

RAGHAVENDRA RAO ETC.

V.

STATE OF KARNATAKA & ORS.
Civil Appeal Nos. 907-936 Of 2009

FEBRUARY 12, 2009

[S.B. SINHA AND DR. MUKUNDKAM SHARMA, JJ]

Karnataka Civil Services (Special Recruitment of Local Candidates) Rules, 1986: Regularization – Claim for, under 1986 Rules – By employees appointed by Tehsildar – Held: Tehsildar has no jurisdiction to appoint in terms of Rules – Offers of appointment made in favour of employee having been appointed by a person who had no authority, must be held to be nullity – Service Law.

Service law : Appointment –Public appointment – Claim in public service based on hereditary right – Held: Is unconstitutional.

Absorption – Right to – Held: Merely because an employee continued in service under the cover of an order of the Court would not entitle him to right to be absorbed or made permanent in service.

Res judicata – Principle of – Held: Applicable to writ proceedings also.

Appellants were appointed as Patwaris/Village Accountants by the Tehsildar/ Assistant Commissioner. They prayed for regularisation of their services in terms of provisions of Karnataka State Civil Services (Direct Recruitment to Class-III Posts) (Special) Rules, 1973. Their prayer was dismissed by the Tribunal. SLPs filed there against were also dismissed. Relying on the observations made in some other SLPs that it would be open for employees to represent before the State of Karnataka for regularisation in terms of Karnataka Civil Services (Spe-

A cial Recruitment of Local Candidates) Rules, 1986, which
came into force w.e.f. 4.7.1986, appellant requested the
State to regularize their services under 1986 Rules. The
State rejected their prayer stating that the 1986 Rules were
not applicable to their cases as they were appointed by
B the Tehsildar/Assistant Commissioner whereas in terms
of the 1986 Rules, the appointing authority was the Deputy
Commissioner.

C An observation was made by Tribunal in another case
that Patwaris come within the definition of local candidates
and are entitled to be considered for regularization in
terms of 1986 rules. Relying on that, appellants again filed
application for regularization under 1986 Rules. Tribunal
allowed the applications. Writ petition thereagainst was
D allowed by High Court. Review petitions were also dis-
missed. Hence these appeals.

Dismissing the appeals, the Court

E HELD: 1. In SLPs relating to another case, leave was
granted by this Court to avail any other remedy available
only to those petitioners who were not paid their salary
for the period during which they worked as Accountants.
The claim of the appellants is, thus, barred under the prin-
ciples of res judicata/constructive res judicata, the earlier
F judgment having attained finality. It is now a well settled
principle of law that the principle of res judicata applies
also to the writ proceedings. [Paras 12, 13] [229-C; 230-D]

Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.
(2006) 4 SCC 1 – referred to

G 2. Any claim in a public service on the basis of a he-
reditary claim is unconstitutional. The appellants claimed
their right to be appointed and/or consequential regular-
ization in the services on the basis of the hereditary right.
H They rightly were held to be not entitled thereto. An en-

deavour had been made to show that appellants were appointed by Tahsildar. It has, however, not been denied that the Tahsildar had no jurisdiction to appoint in terms of the Civil Services Rules. They, thus, having been appointed by a person who had no authority, the offers of appointment made in their favour must be held to be nullities. Such illegal appointments cannot be brought within the purview of Rule 3(2) of the 1986 Rules. In terms thereof only appointment not made in accordance with the Rules would attract Rule 3(2). The same would not mean that any appointment made by any other authority would also come within the purview thereof. [Paras 13, 15] [230-A: 231-A, B]

State of Karnataka & Ors. vs. P.M. Bhaskara Gowda & Ors. (2004) 1 SCC 106; Gazula Dasaratha Rama Rao vs. State of A.P. AIR 1961 SC 564 – relied on.

3. It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. [Para 16] [231-D]

Official Liquidator vs. Dayanand & Ors. (2008) 10 SCC 1 – relied on.

Case Law Reference

(2006) 4 SCC 1	referred to	Para 10
(2004) 1 SCC 106	relied on	Para 13
AIR 1961 SC 564	relied on	Para 13
(2008) 10 SCC 1	relied on	Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 907-936 of 2009

S.B. Sanyal, Rajesh Mahale for the Appellant.

A Sanjay R. Hegde, Amit Chawla, for the Respondents.

The Judgement of the Court was delivered by

S.B. SINHA, J.

1. Leave granted.

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2. Appellants are before us aggrieved by and dissatisfied with a judgment and order dated 04.09.2002 passed by a Division Bench of the High Court of Karnataka at Bangalore in WP Nos. 38797-38800/1998, 38803/1998, 38808/1998, 38810/1998, 38812-38816/1998, 38828-38830/1998 & 38832/1998 and judgment and order dated 11.10.2002 passed by the said Court in RP Nos. 769-775/2002 and 776-782/2002 respectively whereby and whereunder the writ petitions filed by the respondents herein for quashing the order dated 26.03.1998 passed by the Karnataka Administrative Tribunal were allowed and review petitions filed by the appellants herein for review of the order dated 4.9.2002 passed by the said Court were rejected.

