

(2001) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 14150, 14248, 14536, 15849, 16480, 17298, 23870, 23973 of 2000 and 2654 and 3689 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Smt. P. Jayamma

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Citation : (2001) 04 AP CK 0015

Hon'ble Judges : Satyabrata Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : M. Ratna Reddy, for the Appellant; Ramachandra Rao, for the Respondent

Final Decision : Partly Allowed

Judgement

Satyabrata Sinha, C.J.—Identical questions having been involved in the writ petitions, they are heard together and are disposed of by this common judgment.

2. The factual matrix of the matter is being noticed from W.P. No. 14536 of 2000.

3. The husband of the respondent was an employee of the Union of India having been appointed prior to the independence. The Upper Division Clerks and Lower Division Clerks were categorised as A, B, and C grades in 1944. A reclassification was made pursuant to the report of the Varadacharyulu Commission of the said category of employees reintroducing the aforesaid grades UDCs and LDCs on 1.1.1947 once again. It is not in dispute that the erstwhile categories of A and B employees were treated as UDCs on a scale of pay of Rs. 80-220 whereas those in category C were designated as LDCs who were entitled to the Scale of Pay of Rs. 55-130. The respondent's husband although was in category-B was wrongly graded as LDC. He retired on 1.7.1962 and died on 26.5.1974. The respondent herein is being paid the family pension. It is not in dispute that several writ petitions and original applications were filed before different High Courts and Central Administrative Tribunals of the Country and different orders were passed.

Some of the matters went up to the Apex Court in UNION OF INDIA VS. SAMBANDAM AND OTHERS¹, wherein the Apex Court by judgment dated 4th November, 1987 directed:

"Having heard learned counsel for the appellants and learned counsel for the respondents and taking into consideration all aspects of the case we reduce the liability of the Union of India under the judgment and under appeal by 40% and direct that 60% of whatever amount is due to each of the respondents under the judgment of the High court shall be paid to the respondents. If any of the respondents is dead, the amount due to him shall be paid to his legal representatives. The appeal is allowed to the above extent. No costs."

4. Such direction was issued in relation to the cases where the High Court/Tribunal allowed the claim of the writ petitioners/original applicants for refixation of salary from 1947 and consequential benefits attendant thereto. However, in one matter that went before the Apex Court arising out of an order passed by the Central Administrative Tribunal of the Principal Bench, Delhi, the Central Administrative Tribunal directed in O.A.960 of 1990 that the petitioners therein should be deemed to have been appointed as UDCs in the scale of pay of Rs. 80-220 with effect from 1st January, 1947 on the basis of the recommendations of the First Pay Commission and they would be entitled to the salary and allowance of the said post from the said date till their retirement. However, therein, the Tribunal did not direct any payment of arrears of pay with effect from 1st January, 1947 but directed that their pay shall be notionally fixed for the purpose of recomputing their pension from the said date. However a review application was filed and by reason of a judgment dated 24.2.1993 passed in review application No. 86 of 1992 arising out of O.A.960 of 1990 the Tribunal directed payment of all arrears of their pay and allowances for the post of UDC with effect from 1st January, 1947. In that situation, the Apex Court held:

"We are not required to go into the correctness of the impugned judgment of the Tribunal dated February 6, 1992 holding that the respondents were entitled to pay and allowances for the post of UDC with effect from January 1, 1947. By the said judgment the Tribunal, had however, denied arrears of such pay and allowances to the respondents and the relief was confined to arrears of pension only which direction has been reversed by the impugned judgment of the Tribunal whereby direction has been given for payment of arrears of pay and allowances with effect from January 1, 1947. The impugned order has been passed on the ground that two employees (Shri S.P. Gupta and Shri V.K. Nigam) had been paid the arrears with effect from January 1, 1947 under orders passed on the basis of the judgment of the Bombay High Court dated July 23, 1979. We are of the view that the said direction of the Tribunal on the review application cannot be upheld since O.A. No. 960 of 1990 was filed before the Tribunal only in 1990 when they had already retired from service. The Tribunal had rightly disallowed the arrears of pay and allowances with effect from January 1, 1947 in the judgment dated February 6, 1992 and was in error in directing such payment of arrears in the

impugned judgment merely because two other employees had been paid such arrears on the basis of an earlier judgment of the Bombay High Court."

