(2011) 12 KAR CK 0058

In the Karnataka High Court

Case No : W.A. No''s. 17109 of 2011 and 17452-487 of 2011 (S-PRO)

The Managing Director, M/s. Karnataka Soaps and Detergent Ltd., Sandal City. P.B. No. 5531 Rajajinagar, Bangalore-560 055 — APPELLANT

Vs

K. Chaitanya and Others — RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0058

Hon'ble Judges : Vikramajit Sen, Acting C.J.;A.S. Bopanna, J

Bench : Division Bench

Advocate : Ravi, Smt. Sunita and Sri Suri, for the Appellant;

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—The appellant/management is before us in this appeal against the order dated 12.11.2010 passed in W.P. Nos. 4182-4218/2010 (S-PRO) and the order dated 17.08.2011 passed in R.P. No. 12/2011. The appellant is aggrieved by the order of the learned Single Judge directing them to revise the pay-scales of the petitioners on par with the pay-scales given by the State Government under the 5th pay commission and to grant the consequential benefits.

2. Heard Sri M.R.C. Ravi, learned counsel for the appellant and Sri M. Raghavendra Achar, learned counsel who had entered caveat on behalf of the respondents and perused the appeal papers.

3. The respondents herein who were working in the cadre of Senior Assistants and Chargemen were promoted as Junior Officers on different dates during the period 2004 to 2006 and were placed in the pay scale of Rs. 5200-9580. Being in the Officers'' cadre, they are given the pay-scales of the Officers as also increments. When the position stood thus, the State Government by its order dated 15.05.2007 revised the, pay-scales of the Officers. The said revision was

with effect from 01.07.2005. But the monetary benefit was admissible from 01.04.2006. The grievance of the respondents herein in their writ petition is that the benefit of the revision of pay was not given to them in conformity with the Government order. According to them, the respondents having made several representations were ultimately before this Court.

4. The learned Single Judge, on noticing the interoffice communication dated 24.09.2007 of the appellant-company and also the Government order dated 22.05.2009 addressed to the Managing Director of the appellant company granting approval for implementation of the pay revision has arrived at the conclusion that the respondents herein are entitled to the benefit and accordingly issued the direction to revise the pay scales. The appellant company though do not dispute that the revision of pay as made by the Government would be applicable to Its officers, are however aggrieved by the direction of the learned Single Judge, since according to them, the extension of the pay-revision to the respondents in the same manner as made applicable to the other officers would lead to anomaly inasmuch as the respondents herein would draw higher pay than the Officers, who are senior to them. In order to bring this aspect to the notice of the learned Single Judge a review petition was filed. The learned Single Judge has however once again taken note of the Government order and rejected the review petition. It is in that context the appellants have filed the instant appeal.

5. The appellants do not dispute that the pay revision as made and being applicable to the Officers of the State Government would in fact be applicable to the Officers of the appellant-company. The solitary contention however is that the revised pay-scale if extended to the respondents herein as it exists without appropriate fixation, the same would result in anomaly and the Officers who are senior to the respondents would be drawing lesser pay than the respondents. In this regard, it is contended that the respondents, who were working as Senior Assistants and Chargemen were in the unionised category prior to their promotion as Junior Officers. The emoluments of the unionised category was fixed based on the wage agreement which would be revised once in five years and such revision had taken place in 2003 prior to their promotion whereunder the salary was enhanced by 10% and the perks at 2.48%. Hence, the respondents who were promoted as Junior Officers on 09.06.2003, 29.07.2.004, 15.07.2004, 22.12.2004 and 07.02.2006 had enjoyed the wage agreement increase at 12.48% with effect from 01.05.2003. Accordingly, on promotion to the Officers cadre their pay was fixed in the pre-revised scale for the Officers at Rs. 5200-9580. On revision of pay for Officers with effect from 01.07.2005, their pay has been fixed in the revised pay scale of Rs. 10800-18150 keeping in view these aspects. It is the case of the appellants that the pay revision for the Officers has been made at 17.5% of the basic pay to be added to the existing emoluments. If such benefit is once again extended to the respondents, who had the benefit of the wage revision at 12.48% about six months earlier when they were in the unionised category without proper fixation, the same would amount to not only granting the double benefit, but would also lead to anomaly inasmuch

as the benefit of the revision made and accorded to the other Officers would be available only once in 10 to 12 years and the seniors would draw lesser pay. It is therefore contended that even though the revision as made by the Government is made applicable, the fixation of the pay scale has been made keeping in view these aspects.

