

UNION OF INDIA

v.

DR. R. D. NANJIAH AND ORS.

October 15, 1976

[M. H. BEG AND P. N. SHINGHAL, JJ.]

States Re-organisation Act (37 of 1956) s. 115—Opportunity to hear after final inter-State seniority list is prepared after giving opportunity to aggrieved officers to make representations against provisional list—If should be given.

Final list, when may be set aside by Court.

(1) When a provisional inter-State seniority list is prepared for integrating services after States re-organisation, there is a possibility of some mistakes occurring about the facts of a case or in the application of the relevant statute or rules or executive directions governing seniority. It would, therefore, be quite fair to give the person affected an opportunity to be heard against the proposed list before it is made final under s. 115, State Reorganisation Act, 1956, so that, any possible mistakes, either in the facts relating to his case or in the law or rule applied with regard to the proposed assignment of a place to him in the seniority list may be rectified. But, once he had that opportunity, it cannot be said that he should have a further opportunity against even a final seniority list, for then such a list would not really be final but will only be provisional or preliminary.

[830 C-D]

(2) But, even a final list, if it is prepared contrary to the rules applicable or is vitiated on some ground showing that a condition precedent to the finalisation of the list is absent, or a particular decision is mala fide or arrived at on totally irrelevant or extraneous considerations, such a final list could be declared invalid by the Court. [830 G]

In the present case, the officer was not satisfied with the position given to him in the final seniority list. But, since he had an opportunity under the integration rules of the State for filing objections against the preliminary provisional list, he cannot urge that he should be heard again after the final list was prepared.

[829 A]

He cannot claim to have a say against the final list on the analogy of a second opportunity to show cause against a proposed punishment in a departmental enquiry, because, no element of punishment is involved in preparing either a provisional or a final seniority list. [830 B]

He is not entitled to any relief because he had not made out in his petition to the Court any of the grounds on which a final list can be assailed. [831 G]

Union of India v. G. M. Shankariah & Ors. etc. (S.L.R. 1969 p. 1) (C As. Nos. 1439 & 1446 of 1967—decided on 16-10-1968) explained.

Union of India & Anr. v. P. K. Roy & Ors. [1968] 2 S.C.R. 186 @ 202 and *Union of India v. G. R. Prabhavalkar & Ors.*, A.I.R. 1973 SC 2102 at 2106, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1744 of 1968.

(Appeal by Special Leave from the Judgment and Order dated 14-6-1967 of the Mysore High Court in Writ Petition No. 440/65).

Mrs. Shyamala Pappu and Girish Chandra, for the Appellant.

Narayana Nettar, for Respondents 4 and 5.

A The Judgment of the Court was delivered by

BEG, J.—The judgment under appeal after certificate of fitness of the case under Article 133(1)(c) of the Constitution of India, is very short as it purports to follow the *ratio decidendi* of *Union of India v. G. M. Shankariah & Ors. etc.*,⁽¹⁾ where this Court had held, upon a concession by the Attorney General, that a list prepared under Section 115 of the States Reorganisation Act, 1956, (hereinafter referred to as 'the Act'), was provisional. Therefore, it was held that the writ petition was pre-mature as the final list of officers on an integrated seniority list was still to be prepared after hearing objections.

C The High Court of Mysore seems to have been under the misapprehension that the case now before us is also governed by what was held by this Court in *Shankariah's* case (supra) with reference to an entirely different and provisional list of Forest Officers. The case now before us pertains to Animal Husbandry and Veterinary Services of the Mysore State in which the petitioner was given, in the final integration list, a position to which he objected. Apparently, the petitioner, whose date of birth is given as 28th June, 1915, has retired. He is a respondent who has not appeared before us, and, therefore, could not be heard by us. We have, however, gone through his petition and the affidavit filed in its support where, in paragraph 16, he states as follows :

E "The Mysore State Civil Service Integration Rules 1960 provide for filing objections only against the preliminary provisional Inter-State Seniority List and do not provide any provision for filing objections or appealing against the final Inter-State Seniority List as per Annexure 'B'. Thus we have no other legal remedies open to us for the redressal of our grievances and the abridgement of our fundamental rights guaranteed under the Constitution of India, and, therefore, we are forced to approach this Hon'ble Court to invoke the writ jurisdiction for the redressal."

F It is apparent that the petitioner-respondent was claiming relief against the final Inter-State seniority list although he was given due opportunity to object to the provisional list. Mrs. Shyamala Pappu, who has looked up the departmental records, informs us that the petitioner was given ample opportunity to file his objections to the preliminary list.

G Now, *Shankariah's* case (supra) was confined to an admission on behalf of the Central Government that the list before the Court was provisional so that the petitioners before the Court on that occasion were to get opportunities of putting forward their objections before the final list is prepared. In the case before us, the petitioner admits that the Mysore State Civil Services Integration Rules provided for filing of objections against the preliminary provisional Inter-State Seniority list. Presumably, he had that opportunity. Otherwise, he would, no doubt have objected that the rules had not been complied

(1) S.L.R. 1969 p.1 (C. As. Nos. 1439 & 1446 of 1967—decided on 16-10-1968).

with, which he did not do. His grievance seemed to be that he was not heard after the final list was prepared. We are unable to appreciate this line of attack upon the final list.

We think that the concession in *Shankariah's* case (*supra*) was confined to the facts of that particular case. There the list was provisional. The most that could be urged, in the light of decisions of this Court, is that a person whose seniority is to be determined under Section 115 of the Act must be given an opportunity to object to the proposed assignment of a place to him in the seniority list. As already observed above, the petitioner had ample opportunity to do that. Hence, the principle recognised in *Shankariah's* case (*supra*) was not applicable to such a case.

