

(1967) 02 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 2105 of 1964

Subbanna (N.R.)

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 03-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Mysore Civil Services Rules, 1958 — Rule 8 (42), 8 (42) (a)

Citation : (1969) 1 LLJ 647 : (1967) 1 MysLJ 358

Hon'ble Judges : K.R. Gopivallabha Ayyangar, J; B.M. Kalagate, J

Bench : Division Bench

Judgement

Kalagate, J.—The petitioner who is working as a second division clerk in the office of the Official Receiver, Bellary, has filed this writ petition under Art. 226 of the Constitution of India seeking to quash the Government order dated 6 March, 1964 declining to extend to him the benefits under the Government order dated 26 June, 1959. He has further prayed for a direction to the Government to grant him the said benefit by issuing a writ of mandamus or other appropriate writ or by any such order.

2. The petitioner N. R. Subbanna was appointed by the District Judge, Bellary, as a temporary clerk to work in the office of the Official Receiver, Bellary. He was confirmed by the District Judge by his order dated 30 January, 1961 with effect from 25 June, 1959 as a clerk in the Munsif's Court, Bellary. The petitioner gave a representation to the Official Receiver, Bellary, on 8 September, 1958 stating that he was eligible to draw the duty allowance of Rs. 10 per month as he was the only person who dealt with the cash and accounts of the offices of the Official Receiver and hence he should be permitted to draw the said duty allowance. This representation of the petitioner addressed to the Official Receiver was forwarded to the District Judge, Bellary, who by his order dated 27 September, 1958 informed the Official Receiver that N. R. Subbanna, i.e., the present petitioner, a clerk in his office is not entitled for special pay of Rs. 10 per month as claimed by him since the special pay was sanctioned to cash clerks of subordinate Courts

and the office of the Official Receiver is not included in Government order No. HD. 23 CDA 57 dated 28 September, 1957.

3. At this stage, we may refer to the Government order dated 25 January, 1957 with regard to the rationalization of allowances [No. FL(B) 14034-14133 Bud. 119-56-3] and Para. 14(q) of the said order relating to rationalization of allowances states as follows :

"14. (q) Rationalization of allowances - Officials entrusted with cash work may be given Rs. 10 to Rs. 20 per mensem according to the volume of cash transaction handled."

4. It should be noted that this order is some what ambiguous and not clear because it states that officials entrusted with cash work may be given Rs. 10 to Rs. 20 per month according to the volume of cash transactions handled. It does not state that the officials entrusted with the cash work must be the officials working in the Court. It was therefore necessary for the Government to clarify this order which it did subsequently by its order dated 28 September, 1957. In an elaborate order, Government have shown in what cases special pay and duty allowance is to be paid and to what extent. The clarification which is relevant for our purpose is as follows :

"Sanction is also accorded to a special pay duty allowance of Rs. 10 per month to the posts of cash clerks of the sub-ordinate Courts and to the cash clerks of the High Court."

5. Thus, it would appear that what was ambiguous was made clear by this order stating that the special pay duty allowance of Rs. 10 per month was to be paid to the posts of cash clerks of the subordinate Courts and to cash clerks of the High Court. Though we note that such duty allowance is sanctioned to the posts of cash clerks, yet we are told that there is no such post of cash clerk as such but a clerk who is entrusted with the duty of handling the cash is called the cash clerk. Therefore, a person who is to be in charge of the cash of a Court should be entitled to draw the duty allowance of Rs. 10 per month whether such clerk is in the High Court or in the Courts below. It appears that again the matter was agitated and on the letter received from the Registrar of this Court, the Government by its order dated 26 June, 1959 made a further clarification which is as follows :

"Government are pleased to direct that the special pay (duty allowance) of Rs. 10 per month sanctioned to cash clerks of the subordinate Courts and to the cash clerks of the High Court of Mysore in G.O. No. 23 HD CDA 57 dated 28 September, 1957, be continued to be paid to the clerks who are entrusted with cash works from 1 January, 1957 in the subordinate Courts, functioning or working in the districts of Kolar, Bangalore, Tumkur, Bellary, Chitaldrug, Shimoga, Chickmagalur, Hassan, Mysore and Mandya and also in the High Court of Mysore, Bangalore."

6. Thus, we note that what was stated in the earlier order was further clarified by stating that the duty allowance at the rate of Rs. 10 per month is sanctioned to the cash clerks of the High Court and Courts subordinate thereto. These are the relevant orders which relate to the grant of special pay (duty allowance).

