
(2012) 03 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 11344 of 2011 and M.P. No. 2 of 2011

K. Rangaraju and Others

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : (2012) 03 MAD CK 0083

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.A. Gouthaman, for the Appellant; Vijaya Pandian, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. It is stated that the issue involved in this Writ Petition is covered by a common order passed by this Court in the earlier Writ Petitions in W.P.

No. 7006 of 2011 and connected matters in R. Thiagarajan Vs. State of Tamilnadu, Rep.by Principal Secretary to Government (Finance

Department), Fort St.George, Chennai 9 and others dated 8.3.2012. Identical contentions raised in the present Writ Petitions were also raised in

the above batch of Writ Petitions and this Court while repelling the contentions, has observed as follows:

16. The broad line of argument addressed by the counsels are as follows:

i. The State Government has no power to issue the order cancelling the earlier order implementing the report of One Man Commission.

ii. The comparison with the different categories of employees in other Departments has no relevance. Each Department/category had to be seen in

the light of its own Recruitment Rules and conditions of service.

iii. In any event the order cancelling the pay fixation done already without notice is against the Principles of natural justice and arbitrary.

iv. Lastly Mr.S.M.Subrmanian, learned counsel for the petitioners added that the State Government insofar as it had allowed the earlier payment

not to be recovered fixed a cut off date and that date should be extended to others until the One Man Commission determines the grievances of

the petitioners.

17. Mr.Gouthaman, learned counsel for the petitioners placed reliance on the following judgments of the Supreme Court:

(17.i) The learned counsel for the petitioner made a reference to the judgment of the Supreme Court in State of U.P. and Others Vs. U.P. Sales

Tax Officers Grade II Association, . In that case, the Supreme Court clearly stated that the decision of expert body like the Pay Commission

cannot be ordinarily subject to judicial review. In paragraph 11, the Supreme Court observed as follows:

11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review

obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the

employees. In the present case, however, judicial review is not sought against the report or recommendations of the Pay Commission. What the

respondent Association has questioned is the implementation of the resolution of the Government based on the report and recommendations of the

Pay Commission. As we have seen above, the Pay Commission classified the District Level Officers into two groups. Those engaged in welfare

and developmental activities, in view of their onerous duties, were recommended pay revision a step above other District Level Officers engaged in

traditional work of the Government. These recommendations of the Pay Commission by classifying District Level Officers into two groups i.e. A

and B has been given a go-by rightly too, in our view, by the Government when it resolved under its decision taken on 29-12-1981 to grant

revised pay scales to District Level Officers only on the basis of the pre-revised pay scales which they were carrying. We have also noted the

relevant part of the resolution of the Government which recommends for the

officers in the pre-revised scale of Rs 400-750, the pay scale of Rs 690-1420.

This decision does not fully help the case of the petitioner because in the present Writ Petitions, the petitioners were never deprived of Pay

Commission recommendations implemented after adopting the Report of the Central Pay Commission. The grievances arose subsequent to the

implementation of the Pay Commission recommendations and when alleged anomalies were projected before the State Government, which led to

the appointment of One Man Commission headed by Rajeen Ranjan, I.A.S. It cannot be said that the State Government can take a different view

when the similar grievances were projected by the other sections of the employees who are also under the very same Government. If by the One

Man Pay Commission recommendations" pay anomalies are rectified and it gives rise to chain reaction, it is open to the State Government to

consider the issue as to whether the grievances projected by the others are so grave and which may hamper the smooth functioning of the State

Service. Ultimately, in the matter of pay scales and conditions of service, the appropriate Government derives its power only in terms of the Rules

framed under Article 309 of the Constitution. These are not the cases of industrial employees, who are protected by different statutory rights in the

matter of altering existing service conditions.

(17.ii) The learned counsel also referred to the judgment of the Supreme Court in Secretary, Finance Department and others Vs. West Bengal

Registration Service Association and others, , for contending that if the recruitment to two Departments are based on different consideration

including educational qualifications, there can always be a different scale and any direction to grant same scale of pay cannot be countenanced.