The judgment of the Mysore High Court was, in our opinion, based on an apparent misunderstanding of *Shankariah's* case (*supra*) and on a failure to appreciate the facts of the case of the petitioner-respondent which is now before us. There was not reference whatsoever to any facts of the case in the order of a few lines by which the petitioner's petition was disposed of by the High Court on the erroneous assumption that it was governed by *Shankariah's* case (*supra*).

As the petitioner in the High Court, who is the respondent before us, was unrepresented, Mrs. Shymala Pappu, appearing on behalf of Union of India, very conscientiously, took us through *Union of India & Anr. v. P. K. Roy & Ors.*⁽¹⁾ from which, learned Counsel thought, the following observations could perhaps be cited on behalf of the petitioner-respondent (at p. 202):

"It was argued by Mr. Ashoke Sen that in regard to both these matters the respondents have a right of representation and the final gradation list should have been published after giving them further opportunity to make a representation. Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the straight-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case (See the decision of this Court in *Shri Bhagwan and Anr. v. Ram Chand & Anr.* [1965] 3 SCR 218, 222. In view of the special circumstances of the present case we think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Ashoke Sen before the final gradation list was published. As no such opportunity was furnished to the respondents with regard to these two matters

(1) (1968) S.C.R. 186 at 202.

A we hold that the combined final gradation list dated April 6, 1962, so far as category 6 is concerned, is *ultra vires* and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of *certiorari*”.

We think that any claim to have a say against the final list prepared, on an analogy with the second opportunity which is afforded to a person to be punished after arriving at a decision on the facts of a departmental trial and proposal to inflict a particular punishment upon him, is quite inappropriate. No element of punishment at all is involved in preparing either a provisional or a final seniority list. All that is done is that certain principles are applied in the preparation of the list. These principles are generally found in the rules or executive directions which are known to or are capable of being found out by the persons affected. When a provisional seniority list is prepared, there is a possibility of some mistakes occurring about the facts of a case or in the application of those rules. It would, therefore, be quite fair to give a person affected an opportunity to be heard against the proposed list before it is finalised so that any possible mistakes, either on facts relating to his particular case or of law in applying the rules governing seniority to those facts, may be rectified. But, once he has had that opportunity, it cannot possibly be said that he should have a further opportunity against even a final seniority list. If he was to have that opportunity the list would not really be final but only provisional or preliminary. It will be obviously contradictory to hold it to be a final list and yet declare it subject to modifications on further objections. We are unable to find any rule of natural justice having such a paralysing scope.

E In *P. K. Roy's* case (*supra*), the opportunity afforded was to be given before the publication of the final list. It was an opportunity to be given before the final list was to be declared and published as a final list. A right to representation was recognised as existing at time when the list was still to be considered as not finalised presumably because some mistakes had crept in due to want of hearing on two points. Evidently what was meant was that the publication gave the list finality. In that particular case, the list had been prepared without due regard to the particular important points which had to be considered before finalisation.

G What we have observed does not mean that, if a final list is prepared contrary to the rules applicable or is vitiated on some ground showing that a condition precedent to the finalisation of the list is absent, it would still be inviolable or sacrosanct. Even a list purporting to be final can be vitiated by non-observance of conditions precedent. In order to establish the invalidity of the final list on some such grounds of invalidity, those grounds have to be shown to exist. We find no such grounds in the case before us.

H Learned Counsel for the Central Government had cited before us *Union of India v. G. R. Prabhavalkar & Ors.* (1) where it was held by this Court (at p. 2106) :

(1) A.I.R. 1973 S.C. 2102 at 2106.

"In our opinion the contentions of the learned Additional Solicitor General are well founded. The Central Government, under Sec. 115 of the Act, has to determine the principles governing equation of posts and prepare a common gradation list by integration of services. To assist it in the task of integration of services and for a proper consideration of representations, the Central Government is empowered to establish Advisory Committees. The Central Government is bound to ensure a fair and equitable treatment to officers in the matter of integration of services and preparation of gradation lists. It has also to give a full and fair opportunity to the parties affected to make their representations; and the Central Government has also to give a proper consideration to those representations. So long as the Central Government has acted properly according to the provisions of the Act, we are of the view that a Court cannot go into the merits or otherwise of equation of posts which is a matter within the province of the Central Government".

It was also held there (at p. 2106) :

"It is no doubt true that the Central Government must have due regard to the principles enunciated by it in consultation with the States for the purpose of equation of posts. It must not only give an opportunity to the concerned officers to make representations, but it must also give those representations a proper consideration. It is not within the province of the Courts to lay down what are the principles to be adopted for purposes of equation. That falls within the purview of the statute concerned and the authorities charged with such duty. The power of the Courts is only to see that an authority has acted properly in accordance with the statute. If that is established, the decision of the authorities concerned will have to stand. If a particular decision is *mala fide* or arrived at on totally irrelevant and extraneous considerations, such a decision can be interfered with by Courts. In this case, no *mala fides* are alleged."

We find that, as was the case of the petitioner in *Prabhavalkar's* case (*supra*), the petitioner-respondent Dr. R. D. Nanjiah, and others similarly placed respondents before us have been unable to make out, in their petitions, any grounds for interference with the final list. We, therefore, allow this appeal, and set aside the judgment and order of the Mysore High Court. The parties will bear their own costs.

V.P.S.

Appeal allowed.