(1991) 01 KAR CK 0007

In the Karnataka High Court

Case No : W.A. No''s. 1504 to 1506, 1518 and 1555 of 1990 and W.P. No. 21007 of 1990

President, Poura Karmika Sangha — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Citation : (1991) ILR (Kar) 918 : (1991) 1 KarLJ 424

Hon'ble Judges : Venkatachala, J;Murlidher Rao, J

Bench : Division Bench

Advocate : K.R.D. Karanth, V.P. Kulkarni, H.S. Jois, K. Subba Rao and Vigneshwar Shastry, for the Appellant; H.K. Vasudeva Reddy, for Kesvy and Co., for the Respondent

Judgement

Murlidher Rao, J.—Writ Appeals 1504 to 1506 of 1990, are against the orders in W.Ps.19058/1986, 18875/1986, 18876/1986, respectively; Writ Appeals 1554 and 1555/1990 are against orders in W.Ps.20452 and 20453/1986. Writ Appeal 1518/1990 is against the orders of single Judge in W.P.21409/1986. These petitions were disposed of by a common Judgment by the learned single Judge on 23-1-1990. Writ Petition 21007/1990 is by a registered Union called "Hubli Dharwad Mahanagarasabheya Harijan Girijan Navakara Sangha", it is filed on 23-10-1990, nine months after the disposal of the above petitions; the reliefs claimed in this petition are substantially the same. On 24th October 1990, the learned single Judge directed this petition to be brought up after the disposal of W.A.1518/1990, referred to above. Thereafter the petitioner filed a memo on 25-10-1990, to hear this matter along with Writ Appeals, referred to above. By order dated 30-10-1990, passed by a Bench, presided by the Hon''ble Chief Justice, this matter is posted for hearing along with the above referred Writ Appeals. Hence it is before us.

2. Heard Sriyuths K. Subbarao, K.R.D. Karanth, Subramanya Jois, Vigneshwar Shastry and other Advocates for the appellants and petitioner and Mr. Nanjunda

Reddy for Hubli Dharwad Municipal Corporation. The appellants being petitioners in original proceedings, they will be referred to as "petitioners".

3. All the petitioners are holders of certain posts below the rank of Superintendents, Hubli-Dharwad Municipal Corporation (shortly referred as HDM Corporation). The pay scales of these posts, prior to 1-10-1975, were as follows:-

"1. Rs. 65-2-95

2. Rs. 80-3-110-4-130-5-145

3. Rs. 90-4-110-5-170-EB-6-120

4. Rs. 100-5-150-6-180-EB-10-220

5. Rs. 120-5-150-8-190-EB-10-240

6. Rs. 130-5-140-8-180-EB-10-260-15-290)

7. Rs. 160-10-260-EB-15-350

8. Rs. 175-10-275-15-350-EB-20-450."

4. On 13th August 1974, the State Government constituted one-man Commission, appointing Mr. A. Narayan Pai, retired Chief Justice, High Court of Karnataka, to examine the existing pay structure and make suitable recommendation. The Commission submitted its report on 8-3-1976; the State Government by its order dated 13-7-1976, appointed an official committee to examine the recommendation and several representations received in relation thereto. The official committee submitted its report on 25th October 1976. The State Government accepted the recommendations, as modified by the official committee and framed Rules under the proviso to Article 309 of the Constitution of India, called Karnataka Civil Services (Revised Pay) Rules, 1976, which came into force on 1st January 1977. These Rules were applicable to State Government employees; therefore the State Government by order No. HMA 1173 MLR 76 dated 31st May 1976 accorded sanction for adopting the revised pay scales by the Municipal Corporations in the State subject to the condition that "the pay of the employees shall be fixed in accordance with K.C.S. (Revised Pay) Rules 1976". Consequently, the Administrator, H.D.M. Corporation, passed a resolution on 14-6-1977, extending the revised pay Rules to the Corporation employees with effect from 1-1-1977. As there was no elected body, the administrator was in charge of the Corporation. Along with the resolution, the administrator notified the "fitment" in the "revised pay" scales corresponding to the "existing pay scale". The expression "existing pay scale" is defined in the Revised Pay Rules 1976 as:-

"3(b) ''existing scale'' in relation to a Government employee means:

(i) the scale applicable to the post held by the Government employee as on 31st December, 1976, whether in a substantive or officiating capacity;

(ii) and in the case of a pre-1956 entrant, who has not elected the 1957 scales/1961 scales/ 1970 scales, the scale or pay in which he was actually drawing pay on 31st December 1976;

(iii) and in the case of any employee drawing pay in the U.G.C./A.I.C.T.E. scale of pay, the State scale of pay as on 31st December, 1976 in which he would have drawn his pay but for his drawing pay in the U.G.C./A.I.C.T.E. scale of pay."

