

# The Secretary To Government Department ... vs K. C. Devaki on 25 March, 2025

**Author: Pamidighantam Sri Narasimha**

**Bench: Pamidighantam Sri Narasimha**

2025 INSC 389

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4356 OF 2025  
ARISING OUT OF SLP (C) No. 2793 OF 2023

THE SECRETARY TO GOVERNMENT  
DEPARTMENT OF HEALTH & FAMILY  
WELFARE & ANR.

... APPELLANT(S)

VERSUS

K. C. DEVAKI

... RESPONDENT(S)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. Does the transfer or reappointment of a government employee from one post to another impact his/her seniority in the new post, and if so, is such seniority contingent upon whether the transfer was made in public interest or at the employees own request? This is the short question that has arisen for our consideration.

3. The fundamental principle underlying the relationship between the State and its employee is that it is governed by Date: 2025.03.25 16:20:57 IST Reason:

administrative rules, rather than contractual agreements. In view of the power of the State to modify the terms and conditions of services by unilaterally amending the Rules, this kind of employment is defined as status. <sup>1</sup> Therefore, when grievance of an employee is brought to a Court or a Tribunal, the primary question is about the Rule that governs the services. At this stage there is no value judgment about the executive

action, unless of course when the Rule itself is challenged on the ground of invalidity or arbitrariness. So, we simply look at the Rule that governs the services and determine whether the action is in consonance with the mandate of the Rule.

4. The Rules that govern the service of the respondent are the Karnataka Civil Services (General Recruitment) Rules, 1977<sup>2</sup> and Karnataka Government Servants (Seniority) Rules, 1957<sup>3</sup>. The context in which interpretation and application of these Rules are to be found in the facts of the case, which, to the extent that they are relevant for our consideration, are as follows. 1 State of Himachal Pradesh and Ors. v. Raj Kumar and Ors., (2023) 3 SCC 773 declared the consequence of status as, “(iii) The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

(iv) In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.” 2 Hereinafter referred to as the ‘1977 Recruitment Rules’. 3 Hereinafter referred to as the ‘1957 Seniority Rules’.

5. The respondent was appointed as a Staff Nurse in the Department of Indian System of Medicine and Homeopathy, State of Karnataka in the year 1979. She submitted a representation to the government and requested to change her cadre to First Division Assistant on medical grounds. Following her request, the government sought opinion of the Director of the Department who asked the respondent to appear before the medical board for examination. The board submitted its report on 22.04.1985 indicating that the respondent was in fact suffering from bronchitis and that she will not be able to carry out the duties of a Staff Nurse.

6. Following the decision of the government accepting her request change of cadre, the respondent was asked to submit a consent letter, which she did on 03.06.1985 indicating that “with reference to the above subject, I hereby give my consent for the offer to change designation to clerical nature of work in the pay scale of Rs.630-1200 and to take seniority below the last person”. Accepting her consent to be placed below the last person in the transferred post, orders of temporary posting, followed by final order dated 19.04.1989 was issued by the government changing the cadre of the respondent from Staff Nurse to First Division Assistant on medical grounds and to take the position below the last candidate. The relevant portion of the order is as under:

“PROCEEDINGS OF THE KARNATAKA GOVERNMENT Subject: Change in cadre to Smt. K.C. Devaki from the post of Staff Nurse to First Division Assistant post on medical grounds-reg.

In the letter dated: 8.7.85 read at (1) above, the Director, Department of Indian Systems of Medicine and Homeopathy, Bengaluru has stated that Smt. K.C. Devaki, Staff Nurse, Sri. Jayachamarajendra Institute of Indian Medicine, Bengaluru has requested for cadre change on medical grounds and the Medical Board has recommended in this regard. Along with the copy of the same, he has recommended for cadre change from the post of staff Nurse to First Division Assistant post.

On examining the proposal in detail, an instruction has been given vide the Government letter dated: 11.2.86 read at (2) above to issue a cadre change order after determining whether the cadre changing employees are eligible or not to perform the duties prescribed to changed post.

