

(1999) 07 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No's. 7061 to 7074 of 1996

Siddappa and Others

APPELLANT

Vs

Managing Director, Karnataka State Forest Industries
Corporation Limited, Bangalore and Others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Karnataka Civil Services (Automatic Grant of Special Promotion to Senior Scale of Pay)
Rules, 1991 — Rule 2 (4), 3
Karnataka Civil Services (Timebound Advancement) Rules, 1983 — Rule 3

Citation : (1999) ILR (Kar) 3193 : (1999) 5 KarLJ 647

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

**Advocate : Sri N.S. Rajendra, for the Appellant; Sri V. Prakash, High Court
Government Advocate and Sri Ashok B. Hinchigeri, for the Respondent**

Judgement

1. Lack of promotional opportunities and resultant frustration of those in public service is not an unknown phenomenon. Rules providing for time-bound promotion of those who have spent years on the same post attempt to remedy the situation no matter partially. In the State of Karnataka, the grant of time-bound advancement was regulated by what are known as Karnataka Civil Services (Time-bound Advancement) Rules, 1983. Rule 3 of the said rules empowered the Appointing Authority to grant the specified selection time-scale of pay to any Government servant, who had put in a service of not less than 10 years in the post held by him and whose record of service was satisfactory provided he was otherwise qualified and eligible for promotion in accordance with the rules of recruitment applicable to him. These rules although applicable only to Government servants were adopted by the respondent-corporation for application to its employees. Consequently, the petitioners, who are serving as Mazdoors in the corporation in the pay scale of Rs. 780-1040 were granted the benefit of time-bound advancement and placed in the higher pay scale of Rs.

810-1310 with effect from the year 1984. Some years later the Government introduced yet another set of rules called Karnataka Civil Services (Automatic Grant of Special Promotion to Senior Scale of Pay) Rules, 1991. Rule 3 of the said rules empowers the Appointing Authority to grant what is termed as "senior scale of pay" to any Government servant, who is holding a post carrying any one of the scales of pay specified in column (2) or selection time-scale of pay granted under the Karnataka Civil Services (Time-bound Advancement) Rules, 1983 mentioned in column (3) of the Table below Rule 1(3). The corporation has adopted even these rules for application to its employees and granted the benefit of the senior scale of pay to them in accordance with the said rules. A proposal to extend the said benefit to the petitioners and a few other category of employees was submitted to the Government for its approval, which was, upon consideration, turned down in terms of a communication dated 26th of November, 1994 primarily on the ground that the same was inconsistent with the provisions of Rule 2(4) of the rules aforementioned. The Government were of the view that Rule 2(4) of the rules did not permit the grant of any benefit for promotion to senior scale of pay in cases where the "selection time-scale of pay" granted under the 1983 Rules in respect of the post held by the Government servant and the "scale of pay of promotional post" was identical. In any such case, the senior scale of pay was deemed to be the scale of pay of such promotional post. In other words, in the case of an employee, who was pursuant to the 1983 Rules placed in a selection time-scale equivalent to the scale of pay of promotional post, the rules did not permit the grant of any further advancement. Aggrieved by the said order, the petitioners have, in the present writ petitions, questioned the legitimacy of the denial and assailed the vires of Rule 2(4) on the ground that the same was discriminatory, hence violative of Articles 14 and 16 of the Constitution.

2. Rule 3 of the 1991 rules with which we are concerned may at this stage be extracted:--

"Grant of special promotion to senior scale of pay.-

The Appointing Authority shall grant to a Government servant who is holding a post carrying scale of pay specified in column (2) or selection time-scale of pay granted under the Karnataka Civil Services (Time-bound Advancement) Rules, 1983 in column (3) of the Table under sub-rule (3) of Rule 1, the senior scale of pay if:-

(a)(i) he has put in a total continuous service of not less than fifteen years of service in the same post held by him on the date of commencement of these rules, with effect from the date of such commencement; or

(ii) he completes a total continuous service of not less than fifteen years in the same post held by him on or after the date of commencement of these rules, with effect from the date following the date on which he completes such years of service;

(b) he has satisfactory record of service; the satisfactory record of service being determined in the same manner as merit is determined for promotion on the basis of seniority-cum-merit;

(c) he is qualified and eligible for promotion in accordance with the rules of recruitment applicable to the post where there is avenue for promotion".