But, in the same case, the Supreme Court in paragraph Nos.11 and 12 observed as follows:

11. The appellants contend that the High Court committed a serious error in revising the pay scale of Sub-Registrars in exercise of its extraordinary

jurisdiction under Article 226 of the Constitution in total ignorance of the settled legal position that pay fixation is essentially an executive function

ordinarily undertaken by an expert body like a Pay Commission whose recommendations are entitled to great weight though not binding on the

government and are not justiciable in a court of law since the court of law is not well equipped to take upon itself the task of job evaluation which is

a complex exercise. In support of this contention a catena of decisions beginning with the case of Parbhat Kiran Maithani v. Union of India and

ending with the case of State of U.P. v. J.P. Chaurasia was relied on.

.....

Thus the examination for Group A employees is far more stringent than for those belonging to Group D employees and, therefore, contend the

appellants, they are not comparable and cannot be placed in the same pay scale invoking the equality clause in Article 14 of the Constitution.

Lastly, it is said that the financial burden which will fall on the State Government on the implementation of the impugned judgment will be in the

vicinity of Rs.1.45 crores which is not justified since the High Court has failed to appreciate the issues in their proper perspectives. We find

considerable force in the submissions made on behalf of the appellants.

12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled

that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts

will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the

Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts

must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with

requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of

different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing

nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his

department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties

and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers

vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc.

We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable

number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having

comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades

which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw

up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is

made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the

nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x)

employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view

while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical

arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance

and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a

substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the

Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that

equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to

come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary

to undo the injustice.

(emphasis added)

(17.iii) Lastly, the learned counsel also referred to the judgment of the Supreme

Court in Union of India (UOI) and Others Vs. Jagdish Pandey and

Others, to contend that except for an appropriate and valid reason, the legitimate right of an employee cannot be interfered with and if any order

varies, the current scale must be supported by reason.

18. In the counter affidavit filed by the respondents, these contentions were refuted. It is stated that the Government withdrawing the

implementation of the earlier One Man Commission's recommendations and cancelling the G.O.Ms.No.448, Finance (Pay Cell) Department

dated 31.12.2010, does not involve granting of any opportunity to the employees and there is no violation of principles of natural justice. It is

further stated that it is not within the provinces of the Court to go into the question regarding the equal pay or the structure of pay scales.

19. Reference was made to the judgment of the Supreme Court in S.C. Chandra and Others Vs. State of Jharkhand and Others, The Supreme

Court in paragraphs 35 to 37 observed as follows:

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of

separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal

pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for

examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of

appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Govt. of W.B. v. Tarun K. Roy.

37. Similarly, in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. the principle of equal pay for equal work was considered in

great detail. In paras 9 and 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which

should be left to an expert body. The courts must realise that the job is both a difficult and time consuming task which even experts having the

assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which

is for the executive to discharge. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences vide Union of India v. Pradip Kumar Dey.

(emphasis added)

20. It was further stated that it was a mistake committed by the State Government and in the name of rectifying an anomaly, it had perpetrated further grievances to other employees. In paragraph No.14 of the counter affidavit, it was averred as follows:

....In view of the aforesaid anomaly which resulted in gross discrimination between equally placed employees of the same category, which resulted due to the mistake perpetrated by the Government in implementing the recommendations of the One Man Commission, the Government decided to rectify their mistakes as soon as it became known. It is pertinent to note that the implementation of the aforesaid recommendations took place only in the month of August 2010.

On the question of prejudice that may be caused to the employees, in paragraph No.16, it was averred as follows:

...It is also submitted that the revision of scale of pay of employees and rectification of anomaly is an official procedure and does not amount to penalize the status of any category of post or an employee. Further, Government has also waived the recovery due to re-fixation of pay.

On the question of existing anomaly projected by all employees, in paragraph No.22, it was averred as follows:

22. With reference to the averments made in ground (m) of the affidavit, it is submitted that among others, orders have also been issued in

G.O.Ms.No.71, Finance (PC) Department dated 26.2.2011, constituting a Pay Grievance Redressal Cell under the chairmanship of Thiru

R.Thiagarajan, Special Secretary to Government and the said cell has been formed to give an opportunity to the aggrieved parties to represent for

pay anomaly rectification and the cell shall submit its report to the Government and the Government shall examine and issue suitable orders

thereon. The final decision in the matter rests with the Government. Therefore, the contention of the petitioner that approaching the redressal forum

would be futile is not correct.

