

Mysore State Road Transport ... vs H. Venkataramanappa on 25 April, 1978

Equivalent citations: 1978 AIR 1385, 1978 SCR (3) 721, AIR 1978 SUPREME COURT 1385, 1978 3 SCC 11, 1978 LAB. I. C. 1101, 1978 2 SCWR 79, 1978 2 LABLN 306, 37 FACLR 70, 1978 U J (SC) 354 AND 356, 1978 2 LABLJ 185

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Bench: Syed Murtaza Fazalali, Jaswant Singh, R.S. Pathak

PETITIONER:

MYSORE STATE ROAD TRANSPORT CORPORATIONBANGALORE

Vs.

RESPONDENT:

H. VENKATARAMANAPPA

DATE OF JUDGMENT25/04/1978

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

SINGH, JASWANT

PATHAK, R.S.

CITATION:

1978 AIR 1385

1978 SCR (3) 721

1978 SCC (3) 1

ACT:

Seniority in and claim to a post-When there is re-designation of posts in the integrated structure, claim should be tested with reference to the post previously held and pay scale and the equated post and scale under the new structure.

HEADNOTE:

The respondent was working under the Mysore Transport Department as a Store Keeper in the grade of Rs. 75-5-100. Pursuant to the State Reorganisation Act, 1956 some territories belonging to the existing States of Bombay and Hyderabad were merged in the State of Mysore and this resulted in the transfer of certain employees of Hubli

region of Bombay State and Raichur section of the Hyderabad State Road Transport department to the services of the Mysore State Road Transport Department. The grades of pay of the existing units were lower than the grades of pay governing the incoming transferred units which caused considerable discontent among the employees of the existing units. Ultimately an Industrial Truce was signed on 10-1-1958 which was to become effective from 1-4-1957, under which the scales of pay attaching to different posts were revised irrespective of the transport service the incumbents of those posts had come. On 8-3-1958 the State Government on a consideration of several factors, published a fresh equation of posts with corresponding scales of pay. In this new dispensation, the post held by the respondent i.e. Store Keeper in the scale of Rs. 75-5-100 came to be equated with that of an Assistant Store-Keeper in the scale of Rs. 92-8-140-10-180. The respondent gave his option to the new scales from 1-4-1957 and therefore his pay was fixed @ Rs. 132/- in the scale of Rs. 92-180. Thereafter, he was temporarily promoted as Store Keeper in the grade of Rs. 124-220 and reverted as Junior Assistant and was again temporarily promoted as Store Keeper. A writ petition filed by the respondent claiming seniority as Assistant Store Keeper under the new equation over certain others were dismissed in 1961. The respondent then filed a writ petition that he may be put in the scale of Store Keeper w.e.f. 1-4-1957 by virtue of the fact that the post which he held was designated as "Store-Keeper" prior to the Industrial truce. The Writ Petition failed before a single Judge but was allowed by the Division Bench of the Karnataka High Court.

Allowing the appeal by special leave the Court

Per Fazal Ali J. (On behalf of Jaswant Singh and himself)

HELD : 1. The High Court over-looked two important facts : (1) that the post of Store Keeper at the time of the industrial truce did not carry the same scale as the post of Store Keeper under the new dispensation which came into existence on 26-6-1958 nor was this new post contemplated at the time when the industrial truce was signed which was six months before this event; (2) that the respondent himself has accepted the terms of the circular giving him the option and had chosen to opt for the new scheme as a result of which he was given the scale of Rs. 92-180 and his salary fixed @ Rs. 132/- p.m. [724 F-G]

(b) The grievance of the respondent, if any, was purely illusory. The substantive post held by the respondent was below the post of Store Keeper and until he had by regular promotion reached the higher post he could not claim to be appointed to the new post of Store Keeper which carried a higher scale,

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namely Rs. 124-220. The mere fact that the respondent had officiated on the post of Store Keeper in a purely temporary

capacity would not clothe him with a right to the post of Store Keeper. In fact, the previous writ petition filed by the respondent was dismissed by the High Court on the ground that the respondent could not claim any seniority to the post of Store Keeper. In these circumstances, therefore, neither in law nor according to rules could the respondent be entitled to be appointed permanently to the post of Store Keeper. [724 G-H, 725 A]

(c) The respondent could not claim the scale of the post which was actually held by him after he had exercised his option and in this regard his equivalent post would be that of an Assistant Store Keeper or a Senior Assistant. The post of a Store Keeper being a higher one could not be given to the respondent until he earned it in due course of his promotion. [725 B-C]

Per Pathak I.. (Concurring).

