Hussain Sasan Saheb Kaladgi vs State Of Maharashtra on 20 November, 1986

Equivalent citations: AIR1987SC1627, 1987(35)BLJR846, (1987)89BOMLR30, 1987LABLC1304, (1987)IILLJ506SC, (1988)4SCC168, AIR 1987 SUPREME COURT 1627, 1988 (4) SCC 168, 1987 LAB. I. C. 1304, 1989 ALL CJ 113, (1990) 2 PAT LJR 1, (1987) 2 GUJ LH 159, (1987) 55 FACLR 304, (1987) 1 LAB LN 422, 1987 BOM LR 89 30

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Bench: B.C. Ray, M.P. Thakkar

JUDGMENT

M.P. Thakkar, J.

1. This is an appeal by an unsuccessful plaintiff who was served with an order dated 28th April, 1965 (Ex.25) reverting him to the post of a primary teacher. The appellant challenged the impugned order on the ground that he was a 'direct recruit' to the post of Assistant Deputy Educational Inspector (A.D.E.I.) and that under the circumstances, there was no question of reverting him to the lower post of a 'primary teacher'. The trial court upheld the contention of the appellant and passed a decree in his favour granting a declaration that he continued in service on the premise that the impugned order as per Ex.25 dated the 28th April, 1965 reverting him from (he post of A.D.E.I. held by him, to the lower post, of a primary teacher was illegal. The trial court also passed a decree for the salary amount. The State of Maharashtra preferred an appeal to the High Court of Bombay. The High Court allowed the appeal, 'reversed and set aside the decree passed by the trial court, and dismissed the suit. Thereupon the appellant has approached this Court by Certificate under Article 133(1)(b) of the Constitution of India.

2. Before the High Court it was conceded by the learned Government Pleader that the appellant was appointed to the post of A.D.E.I. as a 'direct recruit' and that he was not a departmental promotee who had been promoted from the post of primary teacher to the post of A.D.E.I. This is abundantly clear from the following passage extracted from the judgment of the High Court:

> Before us the learned Government Pleader conceded that the appointment of the plaintiff as A.D.E.I. appears to be a direct appointment and not a matter of departmental promotion. He may be ineligible in terms of requisite departmental service as a teacher, but he had the educational qualifications required for the post and he had directly applied for the post, though the application had to come through

proper channel in view of the fact that the plaintiff was in service.

In view of this concession, the High Court should have straightway dismissed the appeal. A direct recruit to a post, it cannot be gainsaid, cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. These propositions are so elementary that the same are incapable of being disputed and have not been disputed. The High Court presumably realised that the matter was inarguable and there was no escape from the conclusion reached by the trial court. The High Court was however carried away by an irrelevant argument which had no bearing on the issue before the Court. What was argued before the High Court was that in any case his appointment was a temporary one and it could have been terminated as per the conditions of service applicable to him. Assuming that his appointment was a temporary one and it could have been so terminated, the fact remains that in point of fact no such power had been invoked and the services of the appellant had not been terminated at all. If his service had been so terminated under the relevant rule, the question could possibly have arisen as to whether or not such termination could have been lawfully made. No such termination having taken place, the existence of the rule was altogether irrelevant. The State had passed an order which clearly was unsustainable in view of the fact that the appellant was a direct recruit and there was no question of reverting him to any lower post. The High Court should not have allowed itself to be misled by the misleading argument regarding the service condition under which the services of the appellant could possibly have been, but were not in fact, terminated. The view taken by the High Court is thoroughly unsustainable. The appeal must, therefore, be allowed. The judgment and decree passed by the High Court must accordingly be set aside and the judgment and decree passed by the trial court must be restored. The parties will bear their costs throughout.