

State Of Mysore And Anr. vs R. Basappa And Ors. on 8 February, 1980

Equivalent citations: (1981)3SCC659, 1980(12)UJ506(SC), AIR ONLINE 1980 SC 83

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Bench: A.D. Koshal, P.S. Kailasam, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. These appeals by Special Leave at the instance of the State of Karnataka are directed against the judgments of the High Court of Karnataka allowing the writ petitions filed by the respondents.

2. The facts are given in the judgments of High Court and it is not necessary to repeat them.

3. The central controversy which was mooted in this case was as to whether or not the respondents who were 1st Division Clerks could be promoted as Head Accountants without passing the S.A.S. Examination as required by Rules framed by the Mysore Government and called "The General Service (Treasury Bench) (Recruitment) Rules," 1961 which were amended with effect from the 1st June, 1961 by the Mysore General Service (Treasury Bench) (Recruitment) (Special) Rules, 1961. There is no doubt that having regard to the length of service, the respondents were the senior-most clerks and had therefore been promoted to the cadre of the Head Accountants. It was contended by the respondents before the High Court that the Rules regarding the passing of the S.A.S. examination were invalid because they were framed by the State Government without obtaining the concurrence of the Central Government as required by the provisions of the States Reorganisation Act.

4. The High Court accepted the contention of the respondents and observed as follows:

In the present case no such approval to the imposition of the passing of S.A.S. examination has been obtained and the petitioner therefore cannot be said to have suffered from any disability till his promotion on 9.1.1962. Rule 4 therefore does not affect the seniority of the petitioner even in the promotional cadre.

5. It was conceded by Mr. Veerappa, learned Counsel for the appellants that before framing the rules in question, no prior approval of the Central Government was in fact obtained in any manner; but he

contended that no such approval was necessary because the Rules were framed under Article 309 of the Constitution. This matter fell for consideration by a Constitution Bench of this Court which, while construing the provisions of Section 7 of the States Reorganisation Act, observed as follows in *N. Raghavendra Rao v. Deputy Commissioner, South Kanara, Mangalore*;

the expression 'previous approval' would include a general approval to the variation in the conditions of service within certain limits, indicated by the Union Government. It has to be remembered that Article 309 of the Constitution gives, subject to the provisions of the Constitution, full powers to a State Government to make rules. The proviso to Section 115(7) limits that power, but that limitation is removable by the Central Government by giving its previous approval.... The broad purpose underlying the proviso to Section 115(7) of the Act was to ensure that the conditions of service should not be changed except with the prior approval of the Central Government. In other words, before embarking on varying the conditions of service, the State Governments should obtain the concurrence of the Central Government.

6. It is thus manifest that after the States were reorganised, while the State Government was free to make any rules under Article 309 of the Constitution, yet before the same could have any legal effect. The prior approval of the Central Government had to be obtained. This statutory requirement not having been complied with in the present case, there was no obligation on the part of the respondents to pass the S.A.S. examination before being promoted as Head Accountants. Therefore, we entirely agree with the view taken by the High Court and see no merit in the appeals which are accordingly dismissed with costs one set.