

(1991) 08 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 1261 of 1991

K. Narayana

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) ILR (Kar) 3283 : (1991) 3 KarLJ 463

Hon'ble Judges : Mohan, C.J; Hanumanthappa, J

Bench : Division Bench

Advocate : K. Subba Rao, for the Appellant; N.K. Gupta, Government Advocate for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Hanumanthappa, J.—This Appeal is directed against the Order passed by the learned Single Judge in Writ Petition No. 5715 of 1983 on 14-1-1991. The petitioner and 2 others, viz., (i) B. Laxman Devadiga and (ii) Haridas, filed Writ Petitions Nos. 5715 to 5717 of 1983.

2. The case of the appellant and the other Writ Petitioners is that at the time of their initial appointments, they were under-graduates. Subsequently, they became graduates. Pursuant to the Government Order, they were given incentive benefits, viz., additional increments. All of a sudden, by a subsequent order the said benefit was not only discontinued but also they were even called upon to reimburse the amount drawn by them as additional increment with retrospective effect. After hearing both sides, the learned Single Judge by his order dated 14-1-1991 allowed the said Writ Petitions in part holding that the additional increments paid to the petitioners therein upto 25-4-1981 are not recoverable from them and further holding that the petitioners cannot contend that the additional increments that were given to them by virtue of the earlier Government Order cannot be dispensed with and they have no legal right to claim the same on the basis of the earlier Government Order. Aggrieved by the

said Order of the learned Single Judge, only the petitioner in Writ Petition No. 5715 of 1983 has preferred this Writ Appeal.

3. A few facts are: The appellant was appointed as a Second Division Clerk in the erstwhile Mangalore City Municipality on 3-3-1961. Then he was S.S.L.C. He became a graduate in Commerce in January 1978. On the basis of the seniority he was promoted to the post of First Division Clerk and he is continuing as such. The Government by Order No. FD 121 SRP(3) dated 1-6-1974 continued the benefit of giving additional increments to the graduates which was introduced by the Government Order dated 9-10-1964. Thus, the said benefit was made applicable to all the Second Division Clerks and Primary School Teachers. The said benefit was granted in the relevant time scale and was subject to maximum of Rs. 25/- over the basic in the scale of pay drawn at the time of grant of the additional increments and the said Government Order dated 1-6-1974 provided that the benefit of the said order would be given effect to with effect from 1-1-1970. Subsequently, by means of another Government Order in HMA 26 MLR 76 dated 29-11-1976 the additional increments were extended to the Local Bodies, Notified Area Committees and Sanitary Boards who had acquired graduate education subject to a maximum of Rs. 25/- from the date of their graduation. By Government Order No. FD 14 SRB (1) 77 dated 24-5-1977 the Government reviewed all its previous orders in the light of the report of the Karnataka Pay Commission and the Official Committee and regulated the same by granting only 2 additional increments. The Government by its order No. FD 53 SRP 79 dated 26-10-1979 the said benefit was ordered to be discontinued with effect from 1-10-1979. This was given effect to by the Government of Karnataka on 25-4-1981, whereby the benefit of additional increments was discontinued to the Municipal Employees possessing or acquiring graduate qualification with effect from 1-1-1977. It was also clarified that the benefit of the Government Order dated 29-11-1976 shall be applicable only upto 31-12-1976. As a consequence thereof, the Commissioner of the Corporation of the City of Mangalore by his proceedings bearing No. A.Dis.4355/78-79 dated 3-3-1982 refixed the basic pay of the appellant and reduced his pay in pursuance of the Government Order dated 25-4-1981. In pursuance of the said order, the appellant's basic pay which was at Rs. 525 as on 3-1-1978 was reduced to Rs.500/- as a result of which the appellant's basic pay which was drawn as on 1-1-1981 was reduced to Rs. 575/-.

