

(1979) 01 KAR CK 0019
In the Karnataka High Court
Case No : WP. 243/77 & 7054/78

Y.H. Sawkar and Others

APPELLANT

Vs

Director of Agriculture and Others

RESPONDENT

Date of Decision : 01-01-1979

Acts Referred:

Citation : (1979) 2 KarLJ 113

Hon'ble Judges : Puttaswamy, J

Judgement

1. As identical questions of law arise for determination in these cases, I propose to dispose of them by a common order.

2. In WP. No 243 of 1977 the petitioners have challenged the notification No. R(1) 3868/76-77/PSC, dated 29-11-1976 (published in Karnataka Gazette dated 9-12-1976)-Sl. No. of Vacancies 9-13-942 issued by the Karnataka Public Service Commission, Bangalore (hereinafter to be referred to as the P.S.C.) calling for applications for filling up 30 posts of Agricultural Officers in the Department of Agriculture of the Government of Karnataka (hereinafter to be referred to as "the department"). In WP. No. 7054 of 1978 the petitioners have challenged the validity of notification No. R(1) 4081/76-77/PSC. dated 14-2-1977 (published in the Karnataka Gazette, dated 17-2-1977)-Sl. No. of the vacancies 1061-1072-issued by the P.S.C. calling for applications to fill up 12 posts of Assistant Directors of Agriculture in the department.

3. Among others the petitioners who are all graduates in agriculture are working as Assistant Agricultural Officers Class III post in the department. The next promotional post for them is Assistant Soil Conservation Officers which is now called as "agricultural Officers"-a class II post-carrying higher scale of pay. In the Karnataka Agricultural Department Services (Recruitment) Rules 1961 (hereinafter referred to as "the 1961 Rules") 33-1/3 per cent of the posts of Assistant Agricultural Officers were reserved for direct recruitment and the rest of 66 2/3 percent was reserved for promotion.

4. In supersession of the 1961 Rules on 18-8-1976 the Governor of Karnataka under the proviso to Art. 309 of the Constitution has promulgated the Karnataka Agricultural Services (Recruitment) Rules, 1976 (hereinafter referred to as "the 1976 Rules") and has modified the ratio or quota available between direct recruits and promotees and has provided that 50 per cent of the posts should be filled by direct recruitment and the other 50 per cent should be filled by promotion from the cadre of Assistant Agricultural Officers. In the same Rules the Governor has also provided that 50 per cent of the posts of Assistant Directors of Agriculture should be filled by promotion and the rest of 50 per cent should be filled by direct recruitment. According to the notification No. AF. 39. ADO. 72(i), dated 18-8-1976 published by the Government the cadre strength of Agricultural Officers consists of 13 permanent posts and 253 temporary posts while the cadre strength of Assistant Directors of Agriculture consists of 19 permanent posts and 95 temporary posts.

5. The case of the petitioners is that the permanent posts in the cadres of Agricultural Officers and the Assistant Directors of Agriculture have all been filled up by the in service promotees and the direct recruitment in the two notifications is sought to be made against temporary posts of the respective cadres. According to the petitioners temporary posts in the cadres of Assistant Agricultural Officers and Assistant Directors of Agriculture can only be filled by promotion of eligible Officers of the department and cannot be filled by direct recruitment and the action taken by the P.S.C. to fill up the advertised posts against temporary posts is impermissible, for which reason the impugned notifications are liable to be struck down. The petitioners claim that by the action of the P.S.C. their chances of promotion to the two cadres is affected.

6. In WP. No. 243 of 1977 the respondents have filed their statement of objections resisting the claim of the petitioners. The respondents have asserted that the temporary posts have been in the establishment for well over three years and are likely to last for more than three years and are also likely to be made permanent. The respondents have contended that direct recruitment can be resorted even against temporary posts which are likely to last for more than three years and therefore the action taken by them to fill up temporary posts is legal and valid.

7. Arguments in the cases have proceeded on the basis that the posts notified for direct recruitment by the PSC, are temporary posts and therefore the factual assertion of the petitioners in that behalf is not in dispute.

8. Sri H.B. Datar, learned counsel for the petitioner, strenuously contended that direct recruitment can be resorted only against permanent posts of a cadre and cannot be resorted to against temporary posts of a cadre and that all temporary posts of a cadre has necessarily be thrown upon for promotion to in service employees only. In support of his contention, Sri Datar strongly relied on the Division Bench ruling of this Court in V.B. Badami v. State of Mysore, (1975) 2 Mys LJ. 356. Sri S.G. Doddakalegowda, learned High Court Government Pleader

appearing for the respondents refuted the contention of Sri Datar and urged that under the Karnataka State Civil Services (General Recruitment) Rules, 1957 (hereinafter referred to as "the 1957 Rules") replaced by the Karnataka Civil Services (General Recruitment) Rules, 1977 (hereinafter referred to as "the 1977 Rules"), the Karnataka Government Servants Probation Rules, 1957 (hereinafter referred to as "the 1957 Probation Rules") replaced by the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as "the 1977 Probation Rules"), it is permissible for the authority to resort to direct recruitment against temporary posts of a cadre and the ruling of this Court in Badami's case, (1975) 2 Mys LJ. 356, has no application.

