

(1978) 04 KAR CK 0027

In the Karnataka High Court

Case No : WPs. 1584 & 1597 of [1973] followed

Ramaiah C.S.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 06-04-1978

Acts Referred:

Citation : (1978) 2 KarLJ 187

Hon'ble Judges : Rama Jois, J

Judgement

1. The above two writ petitions raise common questions of law and fact and accordingly they are being disposed of by this common order.

2. The petitioner in WP. 2717 of 1977 was working as an Accounts Officer in the Office of the Chief Engineer, Hydro Electric Construction Project, Bangalore, during the years 1965 to 1969. His grievance is that the Project Allowance for the period 24-3-1963 to 12-3-1965 was given to him but it was denied for the subsequent period till 31-12-1969.

3. The grievance of the petitioner in WP. No. 2718 of 1977 is that though he was working throughout as First Grade Clerk in the same Office where the first petitioner was working, he has not been given the Project Allowance right from 1-10-1963 to 31-12-1969. Reliance is placed by the petitioners in support of their case on the Government Order dated 18th October, 1963. The relevant portion of the order reads as follows:

"(B) Localallowance (1) Hill and Rural Allowances

X X X X

X X X X (2) Project allowance (a) With effect from 1-10-1963, the staff of the Public Works and other Departments attached to Projects will be entitled to Project Allowance at 20% of their pay uniformly subject to a ceiling of Rs. 100 p.m. Irrigation or power projects estimated to cost not less than Rs. 10 lakhs in each case are treated as "Project" for this purpose. This allowance is purely a

local allowance.

(b) Project allowance is not payable to staff (attached to Projects) residing in City, Taluk or District headquarters, or within a radius of 3 miles thereof. However, with the Special sanction of Government, Land Acquisition Officers and their subordinate staff, excluding office staff, connected with the work of acquisition of lands for such projects may be paid this allowance even though they reside in towns or cities, provided their work is in villages and forests and it is highly taxing in nature."

4. It is also the case of the petitioners that the right of persons to draw Project Allowance is settled by two Division Bench decisions of this Court. The first is *Mohammad Usman v. State of Mysore*, WPs.2552 2553/65 dt. 30-5-68. In the said writ petitions, the Project Allowance was claimed by persons who were working in the Bangalore Harbour Project. Persons who were drawn from the department of Public Works were allowed the Project Allowance and those who were drawn from the Revenue Department were divided into two categories. Among them those who were doing executive work were put into one category and those who were doing office work were put into the other. The persons who were doing executive work were given the Project Allowance and the persons who were working in the office were disallowed. The said distinction was sought to be made on the basis of clause (b) in the Government order dated 18-10-1963 referred to above. As this Court came to the conclusion that clause (b) authorises such discrimination, clause (h) was struck down. The Court held that the petitioners therein were eligible for Project Allowance.

5. Again the same question came up before this Court in WP. Nos. 4753 and 4754 of 1969. In the said case, the petitioners were Junior Engineer and Tracer respectively who were working in connection with Sharavathi Project. In the said case reliance was placed on behalf of the Government on clause (b) for denying the Project Allowance. This Court rejected the said contention. Clause (b) had already been struck down in the earlier case.

6. In view of the aforesaid decisions, it is submitted on behalf of the petitioners that their cases are also covered by the said judgments and therefore they are entitled to relief claimed for in these writ petitions.

7. Sri Doddakalegowda, learned first Addl Government Advocate, appearing for the respondents however submitted that the petitioners are not entitled to claim Project Allowance. He submitted that Project Allowance is a Local Allowance sanctioned for a particular locality in which the Project is situated and for the officers who are working on the establishment attached to the Project and not in respect of offices situated elsewhere having administrative control over the Projects.

8. In support of the aforesaid submission, learned Counsel for the respondents, relied on the definition of the Project Allowance contained in Rule 8(27) of the Karnataka Civil Services Rules. It reads as follows.

"8(27)-Local Allowance.-A" Local Allowance" is an allowance granted in consideration of exceptional local circumstances, such as the unhealthiness or expensiveness of the locality.

Note: Project Allowance granted to the staff of the Public Works Department and other Departments attached to construction project (Irrigation or power Projects) is a local allowance granted on account of the expensiveness of the locality."

From the above definition, it is clear that Project Allowance is one kind of local allowance granted to staff of Public Works Department and other Departments attached to Construction Projects on account of expensiveness of the locality. It is also clear from the Government Order dated 18-10-1963 (Ext. "A"), under which Project Allowance was sanctioned, that it is a kind of local allowance sanctioned in respect of the staff-members of Public Works Department or other departments attached to the Projects. It is these persons who are entitled to Project Allowance at 20% of their pay subject to a ceiling of Rs. 100 p.m.

