

Union of India and Others

Vs

Secretary, Madras Civil Audit and Accounts Association and Another

Civil Appeal Nos. 1783-84 of 1990 with C.A. Nos. 3623-25, 3698-3704, 3705-14 of 1988, 535-40, 705-725, 726-38, 733-38, 739-747, 772-777, 945-74, 975-96, 997-999, 1000-23, 1024-42, 1043-63, 1064-84, 1085-90, 3117, 3678 of 1989

(L. M. Sharma, K. Jayachandra Reddy JJ)

04.02.1992

JUDGMENT

K. JAYACHANDRA REDDY, J. –

1. All these appeals pursuant to the special leave granted are filed by the Union of India, the Comptroller and Auditor-General and the principle Accountant-General. The only question that arises for consideration is whether the benefit under Office Memo (OM) dated June 12, 1987 issued by the Government of India, Ministry of Finance, Department of Expenditure should be extended to the members of the Accounts Wing of the Indian Audit and Accounts Department ("IA & AD" for short) with effect from January 1, 1986 as in the case of Audit Wing or whether it should be from April 1, 1987 as indicated in the said Office Memo ? Several of the employees belonging to the Accounts Wing filed petitions and the Bangalore Bench of Central Administrative Tribunal ("CAT" for short) held that they are entitled to the benefit with effect from January 1, 1986. Subsequent to the said judgment some of the employees in the Accounts Wing in Tamil Nadu filed petitions before the Madras Bench of the CAT claiming that benefit should be extended with effect from January 1, 1986. The Madras Bench was not prepared to agree with the view taken by the Bangalore Bench and the matter was referred to the Chairman of the CAT who constituted a Full Bench presided over by himself. The Full Bench agreed with view taken by the Bangalore Bench and answered the reference accordingly. Following the decision of the Full Bench, the Madras Bench passed the final orders. All these appeals are filed against several orders passed by the Madras Bench as well as the Bangalore Bench. It is contended on behalf of the Union of India that the Office Memo dated June 12, 1987 is based on the recommendations of the Fourth Central Pay Commission which consists of two parts. The first part recommends corresponding scales of pay for the existing posts in the Accounts Wing giving effect from January 1, 1986. The other part is contained in para 11.38. Pursuant to those recommendations the government decided to implement the same with effect from April 1, 1987. It is also contended that the Full Bench failed to appreciate correctly that the second part of the recommendation of the pay Commission clearly indicated that the number of posts to be placed in these scales were to be identified by the government and the government could therefore decide and then give effect at a later date. The learned counsel on behalf of the respondent employees contended that the pay Commission recommended that there should be parity in the pay scales of the staff in the IA & AD and other Accounts organisations and since all of them discharge the similar duties the benefits should be extended to all of them uniformly with effect from January 1, 1986. To appreciate these contentions it becomes necessary to refer to the history of the case briefly and to the relevant documents including the recommendations of the Pay Commission.

2. IA & AD headed the Comptroller and Auditor-General of India (C & AG) recommended some time in 1983 to Government of India to bifurcate IA & AD to two separate and distinct wings, one to exclusively deal with 'audit' and the other to deal with 'accounts' with their own separate personnel. The Government of India after considering all aspects approved the proposal in December 1983. Thereafter C & AG formulated a scheme on December 19, 1983 for bifurcation of the IA & AD into two separate and distinct wings from March 1, 1984 providing for all incidental and auxiliary matters thereto. Before the restructuring of the cadres, the staff working in the IA & AD were asked to exercise their option to serve in either of the two wings. Some exercised the option. There was a grievance that the various equivalent cadres in Audit and Accounts wings were not paid the same scales of pay and the persons allotted to the Audit wing were drawing more pay than the persons in the Accounts wing. The Fourth pay Commission which was looking into various aspects of the matter recommended in its report that there should be parity of scales of pay between the two wings. The government took the necessary decision on the basis of the recommendations and the same were published in the gazette on September 13, 1986. The government accepted the recommendations relating to the scales of pay and decided to give effect from January 1, 1986 in respect of the recommendations of scales of pay for Group 'D' employees. Thereafter Ministry of Finance, Department of Expenditure accordingly issued Office Memo dated June 12, 1987 regarding the posts to be placed in higher scales of pay and it was mentioned that these orders would take effect from April 1, 1987. The grievance of these employees is that these recommendations should take effect from January 1, 1986. The Fourth pay Commission in para 11.38 of its Report made the following recommendations :

