
(1980) 02 KAR CK 0025
In the Karnataka High Court
Case No : WA 318/79

State of Karnataka

APPELLANT

Vs

R. Chikkamagalur

RESPONDENT

Date of Decision : 22-02-1980

Acts Referred:

Citation : (1980) 1 KarLJ 358

Hon'ble Judges : Chandrashekhar, C.J.;Bopanna, J

Judgement

Bopanna, J.-Aggrieved by the order of Rama Jois, J. allowing W.P. No. 8654 of 1976, the State of Karnataka has preferred this appeal. The learned single Judge, by the impugned order, issued a writ in the nature of mandamus directing the State Government to give effect to its assurance as contained in para 8 of the Official Memorandum dated 25-9-1965 (produced as Ext-A in the writ petition).

2. The facts that are material for the disposal of this appeal are not in dispute. In the wake of the first National Emergency declared by the Central Government due to external aggression, a number of Civilian personnel working in the various Departments of the State Government had to be drafted into the Military Service temporarily. To provide an incentive to join such service, certain concessions were assured to personnel joining such service. One such concession announced by the State Government in that Official Memorandum was that 70% of the vacancies that were to be filled by direct recruitment or promotion in the Medical Department, would be reserved to Government servants with Military service. The respondent's grievance is that the aforesaid assurance embodied in clause 8 of that Official Memorandum, was not given effect to by the State Government in her case.

3. The respondent who was a permanent employee of the State Government as a Staff Nurse, rendered military service from 14-5-1963 to 5-4-1971 and held the rank of a Captain in the Army. Since, she retained a lien on her permanent post in the State Government service while she was still in Military Service, she was given a proforma promotion as Nursing Superintendent, Grade-II with effect

from 6-1-1970. After she rejoined the State Government service, she claimed the benefits of the concession under clause 8 of Official Memorandum. She was informed that her Military service would be counted for purposes of promotion, increment leave and pension. Regarding her claim for promotion under clause 8 of the aforesaid Official Memorandum, she did not get any positive reply. Hence she filed the writ petition. While allowing it, learned single judge directed the State Government to give effect to its assurance that 70 per cent of the posts to be filled by direct recruitment or by promotion, should be reserved for Government servants with Military service by making, if necessary, appropriate amendment to the rules of Recruitment and to give her all consequential benefits.

4. In this appeal, the, main contention of the learned High Court Government Pleader was that the Rules or Recruitment of the Medical Department, made by the Governor under the proviso to Art/309 of the Constitution, did not provide for any reservation in favour of Government servants with Military service, that in spite of the assurance contained in para 8 of that Official Memorandum, she could not be promoted contrary to those Rules and that the learned single Judge erred in directing the Government to make amendment to those Rules in order to give effect to the assurance given by the Government.

5. On the other hand, Shri Balachandra, learned counsel for the respondent (the writ petitioner), sought to support the decision of the learned single judge. Sri Balachandra maintained that the learned single judge had applied the principle of promissory estoppel enunciated by the Supreme Court in *Union of India v. Indo Afghan Agencies*, AIR 1968 SC 718 and followed by Venkataramiah, J., in W.P. No. 1466 of 19722 Shri Balacnandra maintained that the learned single Judge had rightly directed the State Government to give effect to its assurance in terms of clause 8 of the aforesaid Official Memorandum and that there was no difficulty for the State Government to effect the necessary amendment to the Rules of Recruitment of the Medical Department made under the proviso to Art 309 of the Constitution of India.

6. It appears to us that the learned single Judge and Venkataramiah, J. have overlooked the pronouncement of the Supreme Court in *C. Shankaranarayanan v. State of Kerala*, AIR. 1971 SC. 1997. Therein, the Supreme Court upheld the view of the Kerala High Court that the power of the Governor under Art 309 of the Constitution to make rules regulating the conditions of Government employees, could in no way be fettered by any agreement. Referring to its earlier decision in *Union of India v. Indo Afghan Agencies Ltd*, AIR 1968 SC 718, the Supreme Court observed that the conditions of service could indisputably be changed in exercise of the powers contained in Art 309 of the Constitution and that in such a situation the principle of equitable estoppel could not be invoked.

