(1984) 06 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No''s. 861 to 870 of 1979

Ananda and Others APPELLANT

Vs

Karnataka State Financial Corpn. RESPONDENT

Date of Decision : 15-06-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16 (1)
Karnataka State Civil Services Rules, 1977 — Rule 8 (1)

Citation : (1985) ILR (Kar) 446

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rama Jois, J.—In these ten Writ Petitions, the Petitioners who are Assistants in the service of the Karnataka State Financial Corporation (hereinafter referred to as ''the Corporation'') have sought for the issue of a Writ of Mandamus directing the Corporation to extend the benefit of Rule 8(1) read with Schedule-II of the Karnataka State Civil Services (Revised Pay) Rules, 1977 in the matter of fixation of their pay and to give them consequential benefits.

2. The facts of the case in brief are as follows : The Corporation is a Statutory body constituted and established under the provisions of The States Financial Corporations Act, 1961 by an order of the State Government. Therefore, it falls within the definition of ''State'' as defined in Article 12 of the Constitution and therefore, bound by the fundamental rights incorporated in Part III of the Constitution.

3. In the service of the Corporation there has been a cadre designated as Assistants (formerly designated as Junior Assistants). The pay scale fixed for the said post by the Corporation which was in force in the year 1976 was Rs, 250-15-400-20-500. All the Petitioners were selected and appointed as Assistants in the service of the Corporation. In the first instance, they were appointed on entraining for six months. During the training period , they were

only given a consolidated remuneration of Rs. 400/- per month. After successful completion of the training, they were appointed regularly as Assistants in the pay scale of Rs. 250-500. The 4th Petitioner was appointed as such in March 1977, others in October 1977.

4. The Governor of the State of Karnataka promulgated the Karnataka Civil Services (Revised Pay) Rules, 1977 (in short ''the Rules'') on 20th December, 1976. Under the said Rules, the pay scales of the State Government Servants were revised with effect from 1st January, 1977. The said Rules were promulgated on the recommendation of Narayan Pai Commission. Under the said Rules, there was rationalization of pay scales. One of the methods adopted was to merge the Dearness Allowance into basic pay. For the purpose of giving effect to the new Pay Scales under the Rules, a conversion table was incorporated in Schedule-II of the Rules. Rule-8 of the Rules provided that initial pay of Civil Servants as on the date on which the Rules came into force should be fixed in accordance with the corresponding payscale indicated in the II Schedule.

5. After the above Rules came into force, the Corporation also took up the question of revision of pay scales of its employees on the same lines as those indicated in the Rule. Accordingly, the Corporation by its resolution dated 30-3-1978 resolved to revise the pay scales of all its employees. The Resolution reads :

"The Board of Directors in their meeting held on 22nd June, 1976 had proposed certain revisions and rationalisation in the pay scales and also reorganisation of the organisational set up of the Corporation with effect from 1-4-1976. The Industrial Development Bank of India, who were consulted in the matter , have given their concurrence to the proposal. After that, the proposals were sent to the State Government for their approval as required under the provisions of the State Financial Corporations Act. Recently, the Government have suggested a system of revised scales merging the Dearness Allowance and Additional Dearness Allowance with her to paid with the basic pay to be adopted by the Corporation with effect from 1st January, 1977. They have also stated that the pay should be fixed in the new scales in accordance with the provisions of the Karnataka Civil Services (Revised Pay) Rules, 1976. All the appointments to be made on or after 1-4-1978 will be in the new pay scales. However. we have made certain appointments during the period between 1-1-1977 (the date from which the new pay scales are effective) and 30-3-1978. In all these cases, the total emoluments will be protected by suitable fixation of their pay in the revised pay scale as near to their total emoluments in the existing pay scale (on the date of appointment) as possible and any difference will be treated as personal pay. The present scale and the revised scale of pay: as suggested by the Government, merging the Dearness Allowance and Additional Dearness Allowance with the basic pay, are detailed below :"

As far as these Writ Petitions are concerned, we are concerned only with the revised pay scale applicable to the Assistants. Revised pay scale fixed for the post of Assistants was Rs. 440-20-500-25-600-30-750-50-900.

