

(1964) 06 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 361 of 1961

Padmanabha B.M. and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 18-06-1964

Acts Referred:

Constitution of India, 1950 — Article 16, 226

States Reorganisation Act, 1956 — Section 115 (3), 115 (7), 166 (1)

Citation : (1964) 2 LLJ 433

Hon'ble Judges : K.S. Hegde, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : K.R.D. Karanth, for K. R. Karanth, for the Appellant; G.B. Kulkarni, for B. Venkataswami, Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.-

1. Petitioners, who are allottees to the State of Mysore under Sub-section (3) of S. 115 of the States Reorganization Act. 1956, from the Department of Excise and Prohibition under the Board of Revenue from Madras State, have filed this writ petition under Art. 226 of the Constitution of India, challenging the action of respondent 3, the Commissioner of Excise, who has included the names of the petitioner in the provisional inter-State seniority list of Excise Assistant Inspectors as on 1 November 1956, on the ground that respondent 3, when he prepared and published the inter-State seniority list, was not the head of the department. Though in their petition the petitioners had claimed a large number of distinct and separate reliefs, they restricted their prayer in their affidavit filed on 9 April 1964 to the following two reliefs :

"(i) to declare that the petitioners constitute a separate department, viz., Excise and Prohibition Department, under the Inspector-General of Police who is performing the functions of the "commissioner" under S. 25(a) of the Madras Prohibition Act and quash the provisional inter-State seniority list dated 12 August 1958 prepared by respondent 3 in so far as they relate to the petitioners

as being ultra vires and null and void;

(ii) to direct respondent 1 to give effect to the revised scales of pay to the same extent as those in identical posts with identical time-scales and defined in the Fundamental Rule 9(31) of the Madras Government."

2. In order to appreciate the contentions urged by the learned counsel for the petitioners in support of the petition, it is necessary to set out briefly the undisputed facts appearing on the pleadings of the parties. Petitioners 1 to 3 were sub- inspectors in the Department of Excise and Prohibition under the Madras Board of Revenue, and petitioner 4 was a lower division clerk in the same department, on 31 October 1956, and all of them were allotted to the State of Mysore by the Central Government in exercise of the powers conferred by Sub-section (3) of S. 115 of the States Reorganization Act, 1956. The petitioners, on the date of the formation of the new State of Mysore, were serving in the district of South Kanara. Which was transferred from the State of Madras to the new State of Mysore. Petitioners 1 to 3 are holding the same posts and petitioner 4 was promoted as sub-inspector on 15 May 1957. In the erstwhile Madras State after the introduction of prohibition, the posts of sub-inspectors, petty officers and peons in the Excise Department were abolished and in their place, the posts of sub-inspectors of prohibition, petty officers, and prohibition guards with the time-scales of pay identical to those in the Police Department were created with effect from 1 October 1946 by G.O. No. 1862, Revenue, dated 27 August 1950. The petitioners who were prohibition officers appointed under S. 25(d) of the Madras Prohibition Act, 1937, were performing the duties prescribed by that Act and rules framed thereunder. The head of the department was the Commissioner of Prohibition appointed under S. 25(a) of the Madras Prohibition Act. By G.O. No. 3524. Home, dated 1 December 1954, of the Madras Government, the work of enforcement of prohibition was entirely transferred to the Police Department with effect from 3 January 1955, and the Board of Revenue, Madras, was put in charge of all residuary work connected with prohibition. The residuary work comprised of administration of the Madras Prohibition Act, the Opium Act and the Dangerous Drugs Act, realization of revenue under the said Acts, and the issue and supervision of the several kinds of licence under those Acts. The personnel then in the Department of Excise and Prohibition were divided between the Inspector-General of Police and the Board of Revenue (Excise). Pursuant to the division, some of the personnel went to the Police Department and the rest were retained in the Department of Excise and Prohibition under the control of the Madras Board of Revenue (Excise). It may be also mentioned that the Police Department and the Department of Excise and Prohibition had common pay-scales. The sub-inspectors in the Department of Excise and Prohibition had the same pay-scale as the sub-inspector of Police in the Police Department and the prohibition guards had the same pay- scales as the Police constables. In a number of instances, there was interchange of personnel : sometimes officials from the Department of Excise and Prohibition were transferred to the Police Department and vice versa. Petitioner 2 had worked as sub- inspector of police,

while he was in the Madras State for a period of about eight months. One Sri P. J. Bagilthaya, Inspector, in the Department of Excise and Prohibition, on 31 October, 1956 was a Police Inspector before, and after the formation of the new State, he was promoted and posted as Deputy Superintendent of Police by the Mysore State. Similarly, Sri Shafee Sehammed and Sri B. Kamalkar Shet who were sub-inspectors in the Department of Excise and Prohibition under the Madras Board of Revenue and who were similarly situated as the petitioners 1 to 3, were transferred to the Police Department after the formation of the new State of Mysore, and for the purpose of seniority and pay, their previous service in the Department of Excise and Prohibition was taken into account.

