

C. KRISHNA GOWDA AND ORS. A
v.
STATE OF KARNATAKA AND OTHERS

FEBRUARY 2, 1998

[M.M. PUNCHI, C.J. AND M. SRINIVASAN, JJ.] B

Service Law—Karnataka Administrative Service—Assistant Commissioners Class I (Junior Scale)—Direct recruits and promotees—Seniority—Strength of Cadre—Government Order No. GAD 590 SMC dated 03.03.1976—Fixing Cadre strength, as 133 posts set out as temporary and 152 as permanent—Held, the strength of cadre cannot be said to include the temporary posts—Constitution of India, 1950—Articles 14 and 16. C

Karnataka State Civil Services (Probation) Rules—Rule 9—Refers to substantive vacancy and confirmation of probationer—Held, not applicable in respect of temporary posts. D

The Government of Mysore published gradation list as on 01.01.1972 by notification dated 13.01.1972 fixing the seniority of Assistant Commissioners. The promotees challenged the quota rule being applied to all vacancies in all posts whether permanent or temporary, in *Badami's Case*. The Court dismissing the appeal held that the quota between promotees and direct recruits was to be fixed with reference to the permanent strength of the junior duty posts. Thereafter the gradation list of Junior Scale Officers as on 30.06.1973 was prepared on the guidelines of State Government and notified on 10.08.1976. In the meanwhile on 03.03.1976 Government passed an order No. GAD 590 SMC dated 03.03.1976 with reference to fixation of cadre strength of Karnataka Administrative Service (Junior Scale). In the appendix 133 posts were set out under caption 'Temporary posts' under State Government and 152 as permanent posts and the permanent cadre strength was mentioned as 152. E

Again by notification dated 02.02.1977 gradation list was published. The direct recruits of 1974 batch made representation for re-fixing the inter-se seniority in the gradation list to which State Government passed an order on 22.05.1980. The promotees challenged the order before the High Court in a Writ Petition. The High Court quashed Government order dated 22.05.1980 and issued direction to the State Government to modify the F G H

A gradation list published in August, 1976. Aggrieved by the judgment of the High Court, direct recruits filed Writ Petition under Article 32 which was disposed of by a common judgment in *Gonal Bhimappa's Case*, affirming the principle laid down in *Badami's Case*.

B Following the decision of this Court in *Gonal Bhimappa's Case* the State Government published notification dated 30.04.1990, after which seniority list of direct recruits and promotees to the cadre of KAS (Junior Scale) was published. Aggrieved, the promotees approached this court seeking reconsideration of the decision in *Gonal Bhimappa's Case*. After the decision in *Direct Recruits Class II Case*, the Writ Petition of promotees was disposed of by this court directing the promotees to approach the High Court and seek appropriate remedies. In the meanwhile the Administrative Tribunal Act came into being and the promotees approached the Tribunal seeking the quashing of notification no. DPARS SKG 89 (1) dated 30.04.1990 and the gradation list of Assistant Commissioners accompanying it. The Tribunal dismissed the Petitions upholding the correctness and the validity of the Government Order.

E In this appeal challenging the decision of the Tribunal, appellants contended that the Government Order dated 03.03.1976 had increased the cadre strength to 285 posts inclusive of the temporary posts mentioned therein and in view of the amendments of the Rules in 1977, the quota for the promotees should be fixed on that basis and not on the footing that the cadre consisted of 152 permanent posts only. It was also contended that Rule 9 as amended in 1977 was not brought to the notice of this court when *Gonal Bhimappa* case was decided.

F Dismissing the appeal, this Court

HELD : 1. The Judgment of the Tribunal upholding the correctness and the validity of the government order dated 03.03.1976 is upheld.

[446-E]

G *Gonal Bhimappa v. State of Karnataka*, [1987] (Supp.) S.C.C. 207 and *V. B. Badami v. State of Mysore*, [1976] 2 S.C.C. 901, relied on.

