

State Of Karnataka & Ors vs C. Lalitha on 31 January, 2006

Equivalent citations: AIRONLINE 2006 SC 209

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:

Appeal (civil) 919 of 2002

PETITIONER:

State of Karnataka & Ors.

RESPONDENT:

C. Lalitha

DATE OF JUDGMENT: 31/01/2006

BENCH:

S.B. Sinha & P.P. Naolekar

JUDGMENT:

JUDGMENT S.B. SINHA, J.

Construction of an inter-parties order of this Court is in question in this appeal wherein the validity of an amendment of the reservation policy of the State which was the subject matter of a decision of this Court in *N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others* [(1990) 3 SCC 157], had been raised. This Court therein declared that the revised reservation policy was not applicable to selection initiated prior thereto and consequently directed:

"15 In this view, we direct the State Government to appoint the appellants on the posts of Tehsildars with retrospective effect, but if no vacancies are available the State Government will create supernumerary posts of Tehsildars for appointing the appellants against those posts. We further direct that for purposes of seniority the appellants should be placed below last candidate appointed in 1976, but they will not be entitled to any back wages. The appellants will be entitled to promotion if otherwise found suitable."

The Respondent thereafter filed an original application before the Karnataka Administrative Tribunal claiming appointment as Assistant Commissioner although in terms of the said revised reservation policy she was appointed as a Tehsildar. The said original application having been dismissed, a Special Leave Petition was filed thereagainst before this Court which was allowed by an order dated 15th March, 1994 in the following terms:

"The appellant was admittedly selected and shown in the first list which is upheld by this Court in N.T. Bevin Katti and Ors. Vs. Karnataka Public Service Commission and Ors. (1990) 3 SCC 157.

In this view of the matter, we allow the appeal and set aside the order of the Karnataka Administrative Tribunal. We are informed that the appellant has since been promoted to Class-I post of Assistant Commissioner (Karnataka Administrative Service). If no vacancies are available, the State Government will create a supernumerary post for the appellant's appointment. We further direct that for the purposes of seniority, the appellant shall be placed below the last candidate appointed in 1976, but she will not be entitled to any back wages. The appellant will be considered for promotion if otherwise found suitable. These directions will be carried out within three months from today.

The appeal is allowed accordingly. No order as to costs."

An application for review was filed by the Appellant herein inter alia on the ground that she did not have any legal right to the said post as the State of Karnataka did not intend to give effect to the additional select list prepared by the Karnataka State Public Service Commission (Commission), which was dismissed.

The State of Karnataka thereafter sought for the opinion of the Commission. The Commission by communication dated 24.6.1995 advised that as per the Respondent's ranking in the General Merit Category I posts, she should be considered for the post of Assistant Controller of Accounts which is a Category I post, as the marks secured by her were below the marks secured by the candidates selected as Assistant Controller of Accounts. The Respondent did not accede thereto when such a post was offered to her.

After an unsuccessful attempt to obtain some order in a contempt proceedings instituted by her, the Respondent filed a fresh original application before the Administrative Tribunal which came to be dismissed whereupon she filed a writ petition before the Karnataka High Court.

We may at this stage notice that the ground upon which the Respondent's application was dismissed by the Tribunal inter alia was that one B.N. Mahesh was at S.No. 1 of the said list whereas the Respondent figured at S.No. 2 and the former's claim for appointment as Assistant Commissioner was thence pending before this Court. The matter of Shri B.N. Mahesh being Civil Appeal No. 3475 of 1998 was dismissed by this Court on 22.7.1998 on the ground that he moved the Tribunal at a belated stage. Taking note of the said fact and interpreting the judgment and order dated 15th March, 1994, a Division Bench of the High Court allowed the writ petition filed by the Respondent against the order of the Tribunal directing the State to implement the order of this Court within four months without reference to the assessment of merit by the Commission as well as the fact that the Government had earlier offered appointment to her as Assistant Controller, State Accounts Department, Group 'A' on the Commission's recommendations.

Mr. P.P. Rao, learned senior counsel appearing on behalf of the Appellant submitted that the State intended to implement this Court's judgment dated 15th March, 1994 wherefor only the recommendation of the Commission was sought for and pursuant thereto and in furtherance thereof the notification dated 14.8.1995 was issued. It was argued that the effect of the order of this Court is to render the parties to the same position as if the reservation policy was not amended and if so construed, the Respondent having been placed in the supplementary list could not have laid any claim for any post in the Administrative Service.

It was urged that the merit should be the sole criteria for selection of the candidates and in that view of the matter, the State cannot be said to have misconstrued and misinterpreted the judgment of this Court.

Mr. S.S. Javali, learned senior counsel appearing on behalf of the Respondent, on the other hand, drew our attention to the prayer made by the Respondent herein in her application before the Tribunal and submitted that the order of this Court should be construed in the context thereof. Drawing our attention to the averments made in the application for review filed by the Appellant herein, it was contended that therein a similar stand was taken but this Court having rejected the review application, the Appellant herein cannot now be permitted to re-agitate the said question once over again.