1. (a) The High Court has omitted to note that in considering the claim, of the respondent to a particular grade of pay, the terms of the Industrial Truce have perforce to be applied in the light of the equation of posts. The equation of posts effected under the States Reorganisation Act constitutes a fundamental feature of the employment structure in the Mysore State Road Transport Department. The equation of posts was necessitated by the coming together into one department of employees from different transport services hailing from different regions and previously operating under different Governments. Both the revised grade of pay set forth in the Industrial Truce and the newly determined equation of posts were inspired by the need to harmonise the terms and conditions of service between employees drawn from the different units. [727 C-D]

(b) The High Court erred in considering the terms of the Industrial Truce only. The High Court should have first determined what was the equated post in the integrated structure which corresponded to the post of Store Keeper in the Bangalore Transport Service held by the respondent. Having decided what was the equated post in the integrated structure, the High Court should then have discovered what was the scale, of pay attaching to that post. That is the scale of pay by which alone the respondent can lay claim. [727 D-E]

(c) In as much as the post of Store Keeper in the Bangalore Transport Service with the grade of Rs. 75-5-100 stands equated with the post of Assistant Store Keeper with the grade of Rs. 92-8-140-10-180, it is the latter post and the grade of pay to which the respondent is entitled with effect from April 1, 1957. His claim that he should all along be treated as holding the post of store keeper in a substantive capacity, and to be paid, therefore, on that basis is without substance. [727E-F]

JUDGMENT :

CIVIL, APPELLATE JURISDICTION : Civil Appeal No. 2484 of 1968.

Appeal by Special Leave from the Judgment and Order dated 22-3-1968 of the Mysore High Court in Writ Petition No. 1221 of 1965.

S. V. Gupte, Attorney General and J. Ramamurthi for the Appellant.

R. B. Datar and (Miss) Farhat Qadri for the Respondent. The Judgments of the Court were delivered by FAZAL ALI, J.-This appeal by special leave is directed against the judgment of the Karnataka High Court dated 22nd March, 1968 and arises in the following circumstances. The appellant was an employee of the Bangalore Transport Company and entered service as far back as 1944. On 28th September, 1956 the Bangalore Transport Service Act was passed by which the Bangalore Transport Company was taken over by the Government. Nearly a month later, that is on 1st October, 1956, the Company became a department of the Government and at that time the respondent was working as Junior Assistant in the grade of Rs. 75-5-100. On the reorganisation of the States on 1st November, 1956 various employees from other regions were transferred to the Mysore Road Transport Corporation and various units were amalgamated with the Mysore Government Transport Department. In view of the new dispensation it became necessary to bring about a radical change in the pay structure of the employees. Ultimately a settlement was arrived at and an industrial truce was signed on 10th January, 1958 which was to become effective from 1st April, 1957 and the respondent was placed in the grade of Rs. 92-8-180. At this time the designation of the post of the respondent was that of a Store Keeper. On the 8th March, 1958 the State Government after a consideration of a large number of factors published a fresh equation of posts with corresponding scales of pay. In this new dispensation the post held by the respondent came to be equated with that of an Assistant Store Keeper. On 26th June, 1958 the Mysore 'Government Road Transport' Department hereinafter referred to as M.G.R.T.D. issued option forms to the employees to opt for the new scales if they so like with effect from 1st April, 1957. In consequence of this arrangement a circular No. 12 of 58 dated 26th June, 1958 was issued which may be extracted thus :-

"As per Clause 7 of the Industrial Truce signed on 10th January, 1958, all employees shall have the option to come on to the new pay scales or to remain on their present pay scales with effect from 1st April, 1957. Unit Heads are therefore instructed to inform all the employees to declare their option on the basis of the provisional equation of posts by executing the printing forms sent herewith. In case any changes are made in the final equation, the affected persons will be given the right to revise their option if they find that they are adversely affected by the ,changes made.