As per the Government letter dated: 11.2.86, vide O.M. dated:

24.4.86 Smt. K.C. Devaki, Devaki, Staff Nurse, Sri. Jayachamarajendra Institute of Indian Medicine, Bengaluru has been appointed temporarily for three months at the post of First Division Assistant at Government College of Indian Medicine, Mysuru, so as to examine her performance. Thereafter continued in the same post, till now.

Vide letter dated: 3.12.88 read at (4) above, it is reported that Smt. K.C. Devaki, Staff Nurse, is performing duties satisfactorily temporarily in the post which is to be cadre changed and passed the departmental examinations prescribed for the said post. As per rule..16(a) of the Karnataka Civil Services (General Recruitment) Rules, 1977, while changing from one cadre to another cadre, educational qualification, prescribed for the post to be cadre changed should be attained. But, since Smt. K.C. Devaki did not attain degree, clarification has sought whether cadre could be changed as per the Government Letter No. HFW 158 PIM 84, dated:

11.2.86. Since it is not mentioned in General Recruitment rule 16(a) (111) about minimum eligibility and since the Director has stated that Smt. K.C. Devaki has performed satisfactorily as First Division Assistant for three years, the Government has decided to change the cadre of Smt. K.C. Devaki from the Staff Nurse post to First Division Assistant.

Government Order No. HFW 536 PIM 88, Bengaluru, dated: 19.4.1989 On examining the proposal in detail, the Government has ordered by changing the cadre of Smt. K.C. Devaki /from the post of Staff Nurse to First Division Assistant post as per rule 16(a) (111) of the Karnataka Civil Services (General Recruitment) Rules, 1977, subjecting to following conditions:-

- 1) She shall be passed departmental examination prescribed to the changed post within 2 years from the date of cadre change.
- 2) In the cadre of changing, she shall get the service seniority below the last candidate on that date.
- 3) No any travel allowance is available to her.
- 4) Hereafter such cadre change could not be given to her in her service.”
7. The Government of Karnataka, the appellant herein, submits that the respondent continued in the new position as First Division Assistant at the place as was accepted by her from 1989 to 2007.

However, when the seniority list was released in 2007, she approached the Karnataka Administrative Tribunal<sup>4</sup> challenging the final seniority list dated 01.10.2007 on the ground that her seniority must be fixed as per her initial appointment as Staff Nurse on 05.01.1979 and not on the basis of her entry into the new cadre on 19.01.1989 as First Division Assistant.

8. The Tribunal allowed the Original Application by following the decision of the High Court in the State of Karnataka v. Sri. K. Seetharamulu<sup>5</sup>. The writ petition filed by the State of Karnataka<sup>4</sup> Hereinafter referred to as the 'Tribunal'.

5 W.P. No. 65474 of 2010 dated 17.09.2010, hereinafter, 'K. Seetharamulu' challenging the decision of the Tribunal was dismissed by the order impugned before us. This is how the State is in appeal. We heard Mr. V. N. Raghupathy, learned counsel appearing on behalf of the State and Mr. Siddharth Garg for the respondent.

9. Analysis: The factual background, as indicated hereinabove clearly establishes that the change of cadre from Staff Nurse to First Division Assistant occurred due to a request by the respondent and the same was considered under the 1977 Recruitment Rules. To consider whether the final seniority list dated 01.10.2007 is legal or not, we need to examine the mandate of Rule 16 which is extracted herein for ready reference:

“Rule 16. Relaxation of rules relating to appointment and qualifications:-  
Notwithstanding anything contained in these rules or the rules of recruitment specially made in respect of any service or post, the Government may, for reason to be recorded in writing-

(a) appoint to a post-

(i) an officer of the Defence Services, an All India Services or a Civil Service of the Union, or the Civil Service of any other State;

(ii) an officer holding a post of an equivalent grade by transfer or by deputation from any other service of the State for recruitment to which these rules apply:

Provided that appointment by transfer under this sub- clause shall not be made unless the officer has passed the examination prescribed under the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 for the post to which he is proposed to be transferred.

