

PETITIONER:
CHIEF SECRETARY TO GOVERNMENT OF ANDHRA PRADESH & ANR.

Vs.

RESPONDENT:
V.J. CORNELIUS ETC.

DATE OF JUDGMENT 18/02/1981

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 1099 1981 SCR (2) 930
1981 SCC (2) 347 1981 SCALE (1) 363

ACT:

Andhra Pradesh Revised Scales of Pay Rules 1969, Rule 3(2) & Fundamental Rules, Rule 22(a)(ii)-Fixation of pay-Provision that junior employee in selection grade of lower post not to draw more pay than his senior holding a higher post-Validity of.

HEADNOTE:

To implement the recommendations of a one-man Pay Commission, the State Government issued the Andhra Pradesh Revised Scales of Pay Rules 1969 providing for the revision of pay and creation of selection grade posts. The selection grade scale was fixed by adding three increments to the maximum of the revised scale of pay.

While implementing the pay scales, the Government realised that a senior holding a permanent post in one category but holding a post in the not higher grade on promotion would draw less pay in the higher post than a junior in the lower category who was given the selection grade. To avoid the anomalous situation thus created the Government by an executive order directed that the pay of an employee placed in selection grade shall be so fixed as not to exceed the pay of his senior working in the higher post on promotion.

This executive instruction was struck down by the High Court as being violative of Articles 14 and 16 and also on the ground that the executive instruction could not prevail over Fundamental Rule 22 (a) (ii).

The Government thereupon introduced Rule 5(2) in the Rules with retrospective effect from the date of the original order. In D. Krishnamurthy & Ors v. State of Andhra Pradesh & Anr. this rule was struck down by the High Court as being violative of Articles 14 and 16. No appeal was, however, preferred from the judgment of the High Court striking down the rule.

Instead of following a uniform policy in revising the pay of all employees in compliance with the direction of the High Court, the Government re-fixed the pay of some of the employees holding selection grade posts but declined to do so in the case of others on the ground that the re-fixation would be done only in the case of employees who had secured such directions.

In the appeals by the Government to this Court it was contended that it was wrong to suggest that since no appeal had been preferred against the judgment of the High Court in D. Krusbanurthy's case all the judgments of the High Court involving a similar question had become final become D. Krishnamurthy's case related to an altogether different category of employees of the State Government.

931

Dismissing the appeals,

^

HELD: 1. When the High Court issues a writ, direction or order under Art. 226 of the Constitution, it is not open to the State Government to implement the decision with regard to some and deny relief to others, although they belong to the same class of persons, and are equally governed by the principles laid down. The State Government is expected to adopt a uniform policy in regard to all its employees. [936 C-D]

2. Replacement of an executive instruction by the State Government by a rule framed under Art. 309 of the Constitution, for the fixation of pay of a person promoted to the Selection Grade at a stage lower than the minimum of the scales of pay of such Selection Grade so as not to exceed the pay of his seniors working in the higher posts on promotion, does not cure the constitutional vice inherent in the Government action as the provision is violative of Arts. 14 and 16 of the Constitution. [935 G-H]

3. The judgment of the High Court, by which sub-r. (2) of r. 5 of the Andhra Pradesh Revised Scales of Pay Rules, 1969 having been struck down as offending Arts. 14 and 16 of the Constitution and as being not in conformity with FR 22(a)(ii) not having been appealed from, had attained a finality and the re-fixation of pay, if any, had to be done as if sub-r. (2) of r. 5 never existed [937 B]

4. It is not open to the Government to question the correctness of the judgment of the High Court when it had attained finality, particularly when in compliance with the directions, it had re-fixed the pay of some of the employees in the Selection Grade posts, on the pretext that the right of appeal was not lost in the case of others in respect of whom no such direction has been issued. At any rate, the point not having been taken before the High Court, could not be allowed to be raised for the first time under Art. 136 of the Constitution. [936 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal NO. 383 of 1976.

Appeal by special leave from the Judgment and Order dated 12-6-1975 of the Andhra Pradesh High Court in Writ Appeal NO. 313 of 1975.

Connected with

Civil Appeal NOS. 1434-85/77, 2669/79 & 2670/79, 1763-1781/77, 2511, 2625, 2679, 2776/77, 332, 333, 909 & 930/78 and S.L.Ps. 70/76, 1769/77, 4246, 4379/77 and 251/79.