Upon the staff exercising the option the Unit Heads of Hubli, Belgaum, Bijapur and Raichur will arrange to refix the salaries of the staff in the categories mentioned in Circular Letter No. 8 of 1958. In the case of staff of B.T.S. and Bangalore Divisions, the Unit Heads will arrange to refix the, pay of all staff with weightage and give effect to these from 1st July, 1958. The arrears which will be due to staff on account of the

refixation of pay with weightage in the case of Bangalore & B.T.S. Divisions and fixation of pay in the case of those in the categories of Ex. Hyderabad and Ex. B.S.R.T.C. mentioned in Circular 8 of 1958 will pend finalisation of equation of posts, All payments made will be provisional and subject to the necessary adjustments on the finalisation of equation "of posts."

It is not disputed that the respondent chose to abide by this circular and exercised option in favour of the new scale and accordingly his pay was fixed at Rs. 132/- in the scale of Rs. 92-180. Thereafter, the respondent was temporarily promoted as Store Keeper and was reverted as Junior Assistant and was again temporarily promoted as Store Keeper. On 1st August, 1961 the appellant corporation came into existence and on 12th December, 1961 a petition filed by the respondent claiming seniority as Assistant Store Keeper under the new equation over certain others was dismissed. Two years thereafter the respondent filed a petition in the High Court of Karnataka praying that he may be put in the scale of Store Keeper with effect from 1-4- 1957 and a writ of mandamus be issued for enforcing the terms of the industrial truce regarding the scale of the respondent. The writ petition failed before the Single Judge but was allowed by the Division Bench which issued the writ as prayed for. The State moved the High Court for grant of a certificate of fitness for leave to appeal to this Court which having been refused the appellant got special leave from this Court and hence this appeal. The short point contended by the Attorney General was that in the new dispensation the post of Assistant Store Keeper was equivalent to the post of others Keeper which was in existence at the time when the industrial truce was entered into and, therefore, the respondent could have no grievance if he was given the equivalent post and scale particularly when he chose to opt for the new scale under the new dispensation. The Division Bench of the High Court appears to have gone on the bare description of the post held by the respondent at the time of the industrial truce rather than the substance of it. The High Court thought that if the respondent was a Store Keeper until the industrial truce he should have been appointed as Store Keeper even under the new dispensation, In coming to this finding the High Court seems to have overlooked two important facts : (1) that the post of Store Keeper at the time of the industrial truce did not carry the same scale as The post of Store Keeper under the new dispensation which came into existence on 26th June, 1958, nor was this new post contemplated at the time when the industrial truce was signed which was six months before this event, (2) that the respondent himself had accepted the terms of the circular extracted above and had chosen to opt for the new scheme as a result of which he was given the scale of Rs. 92-180 and his salary was fixed at Rs. 132.00 p.m. Thus the grievance of the respondent, if any, was purely illusory. The post substantive post held by the respondent was below the post of Store Keeper and until he had by regular promotion reached the higher post he could not claim to be appointed to the new post of Store Keeper which carried a higher scale, namely, Rs. 124-220. The mere fact that the respondent had officiated on the post of Store Keeper in a purely temporary capacity would not clothe, him with a right to the post of Store Keeper, In fact, the previous writ petition filed by the.

respondent was dismissed by the High Court on the ground that the respondent could not claim any seniority to the post of Store Keeper. In these circumstances, therefore, neither in law nor according to rules could the respondent be entitled to be appointed permanently to the post of Store Keeper. Mr. Datar appearing for the respondent submitted that since under the industrial truce the post of Store Keeper was created and given to the respondent he must be deemed to have been duly

promoted to the post of Store Keeper in the new dispensation. This argument however is based on a serious misconception of the previous history and the facts mentioned above. The respondent could not claim the scale of the post which was actually held by him after he had exercised his option and in this regard his equivalent post would be that of an Assistant Store Keeper or a Senior Assistant. The post of a Store Keeper being a higher one could not be given to the respondent until he earned it in due course of his promotion. We do not, therefore, find any substance in the argument of the learned counsel for the respondent.

