
(1965) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 1455 and 1456 of 1963

Seshadri (E.V.) and Another

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 12-02-1965

Acts Referred:

Constitution of India, 1950 — Article 226

States Reorganisation Act, 1956 — Section 115, 115 (5)

Citation : (1965) ILR (Kar) 282 : (1965) 1 MysLJ 392

Hon'ble Judges : H. Hombe Gowda, C.J.; Santosh Duggal, J

Bench : Division Bench

Judgement

Hombe Gowda, C.J.—In these two petitions filed under Art. 226 of the Constitution of India, the two petitioners have challenged the

legality of the order passed by the State fixing the seniority of respondent 2 above them in the revised second provisional inter-State seniority list

and have sought for the issue of a writ of certiorari or any other appropriate writ, direction or order quashing the Government order dated 20 July,

1963 bearing No. GAD 20 IGS 62 placing respondent 2 above C. L. Subba Rao, serial No. 1 in the provisional inter-State seniority list of

Assistant Engineers, by which it is done.

2. In order to appreciate the arguments addressed before us, it is necessary to set out a few facts which are almost undisputed. E. V. Seshadri,

petitioner in Writ Petition No. 1455 of 1963, was appointed as a surveyor in the Public Works Department of the erstwhile State of Mysore in

1941. He was selected as a probationary Assistant Engineer in 1945 and was appointed as an Assistant Engineer on 4 May, 1946. S. K.

Hanumantha Reddi, petitioner in Writ Petition No. 1456 of 1963, joined service of

the erstwhile State of Mysore as a surveyor on 19 May, 1942.

He was also selected as a probationary Assistant Engineer in 1945 and was appointed as an Assistant Engineer in 1946. Respondent 2, S.

Neelakantappa, was appointed by the Coorg Government as an Assistant Engineer on 2 April, 1953. He was promoted as an Executive Engineer

on 10 August, 1955 and continued to hold the post till the reorganization of the States. Consequent upon the formation of the new State of Mysore

all these officers were allotted to the new State of Mysore on 1 November, 1956. After the reorganization of the States, the question of integration

of services was taken up by the new State of Mysore (respondent 1) and for the purposes of such integration the State had to determine the

equation of the posts and fix up the seniority of the several officers in the respective cadres. According to the circular instructions issued by the

Central Government the equation of posts had to be determined having regard to

(1) the nature and duties of a post;

(2) the responsibilities and powers exercised by the officer holding the post; the extent of territorial or other charge held or responsibilities

discharged;

(3) the minimum qualification, if any, prescribed for recruitment to the post; and

(4) the salary of the post.

3. After equating the posts the next stage was to determine the relative seniority as between the two persons holding posts declared equivalent to

each other and drawn from different States. The criterion for fixing the relative seniority was the length of continuous service whether permanent or

temporary in the equated cadre. Respondent 1 prepared what is called the ""provisional inter-State seniority list,"" of the several officers of the

Public Works Department allotted to the new State of Mysore by a notification dated 22 March, 1957. The post held by respondent 2 as an

Executive Engineer in the Erstwhile State of Coorg was equated to that of an Assistant Engineer of the other areas and his rank in the said list was

fixed on the basis of the length of his service in the equivalent cadre. In the said list the name of the petitioner in Writ Petition No. 1455 of 1963

appeared at serial No. 5; that of the petitioner in Writ Petition No. 1456 of 1963 at serial No. 10 while that of respondent 2 appeared at serial

