

(2016) 09 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition Nos.31645 of 2010, WP No.2026 of 2011 and WP No.8011 of 2011

K. Rajeswara Rao

APPELLANT

Vs

Andhra Pradesh State Road

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ALT 327 : (2017) 2 AndhLD 334

Hon'ble Judges : Sri. P. Naveen Rao, J.

Bench : Single Bench

Advocate : Sri A.G. Satyanarayana Rao, Advocate, for the Petitioner; Sri N. Vasudeva Reddy and Mr. S.V. Ramana, Standing Counsel for APSRTC, for the Respondent

Final Decision : Disposed Off

Judgement

Sri. P. Naveen Rao, J. - As the issue raised in these three writ petitions is same, the writ petitions are disposed of by this common order. For convenience, facts in W.P.No.2026 of 2011 are taken into consideration.

2. Petitioners are Class-I Officers retired from service on attaining the age of superannuation between 01.04.2009 and 31.01.2010. Revision of pay scales was due from 01.04.2009. A decision to revise the scales was actually taken in March 2010 and made effective from 01.04.2009. As part of revision of pay scales to Class-I Officers, the Corporation introduced Grade pay system applicable with effective from 01.02.2010. In other words the grade pay to Class-I Officers is made applicable to such of those officers who were in service as on 01.02.2010. Thus, petitioners are denied the benefit of grade pay since they retired from service prior to 01.02.2010. The first petitioner submitted a representation dated 31.03.2010 praying to grant Grade pay to him also. The Retired Officers Association submitted a joint representation on 31.05.2010 praying to grant the benefit of application of Grade pay to the retired officers also. By proceedings

dated 16.05.2011, the prayer to extend the grade pay to the retired Class-I Officers was rejected.

3. Initially this writ petition was filed praying for declaration in not granting the grade pay under revised pay scales, 2009 to the petitioners with effect from 1.04.2009 and not paying the difference in Gratuity, difference of Earned leave encashment and difference of pay and allowance as arbitrary and discriminatory and with consequential prayer, the prayer sought was amended and by the amended prayer, petitioners challenged the proceedings dated 16.05.2011 and seek for consequential direction as originally sought. Petitioners in WP No.2026 of 2011 filed W.P.M.P.No.31529 of 2016 praying to amend the prayer in the writ petition. By this amendment petitioners also seek to challenge clause 2.2 of Circular No. PD-10/2010 dated 02.03.2010.

4. W.P.M.P.No.37514 of 2016 in W.P.No.31645 of 2010 and W.P.M.P.No.38298 of 2016 in W.P.No.8011 of 2011 are filed praying to amend the prayer in the Writ Petitions similar to prayer sought in W.P.M.P.No.31529 of 2016 in W.P.No.2026 of 2011.

5. Heard Mr. A.G.Satyanarayana Rao, learned counsel for petitioners, Sri N.Vasudeva Reddy, learned standing counsel for the respondent-Corporation in WP Nos.31645 of 2010 and 2026 of 2011 and Sri S.V.Ramana, learned standing counsel for respondent-corporation in WP No.8011 of 2011. With the consent of learned counsel, arguments were heard duly taking note of amended prayer as per W.P.M.P.Nos.31529, 37514 & 38298 of 2016 in W.P.Nos.2026 of 2011, 31645 of 2010 and 8011 of 2011, respectively.

6.1. Mr. A.G.Satyanarayana Rao contended that Grade Pay is part of the pay and when grade pay is introduced, it has to form part of the revised pay scales of Class-I cadres. When pay scales are revised w.e.f. 01.04.2009, the Grade Pay should also be extended from that day to all officers in service as on that date. Denying the grade pay to officers in service as on 01.04.2009 and extending the same prospectively from 01.02.2010 is ex facie illegal.

6.2. He would further submit that all along respondent- Corporation was considering to grant all the benefits including the extension of grade pay to class-I officers from 01.04.2009. The Resolutions of the Board and the recommendations made by the Corporation to the Government would show that there was no such decision taken by the Corporation to restrict application of grade pay only from 01.02.2010. The order of the Managing Director dated 02.03.2010 is contrary to the decision of the Corporation and therefore, is not sustainable. Thus, the grade pay should also be extended to all officers who were in service as on 01.04.2009, the date on which the revised pay scales have come into force.

