

PETITIONER:
H.R. RAMACHANDRAIAH & ANR.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 28/02/1997

BENCH:
K. RAMASWAMY, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

These special leave petitions arise from the order of the Karnataka Administrative Tribunal, made on October 31, 1996 in Application Nos. 1374 and 1375/96.

The admitted position is that the petitioners were appointed as Laboratory Attenders in the Department of Horticulture under the Karnataka Horticulture (Department) Recruitment Rules, 1974. Under the hierarchy of the posts, there are Gardeners, Peons, Zamadars including Attenders, Head Gardeners and Field Assistant in the said Department and various scales of pay have been prescribed in the above Rules. The Rules prescribe 25% quota for recruitment by promotion to the post of Field Assistants from the cadre of Head Gardeners, Gardeners, Maistries and col. 3 thereof prescribes the minimum qualification for promotion to the same category. The Petitioners had filed the OA claiming promotion to the posts of Field Assistant treating the Laboratory Attenders as equivalent to Head Gardeners and, therefore, they are eligible to be considered for promotion to the post of Field Assistant. They placed reliance on the judgment of a learned single Judge of the Karnataka High Court. The Tribunal has not accepted the same and dismissed the petition. The Tribunal on an elaborate consideration has given the direction in the operative consideration has given the direction in the operative paragraph of the judgement as under:

"We, therefore, direct the Government to constitute a high powered committee to go into the details of the Mechanics which prompted the Director to pass such orders giving retrospective promotion and further releasing huge sums of money from the public exchequer. On the basis of the Report of the Committee, suitable action be taken against such errant officials after holding enquiry as required under law in respect of the losses caused to the

Government. In an action by way of restitution, it will be the endeavour of the Courts of Tribunals to ensure that party who has suffered on account of decisions should be put back to the position as far as practicable in to the position as far as practicable in which he would have been, if decision adversely affecting him had not been passed. Courts/Tribunals should not 'be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. In deciding appropriate action by way of restitution, the Tribunals/Courts should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of parties. While initiating recovery, the State is directed to consider of granting phased instalments having in vie of the length of service of the Applicants, since recovery in lumpsum would be oppressive and leads to economic ruination. "

It would appear that by giving retrospective promotions to various persons, huge public funds have been frittered away by an illegal action of the Director of Horticulture and, therefore, the aforestated direction came to be issued. While reiteration that action should be taken against erring officers and personal responsibility also fixed; apart from that, disciplinary action should be taken against the persons concerned. We do not think that there is any force in the contention raised by the learned counsel for the petitioners. May be that the learned counsel for the petitioners. May be that the learned single judge of the High Court had taken the view that the petitioners. May be that the learned single judge of the High Court had taken the view that the Laboratory Attenders could also be treated as Head Gardeners. Unless the Rules are integrated and the channel of promotion is given, by interpretation one category cannot be transposed from other channels and fitted into altogether a different category of service merely because channel of promotion in that service is not provided. Under these circumstances, unless the petitioners get into the channel of promotion under the statutory Rules, they cannot by interpretation be fitted into the category to which they do not belong and cannot claim promotion on tat basis. Accordingly, we do not find any illegality in the order passed by the Tribunal warranting interference.

The special leave petitions are accordingly dismissed.