

State of Andhra Pradesh and Another

Vs

T. Gopalakrishnan Murthi and Others

Civil Appeal No. 2136 of 1972

(A. Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

25.09.1975

JUDGMENT

UNTWALIA, J. -

1. This appeal is by certificate of fitness granted by the Andhra Pradesh High Court. The point concerns the scope and the power of the Chief Justice under Article 229(2) of the Constitution of India. The Chief Justice of the High Court wanted the High Court staff to be paid at the scales of pay of equivalent posts in the Secretariat staff of the Government of Andhra Pradesh. The Government did not agree to do so. The respondents who are members of the High Court service belonging to the categories of bench clerks, lower division clerks, typists and certain other categories filed a writ petition in the High Court for a writ of mandamus against the appellants directing them to implement the recommendations of the Chief Justice of the High Court made to the Government from time to time to fix the pay scales of the various categories to which the respondents belong in accordance with the scales of pay as revised by the State Government in case of corresponding categories detailed in Annexure III of the Andhra Pradesh Secretariat Service. The High Court has allowed the writ petition and directed the Government to give effect to the recommendations of the Chief Justice embodied in the letters of the Registrar of the High Court dated March 31, 1969 and July 1, 1969 with such allowances and such benefits as are admissible to the members of the Secretariat service in the Secretariat.

2. A few facts may be stated for determination of the point at issue. In April, 1965 a Pay Commission was appointed by the Government to make recommendations in regard to the revision of pay scales of government employees in the various services. The Pay Commission submitted its report in 1967. In respect of certain categories of the High Court staff, but not all, the Commission recommended to give them the pay scales of their counterparts in the Secretariat.

3. The Assistant Secretary to the Government wrote a letter dated February 12, 1969 to the Registrar requesting that a comprehensive note together with the latest scales of pay obtaining in the other High Courts may kindly be sent to the Government for placing the same before the Officers Committee for consideration. A detailed letter dated March 31, 1969 was written by the Registrar to the Government with reference to some earlier letters of the High Court and in reply to the Government's letter dated February 12, 1969. Facts and figures from other States were given to show that in most of the States the scales of payment allowed to the members of the High Court service were identical with those of the Secretariat staff and the Government was asked to agree to the proposal of the Chief Justice to bring the pay scales of the High Court staff at par with those of the Secretariat. The matter was pursued by the High Court in the Registrar's letter dated July 1, 1969 addressed to the Secretary to the Government Finance (Pay Commission) Department and in the

D.O. letter dated July 23, 1969 written by the Chief Justice to the Chief Minister. The Government did not agree to the equation of the scales of pay of the staff of the High Court to those of the Secretariat's. The High Court was accordingly informed. Thereupon respondents filed the writ petition in January, 1970.

4. In support of the writ petition reliance was placed before the High Court on the power of the Chief Justice under Article 229 and Rule 19 of the Andhra Pradesh High Court Service Rules, 1959 (for brevity, the 1959 Rules). The High Court has taken the view that for the purposes of appointments of officers and servants of the High Court and laying down the conditions of their service the Chief Justice is the highest authority. The requirement of the approval of the Governor of the State under the proviso to clause (2) of Article 229 is a requirement of a mere formal approval. The Government could not refuse to accord their approval approval when the recommendation of the Chief Justice was merely for equation of the pay scales of the High Court staff with those of the Secretariat's. The High Court has not rested its judgment on Rule 19 of the 1959 Rules.

5. Mr. Ram Reddy, learned Counsel for the appellants has assailed the decision of the High Court as being contrary to the two decisions of this Court in *M. Gurumoorthy v. Accountant General, Assam & Nagaland* (1971 Supp SCR 420 : (1971) 2 SCC 137) and *State of Assam v. Bhubhan Chandra Dutta* ((1975) 4 SCC 1 : 1975 SCC (L & S) 186). The High Court has noticed the first decision, but Counsel submitted, it has applied it wrongly. Mr. S. V. Gupte appearing for the respondents endeavoured to support the judgment of the High Court with reference to Rule 19.

6. Leaving aside the proviso to clause (1) of Article 229 in the matter of appointments of officers and servants of a High Court the power is of the Chief Justice or of such other Judge or officer of the Court as he may direct. Under clause (3) the administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court are a charge upon the Consolidated Fund of the State. Any fees or monies taken by the Court formed part of that fund. There is no separate fund or power to raise it at the disposal of the High Court for the purposes of meeting the salaries etc. of the High Court staff. In this context clause (2) of Article 229 may now be read with the proviso appended thereto.

Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

If there is a law made by the Legislature of the State then subject to that law, otherwise without it, the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff. But if the Rules made under clause (2) relate to salaries, allowances, or pensions then since in them is involved the question of finance the framing of the rules under clause (2) requires the approval of the Governor - that means the State Government. One should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally the approval should be accorded. But surely it is wrong to say that the approval is a mere

formality and in no case it is open to the Government to refuse to accord their approval. On the facts and in the circumstances of this case and in the background of the conditions which are prevalent in other States Government could have been well-advised to accord approval to the suggestion of the Chief Justice, as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent posts in the Secretariat. That merely because the Government is not right in accepting the Chief Justice's view and refusing to accord the approval is no ground for holding that by a writ of mandamus the Government may be directed to accord the approval. The High Court staff has not always been treated at par with the Secretariat staff in the matters of scales of pay. The matter has been taken up in the Chief Justices' Conference and with several State Governments. Most of them have acceded to the request of the High Court to bring its staff at par with the Secretariat staff in the matter of pay etc. It is, however, not possible to take the view that merely because the State Government does not see its way to give the required approval it will justify the issuance of a writ of mandamus under Article 226 of the Constitution as if the refusal of the State Government was ultra vires or made mala fide and arbitrarily.

7. In Gurumoorthy's case (supra) Grover, J. delivering the judgment on behalf of the Constitution Bench of this Court has stated at page 429 : [SSC p. 144, para 12]

Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. Apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception, it is abundantly clear, has to be made because the finances have to be provided by the Government and to the extent there is any involvement of expenses the Government has to approve of it.

The more apposite and direct case on the point is the decision of this Court in Bhubhan Chandra Dutta's case (supra) where following the decision in Gurumoorthy's case, Ray, C. J. has said while delivering the judgment on behalf of the Court at page 5 : [SSC (L&S) p. 190, para 17]

Article 229 of the Constitution confers power on the Chief Justice of the High Court to appoint officers and servants of the High Court. Article 229(2) states that subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. It is also provided that the rules made under Article 229(2) shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. It is not disputed that the appointment of Bhubhan Chandra Dutta by the Chief Justice of the High Court at a salary of Rs. 1,500 per month with special allowance of Rs. 250 per month was made without the approval of the Governor. If the Chief Justice of the High Court wanted to appoint the Registrar at the initial salary of Rs. 1,500 with a special salary of Rs. 250 per month, special approval of the Governor should have been taken in view of the fact that the rules did not permit such salary

and the higher salary involved greater financial burden on the Government. (See M. Gurumoorthy v. A. G., Assam & Nagaland)

8. We share the sentiment expressed by the High Court in its judgment and yet find it difficult to allow our sentiment to cross the boundary of law engrafted in the proviso to clause (2) of Article 229.

9. Rule 19 (1) of the 1959 Rules on which reliance was placed on behalf of the respondents to sustain the judgment of the High Court has been quoted therein. After quoting the rules, the High Court has said :

We may observe in passing that this rule has not been happily worded. There is reference to the Rules of 1932, the Rules of 1947, the Rules of 1950 relating to gratuities, provident fund etc., and the Rules of 1947 relating to scales of pay. Whatever might have been the power of the Government in the matter of fixing pay or making rules in the pre-Constitution days, that position has changed after the Constitution in view of Article 229 of the Constitution.

Mr. Gupte pointed out that the 1959 Rules framed by the Chief Justice under Article 229(1) and (2) of the Constitution were with the approval of the Governor of Andhra Pradesh in so far as the Rules related to salaries, allowances, leave or pensions. Rule 19(1) authorised the Chief Justice to regulate the pay of the High Court staff in the manner he thought it fit and proper to do without any further reference to the Governor. We do not find any such words in Rule 19(1) to lead to the above conclusion. The reference to the Rules regulating the pay of the Services included in the Pay Schedule and other rules for the time being in force applicable to officers under the rule-making control of the Government of Andhra Pradesh. was merely a reference to the rules and not to the pay schedules. This was further made clear by the first provision of Rule 19(1) which reads as follows :

Provided that except with regard to salaries, allowances, leave and pensions, the Chief Justice shall exercise the powers vested in the Governor under any of the aforesaid rules;

10. For the reasons stated above we do not find it possible to sustain the judgment of the High Court in law. We, however, trust and hope that the Government will give their second thought to the matter and see whether it is possible in the State of Andhra Pradesh to obliterate the distinction in the matter of pay scales etc. between the High Court and the Secretariat staff. There does not seem to be any good and justifiable reason for maintaining the distinction.

11. In the result the appeal is allowed but there will be no order as to costs.

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