

(1996) 05 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 15515 of 1989

A.N. Sangameswara

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 30-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 226, 299 (1), 299 (2)

Citation : (1996) 3 KarLJ 531

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Basavaraj, for Vijaya Shankar Associates, for the Appellant; S.S. Guttal, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—This petition under Article 226 of the Constitution has been filed by the petitioner, inter alia seeking for a direction to the respondents step up the pay scale of the petitioner with effect from 1.6.1982 to bring it on par with the pay scale of Sri Munikrishna, Typist on the establishment of this Court and to grant all such other consequential benefits flowing from such direction. Strangely, petitioner is not questioning the validity or otherwise of the memo of the 2nd respondent dated 14.12.1988 (Annexure-H) and that of the order of the State Government dated 24th November 1988 (Annexure-H2).

2. At the outset, it should be noticed that the basis of the claim of the petitioner is mainly on the pretext that the pay scale, duties, functions and responsibilities that the Typist-Copyist and Typist are similar and identical.

3. The cause for the grievance of the petitioner emanated only after the issuance of Government Order No. FD 89 SRP 82 dated 14.9.1982. By the said order, Government was pleased to accord sanction for stepping up of the pay of the senior Government Servant to that of his junior, provided the following conditions are fulfilled namely-

"if the pay of the Government Servant who in the pre-revised scale was drawing immediately before 1st January, 1982, more pay than another Government Servant - junior to him in the same cadre gets fixed in the revised scale at the same stage on 1st January, 1982 and the Junior Government Servant draws more pay than the senior Government Servant on account of accrual of normal increment during the period between 1st February 1982 and 1st December 1982 the pay of the Senior Government Servant shall be stepped up to that of the Junior Government Servant from the date the Junior Government Servant comes to draw more pay."

4. The Principle behind this Government Order seems to be that Senior Government Officer should not draw less salary than what his Junior in the same cadre is being paid. If for any reason that happens, then there must be stepping up of pay only once to bring it on par with that of his junior again in the same cadre.

5. In exposing his imaginary grievance the petitioner in the petition has stated that he joined the services on the establishment of this Court as Typist-copyist on 2.4.1979 in the pay scale of Rs. 300-490. One another person by name Sri M. Munikrishna was appointed on the establishment of this Court on 10.6.1981 in the same pay scale of Rs. 300-490. According to petitioner, himself and his so called junior Sri Munikrishna on 1.4.1982 was drawing salary of Rs. 505/- and on 1.6.1982, Sri Munikrishna was given an increment which increased his salary to Rs. 520/-, which was more than what petitioner was drawing as Typist-copyist. According to the petitioner his junior Sri Munikrishna, who is a Typist is drawing more salary than him and in view of the Government Order dated 18th September, 1982, that he is eligible and entitled for stepping up of pay to bring it on par with his junior Sri Munikrishna. In support of his grievance, the petitioner in his lengthy petition has asserted that till the amendment of service conditions under High Court of Karnataka Service (Conditions of Service and Recruitment) Rules 1973 by a notification dated 17.5.1989, the post of Typist and Typist-Copyist were treated by the authorities as posts in different cadres, though the qualifications, the method of recruitment, the pay scales, the nature of duties and responsibilities of the two posts were similar and identical. By an aforesaid amendment to the Service Rules, 1973 the two posts which were placed in different grades have now been treated as equivalent posts. According to the petitioner, there is a disparity in the pay scale of petitioner and that of Sri Munikrishna, who is supposed to be junior to him as on 1.6.1982 and in view of the Government Order dated 14.9.1982, he feels that there should be stepping up of his pay to that of Sri Munikrishna from the date the junior Government Servant comes to draw more pay. To cure this hallucinatory and non-existent injustice, petitioner has made representation to the concerned authorities for appropriate relief. Second respondent by his memo dated 15.12.1988 informed the petitioner that his request in his representation has been rejected in view of the Government Order dated 24.11.1988. Surprisingly, those orders though produced have not been questioned by the petitioner in this proceedings.