(Emphasis added)

21. In the context of stand taken by the State Government, the attack made by the learned counsel for the petitioners on the impugned G.O is

misconceived. It is not as if the State Government has no power to revise the scales of pay whether upwardly or downwardly depending upon the

requirement and exigencies of service. In the cases on hand, the State Government even in the impugned G.O., had stated that the implementation

of the One Man Commission has resulted in wide scale disparity among other sections leading unrest and disquiet among Government servants.

Therefore, the Government wants to examine the entire issue on the comprehensive manner. Therefore, in such context, the individual exercise of

projecting that they are superior to other service depending upon their entry into service, or entitled for higher scale does not stand to reason and in

such circumstances, the question of affording any notice to individual employees does not arise.

22. The Supreme Court has held that the State Government by virtue of its power under Article 309 of the Constitution can make an unilaterally

conditions of service or amend the conditions of service and it can also be given retrospective effect and it is upto the State Government to accept

or reject the Pay Commission's recommendations vide judgment in M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and

Another, . In paragraph No.13, it was observed as follows:

13. Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-à-vis the educational

qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a

valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso

appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing

appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto.

(Emphasis added).

23. The Supreme Court also took exception to the High Court's and Administrative Tribunal's going into the question of fitment of officers in a

particular grade or pay scales attached thereto vide its judgment in Dy. Dir. Gen.

of Geo. Survey of India and Another Vs. R. Yadaiah and Others,

In paragraph No.2, it was observed as follows:

2..... The question that arises for our consideration is whether it was appropriate on the part of the Tribunal to go into this question of

upgradation of pay of a particular group of employees and give the relief with effect from a particular date. On examining the order of the Cuttack

Bench of CAT, we find that the Bench did not have the opportunity of a counter-affidavit on behalf of the Union of India, and on the other hand,

the prayer to file the counter-affidavit stood rejected. Ordinarily, the courts or tribunal should not go into the question of fitment of the officers in a

particular group or the pay scale thereto, and leave the matter to the discretion and expertise of the special commission like the Pay Commission,

unless the court finds on materials produced that there is some apparent error.

(Emphasis added).

24. The Supreme Court also held that a judicial review over expert bodies such as Pay Commission was not normally subject to judicial review

vide its judgment in State of U.P. and Others Vs. U.P. Sales Tax Officers Grade II Association, , In paragraph No.11, it was held as follows:

11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review

obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the

employees.

25. The Supreme Court in K.T. Veerappa and Others Vs. State of Karnataka and Others, has held that the fixation of pay and determination of

parity in duties are the functions of the executive and the scope of judicial review of administrative decision is very limited. In paragraph No.13, it

was observed as follows :

13..... There is no dispute nor can there be any to the principle as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.

that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in

this regard is very limited.

26. The Supreme Court in Ramesh Singh Vs. Union of India (UOI) and Others, ,

had observed as follows

6..... the scope for interference is extremely limited because the Court does not normally substitute its views for those of expert bodies like the Pay

Commission unless some glaring infirmities are established.

27. The Supreme Court also held vide its judgment in Chandrashekar A.K. Vs. State of Kerala and Another, that whether the scale of pay should

be revised or not is the matter of policy decision of the State and no legal right exists in a person to get the revised scale of pay implemented. In

paragraph 14, it was observed as follows:

14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person

to get a revised scale of pay implemented. It may be recommended by a body but ultimately it has to be accepted by the employer or by the State

which has to bear the financial burden.

28. The Supreme Court in State of West Bengal Vs. Subhas Kumar Chatterjee and Others, , once again reaffirmed its earlier decisions and also

condemned the Tribunal's action in interfering with the administrative authorities' power. In paragraph Nos.14 and 21, it was observed as follows:

14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the

Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and

determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the

Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay

Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the

recommendations of the Pay Commission. (See Union of India v. Arun Jyoti Kundu and State of Haryana v. Haryana Civil Secretariat Personal

Staff Assn.) It is no doubt true, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have

remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post.

21. This Court on more than one occasion decried such practices adopted by the

tribunals directing applications filed before them to be treated as representations before the executive authorities for their decision on merits. It is for the tribunals that are empowered to examine service disputes on merits. Such delegation of power apart from being illegal and unconstitutional amounts to avoidance of constitutional duties and functions to decide such disputes which are exclusively entrusted to them by law.

