

THE KARNATAKA SERVICE EXAMINATIONS ACT, 1976

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STATEMENTS OF OBJECTS AND REASONS

I

Act 40 of 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 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 Vs. State of Punjab* reported in *All India Reporter*, 1967, Supreme Court 856 and in *Income-Tax Officer, Alleppy Vs. N.C. Ponnose*, reported in *All India Reporter*, 1970, Supreme Court 385 that appointments of civil servants to offices in which statutory functions are exercisable cannot be made with retrospective effect. (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 declared 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 Reorganisation 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.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A dated 15-4-1976 as NO. 2042 at page 6-7.)

II

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.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A dated 31-3-1981, as No. 223 at page 4.)

KARNATAKA ACT No. 40 OF 1976

(First Published in the Karnataka Gazette Extraordinary on the Twenty-first day of May, 1976)

THE KARNATAKA SERVICE EXAMINATIONS ACT, 1976

(Received the assent of the Governor on the Nineteenth day of May, 1976)

(As Amended by Act 25 of 1982)

An Act to provide for service examinations and connected matters.

WHEREAS the validity of departmental examinations for persons serving in connection with the affairs of the State was from time to time questioned;

WHEREAS while in one set of decisions, courts had held that such examinations could be prescribed validly after obtaining the previous approval of the Central Government in pursuance of the proviso to section 115 (7) of the States Reorganisation Act, 1956, in a later case, the Supreme court held that such previous approval can be assumed in terms of the Official Memorandum of the Central Government dated 27th March 1957;

WHEREAS the divergent views resulted in uncertainty and confusion in the matter of promotions and reviews thereof;

WHEREAS in order to set matters right, the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 have been issued prescribing service examinations;

WHEREAS in some cases on the basis of certain earlier court decisions retrospective promotions and payment of back salary ,etc., are being claimed and sought to be enforced;

WHEREAS in the circumstances, it is not feasible, financially and otherwise also, to so promote and pay;

BE it enacted by the Karnataka State Legislature in the twenty-seventh Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Karnataka Service Examinations Act, 1976.

¹[(2) This section and all the other sections except section 8 shall be deemed to have come in to 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.]¹

¹ Substituted by Act 25 of 1982 w.e.f. 21.5.1976.

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 Mysore in pursuance of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956).

3. No service examination for the period from 1 st November 1956 to 9th January 1974.- (1) For the period commencing on 1 st November 1956 and ending on 9th January 1974, for the purpose of eligibility to promotion, no service examination shall be and shall ever 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 judgement, 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".

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The Karnataka Service Examinations Act, 1976(40 Of 1976) has been amended by the following Acts namely:

Amendments (Chronological)

Sl. No.	Acts No. and year	Sections Amended	Remarks
1	40 of 1976	-	The Act (except section 8) came into force w.e.f 1.11.1956 and section 8 came into force from 11.4.1974
2	25 of 1982	1(2)	w.e.f 1.11.1956

Amendments Section-wise

Sections	Act No. and year	Remarks
1(2)	25 of 1982	w.e.f. 1.11.1956