

(1982) 01 KAR CK 0030
In the Karnataka High Court
Case No : W.P. 18727 etc. 80 and 81

Narasinga Rao and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-01-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1982) 2 KarLJ 258

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. As the petitioners in these cases have challenged one and the same order, they can conveniently be disposed of by a common order Hence I propose to dispose of . them by a commonorder.
2. In these petitions under Art. 226 of the Constitution, the petitioners have challenged Government Order No. FD 35 SRP 79 dated 11-9-1979 of the Government of Karnataka (Annexure-B in W. P.No. 20822 of 1980).
3. The petitioners in W.Ps. Nos. 20322 of 1980, 31154 to 31185 of 1981 are working In one or the other capacity as cadre in this High Court. The petitioners in W.Ps. Nos. 18727 of 1980, 31800 and 31801 of 1981 are working as First Division Clerks in the office of the Superintendent of Police, D.K, Mangalore.
4. Before revising the pay scales of the employees of Government and this Court pursuant to the reeommendations of the Narayana Pai Pay Commission from 1-1-1977, departmental examinations had been prescribed in all the departments of Government and this Court inter alia providing for sanction of an advance increment to those that pass the prescribed departmental examinations. The petitioners had passed the prescribed departmental examinations and, therefore, each of them had been sanctioned an advance increment in the scale of pay attached to the post held by him. Not unnaturally, a large number of employees in, various other departments of Government had also passed the prescribed departmental examinations and had been sanctioned advance increments.

5. On the introduction of revised scales of pay from 1-1-1977, fitment of salaries thereto, several junior officials passing departmental examinations thereafter, an anomalous and incongruous situation of those, junior officials drawing higher pay over their seniors that had passed departmental examinations earlier and were drawing manner pay prior to 1-1-1977, arose in a number of cases of Government departments and this Court. Wot unnaturally those seniors became sore over their not and represented to Government to remove the anomaly, unjust and inequitable, situation that had arisen. On an examination of the same, Government made an order bearing No. FD 68 SRP 78 dated 31-1-1979 (Annexure-A in W. P. No. 20822 of 1980) to remedy the) situation by stepping up the pay of the senior officials. The order made by Government setting out the circumstances, reasons, the terms and conditions on which the benefits were accorded) which is worth reproducing reads thus:

"Sub: Disparity in pay of the Senior Government servant and Junior Government servant consequent on grant of an additional increment in the revised scale of pay for passing the prescribed departmental tests to the junior Government servant stepping of the basic pay of the senior Government servant.

Order No. FD 68 SRP 78, 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 1-1-77, a junior Govt, servant who passes the prescribed teste on or after 1st January, 1977 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 alter 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 1-1-1977 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 prerevised 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 pro-forma (form appended to the Government Order) and service register.

6. In pursuance of the aforesaid order of Government, the Hon"ble, the Chief Justice of this Court examined the claims of the petitioners in W.Ps. Nos. 20822 of 1980, 31154 to 31185 of 1981 and made appropriate orders extending the benefits to which they were entitled to in terms of the said order. As a result" of the same, these petitioners were permitted to draw higher pay sanctioned to them.

7. But, in the case of petitioners in W.Ps.Nos. 18727 of 1980, 31800 and 31801 of 1981 their claims were found to be genuine and fall within the purview of the order dated 31-1-1979 and a recommendation was, therefore, made by the Inspector General of Police, to Government for according formal approval in terms of the last para of the said order.

8. As a bolt from the blue, Government in its order No.FD 35 SRP 79 dated 11-9-1979 rescinded, its earlier order dated 31-1-1979 on the ground that that order had resulted in a "chain reaction". The said order reads thus:

"Sub: Stepping up of pay of a senior Government servant to that of a junior Government servant on account of grant of an additional increment in the revised pay scale to the latter-withdrawal of the orders issued in regard to the-

Read: Government Order No.FD 68 SRP 78 dated 31-1-1979.

Order No.FD.35 SRP 79, Bangalore dated the 11th September, 1979.

In G.O.No.FD 68 SRP 78 dated 31-1-1979 orders were issued for stepping up of pay of a senior Government servant who was granted an additional increment in the prerevised 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 chain reaction. The implications of this question has 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.FD 68 SRP 78 dated 31-1-79 should be and are here by rescinded. Orders stepping up the pay of officials issued, in any in pursuance of the G.O. dated 31-1-79 should be cancelled."

On making the said order, Government requested Hon"ble the Chief Justice to recall the orders made in favour the personnel working in this Court. After some abortive correspondence thereto, the Addl. Registrar of this Court with the approval of the Hon"ble the Chief Justice by his memo No.HCE 414 of 1978 dated 5-11-1980 (Annexure-E in W.P. No. 20822 of 1980) has directed the recovery of payments already made to the petitioners in W.Ps. Nos. 20822 of

1980, 31154 to 31155 of 1981. At that stage, these petitioners have approached this Court and have, obtained stay of the operation of the said order. In view of its order dated 11-9-1979, Government has not conceded the, claims of the petitioners in W.Ps. Nos. 18727 of 1980, 31800 and 31801 of 1981.