6. As can be seen from the resolution , the revised pay scales were proposed to be given effect to with effect from 1-1-1977. As the Corporation resolved to revise the pay scales with retrospective effect from 1-1-1977 and as the Corporation had made appointments including those of the Petitioners after 1-1-1977 the Corporation desired to protect the pay of Petitioners while fixing their pay the new scale as on the date of their appointments. On this issue there was correspondence between the Corporation and the Government to which I shall refer later. The relevant part of the final letter of the Government dated 14-6-1978 reads :

"The pay of the employees of the Corporation may be fixed in the revised pay scales with effect from 1.1.1977 in accordance with the provisions of the Karnataka Civil Services (Revised Pay) Rules 1976. In respect of the employees appointed during the period between 1-1-1977 and 31-3-1978 , any drop in their emoluments on account of fixation of pay in the revised pay scales may be protected by treating the difference as ''personal allowance'' absorbable in future increases as pay."

7.Thereafter the Corporation promulgated the revised pay scales with effect from 1-1-1977 with the aforementioned conditions. Pursuant to said order, the basic pay of all the Assistants who were in service on or prior to 1-1-1977 was fixed by applying the conversion table specified in the II Schedule to the Rules which were adopted by the Corporation The Petitioners, as stated earlier, were not in the service of the Corporation as on 1-1-1977 though they had already joined the service of the Corporation prior to the decision of the Corporation on 30-3-1978 to revise the pay scales of its employees. When the question of fixation of the Petitioners came up, the Corporation fixed the initial pay of the Petitioners without extending to them the benefit of the conversion table. According to the Corporation , the conversion table was inapplicable to the Petitioners for the reason that the revision of pay scales were given with retrospective effect from 1-1-1977 and the conversion table was applicable to only those who were in service on that day in view of Rule 8 of the Rules and the Petitioners joined service after 1-1-1977.

8. The Petitioners question the constitutional validity of not extending the benefit of conversion table to them. They contend that not extending the conversion table and the imposition of the condition approved by the Government in its letter dated 14-6-1978 extracted earlier, is violative of Articles 14 and 16(1) of the Constitution.

9. In order to appreciate the contention of the Petitioners it is necessary to set out the relevant part of the Rule 8 and Schedule II of the Rules :

"8. Fixation of initial pay in the revised scales :

(l)(a) The initial pay of a Government employee who elects or is deemed to have elected, under sub rule (3) of Rule 7, to be governed by the revised scales shall, unless the Governor by special order otherwise directs, be fixed separately

(i) in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended ;

(ii) and in respect of his pay in the officiating post held by him.

(b) Such pay shall be fixed at the stage specified in column 2 of the Second Schedule corresponding to his basic pay in the existing scale appearing in column 1 of the said Schedule."

SECOND SCHEDULE (See Rule 8(1) -- Basic pay in existing scale including Pay in revised stage Pay on account of stagnation increment. scale -- Existing Scale: Rs. 250-15-310.20-350-EB-25-500 250 630 265 660 280 660 295 690 310 720 330 750 350 800 375 800 400 850 425 900 450 950 475 1000 500 1060 525 1060 550 1060 575 1060 -- Thus it may be seen, the basic pay of a servant who was drawing a basic pay of Rs. 250/- in the old scale of Rs. 250-500 would be Rs 630/-in the new scale. If the basic pay of a servant was higher, his basic pay in the new scale also would also be higher as indicated further in the second schedule.

10.The benefit of the table has been extended to all the Assistants who were already in the service of the Corporation on 1-1-1977. But when it came to the fixation of pay of the Petitioners, their pay was not fixed according to the conversion table on the ground that it was applicable only to those who were in service on 1-1-1977.

11. How the pay of the Petitioners has been fixed and how they have been prejudiced stand explained by the statement Annexure ''C'' to the Petition.

It may be seen that if the conversion table was applied, the basic pay of each of the Petitioners would have been Rs.758/-on the date of his first appointment and he would be earning annual increments above that in accordance with the incremental scale in the new scale of Rs. 440-900. It may also be seen that what has been done is the basic pay of each of the Petitioners is fixed at Rs. 526/- and the difference of Rs. 122/-between Rs.526/- and Rs. 648/- which was their total pay in the old scale was treated as personal pay subject to absorption in future increments which was the condition imposed by the Government in its letter dated 14-6-1978 extracted earlier.

12. The position emerging as a result of the method of fixation adopted is starting in that ;

(i) Pay of each of the Petitioners whose total emoluments was Rs. 648/- in the old scale was fixed in the new scale at Rs. 526/- and Rs. 122/- was treated as personal pay though their total pay should have been Rs. 758/- as that was the total pay fixed for an assistant who was drawing a basic pay ofRs.250/-on 1-1-1977. Thus the pay of the Petitioners stand reduced by Rs- 110/-;

ii) The result of treating Rs. 122/- as personal pay subject to absorption in future increment is that for another atleast about eight years the Petitioners would not be securing any annual raise in their pay.