"We have considered the matter. There has all along been parity between the staff in the IA & AD and accounts staff of other departments, which has been disturbed by restructuring the IA & AD into two separate cadres, viz. audit cadre and accounts and establishment cadre and giving higher pay scales to a major portion of the staff on the audit side. The audit and accounts functions are complementary to each other and are generally performed in many government offices in an integrated manner which is necessary for their effective functioning. The staff in these offices perform functions of internal check and audit suited to the requirements of each organisation which are equally important. There is direct recruitment in the scale of Rs. 330-560 in all the audit and accounts cadres through Staff Selection Commission/Railway Recruitment Board from amongst university graduates. We are therefore of the view that there should be broad parity in the pay scales of the staff in IA & AD and other accounts organisations. Accordingly we recommend that the posts in the pay scale of Rs. 425-700 in the organised accounts cadres may be given the scale of Rs. 1400-2600. In the Rail this will apply to the post of sub-head in both the ordinary and selection grades. We also recommend that this should be treated in future as a functional grade requiring promotion as per normal procedure. The proposed scales of Rs. 2000-3200 of section officer may also be treated as a functional grade. With the proposed scales, there will be no selection for any of the posts. As regards the number of posts in the functional scales of Rs. 1400-2600 and Rs. 2000-3200, we note that about 53 per cent of the total posts of junior/senior auditor and 66 per cent of the total posts of ordinary and selection grade of section officer in IA & AD are in the respective higher scales. Government may decide the number of posts to be placed in the scales of (i) Rs. 1400-2600 and (ii) Rs. 2000-3200 in the other organised accounts cadres taking this factor into consideration. All other accounts posts may be given the scales recommended in Chapter 8".

From this it emerges that the Pay Commission made two recommendations, i.e. :

"(I) there should be broad parity in the pay scales of staff in the IA & AD and other Accounts organisations;

(ii) the scales of pay of Rs. 1400-2000 and Rs. 2000-3200 should be treated as functional (grades) requiring promotion as per normal procedure. The number of posts to be placed in these scales to be decided by the government."

So far as the first part of the recommendations is concerned, it has been implemented and there is no dispute about the same. The second part of the recommendations relates to the treatment of the scales of pay of Rs. 1400-2000 and Rs. 2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. The pay Commission also observed that in respect of other recommendations the government will have to take specific decisions to give effect from a suitable date keeping in view all the relevant aspects. Accordingly the government had to examine and decide the number of posts to be placed in these scales of pay and a final decision was taken in the year 1987 and promotions were to be made as per normal procedure. Therefore the government issued Office Memo that the appointments to the extent of number of posts should be made with effect from April 1, 1987. The Full Bench having noted that the offices belonging to both wings do the same type of work, concluded that the principle of equal pay and equal work is fully applicable in the case of the personnel belonging to the Accounts wing. The Full Bench interpreted the recommendations of the pay Commission as to mean that both the wings would not only get the revised scales of pay but they would also get from the same date. It ultimately held that there is no apparent reason to give different dates of implementation to the members of the Accounts wing and that the Office Memo dated June 12, 1987 is violative of Article 14 of the Constitution of India and it accordingly confirmed the view taken by the Bangalore Bench.

3. It may not be necessary to refer to various decisions of this Court on the scope of Article 14 particularly on the question of discrimination. Suffice if we refer to few of them which are cited quite often. It is well settled that equality before the law means that among equals the law should be equal and should be equally administered and that like should be treated alike. However, the principle does not take away from the State the power of classifying persons for legitimate purposes. In *Ameerunnissa Begum v. Mahboob Begum* ((1953) SCR 404 : AIR 1953 SC 91) it was held thus : (SCR pp. 413-14)

"... [A] Legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate".

In *State of W. B. v. Anwar Ali Sarkar* ((1952) SCR 284 : AIR 1952 SC 75) it was held thus : (SCR pp. 334-35)

"The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In

order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others and (2) that that differential must have a rational relation to the object sought to be achieved by the Act. The differential which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them."

In *E. P. Royappa v. State of T. N.* ((1974) 4 SCC 3 : 1974 SCC (L & S) 165 : (1974) 2 SCR 348), *Maneka Gandhi v. Union of India* ((1978) 1 SCC 248) and *Ramana Dayaram Shetty v. International Airport Authority of India* ((1979) 3 SCC 489) this Court has held that Article 14 strikes at the arbitrariness in State action and ensures fairness and equality of treatment. In *D. S. Nakara v. Union of India* ((1983) 1 SCC 305 : 1983 SCC (L & S) 145) the above three decisions are referred to and the ratio laid down is as under : (SCC pp. 317-18, para 15)

"Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differential which distinguishes persons or things that are grouped from those that are left out of the group and that differential must have a rational nexus to the object sought to be achieved by the statute in question."

