

(2017) 04 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6795-6798 of 2014

Palure Bhaskar Rao

APPELLANT

Vs

P. Ramaseshaiah

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Andhra Pradesh Police Service Rules, 1966 — Rule 3

Citation : 2017 AIR(SCW) 1805 : AIR 2017 SC 1805 : (2017) AllSCR 1042 : (2017) 2 JBCJ 371 : (2017) 2 KerLJ 503 : (2017) 2 LawHeraldSC 971 : (2017) LIC 1944 : (2017) 4 Scale 482 : (2017) 2 SCT 842 : (2017) 2 SLJ 128 : (2017) 3 SCR 226 : (2017) 5 SCC 783

Hon'ble Judges : Kurian Joseph, J;R. Banumathi, J

Bench : Division Bench

Advocate : Sudhanshu S. Choudhari, Sridhar Potaraju, D. Abhinav Rao, M. Vijaya Bhaskar, Advocates, for the Appellants; V.V.S. Rao, Sr.Adv., Narender Kumar, Ms. Sujatha Bagadhi, Vijayshree Pattnaik, R. Venkataramani, Sr.Adv., R. Chandra Shekhar Reddy, Biju P Raman, P. Venkat Reddy, Prashant Kr. Tyagi, (For M/s. Venkat Palwai Law Associates), Guntur Prabhakar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Kurian, J.—Seniority versus eligibility, transfer versus appointment by transfer, are the conflicting concepts arising for consideration in this case. The quintessence of the whole dispute centers round interpretation of the Andhra Pradesh Police Subordinate Service Rules and the Andhra Pradesh Police Service Rules.

2. The Andhra Pradesh Police Subordinate Service Rules consist of 7 classes. We are concerned with Class I. Class I consists of the following 7 categories :-

"Categories :

1. Sub-Inspectors of Police

2. Sub-Inspectors of Police (Intelligence)
3. Reserve Sub-Inspectors including the Bandmaster
4. Assistant Sub-Inspectors
5. Assistant Reserve Sub-Inspectors
6. Head Constables (including Band Head Constables, and Reserve Head Constables, in Armourers, Singallers and Motor Transport Drivers.
7. Constables including Band Constables Reserve Constables, Buglers and Bellowboys."

Though the qualifications for appointment and scales of pay for the first three categories of Class I is one and the same, they are not interchangeable.

3. The category I-Sub-Inspectors of Police has later been re-designated as Sub-Inspectors of Police (Civil).

4. Method of appointment to category I Sub-Inspector of Police (Civil), under Rule 2 of the Subordinate Service Rules is done as per Annexure-I to the Rules.

"a) By promotion of HC's upto 30% of cadre

b) PCS, HCS, Police Ministerial staff of sportsmen upto 13% of cadre

c) Direct recruitment upto 50% of cadre.

d) Transfer of RSI's from AR/APSP upto 5% (w.e.f. 02.04.1990 as amended by G.O. Ms. No. 270 Home)

e) Compassionate appointment upto 2%"

As per Annexure-II (2) (9), a Reserve Sub-Inspector shall be eligible for appointment by transfer to the category of Sub-Inspector, after completion of 5 years of service and also subject to the requisite educational qualification prescribed for Sub-Inspector (Civil). Appointment by transfer to the post of Sub-Inspector (Civil) is made by way of selection by the State Level Recruitment Board.

5. The appointment by transfer from Reserve Sub-Inspector to the post of Sub-Inspector (Civil) against 5% reserved quota is optional.

6. Rule 15 of the Subordinate Service Rules deals with the seniority. Rule 15(a) and (c) are relevant which read as follows :-

"Rule 15. Seniority : (a) The seniority of a person in the class or category or grade shall, unless he has been reduced to lower rank as a punishment be determined by the date of his first appointment to such class or category or grade. If any portion of the service of such person does not count towards his probation under the General Rules his seniority shall be determined by the date of commencement of his service which counts towards probation....

XXX XXX XXX

(c) The transfer of a person from one class or category of the service to another class or category 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 person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority."

In view of the statutory provision as above on seniority a Reserve Sub-Inspector selected and appointed as Sub-Inspector (Civil) against 5% quota will be entitled to retain his seniority from the date of his original appointment as Reserve Sub-Inspector of Police.

