

## **S. Nagaraj And Ors. vs State Of Karnataka And Anr. on 26 August, 1993**

**Equivalent citations: JT1993(4)SC27, (1994)ILLJ851SC, 1993(3)SCALE548, 1993SUPP(4)SCC595, [1993]SUPP2SCR1, 1994(1)SLJ61(SC), AIRONLINE 1993 SC 506**

**Bench: S. Ratnavel Pandian, R.M. Sahai, B.P. Jeevan Reddy**

### **JUDGMENT**

(b) Stipendiary Graduate means a person appointed on a stipend under the Stipendiary Employment Scheme sanctioned in Government Order No. PD112 PMM 7 dated 28th December 1977.

(2) Nothing in these rules shall apply to recruitment to the following categories of posts namely:

(i) Sub-Inspectors of Police,

(ii) Forest Rangers.

(iii) Such other category of posts as the Government may by order declared from time to time.

(3) A Stipendiary Graduate appointed to a post under these rules or under the Karnataka State Civil Services (Special Recruitment) Rules, 1982, shall not be eligible for recruitment again under these rules.

5. Rule 3 to 7 of the Rules issued in Notification No. DPAR 50 SDE81 (B) dated 25th June, 1982 under the proviso to Article 309 read as follows:

3. Application.--Notwithstanding anything contained in any rule made under the proviso to Article 309 of the Constitution of India, the provisions of these rules shall apply to direct recruitment to fifty percent of the vacancies existing on the date of commencement of these rules in the categories of posts specified below, namely:

(a) First Division Clerks and Second Division Clerks in all State Civil Services.

(b) Veterinary Live Stock Inspectors.

(c) Veterinary Compounders.

(d) Agricultural Assistants.

(e) Such other category of posts as the Government may by order, specify.

4. Method of Recruitment.--Recruitment under these rules shall be made on the basis of the results of a competitive examination conducted by the Commission. The competitive examination shall be held at such place and on such date as may be notified by the Commission.

5. Academic Qualification of Candidates.--Every person who is not disqualified under the Karnataka Civil Services (General Recruitment) Rules, 1977, and who as on 1st April, 1982, has worked for a period of not less than one year as a local candidate or as a stipendiary graduate and possesses the qualifications prescribed in the rules specially made for recruitment to the category of posts specified in Rule 3 shall be eligible for admission to the competitive examination under these Rules.

Note.--In this rule--

(a) "Stipendiary graduate" means a person appointed on a stipend under the Stipendiary Employment Scheme sanctioned in Government Order No. PD 112 PMM 77, dated 28th December, 1977,

(b) "Local candidate" mean;; a local candidate as defined in Karnataka Civil Services Rules and appointed as such on or after 1st April, 1972.

6. Age Limit.--Notwithstanding the provisions in the rules of recruitment specifically made in respect of any of the posts referred to in rule 3, every stipendiary graduate or local candidate applying to a post under these rules when he was initially appointed as a stipendiary graduate or as a local candidate must have attained the age of eighteen years of age and must not have attained the age of:

(a) forty years in the case of a person belonging to any of the Scheduled Castes or Scheduled Tribes or Backward Tribes:

(b) thirty-eight years in the case of a person belonging to any of the Backward Castes or Backward Communities:

(c) thirty-five .years in the case of any other person.

7. Examination.--The competitive examination shall consist of a Written Examination consisting of one paper in General English or General Kannada and General Knowledge. Minimum marks for the written examination shall be 100. There shall be one examination for recruitment to the category of posts for which a degree or higher qualification has been prescribed as the minimum qualification and another examination for recruitment to the category of posts for which a pass in the SSLC Examination has been prescribed as the minimum qualification. Syllabi for the written examinations shall be as specified in the Schedule to these rules.

