

(2006) 11 KAR CK 0073

In the Karnataka High Court

Case No : Writ Petition No. 2979 of 2004

M.P. Chinnappa and Others

APPELLANT

Vs

Accountant General (A and E) and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 217, 217 (2)

Citation : (2007) 1 KCCR 383

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Dhyan Chinnappa Duo, Associates and R.Y Hadagli P. Nair, for the Appellant; Udaya Holla, AG and R.K. Hatti, HCGP for Respondents 1 and 2 and Shivaprabhu Hiremath, CGC for Devhadass, Sr. CGC for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Three former judges of this Court are seeking a writ of declaration declaring that the Karnataka Civil Service Rules read with Government Order No. FD (spl) 1 Pet 99, Bangalore dated 5-2-1999 (Annexure-G) in so far as it limits the gratuity payable to the Petitioners to Rs. 2,50,000/- as unconstitutional and illegal. They seek for a direction for a maximum gratuity of Rs. 3,50,000/- in the case on hand. All the three Petitioners before elevation have worked as District and Sessions Judges in various places. They were initially elevated as Additional Judges of this Court and thereafter they were made permanent in terms of the averments made in the writ petition. All the three judges have attained the age of superannuation and now they have retired from the office as a Judge of this Court. While fixing the pension, the Respondents have chosen to take into consideration the maximum ceiling of Rs. 2,50,000/- in respect of gratuity in terms of the Government Order dated 15-2-1999. According to the Petitioners Sub-rule (3) of Rule 19 of the Central Rules, the maximum gratuity payable is Rs. 3,50,000/- and the same is not made over. They would say that the Judges elevated from the Bar are provided pension on

the basis of a ceiling of Rs. 3,50,000/- and where as in the case of elevation from the cadre of District Judges, a ceiling of Rs. 2,50,000/- is taken into consideration. This according to them is in violation of Article 14 of the Constitution of India.

2. This Court issued notice to the Respondents. The Central Government has filed an affidavit stating that they have no objection for enhancement of DCRG benefits from Rs. 2,50,000/- to Rs. 3,50,000/- in the case of employees of All India Services Officers w.e.f. 1-1-1996. They would also say that the Union of India has no objection for enhancing subject to the State Government adopting the memorandum dated 18-2-1998. In fact they have enclosed Annexure-R1 dated 18-2-1998. No statement is filed by the State.

3. Heard the learned Counsel for the Petitioner and the learned Advocate General appearing for the State.

4. After hearing, I have carefully perused the material on record. Before I touch upon the merits of the matter, I deem it proper to observe that the Chapter v. of the Indian Constitution deals with the High Court in the State. Article 217 provides for appointment and conditions of the office of a Judge of the High Court. In terms of Article 217(2) of the Constitution, a person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and has at least for ten years held the judicial office in the territory of India or at least an Advocate for ten years in the High Court. After appointment in terms of the Constitution, both the persons namely a judicial officer elevated as a Judge and an advocate elevated as a Judge have the same status. It is needless for this Court to emphasize the importance attached to the constitutional post of a High Court Judge. A Judge of the High Court has tremendous responsibility in terms of the constitutional obligation and he holds a responsible constitutional post in the matter of judicial function in terms of the Constitution. The people of this country have reposed tremendous faith in this organ of the Constitution. The numerous petitions filed in High Courts by rich, poor, educated, illiterate, etc., would show that the people of this country have confidence and high respect for the system and for a Judge of High Court in this Country. To retain the said confidence and to maintain the status of an office of a Judge, the Government has to see that the service conditions of a Judge are reasonably good taking into consideration the importance attached to the said post. Service conditions even after retirement have to be fairly attractive as otherwise, the best brains in the legal field may not choose to opt for judgeship. It cannot be forgotten that a Judge has to be satisfied financially in a reasonable manner and this safeguard is in the larger interest of judiciary and the democracy as a whole. Any discrimination, or any other adverse service condition would adversely affect the very system of judiciary.

5. AIR 1962 SC 165 is a leading judgment of the Supreme Court with regard to the conditions of service of judicial officers wherein the Supreme Court has noticed the prophetic warning sounded by Robert Ingersoll;

A Government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away-all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen or crumbling stone of the once might Rome, comes a wail as it were, the cry that no nation founded on injustice can permanently stand.