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3. Appellants were appointed as Patwaris/Village Accountants. They allegedly had been working for a long time in the Revenue Department. Concededly, they were appointed by the Tahsildar/Assistant Commissioner. They prayed for regularization of their services. As the said prayer was not acceded to, they filed Writ Applications before the High Court being W.P. Nos. 25695-696 of 1981 and other connected matters seeking for direction upon the State of Karnataka to regularize them in services in terms of the provisions of the Karnataka State Civil Services (Direct Recruitment to Class-III Posts) (Special) Rules, 1973 (for short, "the 1973 Rules").

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4. Indisputably, on constitution of the Karnataka Administrative Tribunal, those writ petitions were transferred to the Tribunal and renumbered as Application Nos. 2318-19/1986 and connected cases. On or about 20.02.1987, the said applications were dismissed by the Tribunal. Special Leave Petitions filed thereagainst in this Court were also dismissed.

5. Relying on or on the basis of the observations made by this Court in SLP (C) Nos. 226-29 of 1988 and 5932-41 of 1987 that it would be open for the appellants to represent before State of Karnataka or to avail any other remedy available to them under law, inter alia, contending that their services should be regularized in terms of the provisions of the Karnataka Civil Services (Special Recruitment of Local Candidates) Rules, 1986 (for short, "the 1986 Rules"), which had come into force with effect from 4.7.1986, the appellants requested the State to regularize their services under the 1986 Rules. The State rejected their prayer stating that the 1986 Rules were not applicable to their cases as they had been appointed by the Tahsildar/Assistant Commissioners whereas in terms of the 1986 Rules, the appointing authority was the Deputy Commissioner.

6. Indisputably, relying on or on the basis of the observations made by the Karnataka Administrative Tribunal in Application No. 5377 of 1986 that Patwaris do come within the purview of the definition of 'local candidates' and therefore were entitled to be considered for regularization in terms of the 1986 rules, appellants again approached the Tribunal by filing Application No. 287 of 1997 and connected cases praying for regularization under the 1986 Rules. The Tribunal by its order dated 26.3.1998 allowed the said applications, directing:

"(ii) Authorities are directed to regularize the services of the applicants who have passed the SSLC Examinations before 5th July, 1983, under the Karnataka State Civil Services (Special Recruitment of Local Candidates) Rules, 1986 which came into force on 4.7.1986 (wherein sub-rule 2 of rule 3 envisages the definition of Local Candidate) within six months from the date of receipt of the copy of this order; and it is also made clear that the services of the applicants who are in service not to be disturbed till the date of their regularization;

(iii) Benefit of this order is not applicable to those who

A have passed the prescribed SSLC examination on
or after 5th July, 1983, since they do not fulfill the
eligibility criteria under the Rules in question, for
purpose of appointment as Village Accountant since
B acquisition of qualification subsequently does not
render them eligible.”

7. Writ Petitions preferred against the said order by the
respondents have been allowed by the High Court by reason of
the impugned judgment. Review petitions preferred by the ap-
C pellants have been rejected by the High Court.

8. Appellants are, thus, before us.

9. Mr. S.B. Sanyal, learned Senior Counsel appearing on
behalf of the appellants would contend:-

D i. Appellants having been appointed as local
candidates within the meaning of 1986 Rules, the
earlier decision of this Court would not operate as
res judicata.

E ii. This Court in the earlier round of litigation having
proceeded on the basis that they were appointed as
hereditary candidate and not as directly appointed
candidate, the impugned judgment is not sustainable.

F iii. Rights having been conferred upon the appellants in
terms of the 1986 Rules, the High Court Committed
a serious error in passing the impugned judgment.

10. Mr. Sanjay R. Hedge, learned counsel appearing on
behalf of the respondents, on the other hand, would urge:

G i. Appellants' case does not come within the purview
of the 1986 Rules.

ii. They having claimed themselves to be entitled to
hold the post of Patwaris/Village Accountant on
hereditary basis are now estopped and precluded
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from contending that they were 'local candidates' within the meaning of the provisions of 1986 Rules as the Deputy Commissioner and not the Tahsildar was the Appointing Authority, thus, even the 1986 Rules were not applicable.

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- iii. In view of the decision of this Court in Secretary, State of Karnataka & ors. vs. Umadevi (3) & ors. [(2006) 4 SCC 1], regularization of the employees is impermissible in law.

