
(2013) 09 AP CK 0059
In the Andhra Pradesh High Court
Case No : W.A.No. 504 of 2010

The Union of India

APPELLANT

Vs

A. Sivaiah and Others

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2014) 1 ALD 62 : (2013) 6 ALT 378

Hon'ble Judges : Ashutosh Mohunta, J;A. Rajasheker Reddy, J

Bench : Division Bench

Advocate : S.S. Varma, for the Appellant; Abhinand Kumar Shavili, for the Respondent

Final Decision : Dismissed

Judgement

A. Rajasheker Reddy, J.—The respondents/writ petitioners filed W.P.No. 4769 of 2003 seeking for issuance of Writ of Mandamus declaring the Memo. No. CSB-80(1)/2001-ES.I, dated 15.11.2001 of the 2nd respondent, Central Silk Board, so far as it grants the benefits of the Revised Scale of Pay i.e. Rs. 5000-150-3000 with effect from 15.11.2001 instead of granting the same with effect from 01.01.1996, as arbitrary and illegal and consequently direct the appellants/respondents to grant the benefit of the Revised Pay Scale of Rs. 5000-150-3000 to them with effect from 01.01.1996 on par with the other employees and release all consequential benefits including arrears of pay, increments etc., The case of the respondents/writ petitioners, in brief, is that they are working under the control of the 2nd appellant as Technical Assistants and were placed in the time scale of Rs. 1400-40-1800-EB-50-2300. As per the recommendations of the V Pay Commission, by order dated 21.10.1997, the pay scale attached to the post of Technical Assistant of Rs. 1400-2300 was revised with effect from 01.01.1996 to that of Rs. 4500-125-7000. The employees of the 2nd appellant are governed by the Service Regulations of the Central Government Employees and the 2nd appellant is also adopting and implementing the recommendations of the Central Pay Commission with regard to pay scales of

the Central Silk Board Employees. Following the recommendations of the V Central Pay Commission, the 2nd appellant has adopted the same in its proceedings dated 21.10.1997. The Government of India has approved the application of the Pay Scales as recommended by the V Pay Commission to the employees of the 2nd appellant with effect from 01.01.1996 in the light of the provisions contained in the Ministry of Finance Notification dated 30.09.1997. It is significant to note that for the post which carried the pay scale of Rs. 1400 to 2300 in the Ministry of Textiles, the same was revised to Rs. 5000-150-8000 whereas, the pay scales of Technical Assistants employed with the 2nd appellant were revised from Rs. 1400-2300 to Rs. 4500-125-7000. This anomaly was brought to the notice of the 2nd appellant by the writ petitioners on 12.03.1998 and 26.08.1999 by the Technical Assistants including the writ petitioners. After the revision, by order dated 29.01.2002, the pay scales attached to the post of Technical Assistant have been brought on par with those, for whom the similar revision of scale of pay as that have been recommended by the V Central Pay Commission. Further, the post of Junior Translator (Hindi) in the Central Silk Board also carried the pre-revised pay scale of Rs. 1400-2300 and the same has been revised to Rs. 5000-8000 with effect from 01.01.1996. Similarly, pay of all other employees in the cadre of Senior Research Assistants was revised in the respective cadres with effect from 1.1.96. However, by the impugned order dated 15.11.2001, the 3rd appellant has chosen to revise the scale of pay with effect from 15.11.2001, instead of 01.01.1996 as it has been done in the case of other employees employed with the appellants. Aggrieved by this, the writ petitioners have represented it to the appellants on 28.02.2002 and 10.10.2002 but to no avail. Hence, the present writ petition.

2. On behalf of the appellants, counter has been filed, inter alia, stating that the Central Silk Board being a statutory body under the Ministry of Textiles, have adopted revised scales for all its regular employees as per the recommendations of V Central Pay Commission as approved by the Government of India for its employees with effect from 01.01.1996 and there is no scope to adopt any other scale comparing with other Central Government establishments/Ministries. The revised pay for all the posts in the pre-revised scale Rs. 1400-2300, which includes the post of Technical Assistants held by petitioners, is Rs. 4500-7000. This is given in Sl.No. 8 where two pay scales 1350-2200, 1400-2300 are bunched and revised to Rs. 4500-7000. It is also stated that the pre-revised scale of pay of Rs. 1640-2900 applicable to the cadre of Senior Research Assistant was revised to Rs. 5500-9000 as per the recommendations of the V Central Pay Commission. Accordingly, the pay scale of the post of Senior Research Assistant was revised from Rs. 1640-2900 to Rs. 5500-9000 with effect from 01.01.1996. The long pending demand of the scientific staff of Central Silk Board comprising of Senior Research Assistant, Senior Research Officers, Deputy Directors and Directors for rationalization of their pay scales was considered by the Ministry of Textiles during 1999 and extended the revised pay package to Senior Research Assistant, Joint Directors and Directors with effect from

