

PETITIONER:
N. NAGARAJA ETC.

Vs.

RESPONDENT:
VASANT K. GUDODAGI AND ORS.

DATE OF JUDGMENT 24/04/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
RAMASWAMY, K.

CITATION:
1990 AIR 1377 1990 SCR (2) 695
1990 SCC (3) 42 JT 1990 (2) 217
1990 SCALE (1) 812

ACT:
Civil Services: Karnataka State Civil Service (Regulation of Promotion, Pay & Pension) Rules 1973:
Rule 2--Retrospective promotion--Whether permissible.

HEADNOTE:

The appellant joined service under the State Government as a Lecturer. Later he was deputed to the Directorate of Youth Services as an Assistant Director and subsequently confirmed in the said post. On 27th of March, 1978, he was temporarily promoted as Deputy Director for a period of six months, and an order was made on 20th December, 1978 appointing him on a regular basis with effect from 27th March, 1978. Respondent No. 1 was recruited directly as Deputy Director on 28.7.1978, joined service on 7.8.1978 and was confirmed on 7.8.1980.

A draft Gradation List was published on 25th January, 1983 wherein the appellant was shown above respondent No. 1, and he represented against this placement by claiming seniority over the appellant. This was not accepted, and a final Gradation List was published on 14th September, 1983 maintaining the position shown in the draft list.

Respondent No. 1 filed a writ petition before the High Court which was transferred to the State Administrative Tribunal. The Tribunal held that respondent No. 1 was senior to the appellant as the promotion of 27th March, 1978 in favour of the appellant was a temporarily measure and after the six months period expired, the appellant was really not continuing as Deputy Director, and that the order of 20th December, 1978 issued by the Government could not, therefore, provide a regular retrospective promotion in view of the special Rules obtaining in the State. It therefore, directed the redrawing of the seniority list by showing the appellant below respondent No. 1.

Aggrieved by the aforesaid order of the Tribunal, the appellant as well as the State Government filed appeals to this Court.

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Dismissing the appeals, this Court,

HELD: 1. The Tribunal has found that under Karnataka State Civil Services (Regulation of Promotion, Pay & Pen-

sion) Rules 1973 no retrospective promotion is admissible unless the situation comes within the various clauses of rule 2, and that the instant case was not covered by rule 2 and, therefore, the order of 22nd December, 1978 giving a retrospective promotion from 27.3.1978 was not justified. [698B-C]

2. Attempt was made to place the appellant above respondent No. 1 by making shifting orders between 27.3.78 and 22.12.1978. The appellant was Editor of Youth Karnataka even when he was confirmed as Assistant Director and the Tribunal has recorded that he never worked as Assistant Director. The conclusion reached by the Tribunal cannot be said to be wrong. Its order, therefore, does not call for any interference. [698D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.977 & 978 of 1988.

From the Judgment and Order dated 17.12.1987 Tribunal, Bangalore of the Karnataka Administrative in Application No. 4743 of 1986(T).

P.P. Rao, R.B. Datar, S.R. Bhat, P. Chowdhary, P.R. Ramasesh and R.P. Wadhvani for the appearing parties. The Judgment of the Court was delivered by

RANGANATH MISRA, J. These are appeals by special leave, the first one by Nagaraja, the main contestant, and the second by the State of Karnataka challenging the decision of the Karnataka State Administrative Tribunal by which the Tribunal accepted the claim of inter-se seniority of respondent No. 1.

In the Directorate of Youth Services of the State, there are posts of Assistant and Deputy Directors. Appellant Nagaraja joined service under the State Government as a Lecturer on 6.9.1966 and came on deputation as Editor of 'Youth Karnataka' from 18th of August, 1976. While working as such Editor he was confirmed as an Assistant Director in the Youth Directorate. On 27th of March, 1978, Nagaraja was temporarily promoted as the Deputy Director for a period of six months. On 20th of October, 1978, an order was made promoting
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Nagaraja regularly as Deputy Director and on 22.12.1978 his appointment was made on regular basis with effect from 27.3.1978.

Gudodagi, respondent No. 1, was recruited directly as Deputy Director on 28.7.1978. He joined on 7.8.1978 and was confirmed in the said post on 7.8.1980. The draft Gradation List was published on 25.1.1983 wherein Nagaraja was shown just above Gudodagi. Accordingly he represented against this placement by claiming seniority over Nagaraja and when that was not accepted and the final Gradation List was published on 14th of December, 1983 maintaining the position shown in the draft list, Gudodagi filed a writ petition before the Karnataka High Court which, on the constitution of the State Administrative Tribunal, was transferred to it.

The Tribunal on hearing parties has held that Gudodagi was senior to Nagaraja as the promotion of 27th of March, 1978, in favour of Nagaraja was a temporary measure and after the six months expired, Nagaraja was really not continuing as Deputy Director. The order of December, 1978, could not provide a regular retrospective promotion in view of the special Rules obtaining in the State. Accordingly, the Tribunal directed re-drawing up of the seniority list by

showing Nagaraja below Gudodagi. Thereupon, these two appeals have been filed--one by Nagaraja and the other by State of Karnataka.

The promotional order of 27th March, 1978, read thus:

"Pending consultation with the Karnataka Public Service Commission, Shri N. Nagaraja, Assistant Director, Youth Services is temporarily promoted to officiate as Deputy Director, Youth Services in the grade Rs.900-1750 in the Department of Youth Services for a period of six months with immediate effect from the date of taking over charge of the post or until further orders, whichever is earlier."

The Tribunal has found that Nagaraja had taken over charge as Deputy Director on 13th of April, 1978, and the six month period had expired on 13th of October, 1978. His regular promotion was notified on 20th of October, 1978. Therefore, the Tribunal has not accepted Nagaraja as Deputy Director between 13th of October and 20th of October. To meet that situation the notification of 22nd December, 1978, had been made, which read thus:

"In continuation of Government Notification dated 698

27.3.1978, Sri N. Nagaraja, Assistant Director of Youth Services is regularly promoted to officiate as Deputy Director of Youth Services with effect from 27th March, 1978 (i.e. date from which he was promoted to officiate against the post)

The Tribunal has found that under Karnataka State Civil Services (Regulation of Promotion, Pay & Pension) Act, 1973, no retrospective promotion is admissible unless the situation comes within the various clauses of rule 2. The instant case, according to the Tribunal, was not covered by rule 2 and, therefore, the order of 22nd of December, 1978, giving a retrospective promotion from 27.3.1978 was not justified. Once that notification goes, Gudodagi being a direct recruit from 7.8.1978 would be entitled to seniority.

We have analytically examined the judgment of the Tribunal with reference to the submissions made at the Bar. We have also seen the provisions of the 1973 Act, referred to above and see no justification to take a view different from what has been taken by the Tribunal. From the sequence of events with reference to the dates, an impression is available to be formed that attempt was made to place Nagaraja above Gudodagi by making shifting orders between 27.3.1978 and 22.12.1978. Nagaraja was Editor of Youth Karnataka even when he was confirmed as Assistant Director and the Tribunal has recorded that he never worked as Assistant Director. Taking the broad aspects of the matter into consideration we are satisfied that the conclusion reached by the Tribunal can not be said to be wrong and, therefore, does not call for any interference.

The appeals are dismissed. There would be no order as to costs.

N.V.K.
missed.

Appeals dis-

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