5. In 1987, these rules were amended. Rule 2 was amended and Rule 3 substituted together. By virtue of the new Rule 3, the requirement of selection on the basis of Competitive examination to be conducted by Public Service Commission was deleted. They were now to be appointed on the basis of a common seniority list prepared for the purpose as provided by Rule 3 of Amendment Rules. Rule 3 as substituted in 1987 reads as follows:

3. Procedure for Appointment of Stipendiary Graduates.--(1) There shall be a common list of Stipendiary Graduates, maintained by the Social Welfare and Labour Department, arranging their names according to their seniority, seniority being determined on the basis of continuous service as Stipendiary Graduates and where two or more stipendiary graduates are appointed on the same date, the seniority shall be determined on the basis of their age, person or persons older in age being placed above.

(2) Every appointing authority in respect of Group 'C' posts, after determining the vacancies in respect of each direct recruitment, to be filled up by appointment of candidates who have worked as Stipendiary Graduates or Local Candidates and other candidates, report to the Secretary to Government, Social Welfare and Labour Department the number of vacancies set apart for being filled by Stipendiary Graduates.

(3) The Social Welfare and Labour Department shall on receipt of such reports from the appointing authorities sponsor the names of Stipendiary Graduates equal to the number of vacancies reported by the appointing authorities according to their seniority in the list maintained under Sub-rule (1), in the order of reports as received from the appointing authorities.

(4) On receipt of the list of Stipendiary Graduates from the Social Welfare and Labour Department, the appointing authorities shall appoint them after satisfying that the candidates possess the required academic and other qualification prescribed for the posts under the relevant rules of recruitment. They shall not be subjected to any competitive examination or interview.

(5) If any Stipendiary Graduates whose name has been assigned refuses to accept the appointment, he shall cease to be a stipendiary graduate and his name shall stand deleted from the list maintained under Sub-rule (1).

(6) Savings.--Notwithstanding anything contained in these rules recruitment to any service or post advertised before the commencement of these rules shall be made as if the said rules have not been amended by these rules provided that the last date for receipt of application is over prior to such commencement.

6. The said 50% of the vacancies reserved for stipendiary graduates and local candidates were apportioned between them in the proportion of 40:10. The circle of constitutional violations was thus complete. The Stipendiary Graduates were appointed without any process of selection and now they were being absorbed in Government service -- that too at group 'C' level -- without any process of selection. The concern appears to be to help these persons at all costs, irrespective of its effect

upon others' rights or upon the constitutional requirements and mandates.

7. The Association of stipendiary graduates approached the Karnataka High Court by way of a writ petition seeking a declaration that they (i.e., unabsorbed stipendiary graduates) were regular employees under the Government. The writ petition was transferred to the State Administrative Tribunal after it was constituted. The Tribunal dismissed the claim of the association. Against the order of the Tribunal, the association filed S.L.P (C) No. 4760-62/89. Some of the stipendiary graduates who had not approached the High Court or Tribunal approached this Court directly by way of Writ Petition (C) No. 1249/89. It is in these matters that this Court passed orders referred to in the order of my learned brother Sahai J, The effect of these orders was to direct the State (1) to pay a stipend of Rs. 960/- per month to the stipendiary graduates with effect from February 1, 1990 and (2) to absorb them in the available vacancies requiring graduate qualification (i.e., in the category of First grade assistants) in accordance with the aforesaid Rules (i.e., without holding a competitive examination or an interview). These orders were based upon and induced by the wrong information furnished by the State of Karnataka as demonstrated and detailed in the order of my learned brother. Either the information was not furnished in time or was furnished in a misleading manner. The result was that the directions made by this Court required the State to absorb stipendiary graduates not only against the vacancies meant for them by the 1982/1987 Rules i.e., against 40% of the vacancies reserved for direct recruitment but practically against all the vacancies in the relevant categories. In other words, the effect of these orders -- according to the present stand of the Government--is that instead of confining these persons to 40% of the vacancies to be filled by direct recruitment, they are directed to be absorbed against all the vacancies available i.e., all of the vacancies to be filled by direct recruitment as well as by promotion.

8. When the orders of this Court aforementioned were not fully carried out, the stipendiary graduates have approached this Court by way of these contempt applications.

