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T. SHANTHARAM

v.

STATE OF KARNATAKA AND ORS.

JANUARY 16, 1995

B

[K. RAMASWAMY AND S.C. SEN, JJ.]

Service law—Continued service of deputationist in the new department—Order of absorption and promotion—Held valid.

C

The appellant was appointed in the Revenue Department of the State of Karnataka as second division clerk in Mangalore on October 8, 1963 and sent on deputation to Food and Civil Supplies Department as Assistant Civil Supplies Inspector on December 26, 1967. The appellant was promoted as Second Grade Civil Supplies Inspector on September 11, 1968, a post equivalent to Sheristedar.

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The 5th respondent was appointed as Second Division Clerk on January 22, 1965 in the Food Wing of the Revenue Department and was regularised as Second Division Clerk on September 30, 1971. He was promoted as Sheristedar on June 17, 1982. He was also promoted as Assistant Director.

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When the appellant was sought to be repatriated from the Food Wing he filed an application before the Administrative Tribunal in 1986 which directed absorption of the appellant in the Food Department by order dated January 28, 1988. The appellant was absorbed in the Food Department and was placed above the 5th respondent and promoted as Assistant Director on January 1, 1980.

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In this appeal, the respondent contended that the transfer and deputation of the appellant in the Food Wing on a post higher than the one held in the parent department was impermissible.

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Allowing the appeal, this Court

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HELD : Initially the appellant was mistakenly deputed to a higher post in the Food and Civil Supplies Department but since the appellant has discharged his duties and responsibilities to the satisfaction of all concerned, it would be unjust to send him back to hold the post in the

present department which he is entitled to hold. The order of absorption and promotion given to the appellant by the tribunal is upheld. [276-E-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 922 of 1955.

From the Judgment and Order dated 6.7.94 of the Karnataka Administrative Tribunal, in A.No. 1954 of 1990. B

K. Madhava Reddy, G.K. Narasimha, K. V. Vijayakumar and Girish Ananthamurthy for the Appellant.

Ram Jois and S.N. Bhat for the Respondent. C

M. Veerappa and K.H. Nobin Singh for the State of Karnataka.

The following Order of the Court was delivered :

Leave granted. D

The facts are telling that the appellant was appointed in the Revenue Department as Second Division Clerk in Mangalore on October 8, 1963. He was sent on deputation to the Food and Civil Supplies Department which was then part of Revenue Department as Assistant Civil Supplies Inspector on December 26, 1967 and was promoted as Second Grade Civil Supplies Inspector on September 11, 1968 which is stated to be equivalent to Sheristedar. The 5th respondent Mr. R.K. Vasudev was appointed as a Second Division Clerk on January 22, 1965 in Food Wing of the Revenue Department. Thereafter he was regularised as second Division Clerk on September 30, 1971 and was promoted as a Sheristedar on June 17, 1982. From these facts, it is clear that at all levels of appointments and promotions, the appellant was always senior to 5th respondent. But one fact that remain on record is that the appellant continued to be on deputation in the Food Wing of Revenue Department. When he was sought to be repatriated, the appellant filed Application No. 6432/86 before the Administrative Tribunal, Bangalore. The Tribunal by its order dated January 28, 1988 directed absorption of the appellant in the Food Department as indicated in the order which reads thus :— E
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"Since the applicant is working in the Food and Civil Supplies Department since 1966 (about 32 years and he has not been given H

A any proforma promotion in the Revenue Department and there are no valid ground to reject his request for absorption, we are of the considered opinion that the Applicant is entitled for a direction to the respondents to absorb him in the Department of Food and Civil Supplies in the post now held by him. It is ordered accordingly after quashing Annexure A."

B Subsequent thereto it would appear that the appellant was absorbed and he was placed above the 5th respondent and also promoted on January 1, 1980 as a Assistant Director. It would also appear from the record that the 5th respondent also promoted as Assistant Director. The only question is of *inter se* seniority between the appellant and the 5th respondent.

C Shri Rama Jois, learned senior counsel for the respondent contended that the Rules prescribed that on the deputation the post should be the post equivalent to which he was holding in the parent department and the appellant cannot be transferred and deputed in the Food Wing on higher post than the post hold in the parent department. Though there is force in the contention as per the Rules but meat of the matter is that the appellant uninterruptedly worked in the Food department till date of the order by the Tribunal. Under these circumstances, though initially he might have mistakenly been deputed to hold higher post in the Food and Civil Supplies Department, since the appellant had obviously discharged his duties and higher responsibilities to the satisfaction of all concerned, at this distance of time, it is highly unjust to send him back to hold the post in the present department which he was entitled to hold and the Tribunal is not right to interfere with action of the department in its absorption of the appellant

D as per its own earlier order. The direction given by the Tribunal at the instance of 5th respondent in the impugned order dated July 10, 1994 is accordingly set aside and the order issued in the earlier proceedings stands confirmed. In consequence the order of absorption and the promotion given to the appellant stand upheld. The appeal is allowed. No costs.

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A.G.

Appeal allowed.