5. The corresponding pay scales, relevant for this case are:-

Existing Pay

Revised Pay

1. 65-2-95

250-5-300-10-340-15-400

2. 80-3-110-4-130-6-145

280-5-300-10-340-15-400-20-500

3. 9-4-110-5-130-6-200

300-10-340-15-400-20-500-25-600-20-700

4. 100-5-150-6-180-EB-10-220

340-15-400-20-500-25-600-

5. 120-5-150-8-190-EB-10-240

30-750-25-800

6. 130-5-140-8-180-EB-10 260-15-290

400-20-500-25-600-30-750-50-900

7. 160-10-260-EB-15-350

460-20-500-25-600-30-750-50-1000

6. The pay scales mentioned on the left hand column are those that existed prior to 1-10-1975, referred to earlier. The aforesaid resolution, along with the notified "fitment" was approved by the State Government on 17-6-1977, employees of the Corporation were called upon to exercise their option, in the prescribed form, before 31-12-1977; all the petitioners exercised their options. Accordingly the employees salaries were "fixed" as per the "fitment" and Government approved the same in its order dated 20th July 1977.

7. It becomes necessary to interrupt and mention few intervening facts that gave rise to this litigation. The Commissioner, H.D.M. Corporation proposed "upgradation" and creation of certain posts, above the cadre of Superintendents. Accepting the said recommendation, the State Government, in its order dated

20th December 1976, sanctioned "upgradation" in respect of the following posts:-

1) Deputy Municipal Commissioner (one post) from Rs. 400-950 to Rs. 700-1100

2) Assistant Municipal Commissioner (3 posts) from Rs. 300-700 to 400-950

3) Municipal Secretary (one post) from Rs. 300-700 to Rs. 400-950

4) Chief Auditor (one post) from Rs. 300-700 to Rs. 400-950

This decision was subject to the decision in Writ Petition 2963/1975, in respect of Deputy Municipal Commissioner.

8. The upgradation order and consequent posting orders in the respective posts were issued on 22-12-1976. Similarly in respect of Superintendents the "post" was "upgraded" by enhancing the pay scale to Rs. 275-550 with effect from 28-10-1975 and all the officers who were then functioning as Superintendents were given the benefit of "upgradation". These orders of upgradation caused a stir in employees association and made the lower cadres to aspire for similar benefits. The State Government though did not agree for upgradation sought for, to pacify the employees in the lower cadres by passing an order on 25-4-1978, by conferring upon them certain monetary benefits respecting the period between 1-10-1975 and 31-12-.1976, however making it clear that their salary in the revised pay scales with effect from 1-1-1977, shall be fixed with reference to the pay scales applicable prior to 1-10-1975. This was because by that date the revised pay Rules, 1976, had come into force and were extended to Municipal Corporations, to be effective from 1-1-1977. The order dated 25-4-1978, was in the following terms:-

ORDER

"Government have carefully considered the matter and direct that -

(a) the categories mentioned by the Association shall also be given the same benefit of fixation of their pay with effect from 1-10-1975 to 31-12-1976.

(b) Fitment in the revised scales of pay with effect from 1-1-1977, shall te in the scales, which were applicable prior to 1-10-1975; and

(c) The employees should give an undertaking that they will not demand the fitment taking the revision of pay scale with effect from 1-10-1975,"

(underlining is ours)

9. The "monetary benefit" so extended necessarily required the authorities to structure notional "pay scales" in which their salaries could be fixed between 1-10-1975 and 31-12-1976, without conferring any right for fitment in the revised pay scales to take effect from 1-1-1977. In other words, it was an ad-hoc relief only intended to confer monetary benefit to pacify the agitating employees for like treatment as is given to holder of posts higher than that of Superintendents. As mentioned above, in those cases the "posts" were upgraded

and they were sanctioned higher scales of pay. But for the posts below that of Superintendents, the Government offered to give only higher emoluments for a specified period and such offer was accepted by all the employees, when they exercised their option. The transitory pay scales for extension of "monetary benefits" was regulated by order dated 4th May 1978, which reads thus:

ORDER

In pursuance of the Government Order and resolution of the Corporation read above, the following pay scales at column No. 3 are sanctioned to the employees of the Hubli-Dharwad Municipal Corporation in lieu of the pay scales shown in column No. 2.

