

(2003) 11 SC CK 0093

In the Supreme Court Of India

Case No : Civil Appeal No's. 4559-4562 of 1998

State of Karnataka and Others

APPELLANT

Vs

P.M. Bhaskara Gowda and Others

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : AIR 2004 SC 317 : (2003) 9 SCALE 591 : (2004) 1 SCC 106 : (2004) SCC(L&S) 6 : (2003) 5 SCR 347 Supp

Hon'ble Judges : V. N. Khare, C.J.; S. B. Sinha, J

Bench : Division Bench

Advocate : P.P. Rao, Sanjay R. Hegde, Anil K. Mishra and Balaji Iyer, for the Appellant; R.S. Hegde, Chandra Prakash, Savitri Pandey, P. Devesh, S.N. Bhat, D.P. Chaturvedi, P.R. Ramasesh, Vandana Jalan and P.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. In the State of Karnataka there existed several hereditary village offices, namely, Patel, Patwari and Gramsahayaks prior to 1961. In the year 1961, the Karnataka Legislature passed an Act known as Karnataka Village Officer's Abolition Act, 1961 (hereinafter referred to as, 'the Act') in terms whereof all the hereditary offices at village level were abolished. However, the holders of such offices were allowed to continue on ad-hoc basis on compassionate ground. Subsequently a circular was issued providing for compassionate appointment of children of Gramsahayaks who hold earlier hereditary offices on November 1, 1991 and died in harness.

2. It appears that the respondents herein were appointed as Gram Sahayaks in pursuance of the Government Order permitting the hereditary offices to continue on ad-hoc basis. It is not disputed that respondents were appointed as Sahayak Lekhpal between 1979 to 1983. Alleged on the ground that what" were paid to them as salary was very meagre; they filed an original application before the Karnataka Administrative Tribunal at Bangalore praying therein to pay unto them

salary which was being paid to other Group D employees and further to regularise their services as Group D employees with all consequential benefits. The Karnataka Administrative Tribunal by order dated December 5, 1996 partly allowed the said petition directing the State of Karnataka, the appellant herein, to pay a sum of Rs. 900 per month till the appellant came out with proper scheme laying down the conditions of service of the Gramsahayaks. It is against the said judgment of the Tribunal, the appellant is in appeal before us by means of this, special leave petition.

3. Shri P.P. Rao, the learned senior counsel appearing for the appellant, urged that since the respondents herein were appointed being the children of holders of hereditary office on ad-hoc basis, the Tribunal committed an error in directing the appellant to frame recruitment, rules for them. We find substance in the argument.

4. In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, , the abolition of the Madras Hereditary Village-Offices Act, 1895 was challenged as being void insofar as it infringes the fundamental rights enshrined in Articles 14 and 16 of the Constitution. This Court was of the view that if there is a custom which has been recognised by law as reward any hereditary village office, the same must yield to a fundamental right contained, in Part III of the constitution of India. It was also found that the hereditary village office under the State and Article 16 in turn applies and therefore any appointment pursuant to such custom could be ultra vires. The validity of the said Act was thus, upheld.

5. In *B.R. Shankaranarayana and Others Vs. The State of Mysore and Others*, , the validity of Mysore Village Office Abolition Act, 1961 came to be questioned wherein this Court held that in view of the declaration of law, there can be no hereditary village office in the State of Karnataka and no such appointment could be made.

6. The appointment of respondents herein has its own history. The Gramsahayaks are in the lowest in the hereditary office which was abolished in the year 1961. However, the State taking a compassionate view permitted the hereditary office holders to continue in the post on ad-hoc basis without any hereditary rights. It appears that the aforesaid decision was taken in view of the administrative convenience and administrative exigencies. The appointees were adjusted against the temporarily created posts. The terms and conditions and method of recruitment was provided by the Government, order which runs as under :

"1. Method of recruitment : The Tahsildar of a Revenue Taluk, subject to general orders of the District may appoint a Gramasahayaka on a temporary basis for a period not exceeding five years from among persons who were traditionally discharging the duties of the inferior village officers, who have not attained the age of 65 years, preference being given to persons who are literate.

2. Remuneration : The Gramasahayakas shall be paid a fixed remuneration of Rs.

100/- per month.

3. Duties of Gramasahayakas : The Gramasahayakas shall :

- (a) help the village accountants in collecting Government revenues:
- (b) escort remittances of money to the Treasuries.
- (c) Report births, deaths and other occurrences in the village to village accountants.
- (d) summon villagers to the village chavadi or any public place in the village in connection with Government work
- (e) accompany the Village accountant and other officers during field inspections.
- (f) carry village tap pals and records from the village to Taluk office and vice-versa.
- (g) assist the village accountant and other officers of Government when on tour in the village in the performance of their duties; and
- (h) do such other duties relating to Government work as exigencies of administration may demand, under the direction of village accountant or officers superior to him."

Subsequently, by an order dated September 23, 1982, additional posts of 1509 Gramasahayakas were created. As on date there are 10450 posts of Gramasahayakas in the State of Karnataka. Initially, the appointees were paid Rs. 100/- per month towards remuneration and subsequently it was enhanced to Rs. 120/- and then to Rs. 150/- per month thereafter Rs. 600/- now they being paid Rs. 1000/- per month.

7. Although they were appointed on contract basis for a period of five years, they are still continuing. In view of the fact that the validity of the Karnataka Village Abolition Act has been upheld by this Court and no appointment on hereditary basis could be made, we are of the view that no order for regularisation of services could be passed in their favour. As a logical corollary, no scheme for regularisation of services could be framed. However, since the Tribunal directed the appellant to pay a sum of Rs. 900/- per month till the Government come out with the scheme and as the respondents are being paid as 1000/- we are not inclined to interfere with that part of order under challenge. The State exercise of jurisdiction under the proviso appended to Article 309 of the Constitution of India is entitled to make Rules laying down the terms and conditions of service. The appellants state that the job of Gramasahayaks and other village officers are seasonal and part-time. They are entitled to carry on their other job including the cultivation work. It was contended that the State intends to frame Rules having regard to the requirements for such number of posts as may be necessary for collection of the revenue. They undoubtedly have such a power. With the aforesaid observations, these appeals stand disposed of.

8. The learned counsel appearing for the respondents urged that since the respondents have been serving for a long time, some observations may be made for their regularization. We are of the view that no such observations can be made in view of the fact that despite abolition of such posts they have been appointed and continued in service. Therefore, we are not disposed to entertain this argument.