
(2000) 04 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19657 of 1994

K.B. Siddappa

APPELLANT

Vs

Government of A.P., and others

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 7

Citation : (2000) 4 ALD 117 : (2000) 3 ALT 580

Hon'ble Judges : P. Venkatarama Reddi, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : Mr. P. Rajagopala Rao, for the Appellant; Government Pleader, for Finance and Planning, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioner who was District and Sessions Judge, Gr.II at the relevant point of time worked as Chairman, Industrial Tribunal, Hyderabad during the period 8-6-1990 to 11-3-1992. The appointment was made by the Government u/s 7 of the Industrial Disputes Act on the basis of the proposals sent up by the High Court. While working as Chairman, Industrial Tribunal, the petitioner got promotion as District and Sessions Judge, Gr.I with effect from 7-3-1991. In the revised pay scales of 1986, the post of Chairman, Industrial Tribunal was assigned the revised pay scale of Rs.5,000/- to Rs.6,200/- as against the existing scale of Rs.2,500/- to Rs.2,700/-. The said pay scale is the same as applicable to DJ, Gr.I. A special pay of Rs.250/- was also payable under [he revised pay scales. The District and Sessions Judge, Gr.II were given the pay scale of Rs.3,580/- to Rs.5,380/- as against the former pay scale of Rs.1,800/- to Rs.2,500/-. As the Gr.II DJs as well as Gr.I DJs were being posted as Chairman of Industrial Tribunal, the State Government thought it fit to amend the A.P. Revised Scales of Pay, 1986 with retrospective effect from 1-7-1986. G.O. Ms. No.223 (Finance and Planning) dated 29-8-1988 was issued to that effect. The relevant part of the schedule referred to in the amended rules is as follows:

"In the said rules, in Schedule II (Departmental Schedules) under the heading "Industrial Tribunal" in Column 5, against Sl. No.1, category "Chairman", the following shall be added namely "When District and Sessions Judge, Grade II or other judicial Officers of equivalent rank, are appointed to the post, they shall draw the pay scale as applicable to the post of District and Sessions Judge, Grade II or other Judicial Officer of the same rank."

2. The Constitutionality of the amended rule has been challenged by the petitioner and a consequential direction has been sought to give the petitioner the benefit of the pay scale of Rs.5,000/- to Rs.6,200/- apart from the special pay of Rs.250/- from 8-6-1990 to 6-3-1991 during which period the petitioner drew the pay scale applicable to the post of District and Sessions Judge, Gr.II. It appears that the petitioner got the arrears of differential pay pursuant to the interim direction of this Court.

3. In Krishna Rao v. State of A.P. 1996 (2) ALD 1 a learned single Judge of this Court struck down the impugned rule introduced by G.O. 233, dated 29-9-1988 declaring the same as arbitrary and violative of Article 14 of the Constitution. That writ petition was filed by a similarly situated DJ Gr.II posted as Chairman. Industrial Tribunal. Naturally, this decision has been relied upon by the learned Counsel for the petitioner. The ratio of that decision is discernible from the following passage in paragraph 14:

"In the instant case, it is not in dispute that when a District Judge, Grade I is appointed as a Chairman of the Industrial Tribunal, he gets the scale of Rs.5,000/- to Rs.6,200/-, but at the same time when the same post is held by the District Judge, Grade II, the said Grade II District Judge is entitled to Rs.3,580/- to Rs.5,380/-.

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When the G.O. specifically states the Chairman of the Industrial Tribunal shall have the scale of Rs.5,000/- -Rs.6,200/- it becomes immaterial whether Grade II District Judge or Grade I District Judge is posted to the said post. The issue can also be tested from yet another angle. It is not the case of the Government that when Grade I District Judge is posted as Chairman of the Industrial Tribunal, he discharges the functions in a different manner. So long as it is conceded that the duties that are performed by the Chairman, Industrial Tribunal either Grade I or Grade II District Judge are equal, similar, and identical, denying the scale attached to the post of Chairman occupied by Grade II District Judge, is wholly arbitrary and without any basis. The discrimination is writ large."

4. Earlier, the learned Judge referred to the principle of "equal pay for equal work".

5. With great respect, we are unable to share the same view. We do not find any arbitrariness or discrimination in the impugned rule nor do we find any scope for

application of the doctrine of "equal pay for equal work". The very rule which says that the Chairman of the Industrial Tribunal will have the scale of Rs.5000/- to Rs.6,200/-carves out a qualification that if a Gr.II DJ is appointed to the post of Chairman, Industrial Tribunal, he will continue to draw the pay scale attached to the post of DJ, Gr.II. Of course, the special pay of Rs.250/-will in any case be drawn by him. In our view, there is a rational and wholesome basis for such rule. The underlying idea is that a DJ, Gr.II by the mere accident of being posted as Chairman, industrial Tribunal shall not get higher pay scale applicable to the promotional post of DJ Gr.I DJ, Gr.II when deployed as Chairman, Industrial Tribunal carries with him the pay scale attached to the post of District Judge, Gr.II and when a DJ Gr.I becomes the chairman of the Industrial Tribunal, he will continue to draw the salary in the pay scale attached to the post of DJ, Gr.I. The prescription of different pay scales depending upon the status and rank of the incumbent of the post in the parent department, does not in our view, fall foul of Article 14. Far from creating discrimination, the impugned rule is meant to remove certain anomalies giving rise to unintended advantages. For instance, in administrative exigencies, a comparatively junior Officer (DJ, Gr.II) may be asked to take up the assignment of Chairman, Industrial Tribunal. He will get substantial rise in pay and steals a march over many of his colleagues in the parent department from the standpoint of monetary benefit. It may be a source of heart burning to other seniors.