Sl.No.

Existing Pay Scale

Pay scales now sanctioned

1.

65-2-95

100-5-150-6-180-EB-10-220

2.

80-3-110-4-130-5-145

120-5-150-8-190-EB-10-240

3.

90-4-110-5-175-EB-6-200

130-5-130-8-180-EB-10-260-

4.

100-5-150-6-180-EB-10 -240

15-290

5.

120-5-150-8-190-EB-10-240

160-10-260-EB-15-350

6.

130-5-140-8-180-EB-10-260-15-290

175-10-275-15-350-EB-20-450

7.

160-10-260-EB-15-350

200-10-230-15-350-EB-20-450

8.

175-10-275-15-350-EB-20-450

225-10-245-15-320-EB-20-400-25-450 250-15-310-20-350-EB-25-500

The above pay scales are sanctioned subject to the following conditions as laid down by the Government of Karnataka under the above read order.

(a) The categories mentioned by the Association shall also be given the same benefit of fixation of their pay with effect from 1-10-1975 to 31-12-1976.

(b) Fitment in the revised scales of pay with effect from 1-1-1977 shall be in the scales which were applicable prior to 1-10-1975 and

(c) The employees should give an undertaking that they will not demand the fitment taking the revision of pay scale with effect from 1-10-1975.

Sd/- Commissioner, Hubli Dharwad Municipal Corporation."

Clauses (a), (b) and (c) which reiterate the conditions, make it obvious that the pay scales mentioned in the right hand column under the caption "pay scales now sanctioned" were not intended to create or confer any continuing right and its "life" and effect was restricted from 1-10-1975 to 31-12-1976. In other words, for the period prior to 1-10-1975 and subsequent to 31-12-1976, the fixation and pay, stand regulated by the Revised Pay Rules of 1976, which came into force on 1-1-1977; this being the correct understanding, the "fitment" in Clause (b) above, which itself is a reiteration of the Government Order dated 25th April 1978, must be with reference to the pay scales as it existed prior to 1-10-1975 making the "pay scales now sanctioned" referred to above, inoperative for purposes of "fitment" under the Revised Pay Rules, 1976.

According to Revised Pay Rules, 1976, the "fitment" with reference to the pay scales as it existed prior to 1-10-1975 was done.

10. It appears, in the Audit Section of H.D.M. Corporation the Chief Auditor, refixed the pay of the employees taking into account the salary which was drawn on 31-12-1976 i.e., in the pay scale sanctioned for the period 1-10-1975 to 31-12-1976, quite contrary to the Government Order dated 25-4-1978. This provoked the other employees in the Corporation to demand extension of similar benefit, in effect, it was a demand for multiplying the mistake. The Administrator, who was incharge of the Corporation, without noticing the error, adopted the revised fitment in case of others as was done by the Chief Auditor, it was reasoned that because of the revision of pay scale with effect from 1-10-1975, some disparities in the pay scales have been crept in resulting in some junior employees getting more emoluments than their seniors, to remove this anomaly, it was decided thus:-

"The guide lines proposed to be adopted for removal of disparities in pay are narrated in the Appendix enclosed with this note.

If these guide lines are adopted, it is estimated that about 90% of the disparities caused in fixation of pay will be set right. The additional financial liability on the exchequer of the Corporation on account of this proposal would be Rs. 15,000 per month approximately. This is unavoidable since the disparities in pay have caused great discontentment among the staff. Besides this, if the aggrieved senior officials approach the Court of law on the ground of discrimination, they are sure to succeed in their cause, as emphasised by the Chief Auditor.

Since the issue is of immediate importance and urgency, sanction may be accorded within the purview of the Corporation for adoption of the guidelines and their implementation subject to post-facto-approval of the Government. In other words, with the approval of Corporation we may adopt and implement the guidelines and then write to Government seeking approval for the action taken.

