

(2013) 06 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 48963 of 2012 S-KAT

Sri D.G. Chandre Gowda

APPELLANT

Vs

Director General and Inspector General of Police and The
Superintendent of Police

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Karnataka Government Servants (Seniority) Rules, 1957 — Rule 6

Citation : (2013) 06 KAR CK 0018

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Rajashekar Hegde and Chandrakanth R. Goulay, for the Appellant; S. Susheela, AGA, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is though listed for preliminary hearing, after notice, with consent of counsel, we have heard for disposal. Writ petitioner who had joined the Police Department in CCRB, Bangalore on 19.12.1983 as "Police Constable" is aggrieved that even after putting in service of more than 25 to 30 years, he has not been given any promotion; that to provide succor to such persons who have stagnated in the same post for long years, the Government as per policy, decided to give promotion for all those persons who had put in more than 18 years of service and known as up gradation posts to the post of "Head Constable" on certain conditions as per Government Order dated 5.4.2010 and in spite of it, in as many as 969 Civil Police and 2,396 Reserve Police Constables having been upgraded as Head Constables, still the petitioner is not considered and appointed for such post though petitioner has more than twenty years of service and therefore had approached the Tribunal praying for issue of suitable directions to the respondents by filing application No. 6745/2010.

2. Application was resisted before the Tribunal and it was pointed out that the

writ petitioner had no doubt joined the services in the year 1983, but in the year 1997 he had made a request for voluntary transfer to Hassan Division undertaking to forego all the seniority till then and take bottom seniority in Hassan Division and therefore he has not put in requisite number of years of service when counted from this day of his transfer to Hassan Division; that Rule-6 of the Karnataka Government Servants' [Seniority] Rules, 1957 [for short "the Rules"] governs the situation of promotion whether by up gradation or regular promotion and the qualifying number of years of service is twelve years as per the rule and therefore the petitioner was not eligible for consideration either in regular promotion or in the up gradation scheme as per Government Order dated 5.4.2010.

3. It was also contended that the petitioner having requested for transfer for his own convenience and transfer being not in public interest, his past service cannot be counted etc.

4. The Tribunal accepted the reasoning of the respondent-State and dismissed the application as per its order dated 30.01.2012, did not set aside the endorsement issued to the petitioner that his case cannot be considered for want of sufficient number of years of experience and qualifying service as Constable.

5. It is aggrieved by this order, the present writ petition.

6. Appearing on behalf of the petitioner, submission of Sri. Rajashekar Hegde, learned counsel is that while the petitioner may not be eligible for counting the number of years of service that he had put in earlier in Bangalore Division for the purpose of regular promotion, but when it came to promotion by up gradation scheme, that cannot be ignored; that the petitioner has already put in more than 25 years of service by the time the special scheme was put into operation by the State Government and therefore the order of the Tribunal is not correct and is liable to be set aside.

7. Notice had been issued to the respondent -- State and is represented by Smt. S. Susheela, learned Additional Government Advocate.

8. Smt. S. Susheela, learned Additional Government Advocate, has drawn our attention to Rule - 6 of the Rules, particularly the proviso, indicating that for the purpose of seniority of person transferred on own request, it will be placed in the seniority list of the class or grade of service to which he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer. What is pointed out is that the petitioner had been transferred to Hassan Division as per Office Memorandum dated 14.12.1997 and this was on the undertaking that he is prepared to forego his seniority in Bangalore Division and he is ready to accept bottom seniority in Hassan Division.

9. Learned Additional Government Advocate submits that the list of seniority of the Constables had been prepared and in that list, the petitioner's name figured at Sl. No. 927 and even many seniors above the petitioner in this list have: not

been considered for promotion; that the petitioner has been told that his promotion will be considered as and when it accrues in the seniority list; that even for the purpose of up gradation also, seniority of qualifying service can be counted only from the year 1997 and he had not put in eighteen years service at the time the request was made and endorsement was issued.

10. We have bestowed our attention to the submissions made at the Bar and perused the order of the Tribunal.

11. The Tribunal found that Rule - 6 proviso does come in the way of the petitioner seeking for promotion either in regular course or by up gradation and that it can be taken into consideration only from the year 1997 as per the Rules and it is for this reason the application was rejected.

12. However, what is urged on behalf of the petitioner is that the purpose of the Government Order dated 5.4.2010, is to give promotion from the post of Police Constable to the post of Head Constable who are stagnated for eighteen years; that the scheme to accord promotion on completion of eighteen years of service was to bolster the morale of the Members to the post who have been stagnating without any promotion and should have to wait for long years if they should be given promotion as per the seniority and therefore it was a special scheme and by upgrading as many number of posts of Police Constables who had put in more than eighteen years of service and therefore the petitioner could have been considered for such promotion at least if not for the regular promotion.

13. It is specifically urged that the petitioner no doubt would forego his seniority because of the request transfer, but that does not take away his service rendered earlier as Police Constable and if that is counted for the purpose of the Government Order dated 5.4.2010, he has put in by now more than thirty years of service and therefore the petitioner's case should have been considered if not for regular promotion at least for promotion as per Government Order dated 5.4.2010.

14. Smt. S. Susheela, learned Additional Government Advocate, nevertheless, submits that unless there is vacancy, petitioner's case cannot be considered and moreover petitioner's serial number is 927 whereas promotions had been accorded only up to 529.

15. We find that the seniority list is only for regular promotion and cannot be a defence for the respondents not according promotion in the up gradation scheme as per Government Order dated 5.4.2010 in favour of the writ petitioner. The very purpose will be defeated if the persons like the petitioner are asked to wait for eighteen years from the date of transfer. That may be so for the purpose of seniority in the concerned division. That is not the case for eighteen years of service contemplated as Police Constables to get the benefit of the Government Order dated 5.4.2010.

16. We direct the respondents to consider and appoint the petitioner to the post

of "Police Head Constable" on the premise that his service should be counted from the date of his joining service and not merely from the date of his transfer to Hassan Division for the purpose of the benefit of notification dated 5.4.2010. Even otherwise, the petitioner having completed thirty years of service, the petitioner is eligible as per the Government Order dated 5.4.2010. In the circumstances, we find to this extent, the order of the Tribunal is not sustainable. We set aside the same and allow this writ petition.