6.3. He would submit that the benefit was extended to the Executive Director w.e.f. 01.04.2009 and all the benefits were extended to all officers in Class-I in service after 01.02.2010. The action of the respondent-Corporation in not

extending the benefit of grade pay to Class-I Officers, who were in service on 01.04.2009 and retired before 01.02.2010, amounts to invidious discrimination and arbitrary exercise of power.

6.4. He would submit that totally there were 70 officers who were affected. However, only few officers are agitating the issue and the financial implication is very negligible. Others have not raised the issue and therefore they cannot agitate the same at this distance of time.

6.5. Having rendered long and satisfactory service to the Corporation, the Corporation could not have been so harsh in denying the benefit to petitioners. For retired officers small amount of additional gratuity, Provident Fund and consolidated financial enhancement would go a long way. Having extracted service from the petitioners this benefit could have been magnanimously granted to the petitioners and the harsh attitude of the respondent-Corporation cannot be digested by the petitioners, for having rendered long and satisfactory service and dedicated their lives to the growth of the respondent Corporation.

6.6. In support of his contentions, Mr. A.G.Satyanarayana Rao, placed reliance on the following decisions: i) Life Insurance Corporation of India v. Retired Lic Officers Association (2008) 3 SCC 321; ii) State Of Jharkhand v. Jitendra Kumar Srivastava (2013) 12 SCC 210 ;iii) State Of Madhya Pradesh v. Mala Banerjee (2015) 7 SCC 698; iv) State of U.P. v. U.P. Sales Tax Officers Grade II Association (2003) 6 SCC 250.

7.1. Mr. N.Vasudeva Reddy submitted that the respondent- Corporation was going through financial difficulties. Having regard to the financial implications of revised pay scales, certain decisions were taken by the Board consciously on granting the benefits to the employees/officers. Grade Pay system to Class-I officers was extended only to officers in service as on First February 2010 and from that date only. He would further submit that Class I Officers were being paid allowances towards refreshments, newspapers, conveyance etc. After due negotiations, the Committee of Officers has suggested the reduction of allowances payable to Class-I Officers and simultaneously to grant Grade Pay. Thus the reduction of allowances paid to the Officers and application of Grade Pay are interlinked. By the time the decision was taken to implement the revised pay scales, the Class- I Officers like petitioners have already drawn higher allowances. Therefore, cut off date is relevant on this count also.

7.2. He would further submit that, as seen from the recommendations, which were placed before the Board for approval, it is clearly stated that the Grade Pay would be applicable only from the date of drawl of new allowances. Two proposals were simultaneously placed before the Board in its meeting held on 06.02.2010. The first proposal relates to revision of pay scales as such to all categories of employees including Officers; by Resolution No.23 the proposal placed before the Board was approved. Separate proposals were also placed before the Board regarding revision of allowances; by Resolution No.24 the Board

has approved the proposals. One of allowances considered was, professional development allowance. It is a new allowance granted to Class-I Officers and in Resolution No.24, this allowance was given effect to from 1.2.2010. Thus in terms of the proposals placed before the Board and the decisions taken, the grade pay would also come into force from 1.2.2010. He would, therefore, submit that the proposals for revision of pay scales and allowances and the resolutions of the Board have to be read together to understand the intent of the Corporation. The intent of the Corporation is very clear and categorical, i.e., to apply the Grade Pay only from 1.2.2010.

7.3. It is further contended that the implication of claim cannot be confined to petitioners. Once claim of petitioners is accepted there can be more claims from officers similarly situated to petitioners and a similar demand can be raised from other officers, who are about 400.

7.4. He would further submit that prescription of cut off date by employer to extend any benefit is permissible more particularly when extension of benefit has financial implications.

