**(2001) 10 KAR CK 0037**

**In the Karnataka High Court**

**Case No :** Writ Petition No''s. 8793, 8813 to 8822, 10085 to 10142, 13703 to 13744, 14040 to 14080, 14520 to 14591, 14757 to 14763, 15646 to 15680, 18412 to 18446, 24344 to 24347, 20599 to 20610 and 22747 to 22758 of 2001

M.C. Ingalagavi and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

**Date of Decision :** 06-10-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2002) 1 KarLJ 352 : (2002) 1 KCCR 35 SN

**Hon'ble Judges :** Chandrashekaraiah, J

**Bench :** Single Bench

**Advocate :** C.G. Math, R.H. Chandangoudar, Jayakumar S. Patil, B.B. Bajentri, S.K. Acharya, M. Narayana Swamy and H.R.S. Rao and Vijayashankar Associates, for the Appellant; Government Advocate and Srinivasa Murthy, Government Advocate, for the Respondent

**Final Decision :** Allowed

# Judgement

The Court

1. The petitioners in all these petitions are retired teachers of the University, private aided colleges governed by UGC and technical colleges governed by the AICTE. In these petitions the petitioners have challenged the Government Orders dated 8-8-2000 and 29-7-2000 issued by the State Government introducing Clauses 31-A and 27-A to the Government Order dated 15-11-1999.

2. The Government in its order bearing No. ED 188 DCE 99, dated 15-11-1999, revised the pay scale of all Teachers, Librarians and Physical Education Instructors/Directors working in Universities, Government colleges and Government aided colleges on the basis of the pay scales suggested by the UGC and AICTE with effect from 1-1-1996 and accordingly, the petitioners had drawn their salaries as per the revised pay scale with effect from 1-1-1996. Thereafter,

 

the Government under the impugned orders introduced Clauses 31-A and 27-A which read as follows.-

"(1) UGC scales as revised from 1-1-1996 have been linked to the index level of 1510 points inasmuch as the revised pay scale structure includes the DA admissible as on 1-1-1996 to the extent of 138% of basic pay. As on 1-1-1996 the pensionary benefits under the State Government employees came into force from 1-4-1998 by merging DA as on 1-1-1996. The pensionary benefits were also simultaneously revised w.e.f. 1-4-1998. Therefore, the revised pay drawn by the UGC pay scales for the period from 1-1-1996 upto 31-3-1998 shall not be taken as emoluments for the purpose of pensionary benefits.

Accordingly,

(a) In respect of teachers drawing UGC pay scales who have retired during the period from 1-1-1996 to 31-3-1998 they shall be eligible for the benefit of the fixation of pay and arrears under the revised UGC scales of pay only. There shall not be any change in their pensionary benefits with reference to the revised UGC pay and the retirement benefits already sanctioned in the pre-revised UGC pay scales will not undergo any modifications. However, they shall be entitled to the benefit of fixation of revised pension/family pension as contemplated in GO No. FD (Spl) 2 PET 99, dated 15-2-1999 only w.e.f. 1st April, 1998. Para 6 of GO No. FD (Spl) 2 PET 99, dated 15-2-1999 stand modified to this extent".

Under the above said inserted clause the persons who retired from service between 1-1-1996 and 31-3-1998 are not eligible for the pensionary benefits on the basis of their last pay drawn as per the revised pay scales. Hence, the petitioners are before this Court.

3. The respondent-State Government has filed the statement of objections justifying the Government Orders introducing Clauses 31-A and 27-A.

4. The only point that arises for consideration in these petitions is:

"Whether the State Government is justified in issuing the Government Orders dated 8-8-2000 and 29-7-2000 taking away the right of the petitioners to draw pension on the basis of their last pay drawn?"

5. All the petitioners have retired from service between 1-1-1996 and 31-3-1998. It is not disputed that the petitioners were given the benefit of revised pay scale with effect from 1-1-1996. But the last pay drawn by the petitioners has not been taken into account by the respondent for the purpose of granting pensionary benefits in view of the impugned orders referred to above.

6. Part IV of the Karnataka Civil Service Rules (hereinafter referred to as the ''Rules'') provides the manner in which the pensionary benefits are to be granted in favour of the retired employees of the State Government. Rule 296 of the Rules reads as follows:

"296. In respect of retirement or death while in service of Government servants on or after 1-7-1993, the term ''Emoluments'' for the purpose of this Chapter means, the basic pay drawn by the Government servant in the scale of pay applicable to the post on the date of retirement or death and includes the following but does not include pay and allowance drawn from a source other than the consolidated fund of the State.-

(a) stagnation increment, if any, granted to him above the maximum of the scale of pay;

(b) additional increment if any granted to him above the maximum of the scale of pay in accordance with the provisions of Rule 6 of the Karnataka Civil Services (Rules and Kannada Language Examination) Rules, 1974;

(c) personal pay, if any, arising out of fixation of pay in the Karnataka Civil Services (Revised Pay) Rules, issued by Government from time to time and classified as pay in the respective revised pay rules;

(d) special pay attached to all posts in a cadre i.e., stenographers including junior stenographers, typists including senior typists, drivers including senior drivers and lift attenders.

Note:

(a) ''Basic pay'' means the pay drawn in the timescale of pay applicable to the post immediately before retirement or death.