The Supreme Court has noticed the importance of capable people at the Bar joining judicial service in its judgment. This is what the Supreme Court says in para 47;

Society, therefore, must understand the problem. Solution to the problem would depend upon realisation of the fact that the more capable people at the Bar are not willing to accept the offers of judicial appointments. The plea that the other wings in the States would demand improvement in their scales of pay is viewed from this angle. We hope and trust that society would generate the appropriate understanding of the matter and no Government would come forward to take the stand that if the pay scales and perks of the Judicial Officers are improved similar demands would come from other wings of Government.

The Supreme Court further ruled in para 48 as under;

Even in the existing system there are some posts which carry special pay that is on account of the fact that there is more of basic equipment demanded and the nature of work is different and judicial service satisfies both and, therefore, Government can always prescribe a higher pay scale for judicial officers.

The Apex Court has noticed the importance of Judges as a whole in the system and the Court has noticed the difference of working of judicial officers as a whole.

6. The main contention of the Petitioners is one of discrimination in terms of Article 14 of the Constitution of India. The Advocate Judges and Judges from District judiciary form one class of High Court Judges. There can be no difference in the matter of ceiling for these two categories. Article 14 forbids discrimination in any form by the State. In fact the Andhra Pradesh High Court in the case of O. Chinnappa Reddy v. Pay and Accounts Officer Supreme Court of India WP No. 14804 of 1999 has considered the pension of a Judge of Supreme Court of India with that of a Cabinet Secretary. The Division Bench noticed that there cannot be any doubt that in terms of Article 14 of the Constitution of India a reasonable classification based on intelligible differentia would be permissible. But, in a given situation like the present one, where a question arises as to whether classification so made is reasonable or not, the factual backdrop therefore may well require serious consideration. The Division Bench further noticed that a Supreme Court Judge had all along been occupying a higher status than the cabinet secretary, it is no gain saying that whereas a Judge of the Supreme Court discharges constitutional function, a Cabinet Secretary does not. The Division Bench also noticed the case of All India Judges' Association Vs. Union of India

and others, and AIR 1993 SC 2493 and after noticing struck down the discrimination and ordered payment of family pension on the basis of the last pay drawn by him and in terms of the pension payable to him.

7. In the case on hand also, a Judge of High Court whether he is from the Bar or from the District Judiciary is to discharge the same constitutional function in terms of Article 217 of the Constitution of India. Therefore in my view, there is no justification for restricting the maximum gratuity payable to Rs. 2,50,000/- as is being done in the case of a Judge coming from District Judiciary as against Rs. 3,50,000/- to an Advocate Judge. There is a patent discrimination in terms of Section 17A(2) of the Act in the matter of pension. No justification is shown to me by the State. Hence I find substance in the argument of Petitioners that the discrimination has to be wiped out despite the source being different. Therefore I have no hesitation in accepting the argument of the Petitioners.

8. I would be failing in my duty if I do not refer to a latest judgment of the Orissa High Court. In somewhat identical circumstances, the Orissa High Court in WP No. 12811 of 2003 dated 13-1-2006 has issued a direction by way of enhancing the death cum retirement gratuity from Rs. 2,50,000/- to Rs. 3,50,000/- in its order dated 30-1-2006. In fact the Orissa Government has accepted the same in terms of the Resolution which is made available to me by the learned Counsel for the Petitioner.

9. My view finds support by the ruling of another learned Judge of the Orissa High Court.

I must also notice that the Andhra Pradesh High Court has chosen to enhance Rs. 2,50,000/- to Rs. 3,50,000/- in terms of its order dated 5-10-1998. Similarly in terms of Annexure-H, the Bombay High Court has also chosen to enhance from Rs. 2,50,000/- to Rs. 3,50,000/-. The Government of Tamil Nadu also had chosen to raise the gratuity in terms of an order dated 21-4-1998.

10. Taking into consideration, the discrimination and also taking into consideration the constitutional status of a Judge of the High Court, ceiling of Rs. 2,50,000/- is to be enhanced to Rs. 3,50,000/- to be on par with an Advocate Judge.

11. In the result, this petition stands accepted. A writ of declaration is issued declaring that the Judge elevated from the cadre of District Judges is entitled for a maximum gratuity of Rs. 3,50,000/- on par with a Judge elevated from the Bar, and consequently a direction is issued to the State Government to make over the differential amount to the Petitioners within two months from the date of receipt of a copy of this order. No costs.