

(2015) 03 KAR CK 0069
In the Karnataka High Court
Case No : Writ Appeal No. 5602/2013 (S-RES)

State of Karnataka and Others

APPELLANT

Vs

Mohammed Ilyas and Others

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Citation : (2015) 2 AKR 576

Hon'ble Judges : P.B. Bajanthri, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : Y.H. Vijay Kumar, A.G.A., for the Appellant; Javid Hussain, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Bajanthri, J.—The appellant-State aggrieved by the order of the learned single Judge dated 21.2.2013 passed in W.P. No. 13487/2008 filed the present writ appeal.

2. The respondent-petitioner was appointed as a II Grade Stenographer in the Judicial Department, the then Chitradurga district on 1.2.1968. One Sri. Karunakaran was appointed as II Grade Stenographer in Judicial Department, in the Shimogga District on 1.12.1969. Both the respondent and Sri. Karunakaran have earned promotion to the cadre of I Grade Stenographer on 1.4.1972 and 1.6.1972 respectively.

3. The State Government evolved a policy decision to grant two advance increments for acquiring certain qualifications by the Government servants while they were in service. The respondent acquired B.A., degree. Thus, he was granted two advance increments on 19.10.1974, which was prior to 1977 revised pay scales. At this stage, it is relevant to note that 1977 revised pay scales came into force w.e.f. 1.1.1977. In other words with reference to 1972 revised pay scales two advance increments were granted to respondent.

4. Sri. Karunakaran, who is said to be junior to the respondent-Mohammed Ilyas

had been granted two advance increments for passing proficiency in shorthand on 29.11.1977 in the 1977 revised pay scales. The respondent and Sri. Karunakaran were in the cadre of First Grade Stenographer and the respondent being a senior to Karunakaran was drawing higher scale than that of Sri. Karunakaran till 29.11.1977 i.e. the date on which Sri. Karunakaran was granted two advance increments for acquisition of additional qualification viz., proficiency in short hand. Both the respondent and Sri. Karunakaran were transferred and posted to City Civil Court, Bangalore, as Judgment writers.

5. The respondent for the first time submitted a representation on 5.6.1990 to the Registrar, High Court of Karnataka, Bengaluru, to step up his pay to that of Sri. Karunakaran. Thereafter in the month of March 1995, he submitted another representation to the first appellant herein-Finance Department. However, the same was rejected and was communicated to the respondent.

6. There was dispute between the respondent and Sri. K. Karunakaran relating to fixation of seniority. The same was subject-matter before this Court in W.P. No. 35338/96 and it was disposed of on 17.6.1999 in favour of the respondent herein.

7. On 15.9.2000, the claim of the respondent was considered and rejected by the second respondent. In the meanwhile for non-compliance of the order of this Court in W.P. No. 35338/96 the respondent filed contempt petition the same was dropped in view of the first respondent's order dated 15.9.2000 wherein the claim of the respondent was turned down.

8. The respondent aggrieved by the order of the first respondent dated 15.9.2000 preferred a writ petition in W.P. 41042/2001 before this Court which was disposed of on 18.4.2006 by quashing the order dated 15.9.2000 and the matter was remanded to the respondents to pass appropriate orders in accordance with law within a period of three months" from the date of receipt of a copy of the order keeping in view the observations made in the order.

9. The second respondent by Government order bearing G.O. No. LAW 56 LAC 2006 dated 25.11.2006 considered the claim of the respondent herein in detail and rejected the representation of the respondent. Feeling aggrieved by the said order, the respondent filed writ petition No. 13487/2008. On 21.2.2013, the learned single Judge passed the following order:--

"The respondent to work out the salary of the petitioner on par with that of Shri Kamnakaran from the date on which the disparity in pay occurred, namely, the date on which Shri Kamnakaran received a higher pay than that of the petitioner. Necessarily, all consequential benefits should be paid to the petitioner." 10. The appellant-Government aggrieved by the order of the learned single Judge contended that issue regarding stepping up of pay arises only when two Government servants are in the same cadre and on fixation of pay on account of revised pay scales if there is anomaly in pay and if the pay of the junior is higher than the senior in such circumstances stepping up of pay is permissible. Where as in the present case the appellant's counsel submitted that the respondent's

pay was higher than Sri. Karunakaran who was junior to the respondent for the period from 1.4.1974 to till 29.11.1977. Sri. Karunakaran no doubt was junior to respondent herein. However for acquiring higher qualification the respondent was extended the benefit of two advance increments on 18.10.1974 i.e. pre revised 1977 scale i.e. with reference to 1972 revised scale, whereas Sri. Karunakaran was granted two advance increments for acquisition of higher qualification on 29.11.1977. In other words, Sri. Karunakaran has been granted two advance increments with reference to 1977 revision of pay. Therefore, Sri. Karunakaran was drawing a sum of Rs. 550/- as on 29.11.1977 whereas the respondent was drawing a sum of Rs. 500/- on the said date. Therefore, the respondent is not entitled to step up of his pay on par with Sri. Karunakaran. In support of aforesaid contention, the appellant's counsel relied on the decision of the Apex Court which is reported in 1989 SCC in the case of State of Andhrapradesh v. G. Srinvasa Rao, Page 290. An extract of the judgment is reproduced in the grounds of appeal at Para 4. The extract of the judgment is reproduced herein- Page 17 Para 4

