THE KARNATAKA STATE CIVIL SERVICES (REGULATION OF PROMOTION, PAY AND PENSION) ACT, 1973

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STATEMENT OF OBJECTS AND REASONS

I

Act 11 of 1974 .- For reasons beyond control the finalisation of Inter-State Seniority Lists was unavoidably delayed. Information had to be collected from several offices and parent States clarification had to be obtained, documents and records had to be obtained, etc. In addition there were court proceedings results of which had to be awaited. In the meantime, in the exigencies of public service, promotions were being made on the basis of the provisional Inter-State Seniority Lists. These promotions are to be reviewed in the light of the changes made in the final inter-State seniority lists which have now been published in almost all departments. Demand for the same had been made and in a good number of cases courts have been approached. Directions have been given by courts to consider the case for retrospective promotions and to give consequential monetary benefits also. In some cases similar relief in more than one promotion has also been granted. In all these cases some other persons would have discharged the duties of those promotional posts having been promoted on the basis of the provisional lists and would have been paid the pay and allowances attached to the said posts Restrospective promotions as per court directions may result in double payments - one set already paid and another set to the person now promoted. In other words two persons would be paid for discharging duties of one and the same post. All this involves very heavy financial burden on the State.

Besides it is well settled by several decisions that it is not legally permissible to appoint persons restrospectively to statutory posts. Retrospective promotions inevitably result in retrospective reversions and thereby render ineffective statutory functions discharged by the persons so reverted leading to complications. It is necessary to regulate all these matters. Hence Government issued the Mysore State Civil Services (Allottees) (Special) Rules, 1971 providing for review and prospective promotions. It was expected that the said rules would

resolve the difficulties pointed out above. But when the said rules were pleaded the High Court in some cases directed that retrospective promotions and consequential financial benefits should be given. The view taken, apparently, is that the said rules do not prohibit making retrospective promotions and giving consequential monetary benefits. The State Government has filed appeals against some of these judgements to the Supreme Court but in cases where the court has fixed specified dates for implementing the directions contempt applications have been filed against the State. Unless the effect of the said judgements is taken away by suitable legislation Government will have to pay huge sums of money on the basis of retrospective promotions for work

not done. It is felt not legally possible to overcome the court decisions by making rules under the proviso to article 309 of the Constitution.

Uniform provisions in the case of Civil servants other than allottees is necessary to avoid discrimination.

Hence the Bill.

Necessary approval of the Central Government in terms of the proviso to sub-section (7) of section 115 of the States Re-organisation Act, 1956 has been obtained.

II

Amending Act 40 of 76 .- [By this Act, the Karnataka Service Examinations, Act, 1976 was enacted and therein certain consequential amendment were made to this Act and a new section 9A was inserted.]

III

Amending Act 25 of 1982 .- The Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (Act 11 of 1973) was passed in the year 1974 providing for regulation of promotion, pay and pension and other conditions of service of civil servants including those who were allotted or are deemed to have been allotted to serve in connection with the affairs of the new State under section 115 of the States Re-organisation Act, 1956.

2. The promotions made from 1-11-1956 were to be reviewed under section 4 (1) of the Act on the basis of the Final I.S.S Lists published in accordance with the decisions of the Government of India. While so reviewing the promotions it was noticed that some officers who were promoted earlier on the basis of their positions in the provisional I.S.S Lists were eligible for promotion on dates later than the dates of their actual promotion. This would mean that the earlier promotion was fortuitous and the pay was therefore required to be revised. There was no provision in the Act for regulation of pay in such cases. It was considered necessary to make a provision in the Act providing for refixation of pay in respect of such officers on the dates of eligibility.

3. Besides, there is an anomaly in the Karnataka Service Examinations Act, 1976. Section 8(2) of the said Act amends section 3 of the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973. The 1976 Act came into force with effect from 1-11-1956 while section 3 of the 1973 Act came into force with effect from 11-4-1974. The amending provision cannot come into force from a date anterior to the date on which the original provision came into force. To remove this anomaly Section 8 of the Karnataka Service Examinations Act, 1976 is sought to be amended suitably.