7.5. He would submit that all similarly situated officers are given the same benefit and no discrimination is made. Officers retired prior to 01.02.2010 cannot compare with officers in service on that date. Even for the officers in service as on 01.02.2010, this benefit is extended only from that date. Cut off date is applied uniformly. Petitioners cannot compare themselves with Executive Director. The post of Executive Director is a separate cadre by itself.

8. The point for consideration is whether respondent-corporation erred in not extending the grade pay to Class-I Officers retired between 01.04.2009 and 31.01.2010?

9. Facts on record would disclose that the respondent corporation undertakes revision of scales of pay of officers and employees/workmen in a cycle of four years. The management negotiates with recognised unions and determines appropriate revision to various categories. Once an amicable settlement is arrived with workforce, it undertakes similar exercise with officers of various cadres and other staff and revises the scales of pay applicable to them also. The pay revision was due on 1.4.2009. By following the consultation and consensus process of pay revision, scales of pay to various categories of posts were revised in the year 2010. With reference to Class-I Officers, vide circular No. PD-10/2010 dated 2.3.2010, revised scales were notified. They are made applicable from 1.4.2009. One additional feature of this revision is introduction of Grade Pay to Class-I officers. However, the benefit of Grade Pay to Class-I officers was extended from 1.2.2010. There are three different scales in class-I, Special Scale, Senior Scale and Junior Scale. The Grade Pay now introduced is Rs.6100/-, 4100/- and 2700/- respectively to these three grades.

10. Paragraph-2 of Circular dated 02.03.2010 deals with revised scales of pay and their applicability. Paragraph-2.2 deals with Grade Pay. The paragraph reads

as under:

2.2. Grade Pay: The amount of existing reimbursable allowances of refreshments, News Papers and Bearer has been taken for the purpose of introduction of Grade Pay in respect of JSOs, SSOs and IIODs and the rates of Grade Pay are indicated against each category in Annexure-I. The Grade Pay shall be drawn to the Officers w.e.f. 01.02.2010. The Grade Pay shall be treated as Pay for the purpose of drawing applicable allowances i.e., DA, HRA, Encashment and Retirement benefits.

11. The forcible submission of Dr. Satyanarayan Rao, is as the corporation adopted the scales w.e.f. 1.4.2009, Grade Pay should also be extended from that date as it is embedded in the pay scale and, therefore, cannot be separated. He would assert that the decision of the Board of the Corporation was to extend the Grade Pay w.e.f. 01.04.2009 to all officers and therefore the notification dated 02.03.2010 restricting the application of Grade Pay from 01.02.2010 is without competence and is illegal. Managing Director cannot take decision to restrict the financial benefit, contrary to the decision of the Board.

12. Along with additional counter affidavit, copies of minutes of the meeting of the Committee of officers, Resolution No.71 of the Board dated 8.11.2011 and Note for Consideration of the Board on allowances, was placed on record.

13. It is appropriate to note that based on the representation of the Officers Association, the Grade Pay was agreed and was made effective from the date of grant of a new allowance. This is clear from the minutes of meeting of officers committee. The Officers were granted new allowance, known as professional development allowance w.e.f. 01-02-2010. Thus, the grade pay also applies from that date. Further more, this grade pay is linked to revision of allowances and those allowances were reduced only w.e.f., 01.02.2010. Grant of grade pay retrospectively would mean, extension of additional benefit, where as the request of the association and decision of the Corporation was otherwise. Having agreed to such course, it is not open to any individual officer to resile and stake claim from retrospective date.

14. In support of his contention that what is challenged in these writ petitions is defect in implementation of the recommendations of Pay Commission as accepted by the Board of the respondent corporation, Mr. Satyanarayana Rao relied on the decision of the Supreme Court in State of U.P., where in it is held that it is permissible for the officers to challenge the defects in implementation of Pay Commission recommendations. In Life Insurance Corporation of India, the question for determination was competence of the Chairman to fix cut-off date? This submission is based on the wrong premise that the Board of the respondent corporation decided to implement the Grade Pay to all officers w.e.f., 01.04.2009, whereas Managing Director fixed 01.02.2010. The Board resolutions would clearly demonstrate that application of benefit of the Grade Pay was linked to introduction of new allowance and Grade Pay would come into effect from the

date of implementation of the new allowance. For Class-I Officers new allowance was given effect from 01.02.2010. Thus, Grade Pay also comes into effect from that date. A cumulative reading of the proposals placed before the Board and Resolutions passed by the Board, would give no ambiguity on the date of application of the Grade Pay. The Managing Director of the respondent corporation has not fixed the cut-off date. He has only notified the decision taken by the Board.

