

(1973) 09 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 4198 of 1970

N.S. Subba Rao

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 05-09-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 226, 309

Citation : (1974) 1 KarLJ 95 : (1974) 2 LLJ 19

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Judgement

1. N. S. Subba Rao, the petitioner, is a village accountant. In this petition under Art. 226, he complains about the discrimination made in the pay scale given to him with effect from 1-1-1970.

2. Briefly stated the facts are these. The petitioner was appointed as a village accountant in the year 1943 under the provisions of the Mysore Village Offices Act, 1908. The said Act was repealed by the Mysore Village Offices Abolition Act, 1961. Thereafter the Mysore General Services Revenue Subordinate Branch Recruitment Rules, 1961 were framed under the proviso to Art. 309 of the Constitution. By the said Rules, provision was made for the recruitment of village accountants. Qualification fixed for the direct recruitment was a pass in S.S.L.C. examination. The said qualification was relaxed in respect of persons who had already served as village accountants under the M.V.O. Act, 1908. For them, it was sufficient, if they have passed VIII standard and were within 50 years of age.

3. The petitioner was one of the applicants. He had passed only VII standard but he had enough experience in the office. He was, therefore, found suitable and selected as village accountant along with about 141 candidates. Some of them had passed S.S.L.C. examination. All of them were appointed as village accountants in the pay scale of Rs. 65-1-70-90. All of them belonged to one cadre with one pay scale of Rs. 65-90.

4. The petitioner continued to draw the said scale of pay till it was revised by the Mysore Civil Services Revised Pay Rules, 1970. The said Rules framed under the proviso to Art. 309 came into force with effect from 1-1-1970. By these rules, for the first time, a discrimination was brought about in the pay scales, on the basis of the qualifications possessed by the village accountants. The village accountants who had passed S.S.L.C. examination were given the pay scale of Rs. 90-3-105-4-145-EB-5-200 and for the non-S.S.L.C. village accountants and talatis, a lesser pay scale of Rs. 80-2-90-3-120-4-140-4-145 was prescribed. The petitioner being a non-S.S.L.C. village accountant was sought to be given the lesser pay scale. He was asked to give his option, for the same according to the said Rules. He did not give his option, but preferred this writ petition for the following reliefs :

"To issue appropriate writ or order as the case may be directing the respondents to fix the pay of the petitioner in the scale of Rs. 90-3-105-4-145-EB-5-200 with effect from 1-1-1970, if necessary, by declaring the Mysore Civil Services Revised Pay Rules, 1970 in so far it provides for a lower pay scale to non-S.S.L.C. village accountants as void and invalid."

5. The contention urged by Sri Rama Jois, learned counsel for the petitioner, was that throughout there has been only one cadre among the village accountants in the State of Mysore with a uniform pay scale given to them. It was only for the first time, in 1970, that different pay scales were prescribed on the basis of the different qualifications possessed by the village accountants. Learned counsel added, that this prescription of two different scales of pay to persons belonging to one cadre is discriminatory and violative of Arts. 14 and 16(1) of the Constitution.

6. Sri Puttaswamy, learned First Additional High Court Government Advocate, submitted that it is open to the State to prescribe different pay scales to persons possessing different qualifications, even though they are in the same cadre.

7. The decision of the Supreme Court in *State of Mysore and Another Vs. P. Narasing Rao*, , was relied upon by both counsel in support of their respective contentions. Sri Puttaswamy strongly relied on the said decision and contended that the case on hand squarely falls within the ratio of that decision. In the said case, the Court observed thus :

"In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the New Mysore State, one for matriculate tracers with a higher pay scale, and the other for non-matriculate tracers with a lower pay scale, is not violative of Arts. 14 and 16 of the Constitution."

The above observations should not be read in isolation. The facts of the case should be borne in mind. The said case was explained in a Bench decision of this Court in *S. N. Byroji Rao v. State of Mysore*, W.P. 2164/66 dated, 4-2-1969.