We may also here refer to sub-rule (42) of rule 8 of the Mysore Civil Services Rules, 1958, which relates to special pay which has been defined as under :

"(42) "Special pay" means an addition, of the nature of pay, to the emoluments of a post or of Government servant, granted in consideration of

(a) the specially arduous nature of the duties; or

(b) a specific addition to the work or responsibility; or

(c) the unhealthiness of the locality in which the work is performed."

7. Thus, it would appear from this that special pay is allowed to a Government servant in addition to his normal emoluments in consideration of the performance of duties mentioned in (a), (b) and (c) above.

8. The petitioner has based his claims as we have stated earlier on the order of the Government dated 26 June, 1959 and though he was confirmed in the year 1961 with effect from 25 June, 1959 and though he was informed through the Official Receiver by the District Judge, Bellary, by his order dated 27 September, 1958 that he is not entitled to the duty allowance, yet, in the year 1963 he again wrote to the District Judge a letter through the Official Receiver who again by his letter dated 15 December, 1962 forwarded the said letter to the District Judge, Bellary. What happened thereafter is not made known to us except as we gather from the Government order dated 6 March, 1964 that the Registrar of this Court addressed a letter to the Government in respect of the application made by the petitioner claiming special pay (duty allowance) and it is with reference to this representation that the Government wrote back to the Registrar of this Court stating that the claim made by the official, i.e., the present petitioner has to be treated differently from that of a cash clerk of a Court and any special pay for cash work in his case could only be claimed under the general rules applicable to all the departments other than Courts. Thus, the Government by this letter informed the Registrar that the duty allowances can be claimed only by the clerks who handle cash in the High Court or in the Courts subordinate to it. Government also made a reference to the special pay for cash work which is claimable under the general rules applicable to the departments. We have already referred to the relevant provisions regarding the special pay which is paid in addition to the emoluments only to those who come under Cls. (a), (b) and (c) of rule 8(42) of the Mysore Civil Services Rules, 1958. The Government thus stated that the petitioner is not entitled to claim the duty allowance under its order dated 26 September, 1959.

9. The petitioner therefore under the circumstances contends before us that since he is essentially handling the cash in the Official Receiver's office, he also

must be deemed to be included within the category of clerks handling cash either in the High Court or in the Courts subordinate to it. It is contended by Sri Gulur Srinivasa Rao that the Courts should not put a narrow interpretation on the order of the Government so as to exclude a person of the type of the petitioner who is handling large amounts of cash in the office of the Official Receiver, Bellary. It is, according to him an onerous duty which he is performing and if it is so, he would be entitled to claim the duty allowance under the order of the Government dated 26 September, 1959. His submission, is as we understand, essentially based on the earlier order of the Government dated 25 January, 1957 which according to him does not exclude a person of the petitioner's type who handles cash. He states that the Government order dated 25 January, 1957 is quite clear that an official entrusted with cash work may be given Rs. 10 to Rs. 20 as duty allowance according to the volume of the cash work entrusted to him and this, he submits, justifies the claim made by his client, because, he is an official appointed by the District Judge as a clerk in the Court of the Munsif, Bellary. He also states that he is handling cash of the Official Receiver's office and since he satisfies the essential requirements he would be entitled to claim the said allowance. He also states that under this order and the subsequent clarifications made by the Government restricting the payment of special pay (duty allowance) to only cash clerks either of the High Court or of the Courts subordinate to it, is not justified and this Court should not interpret the original order of 25 January, 1957 to exclude the claim of the petitioner. In our view there is no substance in any of these contentions.

10. What was ambiguous has been made clear by the Government by its subsequent order as already stated by us, and the interpretation sought to be put by Sri Srinivasa on the order dated 25 January, 1957 is not justified since it seeks to include any official who deals with cash in any office. This submission also ignores the general provision relating to special pay allowed under rule 8(42) of the Mysore Civil Services Rules, 1958. Government has clarified by its order dated 26 September, 1959, its earlier order of the year 1957, stating that the duty allowance is admissible to clerk who deals with cash in a Court.

11. It is to be noted that the Government by its notification dated 9 November, 1955 has included the Official Receiver's office, in the list of public offices, and the petitioner, though he has been confirmed as a clerk in the Munsif's Court, has been appointed as a clerk in the office of the Official Receiver, Bellary. Thus the petitioner is actually working in that public office at Bellary, and the mere fact that he is handling cash in the Official Receiver's office, Bellary, does not entitle him to claim the duty allowance under Government order dated 26 September, 1959 made applicable to cash clerks working in Courts only.

12. In the result, for the reasons stated above, we are not able to give any relief to the petitioner. Consequently this writ petition fails and the same is dismissed, but, we make no order as to costs.