15. In support of his contention that having extended the pay scales from 01.04.2009, the respondent corporation could not have denied the benefit of Grade Pay from the said date and make it prospective from 01.02.2010 and thereby deprived the additional retirement benefits to the officers who have retired between 01.04.2009 and 31.01.2010, he placed reliance on the decision of the Supreme Court in *U.P.Raghavendra Acharya v. State Of Karnataka* (2006) 9 SCC 630 = 2007 (1) ALT 26.4 (DN SC). The said decision does not come to the aid of the petitioners. In the said case, the revised scales of pay which included basic pay, dearness allowance, interim relief and fixed dearness allowance was given effect to from 01.01.1996, however, the revised pay drawn by the employees between 01.01.1996 to 31.03.1998 was not counted as emoluments for the purpose of determination of the pensionary benefits. This decision was taken on the premise that with reference to employees of Karnataka State, benefits were extended only from 01.01.1998. The Supreme Court, held said decision as illegal. Supreme Court observed that the concerned employees were governed by UGC scales and they cannot be compared with the State Government employees. It was further observed that once benefit of pay revision was extended from 01.01.1996, a right is vested in the concerned employees for determination of retirement benefits. In the cases on hand, revised benefits of pay scales are also made applicable for the purpose of settlement of retirement benefits. What is denied is extension of Grade Pay to the officers who retired prior to the date of its introduction. It is not in dispute that the grade pay to Class-I officers is newly introduced and when a new system of pay or a new allowance is introduced, it is permissible to employer to fix a date of its application and no employee can insist extension of such benefit from a retrospective date, more so, when such claim has financial implications.

16. In State of Jharkhand, the issue for consideration was in the absence of any provision in the Pension Rules, whether the State Government could withhold part of the Pension and/or Gratuity during the pendency of the departmental/criminal proceedings. With respect, said judgment has no relevance to the cases on hand.

17. In State of Madhya Pradesh, the issue for consideration before the Supreme Court was, whether it is permissible for the State to apply different cut-off dates for implementation of particular scheme. It appears State of Madhya Pradesh accepted the Kramonnati Scheme which provides more generous benefits to the lecturers/teachers in the employment of education in tribal welfare department

of Madhya Pradesh, but extended the said benefit from 01.08.2003 whereas the scheme was to extend the said benefit from 19.04.1999. Supreme Court noticed that having accepted to extend the benefits of the scheme from 19.04.1999, there was no justification to restrict extension of the benefits of scheme to 01.08.2003 when the same was extended to other employees from 19.04.1999 and therefore it would amount to violating mandate of Articles 14 and 16 of the Constitution. In the case on hand, the benefits are uniformly extended to all the Class-I Officers who were in service as on 01.02.2010, and the benefit of newly introduced Grade Pay system was not extended to the officers who have retired prior to 01.02.2010. In other words, even to serving officers, it was extended prospectively only. Thus there was no discrimination among the same class of persons. Though an attempt was made to compare with the Executive Director, but the post of Executive Director is a separate cadre by itself and therefore cannot be equated with other class-I posts. The post of Executive Director is a solitary post having far higher responsibilities and cannot be compared with other Class-I posts. Further, in Class-I there are several categories and huge work force. Thus, financial implication can be very high.