No. 210. Respondent 1 called for objections from any Government servant dissatisfied with the above list within fifteen days from the date of its notification in the gazette. The several officers including respondent 2 who were dissatisfied by the equation of the posts and fixation of their seniority filed their objections within the time prescribed. The Central Government being prescribed as the exclusive authority for integration of services under S. 115 of the States Reorganization Act the provisional inter-State seniority list prepared by respondent 1 along with the several objections filed by the Government servants who were dissatisfied with it had to be forwarded to the Government of India for preparation and publication of the final inter-State seniority list. Respondent 1 without adopting such a Course prepared and published what was styled as the "final inter-State seniority list" by a notification dated 13 August, 1960. The name of respondent 2 was omitted in the said list but a note had been annexed to the effect that separate orders will issue regarding his position. In *M. A. Jaleel v. State of Mysore* [1961 Mys. L.J. 425], this Court held that the authority conferred by S. 115(5) on the Central Government is original authority and that the State Government had no competence to finally determine the integration of services and to prepare and publish a "final inter-State seniority list" and quashed the final inter-State seniority list prepared and published in respect of the officers of the Commercial Tax Department. After the decision in *Jaleel case* [1961 Mys. L.J. 425] (vide supra), the so-called "final inter-State seniority list" of the Public Works Department prepared and published by the State Government became a nullity.

4. On 20 December, 1962 respondent 1 published a notification indicating its intention to correct the provisional inter-State seniority list of

Assistant Engineers (Class I) published as Part III in the notification No. SRD 1-13 DIF 57 dated 22 March, 1957 by deleting the name of S.

Neelakantappa at serial No. 210 and inserting it at the top of the said list, i.e., above C. L. Subba Rao (serial No. 1). It was stated in the said

notification that the reasons for giving respondent 2 a special position at the top of the list of Assistant Engineers as on 1 November, 1956 are that

his responsibilities, duties and powers as on 1 November, 1956 were intermediate between those of the Assistant Engineers and the Executive

Engineers of the regular Public Works Department. Respondent 1 called for objections of Government servants dissatisfied by the proposed

change and directed them to submit such objections by means of a written representation addressed to the Chief Secretary to Government,

General Administration Department (Integration) within 15 days from the date of publication of the notification in the gazette for consideration by

the State Government. Several Assistant Engineers whose seniority in the inter-State seniority list published on 22 March, 1957 was likely to be

disturbed by the proposed change of the rank of respondent 2, filed their objections opposing the same. Respondent 1 overruled them, and issued

a corrigendum dated 20 July, 1963 which reads thus :

Corrigendum dated 20 July, 1963 (Ashadha 29, Saka Era 1885) No. GAD 20 IGS 62. In accordance with the G.O. No. GAD 20 IGS 62

dated 20 July, 1963 the name of S. Neelakantappa is deleted at serial No. 210 in the provisional inter-State seniority list of Assistant Engineers

(Class I) published at Part III in notification No. SRD 1-13 DIP 57 dated 22 March, 1957 and inserted at the top of the said list, i.e., above C. L.

Subba Rao (serial No. 1).

Any officer aggrieved by the above correction may submit his objections by means of a written representation (in five sets addressed to the

Secretary to Government of India, Ministry of Home Affairs, New Delhi-11) through the Chief Secretary to Government of Mysore, General

Administration Department (Integration), within three weeks from the date of publication of corrigendum in the gazette for consideration by the

Government of India.

B.R. Deen Dayal , Deputy Secretary to Government, G. A. D. (Integration).

5. Being aggrieved by the above notification the petitioners have filed these two petitions challenging the competence of respondent 1 to prepare

and publish the second provisional inter-State seniority list of Assistant Engineers at the instance of and for the sole purpose of giving a higher rank

to respondent 2.

6. It is necessary to state that on the basis of the rank assigned to respondent 2 in the second provisional inter-State seniority list he has been

promoted as a Superintending Engineer after these petitions were filed. The two petitioners have also since been promoted in their turns as

Superintending Engineers.

