1964

March 31

N. RAGHAVENDRA RAO

v.

DEPUTY COMMISSIONER, SOUTH KANARA, MANGALORE

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.)

Fundamental Rights—Conditions of service changed by the State Government without the previous approval of the Central Government—Loss of benefit of service and increments—"Previous approval"—Meaning of—Mysore General Services Recruitment Rules, 1959—States Reorganisation Act 1956 (37 of 1956), s. 115(7)—Constitution of India, Arts. 16 and 311(2).

The petitioner was selected as a Lower Division Clerk under the Madras Ministerial Service Rules in 1949, and was posted in South Kanara District. He was promoted as upper division clerk on April 2, 1956 and according to him, he should have been promoted much earlier. According to the State, the petitioner was considered for inclusion in the eligibility list from 1955 onwards, but was not selected as he was not considered fit. The State admitted that he was promoted as Upper Division clerk with effect from April 2, 1956, but alleged that this was on a temporary basis. He was later reverted and then again posted as temporary Upper Division clerk. In August, 1957, the petitioner was considered and included in the eligibility list at serial No. 14. This list was regularised on December 12, 1957, in accordance with Madras State and Subordinate Service Rules, with effect from October 19, 1957. According to the petitioner this resulted in the loss of benefit of service and increments. In the meantime, reorganisation of States took place under the States Reorganisation Act, 1956 and South Kanara District went to the new Mysore and the petitioner was allotted to it. On May 11, 1957, the Government of India addressed a memorandum to all State Governments and in respect of departmental promotion it said that "the question whether any protection should be given in respect of rules and conditions applicable to Government Servants affected by reorganisation immediately before the date of reorganisation in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion was also considered. The Government of India agree with the view expressed on behalf of the State respresentatives that it would not be appropriate to provide for any protection in the matter of these conditions. It was urged on behalf of the petitioner (i) that the Mysore General Services Recruitment Rules, 1959, were not made with the previous approval of the Central Government under s. 115(7) of the States Re-organisation Act, and, therefore, do not govern the petitioner in so far as the conditions of service have been varied to his disadvantage and (ii) that the Madras Government had, prior to November 1, 1956, by varoius orders, reduced the petitioner in rank in violation of Art. 311(2) of the Constitution and Art. 16.

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Held: (i) In the setting in which the proviso to s. 115(7) of the Act is placed, 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. Art. 309 of the Constitution gives, subject to the provisions of the Constitution, full powers to a State Government to make rules. The proviso to s. 115(7) of the Act limits that power, but that limitation is removable by the Central Government by giving its previous approval. The broad purpose underlying the proviso to s. 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 the memorandum, the Central Government, after examining various aspects, came to the conclusion that it would not be appropriate to provide for any protection in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion. This amounted to previous approval within the proviso to s. 115(7). By this memorandum the State Governments were required to send copies of all new rules to the Central Government for its information. Therefore, it must be held that the rules were validly made.

In re Bosworth and Corporation of Gravesend, [1905] 2 K.B. 426 and *C. K. Appamna* v. *State of Mysore*, W.P. No. 88 of 1962, held inapplicable.

(ii) The petitioner failed to show how Art. 16 was infringed before he was allotted to the new Mysore State. The State in its reply had asserted that all the orders complained against were passed by competent authorities, after considering the merits of the petitioner on each occasion. It was for the competent authorities to judge the merits of the petitioner. Therefore, it must be held that infringement of Art. 16 was not established.

ORIGINAL JURISDICTION: Writ Petition No. 211 of 1963.

Petition under Art. 32 of the Constitution of India for the enforcement of the Fundamental Rights.

R. K. Garg, for the petitioner.

C. K. Daphtary, Attorney-General, B. R. L. Iyengar and *B. R. G. K. Achar*, for the respondents.

March 31, 1964. The Judgment of the Court was delivered by

Sikri, J.

SIKRI, J.—This is a petition under Art. 32 of the Constitution for enforcing the fundamental rights of the petitioner under Arts. 14, 16 and 19 of the Constitution. Although the petition raises various points, before us only two points have been argued by Mr. Garg, on behalf of the petitioner. We are grateful to Mr. Garg, who has argued as *amicus curiae*, for the assistance he has given. The two points may be formulated as follows:

(1) That the Mysore General Services (Revenue Subordinate Branch) Recruitment Rules, 1959, were not made with the previous approval of the Central Government under s. 115(7) of the State

Re-organisation Act, and, therefore, do not govern the petitioner insofar as the conditions of service have been varied to his disadvantage;

(2) That the Madras-Government had, prior to November 1, 1956, by various orders, reduced the petitioner in rank in violation of Art. 311(2) of the Constitution and Art. 16.

In order to appreciate the arguments addressed to us, it is necessary to give a few facts. The petitioner was selected by the Madras Public Service Commission as a Lower Division Clerk under the Madras Ministerial Service Rules in 1949, and was allotted to the Revenue Department and posted in South Kanara District. He was promoted as Upper Division Clerk on April 2, 1956. According to the petitioner, he should have been promoted much earlier as he had rendered outstanding and meritorious service. According to the State, the petitioner was considered for inclusion in the eligibility list from 1955 onwards, but was not selected as he was not considered fit. The State admits that he was promoted as Upper Division Clerk with effect from April 2, 1956, but alleges that this was on a temporary basis. He was later reverted and then again posted as a temporary Upper Division Clerk. In August 1957, the petitioner was considered and included in the eligibility list at Serial No. 14. This list was regularised on December 12, 1957, in accordance with Rules 39(e) and 35 of the Madras State and Subordinate Service Rules, with effect from October 19, 1957. According to the petitioner this resulted in the loss of benefit of service and increments.