In order to put an end to the growing discontentment among the staff the above proposal may kindly be approved."

11. The Administrator approved the proposal and passed a resolution No. 3716 dated 3-7-1981; on that basis an order was issued by the Chief Auditor on 18-7-1981, which reads thus:-

"In modification of order Nos. ADT.SR.EST.SR. 78-79 dated 23-11-1979 and HDC AUZ 80 dated 29-9-1980 and 18-11-1980 the pay of the staff of this office is refixed in accordance with the IInd schedule sanctioned by the Government under Order No. HMA 1173 MIR 76 dated 20-7-1977. They should draw their pay and allowance as shown in the enclosure less already drawn subject to audit. They should give an undertaking that they would reimburse the excess salary that would be drawn by them in case, if the Government confirms the views of the Chief Auditor.

They should draw the difference of pay with effect from 1-1-1980 as has been drawn by the other employees of the Corporation."

12. In a hasty action this order was implemented and salaries were refixed. Simultaneously the Commissioner sought approval of the State Government for adoption of guidelines mentioned above. The State Government by its letter No. HUD 168 MNU 82 dated 20th October 1982, informed the Commissioner that the intention conveyed in resolution does not appear to be in consonance with the Government decision in G.O. dated 25th April 1978. On 27th May 1983, the Chief Auditor sought clarification, mentioning in detail the various steps taken by the Corporation authorities in fixing the salary. During this period, elections were held and the elected body assumed the office. At its meeting held on 20th April 1985, vide resolution No. 637, the committee having noticed the mistake and its consequences requested the Government to issue proper directions. The State Government by its order in its letter No. HHD 168 MNU 85 dated 24-6-1986,

reiterated its stand and clarified that fitment and the pay fixation on 1-1-1977 should be on the basis of pay scales which existed prior to 1-10-1975, implying thereby that the refixation of salary taking into account the temporary benefits conferred on the employees between 1-10-1975 and 31-12-1976 was erroneous. As a consequence of this order dated 24-6-1986, Corporation restored the fitment done earlier. The resultant position was excess payments made on the basis of erroneous ''fitment'' had to be recovered from the recepients of such benefits. This gave rise to these petitions.

13. The learned single Judge, in an elaborate order, exhaustively dealt with all factual aspects and after correctly summarising the events, held that the grievance of the employees was based on errors; the benefits given to them was not intended by the State Government in its order dated 25-4-1978, and was against the option exercised by the employees. The Writ Petitions were dismissed; however, in respect of recovery it was directed that it shall not exceed 25% of the gross salary of each employee. In exceptional cases, the Commissioner of the Corporation was directed to consider deduction of a lesser sum if an individual case so warrants.

14. In the light of the arguments advanced by the learned Advocates for petitioners, the following questions crop up:-

1) Whether the petitioners are entitled to the benefit of the pay scales granted to them between 1-10-1975 and 31-12-1976, for purposes of "fitment" in the pay scales sanctioned under Karnataka Civil Services (Revised Pay) Rules, 1976, which has been adopted by H.D.M. Corporation?

2) Whether the orders of learned single Judge warrant interference?

15. It is not disputed that posts held by petitioners are not upgraded and what is granted to them by the Order dated 4th May 1978, cannot afford any basis for the fitment in 1976 pay scales. The pay scales sanctioned in the order dated 4th May 1978, was not on permanent basis and the benefit of emoluments was restricted to 1-10-1975 to 31-12-1976. Petitioners contention that the employment of expression "the same benefit" in the Government Order dated 25-4-1978, implies that Government intended to extend all benefits which were given to posts of Superintendent and above cannot be accepted. Clause (b) in the said order which specifically deals with "fitment" directs the authorities to make the fitment as per the salary in the pay scales that existed prior to 1-10-1975. The pay drawn in the pay scale, which existed prior to 1-10-1975, shall alone be taken into consideration for fixing the salary in the revised pay Rules 1976. Moreover this argument overlooks the undertaking given by each of the petitioners to have the salary fixed only on the basis of pay scales which existed prior to 1-10-1975. Petitioners secured the benefit of pay scales sanctioned in the order dated 29th April 1978, on this specific condition that on or after 1-1-1977, their pay will be fixed taking the fitment as provided in the Revised Pay Rules, 1976, based on the pay scale that existed prior to 1-10-1975.

