

EXCISE COMMISSIONER, KARNATAKA AND ANR.

v.

V. SREEKANTA

MARCH 5, 1993

[P.B. SAWANT AND G.N. RAY, JJ.]

*Karnataka State Civil Services (Direct Recruitment to class III posts) (Special) Rules, 1970:*

*Rules 3, 6—Seniority—Inspector of Excise—Appointment of "local candidate"—Regularisation—Counting of service for purpose of seniority—Whether from date of adhoc appointment or regularisation.*

The Respondent and several others were appointed as Inspectors of Excise (Junior) on a purely temporary basis on 17.1.1968. The services of these "local candidates" i.e. direct recruits appointed otherwise than in accordance with the General Rules or Special Rules, were regularised from 26.10.1971. Provisional seniority list prepared by the Department showed the seniority of these candidates from the date of their regularisation and not from their date of appointment. Despite objections from the candidates the said list was finalised. The Respondent challenged the seniority list by filing a Writ Petition before the High Court. The Writ Petition was disposed of with a direction to the appellants that the seniority list should be published afresh considering the claim of the respondent that his seniority should be counted from his date of appointment and not from the date of his regularisation. Again, the department published a provisional seniority list showing the seniority of the Respondent from the date of his regularisation. The Respondent filed another Writ Petition challenging the seniority list. The writ petition was dismissed by a Single Judge holding that as per Rule 1A of Karnataka Government Servants (Seniority) Rules, 1957 the said Rules were not applicable to a local candidate, in whose case the seniority would count only from the date of regularisation. On an appeal by the Respondent, the Division Bench of the High Court set aside the judgment of the Single Judge and directed that seniority of the Respondent should be reckoned from the date of his initial appointment. Aggrieved by this judgment, the Department preferred the present appeal.

A The appellants contended that since the respondent was appointed to the post of Excise Inspector (Junior) as a local candidate purely on *ad hoc* basis and so he was not entitled to count his *ad hoc* appointment for purposes of seniority.

B Allowing the appeal, this Court,

C HELD: 1.1. The respondent was appointed as a local candidate through Employment Exchange in view of the specific sanction of the Government for such *ad hoc* appointment. The terms of appointment in the context of sanction of the said posts by the Government clearly demonstrates that such appointment of the said respondent and other employees in 1968 was *ad hoc* appointment given to local candidates sponsored by the local Employment Exchange. It was only on October 26, 1971, the respondent became eligible to be recruited in the said Class III post, and such appointment/or regularisation of his *ad hoc* appointment was made possible because of the framing of the Karnataka State Civil Services (Special) Rules, 1970. [278D-E]

E 1.2. The respondent was not entitled to claim seniority from the date of his initial appointment on *ad hoc* basis but he was only entitled to claim seniority from the date of his subsequent appointment or regularisation under the special rules. Under Rule 3 of the special rules, the respondent, having possessed the minimum qualifications prescribed by the said special rules for recruitment to Class III Posts and the respondent having been appointed on or after January 1, 1965 as a local candidate to a Class III post and having put in a continuous service of one year prior to October 1, 1970 was eligible to be appointed under the said special rules of recruitment and the respondent was given such appointment with effect from October 26, 1971. [278F-H; 279A]

G 1.3. The respondent was entitled to be treated as direct recruit properly made under the said special rules of 1970 only from October 26, 1971 and the service rendered by him prior to the said date was only on the basis of *ad hoc* employment not made in accordance with the rules of recruitment. [279A]

H Direct Recruit Class II Engineering Officers' Association and others v. State of Maharashtra and others, AIR 1990 SC 1607 and Masood Akhtar Khan v. State of Madhya Pradesh, [1990] 4 SCC 24, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1220 of 1993. A

From the Judgment and Order dated 13.6.1990 of the Karnataka High Court in Writ Appeal No. 2927 of 1986.

