

CASE NO.:
Appeal (civil) 4163-4164 of 2004

PETITIONER:
State of Karnataka & Anr

RESPONDENT:
Karnataka State Patels Sangha & Anr

DATE OF JUDGMENT: 08/02/2007

BENCH:
A.K.MATHUR & H.S.BEDI

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO.850 OF 2006.

A.K. MATHUR, J.

These appeals are directed against the orders passed by learned Division Bench of the High Court of Karnataka at Bangalore dated 25.2.2002 and 18.7.2005 whereby the Division Bench of the High Court has affirmed the direction given by the learned Single Judge which reads as follows:

" 12.(i) Compassionate allowance made payable by Government Order No.RD 443 MVS 182 dated 20-9-1984 (Annexure-A) to the Ex-hereditary Patels is made payable from August 1,1979 instead of from August 15,1984. Such of those persons who received compassionate allowance at Rs.100/- a month pursuant to the order at Annexure-A are therefore entitled to the arrears at that rate from 01-08-1979 to 15-08-1984.

(ii) Enhanced ad-hoc allowance at Rs.500/- a month made payable to such of those Ex-hereditary Patels by order at Annexure-B dated May 30,1994 is made payable from July 1, 1990 instead of from January 1, 1994. Accordingly, such of those persons who are drawing the adhoc allowance of Rs.500/- would be entitled to the arrears at that rate from 01-07-1990 to 01-01-1994.

(iii) If the petitioner-Patel Srinivasa Reddy (in W.P.No.33919 has made application either for grant of compassionate allowance or for grant of adhoc allowance pursuant to the orders at Annexures-'A' and 'B' before the appropriate authority, that application or those applications shall be considered on merits and if he is found eligible, he shall be paid compassionate allowance at Rs.100/- a month from 01-08-1979 till 30-06-1990 and ad-hoc allowance at Rs.500/- from 01-07-1990 till date.

(iv) Applications, if any, by persons claiming to be Gumasta Patel are pending before the competent authorities, those applications shall be considered on merits and if they are otherwise found eligible they shall be paid compassionate allowance at Rs.100/- a month from 01-08-1979 to 30-06-1990 and ad-hoc

allowance at Rs.500/- from 01-07-1990 till date."

Respondent No.1 is Karnataka State Patels Sangha and Respondent No. 2 is Patel Srinivasa Reddy. The present writ petition was filed by the respondents claiming similar treatment as was given to Shanbhogues category of Village Officers. The contention in the writ petition was that both Patels as well as Shanbhogues are holders of similar offices within the meaning of Section 2(n) of the Karnataka Village Offices Abolition Act, 1961 (hereinafter to be referred to as "the Act"). After abolition of these village offices, Shanbhogues were granted compassionate allowance or ad hoc pension at the rate of Rs.100/- per month with effect from 30.7.1979 and the same was raised to Rs.500/- per month with effect from 20.7.1991. So far as Patels are concerned, their demand for grant of similar treatment i.e. ad hoc pension or compassionate allowance at the rate of Rs.100/- per month was also conceded by the State with effect from 1.8.1984 and similarly, the enhancement of compassionate allowance was also made to Rs.500/- per month with effect from 30.5.1994. Therefore, the grievance of the Association of Patels i.e. the members of the Association was that when the Shanbhogues were given the benefit w.e.f. 30.7.79 & 20.7.1991, then similar treatment should also be given to the members of the Respondent No.1- Association with effect from the same date as they were similarly situated. Since it was denied to them, therefore, they filed writ petition in the High Court of Karnataka seeking a direction against the State Government for extending the similar benefit as was given to the Shanbhogues. Learned Single Judge of the High Court allowed the writ petition and granted similar benefit with retrospective effect as was given to the Shanbhogues i.e. ad hoc pension of Rs.100/- with effect from the same date as was given to the Shanbhogues Village Officers and likewise enhanced allowance at the rate of Rs.500/- from the same date as was given to the Shanbhogues. Aggrieved against the order of the learned Single Judge, the matter was taken up before the Division Bench and the Division Bench affirmed the order of the learned Single Judge. Aggrieved against the order of the Division Bench of the High Court the appellants have filed the present appeals.