SCHEDULE-- ''C''***

sl.

Names

Qualification

Present designation

Date of appointment Order

Date of joining service

Date of absorption after training

Pay in the

Difference as on 1-10-77

Old Scale (Rs. 250-500)

Present scale (Rs. 440-900)

Scale (Rs. 440-900) ought to have been given

Basic Rs.

Total Rs.

Basic Rs.

Total Rs.

Basic Rs.

Total Rs.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

1.

Ananda K. N.

B.Com

Assistant

7-3-77

18-3-77

8-10-77

250

648

440

526+ PA 122

630

758

110

2.

Aswathanarayana Setty B.N.

B.Com B.Sc., D.M.EAotom. in Tech)

-do-

-do-

25-3-77

-do-

-do-

-do-

-do-

-do-

-do-

-do-

-do-

3.

Bhanuprakash K.G.

B.Com.

-do-

-do-

14-3-77

-do-

-do-

-do-

-do-

-do-

-do-

-do-

-do-

4.

Ganesha Ganapathy Hegde

B.A.

-do-

10-8-76

12-8-76

2-5-77

-do-

-do-

-do-

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5.

Lakshme Gowda, K.T.

B.Com

-do-

7-3-77

15-4-77

1-11-77

-do-

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6.

Narayana Ramakrishna Bhat.

B.Com

-do-

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7.

Nagaraja, M.S.

B.Com

-do-

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10-3-77

1-10-77

-do-

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8.

Padmanabhan, S.

M.Com

-do-

-do-

16-3-77

1-10-77

-do-

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9.

Raghunath, H.S.

B.Com

-do-

-do-

24-3-77

1-10-77

-do-

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-do-

10.

V.V. Khanage

M.Com

-do-

-do-

21-3-77

1-10-77

-do-

-do-

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13. Sri K.Subba Rao, Learned Counsel for the Petitioners, also pointed out that apart from the fact that the initial pay of the Petitioners was fixed at Rs. 648/-

instead Rs. 758/-, the Petitioners would continue to draw only a pay of Rs 648/- for a period of over 5 years consequent on fixation of their pay in the new scale. As a result they have been placed in a disadvantageous position by the revision of pay. He point-ed out that the pay which each of the Petitioners would have drawn in the pay scale of Rs. 250-15-310-20-350-EB-25-500, if revision of pay scale had not been extended, would have been as follows :

1-10-78 - 648+15 = 663 1-10-79 - 663+15 = 678 1-10-80 - 678+15 = 693 1-10-81 - 693-15 = 708

14. Thus, it may be seen, if the Petitioners had continued in the pay scale of Rs. 250-500 they would have earned increments of Rs. 15/- per annum and consequently at the end of 4 years each of them would have drawn a pay of Rs. 708/-even if the revision of pay scale had not taken place. But by extension of the revision of pay scale they have to stagnate at Rs. 648/- for all the 4 years and at the end of 4th year also they would continue to draw Rs, 648/- and there-after also until the personal pay of Rs. 122/- is adjusted against future increments.

15. The fact that such a consequence has been brought about could not was and not controverted by the Counsel for the Respondent. They however maintained that as according to the Rules, the benefit of conversion table was applicable to all civil servants who were in service on 1-1-1977, the Corporation has also applied the conversion table to all its employees who were in its service on 1-1-1977 and. as a result of fixation of pay of all the Assistants of the Corporation who were in service as on 1-1-1977 they got a higher benefit in view of the application of the conversion table and the Petitioners who entered service after 1-1-1977 could not secure the benefit of the conversion table because they must be deemed to have been appointed in the revised scale of pay itself and any drop in the salary brought about was only fortuitous and it could not be said that there had been any discrimination in violation of Articles 14 and 16(1) of the Constitution. Even so, the Counsel maintained that the Respondents had taken care to ensure that the drop in emoluments was not given effect to by providing special protection, viz., by treating the difference as personal pay absorbable in future increments.

16. Being unable to furnish the basis for such differentiation Learned Counsel for the Corporation submitted that in fact the Corporation wanted to protect the total emoluments and to allow the Petitioners to earn increments over and above the said pay as indicated in its resolution dated 30-3-1978 extracted earlier but the Government did not agree and it directed in its letter dated 14-6-1978 that it should be absorbed in future increments.

