

(1962) 08 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 316 and 385 of 1960

H.N. Nanjundaswamy

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 21-08-1962

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
States Reorganisation Act, 1956 — Section 115 (7), 15

Citation : AIR 1963 Kar 202 : (1962) ILR (Kar) 828

Hon'ble Judges : G.K. Govinda Bhat, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : P. Rangaswamy, for the Appellant; D.M. Chandrasekhar, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—These are petitions under Article 226 of the Constitution by two Civil Servants of Class III and Class IV of the Mysore State Civil Services, for issue of Writs of Mandamus. The substance of the relief prayed for, which is rather vaguely worded, is that the respondent State of Mysore should be directed to fix uniform pay-scales for all their civil servants without discrimination, so that the new pay scales do not fall below the level of the scales applicable to the Civil Servants allotted from Bombay or Hyderabad.

2. The petitioner in Writ Petition No. 385/1960 joined as a Second Division Clerk in about 1950 and the petitioner in Writ Petition No. 316/1960 joined service on 1st July 1956 as a peon in the Government Secretariat of the former State of Mysore. On the formation of the new Mysore State under the States Reorganization Act, 1956, hereinafter referred to as the Act, all Civil Servants in the employment of the former Mysore State and Coorg and a part of the services from the States of Bombay, Madras and Hyderabad, were allotted to the Respondent State u/s 115 of the Act. The Civil Servants now in the employment of the respondent, comprise of two categories, viz., (1) Civil Servants allotted under Sub-sections 1, 2 and 3 of Section 115 of the Act (2) Civil Servants

appointed by the respondent after the 1st day of November, 1958.

3. The Services allotted from the different States were governed by different conditions of service. The question of amalgamation or what is called integration or the services arose consequent on the Reorganisation of States. The power of integration of the allotted services has been conferred on the Central Government under the Act. The respondent State Government prepared and published what are called Provisional Inter-State Seniority Lists, equating the posts for the said purpose on certain principles or considerations.

4. Under the Provisional Inter-State Seniority List prepared by the Respondent, the posts of first Division, Clerks in the former Mysore Government Secretariat have been equated with the posts of the Senior and Junior Assistants of Bombay, the Upper Division Clerks of Madras and Coorg, and the 2nd Grade Clerks of Hyderabad. The peons of the former Mysore State have been equated with similar posts in the other integrating areas.

5. There existed wide disparity in the scales of pay of the allotted Civil Servants holding similar kind of posts. The respondent did not have any pay scales of their own. Therefore, they constituted an Official Committee to examine and recommend scales of pay for several categories of posts. On the recommendations of the said Committee, the respondent by Order No. FL(B) 14034-14133-BUD. 119-56-3, dated 25th January, 1957 prescribed the new Pay Scales for the State. The material portion of the order reads as follows:

"5. Government are pleased to direct that the recommendations of the Committee as modified in the matter of Scales of pay and allowance for the State of Mysore be given effect to as under :

(i) Scales of Pay :-

(a) Scales of Pay of posts common to all Departments as in Annexure I.

(b) The Scales of Pay for particular classes of posts in the several Departments as in Annexure II;

(c) The Scales of Pay applicable to several Gazetted Officers of the State as indicated in Annexure IV.

(ii) Dearness Allowance: The rates of dearness allowance are approved as in Annexure 111.

6. The Scales of Pay and Dearness Allowance referred to above will be effective from 1st January 1957. In respect of all new entrants from 1st November 1956, the scales of Pay and Dearness Allowance will be automatically made applicable from the dates of their entry into services on or after 1st November 1956. All other employees of the State of Mysore in service as on 1st November 1956 including all Government servants allotted to the new State of Mysore from several areas, will be allowed to exercise the option to opt for the new Scales of Pay and dearness allowance and such option shall be exercised within a period of

90 days from the date of Publication of this Order in the Government Gazette. Such option once exercised shall be final. The option shall be given in writing to the Head of the Department or the Head of the Office in which the Government servant is working". The Scales of pay fixed in 1957 were revised in January 1961. The allottees from Mysore and Madras appear to have opted for the new Scales as the same are more advantageous to them, while the majority of the allottees from Bombay, Hyderabad and Coorg elected to remain in the pay scales applicable to them as on 1st November 1956. The position now is that all the new entrants into service and the allottees who have opted for the new scales, are governed by the scales of pay prescribed by the respondent, while the rest who did not opt, continue to draw higher scales of pay. It is not denied by the respondent that there exists disparity in the scales of pay of its civil Servants holding the same or similar Kind of posts and discharging identical duties.

6. The reason for exempting the "allottees" from the operation of the new Scales of Pay, except at their own option is, because the proviso to Sub-section 7 of Section 115 of the Act imposed a fetter on the power of the newly formed State Governments to vary the conditions of service applicable immediately before the appointed day to the case of persons allotted under Sub-section (i) or Sub-section (2) of Section 115, to their disadvantage, except with the approval of the Central Government. The only manner in which without the approval of the central Government the respondent could have applied uniform pay scales for all its Civil Servants, is either by adopting the highest pay scales in force in any of the five integrating States on the 1st November 1956 or any scale higher than such highest scale.