18. It is permissible to classify employees based on cut-off date upon calculating financial implications and fix a date for extension of certain benefits. (State of Punjab v. Amar Nath Goyal (2005) 6 SCC 754 : 2005 (6) ALT 34.6 (DN SC); State of A.P. v. A.P. Pensioners Association 2005 (13) SCC 161 = 2006 (2) ALT 13.2 (DN SC) and Union of India v. Manik Lal Banerjee (2006) 9 SCC 643 = 2007 (1) ALT 29.2 (DN SC). Financial and economic implications are very relevant and germane for any policy decision (State of Punjab v. Amar Nath Goyal- Paragraphs 26 and 37). In State of A.P., Supreme Court held that limiting the monetary benefits to employees retired or died on or after a particular date as valid. Supreme Court considered decision in D.S.Nakara v. Union of India (1983) 1 SCC 305. In Manik Lal Banerjee (supra), Pay Commission recommended linking of Dearness Pay to All India Consumer Price Index on 12.01.1966 as on 01.07.1993 but the entitlement of the employees in terms thereof was directed to be prospectively affected with effect from 01.04.1995. The Central Government accepted the said recommendation. The respondent therein retired on 31.01.1995. Thus, recommendation of Pay Commission was not applied to him. This cut-off date principle was upheld.

19. The scope of decision in D.S.Nakara was summed up in Indian Ex-Services League v. Union of India (1991) 2 SCC 104. as under:

It was clearly stated that if the pensioners from a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. This according to us is the decision in D.S.Nakara and no more(para 12).

20. As long as classification satisfies the twin tests, i.e., (i) intelligible differentia; and (ii) the differentia must have a rational relation to the object sought to be achieved. It passes the rigors of Article 14. In the case on hand Grade Pay is

newly introduced to Class-I officers. While deliberating on various aspects of pay revision, the officers association requested to introduce Grade Pay by reducing various allowances either to paid to them. It took some time for the corporation to undertake process of consultation and finalise pay revision. As pay revision was due on 01.04.2009, though orders were issued in the year 2010, the revision was made applicable retrospectively from 01.04.2009. While broadly, extending various benefits, the benefit of Grade Pay was made applicable w.e.f. 01.02.2010, the date on which professional development allowance was granted and simultaneously the reimbursable allowances were reduced. Thus, this exercise fulfils twin conditions and is valid.

21. The reimbursable allowances relating to newspapers, journals etc are reduced w.e.f. 01.02.2010. This reduction is in lieu of extension of Grade Pay. Till the decision was made to grant Grade Pay, higher reimbursable allowances were paid and, therefore, grant of Grade Pay retrospectively would mean conferment of two benefits. With effect from 01.02.2010 new allowance is granted. This revised Grade Pay is made applicable to all officers who are in service or retired after 01.02.2010 and no exception is made. The benefit was extended to even serving officers only from that date. Thus, extension of Grade Pay has to be viewed in the over all context/in the bundle of facts concerning pay revision and the capacity of the employer to meet the additional financial burden and cannot be seen in isolation. It is part of a package worked out.

22. It is not in dispute that the petitioners were paid the higher reimbursable allowances till they retired from service. Application of benefit of Grade pay retrospectively would mean that they will be getting two benefits. Further more, the benefit cannot be extended to the petitioners in isolation and similar benefit is also required to be extended to the officers who were in service prior to 01.02.2010 and continued after 01.02.2010. It cannot be ruled out that once benefit is extended to petitioners, similar claims would surface. Not extending the benefit to others would amount to discriminatory treatment. This would mean higher financial burden on the Corporation. Thus, the apprehension expressed by learned standing counsel on raising similar claims cannot be easily brushed aside. In matters concerning policy decisions, more particularly when such decision has financial implications, Court cannot mandate the employer to extend the benefits retrospectively.

23. I, therefore, see no error in the decision of the respondent- Corporation in fixing 01.02.2010 as the date for extending the Grade Pay. From the said date, Grade Pay becomes part of scale attached to respective Grades in Class-I. The notification of revision of pay scales to Class-I Officers and extending the Grade Pay from 01.02.2010 is in accordance with the decisions of the Board. It cannot be classified as one made in arbitrary exercise of power and cannot be termed as discriminatory. The communication given to the President of the Retired Officers Welfare Association by the Vice Chairman and Managing Director in his proceedings dated 16.05.2011 is in tune with the decision taken by the Board

and I do not see any illegality in the decision communicated to the petitioners and their association.

24. Accordingly, writ petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.