6. Viewed from another angle, DJ, Gr.II cannot compare himself with Gr.I DJ because Gr.I post is secured by promotion. The test of similarity of duties and functions is, in our view, not a ground to invalidate the amended rule on the ground of discrimination. The fixation of pay scales involves many complexities and dimensions. Unless a clear case of patent and unjust discrimination is made out, the Court in its wisdom should refrain from sitting in judgment over the pay scales assigned. The prescription of pay scales vis-a-vis the post of Chairman of Industrial Tribunal keeping in view the exigencies of posting of Officers and the inherent distinction between Gr.I and Gr.II DJs, does not, in our view, attract the wrath of Article 14. If the similarities of duties is always the test, the Gr.II DJs can extend the logic by pleading for the same pay scale as Gr.I DJs for the reason that very often, they perform the same duties and bear same responsibilities as Gr.I DJs. So also, the Presiding Officer of Labour Court bears the same duties and responsibilities as Chairman, Industrial Tribunal. Very often, a District Judge is appointed as Chairman of Industrial Tribunal as well as the PO of Labour Court in which case his responsibilities and work load will be heavier. Is it then necessary to give him a higher pay than what he gets as Chairman, Industrial Tribunal? We are of the view that the test of similarity of duties cannot be applied as an abstract rule, without regard to other relevant considerations.

7. A Gr.II DJ is called upon to take up the assignment of Chairman, Industrial Tribunal not because of the special qualification (barring the minimum prescribed experience) which the Officer has, but on account of administrative exigencies. He cannot invoke the doctrine of equality to claim higher salary merely because a

Gr.I DJ if appointed to a similar post in administrative exigencies as Chairman, Industrial Tribunal draws higher pay than him. The distinction in the parent department between Gr.I and Gr.II DJs is sought to be maintained by the impugned rule by prescribing two sets of pay scales depending on the rank of the temporary incumbent of the post. We do not think that such classification is forbidden by Article 14 of the Constitution.

8. In Writ Petition No.8784 of 1998 filed by the present petitioner himself, U.L. Waghray, J., while leaving the question of validity of amended rule open, held that the Rule cannot be given retrospective effect in such a manner as to apply it to the petitioner alone. That decision was purportedly followed by a learned single Judge of this Court in J. Narasimha Murthy Vs. District Treasury Officer and Others, and it was held by [he learned Judge that the pay scale depends on the post held by the incumbent and not the designation. But the effect and validity of the amended rule was not considered by the learned Judge in that case. With great aspect, we cannot therefore follow the decision in Narasimha Murthy's case (supra).

9. The logical result of upholding the rule would be to clear the way for recovery of the differential salary paid to the petitioner by virtue of the interim order of this Court. But, there is one weighty reason which dissuades us from giving such direction. It is brought to our notice that the decision of the learned single Judge of this Court in Krishna Rao's case (supra), striking down the impugned rule has become final and the State Government did not prefer any appeal. The benefit has been extended to several similarly situated Officers obviously for the reason that the State Government did not want to contest the decision in Krishna Rao's case (supra). Having regard to these special circumstances, the differential pay released to the petitioner pursuant to the interim order of this Court shall not be recovered. However, by reason of upholding the amended rule, we make it clear that hereafter, DJs., Gr.II posted as Chairman of Industrial Tribunals need not be paid the salary allowed to Grade I District Judge i.e., presently the pay scale of Rs.8,140/- to Rs.10,380/- corresponding to the earlier pay scale of Rs.5,000/- to Rs.6,200/-. As the judgment of this Court in Krishna Rao's case (supra), has held the field till now, we direct that [his judgment upholding the validity of the Rule introduced by G.O. Ms. No.223, Finance and Planning Department, dated 29-9-1988 should be given prospective effect. The result is that Grade II District Judges posted as Chairman of Industrial Tribunals should hereafter get only the pay admissible to Grade II District Judges apart from the special pay.

10. Before parting with this case, we must advert to a disturbing situation which we have come across. It is noticed that not only the Chairman of the Industrial Tribunals but the Presiding Officers of the Labour Courts were extended the benefit of the judgment in Krishna Rao's case (supra), though the ratio of the said judgment has no application whatsoever to the Presiding Officers of the Labour Courts who are not manning Industrial Tribunals. We direct that the additional monetary benefit which has been extended to them unwarrantedly

shall be stopped forthwith.

11. The writ petition is disposed of accordingly. No costs.