
(1972) 08 MAD CK 0029
In the Madras High Court

R. Somasundaram and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 04-08-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 239, 239A, 240

Citation : (1973) 1 MLJ 15

Hon'ble Judges : K.S. Palaniswamy, J;K.S. Palaniswami, J

Bench : Division Bench

Judgement

K.S. Palaniswamy, J.—Somasundaram, the petitioner in W.P. Nos. 3852 and 3353 of 1970, and Rajangam, the petitioner in W.P. Nos.

3354 and 3355 of 1970, belong to the Pondicherry Co-operative Department. Somasundaram was directly recruited as a Junior Inspector in the

year 1960, whereas Rajangam was directly recruited as Senior Inspector in the year 1960. They have undergone the necessary training. Prior to

6th March, 1970, it was the policy of the Government of India to prescribe scales of pay and allowance in certain Union Territories on the basis of

the scales obtaining for corresponding posts in the adjoining States. In accordance with that policy, the Tamil Nadu scales of pay were prescribed

by the Government of India for adoption in the Union Territory of Pondicherry. The scales of pay and allowances of the employees of the Union

Territories of Delhi and Goa were based on the scales of pay of the Central Government. This appears to have been the ground for the

Government of Pondicherry to press upon the Central Government to apply the central pattern of scales of pay and allowances for the Union

Territory of Pondicherry also. As a result of this request, the Government of India reviewed their policy and decided to adopt the central pattern of

scales of pay and allowances for all the employees of the Union Territories with effect from 6th March, 1970. So far as the Co-operative

Department is concerned, the scales of pay applicable to the staff working in that department as obtaining prior to 6th March, 1970 and

subsequently are as follows:

2. The above modification was made as per the letter of the Government of India, Ministry of Home Affairs, dated 8th September, 1970,

addressed to the Chief Secretary, Government of Pondicherry. The relevant portion of that

letter reads as follows:

I am directed to refer to your letter No. 88o3/PA/FS/Central Scales, dated the 5th May, 1970, on the above subject and to say that it has been

decided to grant Central Scales of Pay and Allowance (including dearness pay and allowances) to the employees of the Government of

Pondicherry with effect from 6th March, 1970. In pursuance of this decision, approval of the Government of India is hereby accorded to the

equation of the various categories of posts in the Government of Pondicherry with appropriate posts in the Central scales of pay as indicated ed in

the appendix to this letter.

The Government of Pondicherry communicated the said letter to all Heads of Departments with a direction for taking necessary action. The

petitioners in these cases feeling aggrieved by this order have come forward with these petitions. W.P. Nos. 3352 and 3354 of 1970, have been

filed for the issue of a writ of certiorari to quash the said orders, whereas W.P. Nos. 3353 and 3355 of 1970, have been filed for the issue of a

writ of mandamus directing the Union of India to re-fix the scale of pay of the petitioners in conformity with the pay obtaining for the same class of

employees in the Union Territories of Delhi, Himachal Pradesh, Goa and Tripura.

3. Mr. Sankaran, appearing on behalf of the petitioners, put forward two contentions:

(i) The communication from the Home Ministry is a Regulation within the meaning of Article 240 of the Constitution. A Legislature for the

Pondicherry State having been formed, the power of the President to issue Regulations was taken away by the proviso to Article 240. Hence the

order of the Union Ministry of Home Affairs, upon which the Pondicherry

Government have taken action is invalid ;

(ii) The petitioners are performing functions similar to those of their counterparts in the Union Territories of Delhi, Goa, etc., and the emoluments in

those States are different from the scales proposed in the communication in question. Hence, the petitioners have been unjustifiably discriminated

and the communication is violative of Articles 14 and 16 of the Constitution.

4. I am convinced that none of the foregoing contentions has any substance. Part VIII of the Constitution deals with Union Territories. Article 239

inter alia provides that except as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting to

such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Article 239-A confers power

upon the Parliament to create for any of the Union Territories specified therein a body to function as a Legislature for the concerned Union

Territory. Article 240, as amended by the Constitution Twenty-seventh Amendment, inter alia provides that the President may make Regulations

for the peace, progress and good Government of the Union Territories specified therein, of which Pondicherry is one. This power is, however,

subject to the proviso that when any body is created under Article 239-A to function as a Legislature for the Union Territory concerned, the

President shall not make any Regulation for the peace, progress and good Government of that Union Territory with effect from the date appointed

for the first meeting of the Legislature. The argument advanced by Mr. Sankaran, Counsel for the petitioners was that by reason of the above

proviso, which takes away the powers of the President in the matter of issuing Regulations, the authority competent to make necessary orders was

only the Legislature of the Pondicherry State and that, therefore, the Union Ministry had no jurisdiction to issue the communication dated 8th

September, 1970, which is proposed to be implemented by the Government of Pondicherry. The fallacy underlying this argument is apparent.

What Article 240 contemplates is making of Regulations. The communication in question is by no means a Regulation. It is only in the nature of

acceding to the request of the Government of Pondicherry in the matter of fixation of certain scales of pay. Mr. Sankaran did not draw my

attention to any authority to support his contention that the communication in

question should be construed to be a Regulation. The Counsel for the Pondicherry Government rightly pointed out that what has been issued by the Government of India is only an executive instruction acceding to the request of the Pondicherry Government and that, therefore, there is no ground to warrant the argument that the communication is a regulation.

5. The petitioner's contention that they have been discriminated against in the matter of pay when compared to the pay drawn by persons holding similar posts in the other Union Territories and that as such Articles 14 and 16 of the Constitution are violated is equally untenable. No doubt, in their affidavits they have set out certain scales of pay of Senior Inspectors and certain officers designated as District Auditors holding posts in Delhi, Himachal Pradesh, Goa and Tripura and the scales of pay as mentioned by the petitioners are slightly different from the scales of pay now made applicable by the Pondicherry Government on the basis of the Central pattern of scales. The question is whether, on this ground, the petitioners can complain of violation of Articles 14 and 16. The mere fact that one scale of pay is applied in one Union Territory to a post designated in a particular way does not mean that the same scale of pay should be applied to a post designated likewise in another Union Territory.

The petitioners have not placed any materials to show the exact nature of the functions of the Senior Inspectors and District Auditors in other

Union Territories. The scale of pay for any service depends upon several factors, such as responsibilities, volume of work, area of operation, etc.

Merely because a particular post is designated in the same way in two Union Territories it does not mean that the same scale of pay should be

applied to both the posts irrespective of all other considerations. It is rightly pointed out on behalf of the Government of Pondicherry that the

Inspector-General of Police in Delhi Administration and the Inspector-General in Pondicherry State have the same functions in regard to their

respective Government. But the Inspector-General of Police in Delhi gets a higher scale, namely, super-time scale of the I. P. S. whereas the

Inspector-General of Police in Pondicherry gets a lower scale, namely, senior time scale of I. P. S. The Counsel for the Pondicherry Government

brought to my notice several other instances where there are posts of the same designation in several Union Territories carrying different scales of

pay. In these circumstances, there is no room to warrant the contention that there has been denial of equality of opportunity or that there has been denial of equal protection of the laws.

6. As would be seen from the previous scale of pay applicable to the members of the cooperative department in Pondicherry State and the scale of

pay now made applicable on the Central pattern, the employees stand to gain considerably. There is nothing in law to compel the Union

Government to adopt the same Scale of pay for all posts in Union Territories merely because of the designation irrespective of all other

considerations. In these circumstances, the petitioners' grievance seems to be merely imaginary and the petitions are liable to be dismissed. They

are accordingly dismissed. No order as to costs.