7. Inspector of Police, the next avenue open to the Sub-Inspector of Police is under the Andhra Pradesh Police Service and selection and appointment is governed by Andhra Pradesh Police Service Rules, 1966. Rule 3 of the A.P. Police Service Rules to the extent relevant, provides :-

"Recruitment by transfer from the Sub-Inspectors of Police categories of Class I in the A.P. Police Subordinate Service Rules shall be made on the grounds of merit and ability, seniority being considered where merit and ability are approximately equal".

A few things are clear, (1) the feeder category for appointment to the post of Inspector of Police under the A.P. Police Service Rules is the Sub-Inspector of Police (Civil) of the A.P. Police Subordinate Service. (2) The method of appointment is recruitment by transfer from the Subordinate Service to the State service. (3) The recruitment by transfer is made on the basis of selection based on merit and ability, seniority being considered where merit and ability are equal.

8. Rule 5 of the A.P. Police Service Rules provides for qualification for appointment to the post of Inspector of Police. The relevant Rule 5(F)(i) reads as follows :-

"Rule 5(F) (i) No Sub-Inspector of Police (Category-I, Class I of Andhra Pradesh Police Subordinate Service) shall be eligible for appointment as Inspector of Police, Category 4, by transfer, unless he has put in a minimum period of service as specified in the table hereunder -

TABLE

S.No.

Sub-Inspector of Police, Category 1, of A.P. Police Subordinate Service

Minimum service required for appointment by transfer as Inspector of Police, Category 4

1.

Sub-Inspector (Direct Recruits)

Six completed years

2.

Sub-Inspectors (Promotees)

Four completed years

3.

Sub-Inspectors (Recruited by transfer)

Six completed years

4.

Sub-Inspectors (Absorbed from Sub-Inspectors of Ex-Prohibition Department)

Four completed years, provided he has put in not less than Two continuous years of service as Sub-Inspector in the ex-Prohibition Dept. or six completed years otherwise"

9. Rule 6(a) of the A.P. Police Service Rules provides for `Probation" which reads :-

"Rule 6. Probation -(a) Every person recruited by transfer or promotion to a category in the service shall be on probation for a total period of one year on duty within a continuous period of two and half years."

The simple issue to be tackled in this case is whether a Reserve Sub-Inspector of Police who is transferred on selection as Sub-Inspector of Police (Civil) in the A.P. Police Subordinate Service when recruited by transfer to A.P. Police Service and appointed as Inspector, should have 6 years of completed service as Sub-Inspector of Police (Civil) or a total service of 6 years including the service as Reserve Sub-Inspector? The Tribunal and the High Court have held that 6 years service required for appointment as Inspector under the A.P. Police Service should be as Sub-Inspector of Police (Civil) and the same does not include the service rendered as Reserve Sub-Inspector. Thus aggrieved, the appellants are before this Court.

10. Heard learned senior counsel and other counsel appearing on behalf of both sides. Though several contentions have been raised, the crux of the arguments is that once seniority is considered from the date of appointment as Reserve Sub-Inspector, since the scales of pay of Reserve Sub-Inspector and Sub-Inspector (Civil) is the same and since both belong to the same class under the A.P. Police Subordinate Service, the Sub-Inspectors selected by transfer and appointed as Sub-Inspectors (Civil) against 5% vacancy and subsequently recruitment by transfer should be allowed to carry the benefit of total service, lest it should also violate Article 14 of the Constitution of India.

11. We find it difficult to appreciate the above submission. A.P. Police Subordinate Service and A.P. Police Service are two distinct and separate services. And though the pay scales of both categories in Class I post of A.P. Police Subordinate Service is one and the same, the posts are not interchangeable. It has been the submission of the State that there is functional difference in the service as well. Be that as it may, the selection to the post of Sub-Inspector (Civil) from Reserve Sub-Inspector is by way of transfer by selection based on merit. Only 5% quota is allocated to the Reserve Sub-Inspectors. Once the Reserve Sub-Inspector comes into the category of Sub-Inspector of Police (Civil), he is entitled to carry his seniority from the date of appointment as Reserve Sub-Inspector and placed accordingly in the seniority list of Sub-Inspectors (Civil). In other words as and when a Reserve Sub-Inspector is selected and appointed by transfer to the post of Sub-Inspector (Civil), though there may be Sub-Inspectors of Police (Civil) already available in that category working for more than 4 years but less than 5 years yet the Reserve Sub-Inspector transferred as Sub-Inspector of Police (Civil) will be placed above those existing Sub-Inspectors of Police recruited from other channels without the benefit of 'carry on' seniority. But that does not mean that on such placement in seniority he will be entitled to claim appointment as Inspector of Police in the A.P. Police Service since under the A.P. Police Service Rules, a Sub-Inspector of Police recruited by transfer should have a minimum service of 6 completed years for appointment by transfer as Inspector of Police. This rule is not under challenge.