P. Rama Reddy, G. S. Narayana and G. N. Rao for the Appellant in all the matters.

B. Parthasarthy for the Respondent in CAs 383/76, 1443/77, 1444/77 (for R. 5), CA 1456/77 (for RR. 2 & 4), CA 1461/77 for R.17), CA 1463/77 for RR-1 & 2 and R. 10 in CA 1464/77 for R.1 in CA 1466/77 for R.1, 1468/77 for both the Respondents, 1470/77 for R. 1, CA 1476/77 for R. 2, 1481 for RR, 1767/77 for R. 1,

932

1768/77 for RR 1, 2, 4, and 5-8, 1773/77 for RR 1-4 and 5, 2625/77 for R.1, 2511/77 for all the RRs. 332/78 for R.3, 930/78 for RR. SLP 1769/76 for RR 1-4, 5 & 7.

K. Ram Kumar and Mrs. J. Ramachandran for the RR in CA 1472/77, CA 1473/77 for RR 1-5, 7, 8, 14, 15 and CA 1485 for all RRs.

A. Subba Rao in CA 1434 for RR1, 3, 4, 7, 8, 9 & 11, in CA 1440/77 for RR 1, 2, 3, 4, 6, 7, 10, 11, 13 & 16, in CA 1457/77 for Respondent (Sole), CA 1459/77 for RR 2, 3 and 4, CA 1484/77 for RR 1-2, 16-20, 22, 23, 28, 30, 32, 35 and in CA 1764/77 for Respondent (Sole).

G. Narasimhulu for all the Respondents in CA 1781/77.

B. Kanta Rao for RR 1-3 in CA 1441/77, in CA 1442/77 for RR 4, 8-11, 14, 15, 23 and 24, in CA 1769/77 for RR 1-35, 37-47, 49-62, 64, 65, 67-79, 81-83, 85, 87, 89, 91-99, 101-104, 106-108, 110-114, 116-117, 119-123, in CA 2670 for RR 1-5, 7-12 and 14-16 and 19-20 and in SLP 251/79 for RR 1-8.

The Judgment of the Court was delivered by

SEN, J.-This and the connected 81 appeals by special leave and seven special leave petitions directed against various judgments and orders of the Andhra Pradesh High Court and the Andhra Pradesh Administrative Tribunal, raise a common question: Whether it is permissible for the State Government of Andhra Pradesh to enforce sub-r. (2) of r. 5 of the Andhra Pradesh Revised Scales of Pay Rules, 1969 (hereinafter referred to as 'the Rules') issued by the State Government under proviso to Art. 309 of the Constitution. That depends on whether the Government is competent to withhold the Selection Grade pay-scales contrary to FR 22(a) (ii) to which the respondents were entitled on their being appointed to Selection Grade posts. The Government tries to justify such fixation of pay at a lower level than the minimum of the Selection Grade pay-scales on the basis that it was to ensure that seniors holding higher posts do not draw in such higher posts a pay less than what is drawn by their juniors in the lower posts in the Selection Grade.

The litigative propensities of the Government know no bounds. The Government still assumes that it is within their powers to fix the pay of the respondents lower than the minimum of the pay scales of the Selection Grade posts to which they were promoted although the High Court has unequivocally struck down the impugned sub-r. (2) of r. 5 of the Rules as ultra vires the State Government being violative

933

of Arts. 14 and 16 of the Constitution and being contrary to FR 22 (a) (ii). It is somewhat unfortunate that the Government should have embarked upon this course of action, thereby subjecting thousands of their employees into this fruitless litigation, which is nothing but an exercise in futility, resulting in wasteful expenditure of public money. We wish to impress upon the Government that they are in duty bound to respect the judgments and orders of the courts pronouncing upon the constitutional validity of the various rules, orders and notifications issued by the Executive.

