

(1979) 07 KAR CK 0032
In the Karnataka High Court
Case No : WP. 2407/78

B.N. Chandrasekhara

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 05-07-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 2 KarLJ 347

Hon'ble Judges : Rama Jois, J

Judgement

1. The petitioner who is holding the post of Assistant Chemist in the Department of Mines and Geology complains of discrimination in the matter of pay scale extended to the said post for the period commencing from 23-8-1973 upto 1-1-1977 and has prayed for a writ of Mandamus directing the State Government to give equal treatment to him during the said period also by extending the pay scale of Rs. 275-550.

2. The petitioner is an Assistant Chemist in the Department of Mines and Geology. In the department there are also posts called Assistant Geologists. The minimum qualification for both the posts was Bachelor's Degree in the relevant subject. Both the posts carried equal pay scale except during the period from 23-8-1973 upto 1-1-77. During the said period, the Assistant Chemists were continued in the pay scale of Rs. 225-450 whereas pay scale of Rs. 275-550 was extended to Assistant Geologists. The case of the, petitioner is that there were no, rational basis for subjecting the. petitioner holding the post of Assistant Chemist to lower pay scale during the relevant period.

3. Sri C.N. Kamath, learned Counsel for the petitioner, contended that denial of pay scale of Rs. 275-550 to Assistant Chemists for the period, from 23-8-1973 upto 1-1-1977 is violative of Arts. 14 and 16(1) of the Constitution.

4. In order to appreciate the case of the petitioner, it is necessary to set out the pay scale extended to the two categories of posts from time to time. They are as follows:

Date Pay

Asst. Geologists.

Rs. Pay

Asstt. Chemists.

Rs.

1-1-1957 100-300 100-300

1-1-1961 120-300 120-300

1-1-1970 200-375 200-375

1971 July 73 225-450 225-450

23-8-1973 275-550 -

1-1-1977 660-1300 660-1300

From the above statement it may be seen that in all the revision of pay scales by the State Government, identical pay scale has been extended to the two categories of posts. By the Government Order dated 12/14-6-1974 a pay scale of Rs. 275-550 was extended to the posts of Assistant Geologists with effect from 23-8-73. The said order reads thus:

PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA.

Sub: Establishment of Mines and Geology Department-Revision of pay scales of Assistant Geologists-Orders passed. Order No. VI. 23 AMG. 74, Bangalore, Dated the 12th 14th June, 1974.

Preamble:

The Karnataka Assistant Geologists' Association has represented that the scale of pay of the post of Assistant Geologists is not commensurate with the duties and responsibilities and the minimum qualification prescribed for the post. According to Notification No. CI 80 EMG 70(2), dated the 26th June, 1973, the minimum qualification for the post of Assistant Geologists prescribed is higher than that prescribed for the post under the earlier rules, when the scale of pay was Rs. 225-450. The request of the Association was placed before the official (pay) committee. The Committee has recommended that the scales of pay of the posts of Assistant Geologists be revised from Rs. 225-450 to Rs. 275-550.

ORDER

Government have accepted the recommendation of the official (pay) Committee and are pleased to direct that the Scale of pay of the post of Assistant Geologists of the Department of Mines and Geology be revised from Rs. 250-10-245-15-320-EB-20-440-25-450 to Rs. 275-25-375-EB-25-550.

2. Government are further pleased to direct that the pay of the existing Assistant Geologists be nationally fixed in the revised scale with effect from 23rd August, 1973 and the monetary benefit given with effect from 1st April, 1974.

3. This order issues with the concurrence of the Finance Department vide U.O.No. FD 16 SRP(3) 74, dated the 20th May, 1974.

By order and in the name of the Governor of Karnataka,

Sd/-

R.N. Shastry,

Under Secretary to Government, Commerce and Industries Department."