6. Sri Basavaraj, learned Counsel for the petitioner contended that the respondents have acted in violation of Articles 14 and 16(1) of the Constitution of India in applying the Rule of stepping up of pay scales to Typists and in not applying it to Typist-copyists and that the denial of benefit of stepping up of the pay scale to the petitioner on the ground that the posts of Typist and Typist-Copyists are in different cadres is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. In support of his contention, the learned Counsel strongly relies upon the decisions of this Court in the case of C.L. VIJAYAKUMAR v. STATE AND ANR., W.P.No. 10561/1980 DD 4.11.1980, M.R. JOSHI v. STATE AND ANR., W.P.20191 to 197/1980 DD. 20.11.91, D.V. KRISHNA MURTHY v. STATE AND ANR., W.P.17766 to 17775/1984 DD 18.8.1986

7. In Vijaya Kumar's case, the question that arose for consideration was whether the Typist-Copyist on the establishment of this Court were eligible for grant of advance increments if they had acquired the graduate qualifications. This Court after detailed examination of the matter held that there is no essential difference in the nature of duties and responsibilities, the educational qualification and the pay scale of Typists and Typist-cum-Copyist and Second Division Clerks and as such, the State Government could not have denied the benefit of advance increments to Typist-Copyist after they acquired degree qualification. It is also observed in that decision that the post of Typist-Copyist is similar to that of the post of Typist. The ratio of the above decision was once again followed by this Court in M.R. Joshi's case and in D.V. Krishna Murthy's case. In those decisions, this Court did not hold that two cadres of Typist-Copyist and Typist are one and the same, even though the benefits given to Typists was extended to Typist-Copyist. In my view, the ratio decidendi in those cases will not apply to the facts and circumstances of the case on hand and further the observation made by this Court in those cases does not establish that the two cadres of Typist-Copyists and Typists are one and the same. The present case is not a case of non-payment of advance increment between the class of employees, discharging similar work and responsibility, not a case where equals are treated unequally to offend Article 14 of the Constitution and not a case where pay scales of same class of employees are discriminated. Here is a case where an employee on the establishment of this Court, appointed as Typist-Copyist a separate cadre earlier to the amendment of Service Rules in 1979, demands to equalise his pay with that of Typist, who had entered the service on the establishment of this Court a little later in different cadre altogether basing his claim on the Government Order dated 18.9.1982. In the absence of challenge to those rules which had categorised the posts of Typists and Typist-Copyists in two separate distinct and different cadres, petitioner cannot as a matter of right claim for stepping up of his pay on par with an employee in a totally different cadre, even though the duties and responsibilities attached to those posts are more or less the same when a rule making authority has treated them as a separate class or category. This Court while exercising its jurisdiction cannot infer that all of them would fall under a single class or category. The Rule making authority can definitely create

more than one grade of officers for doing the same work. Difference between the pay scales among such dissimilar class of employees cannot be held either as discriminatory or arbitrary within the meaning of Article 14 of the Constitution of India. It is suffice to say that the Government Order dated 18th September, 1982 would apply to persons belonging to the same cadre and does not apply to persons belonging to different cadres. In the present case, there is no scope for applying the order of the State Government dated 18.9.1982, when the petitioner, Typist-Copyist and Sri Munikrishna, Typist belong to separate categories in the Schedule to the Rules framed by Hon"ble Chief Justice of this Court exercising his powers under Article 229(1) and (2) of the Constitution of India. According to me, there is no element of arbitrariness in the decision of respondents dated 24.11.1988 and it does not violate any of the provisions of the Constitution of India calling for interference by this Court.

8. That apart, earlier to the amendment of the Service Rule in 1989, merging the two posts of Typist-Copyist and Typist, the establishment of this Court had maintained separate seniority lists for the respective cadres only to indicate that they are two different and distinct separate cadres and common seniority list for the purpose of promotion to the cadre of First Division Clerks. It is needless to say that comparison of pay of officials could be with the officials belonging to the same cadre but not with those belong to different and separate cadre or class. Similarly stepping up of pay could be only if a junior official in the same cadre is drawing more salary than that of senior official in the same cadre. The benefit under the Government Order dated 14.09.1982 with regard to stepping up of pay is admissible only if both senior and junior Government Servants belong to the same cadre.

9. For the reasons that the petitioner does not fulfill the conditions covenanted in the Government Order dated 14.9.1982 and when he is not seeking to step up the pay within the same cadre and when he is requesting this Court to direct respondents to step up pay to bring it on par with an official working in a different cadre altogether, when the petitioner has not questioned the vires of the rules which has placed posts of Typist and Typist-Copyists in separate cadres and when he has not questioned the validity of the memo dated 14.12.1988 and the Government Order dated 24.11.1988, this Court cannot grant any relief to the petitioner.

10. In this view of the matter, Writ Petition deserves to be dismissed. Accordingly, it is dismissed. Rule discharged. There will be no order as to costs.