To bring out the point involved, it is necessary to state a few facts. By G.O. MS. 173, Finance, dated June 13, 1969, the State Government issued the Andhra Pradesh Revised Scales of Pay Rules, 1969, providing for revision of pay and creation of Selection Grade posts, the number of such Selection Grade posts for every category being limited to 15% of the total number of posts in that category with a view to implement the recommendations of the One-man Pay

Commission appointed for the purpose. The Selection Grade scale was fixed by adding three increments to the maximum of the revised scale of pay. The pay-scales for the Selection Grade so fixed were found to have a higher start than the minimum pay prescribed for the next higher category of posts. Some of the senior persons holding permanent posts in one category, but holding posts in the next higher category on promotion were found to draw less pay in the higher posts as compared to their juniors in the lower category who were given the Selection Grade scale of pay. The Government felt that this would result in serious discontentment among the senior employees holding higher posts but drawing less pay than the minimum prescribed for the Selection Grade in the lower category. At a meeting of the Secretaries to Government held on June 24, 1969, it was decided to set right this anomalous position, by the issue of an executive order. Consequently, the Government issued a departmental instruction in U.O. Note No. 808/PC/69-I dated July 26, 1969, directing that the pay of an employee placed in the Selection Grade shall be so fixed as not to exceed the pay of his seniors working in the higher post on promotion. Para 3 (iii) of the U.O. Note was as follows:

(iii) Since in many cases, the minimum of the 'selection grade' is higher than the minimum of the next higher grade, there is a possibility of a junior appointed to 'selection grade' hereafter drawing more pay than his senior who has already been promoted to higher grade. With a view to avoid such an anomaly, it will be necessary to prescribe that a person promoted to a 'selection grade' shall draw the minimum of the remedy was by way of an appeal. That judgment has attained a

934

promotion category should be drawing less than such minimum his pay shall be limited to the pay being drawn by such senior, in his own scale.

The direction contained in para 3(iii) of the aforesaid U.O. Note was struck down by Chinnappa Reddy, J. in S. A. Prabhakar & Ors. v. Government of Andhra Pradesh by his judgment dated December 26, 1973, on the ground that the executive instruction could not prevail over FR 22(a) (ii) and secondly, fixation of pay at anything lower than the minimum of the scale of pay sanctioned for the Selection Grade posts was violative of Arts. 14 and 16 and was also contrary to the Directive Principles of State Policy enshrined in Art. 39 of the Constitution, according to which there shall be equal pay for equal work. The learned Judge was of the view that the Government having created Selection Grade posts carrying a certain scale of pay and having appointed persons to those posts, it was not open to them to allow that pay to some and deny to others on the ground that their seniors working elsewhere were not drawing the same scale of pay.

The Government preferred a Letters Patent Appeal against the judgment of Chinnappa Reddy, J., and made a grievance that while the writ petition was pending the offending U.O. Note (No. 808/PC/ 69-I dated July 26, 1969) had been substituted by sub-r. (2) of r. 5 of the Rules issued under GO MS 215, Finance, dated September 5, 1973, with retrospective effect from March 19, 1969. That being so, the Division Bench dismissed the appeal observing that the appropriate remedy was to file a review petition. Against the judgment of the Division Bench, the Government preferred a petition for grant of special leave in the Supreme Court under Art. 136 of the Constitution, being SLP

(Civil) No. 1878 of 1975 and this Court issued a show cause notice to the respondents on September 28, 1975. But the Special Leave Petition was ultimately dismissed as withdrawn on October 27, 1978, in view of the fact that a review petition had been filed.

Sub-r. (2) of r. 5 of the Rules, inserted by G.O. MS. 215, Finance, dated September 5, 1973, reads:

(2) Notwithstanding anything contained in sub-rule (1) or any other rule relating to fixation of pay, if a person in any post is promoted or appointed to the selection grade in that post he shall draw the minimum of such selection grade provided that if any of his seniors, who is promoted or appointed by transfer to a higher post, draws a pay in that

935

higher post less than such minimum, his pay shall be limited to the pay so drawn by his senior.

Explanation.-For the purpose of this sub-rule, a person shall be deemed to be a senior to another even though both of them belong to two different classes, categories/grades, provided these two are sources for promotion or appointment by transfer to a higher post.