R.N.N. Murthy, M. Veerappa and K.H. Nobin Singh for the Appellants. B

H.N. Salve, S.R. Bhat, Mrs. Lalit M. Bhat, Ms. Kiran and N.R. Nath for the Respondent.

The Judgment of the Court was delivered by C

G.N. RAY, J. Leave granted.

The special leave petition is directed against the judgment dated June 13, 1990 in Writ Appeal No. 2927 of 1986 passed by the Division Bench of Karnataka High Court reversing the judgment dated August 8, 1986 passed by the learned Single Bench of the said High Court in Writ Petition No.6645 of 1982. The parties to the special leave application have filed their respective counter affidavit and affidavit of rejoinder and have also made their respective submissions at the hearing of the matter. For the purpose of appreciating the respective contentions of the parties to the special leave petition, relevant facts may be indicated as hereunder. D E

The Respondent V. Sreekanta was appointed as an Inspector of Excise (Junior) on January 17, 1968 vide O.M. No. ADM EST 1 1312/67 dated 11.1.1968 along with 37 other persons. It has been indicated in the said letter of appointment that the candidates sponsored by different employment exchanges to the State were appointed as Excise Inspector and posted to the places noted against each of them subject to the conditions noted in the said letter of appointment. It was specifically stated in the said appointment letter that the appointment were made on purely temporary basis and the services were liable to be terminated at any time without notice. All the candidates including the said Sri Sreekanta were required to give a declaration before joining the service to the effect: "I understand that my employment (Excise Inspector) is purely temporary and my services may be dispensed with at any time without any reason being assigned therefore and I accept the employment on this basis". The services of the said Respondent Sri Sreekanta and similarly appointed F G H

A other presons were regularised vide Order No. ADM EST 1 215/21-72 dated October 26, 1971 under the Mysore State Civil Services (Direct Recruitment to class III posts) (special) Rules 1970. It was specifically mentioned in the said order of regularisation/appointment of the employees including the said Sri Sreekanta that the services of the said employees being local candidates were regularised in the cadre of Inspectors of Excise. The specific term of regularisation/appointment is to the following effect:

C "The following Local Candidates who were appointed as Inspectors of Excise are found eligible for appointment to the posts (i.e. Inspectors of Excise) under Rule 3 of the Mysore State Civil Services (Direct Recruitment to Class III posts) (Special) Rules 1970. They are hereby appointed temporarily as Inspectors of Excise in the pay scales of Rs.160-350 with effect from the date of this order and are placed on probation for a period of 2 years from the said date."

E It was also indicated in the said order of appointment that "the seniority of the candidates in question shall be governed by provisions of Rule 6 of the Mysore State Civil Services (Direct Recruitment to Class III posts) (Special) Rules 1970.

In the Karnataka State Civil Services (Direct Recruit to Class III posts) (Special) Rule 1970 framed under Article 309 of the Constitution 'local candidate' has been defined as follows:-

F "Local candidate means any person appointed to any of the categories of Class III posts by an appointing authority by direct recruitment otherwise than in accordance with rule 4 of the Karnataka State Civil Services (General Recruitment Rules 1957, or the special rules of recruitment applicable to such category of Class III Posts, but does not include any person;-

H (i) Selected by the Karnataka Public Service Commission and appointed to an assumed charge of such post in pursuance of such selection; or

(ii) appointed temporarily for a fixed period or for any item of work; or

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(iii) whose services have been terminated due to resignation or an enquiry under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957".