5. In the cases on hand, several applications were filed prior to the date of aforementioned judgment dated 24th October, 1997 and disposed of on concession made by the learned counsel appearing on behalf of the writ petitioner herein. Although some cases were heard and disposed of after 24-8-1997, having regard to the concession made by the learned counsel appearing on behalf of the petitioner, similar orders were passed in terms of the judgment of the Apex Court dated 4.11.1987 in Civil Appeal No. 4201 of 1985.

6. In some of the cases, the petitioner herein filed review applications after 2/3 years of the passing of the judgment of the Apex Court dated 24.10.1997 with an application for condonation of delay but such applications had not been entertained. Yet, in some cases, the petitioner had prayed for extension of time for implementing the judgment. Yet again, in some matters, the petitioner herein had paid part of the arrears of the pay, salary as also pension. In some of these cases, counter-affidavits have been filed by the respondents. In para VIII of the counter affidavit filed by Smt. T. Jayamma in W.P.14536 of 2000, it is stated :

VIII. In reply to various allegations made and the contentions raised in the affidavit, I state as follows: Even according to the petitioners, my husband was entitled to pension on revised pay as per the judgment dated 24.10.1997 of the Honourable supreme Court of India in Civil appeal No. 7453/97. As per the said judgment of the Honourable Supreme Court of India, arrears of pension have also to be paid from the date of superannuation. In fact, the 1st petitioner had issued a Circular No. PC.90237/6730/EIC (Legal D) 457-LC/D (Civil), dated 04-09-2000 in this regard. In pursuance of the said Circular, similarly placed retired employees viz., S/Sri T.Satyanarayana and others have been paid arrears of pension. This Honourable Court may therefore modify the impugned order of the Central Administrative Tribunal, Hyderabad Bench and direct the petitioners to pay the arrears of pension due to my late husband from the date of retirement i.e., 1.7.1962 till his death i.e., 26.5.1974 and the difference in family pension from the year 1974 as per the judgment dated 24.10.1997 in Civil Appeal No. 7453/1997 of the Honourable Supreme Court of India and the Circular dated 4.9.2000 referred to above."

7. Mr. G.Ramchander Rao, learned counsel appearing on behalf of the respondents very fairly states that having regard to the subsequent order passed by the Supreme Court, the order passed by the Tribunal may be modified to the extent as noticed supra. But in whichever cases arrears of salary or part thereof or pension had already been paid, the same may not be directed to be recovered.

8. Having heard the learned counsel for the parties, we are of the opinion that the stand taken by Shri Ramchander Rao is very fair and could be accepted. It would appear from the foregoing paragraphs, that persons were required to be differently treated having regard to the two different orders passed by the Apex

Court. In cases of like nature, persons who were similarly situated to the husband of the respondent in W.P. No. 14536 of 2000 or other retired employees, the petitioner had paid entire arrears of salary pursuant to the orders of the Bombay High Court and in some cases only 60 per cent of arrears were paid pursuant to the orders of the Apex Court or notional pension was paid in terms of the later decision of the Supreme Court without payment of any arrears of salary and pension. Ordinarily this Court would not have entertained any writ petitions against orders which had been passed on concession and particularly when the review applications were filed after 2/3 years from the date of passing of the orders in the main Original Applications despite knowledge of the order of the Apex Court dated 24.10.1997 but in view of the submissions made by Mr. Ram Chander Rao, we are of the opinion that the respondents herein be paid their arrears of pension from the date of retirement of the concerned employee upon computing the same notionally in the scale of pay payable to the UDCs from 1st January, 1947. In case where the employee has died, the family pension shall be paid to their legal representatives from the date of death in terms of the judgment of the Apex Court dated 24.10.1997 in Civil appeal No. 7453 of 1997 and Circular letter dated 4.9.2000. However, we also direct that in all such cases where any payment has been made pursuant to the aforementioned Circular and following the Supreme Court decisions, keeping in view the different stand taken by the Union of India in different cases before different courts/Benches of Central Administrative Tribunal, no recovery from the concerned respondent-employees shall be made.

9. It is stated at the Bar that arrears of pension had not been paid to the respondent-employees due to the pendency of these writ petitions. We direct the writ petitioner to pay all such arrears as expeditiously as possible and preferably within four months from the date of communication of this order. With the aforementioned directions the writ applications are allowed in part to the extent indicated above. There shall be no order as to costs.