4. In the instant case the question is whether there was apparent reason to give different dates of implementation of the recommendations of the pay Commission in respect of the members of the Accounts wing and whether such an implementation offends Article 14 and 16 in any manner ? It is not in dispute that after the report of the Pay Commission the government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from January 1, 1986. It is clearly indicated in the report that in regard to recommendations in other matters the government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The second part of the recommendations relates to treatment of scales of pay of Rs. 1400-2000 and Rs. 2000-3000 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the government will have to take specific decisions to give effect from a suitable date. The government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay. In this context it is relevant to refer to paragraph 4 of the Officer Memo dated June 12, 1987. It reads as under :

(4) The question regarding number of the posts to be placed in the higher scales of pay has been under the consideration of the government and it has now been decided that the ratio of number of posts in higher and lower scales in the Organised Accounts cadres as well as in Accounts wing of the IA & AD may be as follows :

(i) Section Officer (SG) Rs. 2000-6-2300-EB-75-3200 80 per cent

(ii) Section Officer Rs. 1640-60-2600-EB-75-2900 20 per cent

(iii) Senior Accountant Rs. 1400-40-1600-50-2300-EB-60-60-2600 80 per cent

(iv) Junior Account Rs. 1200-30-1560-EB-40-2040 20 per cent

The designations in different Organised Accounts cadres may be different. In such cases also the pay structure on these lines may be decided.

The government have to necessarily frame rules for appointment to these functional grades and the government decided that those who have passed the graduate examination and who have completed three years as Section Officer could be placed in the category of the persons entitled to the scale of pay of Rs. 2000-3200 and the same post was redesignated as Assistant Accounts Officer which post was not there previously. A Circular dated August 17, 1987 makes this aspect clear. It can be seen that the category of officers who have to be placed in the functional grade had to be decided by the government and accordingly the government took the decision in the year 1987. Therefore it is not correct to say that these officers who were subsequently placed in the functional grade belong to the same group who were entitled to the respective scales in their own right on January 1, 1986 itself. It must be borne in mind that in order to enable the identification of posts and fitment of proper persons against them the government had to take a decision. We have already noted that the recommendations of the Pay Commission deal with parity of scales of pay of the staff in IA & AD and other Accounts organisations after holding that Audit and Accounts wings' functions are complementary. But the Pay Commission also pointed out that the posts in the scales of pay of Rs. 1400-2000 and Rs. 2000-3200 should be treated as functional grades requiring promotion as per normal procedure and it was left to the government to decide about the number of posts to be placed in these scales. Paragraph 4 of the Office Memo dated June 12, 1987 deals with the later part of the recommendations and clearly provides for the identification of the posts carrying somewhat higher responsibilities and duties and for an exercise to be undertaken for fitting the senior and suitable persons against these posts. The government after due consideration decided the issue. The Circular dated August 17, 1987 clearly shows that some of the posts are identified as belonging to the higher functional grade and accordingly issued instructions in conformity with its Office Memo dated June 12, 1987 and accordingly they were given the benefit with effect from April 1, 1987.

5. One of the submissions of the learned counsel for the respondents is that the persons allocated to the Accounts wing, who possessed similar qualification before and after entry into the department, were performing duties of same nature, as those allocated to the Audit wing, and that being so, allowing them lower scales of pay than those allowed to the Audit wing was violative of Articles 14 and 16 of the Constitution. It is true that all of them before restructuring belonged to one department. But that by itself cannot be a ground for attracting Articles 14 and 16 of the Constitution. As already mentioned the new posts have to be identified as indicated by the Pay Commission and thereafter the implementation of the recommendations in respect of higher scales can be done. The Full Bench as well as the Bangalore Bench of CAT have not correctly interpreted the scope of the recommendations. A combined reading of the Pay Commission Report and the Office Memo makes it abundantly clear that the second set of the recommendations could only be given effect to after identifying these posts. For that purpose the whole matter is required to be examined and the necessary decision has to be taken. In this context it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purposes necessary rules have to be framed prescribing the eligibility etc. and the senior Accountants who have completed three years' regular service in the grade are upgraded to this post. It is evident that all this could have been done only in the year 1987 and in the said Organised Accounts office higher scales of pay were given with effect from April 1, 1987 i.e. from the beginning of the financial year. We are unable to see as to how the respondents can insist that they must be given higher scales with effect from January 1, 1986. This claim is obviously

based on the ground that some of the officers belonging to the Audit wing were given scales with effect from January 1, 1986. But it must be borne in mind that they were eligible on that date for the higher scales. Likewise some of the officers of the Accounts wing who were eligible for higher scales were also given. But with reference to the second part of the recommendations categories of posts in the functional grades in the Accounts wing had to be identified and created. The respondents who got that benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were given effect to with effect from January 1, 1986. There is a clear distinction between the two categories. Therefore, the submission that giving two different dates of implementation of the recommendations in respect of these two categories of personnel of the Accounts wing and the Audit wing offends Article 14 and 16, is liable to be rejected.