4. Hence this Bill.

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[1][KARNATAKA][1] ACT No. 11 OF 1974

THE [1][KARNATAKA][1] STATE CIVIL SERVICES (REGULATION OF PROMOTION, PAY AND PENSION) ACT, 1973

(Received the assent of the Governor on the Eleventh day of April, 1974)

(As amended by Karnataka Acts 40 of 1976 and 25 of 1982)

An Act to provide for the prospective promotions of civil servants and to regulate the pay, seniority, pension and other conditions of service of civil servants in the State of [1][Karnataka][1] including those that are allotted or deemed to be allotted to serve in connection with the affairs of the State of [1][Karnataka][1] under or in pursuance of section 115 of the States Reorganisation Act, 1956;

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

WHEREAS on the basis of the ranking of civil servants in the several inter-state seniority lists prepared in pursuance of sub-section (5) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), courts have directed the making of retrospective promotions to statutory and other offices;

AND whereas as held by the Supreme Court in *Ajit Singh* Vs. *State of Punjab* reported in All India Reporter 1967, Supreme Court 856 and in Income-Tax Officer, *Alleppy* Vs. *N.C. Ponnoose,* reported

in All India Reporter 1970 Supreme Court 385 appointments of civil servants to offices in which statutory functions are exercisable cannot be made with retrospective effect;

AND whereas retrospective promotions involve payment of large sums of money to persons who have not worked in the promotional posts or offices concerned, to the detriment of the finances of the State, besides involving retrospective reversions rendering invalid the statutory functions discharged by the persons reverted ;

AND whereas retrospective promotions preclude the determination of the suitability of the civil servants to hold the promotional posts or offices and will enable them to continue in such posts or offices only on the ground of their eligibility to promotions, resulting in the continuance of even unsuitable civil servants in promotional posts or offices to the detriment of public interest ;

AND whereas it is necessary and expedient to provide against the said consequences;

AND whereas the Central Government has given previous approval under the proviso to sub-section (7) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) communicated in letter No. 5/5/73 - SR (S) dated 22nd February, 1973 of the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms ;

Be it enacted by the [1][Karnataka][1] Legislature in the Twenty-fourth Year of the Republic of India as follows:-

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

1. Short title and Commencement .- (1) This Act may be called the [1][Karnataka][1] State Civil Services (Regulation of Promotion, Pay and Pension) Act 1973.

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

(2) This section and sections 2,4,5,6,7,8,9,10 and section 12 shall be deemed to have come into force on the first day of November, 1956 and the remaining sections shall come into force at once.

2. Definitions.- In this Act unless the context otherwise requires, -

(a) 'allottee' means a Government servant allotted or deemed to have been allotted to serve in connection with the affairs of the State of [1][Karnataka][1] under or in pursuance of section 115 of the States Reorganisation Act 1956 (Central Act 37 of 1956);

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

(b) 'civil servant' means a person who is a member of civil service of the State of [1][Karnataka][1] or who holds a civil post under the State of [2][Karnataka][2] and includes an allottee;

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

(c) 'final seniority list' means an inter-State seniority list of allottees prepared in accordance with the decisions of Central Government under the provisions of sub-section (5) of section 115 of the States Reorganisation Act 1956 (Central Act 37 of 1956);

(d) 'Inter-State seniority list' means an inter-State seniority list prepared from time to time, on the basis of the seniority in which the eligibility of an allottee to promotion to higher post or posts is considered.

(e) 'rules of recruitment' means the rules of recruitment made in respect of recruitment to any service, post, office or class of posts or offices.

3. Promotions, etc., of civil servants .- (1) No civil servant shall,-

[1][(a) be entitled to promotion to any post or office with effect from a retrospective date, except and to the extent specified in the rules made under this Act.][1]

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

(b) only on the ground of his seniority in a seniority list, be promoted to any post or office unless the authority competent to promote determines his eligibility and promotes him by a written

order to officiate in such post or office; and no such civil servant shall, save as provided in section 9, be entitled to continue in such promoted post or office unless the said authority assesses the work of such civil servant in such post or office and declares by a written order that he had satisfactorily completed his officiation ;

(c) when promoted to officiate in any post or office save as provided in section 9, be entitled to be considered for promotion to the next higher post or office unless he is declared to have satisfactorily completed his officiation in the first promoted post or office.

(2) In matters not specified in sub-section (1), the provisions contained in sections 4,5,6,7 and 8 shall *mutatis mutandis*, be applicable.

4. Promotions, etc., of allottees.- (1) Where the seniority of an allottee as specified in the provisional Inter-State seniority list in any class of post or office has been altered in the final seniority list relating to that class, every promotion made on any date after the first day of November 1956, on the basis of seniority-cum-merit, shall be reviewed with reference to the qualifications and other conditions laid down in the rules

of recruitment applicable at the relevant time for such promotion and the ranking in the final seniority list assigned to the allottees in that class of post or office. If any person senior in rank than the person promoted is held to be suitable for promotion on such date (hereinafter in this section referred to as the date of eligibility), an order shall, subject to section 9, be made promoting the said person to officiate in the said post or office with effect from a prospective date to be specified in the order.

(2) As soon as may be, after the person promoted under sub-section (1) is declared to have satisfactorily completed the period of officiation in the promoted post or office an order shall, subject to section 9, be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding the said post or office from the date of eligibility and drawn the pay and allowances accordingly, but such person shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date of eligibility.