3. Subsequent to 1 November 1956, in the new State of Mysore, the pay-scales in the Department of Police were revised in the years 1957 and 1961 with substantial benefits" to the employees of the department. But no such revision was effected in the Department of Excise and Prohibition. The petitioners" grievance is that while they were in the service of Madras State, there was common pay-scale for the Department of Police and the Department of Excise and Prohibition and in the new State of Mysore, they have not been given the benefit of the revision of pay-scales given to the officials of the Department of Police. This, according to the petitioners, is violative of the guarantee of equality enshrined in Arts. 14 and 16 of the Constitution.

4. The head of the Department of Excise and Prohibition in the Madras State was the "Commissioner" appointed under S. 25(a) of the Madras Prohibition Act, and the Madras Board of Revenue exercise the powers of the Commissioner. Section 122 of the States Reorganization Act empowered the State Government to specify, by a notification, the authority, officer or person who as from the appointed day shall be competent to exercise the functions exercisable under any law in force on that day. In exercise of the powers conferred under S. 122 of the States Reorganization Act, respondent 1, the State of Mysore, has specified the Inspector-General of Police (respondent 2) as the officer who shall be competent to exercise the functions of the Commissioner under the Madras Prohibition Act and the rules, regulations, orders and notifications made or issued thereunder. Therefore, by virtue of the said notification, respondent 2 became the Commissioner under the Madras Prohibition Act and he was the head of the Department of Excise and Prohibition to which the petitioners belong.

5. Consequent on the transfer of service personnel from the different integrating areas of the new state, the problem of integrating the services of the new State arose. The equation of posts and determination of seniority in the integrated cadres were the main problems involved in the integration of services. For ensuring fair and equitable treatment to all service personnel affected by the States Reorganization Act, the Parliament, by enacting Sub-section (5) of S. 115, conferred the power on the Central Government to establish one or more advisory committees for the purpose of assisting it in regard to the division and integration of services among the new States. Sub-section (7) of the same

section afforded protection to the service conditions applicable to such personnel immediately before the appointed day by providing that they shall not be varied to their disadvantage except with the previous approval of the Central Government. The Central Government have constituted an advisory committee for the purpose of integration of service and they have also formulated the principles for equation of posts and determination of inter-State seniority, and the concerned State Government have been instructed to prepare the provisional inter-State seniority lists of each department. The Court, in *M. A. Jaleel v. State of Mysore and others* AIR 1961 Mys. 210, has exhaustively considered the scope of Sub- see. (5) of S. 115 in the matter of integration of services. The power of integration of services, by what is called, the inter- State seniority list, vests in the Central Government as laid down in that decision.

6. In Circular No. R.D. Equ. 57, dated 17 November 1957, the Government of Mysore has issued directions to the heads of departments to prepare the seniority lists of Statewide posts in accordance with the principles formulated by the Central Government. That the posts of the petitioners are Statewide posts and therefore, it is for the head of the concerned department to prepare the provisional departmental seniority list as directed by respondent 1, has not been disputed before us. According to the directions of respondent 1, it was the duty of the Inspector- General of Police (respondent 2) to prepare the provisional departmental seniority lists including that of the Petitioners, but respondent 3, the Commissioner of Excise, who was not the head of the Department of Excise and Prohibition under the Madras Prohibition Act, to which the petitioners belong, by his Official Memorandum No. BI-III-2926 of 57-8, dated 12 August 1958, purported to publish the provisional Inter-State seniority list of Mysore Excise Assistant Inspectors as on 1 November 1956, in which he has included the names of the petitioners 1 to 3 by equating them with the Assistant Inspectors of old Mysore area.

7. The petitioners have objected to their inclusion in the list prepared by respondent 3 as he was not the head of their department. Though under the directions of the Central Government, It is the State Government that has to prepare the provisional Inter-State seniority list, for final consideration together with the representations of the concerned personnel, it has not published any such, list so far, though it is to nearing eight years since the new State came into existence. The complaint of the petitioners is that, pending publication of the inter-State seniority list as determined by the Central Government, postings and promotions are being made on the basis of the provisional inter-State seniority list made by respondent 3. Which he had no jurisdiction to do so for as the petitioners are concerned. Their further complaint is that respondent 2, who was the competent authority to make the departmental list, has failed to do his duty as required under the circular of the Government by including the names of the petitioners in the departmental list prepared by him.