29. The Supreme Court had also forewarned that a policy consideration of the State Government cannot be interfered with by the Court vide its judgment in Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, . In paragraph Nos.16 and 17, it was averred as follows:

16. Aware of our jurisdictional limitations we do not agree that the court can analyse such minutiae to fault the policy and quash the order of government i.e G.O.No. 1968. For argument's sake, let us assume that there is a volte face on the part of the Government in shifting its stand in the matter of computation of seniority with reference to length of service. Surely, policy is not static but is dynamic and what weighed with the Government when panchayat institutions were amalgamated with the District board institutions might have been given up in the light of experience or changed circumstances. What was regarded as administratively impractical might, on later thought and activist reconsideration, turn out to be feasible and fair. The court cannot strike down a GO., or a policy merely because there is a variation or contradictions. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. Let us assume for argument's sake that the mode of selection by the District Boards is not as good as by the Public Service Commission. Even so it is difficult to dislodge the Government's position that the teachers with mostly the same qualifications, discharging similar functions and training similar students for similar examinations cannot be equated from a pragmatic angle without being condemned as guilty of arbitrariness.

17. Sri Govind Swaminathan drove home the point that in some cases even a few hundred "A" wing members have been passed over by someone

in the "B" wing far junior to them. Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side

cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterday

becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy.

(Emphasis added)

30. In this context, it is useful to refer to the judgment of the Supreme Court regarding the right of employee in receiving pay and the Government's

right to vary the scale vide its judgment in Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others, The Supreme Court has also

upheld the right of the State Government to withdraw any mistaken payment and rectify the mistake committed. In such circumstances, the

Supreme Court held that it does not call for any opportunity of hearing. In paragraphs 7 to 10, it was observed as follows:

7. There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has

merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of

hardship, where the following conditions were fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular

interpretation of rule/order, which is subsequently found to be erroneous.

8. In Col. B.J. Akkara (Retd.) v. Govt. of India this Court explained the reason for extending such concession thus: (SCC pp. 728-29, para 28)

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in

exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant,

particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess

payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment

will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess

of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief

against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to

grant such relief against recovery.

(emphasis supplied)

9. What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by

applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is

subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not

use their discretion to deny the right to recover the excess payment.

10. In these cases, the Rules specifically provided that the employees should be paid a consolidated salary. Therefore without amendment of the

Rules, the Managing Committees could not have passed a resolution for giving the benefit of regular pay scales that too with retrospective effect to

the employees. Further, the Societies did not have the funds to make such payments and illegally diverted the funds made available for disbursal of

loans to farmers, for the purpose of making such excess payment to the employees. When the resolution extending such benefit was passed and

the amounts earmarked for loans for farmers were diverted for making payment to the employees, the Managing Committees as well as the

employees were aware that the resolution and consequential payment was contrary to the Rules. There was no question of any wrong calculation

or erroneous understanding of the legal position. Most of the employees who received similar relief have refunded or have agreed to refund the

excess payment. Making any exception in the case of the respondents would also lead to discrimination.

31. Therefore, the contentions raised by the petitioners in assailing the impugned order do not stand any legal scrutiny. It is not as if the State

Government was unmindful of the grievances projected not only the Group represented by the petitioners but also others. As noted already, in the

communication sent on 7.3.2012, it was stated that the Government is at present having 500 grievances regarding pay anomaly and they are willing

to appoint a new committee for the purpose of examining those grievances and submitting a report within a time frame and thereafter for

considering these recommendations, the Government will issue appropriate orders.

32. In the light of the Pay Grievance Redressal Cell headed by R.Thiyagarajan, I.A.S not being available, a direction is issued to the State

Government to implement paragraph 5 of the letter dated 7.3.2012. A decision in this regard shall be taken within four weeks and thereafter the

said Committee will proceed to hear the grievance of all persons including the petitioners.

33. The Writ Petitions are misconceived and bereft of legal reason. In the result, except the aforesaid directions, all the Writ Petitions stand

dismissed. No costs. The connected Miscellaneous Petitions are closed.

In the light of the above, the writ petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.