9. The petitioners have asserted that before the new scales of pay were introduced with effect from 1-1-1977, as a matter of fact, they were drawing higher pay over many of their juniors, regard being had to their length of service, increments earned from time to time and passing of departmental examination, but that position was altered to their disadvantage in the re-fixation of their pay under the new scales of pay that were introduced from that date. Every one of the petitioners has highlighted the anomalies and injustice that has occasioned to him in the re-fixation of his pay vis-a-vis his juniors. As an illustrative and poignant case it is enough to refer to what is stated by respondent No. 1 in its original return which reads thus:

"For example a Sub-Inspector of Police in the pre-1977 scale of Rs.175-10-275-15-350-EB-20-450 was granted an additional increment of Rs.10/- in 1974 for passing the prescribed tests. He along with some of his juniors in the cadre was promoted to the cadre of Police Inspector in the pre-1977 scale of RS.275-25-375-EB-25 550 and the pay of all these officials on promotion was fixed at the minimum of the scale i.e., Rs.275 in the pre-77 scale of Rs. 275-500. The police Inspector junior to the one who was granted an additional increment in 1974 in the scale of pay applicable to the lower post of Sub-Inspector passed the prescribed tests after his promotion to the cadre of Police Inspector. This junior officer got the benefit of additional increment of Rs.25/- in the pre 1977 sale of Rs.275-500 and his pay was fixed at Rs. 300/- while his senior who got the benefit of the additional increment of Rs. 10/- only was drawing the lower pay of Rs. 275/-."

In the additional return, a few more cases have been highlighted but it is not necessary to refer to all of them.

10. The petitioners in W.Ps.Nos. 20822 of 1980, 31154 to 31185 of 1981 have also urged that their fitment having been made by the Hon"ble the Chief Justice, it was not open to Government to withdraw the same in any event, in violation of the principles of natural justice.

11. In its returns respondent No. 1 has urged that the power to make the original order comprehends in itself the power to rescind or recall that order and the, same, has been done on a detailed examination of all the relevant aspects bearing on the question.

12. On merits, respondent No. 1 has urged that the anomalies were not a peculiar feature of 1977 pay scales only but existed earlier also. The term "chain reaction" that being the sole reason for recalling the earlier order, has been elaborated by furnishing various particulars. Respondent No. 1 has asserted that if the earlier order is allowed to stand, in reality and in substance, it would

amount to sanctioning an additional increment in the 1977 pay scales, which are very liberal, roughly . to 2.5 lakhs employees resulting in a recurring financial liability of 2.5 crores per annum to the exchequer and the same requires to be avoided.

13. So far as the petitioners that are working in this Court, respondent No. 1 has urged that the proposals for stepping up of their pay were not forwarded and have not been sanctioned by Government in terms of the last para of the order dated 31-1-1979 and, therefore, they have not acquired an indefeasible right to sustain the orders made by the Hon"ble the Chief Justice.

14. Sriyuths Murlidhar Rao and H. Subramhanya Jois, learned counsel for the petitioners have contended that the order made by Government on 31-1-1979, had rightly remedied the injustice caused to the petitioners and the same had been arbitrarily withdrawn by Government in violation of Art 14 of the Constitution. In support of their contention, counsel for the petitioners strongly relied on the rulings of the Supreme Court in Ramanu Dayaram Shetty v. International Airport Authority, AIR 1979 SC 1628 and Ajay Hasia v. Kalid Muzib Sehraavardi, AIR 1981 SC 487 and the decision, of this Court in R.B. Mutgi v. Karnataka Electricity Board, W.Ps. 7512 to 7524/80 dt. 24/25.11.81.

15. Sri S.V. Narasimhan, learned High Court Government Pleader, appearing for the respondents urged that Government was competent to withdraw its earlier order made under a mistake, the facts and circumstance fully justified the same and the same does not offend Art. 14 of the Constitution.

16. On an examination of the anomalies and injustice occasioned to senior officials, who were drawing higher pay in the pre-revised scales of pay but who had to draw lower pay than their juniors after 1-1-1977, Government made an order on 31-1-1979, to remove the anomalies and injustice caused to them. A cursory or a close examination of this order that meted out minimum justice, if not absolute justice reveals that the same did not suffer from any infirmity. But, still the said order was rescinded by Government on the ground that it has resulted in a "chain reaction.