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Rule 3 of the said Rules deal with Recruitment. It has been provided for in Rule 3 that direct recruitment to Class III posts in the State Civil Services shall, notwithstanding anything contained in any rules relating to recruitment to any of the categories of Class III posts issued under the proviso to Article 309 of the Constitution of India, be made by the authority concerned by appointing local candidates who were not disqualified for appointment under the Karnataka State Civil Services (General Recruitment) Rules 1957 on the date of their appointment as Local Candidates and who possess the qualifications specified in Sub Rule (2). Sub Rule (2) is to the following effect:-

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(2) For purposes of sub rule (1) the candidate must be person,

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(i) who on the date of his appointment to the Class III posts referred to in item (ii),

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(a) was within the age limit prescribed for recruitment to such post by the rules of recruitment applicable to such posts, and where no such rules have been made by the Karnataka State Civil Services (General Recruitment) Rules, 1957;

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(b) possessed the minimum academic qualification prescribed by the special rules of recruitment applicable for recruitment to such posts; and

(ii) who is or had been appointed on or after the 1st January, 1965 as a local candidate to a Class III post and has or had put in a continuous service of not less than one year at any time prior to 1st October, 1970.

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Rule 4 of the said Rules dealing such manner of recruitment provides that in every department appointment to vacancies in categories of Class III

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- A posts remaining after appointment of candidates selected by Karnataka Public Service Commission and after providing for appointment under Karnataka State Civil Service (Recruitment of Local Candidates to Class III posts) Rules 1966 shall be made by appointing local candidates under the said Special Rules of 1970 who were in service on the date of commencement of the said Rules of 1970 and who possessed qualifications as mentioned in Rule 3 of the said Rules of 1970.
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Rule 6 of the said Special Rules of 1970 provides as follows:-

"Service for purpose of seniority:-

- C The service rendered by a candidate on or after the date of his appointment to any category of post in a department under Rule 4 shall count for purpose of determination of seniority of such person with reference to persons who are appointed to such category of posts in such Department."

- D The department prepared a provisional seniority list of the Inspector of Excise (Junior) and the seniority of Sri V. Sreekanta was counted from 26.10.1971 namely from the date of regularisation/appointment of the said employee under the said service Rules of 1970 and not from his initial appointment on 17.1.1968. As despite objection, the final list of seniority was published on the basis under which provisional list was published, the said Sri V. Sreekanta moved a writ petition in the Karnataka High Court in W.P. No.6662 of 1979.
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- The Writ Petition was disposed of by the Karnataka High Court by directing that the seniority list should be published afresh after considering the claim of Sri V. Sreekanta that his seniority should be counted from 17.1.1968 and not from 26.10.1971. After the disposal of the said Writ Petition, the provisional list was again published by counting the service of the said Sri V. Sreekanta with effect from 26.10.1971. The writ petitioner Sri V. Sreekanta then moved another Writ Petition in question namely W.P. No.6645 of 1982 before the Karnataka High Court challenging the preparation of provisional list by counting his service from 26.10.1971.
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- The writ petitioner Sri V. Sreekanta contended that he being initially appointed as Excise Inspector (Junior) in 1968 and subsequently regularised in October 1971 his seniority should be counted only from the
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date of initial appointment in 1968 and not from the date of regularisation and that in any event, in view of allowing his claim of seniority by quashing the seniority list and directing the respondent to prepare the seniority list afresh after taking into consideration the claim of the writ petitioner in the said earlier writ petition, the concerned authorities were not entitled to count the seniority of writ petitioner again on the basis of appointment on 26.10.1971. The learned Single Bench by the judgment dated August 7, 1986 dismissed the writ petition by holding *inter alia* that the writ petitioner did not produce the relevant orders namely the order of appointment made on 17.1.1968 nor the order regularising his service on 26.10.1971 and the writ petitioner having been appointed as a local candidate on 17.1.1968, as per Rule 1A of Karnataka Government Servants (Seniority) Rules 1957, the said seniority rules were not applicable to a local candidate so long he continued as local candidate. The proviso to the said Rule 1A provided that where appointment was treated as regularised from any date, the seniority in the service of such person would be determined in accordance with the Rules as if he had been appointed regularly as per the Rules of recruitment to the post held by him. Hence the seniority of the writ petitioner was to be counted from 26.10.1971 and not otherwise.