Keshava Ramaswamy Gowda v. State of Karnataka, (1995) K.S.L.J. (S.C.) 767, distinguished.

H *Direct Recruits Class II Engineering Officers Association v. State of Maharashtra*, [1990] 2 S.C.C. 715, referred to.

2. The temporary posts are not to be taken into consideration for working out the quotas. A perusal of the Government Order dated 03.03.1976 shows that the temporary posts mentioned in the Appendix were not included in the cadre. By that Order, the Government had only given a clear picture of the cadre in one order. The Appendix referred to permanent cadre strength as 152 posts. Similar language is not used with reference to the 133 temporary posts mentioned in the first part of the Appendix. Therefore, it cannot be held that the Government Order increased the strength of the cadre to 285 posts.

[445-E]

3. Rule 9 of the Probation Rule as amended in 1977 has no application to the present case since it refers to substantive vacancy and confirmation of probationer and in this case none of the appellants was appointed on probation. Even the Government Order cannot be read in conjunction with Rule 9 of the Probation Rules as amended in 1977 as the Government Order itself did not have the effect of increasing the strength of the cadre.

[445-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 528-536 of 1998.

From the Judgment and Order dated 8.3.96 of the Karnataka Administrative Tribunal, at Bangalore, in A. No. 2113/94, 1233-35/95, 1239, 4038 and 4040/95 and O.A. Nos. 1237 and 2036 of 1995.

M. Rama Jois, Kapil Sibal, V.C. Mahajan, Manoj Goel, Ms. Indu Malhotra, S.N.Bhat, Ms. Binu Tamta, K.R.Nagaraja, K.K.Tyagi, P.Mahale, D.K.Garg, Satpal Singh, (R.C.Kaushik) (N.P.) and P.N. Gupta, Anis Suhrawardy for the appearing parties.

The Judgment of the Court was delivered by

SRINIVASAN, J. Leave granted in all the S.L.Ps.

The phoenix has risen again. Admittedly this is the fourth round of litigation in the dispute which germinated about three decades and three years ago between two groups of employees in Karnataka Administrative Service. One group comprises persons directly recruited as Assistant Commissioners in Group 'A' (junior scale) while the other consists of Tehsildars promoted as Assistant Commissioners. This matter came to this Court on three occasions and the relevant Rules were considered elaborately and interpreted on two of them. The history of the Rules governing the service

A need not be repeated here as it has been set out in detail in the previous rulings.

2. The Government of Mysore published a gradation list prepared as on January 1, 1972 by a notification dated January 13, 1972 fixing the seniority of the Assistant Commissioners. The same was challenged in *V.B. Badami v. State of Mysore*, [1976] 2 S.C.C. 901, Before this Court as many as six contentions were urged, the first of them being that the quota rule applied to vacancies in all posts whether permanent or temporary. All the six contentions were rejected. While dealing with the first contention, this Court gave three principal reasons :-

C I. The cadre consisted only of permanent posts.

II. The advertisement of the Public Service Commission stated that the posts were likely to be made permanent.

D III. Rule 9 of the Mysore Government Servants Probation Rules provided for confirmation of a Probationer as a full member of the service at the earliest opportunity in any substantive vacancy which may exist or arise in the permanent cadre of the service.

3. The court went on to hold that the quota between promotees and direct recruits was to be fixed with reference to the permanent strength of 135 junior duty posts. The cadre strength was found to be 135 permanent posts. In para 34 of the judgment, the court said that so long as the quota rule remained, neither promotees could be allotted to any of the substantive vacancies meant for the quota of direct recruits nor direct recruits could be allotted to promotional vacancies. Ultimately the court dismissed the appeals rejecting the claim of the promotees.

