(2010) 11 MAD CK 0412

In the Madras High Court

Case No : Writ Petition No. 40701 of 2002

T.U. Loganathan and Others — APPELLANT

Vs

The Union of India (UOI) and The Director Pasteur Institute of India — RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2010) 11 MAD CK 0412

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : S.M. Subramanian, for the Appellant; S. Seethalakshmi, for R 1 and K.R. Vijayakumar, for R 2, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The writ petition has been filed by the Petitioners who are the employees of the second Respondent working in the cadre of Head Clerks seeking to set aside the order passed by the first Respondent in proceeding Proc. No. P.19012/8/99 PH dated 24.12.2001 and the consequential direction directing the Respondents to implementing the revised scale of pay are of Rs. 5000-150-8000 as per the recommendations of the fifth central pay commission with effect from 01.01.1996.

2. The Petitioners herein are working as Head Clerks in the second Respondent''s institute. The Second Respondent''s Institute is an autonomus institute controlled and governed by Ministry of Health and Family Welfare Department, New Delhi, Government of India.

3. A revision of pay scale was made by the second Respondent to his employees as per the recommendations of the fifth pay commission. Accordingly, the Petitioners who were shown in Annexure-A of the fifth pay commission have been given the revised scale from 1350-30-1440-40-1800-50-2200 etc., to

4500-125-7000. The Petitioners were shown in S. No. 9 in Grade S8. Similarly, in so far as the Stenographers who have been working with the second Respondent are concerned they have been shown in S. No. 9 in Grade S-9 fixing the revised scale of Rs. 5000-150-8000. Part-B of the fifth pay commission provides for revised pay scale for certain common categories of staff. As per the said revised pay scale a Head Clerk is given the revised pay scale of Rs. 5000-150-8000/-. The said Part-B of the fifth pay commission recommendation also says that in the case of any change in the recruitment rules, re-structure of cadre, re-distribution of post into higher cadre etc., untill and unless the same has been effected by the competent authorities, the earlier scale of pay would continue and the employees covered by those cadres would get the benefits of the fifth pay commission recommendation only after the amendment of the recruitment rules, re-construction of cadres and re-distribution of posts into higher grade. The Government of India, Ministry of Finance, Department of Expenditure has issued guidelines under office memorandum dated 02.12.1997 for the pay revision of employees of autonomus bodies controlled by Central Government. In the said memorandum it has been stated that orders may be extended to the employees of autonomus organisations whose pattern of emoluments structure-pay scale and allowance are identical to those of Central Government employees. Accordingly, the recommendation of the fifth pay commission was implemented to the Petitioners since they come under Annexure-A of the fifth pay commission recommendation. The scale of pay and other recommendation made by the fifth pay commission as incorporated in Part-A as per Civil Services revised pay rules 1997 were implemented. The guidelines also make it clear that such a power can be exercised by the second Respondent only to those posts are included in the Part-A alone.

4. However, recommendations have been made by the second Respondent in pursuant to the request made by the Petitioners and other employees working as Head Clerk to revise their pay scale on par with the Head Clerks mentioned in Part-B. Inasmuch as the same has not been made appliable to them being employees of an autonomus body, the recommendations made were rejected initially by the first Respondent in an by the letter dated 03.09.2001. Thereafter, another recommendation has been made by the second Respondent and based upon the said recommendation and also on a consideration of the relevant materials, the first Respondent in and by the proceedings dated 24.12.2001 has upgraded the pay scale of Head Clerk / Assistant from Rs. 4500-125-7000 to Rs. 5000-150-8000 with effect from the date of the issuance of the order. It is also seen that by the letter dated 08.02.2001 the decision of the Government of India, Ministry of Health and Family Welfare Department was communicated to the effect that the pay commission recommendations in so far as the Part-B is concerned can be extended to autonomus bodies as well. Accordingly, an order has been passed by the first Respondent dated 24.12.2001 extending the benefit to the post of Head Clerk as well as Supervisor of the second Respondent including the Petitioners herein.

