MYSORE LEGISLATIVE COUNCIL

REPORT

OF THE

SELECT COMMITTEE ON THE MYSORE STATE CIVIL SERVICES (REGULATION OF PROMOTIONS, PAY AND PENSION) BILL, 1973.

Presented on 9th October 1973

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Sri D. K. Naikar (Minister for Law and Parliamentary Affairs), **(Chairman).**

Sriyuths—

1. M. C. Basappa
2. B. A. Bolashetty
3. S. R. Bommai
4. B. Channabyre Gowda
5. Govind P. Vadeyaraj
6. K. Jattappa Rai
7. Smt. B. Padmavathi Vittal Rao
8. Y. R. Parameswarappa
9. Y. S. Patil
10. M. Satyanarayana Rao
11. A. K. Subbaiah

Representative of the Department

Sri R. J. Rebello, Chief Secretary to Government.

Representatives of the Department of Law and Parliamentary Affairs.

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.
2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.

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Secretariat

Sriyuths—

1. Te. Hanumanthappa, Secretary, Mysore Legislature.

2. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.

REPORT OF THE SELECT COMMITTEE ON THE MYSORE STATE CIVIL SERVICES (REGULATION OF PROMOTIONS, PAY AND PENSION) BILL, 1973.

The Select Committee which considered the Bill have the honour to make the following report.

The Bill as passed by the Legislative Assembly was laid on the Table of the Legislative Council on the 26th May 1973.

The Legislative Council discussed the motion for consideration on 18th and 19th June 1973. The motion for reference of the Bill to the Select Committee was moved by Sri S. R. Bommai on 19th June 1973 and it was adopted by the Legislative Council the same day.

The Committee held six sittings.

At the first sitting held on 22nd August 1973, the Committee decided that a press communique may be issued inviting Organisations/Institutions who desired to submit their suggestions or views on the provisions of the Bill to send written memoranda for the purpose or give oral evidence before the Committee.

Eight memoranda on the Bill were received by the Committee from Organisations/Associations/Individuals.

At the sittings held on 29th and 30th August, 7th and 14th September 1973, the Committee heard oral evidence given by five parties.

The Committee considered and adopted their report at the sitting held on 15th September 1973.

After going through the evidence of the individuals/ Associations who appeared before the Committee and the

memoranda submitted to it, and after carefully perusing the decisions of the Supreme Court of India and different High Courts in different cases on the point and after taking into account the categorical statement made on behalf of the Government that it is not in a position to give to the Committee the magnitude of the financial commitment, even approximately payable to the employees in case the Bill is not passed by the Legislature and after having gone through every clause of the Bill, the Committee make the following observations :—

1. The purpose of clause 4 of the Bill is to deny to allottees to the New State of Mysore under States' Reorganisation Act the benefit of arrears from the date they ought to have been promoted to higher posts consequent upon the refixation of their seniority in the final Inter-State seniority list. However, the clause does not deny to them the benefit of fixation of pay in the higher post from the date their juniors were promoted on the basis of the provisional seniority list.

2. The Statement of Objects and Reasons appended to the Bill introduced in the Legislative Assembly states that payment of arrears " involves very heavy financial burden to the State ". Again it is also stated that " Government will have to pay huge sums of money on the basis of retrospective promotions for work not done."

3. The members of this Committee repeatedly requested the Government to provide to the Committee an indication of the financial burden that will have to be met by the State if arrears are to be paid retrospectively to persons who are entitled to it on the basis of the final Inter-State seniority list. The Government, however, pleaded their inability to furnish even the approximate figures of the financial implications in this behalf.

4. The Committee is therefore constrained to conclude that the Bill had been introduced without proper assessment

of the financial burden and that the averments made in the Statement of Objects and Reasons appended to the Bill are without foundation.

5. Secondly, the Committee found that the cases quoted in the preamble of the Bill are totally irrelevant and are in applicable to the facts and circumstances of the Bill under consideration. Since the Government has proceeded with the Bill on wrong assumptions, the Committee is of the opinion that to proceed with the Bill further will be an infructuous exercise.

6. Considering the evidence placed before the Committee and taking into account the commitments made by the Government before the Hon'ble High Court of Mysore in several writ petitions, the Committee is of the view that it would not be correct to deny to the employees retrospective monetary benefits to which they are entitled to for promotions made retrospectively. If the Committee proposes to recommend any change in the Bill for providing restrospective monetary benefits, the whole object with which the Bill has been brought by the Government will stand defeated and the Bill itself would become infructuous.

