
(2012) 10 MAD CK 0097

In the Madras High Court

Case No : W.A. No. 1225 of 2010 and M.P. No. 1 of 2010

Electronics Corporation of Tamil Nadu Ltd.

APPELLANT

Vs

N. Kumar

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 39(d)

Citation : (2013) 1 LLJ 266 : (2012) 7 MLJ 761

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : S. Ravindran for T.S. Gopalan and Co, for the Appellant; N. Rajan, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Whether acquiring higher qualification can be considered to be a relevant criteria for the purpose of grant of advance increments and applicability of doctrine of "equal pay for equal work" are involved in this appeal which arises out of the order of the learned single Judge dated 23.3.2010 passed in W.P. No. 14887 of 2009 allowing the Writ Petition filed by the respondent herein. From the materials, it is seen that the respondent herein, who was a B.L. Degree holder, joined in the appellant Corporation as an Assistant, promoted as Junior Manager and subsequently, as Assistant Manager in the year 2000. Later on, the post was re-designated as Deputy Manager in view of his obtaining Post Graduate Qualification in Law. Further, in appreciation of his acquisition of Post Graduate Qualification in Law, the appellant Corporation, by order dated 3.3.2005, granted two advance increments in terms of the Government Order in G.O. Ms. No. 80 Law Department dated 24.4.1979. But, by order dated 29.6.2009, the appellant Corporation cancelled the two advance increments already accorded to the respondent and directed recovery of the monetary benefits granted to him on the basis of the said G.O. on the ground that the same was granted erroneously as the G.O. is applicable only for the employees

working in the Law Department at Secretariat. Even the representation made by the respondent for reviewing the order was also rejected. The said order was impugned in the Writ Petition.

2. The Corporation filed a counter affidavit before the learned single Judge stating that the respondent was granted two advance increments for acquiring P.G. Qualification erroneously and that he has no such equitable right.

3. The learned single Judge, on consideration of the arguments advanced by the learned counsel for the parties and the materials placed on record, found that no reference was made about G.O. Ms. No. 80 while sanctioning the benefit and that the impugned order was passed, without giving any opportunity to the respondent, after a lapse of four years and accordingly, allowed the Writ Petition thereby quashing the order passed by the Corporation. Feeling aggrieved, the Corporation is before us.

4. Learned counsel representing the appellant Corporation submitted that the order impugned before the learned single Judge is nothing but an administrative action setting right the error crept in the earlier order and as such, violation of principles of natural justice would not arise and it is hit by the principles of Useless Formality Theory. According to him, when no separate Law Department is existing in the appellant Corporation, the respondent is not entitled to take advantage of the erroneous order and the finding of the learned Judge that the benefits of G.O. Ms. No. 80 dated 24.4.1979 would squarely be applicable to the respondent requires to be interfered with.

5. Per contra, learned counsel appearing for the respondent vehemently contended that once the officers working in the Law Department are getting two advance increments for obtaining M.L. Degree, not extending the same to the employees working in other Departments and the Corporations like the appellant, amounts to violation of the principle of "equal pay for equal work" enshrined under Article 39(d) of the Constitution of India read with Article 14. He further contended that the action of the appellant Corporation is contrary to the judgment of the Hon'ble Supreme Court in M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another, and U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others, Relying on Rule 20 of the ELCOT Service Rules, he also submitted that the Managing Director is vested with power to grant increments and that the order passed by the learned single Judge is correct and requires no interference.

6. Heard the learned counsel for the parties and perused the records.

7. From the materials, it is seen that at the time of considering the request of the writ petitioner for two advance increments for obtaining additional qualification of M.L. Degree, it was specifically brought to the notice that there is no Law Department in the appellant Corporation inspite of which a note was prepared to suit him for grant of two advance increments. The relevant portion of the note reads as follows:

... The above individual is working in accounts department and looking after Income Tax matters and other connected matters. The Corporation also needs a person who possess qualification in Law to handle effectively various labour issues and Company Law Board matters Further, there is no officer posted to head P.F. Section. So, we may post the above individual to look after the works relating to all legal matters and sanction the above advance increments based on his qualification.

8. A mere reading of the another Office Note Ref. No. HR/A1/1592/2002 would show that the entire services of the respondent were utilised only in Accounts Department and no where in connection legal matters besides stating that the ELCOT does not have separate Law Department to look after legal issues and whenever any legal issues are arising, the appellant Corporation approaches M/s King & Partridge and other advocates. It is further stated that possession of the M.L. Degree is no way useful to ELCOT and his services are not required in the legal cell of ELCOT. Therefore, it is clear that the respondent has acquired higher qualifications in Law on his own, without any requirement of the Department When that being the real situation, the above extracted portion of the Office Note makes it clear that only with a view to grant the benefit of two advance increments to the respondent, a via media note was prepared for consideration of the Managing Director. Therefore, it is nothing but a fraud played by the persons in the helm of affairs of the Managing Director in collusion with the respondent.