9. At this stage, I think it appropriate to refer to some of the averments in the affidavit filed by Shri Y. Chandrasekhar, Dy. Secretary to Government (S.W. & L.) Department in Contempt Petition No. 142-166/91. It is stated therein inter alia, as condensed by me:

After the introduction of the 1982 rules several stipendiary graduates appeared for selection of Public Service Commission for class 'C' posts and those who were successful were appointed to several categories in group 'C' including First grade assistants and second grade assistants.

Even after the Amendments effected in the year 1987, some stipendiary graduates were absorbed in various posts including first grade assistants and second grade assistants and equivalent posts.

In all 260 stipendiary graduates have been absorbed in the scale of Rs. 960-1760, 320 candidates in the scale of Rs. 1040-1750, 164 in the scale of Rs. 1190-2200 and 17 in the scale of Rs. 1280-2450. About 466 S.Gs. possessing B.E.d. qualification have been sponsored for the posts of High School Teachers. Several S.Gs., senior to the

petitioners, are now working in the post of second division assistants and/or equivalent posts. Five thousand more stipendiary graduates are still remaining unabsorbed in group 'C' and they are the petitioners in this Court.

The order dated 24.7.1990 made by this Court mainly provided absorption of S.Gs. in group 'C' posts. Subsequently, however, the counsel for the S.Gs. got the word "graduate" inserted in the said order and on that basis they are now claiming that all of them must be absorbed in the first grade assistant posts or equivalent posts alone - and not in other lower posts.

The following statement being quite relevant is reproduced from the affidavit;

The Government have filed an affidavit stating that there were 3691 vacancies at the time of filing the affidavit. But it was the total vacancy i.e. 100% of the vacant posts in all the categories under group 'C' containing 8 categories. Whereas the percentage of the posts reserved for the stipendiary graduates as per Karnataka Civil Service (Spl. Rules, 1987, is only 40%. Further the vacancy position mention by the petitioner includes all (100%) vacancies in Group A, B, C & D. If the 40% of the Direct Recruitment vacancies in only Group 'C' Posts is taken up the vacancy available to accommodate the stipendiary graduates as per Karnataka Civil Services (Special) Rules 1987, is negligible. Hence, the claim of the petitioner that they can be immediately absorbed is not maintainable.

In pursuance of the order of this Court all the five thousand S.Gs. have been absorbed in Government service with effect from 1.9.1991 vide Government order No. SWL-106-ECS-89 dated 17.8.1991 and 5.9.1991. If all these five thousand S.Gs. are to be absorbed in group 'C' posts, it will choke all the available vacancies for the "several coming years. It will also affect the promotional chances of the regularly appointed persons and the opportunity to apply and compete for the said posts to those eligible to apply therefor for direct recruitment. The orders passed by this Court are creating several difficulties in the way of the Government and, therefore, require to be modified.

10. It is true that the stipendiary graduates employment scheme was evolved to provide some relief to unemployed graduates, but - as rightly emphasised by my learned brother Sahai, J, - this concern cannot be carried to the extent of violating the provisions of the Constitution. Any scheme framed by the State, even for achieving laudable purposes, shall have to conform to the commands of the Constitution. One can atleast understand the 1982 rules as they were issued originally - not that we are pronouncing them as valid. They contemplated absorption of stipendiary graduates in group 'C' services, to a limited extent, after processing them through and on the basis of a competitive examination held by the Public Service Commission. But the amendments made to these rules in the year 1987 are extremely difficult to understand or appreciate. By these amendments, the requirement of competitive examination to be held by Public Service Commission was done away with, which meant that these persons could be absorbed straightaway in group 'C' services on the