7. Further, article 202 (3) (e) states that the sums required to satisfy any judgment, decree or award of any court or arbitral tribunal are to be charged upon the Consolidated Fund of each State. That being so, a decree or court order for the payment of arrears to persons promoted as a result of refixation of seniority in the final list being a fundamental right is an unavoidable obligation which should not be set at nought through the Bill under consideration.

8. Further, the previous consent of the Central Government, stated to have been obtained in the preamble, does not cure the legal defect of the Bill. Payment of arrears to persons promoted retrospectively as a result of

refixation of seniority in the Inter-State Seniority List is a fundamental right under the Constitution and is not merely a condition of service applicable to allottees within the scope of the States' Re-organisation Act and the Central Government is not competent to give previous consent to such matters. In any case, since the Bill appears to be violative of articles of the Constitution particularly articles 14, 15 and 19, the Central Government's previous sanction is of no avail.

9. The representatives who appeared before the Committee were of the unanimous opinion that if this Bill becomes law, it would cause frustration and demoralisation in the services.

10. There are no analogous enactments in any of the States similarly affected by States' Re-organisation. There is no enactment of the Central Government on this matter and there is no decision of any court directly bearing on this point.

11. In the other States affected by States' Re-organisation where the situation is similar, the Central Government have finalised Inter-State Seniority lists and the States have paid to the employees whatever benefits they were entitled on promotion as per final Inter-State Seniority list.

In these circumstances, the Committee recommend to the House that the Bill may be rejected.

The minute of dissent given by the Chairman is appended.

D. K. NAIKAR,
Chairman.

MINUTE OF DISSENT

The Bill covers the cases of both allottees and non-allottees in the State Civil Services. The general provision made is that normally promotions should not be ordered retrospectively. Though mainly problems have arisen in connection with promotions on the basis of Inter State Seniority Lists of allottees, non-allottees also have been included to avoid challenge of hostile discrimination among State Civil Servants.

As regards the allottees, the task of integration of services is entrusted to the Central Government under the States Reorganisation Act. Equations, preparation of seniority Lists, hearing of objections, finalisation of the said Lists are all the concern of that Government. The State Government, if at all, acts only as the agent of the Central Government in this behalf. The States Reorganisation became effective on 1st November 1956 but the final integration of all services is yet to take place, though the work relating to majority of Departments is completed. This is not for no reason. Data regarding service, its conditions etc., have to be collected in most cases from the respective parent States, carefully verified, equations made in accordance with the principles laid down (on consensus) by the Central Government, provisional Lists published inviting objections from the concerned, analysing and examining the various objections preferred, hearing the parties interested, and then, ultimately, taking decisions thereon. It is only after all these processes are undergone that the Final Inter State Seniority Lists emerge. Necessarily much time is taken to go through all these requisite formalities. Even in the normal course the minimum period required is several years to complete the task. When this is so, it cannot be said that simultaneously with the reorganisation of States the final integration of services also should have been accomplished.

Pending finalisation of the Lists, for purposes of administrative convenience and expediency, posts had to be filled. For this, Government could only look to the

provisional Lists prepared by then and published. These appointments, by promotion or otherwise, could be only temporary, in nature, subject to review on the finalisation of the Lists so that, a person getting a higher rank in the Final List would not and could not have been promoted earlier. Upon review, he would certainly be considered and promoted if found fit. In the circumstances it would not be for him to say that the delay in promotion was wanton.

Added to the normal time involved in finalising the Lists, certain other peculiar difficulties also were there. When some of the provisional Lists were published they were challenged in the High Court about the equations done, seniority fixed, etc. In a good number of cases stay orders were issued also. Nothing except waiting could be done so long as the stay orders operated. Similar was the case with Final Lists also. There were challenges and stay orders. Several Final Lists also were quashed, necessitating preparation of fresh Lists, which naturally involved further time. In several matters the parties approached the Supreme Court also. This also meant lapse of time in finalising.

It is in the context of the aforesaid circumstances that the provisions of the Bill may have to be examined. Whether a person who has not worked and discharged the duties of a post should, merely because higher seniority has been fixed in the final list be promoted with retrospective effect and paid the consequential monetary benefits. No doubt if his earlier non-promotion was wanton on the part of the State then his claim would have to be met but as stated here it was not wanton and the delay in promotion was for the reason the requisite formalities had to be observed. In other words, it was not due to any fault of the State. This being so, the legal maximum that no work, no pay should apply and it is not wrong to apply the same.