It is not in dispute that the Respondent herein had been working from the very beginning in the Revenue Department. The order of this Court dated 15th March, 1994 as noticed supra should, thus, be construed in the light of the decision of this Court and the pleadings of the parties.

For the said purpose, we may notice the prayers made by the Respondent before the Karnataka Administrative Tribunal which are as under:

"i) Declare by the issue of an appropriate order or direction as the case may be, the action of the State Government in denying the benefits to the applicants flowing from the decision of the Hon'ble Supreme Court of India in Civil Appeal Nos. 2270 to 73/87 and connected appeals, as illegal and discriminatory, with a further declaration that the applicants are entitled to be considered for appointment to Group A Services (Assistant Commissioners). On the basis of the first select list prepared by the Karnataka Public Service Commission vide Notification dated 23.2.1976 published in the Karnataka Gazette dated 26.2.1976 (Annexure A1) and entitled to all consequential benefits, in the interest of justice and equity.

(ii) Issue an appropriate order or direction, as the case may be, directing the State Government to pass appropriate orders appointing the applicants to Group A services (Assistant Commissioners), pursuant to the declaration to be granted as per the above prayer, w.e.f, the dates, the same has become due with all consequential benefits, in the interest of justice and equity.

(iii) Pass such orders just and expedient in the circumstances of the case, including the aware of cost."

Prayers made in the said original application before the Tribunal must be construed having regard to the pleadings thereof. We have been taken through the application filed by the Respondent before the Administrative Tribunal. No statement far less any claim grounded on legal right was raised to the effect that she was entitled to be appointed as Assistant Commissioner from the very inception. Such a plea could not have been taken.

In paragraph 6 of her application, she accepted that her name was included in the Additional List of Category I Service. In sub-paragraph (e) of the said paragraph, she moreover accepted that her name had appeared at Sl. Nos. 26 and 5 respectively in Category II Service (Tahsildars) now designated as Group 'B' Service omitting her name from Group 'A' Service. In sub-paragraph (g) of paragraph 6 she stated:

"By order dated 30.3.1990, the Hon'ble Supreme Court of India struck down the government order dated 23.4.1976. Thus, with the setting aside of the Government order dated 23.4.1976, the applicants also became entitled to be appointed to Group 'A' Services on the basis of the first select list (Annexure A1). The judgment of the Hon'ble Supreme Court of India also ensures to the benefit of the applicants and accordingly the applicants became entitled to be appointed to Group A Services w.e.f. the respective dates the Candidates included in the second list to the Annexure B were appointed with all consequential benefits except an express benefits denied by the State Government by order dated 22.5.1990 proceeded to grant benefits only to the petitioners before the Hon'ble Supreme Court of India "

Yet again, in the Grounds contained in the said application, she merely contended:

" With the setting aside of the directions, even the deletion of the names of the applicants from the additional list of Group A services is automatically held to be illegal and discriminatory "

Furthermore, in sub-paragraph (m) of paragraph 6, she stated:

"The applicants submit that they too are similarly and equally placed like those who were Appellants before the Hon'ble Supreme Court, in the matter of appointment on the basis of first select list (Annexure-A1) "

It is, thus, only in the prayer portion, she prayed for being considered for appointment to Group 'A' Service (Assistant Commissioner) without there being any requisite pleadings therefor. She had, thus, never questioned the merit position.

The Commission issued a notification on 23.2.1976 showing the names of the candidates who became eligible to hold the posts of Assistant Commissioners being Category I service. The name

of the Respondent did not figure therein. Her name did not figure even in the posts of Assistant Controllers which were also Category I posts. Her name appeared at Sl. No. 2 in the Additional List of Category I service. It is true that having regard to Devin Katti (supra), the said List was revised but even on revision of the list, her name could have been placed only below K.C. Ramamurthy who got 871 marks as she got 868 marks. Even some candidates belonging to the Scheduled Castes category as, for example, Shri T. Muktaba got higher marks than her i.e. 893 marks. It further appears that even in the List of Commercial Tax Officers, the last candidate therein Shri M. Viswanatha who was a General Category candidate got 875 marks. Thus, there were many persons who were above the Respondent both amongst General Category as also Reserved Category candidates. Upon revision of the List, She had, thus, been placed at Sl. No. 26 of Category II Service which was meant for Tahasildars. It is not in dispute that if the name of the Respondent was to be included in the Assistant Commissioner from the General Merit Category, then cases of six more candidates, namely, A.C. Suryaprakash, C. Vasumathi, V. Mohan Kumar, M. Vishwanatha, K.C. Ramamurthy and B.N. Mahesh, being above her, were also required to be considered. It is, furthermore, not in dispute that those who had been offered the post of Assistant Controller of Accounts in 1993 are currently working as Joint Controller. Only one person, Shri M.V. Munirathnappa has been promoted as Additional Controller of State Accounts on 22.5.1997. The merit position of the candidates, as noticed hereinbefore, had never been questioned and even now has not been disputed. The Respondent, on her own showing, has been presently working in Karnataka Administrative Service, Group 'A', Super-Selection Post in the scale of pay of Rs. 13820-17220. There are 62 posts in the Selection Grade and 45 posts in the Super-Selection Grade. The post of Controller is only one whereas the number of posts of Additional Controller is 9 and that of Joint Controller is 50.