(3) Where consequent upon the review of promotions made under sub-section (1), it is found that an allottee, who, before coming into force of sections 3, 11 and 13 had been promoted to a higher class or grade of service found eligible for promotion to that higher class or grade of service from a date prior to the date of actual promotion and subject to section 9, is declared to have satisfactorily completed the period of officiation in the promoted post or office, an order shall be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding the said post or office from the date on which he is found eligible for promotion and drawn the pay and allowances accordingly, but he shall not be entitled to payment of any arrears for the period prior to the date of the actual promotion. [1][Where, on such review he is found eligible for promotion to a higher class or grade of service from a date subsequent to the date of his actual promotion to such class or grade of service, his pay on the date of eligibility shall be refixed as if he had been promoted on such date but he shall not be liable to refund the excess pay and allowances drawn by him up to the date of issue of the order fixing the date of eligibility.][1] His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date on which he is found eligible for promotion.

1. Inserted by Act 25 of 1982 w.e.f. 1.11.1956.

(4) Where an order is made in respect of any allottee under sub-section (2) or as the case may be, under sub-section (3), and the ranking in the seniority list of persons in the promoted class or grade of service, as fixed by such order, stands revised, the promotions made from that class or grade of service to the next higher class or grade of service shall be reviewed in accordance with and subject to the provisions of sub-section (1) as if reference therein to the final seniority list were references to the

aforesaid revised seniority list and the provisions of sub-section (2) shall, *mutatis mutandis*, be applicable to every promotion so made.

(5) The provisions of sub-section (4) shall, *mutatis mutandis*, be applicable in respect of promotions of allottees to the next higher classes or grades of the same service.

(6) The provisions of sub-section (3) shall, *mutatis mutandis*, be applicable in respect of review of promotions of allottees made under sub-sections (4) and (5).

(7) Where in respect of promotions on the basis of seniority-cum-merit from any class or grade of service to the next higher class or grade of service, the rules of recruitment require service for a minimum period in the former class or grade to become eligible for promotion, the said period shall in its application to an allottee eligible for promotion under this section, be deemed to be the period during which he satisfactorily completes the period of officiation in the post or office of that class or grade of service and no such minimum service shall be necessary in the case of an allottee whose record of service was satisfactory on the relevant dates of eligibility or the relevant dates on which he is found eligible for promotion.

(8) In respect of promotions from any class or grade of service by selection to the next higher class or grade of service, where an allottee would have been eligible for consideration if he had been promoted to the former class or grade of service on the basis of his seniority in the final seniority list, such allottee, shall, subject to section 9, be considered for selection to the next higher class or grade of service, immediately after he satisfactorily completes the period of officiation in the said former class or grade of service. If he is selected and promoted to the higher class or grade of service and satisfactorily completes his period of officiation in the said class or grade, he shall be entitled to initial pay on the date of actual promotion to the said class or grade as if he was holding the said post or office from the date on which his immediate junior in the lower class or grade was promoted to the said class or grade of service, but he shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of the persons in the said class or grade shall be fixed as if he had been promoted on the date immediately preceding the date on which his immediate junior in the lower class or grade was promoted to the selection class or grade of service.

(9) An order under sub-section (2) in respect of an allottee who had been reduced to a lower stage in a time scale and whose increment had been withheld shall be subject to such modification as the State Government may, by order direct.

(10) No promotions of allottees made on the basis of any provisional inter-State seniority list shall be reviewed except after the publication of the final seniority list and in the manner provided in this section.

***Explanation* .-** For purposes of this sub-section provisional inter-State seniority list includes every inter-State seniority list used as the basis for carrying on the day-to-day administration whether prepared by the State Government or declared by court as operative until the publication of the final seniority list.

5. Provision relating to reversion of allottees .- (1) Where consequent upon the review of promotions under section 4 any allottee promoted to any class of posts or offices is found not entitled to continue in that class, he shall be reverted to ,-

(a) the class of posts or offices to which he would have been eligible for promotion on the basis of his rank in the final seniority list, or

(b) the class of posts or offices in which he would have continued on the basis of his rank in the final seniority list.

(2) Where any reversion is made under clause (a) of sub-section (1), the rank of the allottee in the seniority list of that class of posts or offices shall be fixed as if he had been promoted to that class of posts or offices on the basis of his rank in the final seniority list.

6. Provision relating to revision of pensions, etc .- Where consequent upon a review of promotions under section 4, it is found that any allottee who has retired from service before an order under sub-section (1), (3), (4) ,(5),(6) or (8) of section 4, is made, or before the expiry of the period of his officiation in the promoted post or office would have been eligible for promotion to the next higher class or grade of service under the said section if the final seniority list had been published on the first day of November, 1956, his pension and death-cum-retirement gratuity shall be revised with reference to the pay and allowances he would have drawn if he had been promoted to the next higher class or grade of service on the date on which he was found eligible for such promotion with reference to his rank in the final seniority list and the relevant recruitment rules, and as if he had satisfactorily completed the period of officiation in the said class or grade of service.

