

Supreme Court of India

State Of Karnataka vs K. Vasudeva Mayya And Anr on 5 October, 1994

Bench: K. Ramaswamy Venkatachala

CASE NO. :

Appeal (civil) 849-50 of 1992

PETITIONER:

STATE OF KARNATAKA

RESPONDENT:

K. VASUDEVA MAYYA AND ANR.

DATE OF JUDGMENT: 05/10/1994

BENCH:

K. RAMASWAMY AND N. VENKATACHALA

JUDGMENT:

JUDGMENT 1994 SUPPL. (4) SCR 254 The Judgment of the Court was delivered by VENKATACHALA, J. These appeals by special leave, of the State of Karnataka are directed against a common Order of the Karnataka Ad-ministrative Tribunal - "the KAT" made on September 3, 1990 in Review Application Nos. 204 and 220 of 1989.

K. Vasudeva Mayya, respondent-I was a Govt. servant belonging to the cadre of KAS, Group-A (Junior Scale). He was working as Secretary, Karnataka Housing Board on 31.7.1984 when he was ordered to retire on attaining the superannuation age of 55 years. However, he was re-employed by the State Government on contract basis w.e.f. 1.8.1984, subject to the conditions of service contained in rule 313(b) of the Karnataka Civil Service Rules, 1957 - "the KCS Rules", as Secretary to the Chairman, Karnataka State Sports Council, for the period co-terminus with that of the Chairman.

A.H. Someshwar, respondent-2, who belonged to the Karnataka State Secretariat Service, was ordered to retire on 31.3.1984 on attaining the superannuation age of 55 years, while he was working as Joint Secretary to Government, However, he was re-employed by the State Government on contract basis w.e.f. 1.4.1984 subject to the conditions of service in rule 313(b) of the KCS Rules, as Secretary, Dr, Sarojini Mahishi Committee, for the period co- terminus with that of the committee.

While respondents-1 and 2 were in State Civil Service. On their re- employment, the State Government issued an order dated 24.8.1984 enhancing the retirement superannuation age of all Government servants in State Civil Service from 55 to 58 years and gave retrospective effect to it from 2.8.1984. Subsequently, the Government issued another order dated 17.9.1984, treating some of the retired Government servants who had retired on superannuation at the age of 55 years, but had been re-employed in State Civil Service on contract basis as those continuing in State Civil Service till they attained the superannuation age of 58 years, if they were to satisfy three conditions specified thereunder. Since respondent-I satisfied the three conditions of the Government order dated 17.9.1984, the State Government, by its order dated 5.6.1985, treated respondent-1 as one who

had continued in regular Civil service and appointed him as Assistant Director (Co-ordination), Directorate of Backward Classes and Minorities. Bangalore. Vice; Sri R. Stanty Joseph, promoted. Thereafter, the State Government, by its order dated 3.7.1987 retired respondent -1 from service on 31.7.1987 (A/N), when he attained the superannuation age of 58 years on 15.7.1987, as was being done in respect of other regular Government servants. Similarly, respondent-2 who satisfied the three conditions of the said Government order dated 17.9.1984 and who had been specifically continued in State Civil Service as Joint Secretary to Government under Government order dated 25.1.1985, was subsequently retired from service w.e.f. 31.3.1987 when he also attained the superannuation age of 58 years. However, the Karnataka Civil Services (Revised Pay) Rules, 1987 - "the Revised Pay Rules", came into force w.e.f. 1.7.1986 enhancing the scales of pay of the State Government servants, while respondents-1 and 2 had continued in State Civil Service because of specific orders made in that regard on the basis of Government order dated 17.9.1984 Which treated the periods of re-employment also as their regular continuing Civil Service, Yet, the benefits of the Revised Pay Rules were denied to the respondents, as regards their pay and pension. This situation led respondents-1 and 2 to the filing of a joint Application No. 2382 of 1987 before the KAT calling in question a provision in the Revised Pay Rules which had made those rules inapplicable to pensioners who had been re-employed in Government service after retirement. However, while the first relief claimed in that application was that the respondents should be given the benefit of the revised Pay Rules, the second relief claimed therein was that the service rendered by each of them to the State between their earlier retirement at the superannuation age of 55 years and their subsequent retirement at their superannuation age of 58 years, ought to be taken into account as their continued State Civil Service for computing their pensionary benefits.

The KAT which decided that application by its order dated 11.10.1988, while held that the respondents were entitled to the benefit of the Revised Pay Rules and directed the State to give the benefit of those Revised Pay Rules to them, disallowed the claim of the respondents for counting the period of their service between their earlier superannuation and their subsequent superannuation, for granting then- pensionary benefits. However, the respondents by making Review Application No. 204 of 1989 and the State by making Review Application No. 220 of 1989 before the KAT sought from it, review of the said order dated 11.10.1988 in so far it had gone against each or them. The KAT on consideration of the said Review Applications, by its common order made in them on 3.9.1990 while allowed the Review Application of the respondents, dismissed the review Application of the State. It is the said common order made in the Review Applications which is questioned by the State in the present appeals, by special leave.