7. It is urged by Sri V. L. Narasimha Murthi, learned counsel for the petitioners, that once respondent 1 determined the equation of the posts and

fixed the seniority of the officers in the equated cadre according to the circular instructions issued in that behalf by the Central Government and

issued a notification on 22 March, 1957, it had no authority to prepare and issue a second or a revised provisional inter-State seniority list of

Assistant Engineers. He strenuously urged that the second list prepared and issued by respondent 1 is beyond its competence and is liable to be

struck down. He further urged that the perusal of the notification dated 22 March, 1957 clearly indicated that respondent 1 had taken into

consideration the several relevant factors while it equated the post of the Executive Engineer of Coorg to that of an Assistant Engineer of the other

areas and that the question whether the said equation is correct or not had to be finally determined by the Government of India under S. 115 of the

States Reorganization Act and that respondent 1 had no authority to revise the list. On the other hand it is urged by Sri Malimath, learned counsel

for respondent 2, that the State Government was entirely wrong in equating the post of the Executive Engineer in Coorg which was held by

respondent 2 on 31 October, 1956, to that of an Assistant Engineer of other areas and that respondent 1 was perfectly justified in revising it taking

into consideration the several factors mentioned in the representations submitted by respondent 2. Sri Malimath strenuously urged that the post

held by respondent 2 should have been equated to that of an Executive Engineer of the other areas and that if that had been done, respondent 2

would have been placed above many of the Executive Engineers allotted to the new State of Mysore from other areas and in the circumstances the

petitioners who were only Assistant Engineers on 31 October, 1956 cannot at all have any legitimate grievance against the order passed by

respondent 1 fixing the rank of respondent 2 above C. L. Subba Rao (serial No. 1) in the provisional inter-State seniority list of Assistant

Engineers (Class I).

8. It is clear from the perusal of the notification dated 22 March, 1957 issued by respondent 1 that the post held by respondent 2 as an Executive

Engineer in Coorg State was equated to that of an Assistant Engineer of the

other areas after considering all the relevant factors. The basis for equating the post held by respondent 2 on 31 October, 1956 with that of the Assistant Engineer of other areas is stated as under in the said notification :

4. The post of Executive Engineer in Coorg is equated to that of an Assistant Engineer of other areas in the light of the following facts and on the principles referred to in Para. 2 -

(a) that he was appointed as an Assistant Engineer on probation and was confirmed as Executive Engineer after the period of probation,

(b) that he was charge of only minor irrigation works and community project and had under him four subdivision officers (non-gazetted),

(c) that the outlay incurred in his jurisdiction does not exceed two or three lakhs of rupees,

(d) that he was given a pay-scale of Rs. 350-25-600.

9. It is, therefore, idle for the respondents to contend that all the relevant factors had not been taken into consideration while equating the post of

respondent 2 to that of an Assistant Engineer in other areas at the time the first provisional inter-State seniority list was prepared and notified. Once

respondent 1 prepared a common provisional gradation list in accordance with the principles laid down by the Central Government and published

the same and called for representations from Government servants who were aggrieved by it within the time specified in the said notification, it had

only to collect all the representations and forward them with the list to the Central Government. Decisions on those representations could only be

taken by the Central Government in consultation with the advisory committee under S. 115 of the States Reorganization Act. Admittedly

respondent 2 and many other Government servants who were aggrieved by the equation of posts and fixation of their seniority in the inter-State

seniority list referred to above had filed their written representations within the time prescribed in the notification referred to above. All that the

State Government had to do was to forward the provisional inter-State seniority list along with the objections or representations filed by the several

Government servants to the Central Government for decision in consultation with the advisory committee and for publication of the final inter-State

seniority list. Respondent 1 did not, admittedly, adopt this course. On the other

hand, it proceeded to revise the provisional inter-State seniority list

taking into consideration the representations made by respondent 2 and notified its intention to fix the rank of respondent 2 above C. L. Subba

Rao and called for objections from persons that are dissatisfied by the proposal and has after considering some of the objections received in

response to it, overruled them and published the second list fixing the rank of respondent 2 above C. L. Subba Rao (serial No. 1) in the first list.