basis of their seniority. Group 'C' service comprises of I and II division assistants and, various other posts of equal grade. The ordinary mode of recruitment to these posts is by selection by the Public Service Commission - or where consultation with the Public Service Commission is dispensed with, by the appropriate authority in accordance with the prescribed procedure. Invariably, a public notice is issued giving an opportunity to all eligible persons to appear and compete for the selection. (Of course, the public notice may not be necessary where the candidates are called for from the employment exchange since such procedure has been held to be consistent with Articles 14 and 16). The 1982 Rules took away half the vacancies meant for direct recruitment and reserved them for stipendiary graduates and 'local candidates'. The 1987 Amendments made the position worse by removing even the fig-leaf of a competitive examination to be conducted by the Public Service Commission. Now, they were to be filled on the basis of seniority inter se of the stipendiary graduates without any test or interview. The number of these stipendiary graduates runs into several thousands. Absorption of this large body of persons is likely to take several years, thus choking - indeed, closing - the normal channels of recruitment. All this in the context of the fact, it may be reiterated, that the initial appointment of these stipendiary graduates was without any selection or interview but on an ad hoc basis. This situation was further compounded beyond redemption by the misleading particulars furnished by the State of Karnataka to this Court while passing the earlier orders. The State of Karnataka furnished the total vacancy position in group 'C' services instead of furnishing the number of vacancies which according to the 1982 Rules could be filled by stipendiary graduates i.e., 40% of the vacancies reserved for direct recruitment. Atleast, that is what the State now says. Believing in the information so furnished wrongly, this Court passed the aforesaid orders. The orders based upon the misleading and wrong information have resulted in directing the filling up of all vacancies in group 'C' Services with the stipendiary graduates instead of confining them to 40% of the vacancies reserved for direct recruitment. The failure a justice and infraction of law is not eloquent to require any emphasis. Stipendiary graduates were not government servants. They were stipendiaries. They were never appointed to any service under the State. The manner of their induction into government service en masse, to the extent of all the available vacancies nor even to the extent of vacancies reserved for direct recruitment is likely to take several years which means that others including fresh graduates can never expect to get an opportunity to apply or compete for these vacancies. Similarly, persons in the lower grades, who are entitled to be promoted to these posts are also deprived of their opportunity for a long number of years to come. Such a course can not be treated as valid unless there are extraordinary and exceptional circumstances to sustain it. None are present here except an unseemly anxiety on the part of the State to accommodate these persons. It needs equally to be emphasised that these stipendiary graduates were sought to be absorbed into Government service straightaway at the level of I and II division assistance, when posts of a lower status (in group 'D') were also available. Indeed, the claim of these persons at present, or the basis of the orders of this Court, is that they should be absorbed straightaway in grade I assistant category. The ambition of these persons is truly limitless.

11. The question now arises what is the proper course to be adopted by this Court in the circumstances ? Would it be just, proper and consistent with law to direct the Government to absorb all the remaining five thousand S.Gs, in regular group 'C' Government service and that too at the level of first grade assistants or equivalent posts or would it be just and appropriate to modify and revise the earlier orders, vitiated as they are by the wrong or misleading information furnished by

the Government, After giving my earnest consideration, I am of the opinion that this Court ought to follow the second course and not the first one. As pointed out hereinabove, the S.Gs. were appointed without any test or process of selection - i.e., on an adhoc 'basis. The original scheme was a measure of unemployment relief; the idea was to provide them a small amount of Rs. 150/- by way of Stipend till they get employed in Government service or elsewhere, The stipend of Rs. 150/- was raised from time to time to Rs. 640/-. Under the orders of this Court it has been raised to Rs. 960/-. The number of these persons runs into several thousands. Even today about five thousand persons remain unabsorbed in regular Government service. In pursuance of the orders of this Court, the Government appears to have 'absorbed' them in Government service but paying them only the stipend of Rs. 960/- per month. These are all the persons, it is relevant to remember, who either did not apply or appear in regular Selection for group 'C' posts or having applied and appeared for regular selection for Group 'C' posts, they could not be selected. And now they are all directed to be absorbed immediately in group 'C' service and that too at the level of first grade assistants - highest category in group 'C'. The consequences flowing from such direction are pretty grave. Such absorption will take a long number of years - unless of course the Government is compelled to create five thousand posts at once, which is bound to create serious consequences for the Administration and its finances. Even if these persons were absorbed nonce, they will block the chances of others for many years. The direction to absorb them at the level of first grade assistants, it is relevant to notice, brings about a discrimination even as between the S.Gs. themselves. As stated hereinbefore, a good number of S.Gs. were absorbed as second grade assistants on the basis of selection by P.S.C. between the years 1982 and 1987. Even after 1987, some of them have been absorbed in the second grade assistant and equivalent categories on the basis of seniority. Now the remaining S.Gs. who are admittedly juniors to those already absorbed in second grade assistant category are directed to be absorbed in the grade of first grade assistants. These juniors will thus be selling a march over their seniOrs. Above all, the directions given by this Court are vitiated on account of the fact that they are based upon incorrect and misleading particulars furnished by the Governmental the earlier stages of the litigation. The directions now made pertain not merely to 40% of the vacancies to be filled by direct recruitment as provided by Rules but to all the available vacancies in all the group 'C' posts. It is evident that insistence upon compliance with the orders of this Court made in the above circumstances would lead to serious problems besides being inconsistent with law and the constitutional rights of others.

