

(2007) 10 KAR CK 0016
In the Karnataka High Court
Case No : Writ Appeal No. 1921 of 2007

Shivanna

APPELLANT

Vs

The Command Area Development Authority, Cauvery Basin
Project, Narasimhaiah and State of Karnataka

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Citation : (2008) ILR (Kar) 729 : (2008) 3 KarLJ 407 : (2008) 2 KCCR 811

Hon'ble Judges : Cyriac Joseph, C.J.;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Ravivarma Kumar for H.C. Shivaramu, for the Appellant; X.M. Joseph, for C/R2 and B. Sreenivasa Gowda, GA for R-3, for the Respondent

Judgement

Cyriac Joseph, C.J.—The appellant is the petitioner in Writ Petition No. 8373/2006 which was dismissed by the learned Single Judge.

The appellant is an employee of the Command Area Development Authority, Cauvery Basin Project. While he was working as First Division Assistant, he was promoted to the cadre of Superintendent as per Annexure-B order dated 2.6.1997. Even though the appellant was not th the senior most First Division Assistant at that time, he was promoted to the higher cadre giving him the benefit of reservation as he is a member of the Scheduled Caste. The 2nd respondent-Narasimhaiah was the senior most First Division Assistant at that time and apparently he was overlooked in the matter of promotion on the ground that he belongs to the general category. Contending that the post of Superintendent is a single post cadre in the Command Area Development Authority, Cauvery Basin Project and hence the said post cannot be reserved, the 2nd respondent made representations to the Government. After considering 2nd respondent's representations, the Government issued Annexure-D letter dated 16.11.2005 to the 1st respondent pointing out that the promotion given to the appellant was illegal and hence his promotion should be cancelled after issuing notice to him and considering his objections. In Annexure-D letter the

Government also directed that the excess amount received by the appellant in the post of Superintendent should be recovered from him. Based on Annexure-D Government letter dated 16.11.2005, the 1st respondent issued Annexure-C notice dated 2.12.2005 to the appellant proposing to cancel his promotion to the cadre of Superintendent. The appellant submitted Annexure-G objection dated 17.12.2005 in reply to Annexure-C notice. After considering the appellant's objection, the 1st respondent passed Annexure-Q order dated 13.6.2006 cancelling the promotion given to the appellant in the year 1997. However in Annexure-Q order nothing is mentioned about the recovery of any amount from the appellant. Aggrieved by Annexure-Q order of the 1st respondent, the appellant filed the writ petition praying to quash Annexure-Q order of the 1st respondent. Though the writ petition was not admitted, an interim order dated 26.6.2006 staying Annexure-Q order was passed by the learned Single Judge. Later after considering rival contentions, stay order was vacated and the writ petition was dismissed on 6.9.2007. Aggrieved by the dismissal of the writ petition, the appellant has filed this writ appeal.

2. Having heard learned Counsel for the appellant and having considered the facts and circumstances of the case, we do not find any valid and sufficient ground to entertain this writ appeal. It is not disputed that the post of Superintendent in the Command Area Development Authority, Cauvery Basin Project is a single post cadre in the organisation. It is also not disputed that the employees of different Command Area Development Authorities do not constitute a common cadre and therefore employees of other Command Area Development Authorities cannot be considered for promotion to the post of Superintendent in the Command Area Development Authority, Cauvery Basin Project. Similarly the employees of the Command Area Development Authority, Cauvery Basin Project cannot be considered for appointment or promotion in other Command Area Development Authorities. Thus the post of Superintendent to which the appellant was promoted in the year 1997 was a single post cadre. It is settled law that there cannot be any reservation against a single post cadre. It is admitted that the 2nd respondent is senior to the appellant in the cadre of First Division Assistant and therefore if the promotion was to be made on the basis of seniority, the 2nd respondent was entitled to be preferred to the appellant. The appellant was given promotion overlooking the claim of the 2nd respondent only on the wrong assumption that as per the roster system, the post was to be filled up by a member of the Scheduled Caste, Since the roster system cannot be applied in respect of a single post cadre, the promotion of the appellant overlooking the claim of the 2nd respondent and other seniors was patently illegal. The objection raised by the 2nd respondent was valid and the Government was justified in directing the 1st respondent to consider the cancellation of the illegal promotion after issuing notice to the appellant. The appellant was given opportunity to raise his objections to the proposed cancellation of the promotion and the objections raised by the appellant were considered. Since the promotion of the appellant was illegal and since the illegal

promotion was cancelled after issuing notice to the appellant and considering his objections, we do not find any illegality in the impugned action of the 1st respondent in passing Annexure-Q order. Therefore the learned Single Judge was right and justified in dismissing the writ petition.

3. Learned Counsel for the appellant pointed out that even though there is no reference to recovery of any amount from the appellant in Annexure-Q order, Annexure-D order of the Government refers to the recovery of the amount from the appellant. Learned Counsel submits that the appellant apprehends that pursuant to Annexure-Q order, the 1st respondent may initiate action to recover the amount in compliance with the direction in Annexure-D letter of the Government. It is contended that since the appellant had worked as Superintendent on the basis of an order passed by the competent authority and since the respondent has extracted work from the appellant as Superintendent, there is no justification for recovering any amount received by the appellant as Superintendent. We find force in the above contention of the learned Counsel for the appellant. The above contention of the learned Counsel for the appellant is supported by the decision of the Hon'ble Supreme Court in *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, . Hence while dismissing the writ appeal, we hold that the appellant will not be liable to refund any amount received by him as Superintendent. The Respondents 1 to 3 are restrained from recovering any amount paid to the appellant while the appellant was discharging the duties and functions of Superintendent. The Writ Appeal is disposed of in the above terms.