4. That judgment was delivered on September 17, 1975. The state government issued an official memorandum on July 5, 1976 laying down guidelines for determination of seniority between the direct recruits and promotees. The Gradation List of Junior Scale Officers as on June, 30, 1973 was drawn up on the basis of such guidelines and notified on August 10, 1976. In the meanwhile on 3rd March, 1976 the Government passed an order number GAD 590 SMC dated 3.3.1976. with reference to the fixation of cadre strength of K.A.S (Junior Scale). As strong reliance is placed by the petitioners on the said order in support of their contention that the total cadre strength was increased to 285 by including 133 temporary posts under the government

order it is necessary to extract the operative part thereof:

ORDER NO. GAD 590 SMC 74,

BANGALORE, DATED THE 3RD. MARCH 1976. READ

G.O.No. GAD 110 SMC 66, dated 23.1.1967.

In Government order dated 23.1.1967, the permanent cadre strength of KAS Class-I (Junior Scale) was fixed at 151. The composition of the cadre has not changed, since some of these posts are no longer held by KAS Class-I (Junior Scale) Officer because they have been upgraded to the KAS (Senior Scale) or are now held by Officers of the respective Departments. The present cadre strength has, therefore been reviewed in the light of these changes. In the past the temporary posts held by KAS Class-I (Junior-Scale) were treated as temporary additions to the cadre from time to time. It is now proposed to show the permanent and temporary cadre strength in a common order to have a clear picture of the cadre.

Accordingly, Government hereby fix the permanent and temporary cadre strength of KAS Class-I (Junior-Scale) as shown in the Appendix.

This issues with the concurrence of Finance Department vide U.O. No. FD 248/S-I 75, dated 27.1.1976.

In the appendix 133 posts were set out under the caption 'Temporary posts under State Government' in 29 categories. A list of 152 Permanent posts under State Government is also set out therein and the permanent cadre strength was mentioned as 152.

5. By notification dated February 2, 1977, the gradation list was published. In June 1977, Karnataka Civil Services (Probation) Rules were framed in exercise of the power conferred by Article 309 of the Constitution. Rule 2(ii) thereof defined a probationer, as a government servant on probation. Rule 9 thereof read as follows:

"9. *Confirmation* - Subject to sub-rule (4) of rule 19 of the Karnataka State Civil Services (General Recruitment) Rules, 1977, a probationer who has been declared to have satisfactorily completed his probation shall be confirmed at the earliest opportunity in any substantive vacancy which may exist or arise:

A Provided that where more than one approved probationer is available for such confirmation, the senior-most approved probationer on the date of vacancy shall be confirmed.”

B 6. On a representation made by some of the direct recruits of 1974 batch for re-fixation of *inter-se* seniority in the gradation list, the State Government passed an order on 22.5.80. Challenging the same certain promotees filed writ Petitions in the Karnataka High Court. The writ Petitions were disposed of by the High Court on 8.9.82 when they were partly allowed. The Government Order of 22.5.80 was quashed and a direction was issued to the State Government to modify the gradation list earlier published in August 1976. In that judgment, the High Court analysed the judgment of this Court in *Badami's* case [1976] 2 SCC 901. It was observed that it was not open to the High Court to speculate what would have been the conclusion of this court if it had known the correct factual position that the cadre of junior scale consisted of both the permanent and temporary posts. Thus the High Court expressed a doubt that this Court was not aware of the correct factual position when it disposed of *Badami's* case. However, the High Court observed that the judgment of this Court would bind not only the parties thereto but also the other promotees who were petitioners before it.

E 7. The judgment of the High Court was challenged in this court in a batch of Appeals by Special Leave. Writ Petitions under Article 32 were filed by direct recruits. All the cases were heard and disposed of by a common judgment on August 11, 1987. The same is reported in *Gonal Bhimappa v. State of Karnataka* [1987] Supp. S.C.C. 207. This court set out the following aspects for determination ;

F “(i) what is the effect of the quota rule in the matter of fixation of *inter se* seniority in the Gradation List so far as recruits from different sources are concerned ?

(ii) Thought admittedly in 1957 under the relevant rule, a quota existed, was that basis altered or given up during the relevant period ?

