
(1997) 04 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 1400 of 1996

P.N. Jeevarathinam and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 23-04-1997

Acts Referred:

Citation : (1998) 9 JT 261 : (1997) 11 SCC 102 : (1998) SCC(L&S) 89

Hon'ble Judges : S. B. Majmudar, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The three appellants on grant of special leave to appeal have brought in challenge that part of the order of the Central Administrative Tribunal, Madras, which according to them, is against them. The appellants were working as Munshis in Madras Telegraph Office. Their contention before the Tribunal was that they were doing the same work as clerks still they were granted the pay scale of Class IV staff and they were entitled to the pay scale of clerks who are in Class III. They made various representations and ultimately filed a writ petition in the Madras High Court in 1983. The said Writ Petition No. 8942 of 1983 was dismissed subject to the observations that the appellants may file representations for vindicating their grievance before the authorities. The High Court directed that the respondents will consider the case of the appellants as to whether they have been discharging the duties of clerks or they were discharging the duties of only Munshis. The said decision of the High Court dated 5-12-1984 clearly postulated that the three appellants concerned were in service at the time of the decision of the High Court. They filed original application in 1988 before the Tribunal which was disposed of on 4-4-1990 by directing the respondents to communicate the decision which might have been taken on the representation of the appellants as the appellants had contended that despite their representations no decision was communicated to them. It appears that thereafter a decision rejected their representations was communicated to the appellants. They again

therefore, approached the Tribunal in OA No. 740 of 1990 for redressal of their grievance. The Tribunal after hearing the contesting parties came to the conclusion on the evidence laid before it that the appellants though styled as Munshis, were discharging the duties of full-fledged clerks, and especially when some of the Munshis themselves were treated as full-fledged clerks by the respondents, there was no reason why the appellants similarly circumscribed should be discriminated against. The Tribunal also took the view that the appellants were entitled to be given the pay scale of clerks from 1-1-1975. However, there would be only notional adjustment of the pay scale for them. So far as the arrears of pay scale were concerned, in the view of the Tribunal even though the pay scale was revised from 30-9-1975 as the appellants had not moved the matter before any competent court till their actual date of superannuation, no arrears of difference in the pay scale could be awarded to them. The result was that the only benefit available to them would be the hike in the pensionary benefits. The said order of the Tribunal is brought in challenge by the appellants in the present proceedings on the ground that the appellants are entitled to arrears of the higher pay scale from the date of their initial entry in service as Munshis, or at least from 30-9-1975 when the revised pay scale was available to clerks and which pay scale according to the Tribunal could otherwise be awarded to the appellants.

2. It was submitted by the learned Counsel for the appellants that the appellants were agitating about their rights from the very beginning. They had filed representations earlier in 1978 and 1982. It is true that they approached the High Court of Madras in a writ petition in 1983 but as they were actively pursuing the remedy before the respondents themselves it cannot be said that the appellants had indulged in any procrastination or delay in getting redress in connection with their grievance and therefore, according to the learned Counsel for the appellants the Tribunal had erred in not granting full relief to the appellants by awarding the actual arrears of difference i.e. the hike in the pay scales as clerks from the very inception of their service.

3. The learned Counsel for the respondents, on the other hand, submitted that the appellants approached the Tribunal much after they were superannuated and therefore, the Tribunal was justified in not awarding actual arrears of difference of pay scales to them. He further submitted that on equitable consideration also the appellants would not deserve any relief; as they had continued in service upto 60 years of age as Munshis and once they were claiming higher pay scale of clerk; on the principle of "equal pay for equal work", in the usual course as clerks they would have retired on completion of 58 years. Thus, they get the benefit of two more years of service as Munshis. Because of the benefit they got of extra service of two years, they forfeited their claim of actual payment of higher timescale of clerks. Consequently, their grievance should not be entertained in the present proceeding.

4. We have given our anxious consideration to these rival contentions. In our

view once the Tribunal took the decision that the appellants were doing the same work as full-fledged clerks and on the ground of the principle of "equal pay for equal work" they were entitled to the higher salary made available to clerks from 1975 and that pay scale was made available to the appellants though notionally till the date of superannuation, the appellants would necessarily have been entitled to payment of arrears of higher salary also. The only ground on which the Tribunal rejected the appellants' prayer for actual arrears of salary in the timescale of clerks on the basis that they came late to the Tribunal and had not raised their grievance about the same earlier cannot be sustained. It has to be kept in view that leaving aside their representations before the authorities the appellants approached the High Court of Madras as early as in 1983. Consequently, it cannot be said that the appellants had not gone to the competent court earlier and had waited till they got superannuated and only thereafter had approached the competent court. They approached the Tribunal later on only because earlier the High Court had relegated them to the remedy by way of representation and once their representation was rejected they approached the Tribunal firstly claiming that they were not served with the order of rejection of their representation and on the second occasion when the representation was already rejected and order was communicated to them. For all these reasons, it must be held that the appellants at least should have been awarded arrears of salary in the higher time scale of clerks from the date on which they approached the High Court in Writ Petition No. 8942 of 1983. From that date the actual arrears of salary in the higher time scale of clerks should have been made available to them. It is not possible to agree with the contention of the learned Counsel for the appellants that they should be given the arrears from 30-9-1975 when the pay scale of clerks was revised or even earlier from their entry in service as Munshis. Their filing of representations before the respondents cannot be taken into consideration for finding out whether they had approached the competent court on an earlier occasion. They having approached the High Court in Writ Petition No. 8942 of 1983 for the first time in all fairness, they should have been awarded actual arrears of back wages in the timescale of clerks can be awarded to the appellants only till the date of actual superannuation. It appears that after the decision of the High Court in the aforesaid writ petition and before they approached the Tribunal in 1988, the appellants might have retired. Therefore, the only relief which could be granted to them in the present appeal would be to the extent that the appellants shall be entitled to actual arrears of salary in the higher timescale of pay of clerks from the date of their filing of the Writ Petition No. 8942 of 1983 till their respective dates of actual superannuation. This benefit shall be worked out by the respondents and shall be made available to the appellants within a period of 4 months from the date of receipt of a copy of the order at their end. The appeal will stand allowed to the aforesaid extent. There will be no orders as to costs.