9. It is not controverted that G.O. Ms. No. 80, Law Department dated 24.4.1979, which is the basis for two advance increments granted to the respondent, is not applicable to all Government Public Sector Undertaking servants. It is also not disputed that the respondent is not a Government employee. The G.O. was issued accepting the recommendations of the Third Pay Commission as per which the employees working in the Law Department of the Secretariat with M.L. Degree as on 1.4.1978 are entitled. It shows that the very purpose of the G.O. is to give two increments to M.L. Degree holders working in the Law Department of the Government of Tamil Nadu. It is only during 2009, when the authorities considered the similar request of two other employees, it came to light that the two advance increments given to the respondent was on erroneous understanding of the G.O. Ms. No. 80 and hence, the same was cancelled thereby ordering for recovery of the amount granted to him pursuant to the order dated 3.3.2005.

10. It is pertinent to note that in terms of G.O. Ms. No. 80, even all the Government employees are not entitled to the benefits contained therein. As seen from the records, a letter dated 9.2.2010 issued by the Secretary to Government further clarifies the situation that the advance increments are admissible to persons in Law Department who possess M.L. Degree irrespective of the fact that they are appointed or promoted under the emergency provisions of the rules, for the period of their temporary service also. It is further clarified

that the Finance Department has not extended the orders issued in the said G.O. to the employees of SPSUS/Boards and the employees of ELCOT. When such is the case, it is not known as to how the learned Judge has arrived at a conclusion that the respondent, who is an employee of the Public Sector Undertaking, is entitled for the benefits of the G.O. In our considered opinion, the learned single Judge has committed an error in holding that the G.O. is applicable to the respondent because it was applying Government scale of wages to the employees of legal division of the appellant who possess M.L. Qualification.

11. More over, it is now brought to our notice that the power of the Managing Director to grant such advance increments, was already withdrawn on 27.2.1991. Therefore, granting of the same in the year 2005 was without power and jurisdiction.

12. The other point urged on behalf of the respondent is that there should be equal pay for equal work and, therefore, the action of the appellant Corporation amounts to violation of Article 14 read with Article 39(d) of the Constitution of India.

13. The doctrine of equal pay for equal work, as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects.

14. The Supreme Court vide its decision *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, held that even Secretaries working in the Ministry and the other Department coming under Directorates are entitled to draw different salaries even though the work performed by them may be same. The Supreme Court, after reviewing all the cases, in paragraph 11 of the judgment, held as follows:

11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more fact, some less--it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter this application must fail and it is accordingly dismissed without any order as to costs.

15. In *Government of West Bengal Vs. Tarun K. Roy and Others*, , the Supreme Court has clearly laid down that the holders of a higher qualification can be

treated to be a separate class, holding:

20. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia.

16. In this context, it is also useful to refer to the judgment of the Supreme Court S.C. Chandra and Others Vs. State of Jharkhand and Others, wherein M. KATJU, J., in his concurring judgment, held that grant of pay scales is an executive or legislative function and not a judicial function. The said decision also came to be followed by the Supreme Court in the subsequent judgment in State of Punjab and Others Vs. Surinder Singh and Another, . The learned counsel further relied upon the following judgments of the Supreme Court in Union of India (UOI) and Another Vs. Mahajabeen Akhtar, K.S. Krishnaswamy etc. Vs. Union of India (UOI) and Another, , Union of India (UOI) Vs. Arun Jyoti Kundu and Others, and Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, .

17. The sum and substance of all these cases cited supra is that the fixation of pay scale pursuant to the recommendations of the Commission are being done through a policy decision by the Government and that in the name of equal pay for equal work, the same cannot be directed to be implemented by orders of the Court.

18. In the case on hand, it is the policy decision of the Government to grant two advance increments to the employees working in the Law Department of the Secretariat and it is the admitted fact that the respondent is not working in Law Department nor discharging similar duties of those working in Law Department. As such, he is not eligible for grant of equal pay for equal work and the two decisions relied on by him are not applicable to the facts of the case.

19. Coming to the next contention of the learned counsel for the respondent that the Managing Director is vested with power to grant increments as per Rule 20 of the ELCOT Service Rules, it is only to be rejected for the simple reason that the powers of the Managing Director with regard to grant of advance increments for acquiring higher qualification was withdrawn even as early as on 27.2.1991. On the other hand, as per Rule 20, the Managing Director has got power to grant ordinary increments when the employees are entitled to. For the foregoing reasons, we are unable to agree with the reasoning adopted by the learned single Judge in quashing the order of cancellation and recovery impugned in the Writ Petition and the same is liable to be set aside.

In the result, the Writ Appeal is allowed setting aside the order of the learned single Judge. No costs. Consequently, connected Miscellaneous Petition is closed.