
(1992) 04 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No's. 1433 to 1448 of 1991

M.G. Hanumantha Rao

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 23

Citation : (1992) ILR (Kar) 1387

Hon'ble Judges : S.P. Bharucha, C.J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : V.V. Srinivasachari, for Kumar and Kumar, for the Appellant; A.G. Holla, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—Appellants were the petitioners who filed Writ Petitions; they sought the quashing of the order dated 29-12-1978 whereby the 2nd respondent regulated the fixation of pay of the non-executive employees promoted to an executive grade on or after 1-1-1977; petitioners further sought for a direction to fix the basic/substantive pay of the petitioners in accordance with office order dated 10-7-1976, with effect from 1-5-1979; consequential relief for the arrears of salary was also sought.

2. Petitioners were holding the posts of Group-IX (non-executive cadre). On 31st April 1978 there was an internal advertisement offering the employees in this cadre to seek the higher post in E.I. (Executive) cadre. It was only, if sufficient number of existing Group-IX (non-executive) employees were not available, the executive posts were to be filled up by inviting applications from the eligible candidates from the public. The petitioners responded appropriately by filing their applications. The last date for filing the application was 30-9-1978. As on 31-8-1978 (when internal advertisement was issued) the pay scale of Group-IX (non-executive) employees, was Rs.375-19-413-20-673. However, by an order

dated 20-9-1978, this scale was revised to Rs. 590-22-964, with retrospective effect from 1 -1 -1977. Accordingly, the scales of pay of the petitioners were revised, as per the principle evolved in another order of the same date (20-9-1978); there was another order on 5-10-1978 giving the relevant equation chart. The respective pay drawn by each of the petitioners stood enhanced, by virtue of this revision of pay scale.

3. On 1-12-1978, a similar order revising the pay scale of E.I. (executive) grade was issued. Earlier, the pay scale of E.I. (executive) grade was Rs. 600-25-750-30-900. The revised pay scale was Rs. 650-35-1035. On 29-12-1978 another order was issued, regulating the manner in which the pay scale of the promotees from non-executive cadre to the executive cadre, is to be fixed, consequent upon the revision of the pay scale, as aforesaid.

4. The petitioners were promoted to the executive cadre with effect from 1-5-1979. Thereafter, basic pay of each of the petitioners in the promoted cadre was fixed applying the order dated 29-12-1978. This, according to the petitioners resulted in deprivation of the basic pay already earned by them in the lower cadre as the revised basic pay in the executive cadre was less than the pay already being drawn by the petitioners in the lower cadre. For example, at the time of his promotion, petitioner Hanumantha Rao was drawing Rs. 942/- + Rs. 7/- as the basic pay; however, on promotion to the executive cadre on 1-5-1979, the basic pay in this cadre came to be Rs. 825/-. This reduction, according to the petitioners is the result of the order dated 29-12-1978 and therefore should be struck down.

5. The petitioners contend that the order is arbitrary and unreasonable, because (i) it resulted in the deprivation of the basic" pay already earned by them; (ii) it is anomalous and entirely unreasonable to have a lower pay to a higher post, than the pay paid to a person when he held the lower post; (iii) the impugned order offends the principle of equal pay for equal work, according to which work involving higher responsibilities should have a higher pay.

6. The learned single Judge rejected all the Writ Petitions, holding, inter alia, that the petitioners fully knew, at the time they accepted the promotion, of the pay scale applicable to the executive cadre and the principles governing fixation of the pay on promotion to the said cadre, and therefore, it is too late for them to make a grievance of the principle evolved to fix the pay scale. The learned Judge noticed that the total pay packet of each of the petitioners was larger in the executive cadre than the total emoluments drawn by them in the lower cadre and therefore, in reality they did not suffer any monetary loss consequent upon the promotions.

7. The learned Counsel for the petitioners criticised the various reasons given by the learned single Judge, for his conclusions. However, ultimately, the question is whether the principles stated in the order dated 29-12-1978 lead to arbitrary and unreasonable results and whether the petitioners are entitled to question the

same.

8. It is undisputed that the total emoluments drawn by each of the petitioners, on promotion, is larger than the emoluments drawn by each of them in the lower cadre. It is also undisputed that the petitioners had every option not to accept the promotion on 1-5-1979 and that each of them accepted the promotion voluntarily and willingly.