5. It is explained by the petitioner in para 7 of the petition that the reason for raising the pay scale to the posts of Assistant Geologists was the prescription of higher minimum qualification i.e., M.Sc., degree. According to the petitioner, the minimum qualification for the posts of Assistant Chemists was also increased to Master's Degree with effect from which the higher minimum qualification was prescribed for the posts of Assistant Geologists. The preamble to the Government Order dated 12/ 14-6-1974, Ex. B., indicates that after the minimum qualification for the post of Assistant Geologists was raised, the Assistant Geologists' Association made a representation to the State Government for increasing the pay scale of the posts of Assistant Geologists by making it equal, to the pay scale given by the State Government for persons holding Master's Degree,. It is in these circumstances the State Government increased, the pay scale of the Assistant Geologists from Rs. 225-450 to Rs. 275-550 with effect from 2335-1973.

6. The learned Counsel for the petitioner relied on the decision of this Court in Chandrashekar Math v. State of Karnataka, (1979) 1 Kar.L.J. 27 in support of his case. The said case related to the discrimination of pay scales between the Assistant Geologists and the Assistant Geophysicists of the same Department. As can be seen from the said decision, the case of Assistant Geophysicists who were denied higher pay scale, is, in all respects, similar to the case of the Assistant Geologists in this case. The writ petition was allowed holding that there was no jurisdiction for subjecting the Geophysicists to lower pay scale between 23-8-1973 and 1-1-1977. The said decision was affirmed by the Division Bench of this Court in Writ Appeal No. 478 of 1978 decided on 14-9-1978 and the Special Leave petition filed by the State Government against the said judgment before the Supreme Court was also rejected in S.L.P. No. 667 of 1979 dated 5-2-1979.

7. Sri G.R. Nataraj, learned High Court Government Pleader, however, tried to distinguish the decision on the ground that the posts of Assistant Geologists and the Assistant Geophysicists were inter-changeable but in the present case the posts of Assistant Geologists and the Assistant Chemists are not interchangeable. It is no doubt true that the posts of the Assistant Geologists and the Assistant

Geophysicists are inter-changeable; but the posts of the Assistant Geophysicists and the Assistant Chemists are not inter-changeable. But that difference is not a ground for distinguishing the principle laid down in the said case. The principle laid down in the said case following the earlier decision of a Division Bench of this Court in *B.G. Gupta v. State of Mysore*, (1967) 1 Mys L.J. 208, is that when the State has evaluated the duties and responsibilities of two categories of posts in the service, of the State Government as equal for the purposes of pay scale throughout and difference has been brought about only for an intervening period, such difference amounts to discrimination. As pointed out in the present case, the minimum qualification prescribed for both the posts earlier as well as later, is the same i.e., Bachelor's degree or Master's degree as the case may be in the subject concerned. The State Government itself has evaluated the, duties and responsibilities of the posts as equal in the matter of awarding pay scale and had awarded similar pay scale for both the posts commencing from 1-1-1957, 1-1-61, 1-1-70 and even as on 1-1-77. It is only during the period commencing from 23-8-73 upto 1-1-77 the petitioner has been subjected to lower pay scale of Rs. 225-450 whereas the Asst. Geologists were given pay scale of Rs. 275-550. Obviously, the State Government while passing the order dated 12/14-6-1974 overlooked the case of the Assistant Chemists in respect of which post also the minimum qualification was increased to Master's degree in 1973 as they had done in the case of Assistant Geophysicists. It is for this reason, as stated by the petitioner, the Head of the Department also wrote to the Government that there was no justification for denying the Assistant Chemists the pay scale of Rs. 275-550 from 23-8-1973 upto 1-1-1977.

8. For the reasons stated above, I hold that denial of pay scale of Rs. 275-550 to the post of Assistant Chemists in the Department of Mines and Geology between 23-8-1973 and 1-1-77 while extending the similar pay scale to the post of the Assistant Geologists, is violative of Arts. 14 and 16(1) of the Constitution as such an action on the part of the State Government denied equality before law to the petitioner and equal opportunity in matters relating to employment under the State. In the circumstances, I make the following order:

- i) Rule is made absolute;
- ii) A writ in the nature of Mandamus shall be issued to the State, Government to extend to pay scale of Rs. 275-550 to the post of Assistant Chemists from 23-8-1973 upto 1-1-1977;
- iii) The petitioner shall be entitled to consequential benefits flowing from the aforesaid directions with effect from 1-1-1974 as extended to the post of Assistant Geologists.