M.K. Krishnaswamy Etc vs Union Of India & Ors on 28 February, 1973

Equivalent citations: AIR 1973 SUPREME COURT 1168, 1973 LAB. I. C. 781, 1973 (1) LABLJ 422, 1973 (1) SCWR 488, 1973 4 SCC 163, 1973 (1) SERVLR 1068

Bench: A.N. Ray, D.G. Palekar, S.N. Dwivedi

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           CASE NO.:
Appeal (civil)  2395-2401 of 1968

PETITIONER:
M.K. KRISHNASWAMY ETC.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 28/02/1973

BENCH:
S.M. SIKRI (CJ) & A.N. RAY & D.G. PALEKAR & S.N. DWIVEDI & B.K. MUKHERJEA

JUDGMENT:
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JUDGMENT 1973 AIR 1168 = 1973 (4) SCC 163 The Judgment was delivered by PALEKAR, J Per Palekar, JThese are appeals by certificate from an order of the Punjab High Court (Circuit Bench at Delhi) dated 16-9-1964 in Civil Writs Nos. 244D to 250D of 1963 dismissing the petitions. The appellants prayed for a writ of mandamus directing the respondents, the Union of India and others, to recognize and declare the appointments of the appellant Income-tax Officers as having been made in Class I, Grade II, instead of Class II, Grade III; to frame a list of seniority accordingly; and to grant the appellants all consequential reliefs following thereon. Seven separate petitions were filed but the petitions were based on practically the same facts. It is sufficient, therefore, to refer to the facts in the first Civil Appeal No. 2395 of 1968 because a decision in that appeal will govern the other appeals.

2. The appellant Krishnaswamy was offered a post of an Income-tax Officer, Class II, Grade III in 1950 and on his acceptance of the same, he was appointed to the post in 1950. It appears that in 1945, Government had framed rules entitled the "Income-tax Officers (Class I, Grade II) Service Recruitment Rules" for regulating recruitment to the said service. 80% of the vacancies in that cadre were to be filled by direct recruitment on the result of a competitive examination held by the Federal Public Service Commission and the remaining 20% of the posts were liable to be filled by promotion of Income-tax Officers from Class II, Grade III. It must be stated here that, at that time, on the reorganisation of the service, there were two classes of Income-tax Officers - Class I and Class II. Class I Officers were divided into two grades of Grade I and Grade II and Class II Officers were

called Grade III Officers. The rules referred to above were only concerned with Class I, Grade II.

3. The appellant Krishnaswamy had appeared in the competitive examination held by the Federal Public Service Commission in 1948 and if a vacancy was available and he was found eligible he would have been appointed directly to Class I, Grade II post. But in the competitive examination his rank was 122 and since the Government recruited only 33 Income-tax Officers directly that year he could not be accommodated. The Central Government, however, offered him a post in Class II, Grade III which as we have already stated, he accepted and he joined that post in 1950. In 1951 he made a representation to the Government that he ought to have been appointed in Class I, Grade II and not in Class II, Grade III. In the reply dated 15-10-1951 he was informed by the Government as follows :

> "..... appointments to Class I service are offered strictly in order of merit upto the number of vacancies available to candidates declared eligible for such appointments by the Union Public Service Commission on the results of the annual combined competitive examinations. As the number of vacancies to be filled on the results of the 1948 examination was less than the number declared eligible on the results of that examination, candidates who though eligible ranked below the number required were not offered appointments to Class I Services. In the circumstances, the Government of India are of opinion that there is no ground for legitimate grievance at all."

4. So far as the respondents are concerned the matter was closed in 1951.

5. Some 10 years later a direct recruit named Jaisinghani challenged the correctness of the seniority list of Income-tax Officers prepared by the Government. His complaint was that more vacancies were given to the promotees than what they were entitled to under the rules and that by an artificial rule which gave the promotees weightage in seniority his own seniority in the seniority list had been considerably affected. He filed his writ petition before the circuit bench at Delhi in 1962 and in the course of that litigation the appellant Krishnaswamy learnt that the vacancies in Class I, Grade II, for the year 1950 had been wrongly calculated by the Government and that posts to which the direct recruits ought to have been appointed had been illegally filled by the promotees. He, therefore, made another representation to the Government complaining that he had been wrongly deprived of a post in Class I, Grade II service and that it should now be considered as if he had been appointed in that service from 1950 and given consequential benefits. On this representation also being rejected Krishnaswamy and the other six appellants who had the same grievance filed separate writ petitions in the High Court.

6. The respondent raised several contentions including the contention that the claim was stale and belated and that the petitions should be rejected on that ground alone.

7. The High Court did not deal with these petitions separately on merits. Jaisinghani's case was before it. It had dismissed Jaisinghani's petition and since it was thought that the appellants' cases were cognate cases, the High Court dismissed these petitions also. However, certificates of fitness

were given to all, including Jaisinghani, and that is how the appellants are before this Court. It may be stated here that Jaisinghani's case was heard by this Court and disposed of in 1967 (S. G. Jaisinghani v. Union of India and others, 1967 (2) SCR 703.

8. The case of the appellants, as already seen, was not similar to the case of Jaisinghani. Jaisinghani was a direct recruit to Class I, Grade II service and his complaint was against the seniority list in which he was shown as junior to officers promoted to Class I, Grade II from Class II, Grade III on dates much after his appointment. The appellants had not been recruited to Class I, Grade II posts. They had been recruited to Class II, Grade III posts which they need not have accepted. It appears that since some of these persons who had appeared in the competitive examination had failed to obtain an appointment in Class I, grade II. Government, out of consideration for them, offered them posts in the lower cadre of Class II, Grade III and since they accepted the same, there was really an end of the matter. Having entered the service in the lower grade, the appellants are now contending that from facts which came to their notice in 1962 they feel that they ought to have been accommodated in Class I, Grade II, posts and, therefore, they had a right now to be regarded as having been recruited to that class in 1950 and to consequential benefits arising therefrom.

9. We do not believe that if the High Court had applied its mind to the facts of these petitions it would have ever entertained such stale claims in service matters. The appellants had accepted the lower grade posts in 1950 and made their representation to the Government in 1951 and that representation had been rejected. Thereafter they served in Class II, Grade III posts. It may be that in due course they have been promoted to Class I, Grade II posts and they still continue in the service. We asked learned counsel for the appellants what would have been the position of the appellants if they had not accepted the posts in the lower cadre then ? It would have been impossible for them in 1963 to come forward with a claim that they should be deemed to have served in the posts denied to them in 1960. The mere accident that they are in the Income-tax service does not give them a better right. Even for a suit, the cause of action, if any, would have arisen in 1950 and the suit would have been hopelessly time barred in 1963 when the petitions were filed. The plea that they came to know about certain facts in 1962 would have been of no avail in such a suit. We do not, therefore, think that these are fit cases for interference by this Court nearly 22 years after the alleged cause of action had arisen. The appeals are, therefore, dismissed. There shall be no order as to costs.