9. On the basis of the above definition, it was contended for the State that the petitioners are not entitled to Project Allowance. It was also pointed out that clause (b) of Para 2 of the Government Order dated 18-10-1963 relating to Project Allowance having been struck down, the only provision for payment of Project Allowance is clause (a) read with the Government Order dated 18th October 1963 with definition contained in Rule 8(27) of the Karnataka Civil Service Rules. According to these provisions, he pointed out that officials who were working in the offices in the Project Locality only are entitled for project Allowance. The learned Counsel for the respondents submitted that it is in view of the above position an endorsement dt. 1-3-1977 was issued to the petitioners to the effect that as the Office of the Chief Engineer, Hydro Electric Construction Project was situated in Bangalore, their claims for payment of Project Allowance cannot be accepted.

10. On behalf of the respondents it was submitted that the payment of Project Allowance to the first petitioner from 1-10-1963 to 12-3-1965 itself was irregular. He also pointed out that the State Govt, has itself issued a modified order on 9-2-1970 clarifying the position that Project Allowance is admissible to persons only working in the office of the Public Works Department or other Departments actually attached to the Projects.

11. After the modified Government Order was passed, the claim for Project Allowance at the instance of officials in the position of the petitioners came up for consideration in *Bholashankar v. State of Mysore*.³ In the said writ petitions, the portion of the Government Order which denied the Project Allowance in respect of officials who were working in Cities, Taluks or District headquarters and within a radius of three miles thereof and not actually in the Project areas was challenged on the ground that it is violative of Art. 14 & 16 of the Constitution. Venkataramiah, J, held that the classification between the members of the staff attached to projects who are living in a city, taluk or district headquarters or in

the vicinity i.e. within a radius of three miles from such places and those who are actually living in Project areas, is an intelligible and reasonable classification. The two Division Bench Decisions referred to earlier were also explained and distinguished. It may be seen that in the two Division Bench decisions on which the petitioners rely an unjust discrimination which was brought about by clause (b) of the Government order as between officials belonging to different departments and also as between Ministerial and executive officials was held to be invalid and consequently, Project Allowance was directed to be given irrespective of the fact that "the officials who are employed on the Projects belonged to the Revenue Department or Public Works Department or they belonged to ministerial or executive. The said decisions therefore cannot be invoked in support of the case of persons who were working in offices situate far away from the Projects having only administrative control over the projects. In the two division Bench judgments i.e. WP. Nos. 2552 and 2553 of 1965 and WP. Nos. 4753 and 4754 of 1969, the question whether Project Allowance can be claimed by a person who is working in an office situate far away from the project, did not come up for consideration. This is the reason given by Venkataramaiah, J. to distinguish the case in WP. Nos. 1584 and 1597 of 1973 from these cases. For the same reason these decisions do not cover the point which arises for consideration in these two writ petitions also.

12. Sri U.L. Narayana Rao, learned Counsel for the petitioners however pointed out that in the second batch of cases i.e. WPs. 4753 and 4754 of 1969, from the facts stated in the judgment, it is clear that the petitioners in those cases were actually working in Shimoga and Hosanagar respectively and therefore the said judgment equally applies to the case of present petitioners though they were working at Bangalore.

13. In the above judgment, the question whether persons who are residing in cities and working in the office having administrative control over the projects are entitled to Project Allowance or not was neither canvassed nor has been considered. Further, the definition contained in the Civil Service Rules about Local Allowance and Project Allowance was also not brought to the notice of the Court. The denial of Project Allowance was sought to be justified on the basis of Cl (b) in the Govt Order dated

3. WPs 1584 & 1597/73. 18-10-1963, which had already been struck down in WPs. 2552 and 2553 of 1965 and it was rightly negatived. The question that officials working in offices situated in Towns or cities having administrative control over the projects situated far away are disentitled to draw project allowance was neither raised nor considered in the aforesaid judgment. Hence the question raised on behalf of the respondents is not concluded by the earlier decisions and is therefore open to be decided in these cases. On the other hand, the latest judgment in WPs. 1584 and 1597 of 1973. though concerned with the Govt Order dt. 9-2-1970, has relevance for the claim made by the petitioners in these cases and goes against them.

14. Having regard to the clear object and purpose of grant of Project Allowance as made clear by the definition of "local allowance" contained in Rule 8(27) of the Civil Service Rules and Cl (a) of the Govt Order dt 18th October 1963, the officials who were entitled to project allowance were those who were drawn from any department of the State Govt,, but who were working in the offices situate in the project area and not in respect of officials who were working in offices situated in towns or cities away from the project having administrative control over projects. In the present case, the petitioners were working at Bangalore in the office of the Chief Engineer. Hydro Electric Construction Project and their claim for project allowance is solely on the basis that the Chief Engineer had administrative control over the Sharavathi Project and other projects. As already pointed out. Local Allowance like the Project Allowance is granted in consideration of exceptional local circumstances such as unhealthiness and expensiveness of the locality in which the project office is situated. Therefore the petitioners who were working in Bangalore, cannot claim Project Allowance. The position of the petitioners who were working in the office of the Chief Engineer. Hydro Electric Construction Project situated in Bangalore City is not in any way different from those working in other offices of the Department in Bangalore. Therefore they are not entitled to the Project Allowance under Cl (a) of the Govt Order dt. 18-10-1963 read with Rule 8(27) of the Karnataka Civil Services Rules.

15. For the aforesaid reasons, rule is discharged and the writ petitions are dismissed, but without costs.