3. The expression "senior scale of pay" appearing in the above rule has been defined by Rule 2(4) thus:--

" "Senior scale of pay" means the scale of the pay next above the selection time-scale of pay granted under the Karnataka Civil Services (Time-bound Advancement) Rules, 1983 in respect of the post held by a Government servant or where the selection time-scale of pay granted under the Karnataka Civil Services (Time-bound Advancement) Rules, 1983 in respect of the post held by the Government servant and the scale of pay of promotional post is identical or same, the scale of pay of such promotional post".

4. It is not in dispute that the petitioners have put in the prescribed number of years on the posts held by them nor is it disputed that their record of service has been satisfactory. It is also not denied that each one of them is eligible for promotion in accordance with the rules of recruitment applicable to them. In the ordinary course therefore, the Appointing Authority would be justified in granting to each one of them the "senior scale of pay, which in the instant case would be the scale of pay next above the selection time-scale of pay granted under the 1983 Rules. A perusal of the Table given below Rule 1(3) would show that the scale of pay next above the selection scale granted to the petitioners under the 1983 rules is Rs. 870-1600. The Table may also for facility of reference be extracted at this stage:--

TABLE

Sl. No.

Scale of pay

Selection time-scale of pay

(1)

(2)

(3)

Rs.

Rs.

1.

780-1040

810-1310

2.

810-1310

870-1600

3.

870-1600

960-1760

4.

960-1760

1040-1900

5.

1040-1900

1190-2200

6.

1190-2200

1280-2450

7.

1280-2450

1400-2750

8.

1400-2750

1600-2990

9.

1600-2990

1720-3170

10.

1720-3170

1760-3350

11.

1760-3350

1990-3650

12.

1900-3650

2000-3750

5. The Corporation's proposal to place the petitioners in the pay scale of Rs. 870-1600 failed to carry conviction with the Government by reason of Rule 2(4) of the Rules. The correctness of that view as a distinct possibility on a liberal interpretation of the rule was not disputed by Counsel appearing for the petitioner and Mr. Hinchigeri, appearing for the corporation, for it is admitted that the selection time-scale of pay of Rs. 810-1310 granted to the petitioners under the 1983 Rules was also the scale of pay of the promotional post to which the petitioners were eligible for promotion under the Cadre and Recruitment Rules applicable to them. Left at that, no fault could be found with the view taken by the Government as the same is in tune with what Rule 2(4) seems to be saying. The constitutional validity of Rule 2(4) was however severely assailed by Counsel appearing for the petitioners, who argued that the classification of employees into two categories viz., where the selection time-scale of pay granted under 1983 Rules was different from the promotional post and others where it was same or identical was artificial, wholly irrational and had no nexus whatsoever with the object underlying the rules. It was contended that if the object sought to be achieved by the rules was to extend a monetary benefit to those who had stagnated at a given post for 15 years or more then all those who fulfilled the conditions of eligibility prescribed ought to be entitled to the benefit regardless whether the time-scale advancement granted under the 1983 Rules was same or different from the scale of pay attached to the promotional post. There is, in my opinion, considerable merit in that submission. The object underlying the 1983 Rules as also the 1991 Rules, is to provide relief against stagnation in service as a consequence of nonavailability of promotional avenues to those, who have served on the same post for the prescribed number of years. It is evident from a plain reading of Rule 3 of the said rules, that the grant of time-bound advancement or automatic grant of special promotion to senior scale of pay is subject to the condition that the employee concerned has not only served for the prescribed number of years, but that he is eligible for promotion in accordance with the rules of recruitment and possesses a satisfactory record of service. Satisfactory record of service has in terms of the rules to be determined on the basis of seniority cum merit relevant for purposes of making promotion. The scheme underlying the rules therefore is that any person who has served on a given post for the prescribed number of years and who is qualified for promotion to the next higher post and has satisfactory record of service can be placed in a scale of pay which is next above the selection time-scale granted under the 1983 Rules. That being so, the classification of employees, whose selection time-scale of pay granted under the 1983 Rules is identical to the scale of pay of the promotional post on the one hand, and those, where such scales of pay are