5. Inasmuch as in the order impugned the benefit having been given with effect from the date of issuance of the order, the writ Petitioners have filed the present writ petition alleging that the said benefit will have to be given from 01.01.1996 which is the date of the implementation of the recommendations of the fifth pay commission.

6. Mr. S.M. Subramanian, learned Counsel for the Petitioner submitted that the Petitioners are entitled to get the same pay scale as that of the Head Clerk included in Part-B of the pay commission recommendations. The learned Counsel further submitted that there cannot be a discrimination between the Petitioners and others who are doing the same work with the same required qualifications. It is the further contention of the learned Counsel that the post of Head Clerks having been incuded already in Part-B which provides for revised pay scales for certain common categories of staff, the same will have to be implemented with effect from 01.01.1996. It is the further submission of the learned Counsel that in any case having allowed the revised pay scale by accepting that the Petitioners are entitled to get the same there is no basis for fixing it from the date of the decision made. The learned Counsel has made the reliance upon the judgment of the Hon''ble Apex Court rendered in (2008) 13 SCC 463 (Union of India and another Vs.S. Thakur) and submitted that treating similarly placed persons differently would be violative of Article 14 of the Constitution of India. When a decision is unreasonable and arbitrary, the same is amenable to judicial review. Therefore, the learned Counsel submitted that the writ petition will have to be allowed.

7. Per contra the learned Counsel for the Respondents submitted that as per the office memorandum dated 02.12.1997 the autonomous bodies are only entitled to adopt the revised scale of pay as incorporated in Part-A of the first schedule to the rules. Inasmuch as the said rules in so far as the adoption of revised scale of pay is concerned, any post covered under Part-B cannot be considered. The learned Counsel further submitted that inasmuch as admittedly the Petitioners are coming under Part-A of the rules, the benefits given to the Head Clerks coming under Part-B was not extended as it was not permissable in law. The learned Counsel further submitted that recommendations have been made earlier which were rejected by the first Respondent. Thereafter in pursuant to the second recommendation alone it was decided to give the benefits given under the fifth pay commission to the Head Clerks coming under Part-B to the Head Clerks working with the second Respondents by upgrading the pay scale. In other words it is a specific contention of the learned Counsel that Part-B of the fifth pay commission has no applicability or relevancy to the Petitioners and that is the reason why recommendations have been made and decision has been taken by the first Respondent which was duly implemented. The learned Counsel also submitted that there is no vested right from the Petitioner to claim the same benefits given to the Head Clerks under Part-B. Even perusal of the decision communicated in letter dated 08.02.2001 would show that inclusion under Part-B can be considered in appropriate cases by the autonomous bodies. Therefore it is

submitted that the said letter which is coming into force with effect from 08.02.2001 merely provides for consideration of inclusion and not as a matter of right. Hence, the learned Counsel also submitted that the judgment relied upon by the learned Counsel for the Petitioner would not apply to the present case on hand, inasmuch as the facts involved therein are totally different and the issue which was the subject matter of the above said case was, as to whether a retired employee is entitled to get the same benefits of fixation of pay scae as that of the other employees who are in service. Therefore the learned Counsel submitted that the writ petition will have to be dismissed.

8. The facts involved in this case would demonstrate that the post of the Petitioners was not included in Part-B of the fifth pay commission recommendations. But only in Part-A. Accordingly the second Respondent has exercised his power and implement the recommendations of the fifth pay commission. It is also seen that there are other category of employees coming under Part-A below the Petitioners who have been receiving higher salary and even those employees have been kept in Part-A. Further the office memorandum dated 02.12.1997 makes it clear that the power of the second Respondent can only be exercised for extension only in so far as the post included in Part-A alone. Nevertheless the second Respondent has made recommendation earlier which was rejected by the first Respondent. In the mean while a letter was issued by the first Respondent dated 08.02.2001 by which it was informed that inclusion of a post can also be considered in Part-B of the fifth pay commission recommendations. A further recommendation was made and in pursuant to the same, it was decided to upgrade the pay scale of the Petitioners.