6. The Full Bench of CAT further held that IA & AD consists two wings and both should get the same scales of pay and there nothing in the report of the pay Commission to indicate that these were to be separated and dealt with separately. It also held that bifurcation was done only for the purposes of specialisation and efficiency and not create two separate organisations. Relying on this and other similar observations made by the Tribunal, the learned counsel submitted that since all of them do the same work they should be treated alike and principle of equal pay for equal work is very much attracted. We see force in this submission. It must be noted that the Pay Commissioners Report clearly indicated that after bifurcation certain posts in Accounts wing should be declared to be brought into the function grades and thereafter the higher scales of pay should be paid to officers fitted in such grades. It may be noted that before bifurcation of them belonged to one department and as such all those officers of both the wings who were entitled to the scales of pay from January 1, 1986, have been granted the same with effect from that date but with regard to the posts that were to be identified and brought into the functional grades in future, the higher scales of pay cannot be made applicable retrospectively i.e. with effect from January 1, 1986. It cannot be said that on that date the posts identified subsequently were also in existence. In such a situation the principle of equal pay for equal work is not attracted as on January 1, 1986.

7. In *All India Station Masters' and Assistant Station Masters' Association v. General Managers, Central Railways* ((1960) 2 SCR 311 : AIR 1960 SC 384) this Court held as under : (SCR pp. 315-16)

"It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State ? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment."

8. Proceeding further the Court held thus : (SCR p. 316)

"There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between member of separate, independent classes."

The same principle was later confirmed in the case of *Kishori Mohanlal Bakshi v. Union of India* (AIR 1962 SC 1139).

9. The above ratio has been followed in *Unikat Sankunni Menon v. State of Rajasthan* ((1967) 3 SCR 430 : AIR 1968 SC 81 : (1968) 2 LLJ 129) wherein this Court observed as under : (SCR pp. 435-36)

"It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the officer is drawn for appointment to that post. No. such equality is required either by Article 14 or Article 16 of the Constitution."

In *State of Punjab v. Joginder Singh* ((1963) Supp 2 SCR 169 : AIR 1963 SC 913) this question has been considered and it is held that the question of denial of equal opportunity could arise only as between members of the same class and that it was open to the government to constitute two distinct services of employees doing the same work but subject to different conditions of service. The Court also concluded that the assumption that equal work must receive equal pay was not correct and that it was also not correct to say that if there was equality in pay and work there must be equality in conditions of service.

10. Having given our earnest consideration we are unable to agree with the view taken by the Full Bench of CAT that the principle of equal pay for equal work is attracted irrespective of the fact that the posts were identified and upgraded in the year 1987. There is no dispute that after such upgradation, officers in both the wings who are doing the equal work are being paid equal pay. But that cannot be said to be the situation as well on January 1, 1986 also. The learned counsel, however, submitted that the recommendations of the Pay Commissions should be accepted as a whole in respect of all the categories of employees. In this context he relied on two decisions of this Court. In *Purshottam Lal v. Union of India* ((1973) 1 SCC 651 : 1973 SCC (L & S) 337) a question came up whether the report of the Second Pay Commission did not deal with the case of those petitioners. It was held thus : (SCC p. 655, para 15)

"Either the government has made reference in respect of all government employees or it has not. But if it has made a reference in respect of all government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the government has done as far as these petitions are concerned."

In *P. Parameswaran v. Secretary to the Government of India* ((1987) Supp SCC 18 : 1987 SCC (L & S) 270 : (1987) 4 ATC 198) in a short judgment this Court observed that because of the administrative difficulties the government cannot deny the benefit of the revised grade and scale with effect from January 1, 1973 as in the case of other persons.

11. There is no dispute that in the instant case the terms of reference of the Pay Commission applied to all the categories of government servants. But the question is as to from which date the other category referred to above namely Assistant Accounts Officer etc. should get the higher scales of pay. Identification of these posts and the upgradation cannot be treated as mere administrative difficulties. The implementation of the recommendations of the Pay Commission according to the

terms thereof itself involved this exercise of creation of posts after identification which naturally took some time. Therefore the above decisions relied upon by the learned counsel are of no help to the respondents.

12. For all the above reasons we set aside the orders questioned in all these civil appeals and accordingly allow them. In the circumstances of the cases, there will be no order as to costs.

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