6. The learned counsel for the Caveator Respondents while seeking to sustain the order of the learned Single Judge would contend that the learned Single Judge has in fact noticed the inter office communication whereunder the company had taken a decision to implement the Government order revising the pay scale and the Government had also granted its approval. Having adopted the Government pay-scale, it would not be open for the appellants to contend that the same scale cannot be extended to the respondents herein. Even if the contention of the appellants is taken into consideration, the appellants have no other option but to implement the revised pay-scales and in the event of there being an anomaly, it is for the appellants to step-up the pay of the seniors to rectify the anomaly. In any event, it would not be open for the appellants to deny the benefit to which the respondents are entitled.

7. The rival contentions would clearly reveal that the respondents are seeking for implementation of the revised scale of pay in the same manner as made and applied 10 the Government Officers without the appellant undertaking any other pay fixation/fitment exercise. The appellant on the other hand seeks to justify that the exercise of pay fixation on the facts emerging in the instant ease was required to be made so as to avoid anomaly and double benefit. The learned Single Judge has however merely noticed the inter office communication dated 24.09.2007 and the Government Order dated 22.05.2009 and directed the pay revision be implemented. The fact that the pay revision has been adopted and applied by the appellants is not in dispute nor have the appellants contended that it would not be applicable to them. However, the solitary contention of the appellants as noticed is that while applying it to the respondents, necessary adjustments are to be made so as to avoid double benefit to them as otherwise it would catapult them to receive higher salary than their seniors in the officers grade. This is due to the fact that they had the benefit of wage revision prior to their promotion. This vexed issue has not been adverted to by the learned Single Judge.

8. As an illustration, if the case of the first respondent Sri K. Chaitanya is examined, the position would be clear. He was in the wage scale of Rs. 2900-4980 in the unionised category and his basic wage was Rs. 4015. When the wage agreement was finalised by revision for the unionised category on 01.05.2003, he was placed in the wage scale of Rs. 4210-7455 and the basic wage was fixed at Rs. 5565. On subsequent increments, his basic wage was Rs. 5865 at the time of his promotion as Junior Officer to the Officers'' grade on 22.12.2004. He was accordingly entitled to be placed in the pay scale of Rs. 5200 9580 in the officers'' grade which was done and as required, to protect the

pay being drawn in the lower grade his basic pay was fixed at Rs. 6750. In the Officers'' grade, he earned an increment on 22.12.2005 and as such, the basic pay was Rs. 6900. It is at this point, on 16.05.2007, the pay was revised for the Officers'' category with retrospective effect from 01.07.2005. The first respondent was accordingly given the benefit and placed in pay scale of Rs. 10000 18150 with the basic pay at Rs. 10800 and on subsequent increments, the basic pay is Rs. 12650 as on 01.12.2010. But the respondents contend that on the revision being applicable, it should have been fixed at Rs. 13000 instead of Rs. 10800.

9. From the above, it is demonstrated that the respondents would stand to have the double benefit. That is because they had the benefit of wage revision just prior to their promotion to the Officer''s grade. The said wage revision resulted in they being sanctioned higher basic in the Officers'' grade and the Officers who were already in that grade did not have the benefit of revision at the point, nut they got it only in the instant revision. Therefore, if the pay revision as demanded by the respondents is granted, their pay would be more than the Officers who are senior to them creating an anomaly. This in any case is not denied by the respondents inasmuch as their contention is that if it leads to anomaly, the pay of the Senior Officers is to be stepped up as provided and in that regard reference is made to FR 22 and Rule 42 of KSSR. Though such a provision is available, in the instant facts, it is a different situation. When the double benefit is evident, it cannot be granted as if creates an anomaly and thereafter rectifying it by enhancing the pay of the Senior Officers would in fact have the effect of altering the entire scale as per the revision provided by the Pay Commission. Therefore, in a circumstance when the appellant has adopted the pay revision but has fixed the pay of the respondents keeping in perspective all these matters, the question of issuing further directions would not arise. In a somewhat comparable circumstance, the Hon''ble Supreme Court in the case of Fertilizer Corporation of India Ltd. and another Vs. Sarat Chandra Rath and others, has held that it would be open for the employer to fix the pay so as to avoid double benefit.

10. Though the learned Single Judge has merely issued mandamus to implement the pay revision, keeping in view the prayer made in the writ petition, we are unable to sustain the order. The orders dated 12.11.2010 and 17.08.2011. which are impugned herein are accordingly set aside.

The writ appeals are allowed. No costs.