(1986) 01 KAR CK 0031

In the Karnataka High Court

Case No : Writ Appeal 652/82

Karnataka Electricity Board APPELLANT

Vs

Venkatkrishna RESPONDENT

Date of Decision : 16-01-1986

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974 — Rule 3

Citation : (1986) ILR (Kar) 570 : (1986) 1 LLJ 506

Hon'ble Judges : K. Jagannatha Shetty, Acting C.J.;S.A. Hakeem, J

Bench : Division Bench

Judgement

Jagannatha Shetty, Ag. C.J.

1. These Writ Appeals and Writ Petitions with common questions of law shall stand disposed of by the following order.

2. The facts in outline giving rise to these matters are these :

The Karnataka Civil Services (Service & Kannada Language Examinations) Rules, 1974, which came into force with effect from 10th January, 1974, prescribed certain departmental examinations for Government servants. We may, hereinafter, refer to these Rules ad ''KLE Rules''. Rule 3 of the KLE Rules provides for a period of two years for Government servants to pass the examinations prescribed thereunder, but that period was later extended to three years by an amendment. Rule 6 of the KLE Rules provides for grant of additional increment to Government Servants who pass the prescribed examination. The additional increment is liable to be granted in the pay scale admissible to such Government servants.

3. The State has been revising the pay scales of Government servants from time to time. In 1970, the State constituted a Commission for the purpose, headed by Mr. Justice Tukol who was a retired Judge of this Court. Upon the

recommendations of that Commission, the State revised the pay scales by framing Rules called the Karnataka Civil Services (Revised Pay) Rules, 1970. The said rules were brought into force with effect from 1st January, 1970. In 1976 another Pay Commission was constituted headed by Mr. Justice A. Narayana Pai the retired Chief Justice of this Court. Accepting in principle the recommendations of that Commission, the State again revised the pay structure of Government Servants by framing rules called the Karnataka Civil Services (Revised Pay) Rules, 1976. These Rules came into force with effect from 1st January, 1977.

4. The rates of increment provided under the Pay Rules of 1970 were quite different from those prescribed under the Revised Pay Rules of 1976. Under the latter Rules, the increment provided was comparatively higher. So much so, the total pay of a Senior Government Servant who had passed the prescribed examinations prior to the coming into force of the Revised Pay Rules of 1976 became less than that of his junior who passed such examinations after the said Rules came into force. But this was never intended by the Pay Commission. It was the inevitable result of giving effect to Rule 6 of the KLE Rules.

5. In order to remove such anomalies, the Government made an order dated 31st January, 1979, directing stepping up of the basic pay of Senior Government Servants who had passed the prescribed examinations prior to 1st January, 1977. Such seniors were allowed one additional increment in the revised pay scale admissible to them. The relevant portion of the said Government Order reads :

"ORDER NO. FD68 SRP78 BANGALORE DATED THE 31ST JANUARY, 1979.

Under Rule 6 of the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974, a Government servant who passes the prescribed departmental tests is entitled to an additional increment in the scale of pay applicable to his post. Consequent on the revision of pay scales with effect from 1st January, 1977 a Junior Government servant who passes the prescribed tests on or after 1st January, 1977 and who is granted an additional increment in the revised scale of pay may in some cases draw higher pay than that of the senior Government servant who had passed the prescribed tests prior to 1st January, 1977 and who was granted an additional increment in the pre-revised scale of pay. A number of representations have been received in this behalf requesting Government to remove this anomaly.

2. Government after careful consideration of the question are pleased to order that the basic pay of the senior Government servant who had passed the prescribed departmental tests prior to 1st January, 1977 and who was granted an additional increment in the pre-revised scale should be stepped up into that of the junior Government servant who passed the prescribed departmental tests on or after 1st January, 1977 and was granted an additional increment in the revised scale of pay subject to the following conditions.

(i) Both the senior and junior Government servants should belong to the same cadre. As on 31st December, 1976 the senior Government servant should have been drawing in the pre-revised pay scale, a basic pay not less than that drawn by the junior Government servant.

(ii) The junior Government servant should be getting more pay than the senior Government servant only on account of grant of an additional increment in the revised scale of pay for passing the prescribed departmental tests.

3. Proposals for stepping up of the basic pay in accordance with these orders may be sent to the Finance Department through the concerned Administrative Department of the Secretariat along with the information in the prescribed proforma (form appended to the Government order) and service register.