The writ petitioner thereafter preferred an appeal before the Division Bench of the Karnataka High Court. The Division Bench allowed the appeal and set aside the judgment of the learned Single Bench by its judgment dated June 13, 1990. Unfortunately the judgment in appeal by the Division Bench is very cryptic and does not contain any reasoning for the conclusion made by the Division Bench that "irrespective of the irregularity in the original appointment, where the appellant was a local candidate and not a regular appointee, inasmuch as he was appointed in the year 1968, for the purpose of seniority that date alone is material". The Division Bench directed that seniority of the appellant should be reckoned from the date of initial appointment. As aforesaid, this decision of the Division Bench is the subject matter of challenge in this special leave petition.

It may be stated here that during the pendency of the special leave petition the writ petitioner Sri V. Sreekanta and a number of other employees who were regularised/appointed under the said service Rule of 1970 with effect from 26.10.1971 moved several applications before the Karnataka Administrative Tribunal praying for directing the concerned

- A authorities being Respondents in the applications, to count the services of the said applicants rendered as local candidates for the purpose of their seniority in the cadre. Sri V. Sreekanta was applicant in Application No.4795 of 1990. The Administrative Tribunal disposed of the application of the applicant Sri V. Sreekanta by holding that for the self same relief
- B no fresh application could be moved before the Administrative Tribunal and if the said applicant was aggrieved on account of non implementation of the judgment rendered in his appeal by the Division Bench of Karnataka High Court, he could move a contempt application before the High Court. All other applications by different applicants were rejected by the Karnataka Administrative Tribunal by holding *inter alia* that they being local
- C candidates, the seniority is to be counted only from the date of regularisation.

- Mr. Narasimha Moorthy, learned counsel appearing for the appellants, has submitted that the Writ Petitioner/respondent had never been appointed on a regular basis and such appointment of the respondent was
- D made only as a stop-gap-measure on an *ad hoc* basis without following the regular procedure for direct recruitment to the Class III Posts. He has drawn our attention to the Government decision being Order No.HD 154 EDC 67 dated August 31, 1967 by which Government sanctioned 57 posts of Excise Inspectors (Junior) on consideration of the proposals made by
- E the Excise Commissioner. It was specifically mentioned in the said Order:

- "in the meanwhile, as the posts are to be filled up forthwith, the Excise Commissioner is requested to take action to *make in-charge arrangements* as far as possible and to fill up the released and other vacancies by local candidates through Employment Exchange and at the same time, to take action to fill up the posts through the Public Commission *for replacing the local candidates*."
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(emphasis supplied)

- G In the appointment letter by which the said Writ Petitioner/respondent and 37 other persons were appointed on January 11, 1968, the aforesaid Government Order No. HD EDC 67 dated August 31, 1967 was mentioned.

- H Mr. Narasimha Moorthy has submitted that as for the respondent,

Sri V. Sreekanta, the letter of appointment read with the sanction of the Government as contained in G.O. No. HD 154 EDC 67 dated August 31, 1967, clearly demonstrates that the said respondent was given appointment through Employment Exchange as a local candidate by way of a stop-gap-measure and in their letter of appointment it was specifically mentioned that such service was basically temporary and liable to be terminated without assigning any reason whatsoever. Mr. Narasimha Moorthy has also contended that under the existing rules of recruitment, the said respondent could not have been appointed by the Excise Commissioner even though the said respondent had requisite qualification for being considered for appointment either by the Public Service Commission of Karnataka or in accordance with the rules of recruitment for the said Class III Posts. Mr. Narasimha Moorthy has submitted that the cases of the said respondent and other similarly circumstanced employees were favourably considered by the Government and in order to give them appointment in accordance with the rules, the said special recruitment rules of 1970 were framed under Article 309 of the Constitution of India. Admittedly, under the said special recruitment rules of 1970, the said respondent and similarly circumstanced other employees were appointed and/or regularised. He has submitted that the said Class III posts were required to be filled up by way of direct recruitment and so long the said special recruitment rules of 1970 had not been framed, it was not possible to regularise the said respondent and other employees and/or to appoint them in accordance with the Rules. Though factually the services of the said respondent and other regular employees under the said special recruitment rules of 1970 were regularised in law, the said respondent and other employees were deemed to have been directly recruited to the said posts and precisely for the said reason, in the letter of appointment it was mentioned that they had been directly appointed to the said posts with effect from October 26, 1971 and they should remain on probation for two years from the date of such appointment. Mr. Narasimha Moorthy has submitted that in the facts and circumstances of the case, the previous employment of the said respondent being purely *ad hoc* appointment to a local candidate, the respondent was not entitled to count his *ad hoc* appointment for the purpose of seniority in the cadre. Although, the respondent in the said earlier proceedings before the High Court of Karnataka had challenged the seniority list published by the Administration on the ground that his seniority should have been reckoned from the date of initial appointment in 1968 and not from the subsequent regularisation of appointment on October 26, 1971,

