

KARNATAKA SERVICE EXAMINATIONS ACT, 1976

40 of 1976

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STATEMENT OF OBJECTS AND REASONS KARNATAKA ACT No. 40 of 1976 Karnataka Gazette, Extraordinary, dated 15-4-1976 The question of the validity of the prescriptions of departmental examinations and also the validity of the promotions of Government Servants on the basis of their having passed the said examinations have come up before Courts. The decisions have been conflicting. While in one set of cases the prescription of the examinations have been upheld, a contrary view has been taken in other cases on the ground that prior approval of the Central Government under Section 115(7) of the States Re-organisation Act had not been obtained. In a number of the cases Courts have also directed retrospective promotions and payment of arrears on the basis that no examination had been validly prescribed. The Supreme Court has held in *Ajit Singh v State of Punjab* reported in AIR 1967 SC 856 and in *Income-tax Officer, Alleppy v N.C. Ponnose*, reported in AIR 1970 SC 385 that appointments of civil servants to offices in which statutory functions are exercisable can not be made with

retrospective effective. (In view of these decisions, promotion of officials with retrospective effect) to posts where discharge of statutory functions is involved may lead to legal complications, besides involving payment of large sums of money as arrears of pay and allowances to persons who have not discharged the duties of the promotional posts. Therefore, in order to set the controversy at rest and to provide against the consequences indicated above, it is proposed. (i) to declare that no service examinations had been validly prescribed prior to 10th January, 1974, i.e., the date on which the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 were issued, after obtaining the previous approval of the Central Government under Section 115(7) of the States Re-organisation Act; (ii) to provide for review of all the promotions made up to that date; (iii) to provide for prospective promotions only; (iv) to provide for non-payment of arrears in view of the huge financial burden to the State exchequer. Hence this Bill.

1. Short title and commencement :-

(1) This Act may be called the Karnataka Service Examinations Act, 1976.

[(2) section and all the other sections except Section 8 shall be deemed to have come into force on the First day of November, 1956. Section 8 shall be deemed to have come into force on the eleventh day of April, 1974.

2. Definitions :-

In this Act, unless the context otherwise requires.

(a) "Service examinations" shall have the same meaning as the "prescribed examinations" in the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 issued under the proviso to Article 309 of the Constitution;

(b) "Government servant" means a person serving in connection with the affairs of the State of Karnataka and includes a person allotted or deemed to be allotted to the new State of Karnataka in pursuance of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956).

3. No service examination for the period from 1st November, 1956 to 9th January, 1974 :-

(1) For the period commencing on 1st November, 1956 and ending on 9th January, 1974, for the purpose of eligibility to promotion, no service examination shall be and shall even be deemed to have been prescribed for Government servants.

(2) A Government servant who, during the aforesaid period, was not promoted solely on the ground of not passing any service examination shall, if he has not already been promoted and if he is otherwise eligible, be promoted,

(3) Every promotion under sub-section (2) shall notwithstanding anything in any judgment, decree or order of any Court, be prospective only on and from a date after 10th January, 1974:

Provided that.

(1) the person promoted shall be entitled to initial pay on the date of actual promotion as if he was holding the promoted post from the date he would have been promoted but for not passing the service examination (hereinafter referred to as the eligibility date) but such person shall not be entitled to payment of any arrears for the period prior to the date of actual promotion;

(2) if the person to be promoted has retired from service prior to 10th January, 1974, he shall, if otherwise eligible, be deemed to have been promoted from the eligibility date and his pension and Death-cum-Retirement Gratuity shall be revised on the basis of the pay he would have drawn had he been so promoted from that date.

4. Service Examinations for the period from 10th January, 1974 :-

On and from 10th January, 1974.

(a) service examinations shall be the same as the prescribed examinations provided in the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974; and

(b) every Government servant including a Government servant promoted under sub-section (2) of Section 3 shall be required to pass the service examinations as provided and for the purposes specified therein. Failure to pass shall entail the consequences specified in the said Rules.

5. Review, etc :-

(1) To facilitate promotions under Section 3, a review of promotions

made between 1st November, 1956 and 9th January, 1974 shall be made and the persons promoted shall, if juniors to the person to be promoted, yield place and wherever necessary be reverted to the lower post.

(2) In the seniority list of persons in the class or grade of service to which a Government servant is promoted under Section 3, the rank of the promoted person shall be fixed as if he had been promoted to that class or grade of service on the eligibility date.

6. Application of Act No. 11 of 1974 :-

In respect of matters not expressly provided in this Act, the provisions of the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (Karnataka Act 11 of 1974) as amended by Section 8 shall, to the extent they are not inconsistent with this Act, be applicable.

7. Power to make rules :-

(1) The State Government may make rules for carrying 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 form 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.

8. Amendment of Karnataka Act 11 of 1974 :-

In the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (Karnataka Act 11 of 1974).

(1) for the word 'Mysore' wherever it occurs (including in the title, preamble, short title), the word 'Karnataka' shall be substituted;

(2) for clause (a) of sub-section (1) of Section 3, the following clause shall be substituted, namely.

"(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"

(3) after Section 9, the following section shall be inserted, namely.

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 form 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".