
(1979) 10 KAR CK 0010
In the Karnataka High Court
Case No : W.P. 14678 & 14679/79

V.R. Shambulinga and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1980) 1 KarLJ 394

Hon'ble Judges : Rama Jois, J

Judgement

1. In these two writ petitions presented under Article 226 of the Constitution of India, by the petitioners, who are Motor Vehicle Inspectors in the Motor Vehicles Department in the State Government challenging the legality of the Government Order upgrading 54 posts of Motor Vehicle Inspectors and designating them as Senior Inspectors of Motor Vehicles and directing the posting of respondents 3 to 50 as Senior Inspectors of Motor Vehicles, the following question of law arises for consideration:

Whether the State, in exercise of its executive power could upgrade some of the posts belonging to a cadre, the method of recruitment to which is governed by rules framed under proviso to Article 309 of the Constitution, and could fix higher pay scale and higher duties and responsibilities to such upgraded posts?

When these cases came up for preliminary hearing, after hearing the learned counsel for the petitioner, I was not satisfied that this is a case in which rule nisi should be issued. At that stage, Learned counsel for the petitioner submitted that rule nisi has been issued in a similar case, i.e., W.P. 3564 of 1979. Hence, I directed issue of rule nisi and directed the Government Advocate to take notice and posted the case for hearing as I considered that the case could be disposed of after hearing the counsel for the petitioner and the Government Advocate for the State and notice to other respondents was unnecessary. Accordingly the matter has come up for hearing today.

2. The petitioners are Inspectors of Motor Vehicles in the Motor Vehicles

Department of the State Government. The cadre and recruitment rules of the department was promulgated by the Governor under proviso to Article 309 of the Constitution called the Karnataka General Services (Motor Vehicles Branch) (Recruitment) Rules, 1962. Along with the recruitment rules a notification sanctioning the cadre strength of several cadres of posts borne on the motor vehicles branch of the Karnataka General Services was also issued. According to the cadre notification, one of the cadres of executive posts created by the Government was that of Inspectors of Motor Vehicles. The recruitment rules prescribed the method of recruitment for the posts of Inspectors of Motor Vehicles as by way of direct recruitment. By an order made on 23-1-1979 the State Government upgraded 54 posts of Inspectors of Motor Vehicles as Senior Inspectors of Motor Vehicles in the pay scale of Rs. 660-1300. This order was made on the recommendation of the Transport Commissioner. The relevant portion of the order reads as follows:

ORDER

"Sanction, is accorded, in relaxation of economy orders for upgradation of the 54 posts of Inspector of Motor Vehicles in, the Motor Vehicles Department to those of Sr. Inspector of Motor Vehicles in the pay scale of Rs. 660-30-750-50-1000-60-1300. The duties & responsibilities of Sr. Inspector of Motor Vehicles and Jr. Inspector of Motor Vehicle are specified as in the Annexure I to this order. Necessary amendments to Cadre & Recruitment Rules will be issued separately. Consequential amendments to Karnataka Motor Vehicles Rules, 1963 and Karnataka Motor Vehicles Taxation Rules, 1957 will also issue separately."

Subsequent to the issue of the above order, the Commissioner for Transport issued an Official Memorandum dated 27-2-1979 and posted 48 Inspectors of Motor Vehicles (respondents 3 to 50) as Senior Inspectors of Motor Vehicles. Aggrieved by the said order, the petitioners have presented these writ petitions.

3. learned counsel appearing for the petitioners contended that the creation of the posts of Senior Inspectors of Motor Vehicles is illegal for the reason that such creation contravenes the recruitment rules framed by the Governor under proviso to Article 309 of the Constitution.

4. Elaborating the contention, learned counsel for the petitioners submitted that the posts of Senior Inspectors of Motor Vehicles are treated as superior to that of Inspectors of Motor Vehicles which posts are held by the petitioners and the persons posted as Senior Inspectors of Motor Vehicles are given certain supervisory powers over the Inspectors of Motor Vehicles and such a provision could not have been made by means of an executive order when according to the rules framed by the Governor under proviso to Article 309 of the Constitution, provision for recruitment is made only for the post of Inspector of Motor Vehicles.