Narayana Pai, J. (as he then was) said at para 13 thus :

"It is next contended that this case is governed by the decision of the Supreme Court in *State of Mysore and Another Vs. P. Narasing Rao*, , in which the prescribing of a higher scale of pay for matriculates or S.S.L.C. and a lower one for others in the same cadre of tracers in the Public Works Department was upheld, and it was pointed out that it would not be violative of Arts. 14 and 16 for the Government to prescribe qualifications for a post and also give preference to candidates with higher or better qualifications, whether technical or general. It is seen, however, that the position on facts was not in all respects the same as in this case. The respondent Narasinga Rao therein was a tracer allotted from the Hyderabad State, where the possession of any academic qualification was not necessary. In the old Mysore State there were two grades of tracers, viz., non-S.S.L.Cs. on a lower pay scale and S.S.L.Cs. on a higher pay scale. After the States Reorganisation Act, the cadre of tracers into which were absorbed tracers from the old States of Mysore, Hyderabad and Bombay was reorganised by the New Mysore State into two grades, one consisting of matriculates or S.S.L.Cs. and the other of non-matriculates or non-S.S.L.Cs. with effect from first January, 1957. There was not, therefore, in the said case, as in the present one, a recruitment on the basis of several qualifications treated as equivalent and one single pay scale irrespective of qualifications; nor is there in the present case a reorganisation of the cadre into two grades as in the case of tracers."

It is said that the said decision was taken in appeal by special leave before the Supreme Court, but the special leave was not granted by the Supreme Court as seen by the order dated 17-3-1970 in SLP Nos. 525 and 526, 1970.

8. That apart, the Supreme Court itself has explained Narasinga Rao's case (supra) in the recent decision in *S.M. Pandit and Others Vs. The State of Gujarat and Others*, thus :

"The counsel for the appellants sought to place some reliance on the decision of this Court in *State of Mysore and Another Vs. P. Narasing Rao*, . That decision is clearly distinguishable. In that case, according to the Rules framed by the Government, the non-matriculate tracers formed separate cadre from those who had passed the matriculation examination. The two cadres had different pay scales. Hence there was no discrimination between the officers borne on the same cadre."

9. It is, therefore, very clear that the observation in Narasinga Rao's case (supra) should be considered in relation to the facts of the case. In that case, the matriculate and non-matriculate tracers formed two separate cadre according to the rules framed by the Government. The last sentence at para 6 of the above Supreme Court judgment is very significant. To put it in other words, what it means is that there shall not be a discrimination between the officers borne on the same cadre.

10. The questions as to whether a higher scale of pay can be granted only to

some of the officials in the same cadre on the basis of their possessing higher qualification has been the subject-matter of two other decisions of this Court : see K. N. Dasappa v. State of Mysore, W.P. 1341 dated 16-6-1971, and B. Basavalingappa v. State of Mysore, W.P. 2213/70 dated 6-3-1973. In these decisions also it was held that the State cannot make any discrimination in the matter of pay scales amongst the officers belonging to the same cadre on the ground that some of the officers have higher qualifications than the others.

11. The case on hand cannot be said to be an exception to the above principle either on facts or law. It is not disputed that all the village accountants, irrespective of their qualifications, formed one class or cadre. Everybody possessed the minimum qualification prescribed for the post. They were recruited by one method. There was a common training for them. They have no separate avenues of promotion. In such a case, the State cannot make any discrimination in the matters of employment as between members of the same class. Therefore, the granting of higher revised pay scale only to the village accountants who have passed the S.S.L.C. examination and not giving the same to those who have not passed the S.S.L.C. examination clearly offends the equality clause guaranteed under Arts. 14 and 16(1) of the Constitution. I find, therefore, no difficulty in upholding the contention urged for the petitioner.

12. The next question is, what should be the proper order to be made in this petition. There is no necessity to quash the Mysore Civil Services Revised Pay Rules, 1970 in so far as it provides for a lower pay scale to non-S.S.L.C. village accountants. Since the petitioner is complaining about the discrimination in the pay scale, it is sufficient if I issue an order directing the respondents not to subject the petitioner to a lower scale of pay than the one prescribed to those village accountants who have passed S.S.L.C. examination. It is ordered accordingly.

13. In the circumstances, there will be no order as to costs.