different does not have any nexus with the object which the rules seek to achieve. The petitioners having been placed in the selection time-scale of pay of Rs. 810-1310 under the 1983 Rules are being denied the benefit of the next higher pay scale of Rs. 870-1600 not because they do not satisfy the conditions stipulated by Rule 3 for claiming any such benefit but only because of the fortuitous circumstance of the said pay scale being also the pay scale attached to the promotional post. If the petitioners have even after being placed in the selection time-scale under the 1983 Rules continued to hold the very same post for the prescribed period of 15 years, there is no reason why such continuance should not be treated as a case of denial of promotion and consequent stagnation entitling them to the beneficent provisions of Rule 3. Stated differently if the petitioners had under the 1983 Rules been placed in a pay scale slightly lower or even higher than Rs. 810-1310, the disqualification envisaged by Rule 2(4) would have had no application to them. A difference of even Rs. 10/- in the pay scale, in which they were placed under the 1983 Rules on either side would have taken their case out of the mischief of Rule 2(4), for in the face of any such difference, howsoever marginal or insignificant the two pay scales could not be said to be "identical or same" so as to attract the disqualification contained in Rule 2(4). The classification of employees depending upon whether the selection time-scale of pay granted to them under 1983 Rules is the "same" or "different" from the pay scale attached to the promotional post has therefore no rational nexus with the object sought to be achieved by the rules. Any such classification would fall foul of Articles 14 and 16 of the Constitution.

6. Superadded to the above is the admitted fact that the corporation has extended the benefit of the senior scale of pay to other employees situate similarly with the petitioners. It is not denied by Mr. Hinchigeri, Counsel appearing for the respondent that such benefit is being drawn by employees similarly circumstanced even at present the Government's disapproval notwithstanding. All that was argued was that the Corporation proposes to take steps for withholding the benefit and recovering the amounts already received by such employees. There is, however, nothing on record before me to suggest that any such steps either at the Government or Corporation level have been taken so far. In fairness to Mr. Hinchigeri, I must mention that he did not support the classification made by Rule 2(4) between employees similarly situate on the basis of the selection time-scale and the promotion scales being same or similar. Mr. Prakash, Government Pleader, appearing for the State, was also at a loss to discover the rationale underlying the classification. In the circumstances, the intended withdrawal of the benefits sounds no more than a ruse. I have therefore no hesitation in holding that denial of benefit to the petitioners on the basis of Rule 2(4) of the Rules in question was not justified. The said provision must be read down to mean that all those employees, who satisfy the conditions stipulated by Rule 3 insofar as the length of service, eligibility for promotion and the satisfactory record of service are concerned shall be entitled to the benefit of the senior scale of pay provided for under the rules regardless whether the

selection time-scale of pay granted to them under the Karnataka Civil Services (Time-bound Advancement) Rules, 1983 is identical or similar to the scale of pay attached to the post against which they were eligible for promotion.

These writ petitions are accordingly allowed with a direction to the respondents to extend the benefit of the senior scale of pay to the petitioners in accordance with the provisions of the rules keeping in view the observations made hereinabove. Government endorsement dated 29-10-1991 shall consequently stand quashed. Compliance within six months from today.

No costs.