
(1987) 08 KL CK 0040
In the High Court Of Kerala
Case No : W.A. No. 511 of 1984

P.G. Vasudevan Nair and Another

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (1987) 08 KL CK 0040

Hon'ble Judges : Sreedharan, J;Paripoornan, J

Bench : Division Bench

Advocate : K.K. Usha and N.D. Premachandran, for the Appellant; Government Pleader, for the Respondent

Judgement

Sreedharan, J.—Petitioners in O.P. No. 6239 of 1981 are the Appellants. The first Petitioner is working as Administrative Officer Grade II and the second Petitioner as Finance Officer. They claim special pay as given to their counter-parts drawn from the Secretariat service. That claim was negated by Ext. P-2 order dated 7th January 1981. There upon they approached this Court for quashing Ext. P-2 order and for the issue of a writ of mandamus directing the Government to grant the Petitioners special pay as in the case of their counter-parts in the Secretariat service. The learned Single Judge dismissed the Original Petition holding that the special pay is given to a class or persons by reason of the special nature of their work and so it is based on a reasonable classification. The averments in para 8 of the counter affidavit were relied on to sustain the conclusion. The decisions of the Supreme Court bearing on the question are not seen referred to in the Judgment. The O.P. was dismissed by judgment dated 5th September 1974. Hence this Writ Appeal.

2. The short facts necessary for the disposal of the appeal are as follows. The 1st Petitioner entered service of the Government as a Lower Division Clerk in the Public Works Department on 21st July 1958. He got promotion as Upper Division Clerk, Junior Superintendent and Senior Superintendent. On 5th October 1970,

he was appointed as Financial Assistant Grade II, by direct recruitment through the Public Service Commission. On 20th November 1978, he was appointed as Administrative Officer Grade-II. He is now working in that cadre in the Chief Electrical Inspectorate, Trivandrum. The 2nd Petitioner entered service as Lower Division Clerk on 11th August 1955. He got promotion as Upper Division Clerk and Junior Superintendent. On 16th June 1967, he was appointed as Financial Assistant Grade II through the Public Service Commission. In June 1978, he became Financial Assistant Grade I. He is now working as such in the office of the Chief Engineer (Buildings and Roads), Trivandrum. By G.O. (P) 860/78/Fin., dated 16th December 1978, Administrative Officers/Finance Officers (in the cadre of Deputy Secretary) and Administrative Officer/Financial Assistants in the Cadre of Under Secretary have been made eligible for special pay of Rs. 75 and Rs. 50 per mensem respectively. The cadre of Administrative Officers/Finance Officers/Financial Assistants consists of persons drawn from the Secretariat and those recruited from other departments. The post of Administrative Officers consists of two grades; Grade II is equivalent to the post of Under Secretary and Grade I is equivalent to the post of Deputy Secretary. 50 per cent of these posts are earmarked to Officers of the Secretariat. The cadre of Financial Assistants consists of Finance Officers (equivalent to Deputy Secretary), Financial Assistants Grade I (equivalent to Under Secretary) and Financial Assistant Grade III (in between the grades of Section Officer and Under Secretary). The special pay has not been recommended to officers holding the post of Financial Assistant Grade II. The posts in the cadre of Financial Assistant are also filled up by Secretariat Officers and non Secretariat Officers in equal proportion. Officers like the Petitioners who belong to the same cadre but are not drawn from the Secretariat are denied the benefit of special pay. They made representations to the Government for getting the same benefit to them as well. That request has been rejected by Ext. P-2 order. According to the Petitioners, the action of the Government in granting the special pay to Administrative Officers/Finance Officers/Financial Assistants drawn from the Secretariat wing alone is illegal, discriminatory and violative of the principles contained in Articles 14 and 16 of the Constitution.