4. This was challenged by the petitioner/appellant herein before the learned Single Judge on the ground that discontinuance of the incentive to the employees of the Municipal Corporations is quite arbitrary and against the principles of Natural Justice; that once a benefit like the incentive or additional increment is extended, it confers a right on the employees and the same cannot be taken away by an administrative order that too with retrospective effect; that the action of the respondents in making a demand that the appellant shall refund the additional amount drawn by him pursuant to his acquiring a degree qualification is not only illegal but also without authority of law; that the action of the

Government in restricting to only 2 increments to the Municipal Corporations as not in the case of Government employees is quite arbitrary and violative of Articles 14 and 16 of the Constitution of India; that when the service conditions of the employees of the Municipal Corporations and of the Government Servants, it is improper to discriminate them while extending the benefit; that when the Government itself has extended the benefit of granting additional increments to the employees of the Municipal Corporations, Government is not justified in discontinuing the same subsequently in the absence of any valid reason and that the Government is not right in demanding the amount received as incentive with retrospective effect.

5. The learned Single Judge allowed the Writ Petitions in part. So far as it relates to the demand to refund the additional increments received by the petitioner upto 25-4-1981 as incentive, the same cannot be taken back on the basis of the principles of Doctrine of Promissory Estoppel. Once an assurance was made it is not open to the State Government or the Municipal Corporations to go behind their assurance made earlier. Thus, the learned Single Judge held that whatever amount drawn as additional increments cannot be ordered to be refunded as such benefit was given pursuant to earlier Government Order and the assurance made by the State Government or the Local Bodies that the employees who acquire degree qualification would be entitled to such incentive or additional increments. Regarding the second contention that as per the earlier promise made that the employees are entitled to get the same benefits continued in future also, the learned Single Judge held that after all the incentive is merely an incentive and cannot be equated to a legal right. Accordingly, the learned Single Judge rejected the request to continue the incentive given by way of additional increments to the employees of the Municipal Corporations. Aggrieved by the latter portion of the order, the appellant has preferred this appeal.

6. Sri Subba Rao, learned Counsel for the appellant, contends that the learned Single Judge is not justified in rejecting the request to continue the benefit by extending the same, viz., 2 additional increments, as in the case of Government Servants. He also contends that the present action of the respondent is quite arbitrary and violative of Articles 14 and 16 of the Constitution of India. In support of his contention, Sri Subba Rao relied on a Decision of the Supreme Court in Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, particularly on para 7 which reads as follows:

"We think that the appellant's conditions of service were governed by para 13 of Army Instruction No. I/S of 1954 and his previous full pay commissioned service should be taken in the matter of "ante-date" for the purpose of his pay. The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative (Army?) instruction which was given retrospective effect from 26th October, 1962."

7. After hearing both sides and going through the records, we are of the opinion that none of the contentions raised by Sri Subba Rao, learned Counsel for the

appellant, deserves any consideration for the simple reason that the appellant's assertion that he is entitled to get incentive even in future also on the basis of the earlier Government Order is untenable as awarding incentive cannot be equated to one of a legal right. Further incentive given earlier has not created any vested right. Because, "incentive is nothing but a payment made by the Government out of its own free will unconnected to service condition. It is given with a view to encourage efficiency and standard of work to be turned out by an official by acquiring higher qualification." It is true that the Government have no power to alter or modify the conditions of Government Service with retrospective effect to the prejudice to the Government Servant. But, in the instant case, in fact, the learned Single Judge clearly stated that the action of the respondents in making the demand to refund the amount the appellant received upto a particular date as incorrect. Whereas, subsequent to that date, he has held that the employees of the Municipal Corporation cannot claim as a matter right, as after all extending the benefit in the form of incentive or otherwise is purely a discretion and not a part of the service conditions. The Authority relied upon by Sri Subba Rao is not applicable to the facts of the case. In our view there are no merits in any one of the contentions raised by the appellant so as to interfere with the order of the learned Single Judge.

8. Hence this Writ Appeal is dismissed. No costs.