16(a) Counsel for the Corporation and the State however argued that for the purpose of fixation of pay in the new scale the Respondents had classified the employees into two classes, viz., those who were in service on 1-1-1977 and those who joined service after 1-1-1977, and that conversion table was applied to the former and not to the latter. They maintained that the classification was reasonable and the differentiation made in the matter of fixation of basic pay for the two classess was on a rational basis and, therefore, there was no violation of Articles 14 and 16(1) of the Constitution.

17. Though the submission made on behalf of the Respondents primafacie appears to be very attractive, a careful examination of the submission with reference to facts of the case exposes its lack of any substance and establishes a clear infringement of the right to equality and equal opportunity , in matters relating to employment under the State guaranteed under Articles 14 and 16(1) of the Constitution. It is now well settled, that in finding out as to whether, in a given case, the right to equality has been violated, two aspects arise for consideration :

(1) Whether the classification made by the State is reasonable ? and

(2)Whether the classification even if reasonable has rational nexus to the object sought to be achieved ?

(see D.S. Nakara and Others Vs. Union of India (UOI),

18. The Corporation promulgated the rules revising the pay scales of its employees on 13-10-1978 and adopted the Revised Pay Rules of 1976 promulgated by the Government for the employees of the State. On the said date, the Petitioners who were appointed as Assistants subsequent to 1-1-1977 as well as those who were appointed as Assistants prior to 1-1-1977 were all in the service of the Corporation. All of them were in the pay scale of Rs. 250 - 500. This establishes that all of them were similarly situated. There fore, the benefit of conversion table must apply to all persons who were Assistants as on 13-10-1978 the date on which the revised Rules were promulgated. But, what the Corporation has done is to give the benefit of conversion table found in the II Schedule to the Rules to such of the Assistants who were in the service of the Corporation on or prior to 1-1-1977 and to deny the benefit of the conversion table to the Petitioners on the sole ground that they were appointed subsequent to 1-1-1977 and the Rules were given retrospective effect from 1-1-1977. There could hardly be any objection for giving effect to the Rules with retrospective effect from 1-1-1977 with the object of giving higher pay benefits to the employees who were in service. But the question raised by the Petitioners is why the benefit of conversion table should be denied to those who were already in service prior to the promulgation of the Rules ?

19. Learned Counsel for the Corporation submitted that even in the Revised Pay Rules the conversion table was applied only with effect from 1-1-1977 and what the Corporation has done was also to give revision of pay scales to its employees with effect from 1-1-1977. On that basis he submitted if the applying of the conversion table found in the II Schedule to the Rules to the employees of the State Government with effect from 1-1-1977 was not discriminatory as indeed no Government Servant had made any grievance against it, then what the

Corporation had done cannot be characterised as discriminatory.

20. The submission made on behalf of the Corporation is fallacious. It is true that the conversion table in Schedule II of the Rules have been applied to the civil servants who were in service on 1-1-1977. But it should be pointed out, the Rule was promulgated on 20th December, 1976 and it came into effect from 1st January, 1977, and as a result, every one of the civil servants who was in service on the date of promulgation of the Rules was given the benefit of the revised pay scale as also the conversion table. But, in the present case, while the Corporation made the Rules on 13-10-1978 revising the pay scales of all the Assistants, it has denied the benefit of the conversion table to those Assistants who were in the service on the said date, but extended to only those who were in service on or before 1-1-1977. Thus, it is clear that while the revision of pay scales made by the Government treated every one of its servants in the old pay scale who were in its service on the date when the Rules were promulgated and gave the benefit of the conversion table to all of them, the Corporation denied the benefit to the Petitioners though they were already in service on the date when the Corporation promulgated the revision of pay scale order. It is this action on the part of the Corporation which has resulted in present discrimination.

21.The next question for consideration is whether there is any rational basis for subjecting the Assistants who were appointed subsequent to 1-1-1977 a dissimilar treatment in the matter of extending the benefit of the conversion table incorporated in Schedule IT to the Rules. I find none.

22.The submission made on behalf of the Corporation is that it was competent for it to give the benefit of revision of pay-scales with retrospective effect and therefore the decision of the Corporation to give the benefit of the revised pay scales together with conversion table with effect from 1-1-1977 was valid and the disparity, if any, brought about is only a consequence of this valid decision.