9. Mr. Sreenivasa Achar, the learned Counsel for the petitioners, contended that the petitioners were not certain about the scope of the impugned order dated 29-12-1978 and they were in a dilemma as to whether the office order dated 10-7-1976 (Ann.F) continued to be in force or not; according to the learned Counsel, this earlier order was not superseded by the impugned order and therefore, it caused the dilemma about the respective operations of the two orders; if so, petitioners cannot be held as having accepted the promotions voluntarily with full knowledge of the consequences of the revised principles governing the equation of pay scale on promotion.

10. The office order dated 10-7-1976 refers to "fixation of pay of promotion/appointment to higher posts". The first para reads:

"When an employee is promoted from a lower scale of pay to a higher scale of pay the pay of the employee as on the date of appointment to the higher grade shall first be increased by adding one increment in the lower grade and then the initial pay fixed in the higher scale at the stage next above. This rule is applicable to all cases of promotion including those who have reached the maximum in the lower scale of pay."

11. It is stated in the said order that the said policy was evolved "over a period of time" and that several earlier orders on this subject are superseded by this order. No doubt, this office order does not specifically restrict its operation to the promotional posts in the non-executive cadres. However, the impugned order dated 29-12-1978, which also is an "office order", refers as its subject as "Fixation of pay on promotion from non-executive cadre to the Executive cadre". The first para declares that, "the fixation of pay of the non-executive employees promoted to an executive grade on or after 1-1-1977 would be regulated as laid down in this office order". Such employees are categorised into (i) those promoted between 1-1-1977 and 31-8-1977 and (ii) those promoted on or after 1-9-1977. Appropriate chart fixing the pay on promotion is part of this office order.

12. In view of the unequivocal statement in this office order dated 29-12-1978 that it would govern the promotion to the executive cadre from non-executive cadre and that it would regulate the pay fixation of such employees promoted after 1-1-1977, there is no occasion for any one to entertain any doubt about the operation of this order. Admittedly, this order and the earlier order Annexure-F (dated 10-7-1976) cannot operate simultaneously; necessarily, the order dated 29-12-1978, if applied, would make the earlier order of the year 1976 ineffective

to the cases of employees who were or are promoted from non-executive cadres to the Executive cadres with effect from 1-1-1977. Therefore, it is not possible to accept the contention of the petitioners, that they were in a dilemma as to the operation of the two orders; it is not possible for anyone, reasonably, to imagine that the earlier order dated 10-7-1976 still governed the cases of employees on promotion from non-executive to Executive cadre.

13. The learned Counsel contended that the petitioners are entitled to challenge the validity of the office order dated 29-12-78 even though they accepted the promotion on 1-5-1979. It was argued that the position of an employee is such that he has no equal bargaining power with that of his employer and an offer of promotion would always tempt the employee to accept it; in such a situation, it cannot be held that the acceptance of promotion was a voluntary act so as to disentitle him to question the unreasonable or arbitrary conditions of service governing the promotional post.

14. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, was cited in support of the above proposition. The question posed therein for consideration was, -

"Whether an unconscionable term in a contract of employment is void u/s 23 of the Indian Contract Act, 1872, as being opposed to public policy and when such a term is contained in contract of employment entered into with a Government company, is also void as infringing Article 14 of the Constitution in case a Government company is "the State" under Article 12 of the Constitution ?"

A company was dissolved and its existing staff to the extent possible, was taken over by the appellant Corporation. One of the Rules of the Corporation provided for the termination of the service of a permanent employee on three months' notice on either side. In lieu of the notice, the Corporation was entitled to terminate the employee's service by paying three months' salary. Validity of this Rule was under consideration before the Supreme Court. After holding that the appellant Corporation was a "State" for the purpose of Article 12, the Court held that the impugned Rule was arbitrary and unreasonable; accordingly it was declared as void. For this purpose, it was pointed out that the impugned Rule was part of the contract of employment and its validity had to be tested by the principles of the law of contracts. Thereafter, it was held at page 1610:

"The principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation

of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them, it will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be."