Shri Altaf Ahmad, the Additional Solicitor General, appearing for the appellant-State did not dispute the fact that by reason of the Government order dated 17.9.1984, the respondents who had been ordered by the Government to retire after they had completed their superannuation age of 35 years and re-employed on contract basis, were treated as Government Servants who had continued in Government service from such date of superannuation age until they attained their superannuation age of 58 years. But, he contended, rather strenuously, that the respondents periods of continuance in Government service after their earlier retirements on attaining 55 years of superannuation age, until their subsequent retirements on their attaining 58 years of superannuation age under the Government order dated 17.9.1984, when was subject also to the condition mentioned therein, viz.,

"that there shall not be any change in the nature or character or conditions of service of the re-employment or the re-employment on contract basis or the extension of service" such periods cannot be treated as the periods of service which could be added to their earner periods of service, for purpose of computing the pensionary benefits claimed by them. His contention, to be precise, was that the respondents when were re-employed by Government On their retirement at their superannuation age of 55 years, one of the terms of such re-employment since indicated that rule 313(b) of the KCS Rules would become applicable to their re-employ-ments, the same term stood unaffected in its application to service of the respondents subsequently out in by them until they attained the superannuation age of 58 years, the same having been saved by Government order dated 17.9.1984, by mentioning therein that there shall not be any change in the nature or character or conditions of service of re-employment, on contract basis or the extension of service. It Was, therefore, maintained that the respondents should be regarded as Government servants not entitled to combine their pensionable service rendered by them prior to their attaining the age of 55 years with their service rendered subsequently upto the age of 58 years, for claiming the pensionary benefits admissible under the KCS Rules. The contentions, so advanced on behalf of the appellant-State, do not, in our view, merit acceptance, for the reasons which we shall presently set out.

Since rule 313(b) of the KCS Rules referred to by the Additional Solicitor General is the rule which is mentioned in the appointment order of one of the respondents as that subject to Which he had been re-employed on contract basis, it could be excerpted in order to appreciate the sustainability or otherwise of the contentions based upon it :

"313. (b) The pay to be allowed on re-employment is subject to the following conditions all of which must be satisfied ;

(i) Pay on re-employment plus pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension) should not exceed the substantive pay in a permanent post but not pay in a temporary post drawn before retirement or the officiating pay in cases (where the officiating post has been held) for not less than one year immediately prior to retirement.

Note-1 .....

Note -2.....

Note - 3.....

Note - 4.....

Note - 5.....

(a).....

(b) (i).....

(ii) Where the Government servant has elected to retain the scales of pay applicable to him as on 31st December 1976 according to the proviso to rule 5 of the Karnataka Civil Services (Revised Pay) Rules 1976, and the retirement takes place while he held such scale, the clearness allowance as on 1st April 1973 sanctioned in G.O. No. FD 19 SRP (2) 73 dated 22nd June 1973 and ordered as counting for pension in G.O. No. FD 2 SRP (3) 74, dated 29th March 1974.

(iii) Pay on re-employment, plus pension (including pension equivalent of death-cum-retirement gratuity or gratuity in lieu of pension) should not exceed the maximum of the time- scale of the post in which the Government servant is re-employed.

(iv) Special pay can be drawn in addition to pay on re- employment provided (1) the total of pension and pay on re-employment plus special pay, is restricted to the substantive pay last drawn or officiating pay last drawn where such officiating pay has been drawn for not less than one year immediately prior to retirement plus special day last drawn, and (2) the special pay is attached to the post in which he is re-employed."

It is the order dated 17.9.1984 of the State Government, which made the respondents retire from Government service after they attained the superannuation at of 58 years, by putting an end to their earlier retirements done at their superannuation age of 55 years, and gave them the benefit of continuity in their service upto the age of 58 years, instead of their service on re-employment. If that be so, it is un understandable, how their day and other service benefits to be given to them, could be fixed on the basis that they had retired at the age of 55 years and re-employed thereafter, resort-ing to the provisions in Rule 313(b) above. The rule, of course, would have governed the conditions of service of the respondents, had their re-employ-ment service not been made the continued service of their earlier service by the Government orders, to which we have already adverted to. In other words, if the respondents re- employment on contract basis, had been allowed to continue before they attained the superannuation age of 58 years, the said rule could have governed their service conditions, and would have resulted in denying them the benefit of subsequent service put in by them between 55 years of age and 58 years of age, for the purpose of obtaining pensionary benefits. It is obviously this situation which has made the KAT to rely, in its order under appeal on rules 283 and 284 of the KCS Rules, for its conclusion that the service out in earlier to their superannuation age of 58 years count for purposes of their superannuation pension, i.e., service put in by the respondents before they had attained the earlier superannuation age of 55 years and re-employed on contract basis, and the period put in by them thereafter till they attained the superannuation age of 58 years subject to the other rules adverted to by it.

Thus, on examination of the orders of the Government relating to increase in the superannuation age of Government servants from 55 years to 58 years for their retirement from State Civil Service and their applicability to such of the Government Servants who had retired on attaining the superannuation age of 55 years but were in re-employment on contract basis and further orders made by the Government in relation to applicability of those Government orders to the respondents and their orders on retirement, specifically made on their completion of superannuation age of 58 years, leaves no scope for us to interfere with the Order under appeal made by the KAT.

In the result, we dismiss these appeals, but without costs.