The result is that respondent 1 has prepared and issued a "second or revised provisional inter-State seniority list" assigning a higher rank to

respondent 2 in the provisional inter-State seniority list prepared and issued by it in the year 1957. The question is whether respondent 1 is

competent to do so. This question came up for consideration before a Division Bench of this Court in *P. Lakshmanan v. State of Mysore* [(1963)

1 Mys L.J. 472]. This Court held that the State had no such right to effect a correction in respect of a particular Government servant and observed

as follows :

The published list, as already stated, is an act of the State amounting to a comprehensive decision tentative though it be as to relative seniority of a

certain class or category of its servants. If on representation by certain individuals alone corrections are effected in the list there is a clear possibility

of interests of others being adversely affected. Seniority itself is a relative conception and not an absolute one. Therefore, when a certain gradation

of seniority is arrived at in respect of a certain class of persons any disturbance of the situation of any one person in that list will at least in the eye

of the law affect the relative position of several other persons in the same list. Consequently when a list itself is published as a decision

simultaneously governing a large number of persons, before a change could be made therein representation of all those that have made

representation in respect of that list will have to be taken into account simultaneously, so that the relative or mutual effect which one representation

may have upon another or others may be properly considered by the Government and a just and correct conclusion arrived at. If without making

any such general examination leading to a general revision of the entire list one person who is a junior under the existing list to another is treated as

a senior to that other person there could hardly be any doubt that such act can

well be described as arbitrary on whimsical - whimsical because the treating of a person junior to another as a senior to him would be unaccountable on the basis of the published list and arbitrary because it picks out one person from a class for special treatment and therefore involves an infringement of the guarantee of equal treatment before the law under Art. 14 of the Constitution which the State is bound to extend to all citizens including its servants.

10. The question is whether the revision of 1957 list was made after taking a comprehensive decision of all the representations filed by the several persons aggrieved or is one done for the purpose of assigning a rank to respondent 2 on the basis of his representation only ? We have no doubt in our minds that there has not been a comprehensive revision of the first inter-State seniority list of Assistant Engineers on the basis of the representations received from all the officers in response to the notification issued in 1957. As a matter of fact respondent 2 has not asserted in his counter-affidavit that the second list prepared and issued in 1963 was the result of a comprehensive revision, after taking into consideration all the representations filed by the several persons simultaneously. Nor has respondent 1 asserted in the counter-affidavit that it is as a result of the comprehensive revision of the list in the light of the representations made by several persons that the second list was prepared and issued by it. In these circumstances, we are of the opinion, that the second or revised provisional inter-State seniority or gradation list issued by respondent 1 in the year 1963 was beyond its competence and authority and is liable to be struck down.

11. It is urged by Sri Malimath, learned counsel for respondent 2, that his client has been contending that the post of an Executive Engineer in Coorg, which he was holding at the time of integration, is equivalent to that of an Executive Engineer of other areas; and that he should be treated as an Executive Engineer and equated as an Executive Engineer and placed above the petitioners and when it is so the petitioners who were Assistant Engineers on the relevant date, viz., 31 October, 1956, cannot have any legitimate grievance if respondent 2 is placed above serial No. 1 in the list of Assistant Engineers (Class I). We are unable to appreciate this argument. It is significant to note that the equation of post held by

respondent 2 to that of the Assistant Engineers has not been revised by respondent 1. It is the rank that had been assigned to respondent 2 in the equated cadre that has been altered or corrected by the issue of the second provisional Inter-State seniority list. The question as to whether the respondent 2's claim to be equated to the cadre of Executive Engineers in other areas is a matter which is yet to be decided by the Government of India. We refrain from expressing any opinion on the merits of the above claim of respondent 2. But so long as the post held by respondent 2 in the State of Coorg has been equated to that of an Assistant Engineer in the other areas it is only the length of service that had to be taken into consideration for determining the relative seniority as between the several persons included in the list. That it must be so is clear from the circular instruction issued by the Government of India to respondent 1. It is on the basis that he was continuously holding the post which was equated to that of Assistant Engineers from 10 August, 1955, his rank was fixed at serial No. 210 in the list of Assistant Engineers. Strangely enough, in spite of clear instructions issued by the Government of India, respondent 1 proceeded to re-fix the seniority of respondent 2 ignoring the length of service in the equated cadre and categorically stated in the notification issued in 1963 that nothing prevents Government from assigning seniority to a certain officer otherwise than on the basis of length of continuous service in the equated cadre, if the assignment of such a seniority is called for in view of the peculiar nature of the post held by the officer on 31 October, 1956.