Retrospective promotions also offend certain other well known legal positions. A person so promoted to a

post calling for the discharge of statutory functions would have to be presumed to have discharged those functions retrospectively. This can never be and if adopted would lead to complications. Similarly, persons who had been promoted would have discharged statutory functions and retrospective reversions consequent on retrospective promotion would nullify the actual functions discharged. This again would lead to complications. This is the position affirmed by the Supreme Court in the two dicisions **AIR 1967 SC 856** and **AIR 1970 SC 385** referred to in the preamble of the Bill. The contention that these decisions have no relevance to the present Bill is not tenable. The contentions that the provision proposed in the Bill are unique, that no other State has made them and that they are legally unsustainable are all not tenable. In fact, in connection with the reorganisation of the Punjab, the Central Government issued directions to the State Government under Section 117 of the S.R. Act. One of the directions was, in circumstances similar to those existing in our State, that no retrospective promotion be given and no arrears of salary be paid. In two decisions of the Supreme Court reported in **AIR 1972 SC 586—Jagtar Singh** vs. **State of Punjab and AIR 1972 S.C. 1640—Gurucharan Dass** vs. **State of Haryana** this particular direction came to be considered. The Supreme Court affirmed the direction and in the latter case even issued a mandamus to follow the direction. Decision of the Supreme Court is law binding throughout the territory of India (**vide** article 141 of the Constitution). The provision in the Bill that promotions will only be prospective meaning that no arrears shall be paid is therefore in conformity with the law laid down by the Supreme Court.

The cases cited in the majority report are not relevant. They deal with different questions like when the claims of a senior are ignored he should be made eligible for consideration when his claim had to be considered. The legal question whether retrospective promotions can be denied in cases like the present **by enacting a law** did not arise at all in those cases. As stated, earlier, the question directly

arise in the two Supreme Court decisions referred to in the previous paragraph and the Supreme Court has upheld the legislative competence about it.

The other objection that the provisions to affect decisions of courts is not legally in order is also not tenable It is well settled that a legislature can remove the basis of any judgment or decree of a court by enancting a retrospective law. The proposed law is to take effect from 1st November 1956 and when enacted this would be the law regulating promotions, pay, etc., of civil servants from that date. The court decisions rendered in the meanwhile would all be when there was not this law in force. With the enforcement of the law, the said decisions would not be in confirmity with law and therefore would not be valid and binding. No question of contempt of Court arises in undertaking legislation of the kind proposed.

In the several court cases the direction issued is, usually, to consider the petitioner for promotion (or promote him) with monetary benefits from the date his junior was promoted. Whether the junior was the immediate junior, whether there are not others intervening, whether having regard to the vacancy position the petitioner's chance for promotion would arise at all are not taken note of. So much so, compliance with the direction would result in promoting more than one person to the same post held by the junior and of course payment also for work not done by any of them. This is anamolous and lacks all rationale. This is strong enough reason to render ineffective by legislation the court decision.

Another objection raised is that when the State is not in a position to correctly say what the financial implication will be if the proposed law is not enacted need for the legislation is not made out. During the proceedings of the Select Committee it has been made clear how it is not practicable at this stage to work out all the cases of persons involved in integration and mention the correct figures.

Illustrative cases were shown and the basis of which final working out should be was indicated. The estimate is a few crores of rupees. Any expenditure even of a few crores would certainly be a great financial burden on the resources of the State. Besides in view of the legal position regarding retrospective promotions it is unnecessary also.

For these reasons I differ from the view taken by the majority and commend that the Bill as passed by the Legislative Assembly be considered by the Legislative Council and passed.

D. K. NAIKAR,
Chairman.

MINUTES OF SITTINGS

First Sitting

The Committee met at 2·00 p.m. on Wednesday, the 22nd August 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman.**

Members

2. Smt. B. Padmavathi Vittal Rao
3. M. C. Basappa
4. B. Channabyre Gowda
5. K. Jathappa Rai
6. Govind P. Vadeyaraj
7. A. K. Subbaiah

Representatives of the Department

Sriyuths—

1. R. J. Rebello, Chief Secretary to Government.
2. N. P. Joshi, Deputy Secretary to Government, G.A.D.
3. B. P. Patil, Deputy Secretary to Government, G.A.D.