It was secondly urged by counsel for the respondent that even though he was officiating in a temporary capacity as Store Keeper he was not given the same salary as admissible to Store Keeper during the period of his officiation. No such plea appears to have been taken by the appellant either in the High Court or in his petition for special leave in this Court. Moreover, the Attorney General showed us a chart of the pay drawn by the respondent which shows that he did get the full pay of a Store Keeper while he was temporarily promoted as such. For these reasons this contention is also overruled.

For the reasons given above, the appeal is allowed and the order of the High Court dated 22nd March, 1968 is set aside and the writ petition filed by the respondent in the High Court is dismissed. In view of the order, granting special leave costs are to be paid by the appellants. PATHAK, J.-I agree that the appeal should be allowed. The respondent joined as Assistant Store Keeper in the Bangalore Transport Company in 1944. In 1950, he was promoted to the post of Store Keeper in the grade of Rs. 75-5-100. Some years later on October 1, 1956, the undertaking of the Bangalore Transport Company was taken over by the Mysore State Government and operated as the Bangalore Transport Service. The respondent became a Store Keeper in the employment of the Mysore Government Road Transport Department by virtue of Section 8 of the Bangalore Road Transport Service Act, 1956 on the same terms and conditions of service as enjoyed by him before. On November 1, 1956, pursuant to the States Reorganisation Act, 1956 some territories belonging to the existing States of Bombay and Hyderabad were merged in the State of Mysore. In consequence, with effect from January 1, 1957 certain employees of the Hubli region of the Bombay State Road Transport Corporation and of the Raichur Section of the Hyderabad Government Road Transport Department were transferred to the service of the Mysore Government Road Transport Department. The grades of pay of the existing units were lower than the grades of pay governing the incoming transferred units, and apparently there was considerable discontent among the employees of the existing units. Ultimately, an Industrial Truce was reached on January 1, 1958, under which the scales of pay attaching to different posts were revised irrespective of the transport service from which the incumbents of those posts had come. A Store Keeper and a Senior Assistant were given the grade Rs. 1248-140-10-220, and a Junior Assistant was given the grade Rs. 92-8-140-10-180. It may be mentioned that a Junior Assistant attached to the Store Section is described as an Assistant Store Keeper. The scales were to take effect from April 1, 1957. Clause 7 of the Truce declared that "all employees shall have the option to come on to the new pay scales or to remain on their present pay scales, with effect from 1-4-1957." Concurrently, proceedings were also under way for the equation of posts with a view to completing the process of integration of the transport employees under the States Reorganisation Act. The final equation of posts was published on March 8, 1958, and the employees were informed that the option was to be exercised on the basis of this equation.

According to the equation, the post of Store Keeper in the Bangalore Transport Service with the grade Rs. 75-5-100 stood equated with the new post of Assistant Store Keeper with the grade Rs. 92-8-140-10-