12. What is more interesting is that respondent 1 has repeated it in the counter-affidavit filed on its behalf by the Under Secretary to Government,

Public Works Department, in the following terms :

The general principle for fixation of rank is that the length of continuous service whether temporary, officiation or permanent should be taken into account. The responsibilities, duties, and powers exercised by the Executive Engineer of Coorg as on 1 November, 1956 in the erstwhile Coorg State were intermediate between those of the Assistant Engineers and the Executive Engineers of the regular Public Works Department. But nothing prevents Government from assigning seniority to a certain officer otherwise than on the basis of length of continuous service in the equated

cadre, if the assignment of such a seniority is called for in view of the nature of the post held by the officer.

13. We have no doubt whatsoever, in our minds that this claim of respondent 1 is untenable. Fixation of seniority on considerations other than

mentioned in the circular instruction issued by the Central Government to the State is not at all permissible. We, therefore, unhesitatingly hold that

the second provisional inter-State seniority list issued by respondent 1 refixing the seniority of respondent 2 above C. L. Subba Rao (serial No. 1)

in the first provisional inter-State seniority list of Assistant Engineers prepared and issued in 1957 is illegal and is liable to be struck down.

14. It was urged by Sri Malimath, learned counsel for respondent 2, that respondent 1 had not finally decided that the post of the Executive

Engineer in Coorg is equivalent to that of the Assistant Engineers in other areas even for the purposes of preparation and publication of the

provisional list and therefore, respondent 1 was entitled to refix the rank of respondent 2 which had been tentatively fixed in the first list. In support

of this argument, Sri Malimath relied on the note made against the name of respondent 2 in the last column in the list published on 22 March, 1957

which is to the following effect :

Belongs to Coorg Public Works Department. Provisional pending clarification regarding the nature of service whether regular or contract

appointment.

15. We are unable to accept this contention. What all the note indicated is that respondent 1 had yet to get clarification as to whether respondent 2

was a regular Government servant of the State or whether his services had been taken on contract basis.

16. It is finally urged by Sri Malimath, learned counsel for respondent 2, that in view of the fact that both the petitioners have since been promoted

as Superintending Engineers and in view of the fact that the entire question relating to the equation of posts and fixation of seniority is before the

Government of India, even if we come to the conclusion that the second list prepared and issued by respondent 1 is beyond its authority we should

not strike it down. It is on the other hand urged by Sri Narasimha Murthi, learned counsel for the petitioners, that there is every prospect of

respondent 2 being appointed to officiate as a Chief Engineer as against one of

the posts created for expediting the development programmes undertaken by respondent 1 in the Fourth Five-year Plan period and therefore, it is necessary that we should issue a writ of certiorari quashing the second notification. It is further urged that in spite of the fact that respondent 1 had issued what was styled as a "final inter-State seniority list" in 1960, it had not taken necessary steps to get the same finalized by the Central Government till now and that the Central Government will take some time to publish the final list after scrutinizing the large number of written representations and in the meanwhile it is quite possible that respondent 1 will make promotions to higher posts on the basis of the impugned list and we should therefore strike it down. We cannot say that the apprehensions of Sri Narasimha Murthi are not well-founded. Moreover, once we come to the conclusion that the second list issued by respondent 1 was beyond its competence we should strike it down.

17. We, therefore, allow these writ petitions and make an order quashing the Government order dated 20 July, 1963 bearing No. GAD 20 IGS 62 placing respondent 2 above C. L. Subba Rao (serial No. 1) in the provisional inter-State seniority list, 1957, of Assistant Engineers. The petitioners will get their costs from the respondents. We allow only set of costs. Advocate's fee Rs. 150.