Representatives of the Department of Law and Parliamentary Affairs

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.

2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.

Secretariat

Sriyuths—

1. Te. Hanumanthappa, Secretary, Mysore Legislature.
2. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.
3. M. Subba Rao, Under Secretary, Mysore Legislature.

The Committee desired information on the following points:

(i) The number of persons involved.

(ii) The number of persons affected.

(iii) The number of persons who are going to get benefit if retrospective promotions and monetary benefits are given and

(iv) The total amount to be paid, if retrospective promotions are given.

It was also decided that a press communique may be issued inviting memoranda from the Organisations/Institutions and individuals who are desirous to offer their suggestions or oral evidence on the provisions of the Bill to send written memoranda for the purpose.

The Committee adjourned at 4.30 p.m. to meet at 2.00 p.m. on the 29th August 1973.

Second Sitting

The Committee met at 2.00 p.m. on Wednesday the 29th August 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman.**

Members

2. M. C. Basappa
3. S. R. Bommai
4. B. Channabyre Gowda
5. Govind P. Vadeyaraj
6. K. Jathappa Rai
7. Smt. B. Padmavathi Vittal Rao
8. Y. R. Parameswarappa
9. A. K. Subbaiah

Representatives of the Department

Sriyuths—

1. R. J. Rebello, Chief Secretary to Government.
2. B. P. Patil, Deputy Secretary to Government, G.A.D.

Representative of the Department of Law and Parliamentary Affairs

Sri N. D. Venkatesh, Secretary to Government.

Secretariat

Sriyuths—

1. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.

2. M. Subba Rao, Under Secretary, Mysore Legislature.

3. N. Srinivasan, Under Secretary, Mysore Legislature.

The Committee heard the following witnesses:

Sriyuths—

1. K. V. Narayana Rao, Retired Tahsildar and Joint Secretary, Pensioners' Association.
2. B N. Narayana, Retired Assistant Commissioner.
3. Shankaranarayan, Secretary, Mysore State Village Accountants' Association.

A verbatim record of the evidence is kept separately.

The Committee adjourned at 4.45 p.m. to meet at 2-00 p.m. on the 30th August 1973.

Third Sitting

The Committee met at 2-00 p.m. on Thursday the 30th August 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman.**

Members

2. K. Jathappa Rai
3. A. K. Subbaiah
4. Smt. B. Padmavathi Vittal Rao

5. B. Channabyre Gowda
6. Y. R. Parameswarappa
7. M. C. Basappa
8. Govind P. Vadeyaraj
9. S. R. Bommai

Representatives of the Department

Sriyuths—

1. R. J. Rebello, Chief Secretary to Government.
2. N. P. Joshi, Deputy Secretary to Government, G.A.D.
3. B. P. Patil, Deputy Secretary to Government, G.A.D.

Representatives of the Department of Law and Parliamentary Affairs.

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.
2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.

Secretariat

Sriyuths—

1. Te. Hanumanthappa, Secretary, Mysore Legislature.
2. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.

The Committee heard Sri M. N. Vishwanatha, Joint Director of Horticulture Department (retired).

The Committee had a general discussion about the provisions of the Bill. The members of the Committee felt that they would not be possible to consider the Bill unless the requisite information desired by the Committee earlier was furnished to them. The Chief Secretary on behalf of the Government explained the difficulties to get such information.

The Committee adjourned at 4-00 p.m. to meet at 2-00 p.m. on Friday the 7th September 1973.

Fourth Sitting

The Committee met at 2-00 p.m. on Friday the 7th September 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman.**

Members

2. B. Channabyre Gowda
3. A. K. Subbaiah
4. M. C. Basappa
5. K. Jathappa Rai
6. Govind P. Vadeyaraj
7. S. R. Bommai
8. Y. S. Patil
9. Smt. B. Padmavathi Vittal Rao

Representatives of the Department

Sriyuths—

1. R. J. Rebello, Chief Secretary to Governmnet.
2. B. P. Patil, Deputy Secretary to Government, G.A.D.

Representatives of the Department of Law and Parliamentary Affairs.

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.
2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.

Secretariat

Sriyuths—

1. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.
2. C. S. Sreedhara Murthy, Under Secretary, Mysore Legislature.
3. N. Srinivasan, Under Secretary, Mysore Legislature.