Provided further that where it is necessary in public interest to appoint an officer belonging to a service where has no equivalent grade, an officer holding a post in the next lower grade in such service may be appointed by deputation for a period not exceeding two years. Provided also that no such appointment shall be to a post which is equivalent to or higher than the next promotional post to such officer in such other service.

(iii) an officer who by bodily infirmity is permanently incapacitated for the post which he holds;

Provided that appointment under this sub-clause shall not be:-

(1) to a post lower than that held by such officer save with his consent;

(2) to a post higher than the post held by such officer except when the Government is of the opinion that there is no other equivalent post to which such officer can be appointed.

[(iiia) an officer who by bodily infirmity is temporarily incapacitated for the post which he holds:

Provided that the duration of appointment under this sub- clause shall not be for a period longer than the duration of the bodily infirmity on account of which he is held to be incapacitated to hold the post in the service to which he belongs.]

(iv) in the State Civil Services Group-A on deputation, a person with specialised qualifications in the service of a University established by law in India and holding an equivalent post for such period not exceeding five years and on such terms as the Government may in each case determine;

Provided that, whereas the Government is of the opinion that in view of the special circumstances of a case the period of deputation has to be extended beyond five years as stipulated under this clause, it may, for reasons to be recorded in writing, extend the same for a further period of one year at a time subject to a maximum of three years, so however, that the total period of deputation including the extended period shall not exceed eight years.

(b) relax, by notification for such period as may be specified therein, the qualifications prescribed for purposes of direct recruitment in the rules of recruitment specially made in respect of any service or post, if candidates possessing the prescribed qualifications are not available :

Provided that in the case of a post for which recruitment is required to be made in consultation with the Commission, such relaxation shall not be made except after consulting the Commission.”

10. The 1977 Recruitment Rules govern the process of recruitment to post under State civil services. While Rule 3 provides the method of recruitment, Rule 4 prescribes the procedure of appointment, Rule 5 specifies disqualifications for appointment, and Rule 7 prescribes the procedure for promotion. Rules 3A and 15 provide for appointment of ex-servicemen and retired government servants.

11. Rule 16, with which we are concerned, prescribes relaxation of rules relating to appointment and qualifications. This Rule is in recognition of exigencies of public service which may require

employment of certain persons who may not possess the prescribed qualifications. It is therefore in the form of an exception, which is the reason it provides that “notwithstanding anything contained in the rules or recruitment specially made in respect of any service or post”. It is also provided that for invoking this Rule, the government must record its reasons in writing.

12. Rule 16 is in two parts: Rule 16(a) enables the government to make appointments of certain officers and Rule 16(b) empowers such appointments by relaxing the qualifications prescribed. We are concerned with Rule 16(a), which in turn comprises three categories of officers in whose favour the relaxation could be made. The first relates to appointment of officers who worked in Defence Service, All-India Service or a Civil Service of the Union, or the State. The second relates to appointment of an officer holding a post of an equivalent grade by transfer or by deputation. The third, with which we are concerned, relates to appointment of an officer who by bodily infirmity is permanently incapacitated for the post he holds. For appointment of such an officer, the Rule prescribes two conditions and they are indicated in the proviso. The first condition is that the said officer should not be appointed to a post lower than the post held by him or her. The second condition is that if the officer consents, he can be appointed to a post lower than the one that was held by him or her. This is the crucial facet of the Rule that has fallen for our consideration.

13. Having analysed the Rule in detail, we can re-state its application and operation in the following manner. i. Invocation of Rule 16 is an exception. However, if the power is exercised, it will operate notwithstanding anything contained in the 1977 Recruitment Rules or other rules and reason for exercise for such a power must be evidenced in the written text of the record.

ii. An officer who by bodily infirmity is permanently incapacitated can be appointed to the new post in relaxation of the existing Rules. However, such appointment shall not be lower than the one he holds.

iii. The prescription that such an officer cannot be appointed to a post lower than that held by him or her can be waived or deviated from if the officer himself consents for the same.

14. We will now refer to next set of Rules that govern fixation of seniority of government employees and they are the 1957 Seniority Rules. We are concerned with Rule 6 which is extracted herein below:

“Rule 6. The transfer of a person in public interest from one class or grade of a service to another class or grade carrying the same pay or scale of pay shall not be treated as first appointment to the later for purposes of seniority; and the seniority of a person so transferred shall be determined with reference to his first appointment to the class or grade from which he was transferred;

Provided that, where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer.