7. In *Ramanatha v. State of Kerala*, AIR 1973 SC. 2641, the Supreme Court quoted with approval the following passage in *American Jurisprudence* (2nd Edn) at page 783 para 123:

"Generally, a State is not subject to any estoppel to the same extent as an individual or a private Corporation. Otherwise, it might be rendered helpless to assert its power in Government. Therefore, as a general rule, the doctrine of estoppel will not be applied against the State in its Governmental public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice."

The Supreme Court approved the view of the Kerala High Court that Courts exclude the operation of the doctrine of estoppel when it is found that the authority against whom estoppel is pleaded, owes a duty to the public against which the estoppel cannot fairly operate,

8. However, Shri Balachandra strongly relied on the latest pronouncement of the Supreme Court on the doctrine of promissory estoppel in *M.P. Sugar Mills v. State of U.P.*, AIR 1979 SC. 621. wherein all the earlier decisions of the Supreme Court on the point have been considered. and the Supreme Court has said that the above quoted observation in *N. Ramanatha's* case (7) were obiter dicta.

9. In *M.P. Sugar Mills"* case, AIR 1979 SC. 621, the question that arose for determination was whether the State of Uttar Pradesh which had announced a tax holiday to all new industrial units in the State with a view to enable them to come on firm footing in development stage, should be compelled to carry out the representation and give exemption of sales tax to an industrial unit which had been established in that State on the basis of such representation. S. 4-A of the U.P. Sales Tax Act empowered the State Government to grant such exemption. In those circumstances, the Supreme Court directed the State Government to grant such exemption and to refund the sales tax collected.

10. The decision in *M.P. Sugar Mills"* case, AIR 1979 SC. 621, is distinguishable because the U.P. Sales Tax Act permitted the Government to grant exemption and hence there was no difficulty in applying the doctrine of promissory estoppel; the Government would not be acting contrary to law if it gave effect to its earlier undertaking. The following passage in *M.P. Sugar Mills"* case, AIR 1979 SC. 621, at page 651 of the report, makes it clear that the doctrine of promissory estoppel cannot be invoked to direct the Government to act contrary to law:

"Of course, it may be pointed out that if the U.P. Sales Tax Act, 1943 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Sec. 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government may legitimately be held to be bound by its promise to exempt the appellant from payment of sales tax".

Even the decision of the Supreme Court in *M.P. Sugar Mills"* case, AIR 1979 SC. 621, supports the contention of the appellant that it cannot be asked to act contrary to the provisions of the Recruitment Rules made under the proviso to Art-309 of the Constitution on the plea of promissory estoppel. In our opinion,

this Court cannot direct the Governor to make rules under the proviso to Art 309 of the Constitution or to amend such rules in any particular manner. This Court can only strike down those rules if they violate any of the provisions of the Constitution.

11. We are further of the view that the respondent should fail on another ground which is apparent on the face of the record. On her own assertion, she joined the Military service on 14-5-1963, whereas the Official Memorandum (Ext-A) holding out certain concession to all those Government employees who joined Military service was issued by the State Government on 25-9-1965. Therefore, it could not be said that the respondent altered her position by joining the Military service, pursuant to the representation made in the Official Memorandum (Ext-A). Further it was not her case that even in the year 1963 the State Government had promised her any concession regarding promotion after her return to the State service from the Military service. Hence the doctrine of promissory estoppel invoked by the learned single Judge has no application to the facts of the case.

12. For these reasons, we allow this appeal, reverse the order of the learned single judge and dismiss the writ petition. But we make it clear that the dismissal of the writ petition should not be understood as coming in the way of the writ petitioner claiming other benefits to which she may be entitled under the aforesaid Official Memorandum.