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11. Indisputably, the post of Patwari/Village Accountant could be filled up on hereditary basis. Appellants indisputably claimed their right to be appointed on those posts on that basis. This Court in its judgment and order dated 24.2.1994 rejected the said contention of the appellants, stating:

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"Sri Sridharan maintained that even before the later Rules came into force the right under proviso to rule-10 of the earlier rules had accrued to the appellants – petitioners and that therefore the coming into force of the later Rules did not take away such right. Assuming for the sake of arguments that the above contention of Sri Sridharan is well-founded, the appellants – petitioners did not approach this Court within a reasonable time after their claim under the proviso to rule-10 had not been conceded. On account of such delay, the right of party respondents who have been appointed to the posts of Village Accountants, have intervened. Hence, we do not see any ground to dissent from the decision of the learned Single Judge. In the result, we dismiss these appeals without admitting it."

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12. The purported leave to avail any other remedy was granted only to the petitioners in SLP (C) Nos. 226-29 of 1988 and 5932-41 of 1987, which is in the following terms:

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"S.L.P. (C) Nos. 226-29/1988 and 5932-41/1987

Mr. Ranjit Kumar, learned counsel for the petitioners states

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A that his clients have not been paid the salary for the period for which they actually worked as Accountants. It will be open to the petitioners to represent before State of Karnataka to avail any other remedy available to them under law. Special Leave Petitions are dismissed.”

B It is, therefore, not correct to contend that in terms of the leave granted by this Court appellants were entitled to institute a separate application relying on or on the basis of the provisions contained in the 1986 Rules or otherwise. As noticed hereinbefore, leave had been granted to avail
C any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants.

D 13. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier judgment having attained finality. It is now a well settled principle of law that the principle of res judicata applies also to the writ proceedings.

E This Court in State of Karnataka & ors. vs. P.M. Bhaskara Gowda & ors. [(2004) 1 SCC 106] relying on Gazula Dasaratha Rama Rao vs. State of A.P. [AIR 1961 SC 564] held that any claim in a public service on the basis of a hereditary claim is unconstitutional.

F 14. Rule 2(b) of the 1986 Rules reads as under:

“2(b) **“Local Candidate”** means a local candidate as defined in clause (27-A) of Rule 8 of the Karnataka Civil Services Rules;

G Rule 8(27A) of the Karnataka Civil Services Rules referred to therein reads as under:

“8 (27-A) Local Candidate.- A “Local Candidate” in service means a temporary Government servant not appointed regularly as per rules of recruitment to that service.”

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15. As indicated hereinbefore, appellants claimed their right to be appointed and/or consequential regularization in the services on the basis of the hereditary right. They had rightly been held to be not entitled thereto. Before us, an endeavour had been made to show that appellants were appointed by Tahsildar. It has, however, not been denied or disputed that the Tahsildar had no jurisdiction to appoint in terms of the Civil Services Rules. They, thus, having been appointed by a person who had no authority, the offers of appointment made in their favour must be held to be nullities. Such illegal appointments cannot be brought within the purview of Rule 3(2) of the 1986 Rules. In terms thereof only appointment not made in accordance with the Rules would attract Rule 3(2). The same would not mean that any appointment made by any other authority would also come within the purview thereof.

16. It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. This Court in Uma Devi (3) (supra), held as under:

"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages

A or casual basis, the same would come to an end when it
is discontinued. Similarly, a temporary employee could
not claim to be made permanent on the expiry of his term
of appointment. It has also to be clarified that merely
because a temporary employee or a casual wage worker
B is continued for a time beyond the term of his appointment,
he would not be entitled to be absorbed in regular service
or made permanent, merely on the strength of such
continuance, if the original appointment was not made by
following a due process of selection as envisaged by the
relevant rules. It is not open to the court to prevent regular
C recruitment at the instance of temporary employees whose
period of employment has come to an end or of ad hoc
employees who by the very nature of their appointment,
do not acquire any right. High Courts acting under Article
D 226 of the Constitution of India, should not ordinarily issue
directions for absorption, regularization, or permanent
continuance unless the recruitment itself was made
regularly and in terms of the constitutional scheme. Merely
because, an employee had continued under cover of an
order of Court, which we have described as 'litigious
E employment' in the earlier part of the judgment, he would
not be entitled to any right to be absorbed or made
permanent in the service. In fact, in such cases, the High
Court may not be justified in issuing interim directions,
since, after all, if ultimately the employee approaching it is
F found entitled to relief, it may be possible for it to mould
the relief in such a manner that ultimately no prejudice will
be caused to him, whereas an interim direction to continue
his employment would hold up the regular procedure for
selection or impose on the State the burden of paying an
G employee who is really not required. The courts must be
careful in ensuring that they do not interfere unduly with the
economic arrangement of its affairs by the State or its
instrumentalities or lend themselves the instruments to
H facilitate the bypassing of the constitutional and statutory
mandates."

Recently in Official Liquidator vs. Dayanand & ors. [(2008) A
10 SCC 1], this Court has reiterated the same view.

17. For the reasons aforementioned, there is no merit in
the appeals. They are dismissed accordingly. We have been
informed at the Bar that the appellants pursuant to or in further- B
ance of interim orders passed by the courts continued in ser-
vice; and, thus, if any amount has been paid to them, the same
may not be recovered. No costs.

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Appeal dismissed.