12. The learned senior counsel for the appellants made a persuasive attempt placing reliance on minimum service in the case of Sub-Inspectors absorbed from Sub-Inspectors of Ex-Prohibition Department. Under the said category the minimum service required is 4 completed years as Sub-Inspector (Civil) provided such an Inspector has put in not less than 2 continuous years of service as Sub-Inspector in the Ex-Prohibition Department or has completed 6 years otherwise. That will not take the appellants anywhere. What is required in the category of appellants namely, Sub-Inspectors of Police (Civil) recruited by transfer for appointment as Inspectors is 6 completed years of service as Sub-Inspectors and not total service of 6 years including the service as Reserve Sub-Inspectors. The rule as it stands is crystal clear and does not call for any other interpretation.

13. The rule as stands now and having regard to the functional duties of Reserve Sub-Inspector and Sub-Inspector, and in the absence of a challenge set up on discrimination we find it difficult to test the arguments on the tenets of Article 14 of the Constitution of India.

14. Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra category and inter category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer

simplicitor it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.

15. Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter to a different service altogether. Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simplicitor to a similar post in the same cadre results only in change of place of employment and therefore there is no termination of lien, (See :- V. Jagannadha Rao & Ors. v. State of A.P. & Ors., (2001) 10 SCC 401, B. Thirumal v. Ananda Sivakumar & Ors., (2014) 16 SCC 593).

16. Seniority and eligibility are also distinct concepts. As far as promotion or recruitment by transfer to a higher category or different service is concerned if the method of promotion is seniority-cum-merit or seniority per se, there is no question of eligible senior being superseded. Other things being equal, senior automatically gets promoted. But in the case of selection based on merit-cum-seniority, it is a settled principle that seniority has to give way to merit. Only if merit being equal senior will get the promotion.

17. Merely because a person is senior, if the senior is not otherwise eligible for consideration as per the rules for promotion, the senior will have to give way to the eligible juniors. The instant case is a classic example for the said principle. The Reserve Sub-Inspectors selected and appointed on transfer as Sub-Inspectors (Civil) carries seniority from the date of appointment as Reserve Sub-Inspectors. But the eligibility for appointment by way of a transfer to the post of Inspector under the A.P. Police Service requires 6 completed years of service after being recruited to the category of Sub-Inspector of Police (Civil). In other words, though the Reserve Sub-Inspector selected and appointed on transfer as Sub-Inspector (Civil) may be seniormost in the category of Sub-Inspector of Police, but still he will be ineligible for consideration of appointment as Inspector in case he does not have 6 years of service as Sub-Inspector of Police (Civil). All his juniors who have 6 years of service as Sub-Inspector of Police and having been recruited to that post from different categories are entitled to steal a march over him as the rule now stands. The rule making authority in its wisdom has

provided such a classification and we do not find any material on record to upset the said wisdom.

18. The view taken by us as above is fortified by the decision of this Court in the case of *R. Prabha Devi and others v. Government of India, Through Secretary, Ministry of Personnel and Training, Administrative Reforms and others*, (1988) 2 SCC 233 wherein it has been held that :-

"15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years" approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of CSS. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Article 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

The aforesaid view of this Court in the case of *R. Prabha Devi* (supra) has been reiterated and followed in *State of Punjab and others v. Inder Singh and others*, (1997) 8 SCC 372 and *Shiba Shankar Mohapatra & Ors. v. State of Orissa and others*, (2010) 12 SCC 471.

19. No doubt on the date of occurrence of a vacancy in the post of Inspector of Police, in case a Reserve Sub-Inspector selected and appointed on transfer as Sub-Inspector of Police has completed 6 years as Sub-Inspector of Police (Civil), he is entitled to be considered in preference to his juniors in the seniority list of Sub-Inspectors of Police.

20. In view of the factual and legal position explained above, we find no merit in these appeals, accordingly they are dismissed, subject to the above clarification. There shall be no order as to costs.