(b) ''Stagnation increment'' means stagnation increment granted according to the order issued by the Government".

7. Rule 8(32) of the Rules defines the word ''pay'' which reads as follows.-

"(32) ''Pay'' means the amount drawn monthly by a Government servant as the pay which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre and shall also include-

(a) stagnation increment, if any, granted to him above the maximum of the scale of pay;

(b) additional increment, if any, granted to him above the maximum of the scale of pay, in accordance with the provisions of Rule 6 of the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974;

(c) personal pay, if any granted to him under the Karnataka Civil Services (Revised Pay) Rules, issued by the Government from time to time;

(d) any other emoluments specifically classed as pay by the Government".

8. From a reading of the above said rules, it is clear that every employee who retires from service on or after 1-7-1993 is entitled for pensionary benefits on the basis of the last pay drawn. Similar is the rule in respect of the employees of

 

the Universities, private aided colleges and technical colleges.

9. The case of the State Government as seen from the statement of objections filed by it, is that keeping in view the financial position of the State Government, it has taken a policy decision to deny the pensionary benefits in respect of the employees who retired from service between 1-1-1996 and 31-3-1998. It is not disputed in all these cases that the petitioners are entitled for pensionary benefits on the basis of last pay drawn as per the rules. If that is so, as long as the rules are in force, there is no reason for the State Government to take any policy decision inconsistent with the rules. No doubt the Government has got power to take policy decision keeping in view the financial position and other attending circumstances in the absence of any rules holding the field. But where the field has been occupied by the rules, any decision taken by the State Government must be consistent with the rules. In the case on hand, the Government Orders issued taking away the pensionary benefits as per the last pay drawn on the basis of the revised pay scale is contrary to rules which are in force. Therefore, the said orders are invalid, and are not enforceable in law.

10. It is nextly contended by the learned Counsel for the petitioners that the impugned orders are arbitrary and are hit by Article 14 of the Constitution of India. It is submitted that the teachers working in Government colleges who retired from service between 1-1-1996 and 31-3-1998 were granted pensionary benefits on the basis of their last pay drawn as per the revised pay scale, whereas this benefit has been denied in case of the petitioners. This fact has not been disputed by the learned Counsel for the respondent-State. If that is so, the impugned orders are arbitrary as it results in discrimination between a teacher working in the Government college and a teacher working in the non-Government college, as it amounts to treating equals as unequals. Even otherwise, the impugned orders are violative of Article 14 of the Constitution of India since it results in discrimination between an employee who retires prior to 31-3-1998 and a person retiring subsequent to 31-3-1998. As stated earlier, all the employees who were working as teachers were given the revised pay scale w.e.f. 1-1-1996. If that is so, there is no reason to deny the benefit on the basis of last pay drawn to an employee who retired subsequent to 1-1-1996 and prior to 31-3-1998 though he and the employee retired subsequent to 31-3-1998 are given the revision of pay scale with effect from 1-1-1996. This denial of pensionary benefit to a person who retired between 1-1-1996 and 31-3-1998 and extending the benefit to a person who retired subsequent to 31-3-1998 is discriminatory as both of them are similarly situated.

11. The learned Counsel for the State Government submits that in order to bring parity between the Government employees and the employees of the University, private aided colleges and technical colleges, impugned orders have been issued and therefore, there is no discrimination between an employee of the State and the employees of the University and other private aided colleges.

12. The learned Counsel for the petitioners submits that, the State Government

 

in respect of its employees revised the pay scale w.e.f. 1-4-1998 and they were rightly given the pensionary benefits on the basis of their last pay drawn. Whereas the petitioners whose pay scales were revised w.e.f. 1-1-1996 are also entitled for the similar benefit on the basis of their last pay drawn. If that is so, there is no reason to deny the pensionary benefits to the petitioners on the basis of their last pay drawn as per the revised pay scale.

13. The benefit extended to the employees of the State Government as per the revised pay scale with effect from the date of revision of pay scale, if extended to the petitioners with effect from the date of their revision of pay scales, the parity between the employees of the State and the employees of the University, aided colleges and the teachers of tech- technical colleges would be maintained, otherwise not, as it amounts to treating equals as unequals contrary to the mandate of Article 14.

14. The learned Counsel for the State Government has cited certain decisions to show that the policy decision of the State Government shall not be interfered with by this Court in a writ petition under Article 226 of the Constitution of India. As stated earlier the said decisions have no application to the facts of this case in view of the finding recorded above that there cannot be any policy decision contrary to the rules which are in force.

15. It is nextly contended by the learned Government Advocate that the cut off date fixed as 31-3-1998 cannot be said to be unreasonable since the said date has been fixed by the State Government keeping in view the financial position of the State Government. This contention also is stated to be rejected for the simple reason that what is required to be considered in this case is, whether denial of pensionary benefits to the persons who retired between 1-1-1996 and 31-3-1998 is unreasonable or arbitrary as it resulted in discrimination by treating equals as unequals and not with reference to the cut off date mentioned in the impugned orders.

16. In the result, I pass the following order: Writ petitions are allowed.

The impugned orders dated 8-8-2000 and 29-7-2000 are quashed.

17. The respondents are directed to pay the pension on the basis of the last drawn pay to the petitioners and settle the same as expeditiously as possible.