By order and in the name of the Government of Karnataka,

Sd/- Dy. Secretary to Government, Finance Department."

6. Since similar anomalies also existed in respect of the pay scales of employees of the Karnataka Electricity Board (for short ''KEB''), the Chief Engineer, Electricity (General), suggested to the KEB to follow the principles set down in the aforesaid Government Order dated 31st January, 1979. The KEB accepting the recommendation passed a resolution on 11th June, 1979 which reads :

"RESOLUTION NO. 12885 DATED 11TH JUNE 1979.

It was resolved to adopt the Government Order No. FD68 SRP78 dated 31st January, 1979 (copy enclosed to the Agenda Note) with effect from 1st April, 1976."

Pursuant to the aforesaid resolution, a formal order dated 2nd July, 1979 was issued by the Secretary of the KEB in the following terms :

"ORDER NO. 85/6458/78-79 dated 2nd July, 1979.

Approval is accorded for the adoption of Government Order No. FD68 SRP78 dated 31st January, 1979 (copy enclosed) with effect from 1st April, 1976 in the matter of stepping up the pay of the senior employees to that of juniors.

Proposals for stepping up of the pay of the employees in accordance with the Government Order should be sent to the Board for sanction along with the information in the prescribed proforma (form appended to the GO) and Service Register duly verified by the Chief Controller of Accounts, KEB, Bangalore.

By Order, Sd/- Y. Krishna Murthy, Secretary."

7. The benefit of the Government Order dated 31st January, 1979 was also extended to the staff of the High Court of Karnataka by an order made by the Hon''ble Chief Justice.

8. But the said beneficial order did not last long. It seems the Government had a

second look at the matter and it came to the conclusion that since the implementation of that order would result in a chain reaction, it was considered necessary to withdraw that order. Accordingly, the following order dated 11th September, 1979, was issued :

"ORDER No. FD35 SRP79 BANGALORE DATED THE 11TH SEPTEMBER, 1979.

In Government Order No. FD68 SRP78 dated 31st January, 1979, orders were issued for stepping up of pay of a senior Government servant who was granted an additional increment in the pre-revised scale for passing the prescribed departmental examinations to that of a junior Government Servant who was granted an additional increment in the 1977 revised pay scale subject to certain conditions. It has come to the notice of Government that the implementation of this order is resulting in a claim reaction. The implications of this question have been reviewed by Government and it is considered necessary that the orders should be withdrawn.

2. Government direct that the orders issued in G.O. No. FD68 SRP78 dated 31st January, 1979 should be and are hereby rescinded. Orders stepping up the pay of officials issued, if any, in pursuance of the G.O. dated 31st January, 1979 should be cancelled."

9. The Government thus rescinded the order dated 31st January, 1979 and further directed that the individual orders made in favour of seniors stepping up their pay should also be cancelled.

10. In order to ensure uniformity in all departments, the Government requested the High Court to recall such order made in favour of senior staff of the High Court. After some correspondence, the Hon''ble Chief Justice made an order directing that the excess amounts paid under the stepping up orders should be recovered from the concerned officials. Challenging that order of the Hon''ble Chief Justice, Writ Petition No. 20822/80 and connected Petitions have been preferred.

11. In the meantime, the aggrieved Government servants also moved this Court with Writ Petitions questioning the legality of the Government order dated 11th September, 1979.

12. The Government also seems to have indirectly coerced the KEB to fall in line with the decision not to step up the pay of the senior officials. The KEB though initially reluctant, ultimately succumbed to the pressure of the Government and resolved to discontinue the benefits to their officials by passing a resolution in the following terms :

"Resolution No. 14588 dated 30th July, 1981

It was resolved to withdraw the benefits conferred to the employees vide G.O. No. FD68 SRP78 dated 31st January, 1979, from the date the State Govt. withdrew such benefits to their employees vide G.O. No. FD35 SRP70 dated 11th

September, 1979.

In the case of employees where such benefits have already been extended, the matter would be reviewed and their pay would be refixed and extra payment would be recovered in easy instalments.

Sri A. Thimmaiah, Member, dissented from this decision since it adversely affects the natural justice of the employees."