180. It is relevant to note that this was the grade attaching to the post of Assistant Store Keeper in the Bombay State Road Transport Corporation. Plainly, the post of Store Keeper held by the respondent in the Bangalore Transport Service in the grade Rs. 75-5-100 stood equated with the post of Assistant Store Keeper (i.e. Junior Assistant) with the grade Rs. 92-8-140-10-180. On June 26, 1958, the Mysore Government Road Transport Department issued a circular letter to all employees, pursuant to clause 7 of the Industrial Truce, declaring that they had the option to come on to the new pay scales or to remain on their present pay scales with effect from April 1, 1957. Reference was made to the equation of posts which had already been effected. It was in this context that the respondent exercised his option on September 8, 1958, and having regard to the terms in which the option was expressed, the only inference which can be reasonably drawn is that he opted for the new scales of pay, and on the basis of the equation of posts. That necessarily implies that he accepted the scale of pay attaching to the corresponding equated post of Assistant Store Keeper. It may be mentioned that subsequently an order dated October 4, 1958 was issued by the Mysore Road Transport Department promoting the petitioner, who was described therein as an Assistant Store Keeper, temporarily to officiate as Store Keeper on the pay scale attaching to that post. On January 6, 1959, he was reverted to his substantive post of Assistant Store Keeper. On March 3, 1959, he was again temporarily promoted to the post of Store Keeper.

On August 1, 1961, the Mysore State Road Transport Corporation was brought into existence and the existing transport services forming part of the Mysore Road Transport Department were absorbed as transport services of the Corporation. The respondent was aggrieved by the pay granted to him. He claimed the higher pay scale attached to the post of Store Keeper. The claim was repelled on the ground that the respondent held the post of Assistant Store Keeper on a substantive basis and not the post of Store Keeper. He filed a writ petition in the High Court of Mysore contending that he held the post of Store Keeper substantively and he should be paid the higher pay scale attaching to that post. The writ petition was allowed by the High Court of Mysore on March 22, 1968. The learned Judge of the High Court held that in as much as the respondent held the post of Store Keeper on the date of the Industrial Truce, he was entitled to, continue in that post and to enjoy the revised pay scale pertaining to that Post. The petitioner Corporation obtained special leave to appeal, and leave being granted this appeal is now before us. It is clear that the High Court has omitted to note that in considering the claim of the respondent to a particular grade of pay, the terms of the Industrial Truce have perforce to be applied in the light of the equation of posts. The equation of posts effected under the States Reorganisation Act constitutes a fundamental feature of the employment structure in the Mysore State Road Transport Department. The equation of posts was necessitated by the coming together, into one department, of employees from different transport services hailing from different regions and previously operating under different Governments. Both the revised grade of pay set forth in the Industrial Truce and the newly determined equation of posts were inspired by the need to harmonise the terms and conditions of service between employees drawn from the different units. The High Court erred in considering the terms of the Industrial Truce only. The High Court should have first determined what was the

equated post in the integrated structure which corresponded to the post of Store Keeper in the Bangalore Transport Service by the respondent. Having decided what was the equated post in the integrated structure, the High Court should then have discovered what was the scale of pay attaching to that post. That is the scale of pay to which alone the respondent can lay claim. In as much as the post of Store Keeper in the Bangalore Transport Service with the grade Rs. 75-5100 stands equated with the post of Assistant Store Keeper with the grade Rs. 92-8-140-10-180, it is the latter post and the grade of pay to which the respondent is entitled with effect from April 1, 1957. His claim that he should all along be treated as holding the post of Store Keeper in a substantive capacity, and to be paid, there- fore, on that basis is without substance. It is worth of note that in an earlier writ petition (writ petition No. 435 of 1961) filed by the respondent in the High Court of Mysore, he claimed seniority over other employees of the Mysore Government Road Transport Department, and in their judgment dismissing the writ petition the learned Judges observed that the respondent was an Assistant Store Keeper "under the new dispensation".

Towards the end, it was faintly urged on behalf of the respondent that an order should be made by us requiring the appellant to make payment to the respondent on the basis of the scale of pay attaching to the post of Store Keeper at least for the period during which he held that post temporarily under the new dispensation. On the material placed 'before us, it is clear that no such order can be granted. The respondent has in fact been paid during that period on the basis of which he lays claim.

Accordingly, the appeal is allowed, the order of the High Court dated March 22, 1968 is set aside and the writ petition is dismissed. However; in accordance with the order of this Court granting special leave to appeal, the appellant shall pay to the respondent his costs of the appeal.

S.R.

Appeal allowed