

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JANUARY, 2016

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MR.JUSTICE B. SREENIVASE GOWDA

WA NO.6473/2012 (S-RES)

BETWEEN:

THE PRL. SECRETARY,
KARNATAKA LEGISLATURE SECRETARIAT,
VIDHANA SOUDHA,
BANGALORE-1.

... APPELLANT

(BY SRI. Y. D. HARSHA, AGA)

AND:

SRI. B. L. VENKATESH,
AGED ABOUT 49 YEARS,
S/O. LAKKE GOWDA B.T.,
WORKING AS ASSISTANT IN
KARNATAKA LEGISLATIVE SECRETARIAT,
LEGISLATIVE HOME,
R/AT. NO.46, 4TH CROSS, 6TH MAIN,
III BLOCK, THYGARAJANAGAR,
BANGALORE-560 028.

... RESPONDENT

(BY SRI. D. S. JOSHI, ADV. C/R)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER
PASSED IN THE WRIT PETITION 32237/10 DATED 27/3/12.

THIS APPEAL COMING ON FOR HEARING, THIS DAY,
VINEET SARAN J., DELIVERED THE FOLLOWING:

J U D G M E N T

The respondent-Sri.B.L.Venkatesh joined the service of the Karnataka Legislature Secretariat as a Junior Assistant on 17.03.1982.

2. The admitted case is that the respondent acquired the necessary qualification for being promoted on the post of Assistant on 10.09.2004, on which date, under Rule 32 of the Karnataka Civil Services Rules, he was given independent charge on the post of Assistant, as he was duly qualified to be promoted on the post of Assistant. From the above, it is clear that post of the Assistant was vacant and available and thus the charge was given on said post to the respondent immediately on his acquiring the necessary eligibility and qualification.

3. As the Rule 32 of Karnataka Civil Services Rules itself in Note.1 provides that a Government Servant can be appointed under the said Rule to be in-charge of the current duties of a vacant post only if he is eligible to be

promoted to officiate in that post, thus the respondent being duly eligible and qualified, was given officiating charges and subsequently he was also promoted on the said post. However, since the regular promotion of the respondent was considered along with other candidates who had acquired necessary qualification subsequent to the respondent acquiring the necessary qualification, there was a dispute with regard to the date from which the respondent was to be promoted as a regular Assistant.

4. It is not in dispute that by order dated 8.1.2010, the salary of the respondent was fixed in the cadre of the Assistant w.e.f., 10.9.2004 and accordingly, he was paid the same salary. Being aggrieved by the order dated 5.6.2010 whereby promotion granted to the respondent w.e.f. 10.09.2004 was withdrawn, the respondent filed Writ Petition No.32237/2010, which has been allowed by the learned Single Judge by order dated 27.3.2012. Challenging the said order, the Principal Secretary, Karnataka Legislature Secretariat has filed this appeal.

5. We have heard learned Government Advocate appearing for the appellant and Sri. D.S.Joshi, learned counsel appearing for the respondent and have perused the records.

6. The learned Single Judge has dealt with the issue of the respondent having passed the examination and having been found eligible for promotion to the cadre of Assistant and having been given such promotion and an independent charge of duty of Assistant w.e.f. 10.09.2004. The Writ Court has also considered that the other Junior Assistants working along with the respondent may have been senior to the respondent, but had acquired the necessary qualification for being eligible for promotion on much subsequent date. On having become eligible for grant of such promotion and there being vacancy of the post of Assistant, the respondent was admittedly granted temporary promotion w.e.f. 10.9.2004 and was being paid salary on the said post.

7. After considering all the said aspects of the case, in our view, the Writ Court has rightly come to the

conclusion that the order dated 5.6.2010, insofar as the question relating to the promotion of the petitioner-respondent herein as Assistant w.e.f. 10.7.2009 was concerned and also insofar as it related to withdrawing the earlier order dated 10.09.2004 and the order dated 15.04.2008 placing the respondent as Assistant in an independent charge and consequent pay fixation, was quashed and it was directed that the respondent herein be given promotion as Assistant w.e.f. 10.9.2004, with all consequential benefits. We do not find any irregularity or illegality with the order of the learned Single Judge so as to call for interference in this appeal.

Appeal is accordingly ***dismissed.***

In view of dismissal of the appeal, I.A.Nos.1 and 2 of 2013 stand disposed of.

**SD/-
JUDGE**

**SD/-
JUDGE**

VM