This decision of the KEB has been incorporated in an order dated 17th August, 1981. It was then the turn of the officials of the KEB to challenge the validity of that order in this Court by means of Writ Petitions.

13. All the Writ Petitions filed by the Government servants, the officials of the KEB and the staff of the high Court were allowed by the Learned Single Judge. He held that the withdrawal of the benefit of giving one more increment to seniors without removing the anomaly in their pay scales was arbitrary and violative of Art. 14 of the Constitution. In some cases, the Learned Judge also observed that the action of the authorities in denying such benefits to senior officials would be violative of the principles of natural justice.

14. The Writ appeals have been preferred by the State and the KEB against the decision of the Learned Single Judge. The connected Writ Petitions are those filed by some of the officials of KEB. They have been referred to the Division Bench for disposal since they raise questions similar to those involved in the Writ Appeals.

15. The common contentions urged on behalf of the State Government and the KEB may be summarised as follows :

The conditions of service of Government Servants and the officials of KEB could be unilaterally altered and they have no right to demand that their pay should be stepped up. The decision to grant one additional increment to seniors was only by way of concession afforded to them and that concession could be withdrawn at any time by the employer. The withdrawal of such concession need not be preceded by any opportunity for the officials to show cause since rules of natural justice are not attracted to cases depending upon discretion. The stepping up of the pay of the senior officials has led to a claim reaction with unbearable financial burden on the Government and the KEB. It was therefore considered necessary to withdraw such concession.

16. Per Contra, the Counsel on behalf of the officials mostly highlighted the arbitrariness in the pay structure of the seniors and juniors in the same cadre. According to them in any system of recruitment - private or public - the seniors are paid more than their juniors, and in any event their salary cannot be less than that of their juniors. They also urged that there would be no chain reaction nor unbearable financial burden to the State or the KEB if the pay of seniors is stepped up by one more increment to rationalise the pay structure.

17. Before we examine the main contention relating to the validity of the

discrimination in the pay scales of seniors and juniors, it would be convenient to dispose of two minor questions raised in these appeals. The first of these questions relates to the legality of recovery of the amounts drawn by the seniors under the stepping up orders. It is not in dispute that some of the officials who are respondents herein have received one increment upon refixation of their pay. The refixation of their pay was done under the valid order made by the competent authority. The Counsel for the respondents, therefore, urged that such amounts could not be recovered by retrospectively altering the law. We must, without hesitation, accept this contention. A condition of service of employees cannot be retrospectively altered to the prejudice of the employees. On this question, there can be no two opinions, at any rate, after the decision of the Supreme Court in Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, Therefore, the order made by the KEB and the learned Chief Justice directing recovery of the increments paid to the respondents cannot be sustained.

18. The other question concerns with the violation of principles of natural justice. The learned single Judge has observed that under the principles of natural justice the officials ought to have been given an opportunity before cancelling the order stepping up their pay. It seems to us that this view may not be justified. The deprivation of such benefits due to the officials was not by way of penalty imposed on them. It was the result of a policy decision, right or wrong, taken by the Government and KEB not to give such benefits to their employees. It is a well accepted principle that the conditions of service of Government servants may be altered without their consent (See : Roshan Lal Tandon Vs. Union of India (UOI), The reason underlying this principle is that the service conditions, including the emoluments, are governed by the statutory rules and the legal position of Government servants is more one of status than of contract. The rights and duties of Government servants are imposed by the public law and not mere agreement by the parties. Therefore, the consent of the officials is not necessary for altering such law. Nor the principles of natural justice need be observed. The same would be the position even with regard to officials of the KEB and their service conditions. The KEB and the Government must, therefore, be held to have the power to alter the service conditions of their employees subject, of course, to their other legitimate rights.

19. This takes us to the principal contention raised in these matters. The question is whether the cancellation of the stepping up of pay of senior officials or not extending such benefits to them is arbitrary and violative of the mandate of Art. 14 of the Constitution. Let us consider this question with an illustrative case of a senior and his immediate junior. Here is such a case in the service of the KEB :-

-- V.P.S. Reddy (Senior S.I.Annigeri (Junior employer) employer) (14th Respondent in W.A. 699/82) As Assistant Engineer As Assistant Engineer (24-2-1969) (27-5-1969)