The Committee heard the following witnesses :

Sriyuths—

(1) K. A. Keshava Murthy, President, Mysore Government Employees' Association.

(2) Desik of the Mysore Government Employees' Association.

(3) Sripathy, Vice-President, Mysore Government Employees' Association.

The Chief Secretary once again explained to the Committee, that it was difficult to provide the financial implications involved in the Bill for several reasons. After some discussion, the Committee adjourned at 4.15 p.m. to meet again at 2.00 p.m. on Friday, the 14th September, 1973.

Fifth Sitting

The Committee met at 2.00 p.m. on Friday, the 14th September 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman.**

Members

2. B. Channabyre Gowda
3. A. K. Subbaiah
4. M. C. Basappa
5. K. Jathappa Rai
6. Govind P. Vadeyaraj
7. S. R. Bommai
8. Y. R. Parameswarappa
9. Smt. B. Padmavathi Vittal Rao
10. Y. S. Patil

Representatives of the Department

Sriyuths—

1. R. J. Rebello, Chief Secretary to Government.
2. N. P. Joshi, Deputy Secretary to Government, G.A.D.
3. B. P. Patil, Deputy Secretary to Government, G.A.D.

Representatives of the Department of Law and Parliamentary Affairs.

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.
2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.
3. K. R. Chamayya, Assistant Draftsman and Under Secretary to Government.

Secretariat

Sriyuths—

1. Te. Hanumanthappa, Secretary, Mysore Legislature.
2. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.
3. C. S. Sreedhara Murthy, Under Secretary, Mysore Legislature.
4. M. Subba Rao, Under Secretary, Mysore Legislature.
5. N. Srinivasan, Under Secretary, Mysore Legislature.

The Committee heard Sri K. A. Keshava Murthy, President, Mysore Government Employees' Association who desired to be heard once again to explain certain additional points on the Bill.

The Committee had a general discussion about the provisions of the Bill.

The Chairman suggested that the Bill may be read clause by clause. Sriyuths : A. K. Subbaiah, S. R. Bommai

and Govind P. Vadeyaraj felt that the Committee would not be able to suggest any changes in the Bill, since Government was not in a position to furnish the financial implications involved in the Bill.

The Committee decided to recommend to the House that the Bill be rejected. The Chairman disagreed with this view. The Committee decided that a report may be prepared on the lines indicated above for approval of the Committee.

The Committee adjourned at 4.00 p.m. to meet at 9.00 a.m. on Saturday, the 15th September 1973 to consider and adopt the draft report of the Committee.

Sixth Sitting

The Committee met at 9.00 a.m. on Saturday the 15th September 1973.

Present

Sriyuths—

1. D. K. Naikar (Minister for Law and Parliamentary Affairs)—**Chairman**.

Members

2. B. Channabyre Gowda
3. A. K. Subbaiah
4. M. C. Basappa
5. K. Jathappa Rai
6. Govind P. Vadeyaraj
7. S. R. Bommai
8. Y. R. Parameswarappa
9. Smt. B. Padmavathi Vittal Rao
10. M. Satyanarayana Rao

Representative of the Department

Sri B. P. Patil, Deputy Secretary to Government, G.A.D.

Representatives of the Department of Law and Parliamentary Affairs

Sriyuths—

1. N. D. Venkatesh, Secretary to Government.
2. M. L. Ramaswamy, Draftsman and Joint Secretary to Government.
3. K. R. Chamayya, Assistant Draftsman and Under Secretary to Government.

Secretariat

Sriyuths—

1. Te. Hanumanthappa, Secretary, Mysore Legislature.
2. K. S. Thimmappa Gowda, Joint Secretary, Mysore Legislature.
3. C. S. Sreedhara Murthy, Under Secretary, Mysore Legislature.
4. M. Subba Rao, Under Secretary, Mysore Legislature.
5. N. Srinivasan, Under Secretary, Mysore Legislature.

The draft report circulated to the members was read and approved with some modifications suggested by Sriyuths A. K. Subbaiah, S. R. Bommai and Govinda P. Vadeyaraj. The members of the committee thanked the Chairman for conducting the deliberations satisfactorily. The Chairman thanked the members for their cooperation. The Committee adjourned at 10·30 a.m.

Te. HANUMANTHAPPA,
Secretary.

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