8. The contentions of the Government as set out in Para. 2 of the counter-

affidavit filed by the Headquarters Assistant to the Excise commissioner in Mysore, were that equation of posts and the departmental list Prepared by respondent 3 are not Justiciable under Art. 226 of the Constitution; they also oppose the second relief, namely, that the petitioners are entitled to the revised scales of pay given to the Police Department. The counter-affidavit stated that the petitioners belong to a different cadre of service from the Police Department and therefore, they are not entitled to claim the revised scales of pay given to other departments. The counter-affidavit does not disclose the source of power of respondent 3 to prepare even the departmental provisional inter-State seniority list concerning the petitioners, when respondent 3 was not the head of their department, as notified under S. 122 of the States Reorganization Act. Learned Government Pleader at the hearing submitted that in about the year 1961 there was a further notification constituting respondent 3 as the corresponding authority to the Commissioner under the Madras Prohibition Act. No such notification was produced before us, and there is no averment to that effect in the counter-affidavit, though this case has been pending for more than three years, and the case was adjourned on 7 April 1984 with a specific order that it is necessary that respondent 1 should file a counter-affidavit on or before 13 April 1964. Though the petitioners have specifically stated that respondent 2 was the head of their department being the Commissioner as notified under S. 122 of the States Reorganization Act, and that respondent 3, the Excise Commissioner, had no jurisdiction over the petitioners, the counter-affidavit produced on 10 April 1964 does not traverse the grounds urged by the petitioners that respondent 3 was not the head of their department, and therefore, incompetent to include the names of the petitioners in the departmental list prepared by him on 12 August 1958.

9. This Court, in *Jaleel* case above cited, has observed :

"that the conferment of authority on the Central Government to make the integration did not deprive the Government of the state of its power to consolidate to governmental operations through a transitional reorganization of its administrative structure during the interregnum between the formation of the new State and the amalgamation of the integrant parts of its civil service by the Central Government. and interim classification and equation of Posts, promotions, postings and the like, and the displacement of a Civil servant from the post or office, his continuance in which is guaranteed by S. 166 (1) of the States Reorganization Act, are all matters falling within the scope of the power, provided its exercise does not infringe constitutional guarantees or violate the protection afforded by the proviso appearing under S. 115(7) of the States Reorganization Act."

10. On the authority of the above observations, the learned Government Pleader sought to support the action of respondent 3 on the ground that it is a transitional reorganization. Even the power of transitional reorganization vested in the State is not available to respondent 3 as he was not authorized by

respondent 1 to prepare a provisional inter-State seniority list of officials of, another department. All that he was authorized to do was to prepare a provisional inter-State seniority list of officials of his department. The State has not prepared any provisional inter-State seniority list though it is nearing eight years since the problem of integration of service arose. When even the provisional list has not been published by the State Government so far, and promotions are made and posts are filled on the basis of the departmental list prepared by respondent 3; which he had no authority to do, and the petitioners have genuine grievance against the promotions made on the basis of such an invalid list, which may remain in force for years and the final list approved by the Central Government may not be published until many of the Petitioners retired from service, the objection raised by the learned Government Pleader that the matter is not justiciable, cannot be accepted. The provisional inter-State seniority list prepared by respondent 3 is clearly without authority of law, and it is not disputed that promotions to the posts of Inspectors in the Department of Excise and Prohibition which is the next promotional post available to the petitioners, is made on the basis of the list prepared by respondent 3. In our judgment, the impugned list dated 12 August 1958 published by respondent 3, is without authority of law, and therefore, null and void so far as the petitioners are concerned, and that list cannot be made the basis of Postings and Promotions so far as the Department of Excise and Prohibition in the Madras area of the State until integration of the services is effected in accordance with law.

11. The relief that the petitioners are entitled to the revised scales of pay granted to the Police Department has no legal basis. However just and equitable such a claim may appear. The learned counsel for the petitioners has not been able to support such a claim on the basis of any legal right. The protection afforded to the service personnel affected by S. 115 of the States Reorganization Act to one that is provided by the proviso to Sub-section (7) of S. 115 which only guarantees that the conditions of service applicable immediately before 1 November 1956 shall not be varied to the disadvantage of the service personnel except with the previous approval of the Central Government. It is not the case of the petitioners that their pay- scales have been varied to their disadvantage. On 31 October 1956, they constituted a separate department independent of the Police Department. They are allotted to this State by the Central Government as members of the Excise and Prohibition Department under the Board of Revenue. It might be that in the Madras State, both the departments had the same pay-scales. Learned counsel for the petitioners was unable to show any law which entitled the officials of the Department of Excise and Prohibition to all the revisions subsequently made in pay-scales of the officials in the Police Department. The petitioners have no legal right to claim the revised scales of pay awarded to the officials of the Police Department, and therefore, their second prayer is clearly unsustainable.

12. For the above reasons, we quash the departmental provisional inter-State seniority list of Excise Assistant Inspectors as on 1 November 1956 published by

respondent 3 in his Official Memorandum No. BI-III-2926/57-58, dated 12 August 1958, so far as the petitioners are concerned. Respondent 3 will Pay the Costs of the petitioners. Advocate's fee Re. 100.