23. The submission is partly correct. It was no doubt competent for the Corporation to revise the pay-scales of its employees with effect from a retrospective date i.e.w.e.f. 1-1-1977. But so far as the extending of the benefit of the conversion table is concerned, it must have been extended to all the employees, who were in the unrevised pay-scales of Rs. 250-500 on the date on which the rules were promulgated and to whom the new pay scale of Rs. 440-900 was given irrespective of the date of appointment. The fact that some of them were appointed after 1-1-1977 constituted no rational basis to deny them the benefit of conversion table. As pointed out earlier , the condition imposed to the effect that the personal pay absorbable in future increments of the Petitioners has made the discrimination writ large in that their position is made worse, after revision compared to the position in which they would have been even if the pay scales were not revised. The correspondence which took place between the Corporation and the Government itself indicate that both the Government and Corporation had realised the discrimination that was likely to result on account of the retrospective effect given to the conversion table.

24. In this behalf I may refer to the contents of the Government letter dated 5th June 1978, It reads :

"Sir,

Sub : Revision and Rationalisation of pay scales - Amendment to KSFC Staff Regulation, 1965.

Ref : Your letter No. KSFC/A4/1959, dated 10-5-1978

2. Your letter No. KSFC/A4/1248 dated 25-4-1978.

Adverting to the above, I am directed to state that, while the scales of pay as approved by Finance Department have been incorporated in the draft amendments there are certain other deviations in the resolution of the. Board of Directors which have not been specifically approved by Finance Department Firstly, it is stated that new scales of pay will be adopted with effect from 1-1-1977. At the same time it is proposed that in the case of appointment made between 1-1-1977 and 30-3-1978 (the date of resolution), the total emoluments would be protected by suitable fixation of the pay in the revised scale of pay as near to the total emoluments in the existing scale of pay (on the date of appointment) as possible and any other difference would be treated as personal pay. Finance Department cannot agree to this proposal. If the revised scale of pay is given effect from 1-1-1977 the new scale and the principle of fixation should apply uniformly to all. If the Karnataka State Financial Corporation feels that some officials may be but to loss due to this, then as an alternative, they can give effect to the new scales from 1-4-1978."

The relevant part of the reply dated 9-6-1978 sent by the Corporation to the Government reads :

" With reference to the above and also the discussions the Managing Director had with the Finance Commissioner and the Chief Accounts Officer with the Deputy Secretary on 7th instant, we write to inform you that the question of protection of the total emoluments of the employees appointed during the period from 1-1-1977 to 30-3-1978 has arisen because the orders of Government approving the revision of pay-scales sought from them in July. 1976, cams to us only in March 1978. Since, the new scales will moan a reduction in the total emoluments in respect if these employees and as the Corporation has already appointed them on the existing pay-scale, we cannot reduce the total emoluments drawn by them subsequently. Therefore, it was agreed by the Board that in respect of these employees, their total pay will be protected by suitable fixation of the pay in the revised scale as near to the total emoluments in the existing scales of pay (on the date of appointment) as possible and that any other difference would be treated as personal pay. This is the only alter-native left to us in the circumstances. The pay scales will be given effect from 1-1-1977 and we request the Government to agree for protection of these employees'' total emoluments since, apart from any other consideration the Corporation is legally bound to protect them."

It is after this letter, the Government wrote the letter dated 14-6-1978 contents of which is extracted earlier was written by which the condition that the loss in pay caused to the Petitioners sought to be protected is absorbable in future increments.

25. If the Corporation had accepted the suggestion of the Government made in its letter dated 5-6-1978 to give effect to the revision of pay scales from 1-4-1978, there would have been no discrimination at all against the Petitioners. If the Government had agreed to the proposal of the Corporation for protecting the pay without imposing the condition that it is absorbable in future increments atleast to some extent the loss caused to the Petitioners would have been averted. But, neither of them was done and as a result the Petitioners, stood discriminated against in the manner indicated earlier without any rational basis whatsoever resulting in violation of fundamental right guaranteed to them under Articles 14 and 16(1) of the Constitution.

16. For the aforesaid reasons, I make the following order :

(i) The Writ Petitions are allowed,

(ii) A Writ of Mandamus shall issue to the Corporation to fix the pay of each of the Petitioners in the pay scale of Rs. 440-900 with effect from the date on which they were regularly appointed as Assistants, after completion of their training, in accordance with the conversion table set out in the IInd Schedule to the Karnataka Civil Services (Revised Pay) Rules, 1977 and fix their pay on the said basis and give them all consequential benefits flowing from such re-fixation.

No costs.

