
(2013) 11 KAR CK 0328

In the Karnataka High Court

Case No : Writ Petition No's. 10771 and 16016-16025 of 2012 (S-Cat)

The Union of India

APPELLANT

Vs

Sri Chandra S. and Others

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0328

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; S. Sugumaran for C/R1-R11, for the Respondent

Final Decision : Disposed Off

Judgement

Mohan M. Shantana Goudar, J.—The Order of the Central Administrative Tribunal dated 13.9.2011 in Original Application No. 521/2009 is called in question in these Writ Petitions. By the said Order, the Tribunal directed the petitioners herein to issue necessary Orders within three months from the date of receipt of copy of the order, granting upward revision of pay-scales of the applicants to bring them on par with the pay-scales of Vocational Instructors of the Ministry of Labour. It is made clear in the very order that the respondents are not entitled to arrears of the new pay-scale fixation w.e.f. 13.8.2007, but it will only be notional from that date and the actual pay will be available to them from 1.7.2011. The question to be decided in the matter is as to:

Whether the post of Civilian Trade Instructors under the Ministry of Defence is on par with the post of Vocational Instructors under the Ministry of Labour?

2. Though till this day, the Government Order has not issued to the effect that both the posts are on par with each other for all practical purposes including pay, the Tribunal has gone one step ahead and issued direction to the petitioners granting upward revision of pay-scales for the respondents to bring them on par with the pay scales of the Vocational Instructors.

3. The records reveal that the respondents are working as Civilian Trade Instructors. They claim the same pay attached to the post of Vocational Instructors. According to the petitioners, the qualification, experience needed to both the posts are almost similar; and the discharge of function is also similar. Thus, according to them, they are entitled to the same salary as that of Vocational Instructors' salary. Admittedly, the Vocational Instructors are drawing higher salary than Civilian Trade Instructors.

4. The respondents and similarly situated Civilian Trade Instructors. have been approaching the courts repeatedly since 2001 for the very relief. However, no positive direction was issued in their favour against the petitioners. Based on the repeated directions issued by the Tribunal, directing the petitioners to consider each of the respondents, it seems the Board of Officers consisting of four members were appointed by the department to look into the grievance of the respondents including Cadre Review. It seems, three of the Officers of Board have given positive report in favour of the respondents holding that the posts of Vocational Instructors are similar to the posts of Civilian Trade Instructors. But no action has been taken as on this day by the petitioners. The reports of the Directors have remained as reports. Such reports are not culminated into the orders passed by the respondents.

5. However, the prayers of the respondents are gone into by the petitioners and a speaking Order was passed on 5.10.2009 rejecting the prayer of the respondents holding that both the posts are not on par with each other and therefore, the prayer of the respondents is not tenable. Questioning the said order dated 5.10.2009, the respondents approached Karnataka Administrative Tribunal in Application No. 521/2009 which came to be allowed.

6. It is by now well settled that the determination of the pay scale is a complex task to be performed by expert bodies. The courts/Tribunals will not step into the shoes of the experts in the field for determination of pay-scale and for consideration on parity between two cadres for the purpose of fixation of pay-scale. It is no doubt true that enormous time was taken by the department to complete the task of cadre review. Merely because lot of time was consumed by the department, the Tribunal was not justified in directing the petitioners to grant upward revision of pay scales to the respondents to bring them on par with the pay scales of Vocational Instructors. Whether one cadre is on par with another cadre is a question to be decided by the experts. In that regard, a report has already been furnished. It is for the petitioners to take action based on the report and the other materials on record as per law for the purpose of cadre review. In that view of the matter, in our considered opinion, the Tribunal is not justified in directing the petitioners to grant upward revision of pay scale to the respondents in order to bring them on par with the pay scales of Vocational Instructors of Ministry of Labour. By The impugned order, the Tribunal has not only reviewed the cadre but also fixed the pay scales which is not permissible.

7. The learned counsel for the respondents relied upon the judgment of the apex

court in the case of Union of India (UOI) and Another Vs. P.V. Hariharan and Another, . Taking support from the above said decision, the learned counsel submits that where the records are available before the court and if the courts feel that injustice is really caused, the court can exercise jurisdiction in that regard.

8. The above said ruling of the apex court is not in a straight jacket manner applicable to the present facts and circumstances of the case. In the above case, the apex court cautioned the judicial courts generally not to take up the task of job evaluation, wherein it is difficult even to the experts. But if any great injustice or inaction on the part of the State is evinced from the facts, court can also venture to do the same In the present case, experts report is furnished, it is for the petitioners to take a decision and to act upon the reports and such a power is purely vests with the petitioners. The powers of the petitioners will not be usurped by the court. On the other hand, the court will only direct the concerned for swift action.

9. Apart from the above, we find that the educational qualification prescribed and the experience needed for both the posts are not similar with each other. However, it is for the experts in the field to take decision in the matter. The reports of the experts appointed for the said purpose are already before the petitioners. In this view of the matter, the department has to complete the task of cadre review on merits in accordance with law keeping the entire material on record at an early date. Accordingly, the Writ Petitions stand disposed off and the Order of the Tribunal directing the petitioners to grant upward revision of pay scales to the respondents to bring them on par with the pay scales of the Vocational Instructors, Ministry of Labour stands quashed. However, the petitioners are directed to complete the task of cadre review on merits and in accordance with law based on the material on record keeping in mind that the petitioners have already taken enormous time for the same, to comply with the order as early as possible but not later than outer limit of four months from the date of receipt of the copy of this order.

It is needless to observe that the reports of the experts/Members of the Board on the subject shall also be taken into consideration.