The Respondent herself in her additional affidavit stated:

"That it is directed by this Hon'ble Court on 15.3.1994 "that for the purpose of seniority, the Appellant shall be placed below the last candidate appointed in 1976, but she will not be entitled to any backwages". I submit that the select list of the 1976 Batch in the Administrative Service (Post Karnataka Administrative Service Group 'A') comprised 15 candidates. Three of them died, while one did not join service. The service particulars and promotion accorded to the remaining 11 candidates are indicated in the chart marked herewith as Annexure R-1. I further submit that the 1976 batch Karnataka Administrative Service Group 'A' (Junior Scale) Officers were promoted to the Karnataka Administrative Service Group 'A' (Senior Scale). Vide Notification dated 2.9.1983, a copy of which is marked herewith as Annexure R-2, while I was promoted to Karnataka Administrative Service Group 'A' (Senior Scale) in 1997, vide Notification dated 10.4.1987 the true copy of which is marked herewith as Annexure R-3."

It is, therefore, evident that it had never been nor could be her claim that she should be placed in higher grade ignoring the case of persons similarly situated.

It is true that the Appellant herein filed an application praying for review of the said order dated 15th March, 1994 contending:

" It is respectfully submitted that the Respondent was only included in the additional list of Category I in the pre-revised list and was not allocated to any particular service. The question of appointment of persons included in the additional list would arise only after exhausting the appointment of all the selected candidates in the main list and as already stated, the Respondent came to be included in the list of Category II after the revision taken by the K.P.S.C. as directed by the State Government at that point of time. It is also relevant to state here that the Government took a decision not to operate the Additional List and accordingly the relevant provision providing for publication of the Additional List as provided in Sub-Rule (4) of Rule 11 of the 1966 Rules came to be deleted as per the Notification No. DPAR 46, SRR 76 dt. 21.8.76"

In the order dated 15th March, 1994, this Court noticed that the Appellant had since been promoted to Class I Post of Assistant Commissioner. As the Respondent was to be appointed in the said post with retrospective effect, a direction was issued to create a supernumerary post therefor as otherwise it was not necessary to issue any such direction. Furthermore, this Court directed that the Respondent should be placed below the last candidate appointed in 1976 meaning thereby the same post which she had been holding at the relevant point of time. She was held not to be entitled to any back wages therefor.

The judgment of this Court dated 15th March, 1994 must be construed in the aforementioned backdrop.

A judgment, as is well known, is not to be read as a statute. But, it is also well-known that the judgment must be construed as if it had been rendered in accordance with law.

In *Ramesh Chand Daga v. Rameshwari Bai* [(2005) 4 SCC 772], this Court held :

"A judgment, as is well known, is not to be read as a statute. A judgment, it is trite, must be construed upon reading the same as a whole. For the said purpose the attendant circumstances may also be taken into consideration."

[See also *Zee Telefilms Ltd. & Another v. Union of India & Others* (2005) 4 SCC 649] In *P.S. Sathappan (Dead) By Lrs. v. Andhra Bank Ltd. & Others* [(2004) 11 SCC 672], this Court held :

"The judgment of this Court must be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it."

In *Gajraj Singh and Others v. State of U.P. and Others* [(2001) 5 SCC 762], this Court held:

" A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically."

In N. K. Rajgrahia Vs. M/s Mahavir Planatation Ltd. & Ors. JT 2006 (1) SC 70, the Court observed:

"An order of a court of law and, in particular, a consent order, must be read in its entirety for the purpose of ascertaining its true intent and purport."

Devin Katti (supra) was not directly applicable to the case of the Appellant. Therein this Court was concerned with the selection process which started by a notification dated 23rd May, 1975 which was published on 29th May, 1975 only for the post of Tehsildars whereas the Respondent herein was selected in terms of the notification dated 28th November, 1974. This Court in the case of the Respondent proceeded on the basis that her case was covered by Devin Katti (supra) in all force, only for applying the ratio that after the selection process had started, her status could not have been altered by the reservation policy. Her name was not in the First List but was in the Additional List.

Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I Post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.

It is furthermore not in dispute that the correct position as regard her ranking amongst the successful candidates had not been brought to the notice of this court and if it had been so done, this Court would have found that she was entitled only to the post of Assistant Controller of Accounts.

It may be true that in the Appellant's application for review, more or less similar pleas were raised, but rejected, but, herein the same is not an issue as we are concerned only with construction of this Court's order dated 15th March, 1994.

Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates. Moreover, at the end of the day, the Respondent has got what could be given to her in law. As of now, she had already been enjoying a higher scale of pay than what she would have got if she was to join the post of Assistant Controller. We, therefore, are of the opinion that interest of justice would

be sub-served if she is allowed to continue in her post and direct the Appellant to consider her seniority in the Administrative Service in terms of the order of this Court dated 15th March, 1994 that she would be the last in the seniority list of the appointees in the post of Category I Assistant Commissioner (Karnataka Administrative Service).

The Appeal is allowed to the aforementioned extent. However, there shall be no order as to costs.