-- 1 2 3 -- 1-1-1974 Rs. 450 25/- Rs. 450 1-4-1974 Rs. 500 Rs. 450 (Due to passing Departmental Examination - increment) 1-1-1975 Rs. 500/- Rs. 475/- 1-4-1976 Rs. 525/- Rs. 500/- 1-1-1976 Rs. 1090/- Rs. 1,090/- (Due to revision of pay scale) 25-11-1976 Rs. 1090 Rs. 1,150/- (Due to passing of Departmental Examination as on 25-11-1976) 1-4-1977 Rs. 1150/- Rs. 1,210/- 1-4-1978 Rs. 1210/- Rs. 1,270/- 1-11-1978 Rs. 1240/- Rs. 1,270/- (Promotion as Assistant Still Assistant Executive Engineer, Elect.) Engineer) 1-4-1979 Rs. 1300/- Rs. 1,330/- (-do-) (Assistant Executive Engineer) 1-4-1980 Rs. 1525/- Rs. 1,555/- (-do-) (Due to revision of pay scale) 1-4-1981 Rs. 1600 Rs. 1,630/- (Reached maximum in the scale in Assistant Engineer cadre). Additional increment was granted with effect from 1-4-1971 to all those who have passed departmental examinations and Kannada Language Test. PAY SCALES 1-4-1969 to Assistant Executive Engineer 400-30-550-40-750-50- 850 31-3-1976 Assistant Engineer : 325-25-550 1-4-176 to Assistant Executive Engineer : 850-50-1000-60-1300-75-1675 31-3-1980 Assistant Engineer : 720-30-780-50-1030-60-1330-75-1405 From Assistant Executive Engineer : 1000-60-1300-75-1900 1-4-1980 Assistant Engineer : 780-50-1030-60-1330- 75-1630 --

20. This probably provides the clearest illustration to appreciate the contention urged. V.P.S. Reddy and S.I. Annigeri were both Assistant Engineers in the KEB. The former is admittedly senior to the latter. On 1st April, 1974 they were drawing a uniform pay of Rs. 450/- in the pay scale of 325-25-550. V.P.S. Reddy upon passing the departmental examinations was given one increment of Rs. 25/- with effect from 1st April, 1974 and his pay thereupon was fixed at Rs. 475/- whereas, S. I. Annigeri continued to draw Rs. 450/- since he did not then pass the departmental examinations. On 1st January, 1975 the pay of V.P.S. Reddy was Rs. 500/- and that of S. I. Annigeri was Rs. 475/-. This is fair enough to both the persons.

21. Pursuant to the revision of pay scales with effect from 1st April, 1976 the salary of V.P.S. Reddy and S. I. Annigeri was fixed at Rs. 1,090/-. On 25th November, 1976, V.P.S. Reddy was drawing Rs. 1,090/-. Thereafter S.I. Annigeri passed the departmental examinations and was given one increment of Rs. 60/- in the pay scale of Rs. 720-1405. So his pay was fixed at Rs. 1,150/- as against the pay of his senior at Rs. 1,090/-. This disparity continued for a couple of years. On 1st November, 1978 V.P.S. Reddy was promoted as Assistant Executive Engineer in the pay scale of Rs. 850-1,675. But he did not get more pay than that of his junior. Even after promotion, V.P.S. Reddy was entitled to only Rs. 1,300/- as against the pay of his junior in the lower cadre at Rs. 1,330/-.

On 1st April, 1980 due to revision of pay scales, V.P.S. Reddy as Assistant Executive Engineer was entitled to Rs. 1,525/-, S.I. Annigeri who was still in the lower rank, however, got Rs. 1,555/-. This weightage of Rs. 30/- to S.I. Annigeri was allowed till he reached the maximum of Rs. 1,630/- in his pay scale. This is indeed bad and sad enough to V.P.S. Reddy.

We have been told that similar anomalies are there in all cadres both in the Government service and also among the officials of the KEB.

22. The question herein is, whether this kind of benefits conferred on the juniors without extending corresponding benefits to their seniors is arbitrary and violative of the protection guaranteed under Art. 14 of the Constitution.