9. Almost as a rule, new posts in any cadre are sanctioned on a temporary basis and they are continued from time to time till they are made permanent by the Government. The assertion of the respondents that the large number of posts though classified as temporary have been continued for more than three years and are likely to continue for more than three years and are likely to be made permanent also is not disputed and cannot also be disputed by the petitioners. It is common knowledge that agricultural departments in our country in general and in our State in particular is an ever growing department and posts sanctioned particularly technical posts like Agricultural Officers or Assistant Directors of Agriculture are not likely to be discontinued and on the other hand the prospect is that there will be further additions to the cadres and all the existing posts at any rate are likely to be made permanent. The Karnataka Civil Services Rules do not really make any distinction between a permanent Government servant confirmed and counted against a permanent post and a Government servant counted against a temporary post. The recruitment to the cadres of Assistant Agricultural Officers or Assistant Directors of Agriculture is not regulated by any special Recruitment Rules. On the other hand, the recruitment to those cadres is also regulated by the 1957 Rules or the 1977 Rules. In the language and the scope of 1957 and 1977 Rules there is really no serious departure. Sub-Rule (3)(a) of Rule 1 of the 1957 Rules and the corresponding Sub-Rule (3)(a) of Rule 1 of the 1977 Rules expressly declare that the general recruitment Rules are applicable to recruitment of permanent and temporary posts. In other words, the general recruitment Rules do not make any distinction and difference in the recruitment to the permanent or temporary posts in any cadre of our State Civil Services. In the 1957 Probation Rules as originally promulgated the word "appointed on probation", had been defined as "appointed on trial" in or against a substantive vacancy. But by an amendment made on 26-12-1967 evidently to permit the appointment of probationers against temporary vacancies, the term "appointed on probation", was amended as permitting the appointment against a temporary vacancy likely to continue for not less than three years. The object of the amendment in 1957 was clearly to permit the appointment of probationers against temporary vacancies also. Before appointing a person against a temporary vacancy, necessarily, the appropriate selection authority has to select him in the absence of any special recruitment

Rules only in accordance with the general recruitment Rules. It is thus clear that the impediment, if any, for recruitment and appointment of probationers only against permanent vacancies was given a go by as early as in the year 1967 and express provision was made to permit the recruitment and appointment of probationers against temporary vacancies also. In the 1977 Probation Rules the word "appointed on probation" has been defined as "appointed on trial" only. The 1977 Probation Rules do not make any distinction and difference in permanent and temporary vacancies for purpose of recruitment and probation. An examination of the Civil Services Rules regulating the conditions of service like pay, increment, leave and pension, the General Recruitment Rules of 1957 or 1977 and the Probation Rules 1957 and 1977 would clearly establish that there is no impediment whatsoever for resorting to direct recruitment against temporary posts as claimed by the petitioners. On the other hand a close examination of all those Rules permit the direct recruitment even against temporary posts in any cadre of our State Civil Services.

10. Sri Datar urged that direct recruitment against temporary posts cannot be resorted to is firmly settled as a legal principle by this Court in Badami's case.

11. In Badami's case, (1975) 2 Mys LJ. 356, this Court had to consider the validity of a seniority list drawn up by the Government in the cadre of Karnataka Administrative Service, the recruitment to which was regulated by a special set of Rules called the "Karnataka Administrative Services Rules" and the "Karnataka Recruitment of Gazetted Probationers Rules", 1959. Unlike the other cadres in a department, the cadre of Karnataka Administrative Services consisted of only permanent strength and did not consist of permanent and temporary strength as in the case of the cadres of Agricultural Officers and Assistant Directors of Agriculture of the Department of Agriculture and various other cadres of other departments of the Government. In examining the relative ranks to be assigned to the direct recruits and promotees who had been promoted in excess of their ratio, quota or strength, this Court having regard to the language of the Rules noticed earlier observed that recruitment for the cadre of Karnataka Administrative Service can only be against permanent strength of the cadre. The decision of this Court in Badami's case, (1975) 2 Mys LJ. 356, was challenged before the Supreme Court in Civil Appeals Nos. 1359 to 1365 of 1973 which by its judgment dated 17-9-1975 affirmed the decision of our High Court and that judgment is reported in 1975(2) S.L.R. 626. While affirming the judgment the Supreme Court has expressly stated that the cadre of Karnataka Administrative Service only consisted of permanent posts and did not consist of any temporary posts (vide para 23, page 631). In Badami's case, (1975) 2 Mys LJ. 356, this Court or the Supreme Court was not called upon to decide the question as to whether there can be direct recruitment against temporary posts which are likely to last for more than three years as in the present case in particular having regard to the language of the Civil Services Rules, General Recruitment Rules and the Probation Rules, much less was it called upon to examine their true scope and ambit and its application. In my opinion, the observations of this Court

in paragraphs 18 to 21 of the judgment on which Sri Datar placed great reliance cannot be read as laying down any firm principle that direct recruitment cannot be resorted to against temporary posts and no such firm principle has been enunciated by this Court in Badami's case, (1975) 2 Mys LJ. 356. I am therefore of the opinion that Badami's case, (1975) 2 Mys LJ. 356, case is of no assistance to Sri Datar.

12. As to whether a cadre should consist of permanent and temporary posts and how many posts should be permanent and how many posts should be temporary are all matters exclusively for the Government to decide Even the ratio to be maintained between the direct recruits and promotees is also a matter for the Government to decide. In my view when the Government classifies a certain number of posts as temporary posts and resorts to direct recruitment, the conditions of service of in service people are not in any way affected so as to permit a challenge by them against the recruitment resorted to by the authorities. In my opinion the petitioners are not even aggrieved persons to challenge the action of the Government and the impugned action of the PSC. also.

13. In the light of my above discussion, I hold that the rule issued in these cases is liable to be discharged.

14. Rule discharged, with costs. Advocate's fee Rs. 100 in each writ petition.