7. It is urged on behalf of the petitioners that the admitted disparity in the pay scales of the civil servants holding the same or similar kind of posts under the respondent, is violative of the fundamental rights secured to the petitioners under Articles 14 and 16 of the Constitution. It is contended on behalf of the State that the disparity created in the circumstances of the Re-organization of States and the protection given to the allotted civil servants, are special circumstances--applicable to the allotted civil servants and the classification is reasonable having relation to the object sought to be secured. The question presented for our decision is as to whether in the special circumstances arising from the Re-organization of States and the protection given to the Services affected by the Act, any classification made by the respondent on the basis of the rights protected, can be said to be unreasonable or arbitrary so as to offend Articles 14 and 16 of the Constitution. Article 14 contains a prohibition against the State that it shall not deny to any person equality before the law or the equal protection of the laws. It does not forbid reasonable classification for the purpose of legislation having relation to the object sought to be secured. What is prohibited is denial of equal treatment to persons similarly situated with respect to the matter taken up for legislation or regulation. The equal protection clause does not demand that the laws should operate with rigid sameness upon all persons within the State. It guarantees equality and not identity of rights. It does

not deny to the State the right and power of classification. Article 14 has been the subject of consideration by the Supreme Court on a number of occasions and the principles which govern its application have been summarised in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, in these words:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases Where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

8. The Government Order above referred, fixing the new scales of pay and allowance would be law as defined in Article 13(3)(a) of the Constitution, and if that law infringed Article 14, it will be declared void. The petitioners do not challenge the validity of the, said Government Order, though they refer to the same in their affidavits and base their arguments on the said order. What is urged on behalf of the petitioners by their learned counsel is, that the fundamental right of equality of opportunity for all citizens in matters relating to employment guaranteed by Article 16(1) of the Constitution, entitles an persons holding the same or similar Kind of posts in the equated cadres of the State Civil Services, to the same scales of pay, and Article 14 forbids the State to prescribe different scales of pay for the same or similar posts. Reliance is placed on the observations of the supreme Court made in *The General Manager, Southern Railway Vs. Rangachari*, wherein their Lordships of the Supreme Court observed that the expression "matters relating to employment" in Article 16(1) must be

deemed to include provision as to salary and periodical increments therein, terms as to leave, gratuity etc. In para 16 of the said Judgment, it is observed as follows:

"If the narrow construction of the expression "matters relating to employment" is accepted, it would make the fundamental right guaranteed by Article 16(1) illusory, In that case it would be open to the State to comply with the formal requirements of Article 16(1) by affording equality of opportunity to all citizens in the matter of initial employment and then defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their employment. "Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar posts?" On the narrow construction of Article (16) (1), even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16(1). Such a result would not obviously have been intended by the constitution. In this connection it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other." (Underlining there into " ") is ours).

Their Lordships of the Supreme Court made the above observation when they were deciding the question as to whether the equality of opportunity in matters relating to employment guaranteed by Article 16(1) applies only at the initial stage of the appointment or at all stages of the employment like promotions. They were not considering any question of the type we are considering nor can they be taken to have laid down the broad proposition that equality of treatment in the matter of pay scales for the same or similar kind of posts admits of no exception whatever. When their Lordships further state that Article 16(1) gives effect to the equality before law guaranteed by Article 14, it follows that Article 16(1) also does not forbid reasonable classification in regard to matters relating to employment. It is not contended by the petitioners that the "allotted civil servants" do not constitute a distinct class distinguishable from the new entrants into service after 1st November 1956. It is not also contended by them that the option given to the allotted civil servants is arbitrary or unreasonable. The provisions of Sub-section 7 of Section 115 of the Act affording protection to the conditions of their service is not challenged as violative of Article 14 or 16.

We have to consider whether there are any special circumstances or reasons applicable to the allotted civil servants which are not applicable to the rest, so that they may be treated as a class. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, their Lordships of the Supreme Court clearly state that in order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and assume every state of facts which can be conceived

existing at the time of legislation. The State is, therefore, entitled to ask us to take into consideration the circumstances accompanying the States Re-organization. The States out of which the present Mysore State has been formed, were under different administrative set up. Those states, having regard to their resources and other existing conditions, had fixed their pay scales, which were among the conditions of service applicable to the allotted civil servants on the date immediately preceding the "appointed day". While the entire services of former Mysore State and Coorg were allotted by the Act to the new State, a part of the services from Bombay, Hyderabad and Madras were allotted by the Central Government in exercise of their authority under the States Re-organization Act. the civil Servants so allotted had no option but to come to the new State. In those circumstances, the proviso to sub-section 7 of the Section 115 afforded protection to the civil servants affected by the Act with respect to their conditions of service which includes their pay scales. By virtue of the proviso to Section 115(7) read with section 116 of the Act, they should be deemed to have been appointed as Civil Servants of the new State on the pay scales applicable to them in their parent States immediately before the appointed day. The very Act which created the new State and the new State civil services guaranteed the existing conditions of service of the civil servants affected by the Act.

