
(2002) 09 AP CK 0020
In the Andhra Pradesh High Court
Case No : WA No. 21 of 2000

D.J. Prasad and Others

APPELLANT

Vs

Registrar, Sri Krishnadevaraya University and Another

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 6 ALD 314

Hon'ble Judges : S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; P. Sriramulu Naidu and Government Pleader for Higher Education, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J

1. A short question that arises for the decision in this writ appeal is whether the members of the non-teaching technical staff of Sri Krishnadevaraya University are entitled to the revised pay scales with effect from 1-7-1986 as has been done by the University itself in the case of all other employees or they are entitled to the revised pay scales only with effect from 1-4-1990 as has been fixed in G.O. Ms. No. 287 (Finance and Planning) Department, dated 3-12-1991. This question arises in the following factual background:

2. The petitioners 21 in number are the non-teaching technical staff working in the 1st respondent-University. They filed writ petition No. 2116 of 1996 assailing the validity of G.O. Ms. No. 287 extending the revised pay scales to the non-teaching technical staff only with effect from 1-4-1990. In the year 1986, the State Government had Issued orders in G.O. Ms. No. 288 (Finance and Planning) Department, dated 17-11-1986, revising pay scales of its employees with effect from 1-7-1986. Subsequently the non-teaching staff working in various Universities represented to the State Government for extension of revised pay

scales, 1986 to them also. The Government of Andhra Pradesh, upon consideration of the representations, decided to extend the pay scales as mentioned in schedule I appended to G.O. Ms. No. 288, dated 17-11-1986 to the non-teaching staff of the Universities also with effect from 1-7-1986 and accordingly it issued G.O. Ms. No. 25 (Finance and Planning) Department, dated 11-2-1988.

3. After the above event, the Vice-Chancellors of various Universities represented to the Government for assigning the pay scales mentioned in Schedule II appended to G.O. Ms. No. 288 to the non-teaching staff of the Universities. The petitioners who belong to the non-teaching technical staff also made similar representation to the Government stating that the pay scales as mentioned in G.O. Ms. No. 25, dated 11-2-1988 do not cover the non-teaching technical staff and, therefore, requesting the State Government to evolve appropriate pay structures in order to implement the revised pay scales with effect from 1-7-1986 to them also. This led to the Government of Andhra Pradesh examining the whole issue and having done it, it issued G.O. Ms. No.78 (Finance and Planning) (FW PRC-I) Department, dated 30-3-1988 modifying the pay scales to the common categories and also to the categories which are having comparable posts in the Government. In respect of the categories which do not have comparable posts in the Government service, the matter was referred to a committee headed by Sri T. Navaneetha Rao who examined the remaining posts and suggested suitable pay scales to the various categories duly taking into account the qualifications, nature of duties, qualifications prescribed for the feeder and promotional posts, etc., and accordingly orders were issued in G.O. Ms. No. 79, dated 30-3-1988. It appears that pending submission of the report by the committee headed by Sri T. Navaneetha Rao, the Government issued G.O. Ms. No.78, dated 30-3-1988 directing that the above categories shall continue to draw pay scales corresponding to the one in schedule I appended to G.O. Ms. No. 288, it is admitted position that in pursuance of the said Government order i.e., G.O. Ms. No.78 the petitioners are allowed to draw scales corresponding to the scales in Schedule I. The committee headed by Sri T.Navaneetha Rao submitted its report in the year 1991.

4. The Government, after examining the recommendation of the said committee, decided to implement the same and accordingly issued G.O. Ms. No. 287, dated 3-12-1991 revising the pay scales of all those new categories. Including the category of non-teaching technical staff with effect from 1-4-1990. The petitioners being aggrieved by the said Government order filed writ petition No. 2116 of 1996 for mandamus, declaring that they are also entitled to the revised pay scales with effect from 1-7-1986 on par with other employees of the 1st respondent University and directing the 1st respondent to arrange for the payment of arrears of salary i.e., difference of pay between the tentative pay and the revised pay from 1-7-1986 to 31-3-1990.

5. The writ petition was opposed by the State Government who is the 2nd

respondent in the writ petition by filing counter-affidavit. Although the counter-affidavit filed by the State Government runs to 4 pages, on a careful perusal of the same, we do not find any weighty or substantive grounds in it on the basis of which the State Government could possibly and legally make a reasonable classification between the members of the non-teaching technical staff and other non-teaching staff of the University.

6. The learned single Judge, on consideration of the rival contentions, has opined that in fixing a different cut off date in the case of non-teaching technical staff the University and the Government have not violated Article 14 postulates and, therefore, their action could not be regarded as discriminatory. In the premise of that opinion the learned Judge dismissed the writ petition by the order under appeal.

7. Although the writ petition was filed by as many as 21 employees belonging to the non-teaching technical staff of the University, the writ appeal is preferred by only 13 employees belonging to that category. We have heard Sri V. Venkataramana, learned Counsel for the appellants and the learned Government Pleader for Higher Education and the learned Standing Counsel for the respondent-University.