"Equal pay for equal work" does not mean that all the members of cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot be invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when person recruited from different sources are given pay protection, when promote from lower cadre or a transferee from another cadre is given pay protection, when senior is stopped at efficiency bar when advanced increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency: are some of the eventualities when a junior may drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differential on these grounds would be based on intelligible Criteria which has rational nexus with the object sought to be achieved" (emphasis supplied) This court held that the High Courts and Tribunals should not, in an omnibus manner come to the conclusion that whenever and for whatever reasons, a junior is given higher pay, the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay, irrespective of the scope of the relevant rules and the reasons which necessitated fixing of higher pay for juniors." 11. It was further contended by the learned counsel for appellant Mr. S. Susheela that for several reasons there would be disparity in the pay among senior and junior. In the present case, such difference/disparity accrued due to extending two advance increments for acquisition of additional qualification and it has been extended to all those persons who have acquired the said qualification. In the present case, the respondent has acquired required qualification for the purpose of extending advance increments in the year 1974 itself and Sri. Karunakaran acquired

required qualification for the purpose of extending two advance increments on 29.11.1977. Disparity in the pay among the respondent and Sri. Karunakaran has occurred due to extending of two advance increments with reference to different revised pay scales i.e. 1972 and 1977 revised pay scale. Therefore, the question of stepping up of pay of the respondent to that of Sri. Karunakaran is impermissible. Consequently, the learned single Judge has erred in granting relief to the respondent only on the ground of disparity in pay between senior and junior.

12. The respondent's counsel Mr. Javid Hussain vehemently submitted that respondent is entitled for stepping up of pay on par with Sri. Karunakaran since it was undisputed that respondent is senior to Sri. Karunakaran. Absolutely, there is no error in the order of the learned single Judge.

13. Heard the counsel for both the parties.

14. Having regard to the facts of the case, the point that arises for consideration is:--

"Whether in respect of pay anomaly that has occurred on account of granting of two additional increments to a junior person, the principle of stepping up of pay is applicable or not?" 15. The particulars of the pay drawn by the respondent and Sri. Karunakaran are as hereunder:--

With reference to the aforesaid pay particulars of the respondent and Sri. Karunakaran, it is evident that the respondent is senior and he was drawing higher pay than that of Sri. K. Karunakaran till 29.11.1977. The respondent was granted two advance increments for acquiring B.A., graduation qualification w.e.f. 18.10.1974 in terms of the G.O. No. FD 73 SRP (1) 69 dated 18.2.1970. He was drawing basic pay of Rs. 172/- in the pre-revised scale as on 1.1.1977. In the case of Sri. Karunakaran, without there being benefit of any advance or additional increment he was in the basic of Rs. 156/- in the pre-revised scale as on 1.1.1977. In view of the Karnataka Civil Service (Revised Pay) Rules, 1977, the pay of the respondent who was drawing the basic pay of Rs. 172/- was fixed at the stage of Rs. 500/- as on 1.1.1977 on the other hand, Sri. Karunakaran who was drawing a basic pay of Rs. 156/- was fixed at Rs. 480/-. In view of the G.O. No. EV 14 SRP (1) 77 dated 24.5.1977 for acquiring the qualification of proficiency in Shorthand two advance increments is permissible. With reference to the said Government Order read with acquisition of proficiency in shorthand qualification by Sri. Karunakaran on 29.11.1977 two advance increments were granted, consequently pay of Sri. Karunakaran was enhanced from Rs. 480/- to Rs. 550/- (annual increment was granted as on 1.6.1977 by which the pay was enhanced from Rs. 480/- to Rs. 500/- + two advance increments). In view of the aforesaid circumstances read with Government orders dated 18.2.1970 and 24.05.1977 the respondent has not made out a case so as to step up his pay on par with Sri. Karunakar.

16. The benefit of stepping up of pay is permissible in cases where the senior

and junior government servants stand on equal footing where all the considerations and incidences are identical and the anomaly in their pay is solely attributable to some situations like revision of pay scale and promotion. In the present case, the anomaly of pay has not occurred due to revision of pay scale or promotions. The learned single Judge has failed to take note of the difference between stepping up of pay and grant of two advance increments due to acquisition of certain qualifications by the respondent and Sri. Karunakaran on acquisition of different qualification and dates. In the impugned order dated 25.11.2006 the second respondent has referred to two Government Orders relating to stepping up of pay namely G.O. No. FD 11 SRP 78 dated 20.4.1978 and G.O. No. FD 68 SRP 78 dated 31.1.1979. The said orders relate to extending the benefit of stepping up of pay whereas the two advance increments for acquisition of qualification are under G.O. No. FD 73 SRP (1) 69 dated 18.2.1970 and G.O. No. FD 14 SRP (1) 77 dated 24.5.1977. These two set of Government orders governs stepping up of pay and grant of two advance increments. Therefore, the respondent has not made out a case so as to interfere with the order dated 25.11.2006 of the second respondent. Consequently, granting of relief to the respondent without quashing the Government Order No. LAW 56 LAC 2006 dated 25.11.2006 are not in consonance with the policy evolved by the State Government in respect of extending of stepping up of pay to a senior and the grant of two advance increments.

17. Hence, the appeal is allowed and the order of the learned Single Judge is set aside. No order as to costs.