5. I do not see any force in the contention urged for the petitioners. The power to legislate on all matters relating to State Public services is included in Entry 41

of List II of the VII Schedule (State List) read with Article 246 of the Constitution. Special provision has however been made in respect of two specific matters, viz., recruitment and conditions of service under Article 309 of the Constitution. Under the proviso to that Article, the power to frame rules regulating recruitment, and conditions of service of persons appointed to public services and posts under the Union or of any State is conferred on the President or the Governor, as the case may be, until provision is made in that behalf by Acts of appropriate Legislatures. The power under Article 309 to regulate recruitment and conditions of services could be exercised in respect of cadres or posts created until they are abolished. But the power to create or abolish the posts is not a power which falls under Article 309 of the Constitution, The said power is included in Entry 41 of the State List. Therefore under Entry 41, the State Legislature has the power to make law regulating the creating and abolition of posts and all other matters relating to public services and posts which also includes matters relating to recruitment and conditions of service. The executive power of the State is coextensive with that of the Legislature in view of Article 162 of the Constitution, Therefore in the absence of any law made by the Legislature, the executive has the power to create or abolish any post or posts. In fact, notification sanctioning the cadre strength of each category of posts in any service of the State is always issued by the State in exercise of its executive power. Provisions for regulating recruitment are only incorporated in the rules made under the proviso to Article 309 of the Constitution. In the present case also cadre strength was fixed by such separate notification issued, on the same date when the recruitment rules were promulgated. The impugned order of the Government is only an amendment to the cadre notification issued in exercise of executive power and not to the rules of recruitment framed under proviso to Article 309 of the Constitution. The effect of upgradation of 54 posts of Motor Vehicle Inspectors is, the abolition of 54 posts of Motor Vehicle Inspectors and creation of equal number of posts of Senior Inspectors. It was perfectly within, the competence of the State to create a new cadre of posts in exercise of its executive power. After the creation of those posts by executive action,, it was also competent for the executive to prescribe conditions of service as applicable to such new posts as also the method of recruitment until the same is covered by rules framed under the proviso to Article 309 of the Constitution or law made by the Legislature (See: B.N.Nagarajan v. State of Mysore, AIR 1966 SC 1942).

6. In the present case, the State Government accepting the recommendations of the Transport Commissioner issued an order creating a new cadre of Senior Inspectors of Motor Vehicles and fixed the strength of the cadre at 54. Having created the posts, it was also necessary for the State Government to have fixed a higher pay-scale. Accordingly a higher pay-scale has also been fixed Similarly having created the higher posts and also fixed higher pay-scale, it was also open for the Government to fix higher duties and responsibilities. Accordingly the same has been fixed. The impugned notification of the Government creating the higher cadre of posts and also fixing the pay scale for the post and the duties

attached to the post is within the scope of its executive power and does not amount to any contravention of the rules framed under the proviso to Article 309 of the Constitution.

7. Apart from the fact that there is no force in the contention urged for the petitioners, they are in no way adversely affected by the impugned orders. On the other hand by the creation of a higher cadre the petitioners are benefited. Though in the first instance the senior officials in the cadre of Inspectors of Motor Vehicles have been posted as Senior Inspectors of Motor Vehicles, as and when vacancies arise in the cadre of Senior Inspectors, the petitioners and others, who were Inspectors of Motor Vehicles, get the benefit of promotion and higher pay-scale according to their turn and they will also be benefited. Therefore there is no reason for the petitioners to be aggrieved by the impugned order of the State Government.

8. In the result, my conclusions are as follows:

(i) The State, in exercise of its executive power could upgrade some of the posts belonging to a cadre, the method of recruitment to which is governed by rules framed under proviso to Article 309 of the Constitution, and could fix higher pay-scale and higher duties and responsibilities to such upgraded posts.

(ii) The upgradation of 54 posts of Motor Vehicle Inspectors made by the impugned order amounts to creation of 54 posts of Senior Inspectors by abolishing equal number of posts of Inspectors and the State was competent to do so by means of an executive order and could also fix higher pay-scale and higher duties and responsibilities for the upgraded posts and it does not amount to contravention of recruitment rules framed under proviso to Article 309 of the Constitution.

9. Accordingly I make the following order:

(i) Rule discharged.

(ii) Writ petitions dismissed.

(iii) No costs.

Sri B.B. Mandappa, High Court Government Pleader is permitted to file memo of appearance within two weeks.