- A the Karnataka High Court did not made any such finding in favour of the said respondent but only directed the authorities to publish the seniority list after considering the said claim of the respondent. Since such claim could not be entertained as legal and valid, such claim was not accepted by the administration and the seniority list was published afresh by counting the service of the respondent and similarly circumstanced employees from the date of their subsequent employment in accordance with the rules of recruitment. Mr. Narasimha Moorthy has submitted that the Karnataka Government Servants (Seniority) Rules, 1957 do not support the contention of the respondents. He has submitted that Rule 1-A of the said seniority rules provides that the said Rules would not be applicable to the
- C local candidates who may be serving in any cadre. Proviso to the said Rule 1-A indicates that where the local candidate's appointment is treated as regularised from any date, his seniority in the services shall be determined in accordance with these rules as if he had been appointed regularly as per the rules of recruitment to the post held by him on that day. Mr. Narasimha Moorthy has also drawn our attention to Rule 6 of the said special rules of recruitment of 1970 and the said Rule 6 deals with the seniority of the employees appointed under the said rules. Under the provisions of Rule 6 the services rendered by candidate on or after the date of his appointment to any category of post of a department under Rule 4, shall count for purposes of seniority of such person with a reference to persons who are
- E appointed to the said category of such department. Mr. Narasimha Moorthy has also drawn the attention of this Court to the decisions of this Court made in the *Direct Recruit Class II Engineering Officers' Association and others v. State of Maharashtra and others*, AIR 1990 SC 1607 and *Masood Akhtar Khan v. State of Madhya Pradesh*, [1990] 4 SCC 24. The Constitution's Bench in *Engineering Officers' Association's* case has held
- F that where the initial appointment is only *ad hoc* and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. In the subsequent decision in *Masood Akhtar Khan's* case, the said decision in *Engineering Officers' Association's* case was referred to and it has been held by this
- G Court that the decision of this Court unequivocally made it clear that if the initial appointment is not according to the rules, subsequent regularisation of service does not entitle an employee to the benefit of intervening service for seniority. It has been contended by Mr. Narasimha Moorthy that in view of such decisions of this Court and in view of the fact that the respondent
- H was given appointment not in accordance with the existing rules but only

as a stop-gap-measure on *ad hoc* basis as local candidate, the service rendered by the said respondent as local candidate prior to his appointment or regularisation according to the said special rules of recruitment in 1970 cannot be taken into consideration for the purpose of fixing his seniority in the cadre. He has submitted that the learned Single Judge disallowed the contention of the respondent on very cogent reasons and no exception should be made to such decision of the learned Single Bench. Mr. Narasimha Moorthy has submitted that unfortunately the Division Bench has not referred to the real question involved in the matter and without considering the reasonings indicated in the decision of the learned Single Judge and also the correct legal position as laid down by this Court has come to the conclusion that irrespective of the fact that the respondent was a local candidate, his seniority should be fixed from the date of his initial appointment and not from the date of regularisation. Mr. Narasimha Moorthy has submitted that such view is contrary to the service rules and also contrary to the decisions of this Court referred to hereinbefore. He has, therefore, submitted that the decision of the Division Bench of the Karnataka High Court should be set aside and the Writ Petition of the respondent should be dismissed.