Provided further, that the seniority of a person transferred in public interest vis a vis the persons actually holding the post in the Class or Grade to which he is transferred shall be determined on the date of such transfer with reference to his first appointment to the class or grade from which he was transferred.

Explanation.- For the purpose of the above proviso, the persons actually holding the post do not include the persons who have before the date of such transfer been promoted, whether in an officiating or substantive capacity to a higher class or grade.”

15. The above rule contemplates transfers under two contingencies, the first is when the transfer is made in public interest and the second is when transfer is made at the request of the officer. The purpose of transfer, considerations that weigh, the consequences that follow a transfer made in public interest, as against a transfer made at the request of the officer, vary substantially.

16. The purpose and object of transfer in public interest is singular and straightforward, i.e., to ensure effective and efficient administration. This is for the reason that administration and provisioning goods and services in a welfare State requires the government to deploy officers at different places and the exigencies of service take within its sweep the need to redeploy or transfer them from one place to another for myriad reasons, all intended to subserve the purpose of the State. All these decisions are transfers in public interest.

17. On the other hand, where a transfer is sought at the request of the officer and if the government is satisfied with the genuineness of the request, it may accept the request and direct transfer. This is fairness in action as governmental power accommodates, as it must, human needs and vulnerabilities. However, this kind of transfer, effected at the request of the officer, does not partake the character of a transfer made in the public interest. 6

18. Transfers characterised as in public interest are founded, sourced, and rooted in administrative exigencies and nothing else. Effecting or transferring employees at their behest is equally important but exercise of that power and discretion is to subserve a different cause or a value, which is distinct from transfer in public interest. It is necessary to draw a clear distinction between these two, as their purpose, procedure, and consequence are distinct. This distinction is in fact recognised and incorporated in the Rules.

19. If a government employee holding a particular post is transferred on public interest, he carries with him his existing status including seniority to the transferred post. However, if an officer is transferred at his own request, such a transferred employee will have to be accommodated in the transferred post, subject to the claims and status of the other employees at the 6 Geetha V.M. v. Rethnasenan K. 2025 SCC OnLine SC 35. transferred place, as their interests cannot be varied without there being any public interest in the transfer. Subject to specific provision of the Rules governing the services, such transferees are generally placed at the bottom, below the junior-most employee in the category in the new cadre or department. The rationale in assignment of such seniority is to avoid heartburn of existing employees in the transferred cadre. 7 In K.P. Sudhakaran

v. State of Kerala 8, this Court held:

“11. In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the juniormost employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules.”

20. In the order impugned before us, the High Court has fallen into an error by blurring the distinction between the two functions and treating transfer made at the request of the officer on medical

7 Surendra Singh Beniwal v. Hukam Singh, (2009) 6 SCC 469 (2006) 5 SCC 386.

grounds as equivalent to transfer in public interest. Keeping the distinction is essential since origin and the consequences that follow are distinct.

21. We will now refer to the precedents cited by the Tribunal and the High Court. The High Court referred to its own decision in K. Seetharamulu (supra). Having examined the said decision, we are of the opinion that it does not lay down the correct principle. In fact, the applicable Rule is not analysed and the decision is based on the facts and circumstances of the case, where the employee is said to have suffered injury during the course of employment. However, a sweeping observation in that judgment that “change of cadre was accorded pursuant to the report of the medical board and therefore it has to be treated as change of cadre in the public interest” is unsustainable as change of cadre pursuant to report of medical board is not determinative of whether the transfer is for public interest or effected at the request of the officer.

22. Having considered Rule 16 of the 1977 Rules, as per which the respondent accepted the appointment after consenting to be placed before the last person in the transferred post, which position is recorded in the order dated 19.04.1989 itself, we are of the opinion that seniority has to be with effect from 1989 only. The decision of the government in issuance of final seniority list dated 01.10.2007 granting seniority w.e.f. 19.04.1989 is in consonance with Rule 16 of 1977 Recruitment Rules. This decision is also in consonance with Rule 6 of the 1957 Seniority Rules which specifically



provide that where transfers are made at the request of the officer, the employee shall be placed below all the officers borne in that class in the transferred post.

