rules governing appointment to the cadre of Stenographers in this Department, a Typist for being eligible to be promoted should have had the same qualifications as prescribed for direct recruitment to the post and this is clear from the qualifications prescribed in the third column to the rules extracted above, which say that the promotee should possess the same qualification as required for direct recruitment.

In the end, in the Note to the said Cadre and Recruitment Rules, a condition is stipulated, and it says that a Typist who has passed Junior Shorthand examination may be promoted as a Stenographer subject to the condition that he passes the "prescribed examination" within the time stipulated therein.

What do the words "prescribed examination" found in the Note, in the context in which the said term is used, mean? It means the "prescribed examination" for the post of Stenographer and that fact is clear from the very rule to which we have referred to above. The Cadre and Recruitment Rules say that a promotee to

be eligible to be promoted as a Stenographer should have had the very qualifications prescribed for direct recruitment. However, it has been somewhat relaxed in the Note which provides that a Typist could be promoted even though he did not possess the qualification, but subject to the condition that he acquires such qualification within certain period stipulated in the Note.

6. In our humble view, there was nothing wrong in the said rules. The term "prescribed examination" found in the Note has to be understood and construed in the manner stated by us above. Since the rule was dealing with the recruitment to the cadre of Stenographers, which in turn provided for recruitment both directly and by promotion and which also had prescribed certain qualifications, such as Senior Shorthand examination, for being directly appointed, and since the rule provided that the promotee should possess similar qualifications, the rule making authority, as a matter of concession to the Typists, relaxed the rigour of the rule with a condition stipulated in the Note. That power the rule making authority did have, and in the instant case the appointing authority in issuing Annexure A-1 had not exceeded his powers.

7. Now, to refer to the judgments of the Karnataka High Court relied upon by the learned counsel for the applicant in support of his contention that the conditions stipulated in the order of promotion could not have been so stipulated and that his client's reversion on the ground he had not fulfilled that condition, was itself a void one.

Of the four decisions referred to by the learned counsel, we would like to refer to the earliest one for the reason that following that decision or taking into consideration the same the subsequent decisions had followed.

The first one is that of P. Sadasivan. He was a Typist. He had been promoted as a First Grade Stenographer stipulating a similar condition relying upon the Note referred to above. Since he did not fulfill the condition-pass the examination, he was sought to be reverted. Challenging that action it was argued by the learned counsel appearing for Sadasivan, that the rule merely provided that the promoted Typist should pass the prescribed examination; that however, no examination had been validly prescribed by any of the rules framed under the proviso to Article 309 of the Constitution, and therefore it was not competent for the authority to revert his client on the ground he had not passed the prescribed examination (see para-3 of the judgment). On behalf of the respondents, the Government Pleader appears to have argued relying upon some Government Order dated 30-3-1968, that officials such as Typists had to pass certain examinations as directed in the said Government Order. Adverting to the aforesaid rival submissions, the Court observes as under at para 9 in the judgment-

"It has been held by this Court in several cases including the one in the case of H.A. Ramanuja and others v State of Mysore and others, 1971(2) Mys.L.J. 601, that the prescription of departmental examination could only be by a competent

authority and that power has also not been delegated to the Government, the Government Order dated 30-3-1968 cannot be deemed to be as an amendment to the rule requiring the petitioner to pass the examination prescribed therein. Therefore, so far as the category of the officials like the present petitioner is concerned, there is no prescription of examination by the competent authority; with the result that threatening to revert the petitioner on the ground of non-passing of the examination was not possible. In that view of the matter, it is clear that the petitioner is entitled to an order quashing the notice issued by the 3rd respondent."

With great respect we are unable to agree with the aforesaid views of the Court. The prescribed examination referred to in the Note had nothing to do with the Departmental Examinations. The term "prescribed examination", as already stated, has reference only to the examination prescribed for direct recruitment, which in turn was the examination prescribed under the rules for being eligible for a Typist for being considered for promotion as a Stenographer. The understanding of the writ petitioner that he had to pass the prescribed examination, meaning thereby the "prescribed Departmental Examinations", which under the relevant rules are required to be passed to acquire efficiency and quality, was not correct. That argument was sought to be met by the Government counsel relying on a certain Government Order dated 30-3-1968, which according to us, was not at all relevant in the circumstances.

The judgment in B. Prahlad proceeded placing reliance of P. Sadasivan. In the circumstances, with great respect, we are unable to agree with what has been stated in B. Prahlad.

In B.M. Chandrakant also the Court followed the P. Sadasivan. For reasons, as already stated above, with great respect, we are unable to agree with the decision of the High Court in M.V. Seshachalam and others also.

8. Therefore, for reasons stated above, we are not in a position to say that the impugned order of reversion was void-ab-initio. An order can be void-ab-initio only when it has been passed or issued by an authority lacking in inherent powers to pass such an order. It was the appointing authority who had stipulated the condition as to the passing of the Senior Shorthand examination. It was he after due deliberation who took this decision of reversion of this Official since he did not fulfill that condition. The appointing authority, also an authority empowered, for valid reasons can revert a person promoted. It cannot be said that in the instant case the Director lacked any inherent authority. An authority having powers in law to pass an order may pass a wrong order, but that wrong order would not be a nullity or ab-initio void. It can at best be voidable, which means it has to be avoided by taking appropriate steps within the stipulated time or reasonable time. In this view of the matter the challenge to the impugned order about 10 years also, cannot be countenanced and we have no powers even to condone the delay for the reason that the event which had given rise to the complaint that had taken place much earlier to the period of three years

immediately preceding the establishment of this Tribunal which took place on 6-10-1986. In this connection, may see the decision of this Tribunal in S.B. Chikkamath v State of Karnataka, 1988(1) Kar.S.L.J. 101.

9. The application is hopelessly barred by time, and therefore, not admitting the same, we hereby dismiss it.

Application dismissed