G (iii) what is the effect of this Court's judgment in *Badami* case? Was the High Court correct in observing that this Court would not have come to the conclusion that quota was confined to substantive vacancies only if the true state of facts was known ?

H (iv) what is the effect of the observation in *Iyer* case and does it supersede the rule in *Badami* case ?

(v) Does the situation highlighted in this case require any other direction ? A

8. Aspect No.2 is relevant for the purpose of this case. The answer thereto is found in paragraphs 12 and 13 of the judgment which read as follows:

"12. There was no dispute either before the High Court or before us that in the 1957 Rules there existed a quota for filling up vacancies in the Class I Junior Scale posts. The High Court found that the quota continued throughout during the relevant period. Before us Mr. Nariman supported that finding while Mr. Kacker maintained that the quota had in later years been given up. Rule e of Mysore Recruitment of Gazetted Probationers Rules, 1959 made the following provisions: B

(1) The provisions of these rules shall be applicable in respect of direct to recruitment the cadres in State Civil Services Class I and Class . II specified in column 8 of the Schedule of these rules relating to the Services specified in the corresponding entries of column 2 of the said Schedule. C

(2) These rules shall have effect notwithstanding anything contrary contained in the Cadre and Recruitment Rules for the time being in force applicable to the cadres in the State Civil Services referred to in sub-rule (i) and (ii) in the Mysore State Civil Service (General Recruitment) Rules, 1957. D

(3) During the period of five years from the date of commencement of these rules, as nearly as may be two-thirds of the number of vacancies arising in the cadres in the State Civil Services referred to in sub-rule (i) shall be filled by appointment of candidates (hereinafter in these rules referred to as probationers) selected in accordance as with the provisions of these rules and the actual number of a vacancies to be so filled shall be determined by the government. E

Admittedly these rules related only to direct recruitment and as it appears, sub-rule (3) remained in force for five years (said to have been extended for one more year); with the lapse of a total period of six years from the date when these rules came into force, they cease to have effect. In 1966 rules were made under the proviso to Article 309 known as the Karnataka Government Gazetted Probationers Posts (Appointment by Competitive Examination) Rules, 1966 and sub-rule F

H

A (3) of Rule 3 there of provided *inter alia* :

That notwithstanding anything contrary in the rules of recruitment to the Karnataka Administrative Service the number of vacancies as determined by the government in that service should be filled by direct recruitment after holding a competitive examination by the Commission.

B

(13) On August 11, 1977, the Karnataka Administrative Service (Recruitment) (Amendment) Rules, 1977 came into force. Rule 2 thereof provided :

C

Amendment to Schedule-In the Schedule to the Karnataka Administrative Service (Recruitment) Rules, 1977 for the entries at the Item (b) the following entries shall, be substituted, namely:

	1	2	3
D	(b) All (Junior	Class I (i) 50 percent of Scale) vacancies to be	For Posts

D

E

Unless the 1957 Rules, remained in force till 1977, there would have been reality no necessity to refer to them for the purposes of amendment. *Badami* case did proceed on the footing that the quota system in the Recruitment Rules continued till 1971-72. It is not Mr. Kacker's case that anything happened after 1972 which brought about dissolution of the quota. We reject the contention of Mr. Kacker that the quota system had been abandoned and confirm the finding of the High Court in that a regard. It is, however, a fact that the ratio has been changed from time to time."

F

While considering the 3rd aspect, the Bench said:-

G

"15. The conclusion indicated in the decision of the learned Chief Justice of this Court in *Badami* case had been supported by reasons. As it would appear at Page 819 of the Reports, this aspect was raised as the first of the six contentions formulated for consideration of the Court. Keeping the facts of the case in the background, three reasons were indicated in the judgment for the conclusion that quota covered permanent posts. Reference was made to certain decisions of this Court as also to Rule 9 of the Probation Rules of 1959. It was held