12. It is true that the Government is mainly responsible for the above unfortunate state of affairs but that should not desist this Court for revising and reviewing the said orders which have such serious consequences. It is one thing to punish the person who famished false particulars and altogether a different thing to refuse to revise and review the orders when the correct situation and its likely consequences are brought to the notice of Court. It is the duty of the Court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders was passed on a wrong or mistake assumption of facts and that implementation of those orders would have serious consequences. An act of Court should prejudice none. "Of all these things respecting which learned men dispute", said Cicero, "there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature." This very idea was echoed by James Madison (The Federalist No. 51 page 352), He said: "Justice is the end of government. It is the end of the Civil Society. It ever has been and ever will be pursued, until it be obtained or until

liberty be lost in the pursuit."

13. There is yet another circumstance. The question is, whether this Court should enforce the 1982 Rules as amended in 1987. The 1987 amendments have the effect of smuggling in thousands of persons into Government service by a back-door - without complying with the requirements of Articles 14 and 16. One can understand the rules as framed in 1982, but it is extremely difficult to appreciate or understand the reasons for which the 1987 amendment was brought in. The question, to repeat, is whether this Court should extend its arm - its discretionary power under Articles 136 and 32, as the case may be, to implement such unconstitutional Rules and help these persons to gain a back-door entry into Government service - that too at the highest level in group 'C' services straightaway. It is true that no one has questioned the 1987 amendments. The petitioners do not question them because they are advantageous to them; they want them to be implemented. The Government cannot and does not question them because it has itself made them. The parties who are affected namely the persons awaiting employment under the government probably do not even know what is happening. But where an unconstitutional provision of such vast impact is brought to the notice of this Court and it is asked to enforce it, it is the constitutional duty of this Court to refuse to do so. I am, therefore, of the firm opinion that this Court should refuse to make any orders directing implementation of the Rules as amended in 1987. The proper direction would be to direct the absorption of the S.Gs. in accordance with the 1982 rules as originally framed (i.e., without reference to the 1987 Amendments) and to the extent provided therein. Of course those S.Gs. who have been absorbed already into group 'C' service in accordance with the said rules will remain unaffected since disturbing them, without notice to them and in view of all the circumstances of this case may not be advisable. All those S.Gs. who have not so far been absorbed in group 'C' service shall continue in the present status, drawing Rs. 960A per month. They will be entitled for absorption in group 'C' posts only in accordance with the 1982 Rules without reference to the 1987 Amendments.

14. According to the directions now contained in the judgment of my learned brother Sahai, J., the direction is to absorb these persons in the second grade assistant's category only which means that earlier orders of this Court have been revised. In the place of earlier direction to absorb them in first grade assistant's category, the direction now given limits them to second grade assistant's category only. In my respectful opinion, this limited review does not meet the end of justice or of the law. It may not be permissible for the court to load the administration with five thousand persons at a stretch. The practical and pragmatic considerations militate against such direction, in my humble opinion.

The earlier orders of this Court shall stand revised and modified in the above terms. The Contempt Petitions are disposed of as unnecessary. No costs.

ORDER For reasons given by the majority of us the application filed by the State is allowed and the special leave petitions, writ petitions and the contempt applications are disposed of in terms of the directions contained in the order. No costs.