23. The scope of Art. 14 of the Constitution has been well established in a catena of decisions of the Supreme Court and it is not necessary to refer to them in detail. Suffice to State that the guarantee of equal protection under Art. 14 embraces the entire realm of "State action" including the vagaries of the executive. Article 14 unlike other fundamental rights, is not so much a right to persons, but an unequivocal admonition administered to the State by the Constitution that it shall not discriminate persons belonging to the same class while conferring benefits or imposing liabilities on them. It is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity (See : Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, . In this way, it does, indeed, strike at arbitrariness in State action and ensures fairness and equality of treatment Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . It is the solemn duty of Judges to see that the State does not endanger this equality of treatment commanded by the Constitution.

24. It is necessary to remember that departmental examinations under the KLE Rules have been prescribed to promote efficiency among the officials. It is, therefore, expected that all those who have passed such examinations must be treated equally. At any rate, no premium could be paid to a junior who has not been able to pass the examinations either by his lethargic attitude or inefficiency. But the actions of the Government and the KEB seem to be the other way about. It will be interesting to note from the aforesaid illustration that the junior who could not pass the prescribed examinations in time and who has taken his own time to pass (perhaps after one or two unsuccessful attempts) has been rewarded with more pay than his immediate senior who had passed such examinations long earlier to his junior. It looks as though the senior has been punished for his piquancy and assiduous work and his junior has been rewarded for his immanent torpid character. We fail to understand what else this could be if not arbitrary and whimsical attitude of the Government and the KEB.

25. In P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, the Supreme Court observed that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

The case on hand in much stronger than the P. Savitha''s case (supra) considered by the Supreme Court. Here, not only the senior in the same cadre gets less pay but, even upon promotion to a higher cadre he continues to receive less pay than that of his junior in the lower cadre.

26. We do not suggest that the officials should not be given incentives for passing the departmental examinations. We are only pointing out that there shall not be unequal treatment to seniors who are efficient than their juniors. The Government having realised this mistake or folly, indeed, rightly suggested that such anomaly should be removed. So the order dated 31st January, 1979 stepping up the pay of such seniors was issued. But sadly it was discontinued without otherwise setting right the wrong done to the seniors.

27. The Government could have avoided the injustice to the seniors by fixing the rate of increment for passing the prescribed departmental examinations with a condition that the grant of additional increment to a junior shall not exceed the pay drawn by his senior. This could have been done by suitably amending Rule 6 of the KLE Rules. Or the Government could have completely deleted the said Rule 6. In fact, records reveal that the Official Committee constituted to consider the recommendations of Mr. Justice Narayana Pai pay Commission had suggested that there would be no rationale behind the scheme for grant of an additional increment for passing the departmental examinations. Unfortunately, that suggestion was not accepted by the Government.

28. Under Rules 3 and 4 of the KLE Rules, the Government servant is required to pass Kannada Language and Service Examinations for earning normal increments, confirmation and eligibility for promotion. Since passing of the prescribed examinations is a statutory requirements, deletion of Rule 6 which provides only an incentive for passing such examinations could not possibly affect the efficiency in the administration. The Government without having recourse to one or the other remedy available, has quickly cancelled the beneficial order on the ground that it results in a chain reaction.

29. The final point urged by Counsel for the appellants is as regards the so called ''chain reaction'' which formed the the basis for cancelling the Government Order dated 31st January, 1979. There is considerable uncertainty if not obscurity as to legal effect of implementation of the said order. The Counsel with all their efforts were not able to give us the picture of it. The only problem presented before us in this context is about the financial burden on the State and KEB. It was said the continuous implementation of the aforesaid order would drain their financial sources. We do not think there is much substance in this contention. We called for the financial outlay required to be provided for stepping up the pay of senior officials. So far as the KEB is concerned, we have been told that the total outlay to cover all such cases hitherto arisen would be only 13 lakhs eight thousand and forty rupees. The recurring expenditure per year would be hardly Rs. 1.40 lakhs. So far as the State Government is concerned, as revealed from the counter-affidavit, the amount required for the purpose is about Rs. 2 1/2 crores per year. This in itself, in our opinion, should not be regarded as a problem at all. It is inconceivable that the payments of such amounts would be a financial burden

either on the Government or the KEB. If the Government wants to keep Rule 6 of the KLE Rules in the Statute Book, the imbalance in the pay scales of juniors and seniors in the same cadre should be removed. The difficulties, if any will have to be overcome. What is needed is a wise decision which ensures fairness to all though unpalatable to some.

30. In the result, these appeals fail and are dismissed. Rule issued in WPs. 28118 & 28119/81 is made absolute.