H

that Rule 9 established the exclusion of temporary posts from the cadre. *Royappa* case was relied upon for the same conclusion by saying that posts temporarily added to the cadre by exercise of power under a permissive rule would not become cadre posts and temporary posts *careerted* due to exigencies of the service should be treated as posts outside the cadre. The High Court in the judgment in *Kadali* case relied upon Note 2 of Rule 49 of the KCSR and thought that this Court was not properly informed of the factual situation when in *Badami* case it said that temporary posts were not to be taken into consideration for the purpose of working out the quota. The note of Rule 49 has indeed no bearing on the point and we are of the view that there was really no justification for the doubt indicated by the High Court. Apart from the fact that the conclusion of this Court in *Badami* case on this score is a binding authority on us, from an examination of the matter we also reiterate that conclusion to be correct.”

9. Thus this court affirmed the principle laid down in *Badami's* Case and allowed the appeals and writ petitions of the direct recruits while dismissing the appeals by the promotees. The decision was sought to be reviewed by a few promotees in Review Petition Nos. 880-881 of 1987. They were dismissed on 23.9.87.

10. Following the said ruling, the government published a notification on 30.4.1990 reviewing the promotions of the petitioners assigning to them the dates of eligibility for promotion to the cadre of Junior Scale KAS Officers. Simultaneously, a seniority list of direct recruits and promotes to the cadre of KAS (Junior Scale) was published. Challenging the same the aggrieved promotees filed writ petitions under Article 32 of the Constitution in this court seeking reconsideration of the decision in *Gonal Bhimappa's* case. The petitions were kept pending after notice awaiting the decision by the Constitution Bench in *Direct Recruits Class II Engineering Officers Association v. State of Maharashtra*, [1990] 2 S.C.C. 715 after the decision of the Constitution Bench the writ petitions of the promotees were disposed of by the court with a direction to the petitioners to approach the High Court and seek appropriate remedies. Though this court directed the petitioners to approach the High Court they had to approach the Administrative Tribunal as by that time the Tribunal had been constituted under the provision of the Administrative Tribunals Act. Pursuant thereto, the petitioners filed applications before the Tribunal. The substantive prayer made by the

A petitioners was to quash the notification number DPARB SKG 89(1) dated 30.4.90 and the gradation list of Assistant Commissioners accompanying it. The basis of the claim of the petitioners before the Tribunal was that the correct factual position was not placed before this court in *Badami's* case or *Gonal Bhimappa's* case and the decisions therein were not binding and in any event would be distinguishable. The petitioners went to the extent of contending before the tribunal that the judgments were per incuriam.

11. The Tribunal perused the records in *Gonal Bhimappa's* case and arrived at a factual finding that this court was dealing with an identical set of facts in that case. The Tribunal also found that the decision was based upon the interpretation of the same rules and orders. The Tribunal opined that it was impermissible to take a different view in the present case. It was contended before the Tribunal, that some observations made in the order of this court whereby the petitioners were directed to approach the High Court and seek appropriate remedies on the basis of the ruling in the *Direct Recruit's*, case [1990] 2 S.C.C. 715, would enable the petitioners to reargue the matter decided by this court in *Gonal Bhimappa's* case. That contention was rejected by the Tribunal which held that there was no specific direction permitting the High Court or the Tribunal to reconsider the issue. The Tribunal also placed reliance on certain passages in the judgment of the Constitutions Bench of this Court in that case to the effect that a decision concerning a large number of government servants in a particular service given after careful consideration of rival contentions is binding on all of the members of the service. After referring to the judgments of this court in various cases the tribunal dismissed the petitions upholding the correctness and validity of the government order.

12. Aggrieved thereby, the petitioners have filed these petitions for leave to appeal to this court against the judgment of the Tribunal. Having regard to the long pendency of the disputes the matters have been posted for final disposal, after notices in the petitions have been served on the respondents and both the parties have been given sufficient opportunity to file their respective pleadings.

