

(1970) 08 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 2290 to 2292 of 1965

T. Shair Saheb and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 12-08-1970

Acts Referred:

Citation : AIR 1971 Kar 26 : (1970) 2 MysLJ 321

Hon'ble Judges : M. Santhosh, J;K.R. Gopivallabha Iyengar, J

Bench : Division Bench

Advocate : T. Venkanna, for the Appellant; S.G. Doddakalagowda, High Court Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Gopivallabha Iyengar, J.—The petitioners in these writ petitions and the respondents other than respondents Nos. 1 and 2 (the State and the Deputy Commissioner) are all first division clerks at present. Respondents other " than respondents 1 and 2 are the persons in regard to whose promotions the petitioners feel aggrieved. These respondents are referred to as respondents hereinafter.

2. The undisputed facts are that the petitioners are seniors to the respondents. The petitioners are aggrieved with respect to the orders of the Deputy Commissioner made on 9th January 1965 and 14th September 1965. It is not disputed that on these two dates the petitioners had passed qualifying examinations required for promotion. The order dated 9th January 1965 and the one dated 14th September 1965 are marked as Annexures "G" and "H" respectively. In these orders respondents who are juniors are promoted as first division clerks while the petitioners are promoted long afterwards. It is the grievance of the petitioners that their claims were not considered for promotion when Annexures "G" and "H" were issued promoting the juniors of the petitioners as first division clerks. In the counter-affidavit filed by the State it is stated that the petitioners were not qualified on the date the vacancies arose.

Though in the aforesaid affidavit it is mentioned that the vacancies arose on 13-3-1959, there is no basis to establish the said fact.

A reference is made to a direction of this Court in W.P. No. 654 of 1962 (Mys), that the claims of all officials qualified for promotion as on 13-3-1959 should be considered. It appears to us that we are really not concerned with what actually transpired in W. P. No. 654 of 1962 (Mys), so far as the facts are concerned. On the facts of this case, it is clear that the promotions were made on 9th January 1965 and 14th September 1965. The contention advanced on behalf of the State is that the qualifications of the petitioners for promotions should be considered with reference to the date on which the vacancies occurred and not the date on which promotions are made. From the affidavits filed by the petitioners it can be gathered that they had not acquired the requisite qualifications for promotion on 13-3-1959. But this is not of much consequence as it is admitted that by the date of promotion under Annexures "G1 and "H" the petitioners had acquired the requisite qualifications. So the only question is even if we take that the vacancies arose on 13-3-1959 whether the petitioners would be disqualified from being considered for promotion or not. This depends upon the legal position whether the qualification of the person for purposes of promotion should be taken into consideration with reference to the date of vacancy or the date on which the vacancy is filled by promotion. In support of the proposition that it is the date of vacancy with reference to which the qualification of a person for promotion is to be considered, our attention was drawn to an observation in Writ Petn. No. 1111 of 1965 (Mys), which is as follows:--

"It is a principle to which no exception taken that the question whether a person who aspires for a promotion has the qualification for such promotion has to be examined and decided when the vacancy to which such promotion could be made comes into being".

From this observation it is argued that the qualification is to be determined with reference to the time when the vacancy comes into being. The petitioners' counsel submits that this observation loses its force in view of what has been decided by this Court in Writ Petn. No. 654 of 1962 (Mys). It is further submitted that the above observation was not necessary for a decision in Writ Petn. No. 1111 of 1965 (Mys), as it was held that those vacancies to which respondents in the said case were promoted came into being only after the petitioner had acquired the qualification for promotion. It is further submitted that this observation is only obiter dicta and is actually opposed to what has been laid down in the other writ petition referred to above. In W. P. No. 654 of 1962 (Mys), this question has come up for consideration directly. The facts in the said case are that the vacancies to which promotions were to be made arose between January and June 1958. The petitioner therein passed the qualifying departmental test in October 1958. The promotions of the respondents therein were effected subsequent to 22nd November 1958. The petitioner was not given the benefit of any promotion; therefore he filed the writ petition.

The relevant observation of the Court in that Writ Petition is as here-under:

"What is indisputable is that the approach made by the Deputy Commissioner to the consideration of the question was illegitimate and faulty. If the petitioner was holding a higher rank than respondents 3 to 14 and if by March 1959 when the impugned promotions were made he had passed the prescribed departmental examinations, the question which the Deputy Commissioner had to consider in making the promotions in 1959 was whether, on the date of the promotions, the petitioner possessed or did not possess the prescribed qualification.

It should be pointed out that it would be a more reasonable view to take that the passing of departmental examinations is not really a qualification but only what amounts to removal of an obstacle to promotion which may otherwise be claimed by a civil servant. If therefore that obstacle had been removed and had disappeared by March 13, 1959 when the first instalment of promotions was made by the Deputy Commissioner and there was thus no impediment to the petitioner being promoted, the fact that the petitioner had not passed the departmental examinations during the period between January and June 1958 when the vacancies arose, could not constitute the obstacle to his promotion to which he was otherwise entitled. If a civil servant has to pass a departmental examination in order to become entitled to promotion to a higher post, the material date on which the question whether he has or has not passed that departmental examination has to be considered is the date on which the promotion is made. It would be taking an extremely unreasonable view to judge the eligibility of a civil servant for promotion with reference to the date on which the vacancy arose. I do not find it easy to understand what materiality the date on which the vacancy arose to which the promotion has to be made, can have in a case of that description. What really is the true criterion is whether on the date on which the promotion has to be made, a civil servant is or is not eligible for promotion. Any other view would lead to the incongruous situation that a person who was not eligible for promotion when the vacancy arose but became so eligible when the promotion is made, would not be entitled to claim promotion although he has a claim to such promotion over others in every other way."

In the later part of the judgment while considering the eligibility for promotion the Court observes:

"That being so, the material date for determination of eligibility in this case was not the date on which the vacancy arose but the date on which the promotions were actually made by the Deputy Commissioner which he made in March and October 1959. If by then the petitioner had passed the departmental examinations, and therefore there was no obstacle to his claim to promotion, the fact that if the promotion had been made before he passed those departmental examinations he would not have been entitled to be promoted would not be a ground for the deprivation of the promotion to which he was otherwise entitled."

We respectfully agree with these observations. On the basis of these

observations and the admitted facts in this case, it is clear that the petitioners' claim for promotion should have been considered by the Deputy Commissioner before passing the orders dated 9th January 1965 and 14th September 1965 Annexures "G" and "H" respectively.

3. The petitioners have sought for relief quashing the orders Annexures "G" and "H". It is unnecessary to grant this prayer. The petitioners have also asked for a writ of Mandamus directing the second respondent namely the Deputy Commissioner, Bellary to consider the petitioners' case on merits for promotion with effect from 9-1-1965 assigning them a ranking senior to the respondents. The petitioners are entitled to relief in this regard. Therefore we issue a writ of Mandamus directing the second respondent, the Deputy Commissioner, Bellary to consider whether the petitioners should have been promoted on the relevant date, viz., 9-1-1965 as first division clerks when officers junior to them were promoted and if so, ranking should be assigned to them and all the consequential monetary benefits should be allowed to them. These writ petitions are allowed in the above terms.

4. There will be no order as to costs.