Mr. Hegde, learned counsel appearing for the State Government strenuously urged before us that the position of the Shanbhogues and that of the Patels are different and their duties are also different. Therefore, the respondents cannot claim similar treatment. Mr.Hegde tried to take us to the history in order to justify that these two offices are separate and they were not discharging similar duties. Therefore, they cannot claim parity and the view taken by the Karnataka High Court is not sustainable. We need not go to the background because the two orders which have been produced under which the allowance was given to the Patels on the understanding that both the offices are similar and they used to discharge similar duties. Therefore, similar treatment was conceded by the State. But only difficulty was that for Shanbhogues employees compassionate allowance at the rate of Rs.100/- per month was given with effect from 30.7.1979 and to the Patels it was given with effect from 1.8.1984 and the same was enhanced to Rs.500/- per month with effect from 30.5.1994 instead of from 1991. This grievance was redressed by learned Single Judge and rightly so in our opinion because once both the offices i.e. village Offices were held hereditarily by the two class of persons and they were discharging same revenue functions, then there should not have been any discrimination between the persons similarly situated. The High Court has rightly granted the respondents the same treatment from the same date as was given to the Shanbhogues. Once it is accepted by the State Government that they were similarly placed and they were discharging similar duties, then there was no justification on the part of the State Government not to give the same

treatment from the same date as was given to Shanbhogues. Mr.Hegde, learned counsel for the appellants tried to take us through the judgment of learned Judge which goes back into the history and tried to justify the action of the State Government. But in view of the fact that when the State Government themselves have conceded and granted similar treatment to the Patels taking them to be similarly situated, then there was no justification to deny them the similar treatment as was given to the Shanbhogues employees.

Mr.Hegde, learned counsel submitted that these are all concessions and no mandamus can be issued and in support of his submission, he invited our attention to a decision of this Court in The State of Madhya Pradesh v. G.C.Mandawar ([1955] 1 S.C.R. 599). In this case, the question was with regard to grant of dearness allowance under Rule 44 of the Fundamental Rules. Discretion vests with the local Government whether it will grant dearness allowance to any Government servant and if so how much. It imposes no duty on the State to grant it and therefore no mandamus can be issued to compel the State to grant it nor can any other writ or direction be issued in respect of it as there is no right in the Government servant which is capable of being protected or enforced. This was in the context of an individual seeking dearness allowance under Rule 44 of the Fundamental Rules and in that context, the Court held that no mandamus can be issued for grant of dearness allowance as it was the discretion of the local Government and it cannot be regulated by issuing mandamus. Therefore, this case stands on a different footing. The case before us is for invoking Article 14 of the Constitution when two class of persons are similarly situated, then one cannot be discriminated against.

As against this, learned counsel for the respondents invited our attention to a decision of this Court in State of A.P. v. G.Ramakishan & Ors. [(2001) 1 SCC 323]. This was a case where stipend was given to the postgraduate students of Agricultural University from a date posterior to the date from which the same enhanced rate was given to the postgraduate students of Medical Colleges. Then the question arose that when the Postgraduate students of Agricultural University and the postgraduate students of Medical Colleges are similarly placed, then what is the basis for giving the stipend from different dates. This Court held that in absence of any pleading stating any reasonable or rational basis for giving enhanced stipend with effect from two different dates and any material in support of such action was violative of Article 14 of the Constitution and this Court directed that same benefit should be extended from date posterior as was given to the Postgraduate students of Medical Colleges. Similar is the position here. When the Patels and Shanbhogues both were holders of village Offices and discharging identical duties, then there was no justification to deny the respondents the same benefits as was given to the Shanbhogues.

As a result of our above discussion, we do not find any merit in these appeals and the same are dismissed. No order as to costs.