3. On behalf of the State of Kerala a detailed counter-affidavit has been filed. The Government tries to support the differential treatment of officers drawn from the Secretariat and from other departments. The reason for the said treatment is explained in paragraph 5 of the counter-affidavit. For a proper understanding of that we would read the same:

Normally a Secretariat Officer is not expected to be transferred and posted for work in the offices of Heads of Departments. But Secretariat Officers are posted as Administrative Officers/Financial Assistants which posts are treated as additions to the cadre of the post in the Secretariat. In the Secretariat, Under Secretary/Deputy Secretary is not expected to take final decision in policy matters. There are officers above their rank vested with more powers and orders can be taken by circulating files to Ministers and even by placing them before the

Cabinet if necessary. But when such an officer is posted in the offices of the Head of Departments as Financial Assistant/Finance Officer/Administrative Officer he is to guide the Head of Department and he has to take decision in financial matters also. Hence an Under Secretary/Deputy Secretary posted as Administrative Officer/Financial Assistant has to shoulder more responsibilities than that they will have to attend if they work in the Secretariat itself. There is a definite Change of their duties and they have to shoulder more responsibilities when they work outside the Secretariat. A directly recruited Administrative Officer or a Financial Assistant Grade I promoted from the category of directly recruited Financial Assistant Grade II will not have to face such a difficult position. Since they are direct recruits to the above posts the duties and responsibilities attached to these posts of Administrative Officer/Financial Assistant Grade I can be considered to be only their normal duties and no speciality or arduousness can be attributed to it, unlike in the case of Administrative Officer/Financial Assistant Grade I posted from among Secretariat Officers. In the circumstances, the Special Pay allowed to the Administrative Officers/Financial Assistant posted from among the officers of the Secretariat cannot be extended to those who are directly recruited/appointed to these cadres.

4. Officers in the cadre of Administrative Officer/Finance Officer/Financial Assistant, discharge the same type of duties and functions. Once they are appointed to the above cadres they form an integral unit. It is not disputed that the two sets of officers, namely, the direct recruits and those drawn from the Secretariat, discharge the same functions, duties and responsibilities. The Government have no case that the officer's from the Secretariat were drawn to the cadre on account of their displacement from the Secretariat. When the officers drawn from different sources are fused into one unit and they discharge the same duties, functions and responsibilities they cannot be discriminated on the basis of the source from which they were drawn.

5. The Supreme Court in *M.P. Singh v. The Union of India* 1987 (1) S.S.C. 592 had considered the validity of special pay given to certain C.B.I. Officers on account of the arduous nature of their duties. The C.B.I. Officers drawn from the State Cadres were getting higher special pay while the officers belong to Central Cadres were paid a lesser sum. The said discriminatory treatment shown to officers belonging to the Central Cadre was found to be invalid and opposed to Articles 14 and 16 of the Constitution, because arduous nature of duties that is being performed by all of them is identical.

6. Article 39(d) of the Constitution provides that the State shall direct its policy towards securing equal pay for equal work for both men and women. This Directive Principles of State Policy casts a duty on the Government to strive for making provisions for equal pay for equal work. This solemn duty cast on the State must as far as possible be given effect to. When it is admitted that persons belonging to one cadre are discharging the same functions, duties and responsibilities, the State will not be justified in granting special pay to a group

of them depending on the source from which they are drawn. In *State of Mysore v. B. Basavalingappa* AIR 1967 S.C. 411 the Supreme Court held that different pay scales could not be enforced for the same posts merely on the basis of different qualifications held by the officers in the cadre. In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, . Their Lordships observed:

The Central Government, the State Government and likewise all Public Sector Undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State Undertakings.

7. In the light of the above decisions of the Supreme Court of India, we are of the view that the plea of the Appellants that they are entitled to Special Pay as in the case of their counter-parts drawn from the Secretariat Service, is justified. We declare that the Appellants are entitled to the Special Pay, like their counter-parts, drawn from the Secretariat Service. The decision of the learned Single Judge to the contrary is unsustainable in view of the decisions of the Supreme Court, referred to herein above. We, therefore, set aside the judgment of the learned Single Judge and allow this appeal. The Respondent-State of Kerala is directed to pass appropriate orders in accordance with the declaration granted herein, conferring monetary benefits on the Appellants in accordance with the declaration given herein, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this judgment. However, there shall be no order as to costs in this Writ Appeal.