Mr. Harish Salve, learned counsel appearing for the respondent Sri V. Sreekanta, has submitted that the decisions of this Court as referred to hereinbefore are not applicable to the facts and circumstances of the case. In all the said decisions, it has been held that in the case of *ad hoc* appointment, seniority should not be counted for the period of such *ad hoc* appointment. He has submitted that in the instant case it should not be construed that the respondent was given an *ad hoc* appointment. The respondent was recruited through Employment Exchange and admittedly, the respondent had requisite qualifications making him eligible to be directly recruited under the existing rules of recruitment. He has further submitted that the respondent was intended to be absorbed which may be evident from the fact that in the letter of appointment it was indicated that the registration with the Employment Exchange was to be cancelled on being given appointment to the concerned employees. Since the respondent and some other employees were given temporary appointment without following existing recruitment rules, the Government in its anxiety to do justice to the respondent and other employees framed the said special rules of recruitment in 1970 and regularised their services. In such circumstances, the irregular appointment being subsequently regularised, the respon-

A dent and similarly circumstanced other employees were entitled to get the benefit of the continuity in service from the date of initial appointment for the purpose of reckoning the seniority. He has also submitted that it will be unfair and unjust to deny the seniority to the said respondent when admittedly, he had all the requisite qualifications of being directly recruited in 1968 and he had been rendering useful service in the cadre. He, therefore, submits that under the ratio in the *Engineering Officers' Association's* case and *Masood Akhtar Khan's* case, the respondent is entitled to claim seniority from the date of initial appointment and the Division Bench was justified in holding that it was immaterial if the respondent had been appointed as local candidate through local Employment Exchange without following the rules of recruitment then in force. He has, therefore, submitted that no interference is called for against the decision of the Division Bench of the Karnataka High Court and the appeal should be dismissed with costs.

D After giving our anxious consideration to the respective contentions of the parties it appears to us that the Writ Petitioner/respondent, Sri V. Sreekanta, was appointed as a local candidate through Employment Exchange in view of the specific sanction of the Government for such *ad hoc* appointment. The terms of appointment in the context of sanction of the said posts by the Government, in our view, clearly demonstrates that such appointment of the said respondent and other employees in 1968 was *ad hoc* appointment given to local candidates being sponsored by the local Employment Exchange. It was only on October 26, 1971, the said respondent became eligible to be recruited in the said Class III post, and such appointment/or regularisation of his *ad hoc* appointment was made possible because of the framing of the said special rules of recruitment in 1970. In our view, Mr. Narasimha Moorthy is justified in his submission that the respondent was not entitled to claim seniority from the date of his initial appointment on *ad hoc* basis but he was only entitled to claim seniority from the date of his subsequent appointment or regularisation under the said special rules of recruitment in 1970. It appears to us that under Rule 3 of the said special rules of recruitment of 1970, the respondent, having possessed the minimum qualifications prescribed by the said special rules of recruitment for recruitment to Class III Posts and the said respondent having been appointed on or after January 1, 1965 as a local candidate to a Class III post and having put in a continuous service of one year prior to October 1, 1970, was eligible to be appointed under the said special rules

of recruitment and the respondent was given such appointment with effect from October 26, 1971 under the said special rules of recruitment of 1970. The said respondent was entitled to be treated as direct recruit properly made under the said special rules of 1970 only from October 26, 1971 and the service rendered by him prior to the said date was only on the basis of *ad hoc* employment not made in accordance with the rules of recruitment. In the aforesaid circumstances, the decision of the Division Bench of the Karnataka High Court appears to be clearly erroneous and we have no hesitation in setting aside the same. Learned Single Bench of the Karnataka High Court, in our view, has rightly dismissed the Writ Petition and we affirm the said decision. The appeal is accordingly allowed without any order as to costs.

G.N.

Appeal allowed.