01.01.1996 besides extending facility of automatic transition from SRA cadre (from 5500-175-9000) with 10 years service to Senior Research Officer cadre (to 8000-275-13500). This package was made applicable only to scientific personnel working under Central Silk Board, which cannot be extended to other disciplines which include technical and field personnel to which writ petitioners belong.

3. Further, it is also submitted that the Central Silk Board has conducted a detailed review of non-scientific cadres which include the technical cadre to which the petitioners belong and based on the recommendations of the Cadre Review Committee and with the approval of the Board implemented certain recommendations like provision of additional posts in order to relieve acute stagnation, conversion of posts, rationalization of pay scales in respect of certain cadres etc. The post of Technical Assistant is one such post the scale of which was revised from Rs. 4500-7000 to Rs. 5000-8000 with effect from 15.11.2001 based on the recommendations of the Cadre Review Committee. Since, this is purely departmental action and not a general revision of pay scales like implementing the recommendations of the V Central Pay Commission, the effect of such pay scale revision can only take a prospective effect and cannot be done with effect from 01.01.1996 as has been claimed.

4. Further, the Government of India vide their OM dated 08.11.2000 conveyed approval for revision of pay scales in respect of Junior Translators (Hindi) from Rs. 4500-7000 to Rs. 5000-8000 with effect from 01.01.1996 working in all Central Government establishments/Ministries. Accordingly, Central Silk Board has also revised the pay scales of all junior translators with effect from 01.01.1996. Since this has been done with specific approval of the Government, the same cannot be extended to other disciplines. The Government as a part of V Pay Commission recommendation approved for revision of pay scales of Library Staff and Central Silk Board has effected the revision of pay scales of eligible Library staff accordingly with effect from 01.01.1996.

5. Eventually, the reason for revising the pay scales of the post of Technical Assistant from Rs. 4500-7000 to Rs. 5000-8000 with effect from 15-11-2001 were explained above. Similar revisions of pay scales have been done for other cadres like Senior Mechanic Assistant (Tech) etc., revising the pay scale of Rs. 4500-7000 to Rs. 5000-8000 with effect from 15.11.2001. The pay scales of all these cadres including those of petitioners have been revised to Rs. 5000-8000 with effect from 15.11.2001. This is done departmentally to help some of the cadres to get their pay scales, which has nothing to do with the central pay commission's recommendations.

6. The learned Single Judge, by order dated 23.3.2010, disposed of the writ petition by setting aside the impugned order therein to the extent of giving effect of the benefits under the impugned order with effect from 15.11.2011 and the appellants are directed to consider the case of the writ petitioners for giving effect to the revised pay scales including the arrears of pay, which the writ petitioners are entitled to, with effect from 1.1.96 and pass appropriate orders.

The same is under challenge in this Writ Appeal.

7. Learned counsel for the appellants contended that since the cadre review committee recommended that the revised pay scales should be given effect to in the case of Technical Assistants from 15.11.2001, the same was granted from 15.11.2001 and as the same is purely departmental action, it cannot be questioned and the respondents/writ petitioners cannot be granted revised pay scales with retrospective effect. It is also contended that the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), has issued a notification dated 22.4.2008 under sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985 (for short "the Act") in respect of the Central Silk Board, 2nd appellant herein, as such, the writ petitioners cannot agitate their grievance before this Court and they have to approach the A.P. Administrative Tribunal as they are notified under sub-section 3 of Section 14 of the Act. It is also contended that the matter has to be transferred to the A.P. Administrative Tribunal.