Petitioners cannot be permitted to take benefit of an advantage ignoring the conditions subject to which the advantage was conferred. It was contended that the ''salary'' drawn on 31-12-1976, and not the "pay scale", that should be taken for purposes of "fitment" in the 1976 pay scales. It is urged that consequence of ignoring the pay drawn between 1-10-1975 and 31-12-1976 would be hazardous. Elaborating this contention and demonstrating this with reference to pay scales, it was said that a person drawing Rs. 93/- in the pay scales of 65-2-95 will have his pay fixed at Rs. 320/- in the pay scale of Rs. 250-400, but if the salary paid on 31-12-1976 in the pay scale of Rs. 100-200 (that is under the temporary benefit scheme) is taken into account, his salary would get fixed at Rs. 330/- + 4(P.P) But this argument ignores the fact that in the pay scale of Rs. 65-95, including the stagnation increments, the officer would not have gone above Rs, 101/-; whereas under the temporary benefit scheme, the scale being Rs. 100-220, he could go upto Rs. 220/- without there being a revision of 1975 pay scales.

16. To take yet another instance, the pay scale of Rs. 130-290 under the 1975 pay scales is revised to Rs. 400-900. An officer drawing Rs. 164/- on 30-9-1975, his salary would be fixed at Rs. 500/-. Petitioners contend that as he was drawing Rs. 210/- in the pay scale of Rs. 200-450/- (which was stipulated under the temporary benefit scheme) his salary should be fixed at Rs. 575/-. In the pay scale of Rs. 130-5-140-8-180-EB-10-260-15-290 as it existed prior to 1-10-1975 he would have reached Rs. 210/- after five years, if he crosses efficiency bar at Rs. 180/-. In other words, he wants to treat the pay scales sanctioned between 1-10-1975 and 31-12-1976 as first revision and pay scales sanctioned under the Revised Pay Rules, 1976, as second revision or to be more specific, according to the petitioners, Revised Pay Rules, 1976, were revising the pay scales that was extended between 1-10-1975 to 31-12-1976. This is not contemplated by the Revised Rules 1976. The consequence of losing certain financial benefits cannot be treated as unjust or hazardous because petitioners had agreed that they would not claim the benefit of ''temporary fixation'' for purposes of "fitment" in the 1976 pay scales with effect from 1-1-1977 and fitment should only be on the basis of their salary in the pay scale which existed prior to 1-10-1975. Indeed such a benefit was neither extended to State Government employees nor the employees of other local bodies. If the contention is accepted, then the basis of "fitment" under the 1976 Pay Rules would be discriminatory. In the case of all other employees, the "fitment" would be on the basis of pay scales as it existed prior to 1-10-1975 and in the case of H.D.M. Corporation, it would be on the basis of pay in a pay scale, which was structured temporarily to survive between 1-10-1975 to 31-12-1976. This special treatment in giving effect to 1976 revised Pay Rules is neither intended nor is it permissible. To accede to this contention, only because it results in hazardous consequences would be to carve out an ''exception'' to the Revised Pay Rules, 1976, by giving judicial approval to the error committed by the Chief Auditor and the Administrator in the H.D.M. Corporation. An error whenever detected has to be rectified and not multiplied or

perpetuated. It was also contended that the claim of recovery or refund of the excess pay drawn is barred by limitation. Admittedly these amounts are paid by "mistake" and it is implicit in the option exercised and undertaking given that petitioners will abide by the consequence that flow from the "fitment" in the Revised Pay Rules 1976, on the basis of pay scales as they existed prior to 1-10-1975. Indeed on their part, each of the petitioners was aware of the fact that the pay scale formulated in June 1977, would be no avail in determining the "fitment" under the Revised Pay Rules 1976, on 1st January 1977. Retention of benefit on permanent basis in these circumstances, is unjust and illegal. Therefore the conclusion of the learned single Judge has to be accepted and we accordingly concur.

17. The learned single Judge has been quite just and equitable in regard to recovery, that does not call for interference. Hence these appeals and Writ Petition filed by Sangha are dismissed. No costs.