In the meantime, reorganisation of States took place under the State Reorganisation Act (XXXVII of 1956) South Kanara District, except Kasaragod Taluk, went to the new Mysore State and the petitioner was allotted to it. On May 11, 1957, the Government of India addressed a memorandum (No. S.O. SRDI-I. APM-57) to all State Governments. Broadly speaking, the Central Government said that some conditions of service should be protected, e.g., substantive pay of permanent employees, certain type of special pay, leave rules unless the Government servant opts for new leave rules, etc. But in respect of departmental promotion it said that "the question whether any protection should be given in respect of rules and conditions applicable to Government servants affected by reorganisation immediately before the date of reorganisation in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion was also considered. The Government of India agree with the view expressed on behalf of the State representatives that it would not be appropriate

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to provide for any protection in the matter of these conditions." Therefore, it is evident from this memorandum that the Central Government had told the State Government that they might, if they so desire, change service rules as indicated in the memorandum. But Mr. Garg argues that even so this does not amount to previous approval within s. 115(7) of the States Reorganisation Act to the making of the Mysore General Services (Revenue Subordinate Branch) Recruitment Rules, 1959. What then is the true meaning of the expression "previous approval" in the proviso to s. 115(7). Sub-section (7) of s. 115 provides that:

> "(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State;
>
> Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) of subsection (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

The effect of this sub-section is, *inter alia,* to preserve the power of the State to make rules under Art. 309 of the Constitution, but the proviso imposes a limitation on the exercise of this power, and the limitation is that the State cannot vary the conditions of service applicable immediately before November 1, 1956, to the disadvantage of persons mentioned in sub-ss (1) and (2) of s. 115. It is not disputed that the petitioner is one of those persons.

Mr. Garg has submitted that the very fact that the Mysore General Services (Revenue Subordinate Branch) Recruitment Rules, 1959, as framed, were not sent to the Central Government for approval before being promulgated shows that previous approval has not been obtained. The memorandum, he says, is not approval but an abdication of the powers of the Central Government. In this connection he relies on the decision of the Court of Appeal in the case of *In re Bosworth and Corporation of Gravesend*(1), but this, decision has no bearing on the point under discussion. An Order in Council had been made under the provisions of the Burial Act, 1853, whereby it was ordered that no new burial ground shall be opened in (amongst other places) Gravesend, without the previous approval of one of Her Majesty's Principal Secretaries of State. Permission was sought of the Secretary of State to add additional land to an existing cemetery

(1) [1905] 2 K.B. 426.

The Secretary of State replied that his sanction to the proposed addition was not required. It is this reply which was characterised by Collins, M. R., as renouncing of jurisdiction. We cannot appreciate how this assists us in interpreting the proviso to s. 115(7). He further relied on the unreported judgment of the High Court of Mysore in *C. K. Appanna* v. *State of Mysore*(1), but this proceeds on a concession made by the Government Pleader and does not advance petitioner's case. In our opinion, in the setting in which the proviso to s. 115(7) is placed, 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 Art. 309 of the Constitution gives, subject to the provisions of the Constitution, full powers to a State Government to make rules. The proviso to s. 115(7) limits that power, but that limitation is removable by the Central Government by giving its previous approval. In this context, we think that it could not have been the intention of Parliament that Service Rules made by States would be scrutinised in the minutest detail by the Central Government. Conditions vary from State to State and the details must be filled by each State according to its requirements. The broad purpose underlying the proviso to s. 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. In the memorandum mentioned above, the Central Government, after examining various aspects, came to the conclusion that it would not be appropriate to provide for any protection in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion. In our opinion, this amounted to previous approval within the proviso to s. 115(7). It may be mentioned that by this memorandum the State Governments were required to send copies of all new rules to the Central Government for its information. Therefore, in our opinion, there is no force in the first contention of the learned counsel for the petitioner, and we hold that the rules were validly made.

There are two preliminary hurdles in the way of the petitioner regarding the second point taken on his behalf. Firstly, the State of Madras has not been made a party to this petition. Secondly, he never raised these points while he was serving under the State of Madras. It is difficult at this stage to challenge orders, which if quashed, would affect the rights of other civil servants who are not

(1) W.P. No 88 of 1962; judgement dated January 13, 1964.

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parties to this petition. At any rate, the petitioner has not been able to show how Art. 16 was infringed before he was allotted to the new Mysore State. The State in its reply has asserted that all the orders complained against were passed by competent authorities, after considering the merits of the petitioner on each occasion. It was for the competent authorities to judge the merits of the petitioner. We find no force in this contention and hold that no infringement of Art. 16 has been established.

Accordingly, in the result, the petition fails. In the circumstances of the case we order that the parties will bear their own costs in this Court.

Petition dismissed.