8. On the other hand, learned counsel for the respondents/writ petitioners submitted that the revised pay scales have been implemented in respect of the employees in the 2nd appellant-Board with effect from 1.1.96 and the writ petitioners cannot be singled out and the revised pay scales cannot be given effect to from 15.11.2001 which is discriminatory and there is no rationale behind such classification. It is also submitted that the learned Single Judge has taken note of the fact that other cadre employees in the 2nd appellant-Board have been given revised pay scales with effect from 1.1.96, as such, the writ petitioners are also entitled for such benefit. It is contended that the writ appeal was filed in the year 2003, but no plea regarding jurisdiction of this Court has been raised and it is only after notification was issued in the year 2008 and after the writ petition was disposed of, such plea is raised in the writ appeal and objection regarding jurisdiction as per Section 21 of CPC should have been taken at the first instance and not at the stage of appeal. It is also contended that Section 29(2) of the Act has no application regarding the appeals pending before the High Court and in support of this contention, the learned counsel relied on the judgment of the Supreme Court in Navodaya Vidyalaya Samiti Vs. T.C.S. Naidu, . It is also contended that when jurisdiction had never been raised when the matter was pending for a long time before the learned Single Judge, such plea could not be allowed to be raised for the first time in the appeal. In support of this contention, the learned counsel relied on the judgment of the Apex Court in Management, The Assistant Salt Commissioner Vs. Secretary, Central Salt Mazdoor Union,

10. In the present case, the question that falls for consideration is whether the respondents/writ petitioners are entitled for revised pay scales w.e.f. 1.1.96 or 15.11.2001 and whether this appeal is required to be transferred to the Central Administrative Tribunal.

11. We have perused the order of the learned Single Judge and the material

available on record. The learned single Judge, after going into the merits of the case, found that other cadre employees were granted benefit of revised pay scales from 1.1.96, whereas the writ petitioners were granted the benefit from 15.11.2001 and that there is no reason for denying the same benefit to the writ petitioners. The learned Single Judge also found that the Government of India vide their OM dated 8.11.2000 conveyed approval for revision of pay scales in respect of Junior Translators (Hindi) from Rs. 4500-7000 to Rs. 5000-8000 with effect from 1.1.96. The learned Single Judge also found that non-extending the benefit of revised pay scales from 1.1.96 to the writ petitioners is illegal and arbitrary. We are of the view that there is no justification for the appellants in not extending the benefit of revised pay scales to the writ petitioners w.e.f. 1.1.96 while the other cadre employees of the 2nd appellant-Board were extended the same benefit w.e.f. 1.1.96. Therefore, we do not find any error in the view taken by the learned Single Judge in this respect.

12. As far as the jurisdiction aspect is concerned, the writ petition was filed in the year 2003 and though counter was filed, objection regarding jurisdiction was not taken in the counter and no objection was also taken even at the time of disposal of the writ petition and only for the first time in the writ appeal such objection was taken. Even otherwise, the Supreme Court in Navodaya Vidyalaya Samiti case (1 supra) held in paras 4 and 5 as under:

4. The short question that arises in this case is whether pending appeals were liable to be transferred to the Central Administrative Tribunal on issue of notification under subsection (2) of Section 14 of the Act. Section 29(2) of the Act reads as thus:

29. Transfer of pending cases

1. ...

2. Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which the jurisdiction is conferred on a Tribunal in relation to any local or other authority or Corporation or society being a suit or proceeding, because of action where on it is based, is such that it would have been if it had arisen after the said date, within the jurisdiction, shall stand transferred on that date to such Tribunal;

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before the High Court.

5. We are of the opinion that in view of proviso to subsection (2) of Section 29 of the Act, the appeal was required to be decided on merits by the High Court. Under such circumstances, we set aside the order under challenge and send the case back to the High Court to be decided on merits.

13. In Central Salt Mazdoor Union case (2 supra), the Apex Court held in para 22 as follows:

We would assume that the Industrial Tribunal had no jurisdiction to decide such a question after enactment of the Administrative Tribunals Act, 1985. But such a contention had never been raised. The matter remained pending before the Labour Court for a long time. We, therefore, should not permit the appellant to raise such a contention before us for the first time.

14. Section 29(2) of the Act clearly shows that nothing in the proviso to sub-section 2 shall apply to any appeal pending as aforesaid before a High Court. In view of above position of law, the question of transfer of the present writ appeal to the A.P. Administrative Tribunal as contended by the learned counsel for the appellants does not arise.

15. In view of the above discussion, we do not find any error or infirmity in the order passed by the learned Single Judge.

16. Accordingly, the Writ Appeal is dismissed while confirming the impugned order. As a sequel, interim order granted earlier i.e., on 07.07.2010 is vacated and miscellaneous petitions, if any, pending in the writ appeal shall stand disposed of.