
(1971) 01 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 2478 of 1965

R.K. Kulkarni

APPELLANT

Vs

The Divisional Commissioner, Belgaum and Others

RESPONDENT

Date of Decision : 06-01-1971

Acts Referred:

Constitution of India, 1950 — Article 162
States Reorganisation Act, 1956 — Section 115

Citation : AIR 1971 Kar 240 : (1971) 1 MysLJ 213

Hon'ble Judges : A. Narayana Pai, C.J.; B. Venkataswami, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; R.N. Byra Reddy, High Court Govt. Advocate and L.G. Havanur, for the Respondent

Final Decision : Dismissed

Judgement

A. Narayana Pai, C.J.—This Writ Petition was originally included In a batch of writ petitions all of which were disposed of by a common order dated 25-2-1969. It was later discovered that this writ petition had been wrongly included in the said batch. The said order of 25-2-1969 in so far as it related to this writ petition was recalled and set aside on 23-1-1970. As directed in the same order fresh notice was issued to parties who were unrepresented by counsel. Service on them also has now been completed.

2. The question raised by the petitioner is one of relative seniority between himself and respondents 4 to 25. One of the village offices in the erstwhile State of Bombay went by two names Kulkarni and Talati. Kulkarnis were hereditary village officers enjoying watan land for service." Talatis were non-hereditary stipendiary officers. The petitioner, a hereditary Kulkarni had been working as such from 1940 onwards. When the Kulkarni watans were abolished by an Act of the Bombay Legislature with effect from 1-2-1952, the petitioner along with other Kulkarnis was absorbed into Government service as stipendiary Talati. Such absorption took effect from 1-2-1952.

3. Respondents 4 to 25 were appointed as on an ad hoc appointment between the dates 25-3-1945 and 16-1-52. Such ad hoc appointment is in all material particulars the same as the appointment as local candidate in the erstwhile State of Mysore, The said respondents were subsequently enlisted as regular Talatis as from 31-8-1956. Such enlistment is equivalent to what is called regularisation in the erstwhile State of Mysore.

4. On 21-11-1952, the Assistant Commissioner of Haveri Division made a certain order confirming some persons as Talatis and making further promotions of some out of them. The effect of the order was that respondents 4 to 25 though enlisted only as from 31-8-1956 were to be regarded as having been confirmed as from 1-2-1952 which is the same as the date on which the petitioner was absorbed into Government service as a stipendiary Talati. The result was that respondents who were older in age than the petitioner became entitled to claim seniority above him.

5. The petitioner appealed to the Deputy Commissioner, Dharwar and then to the Divisional Commissioner, Belgaum, but without success. Hence this Writ petition.

6. So far as the determination of seniority is concerned there does not appear to have been any regular set of rules governing the cadre of Talatis in the erstwhile State of Bombay. With regard to Kulkarnis subsequently absorbed as stipendiary Talatis after abolition of watans there was an order issued on 23-6-1954 according to which, the inter se seniority of Kulkarnis absorbed as Talaris should be determined according to the length of service as Kulkarni and among persons having equal period of service according to age; it also provided for length of service being taken as determinative when age was same and vested a discretion with the Prant Officer or the Assistant Commissioner to determine the seniority when both service and age were the same.

7. There is another order referred to in this case namely, an order of the Bombay Government dated 30th September 1954 which among other things contained a direction that seniority should be fixed on the basis of pay and that previous service, that is, service before enlistment should not count. That order however, refers specifically only to clerks in the revenue department. It may not, therefore, of its own force, apply to Talatis.

8. The legal position therefore is that there was no specific rule for determination of relative seniority as between Kulkarnis absorbed as Talatis and persons directly appointed as Talatis. But one thing is clear viz., that whichever be the source of recruitment, after recruitment both fall into the same category of stipendiary talatis.

9. There is also another factor about which there could be no dispute or doubt. As already pointed out by us the character or nature or service of persons appointed on ad hoc basis upto the date of enlistment is merely that of a local candidate in Mysore. With reference to the local candidates and the nature of their service the principles have been fully discussed in the case of Chandramouli

V. State of Mysore (1970) 2 Mys LJ 187 : AIR 1971 Mys 53. After referring to the decisions of the Supreme Court and of this Court it is pointed out therein that service of local candidate upto the date of regularisation must be regarded as irregular service which cannot be counted for seniority as against periods of regular service.

It has also been pointed out in that case that where the State Government in exercise of its executive power under Article 162 of the Constitution makes an order for regularisation of service of a local candidate, the State Government may fix a date for regularisation according to its discretion or opinion subject however, to the condition that in the case of allottees under the States Reorganisation Act the date selected for commencement of regular service should not be any date prior to 1st November, 1956, because, to do so would be interfering with or impeding the exercise of the power of the Central Government to bring about integration of services u/s 115 of the States Reorganisation Act.

10. The last mentioned principle is sufficient to decide and dispose of this case. The Government could not have regularised the services of the respondents from any date prior to 1-11-1956. The enlistment or regularisation was given effect to from 31-8-1956 though the order of enlistment was made after 1-11-1956. However, no one has challenged that date till now and the petitioner is not interested in challenging the same because his prior absorption into Government service from 1-2-1952 will give him seniority over the respondents 4 to 25 enlisted or regularised as from 31-8-1956.

11. We, therefore, issue a writ quashing the order of the Deputy Commissioner and the Divisional Commissioner determining the date of commencement of regular service of respondents 4 to 25 as 1-2-1952 and declaring that the commencement of such regular service could only be 31-8-1956 and the commencement of regular service of the petitioner is 1-2-1952. It goes Without saying that this determination of relative seniority will entitle the petitioner to such benefits as may flow in consequence of this order.