The inequality complained of by the petitioners is in the conditions of service inter se between the civil servants allotted from the different States. It cannot be said that persons appointed on different pay scales with different conditions of service by different States, are all alike and similarly situated though the nature of their duties may be similar. Civil servants of different states were allotted to the new State and integrated into common cadres on the basis of the nature of the duties of their posts, under the provisions of the Act. The respondent has not made any law providing for different pay scales for the same kind of posts. They have prescribed uniform scales of pay. No discrimination is made between persons to whom the new scales are applicable; option is given to the allottees from all the States to opt for the new scales or to continue in their existing scales. The higher scales of pay drawn by the allottees, who do not opt for the new scales prescribed by the respondent is not by virtue of any law, made by the respondent or action taken by them but by reason of pre-existing rights protected by the proviso to Sub-section 7 of Section 115.

9. The respondent has exempted the "allottees" from the operation of their new scales of pay with the view to observe and respect the rights conferred on them by the Act. A classification designed to accord with superior constitutional requirements cannot be said to be unreasonable or arbitrary. The United States Supreme Court upheld a classification adopted in a State statute with a view to avoiding conflict with the Commerce clause of the Federal Constitution. In *Packer Corporation v. Utah*, reported in (1931) 76 Law Ed. 643, Mr. Justice Brandies observed as follows:

"The Classification alleged to be arbitrary was made in order to comply with the

requirements of the Federal Constitution as interpreted and applied by the highest court of the State. Action by a State taken to observe one prohibition of the Constitution does not entail the violation of another."

The Supreme Court of India has upheld the discrimination made in favour of the ex-Rulers of Indian States u/s 87-B of the CPC by conferring on them certain immunity from civil process. Rejecting the contention that Section 87-B of the Code offended Article 14, their Lordships of the Supreme Court in, *Mohanlal Jain Vs. His Highness Maharaja Shri Sawai Man Singhji*, observed as follows:

"In this historical background the question of discrimination raised in the appeal must be examined. It is easy to see that the ex-Rulers form a class and the special legislation is based upon historical considerations applicable to them as a class. The princes who were, before integration, sovereign Rulers of Indian States, handed over, after the foundation of the Republic, their States to the Nation in return for an annual Privy Purse and the assurance that their personal rights, privileges and dignities would be respected. The Constitution itself declared that these rights, etc., would receive recognition. A law made as a result of these considerations must be treated as based on a proper classification of such Rulers, who had signed the agreement of the character described above. It is based upon a distinction which can be described as real and substantial, and it bears a just relation to the object sought to be attained".

The operation of different Sales Tax Laws in the integrating areas of the State of Madhya Pradesh was held to be not violative of Article 14 on the ground that the differentiation arose from historical reasons. By the Supreme Court in *Bhaiyalal Shukla Vs. State of Madhya Pradesh*, . In *Kishori Mohanlal Bakshi Vs. Union of India*, the Supreme Court rejected the contention similar to the one raised in these petitions that Article 14 guarantees equal pay for equal work. In that case, a class II Income Tax Officer contended that the pay scales for Class I and Class II Income Tax Officers offended Article 14 inasmuch as they do the same Kind of work. Their Lordships observed.

"If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14".

10. A classification based on the recognition of the pre-existing rights of the allottee civil servants cannot be said to be unreasonable or arbitrary. It is argued by Mr. Iyengar, the learned counsel for one of the petitioners, that the protection given under the proviso to Sub-section 7 of Section 115 is operative only until the final allotment of the civil servants is made by the Central Government. We are unable to accept any such interpretation on the said provision. The civil servants of former Mysore and Coorg were allotted by the Act under Sub-section (1) of Section 115 and there is no provisional or final allotment in their case. The language of Section 115 does not warrant the interpretation placed by the learned Counsel.

11. It may, no doubt, appear unfair that civil servants holding the same or similar posts and working in the same department should receive different salaries. The salaries paid to the Bombay or Hyderabad allottees by the respondent in the circumstances of the States Reorganisation, can furnish no ground for holding that the pay scales prescribed by the respondent is repugnant to Arts. 14 and 16. That the State Government desires to minimise the existing disparities is evident from the revision of scales effected in January 1961. As stated in the counter affidavit, the disparities may disappear in course of time. The rights of the parties have to be decided on legal considerations only and it is not possible to hold that any legal rights of the petitioners have been violated. (12) In the result, these writ petitions fail and are dismissed but in the circumstances of the cases parties will bear their own costs.