In D. Krishnamurthy & Ors. v. State of Andhra Pradesh & Anr. (Writ Petition No. 4459 of 1972), Mukhtar, J., by his judgment dated August 12, 1974, struck down the rule as it was violative of Arts. 14 and 16 of the Constitution. The learned Judge observed that in view of the decision of this Court in B. S. Vadera v. Union of India, Ors it was settled law that rules framed under the proviso to Art 309 of the Constitution, whether retrospective or prospective in effect, must be enforced, if framed by the appropriate authority, unless it can be shown that the rules so framed are in violation of any of the rights guaranteed under Part III or any other provision of the Constitution. He was of the view that sub-r. (2) of r.5 of the Rules does not satisfy the test because it takes away the rights to equality before the law and equality of opportunity in matters of public employment, guaranteed under Arts. 14 and 16 and was, therefore, void and unconstitutional. He was dealing with the case of Deputy Tahsildars in the Nizamabad District who were promoted to the Selection Grade but could not draw their pay of Selection Grade because it exceeded the pay of their immediate seniors working as Tahsildars, by reason of sub-r. (2) of r.5 of the Rules. The learned Judges observed that if FR 22(a) (ii) was applicable, and there was no reason why it should not be made applicable, the pay of the Deputy Tahsildars in the Selection Grade could not be fixed at less than Rs. 500 which was the minimum of the time-scale fixed for the Selection Grade of Deputy Tahsildars. According to him, sub-r. (2) of r.5 was per se discriminatory because a Deputy Tahsildar in the Selection Grade with no seniors promoted to a higher post could draw minimum pay of such Selection Grade; but a Deputy Tahsildar in the Selection Grade who unfortunately had a senior promoted to a higher post who drew a pay in that higher post which was less than the minimum of the scale of pay of Selection Grade Deputy Tahsildar, could not draw more pay than that drawn by his senior, although he was performing the same duties and discharging the same responsibilities attached to such Selection Grade posts for which higher emoluments had been prescribed. The learned Judge observed: "To put in the words Chinnappa Reddy, J. it amounts to denial of the

936

principle of 'equal pay for equal work' enshrined in Art. 39

of the Constitution as one of the Directive Principles of State Policy and violates Arts. 14 and 16 which guarantee equality before the law and equal opportunity in the matter of public employment."

The appellant, in the supplementary affidavit filed by the Deputy Secretary to Government of Andhra Pradesh, Finance and Planning: Department (Finance Wing) admits that the judgment of Mukhtadar, J., in Krishnamurthy's case supra had become final because steps were not taken in time to go in appeal; but, nonetheless, asserts that since the matter before the learned Judge related to Selection Grade Deputy Tahsildars, it was wrong to suggest that all the judgments of the High Court involving a similar question had become final, or that the Government had lost its right of appeal in other similar matters. We are really at a loss to appreciate this attitude on the part of the Government in showing scant respect to the High Court although the judgments had become final and the point involved was one and the same. There has been total failure on the part of the Government to realise that the replacement by sub-r. (2) of r.5 of the Rules, of the executive instruction contained in the U.O. Note, does not cure the constitutional vice inherent in the governmental action.

This is nothing but a plea of justification for the Government had, in the meanwhile, on the strength of the offending U.O. Note and sub-r. (2) of r. 5, promoted thousands of their employees to Selection Grade posts in different departments, but fixed their pay at a point lower than the pay drawn by their seniors in the next higher grade. There have been several judgments of the High Court and of the Andhra Pradesh Administrative Tribunal on writ petitions filed by the persons so affected.

The Government, instead of following a uniform policy, have refixed the pay of some of the employees holding Selection Grade posts, in compliance with the directions of the High Court, but declined to do so in the case of others on the pretext that the re-fixation would be done only in the case of employees who have secured such directions. It is impressed upon us that the Government wants a decision on merits as the matter involved a question of principle. We were asked to determine the validity of sub-r. (2) of r.5. It was urged that the Government wants a clear pronouncement on the extent of their powers in the matter relating to fixation of pay of a person appointed to the Selection Grade, in accordance with sub-r.(2) of r.5. We are afraid, the question does not arise in these appeals. It is quite clear from the judgments under appeal that the validity of sub-r. (2) of r.5 was not in question. We are constrained to observe that if the Government wanted

937

to question the correctness of the judgment in D. Krishnamurthy's case, the 'selection grade' provided that if his senior in the higher finality which cannot now be upset. In that judgment, Mukhtadar, J., struck down sub-r. (2) of r.5 as ultra vires the Government as being violative of Arts. 14 and 16 of the Constitution and as being not in conformity with FR 22(a)(ii). The effect of the judgment of Mukhtadar, J., in Krishnamurthy's case (supra) is that sub-r. (2) of r.5 is wiped out for all purposes and the re-fixation will have to be done as if sub-r. (2) of r. 5 never existed. The whole attempt of the Government in filing these appeals is to retrieve the lost ground which cannot be permitted.

In the result, the appeals and the special leave petitions are dismissed. There shall be no order as to costs.

N.V.K.
938

Appeals & Petitions dismissed.

JUDIS