13. Before us learned senior counsel for the petitioners has submitted that the decision of this court in *Badami's* case was based on the factual situation then prevailing and he has no quarrel with the same. Though learned counsel said that he is not challenging the correctness of the decision in *Gonal Bhimappa's* case, the effect of his argument is that the relevant rules and the government orders were overlooked in the said decision. According

to him the government order dated 3.3.1976, the relevant portion of which has been extracted, already had increased the cadre strength to 285 posts inclusive of the temporary posts mentioned therein and in view of the amendments of the Rules in 1977, the quota for the promotees should be fixed on that basis and not on the footing that the cadre consisted of 152 permanent posts only. It is also his contention that Rule 9 as amended in 1977 was not brought to the notice of this court when Gonal Bhimmappa was decided. It is his further contention that as the writ petitions filed by the promotees under Article 32 of the Constitution were disposed of with a direction to the petitioners to approach the High Court and raise all the points which were raised in those petitions, besides other points, which they want to raise on the basis of the decision in 'Direct Recruits' Case, it was open to the Tribunal to reconsider the entire issue afresh unfettered by the decision in 'Gonal Bhimappa'. Learned counsel has also brought to our notice that in another case before the same Administrative Tribunal relating to Commercial Taxes Department a different view was taken by the Tribunal. Learned counsel has also placed before us a copy of the order of this court dated 13.7.1995 in *Keshava Ramaswamy Gowda v. State of Karnataka*, (1995) K.S.L.J. S.C. 767 wherein it has been held that the cadre comprised temporary posts also.

14. We are unable to accept any of the contentions. A perusal of the government order dated 3.3.76 shows that the temporary posts mentioned in the Appendix were not included in the cadre. By that order, the government had only given a clear picture of the cadre in one order. The Appendix referred to permanent cadre strength as 152 posts. Similar language is not used with reference to the 133 temporary posts mentioned in the first part of the Appendix. We are unable to persuade ourselves to hold that the government order increased the strength of the cadre to 285. According to learned counsel the government order should be read in conjunction with Rule 9 of the Probation Rules as amended in 1977. That rule refers only to substantive vacancy and the confirmation of the probationer. Learned Counsel for the respondents submits that none of the petitioners were appointed on probation and the rule has no application here. Be that as it may, the order of the government dated 3.3.76 cannot be understood in the light of a rule subsequently framed when by itself the government order did not have the effect of increasing the strength of the cadre. Hence, the contention of learned counsel for the petitioner is rejected.

15. We have already referred to the relevant passages in the judgment of this court in 'Gonal Bhimappa'. There is no doubt whatever that the

A relevant rules and government orders and in particular, the order dated 3.3.76 were placed before this court and considered. This court had taken care to find out whether the observations of the High Court in *Kadali's*, case (1982) 2 KLJ 453 that the factual situation was not brought to the notice of this court in *Badami's* case was correct or not. This court found that the observation made by the High Court was erroneous and the decision in *Badami's* case was based on correct facts. The Tribunal has now found after going through the records in *Gonal Bhimappa's* case that the facts were identical and the questions raised were identical. In such a situation there is no escape for the petitioners from the ruling in *Gonal Bhimappa's* case which is binding on them. The Tribunal has also found that the impugned government notification dated 30.4.1990 and the accompanying Gradation List are in pursuance of the decision of this Court in '*Gonal Bhimappa*'. Hence there is no merit in the challenge of the same by the petitioners.

D 16. The fact that the same tribunal had taken a different view in another case will not help the petitioners in any manner. That case relates to another department. It is unnecessary for us to consider the correctness of that decision of the Tribunal.

E 17. The judgment of this court in *Keshava Ramaswamy Gowda's* case too does not help the petitioner. It is seen from the order therein that the court dealt with Class-II posts only and distinguished '*Badami*' on the ground that it was concerned only with Class I posts. In this present case we are concerned only with class I points and the ruling in *Keshava Ramaswamy Gowda* will not apply.

F 18. We have no hesitation to uphold the judgment of the Tribunal and dismiss these appeals, which we do hereby. There will be no order as to costs.

N.J.

Appeals dismissed.