9. A perusal of the order impugned would clearly show that what was done is only an upgradation. If the contention of the Petitioner is accepted that the Petitioners are already included in Part-B of the fifth pay commission, then there is no necessity for upgradation. A perusal of the letter dated 08.02.2001 issued by the first Respondent would make it clear that a post which is otherwise coming under Part-A cannot be automatically included in Part-B, but it can be considered based upon the relevant materials for such an inclusion. It is also clear from the recommendations that in such an eventuality the original pay scale would continue till the subsequent change is brought forth. Therefore, this Court finds that the submission made by the learned Counsel for the Petitioner that in pursuant to the decision of the first Respondent as a natural consequense the pay scale will have to be fixed with effect from 01.01.1996 cannot be countenanced.

10. The recommendations have been made by the Respondent only pursuant to the request made by the Petitioners. The Petitioners have not challenged the decision of the second Respondent in placing them in Part-A. Therefore, it is not open to the Petitioner to contend that they are already included in Part-B. It is also to be seen that the first Respondent has initially rejected the recommendations made, which order was also not challenged. The very right has

been accrued to the Petitioners only in pursuant to the recommendations made by the second Respondent which resulted in the order impugned. Therefore, the Petitioners being the beneficiary of the order as well as the recommendation made by the second Respondent cannot turn around and challenge the same by taking a contrary stand. Such a contention cannot be made permissible in law.

11. It is a well settled principle of law that the fixation of pay and the upgradation of pay scale is well within the jurisdiction of the authorities concerned. This Court cannot exercise the judicial review unless the decision is tainted with illegality or arbitrariness. In the present case on hand, the first Respondent has accepted the recommendations of the second Respondent only in so far as the post of the Petitioners are concerned and in fact rejected the case of the other cadres. The said fact would indicate that the power to include in Part-B of the fifth pay commission recommendation is a discretionary power based upon the materials available on record. When such a discretion is exercised it cannot be state that it should be exercised with retrospective effect in the absence of any vested right acrruing to the Petitioners.

12. The contention of the learned Counsel for the Petitioner that the persons who are similarly placed in other autonomous bodies have been given the benefit of fixation of pay scale with effect from 01.01.1996 also cannot be countenanced. Each autonomous body is a distinctly different entity. Therefore the violation under Article 14 of the Constitution of India would come only when there is an discriminative treatment between the same class of persons. The mere fact that the first Respondent has accepted the recommendations by also taking into consideration that such benefit has been given to the employees of other autonomous bodies, cannot be a ground to hold that the fixation for the Petitioners will have to be made with retrospective effect from 01.01.1996 onwards. Further a perusal of the relevant portion containing Part-B regarding the revised pay scales for common categories of staff would indicate that by including a new set of employees into Part-B, such an order will take effect prospectively and not retrospectively.

13. As contended by the learned Counsel for the second Respondent Mr. K.R. Vijaya Kumar, the judgment relied upon by the learned Counsel for the Petitioner rendered in (2008) 13 SCC 463 (Union of India and another Vs.S. Thakur) cannot be applicable to the present case on hand. It is well a settled principle of law that a judgment cannot be read as a statute of parliament and has to be made applicable to the facts and circumstances of each case. In the said case, a request was made by the retired employee to the effect that the benefit of upgraded scale will have to be given to him by removing the artificial cut-off date fixed by the authorities. The Hon''ble Apex Court after reiterating the principle that the matters like the fixation of pay scale as the scope of judicial review is very limited has held that the discrimination between the employees of the same concern by fixing a artificial cut of dates without any rational basis cannot be sustained. The facts involved in the present case are totally different and in fact

if the ratio of the Hon''ble Apex Court is applied, then this Court cannot exercise the judicial review over the issue considered by the first Respondent by taking into consideration of the relevant materials inlcuding the recommendations of the second Respondent. Hence in view of the above said conclusion this Court is of the opionion that the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