7. Provisions relating to payments to heirs of deceased allottees.- Where consequent upon a review of promotions under section 4, it is found that any allottee who before an order under sub-section (1), (3), (4), (5), (6) or (8) of section 4 is made, or before the expiry of the period of officiation in a promoted post or office has while in service or after retirement died, would have been eligible for promotion to the next higher class or grade or service on any day under the said section if the final seniority list had been published on the first day of November 1956, his pension and death-cum-retirement gratuity shall be revised, with reference to the pay and allowances he would have drawn if he had been promoted to the next higher class or grade of service on the date on which he was found eligible for such promotion with reference to his rank in the final seniority list and the relevant recruitment rules and as if he had satisfactorily completed the period of officiation in the said class or grade of service, and the excess amount payable on such revision of pension, and death-cum-retirement gratuity shall be paid to the heirs of the said deceased allottee.

8. Sections not applicable to certain allottees.- Provisions of sections 4,5,6 and 7 in so far as they relate to promotion on the basis of ranking in the final seniority list shall not be applicable to an allottee who ,-

(a) has been dismissed, removed or compulsorily retired from service as a penalty;

(b) has been reduced to a lower service, grade or post or office or whose promotion has been withheld as a penalty ;

(c) has been retired from service in public interest ;

(d) has been held unsuitable for promotion to any post or office or class of posts or offices ; or

(e) after promotion has been reverted to the lower post or office on the ground of unsuitability to hold the higher post or office or class of posts or offices.

9. Officiation .- (1) Save as provided in sub-section (2) the rules relating to officiation made under the proviso to Article 309 of the Constitution of India shall apply for purposes of officiation under this Act.

(2) A civil servant shall be deemed to have satisfactorily completed the period of officiation in the promoted post or office and may be promoted to one or more higher classes or grades of service to which he is found eligible for promotion on the basis of his seniority in the seniority list including the final seniority list if his record of service on the date or dates on which he is found eligible for such promotion is satisfactory and indicates that he is eligible for promotion to the next higher cadre and if he possesses the qualifications prescribed in the rules of recruitment applicable at the relevant time for such promotion.

[1] [**9A. Rules.-** (1) The State Government may make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making

any modification in the rule or both Houses agree that the rule should not be made, the rule shall, from the date on which the modification or annulment is notified by the Government in the Official Gazette, have effect only in such modified from or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under such rule.][1]

1. Inserted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

10. Removal of difficulties .- If any difficulty arises in the application of this Act to any case, the State Government may make such orders as may be necessary for the purpose of removing the difficulty.

11. Over-riding effect.- (1) The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law or order having the force of law or rules made under the proviso to Article 309 of the Constitution of India for the time being in force or any provision regulating the conditions of service of any allottee or in any order made by virtue of any such law, rules or provisions.

(2) Notwithstanding anything contained in any judgement, decree or order of any court or other competent authority the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicable, shall be determined in accordance with the provisions of this Act, and accordingly, any judgement, decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion shall be reviewed and orders made in accordance with the provisions of this Act.

12. Repeal.- The [1][Karnataka][1] State Civil Services (Allottees) (Special) Rules, 1971 are hereby repealed.

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

13. Savings .- Save as provided in section 11, nothing in this Act shall be deemed to affect the operation of the provisions of the Constitution of India in relation to the determination of the condition of service of persons serving in connection with the affairs of the State of [1][Karnataka][1].

1. Substituted by Act 40 of 1976 and by Act 25 of 1982 w.e.f. 11.4.1974.

THE KARNATAKA STATE CIVIL SERVICES (REGULATION OF PROMOTION, PAY AND PENSION) ACT, 1973has been amended by the following Acts, namely.-

Amendments (Chronological)

Sl. No.	Act No. and Year	Sections Amended	Remarks
1	11 of 1974	--	Sections 2,4 to 10 and 12 of the Act have come into force from 1.11.1956 and other sections from 11.4.1974.
2.	40 of 1976	Title, Preamble, 1(1), 2(a)(b), 3(a), 9A, 12, 13	1.11.1956
3.	25 of 1982	4(3)	27.7.1982

Amendments (Section-wise)

Sections	No and Year of the Act	Remarks
Title, Preamble	40 of 1976	1.11.1956
1(1)	40 of 1976	1.11.1956
2(a)(b)	40 of 1976	1.11.1956
3(a)	40 of 1976	1.11.1956
4(3)	25 of 1982	27.7.1982
9A	40 of 1976	1.11.1956
12	40 of 1976	1.11.1956
13	40 of 1976	1.11.1956