8. Sri V. Venkataramana contended that though Article 14 does not prohibit reasonable classification there is absolutely no ground whatsoever to make a reasonable classification between the members belonging to the non-teaching technical staff and the members belonging to the other non-teaching staff. In other words, according to Sri V. Venkataramana, the members of both the non-teaching technical staff and other non-teaching staff constitute "a well defined class" and, therefore, they should be treated alike in the matter of extending new pay scales.

9. Learned Counsel concluded that the impugned action cannot be sustained because It tantamounts to the University and the Government practising invidious discrimination among the employees who constitute a single "well-defined class" of persons. He placed reliance on the Judgments of the Supreme Court in State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, , Kailash Chand Sharma Vs. State of Rajasthan and Others, . In support of his submissions.

10. On the other hand, learned Government Pleader for Higher Education, placing reliance on State of Rajasthan and anothers etc. Vs. Amrit Lal Gandhi and others etc., Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, , State of Haryana and others Vs. Rai Chand Jain and others, etc. etc., , submitted that it was very much within the executive power of the University and the Government to fix different dates for implementation of the revised pay scales to different categories of employees of the University and such a decision in the very nature of things should be regarded as a policy decision and such decision cannot lightly be interfered with by the Courts under Article 226 of the Constitution of India.

Therefore, learned Government Pleader would maintain that the plea of invidious discrimination levelled against the University and the Government is not well founded and, therefore, the learned single Judge is justified In dismissing the writ petition.

11. Since the guarantee of equal protection embraces the entire realm of State action, it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liability upon him but also in the matter of granting privileges, advantages, benefits thereby meaning extending pay scales too. This position is well established by a catena of decisions of the Supreme Court Including the decisions in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, .

12. It is true that what Article 14 prohibits is class legislation and not reasonable classification. If the law maker or the executive takes care to reasonably classify persons and they deal equally with all persons belonging to "well defined class" it is not open to the charge of denial of equal protection on the ground the law does not apply to other persons. However, in order to pass the test of permissible classification two conditions must be fulfilled: (1) classification is founded on an intelligible differential which distinguishes persons or things that are put together from others left out of the group and that (2) that differential has a rational relation with the object sought to be achieved by the statute in question. We pointedly asked the learned Government Pleader for Higher Education as what is the intelligible differential on the basis of which a reasonable classification could be made between the non-teaching technical staff and other non-teaching staff. We do not get any proper reply from the learned Government Pleader in that regard. In the counter-affidavit filed by the State Government also, the Government has not stated relevant factors or disclosed any intelligible differential on the basis of which we could sustain the classification made by the respondents between the non-teaching technical staff and other non-teaching staff. Should it be noticed that in the absence of intelligible differential or relevant factors on the basis of which such a classification could be sustained by the Constitutional Court, it is fair that all the employees of the University should be treated alike because they constitute a "well-defined class" of persons. The Government in its wisdom and discretion having thought it fit and appropriate to implement the revised pay scales in the case of other employees of the University with effect from 1-7-1986 on par with its own employees cannot treat the members of the non-teaching technical staff differently in the absence of any differential which could stand the scrutiny of Article 14 of the Constitution. The power of the State or the University, though it may fall within the domain of policy, cannot be exercised whimsically, fancifully and without reason or rhyme. Every power should be exercised fairly, reasonably and in the public interest.

13. The only point stated before us at the time of argument by the learned

Government Pleader for Higher Education is that having regard to the financial burden that may fall upon the State Government and the University in the event of acceding to the request of the petitioners, the revised pay scales were brought into force in the case of non-teaching technical staff only with effect from 1-4-1990 and such a policy decision cannot be condemned as irrational or arbitrary thereby violating Article 14 postulates of the Constitution.

14. We do not agree with the submission of the learned Government Pleader for Higher Education. Where an applicant makes out a case of invidious discrimination, it would not lie in the mouth of the State or State authorities or instrumentalities of the State that they could still be permitted to practise invidious discrimination on the ground of extra financial burden that may be placed on them. It is true that in the matter of fixation of wages, particularly fair and living wages, the capacity of the employer to pay, whether State or private, would be a relevant consideration. We are not called upon to decide such a question in the instant writ appeal. If the appellants are entitled to be treated on par with the other employees of the University by virtue of the postulates of Article 14, it cannot be a valid answer of the University to contend that if they were not to practise invidious discrimination, greater financial liability would be placed on it. The "likes should be treated alike" is a constitutional creed flowing from Article 14 of the Constitution of India and the Government is not justified in treating the non-teaching technical staff differently. A case is made out for our interference.

15. In conclusion, we allow the writ appeal, set aside the order of the learned single Judge and allow the writ petition with no order as to costs. Writ of mandamus shall issue to the respondents to implement the revised pay scale with effect from 1-7-1986 on par with other employees in case of members of the non-teaching technical staff also. This relief should be extended not only to the appellants but also to all similarly circumstanced members of the non-teaching technical staff of the University. Six week time is granted to implement the order.