23. Before we conclude, we may also refer to another Division Bench judgment of the Karnataka High Court in *M K Jagadeesh v. The Registrar General, High Court of Karnataka*<sup>9</sup> which examined the Rule 16(a)(iii) in the context of an undertaking given by the employee to work as a junior-most in the transferred post. The facts in our case are identical to the decision in *M K Jagadeesh (supra)* in as much as the change of cadre occurred under the same Rule, and in fact, the employee was transferred to a similar post i.e. the First Division Assistant. Further, the officer also gave an identical undertaking that he will occupy the junior-most position in the transferred post. The decision in *M K Jagadeesh (supra)* is unfortunately not referred in *Seetharamulu (supra)* and has also been missed by the High Court in the order impugned before us. 9 Writ Appeal No. 1263 of 2007 dated 25.07.2007, hereinafter, 'MK Jagadeesh' The relevant portion of the decision in *M K Jagadeesh* is extracted hereinbelow:

“2. While the appellant was working as Stenographer in the Court of Civil Judge (Jr.Dn.) & JMFC, Tumkur he applied for change of cadre and requested for appointment as First Division Assistant on medical grounds. In his representation requesting for change of cadre and appointment as First Division Assistant he gave an undertaking that he was willing to become junior to the juniormost First Division Assistant in the unit. Rule-16(a)(iii) of the Karnataka Civil Services (General Recruitment) Rules, 1977 permitted such change of cadre if the employee was willing to become junior to the juniormost in the new cadre. Hence the request of the appellant was granted and he was appointed by transfer to the post of First Division Assistant on medical grounds subject to the condition that he shall become junior to the juniormost official in the changed cadre in Tumkur unit. The request was granted as per Annexure-A order dated 19.8.2000. After accepting the above mentioned change of cadre on the basis of Annexure-A order, the appellant submitted a representation in the year 2007 requesting that his seniority in the cadre of First Division Assistant may be reckoned from 23.7.1992 instead of 19.8.2000, the date of Annexure-A order.” 23.1 Dismissing the writ appeal filed by the said employee, the Division Bench of the High Court held as under:

“3.... Having sought change of cadre giving an undertaking to become the junior to the juniormost in the new cadre and having accepted the appointment to the new cadre with the condition that he would be junior to the juniormost First Division Assistant in the unit, it is not open to the appellant to request that his seniority must be reckoned from the original date of appointment as stenographer...” 23.2 Interestingly the Division Bench of the High Court also refer to the relevant Rules relating to fixation of seniority and held as under:

“3. ...the 1st proviso to Rule-6 of the Karnataka Government Servants' (Seniority) Rules, 1957 clearly stipulated that where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which

he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer. There is no challenge against the said statutory provision in the Writ Petition. ... the 1st proviso to Rule-6 of the Karnataka Government Servants' (Seniority) Rules, 1957 is incorporated to recognise the service of the employees in the new cadre who have already been appointed and to protect their seniority in that cadre. If the appellant's request is allowed, the persons who were already working as First Division Assistants in the Tumkur unit before the appointment of the appellant as First Division Assistant will be adversely affected, but they are not made parties to the Writ Petition."

24. In view of the above, we are of the opinion that the Tribunal as well as the High Court committed an error in directing the appellant to grant seniority to the respondent in the cadre of First Division Assistant with effect from the date in which the said respondent has entered service in the cadre of Staff Nurse from 05.01.1979, instead of 19.04.1989, when she was appointed in the new cadre of First Division Assistant.

25. For the reasons stated above, we allow the appeal and set aside the order passed by the High Court of Karnataka dated 25.10.2021 in W.P. No. 42244 of 2019.

26. No order as to costs.

.....J. [PAMIDIGHANTAM SRI NARASIMHA] .....J.  
[MANOJ MISRA] NEW DELHI;

MARCH 25, 2025.