17. The term "chain reaction is not a term of art and has no precise meaning. The Chambers Twentieth Century Dictionary defines the word "chain reaction as a process in which each reaction is in turn the stimulus of a similar reaction. Any action of Government is normally bound to result in action and reaction or a "chain reaction". If the concept of "chain reaction" is carried to its logical conclusion, probably no action as such, can be taken by a modern welfare Government functioning under our Constitution with its obligation to do justice to all. At any rate, it is an elusive concept and cannot be a sound and proper guide for a modern, welfare State at all. In his monumental article, called "Mr. Justice Holmes and the Constitution-A Review of his Twenty-five years on the Supreme Court (reported in 1927-28 Vol. 41 Harward Law Review p. 121) a critical assessment of the work done by Justice Holmes of the, American Supreme Court,

Justice Felix Frankfurter describes a Modern welfare Government as "Government means experimentation". Any hesitation by a Government not to make an order or rescind an earlier order on the ground of a "chain reaction" will make it impossible to work and defeat the above statement of Justice Felix Frankfurter.

18. When a senior official drawing a higher pay over his junior in an incremental scale of pay were to draw a lower pay than his own junior overnight, for no fault of his, the frustration that would be caused to him can be easily imagined and does not require an elaborate argument to convince the same. If the same is allowed to stand so far as the incremental scales of pay, with which alone we are concerned, would render the principle of seniority topsyturvy. Any such situation is not conducive to public service and the same had been rightly remedied by Government on 31-1-1979. But unfortunately in rescinding the same, Government has been influenced by a nebulous, irrational and an arbitrary principle.

19. Earlier, I have found that the principle of chain reaction" that guided Government to withdraw its earlier order is irrational and arbitrary. When, that is so, every one of the, details set out by Government in its returns viz. (i) benefits have to be accorded to about 2.5 lakh of employees; (ii) the, same results in a permanent financial, out-lay of 2.5 crores per annum to the State exchequer; (iii) liberal rates of increments allowed in 1977 pay scales and liberal retirement benefits, also fall to the ground. Even otherwise, all those factors have hardly any relevance to sustain the impugned order.

20. In examining the true, scope; and ambit of Art 14 of the Constitution and the validity of an action as violative of that article, the Courts earlier examined the same on the touchstone of reasonable classification. But, in recent years the Supreme Court has evolved the principle of arbitrary action being antithesis to Art 14 of the Constitution. In *Ajay Hasia's*, AIR 1981 SC 487, case, an unanimous Constitution Bench of the Supreme Court speaking through Bhagwati, J. referring to that principle enunciated in the earlier cases, has restated that principle in these words:

"The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state, that the content and reach, of Article 14 must not be confused with the doctrine of classification. Unfortunately in the early stages of the "evolution of our constitutional law, Article, 14 came to be identified with the doctrine of classification because the view taken was that the Article) forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which, distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa v. State of Tamil Nadu* (1974 2 SCR 348: (AIR 1974 SC 555), that this Court laid bare a new

dimension of Article 14 and pointed out that the Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said:

"The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., a way of life, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and, meaning, for to do so would be to violate its activist magnitude.- Equality is a dynamic concept with many aspects and dimensions and it cannot be nibbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.

"Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in *Royappa's* case and it was reaffirmed and elaborated by this Court in *Maneka Gandhi v. Union of India* (1978) 2 SCR: 621 (AIR 1978 SC 597), where this Court again speaking through one of us (Bhagwati, J.) observed: Now the question immediately arises as to what is the requirement of Art. 14: what is the content and reach of the great equalising principle enunciated in this article. There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so, would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits Article 14 strikes at arbitrariness in State action and ensures fairness "and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

This was again reiterated by this Court in *International Airport Authority* case [(1979) 3 SCR 1014] at p.1042: (A.I.R. 1979 SC 1628) (supra) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved: by the Courts is not paraphrase of Article 14 nor is it the, objective and end of that Article. It is

merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Art. 14 immediately springs into action and strikes down such State actions. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

On the application of the, above principle, it follows that the impugned order of Government, which is plainly arbitrary, is violative of Art-14 of the Constitution and is therefore liable to be quashed, and the order dated 5-11-1980 of the Additional Registrar of this Court issued in pursuance of the said order is also liable to be quashed. In this view, it is not necessary to examine the other contentions urged by the parties and express any opinion on them and, therefore, they are not noticed and dealt by me.

21. In the light of my above discussion, I make the following orders and directions:

(1) I quash the order No.FD 35 SRP 79 dated 11th September 1979 (Annexure-B in W.P.No. 20822 of 1980) and the memo No.HCE 414/78 dated 5th November, 1980. (Annexure E in W.P. No. 20822/1980).

(2) I direct the respondents in W. Ps. Nos. 18727 of 1980, 31800 and 31801 of 1981 to examine the claims of the petitioners in the said cases for fitment of their pay on the basis of the order made by Government on 31-1-1979 (Annexure-A in W.P.No. 20822 of 1980) and extend all such benefits to which they are entitled to in pursuance of the said order with all such expedition as is possible in the circumstances of the case, but in any event within three months from the date of receipt of this order.

22. Rule issued is made absolute, in all these, cases. But, in the circumstances of the cases, I direct the parties to bear their own costs.