At page 1613, the background facts are stated thus:

"So far as the original terms of employment with the Corporation are concerned, they are contained in the letters of appointment issued to the contesting respondent. These letters of appointment are of a stereo-type form. Under these letters of appointment, the Corporation could without any previous notice terminate their service, if the Corporation is satisfied on medical evidence that the employee was unfit and was likely for a considerable time to continue to be unfit for the discharge of his duties. The Corporation could also without any previous notice dismiss either of them, if he was guilty of any insubordination, intemperance or other misconduct, or of any breach of any Rules pertaining to his service or conduct or non-performance of his duties. The above terms are followed by a set of terms under the heading "Other Conditions". One of these terms stated that "You shall be subject to the Service Rules and Regulations including the Conduct Rules." Undoubtedly, the contesting respondents accepted appointment with the Corporation upon these terms. They had, however, no real choice before them. Had they not accepted the appointment, they would have at the highest received some compensation which should have been probably meagre and would certainly have exposed themselves to the hazard of finding another job."

That was so, because, the earlier employer, the Company had been dissolved and the appellant Corporation was not bound to take all the employees of the company, on its staff. Again, at page 1615, it was held:

"The Corporation is a large organisation. It has offices in various parts of West Bengal, Bihar and Assam, as shown by the said Rules, and possibly in other States also. The said Rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's Union to support them. They, had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as Clause (i) of Rule 9 is against right and reason. It is only unconscionable. It has been entered into between parties between whom there is gross inequality, of bargaining power."

Proceeding further, the Court observed;

"A clause such as Rule 9(1) in a contract of employment affecting large sections of the public is a harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void u/s 23 of the Indian Contract Act."

It is thus clear that the entire set of circumstances under which the employees came to be governed by the impugned Rule and the harm that would result by such a Rule empowering the termination of the services of the employees for no reason at all, resulting in the invalidity of the Rule. Unreasonableness and arbitrariness of a Rule or a policy, evolved by the instrumentalities of the State cannot be inferred by the application of any particular test. Entire circumstances of a particular case are to be considered. A momentary hardship or a temporary loss of salary by the induction of a new Rule or policy is not a reason to nullify the said Rule or the policy. The permanent impact of the Rule on the service career of the employee, read with the purpose behind the Rule, along with other relevant circumstances are to be borne in mind while considering the challenge to such a Rule,

15. The petitioners' allegation is that on promotion, their immediate basic pay is reduced and that their acceptance of the promotions was not voluntary, in the sense, they nurtured a hope that on promotion, basic pay would not be reduced and that it is most natural for anyone to accept a promotional post

16. We fail to understand as to how the acceptance of promotions by the petitioners was not voluntary. It is not their case that, if they had refused the promotion, their services would have been terminated. The natural tendency to accept a promotion in view of the inherent temptation involved in a promotion cannot make it an involuntary acceptance; if there is any such tempting element in the promotion, it is clear that such an element would compensate the promotes for the temporary reduction in the basic pay.

17. A promotion, certainly, confers a higher status. This apart, the total emoluments received by the promotee is admittedly larger than the emoluments received by him at the lower level. The rate of increment in the pay scale of the higher post here is also more. The revised pay scale of the lower post is Rs. 590-22-964; while the revised pay scale of the promotional post is Rs. 650-35-1035.

18. The 2nd respondent has a very large number of employees (a few thousands) under its employment. It has to evolve a workable formula to have a reasonable equation to refix the pay of the promotees in the light of the revision of pay scales in all the cadres.

19. The learned Counsel for the appellants contended that if the petitioners had been promoted earlier to December 1973, this problem would not have been

arisen and they should have been promoted immediately after the period for filing the application was over, in response to the internal advertisement.

20. This contention also cannot be accepted. There was no compulsion to promote the petitioners immediately after 30-9-1978; even otherwise, the resultant position will be the same, because, the principle evolved at para-4 of the impugned order (Annexure-H) applies to all promotions on or after 1-9-1977. Since Annexure-H was applicable to the cases of the petitioners, the argument based on Annexure-F and its application to the promotions in non-executive cadre, need not be considered. The two classes are not comparable at all. *Randhir Singh Vs. Union of India (UOI) and Others*, was cited in support of the proposition that the lower basic pay in a higher post offends the principle of equal pay for equal work. Admittedly, the status and the nature of the posts under non-executive and executive cadres are different. Further, the test of inequality, has to take into consideration all aspects of the two posts, including the total emoluments paid in each of the posts, and the long range advantages in being in one or the other posts.

In the view we have taken as above, no other question survives for consideration.

Appeals are accordingly dismissed. No order as to costs.