

Government of A. P. and Anothers

Vs

M. Pandurang and Others

Civil Appeal No. 11465 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

20.11.1995

ORDER

1. Leave granted.

2. Respondent 1, namely, M. Pandurang, and Respondent 14, namely, V. Parvathalu, are reported to be dead. In spite of the fact that time was given to the State for impleading the LR's, the needful has not been done. Therefore, the appeal as against those two respondents stands abated. It is accordingly dismissed.

3. As regards the other respondents, the facts are fairly clear that they were working as Junior Analysts in the Institute of Preventive Medicine, Public Health Labs and Food (Health) Administration which was under Medical and Health Department. They claimed that since their juniors were drawing more pay than them in the cadre of Junior Analysts, they invoked the jurisdiction of the Tribunal for payment of equal pay under Article 39(A) of the Constitution. The Tribunal in the impugned order dated 15-11-1995 has allowed the writ petition and directed implementation of the order passed in similar circumstances. Feeling aggrieved by that order, this appeal has been filed.

4. It is stated in the petition that since one of the juniors was granted selection grade, he was drawing higher scale of pay. Another junior, in view of his longer length of service in the feeder cadre, is drawing higher scale of pay. Therefore, the respondents are not entitled to the parity of the scale of pay with those persons. Shri Nageshwara Rao, the learned counsel for the respondents, contended that the Government in several GO's has implemented the directions issued by this Court and also by the High Court. Having implemented those directors, the same relief cannot be denied to the respondents.

5. We find no force in the contention. GO's were issued by the Government implementing the interim directions issued by this Court or by the High Court. However, it would be subject to the result in the main pending matters either in the High Court or in this Court. It is common knowledge that when Article 371-D(5) was declared ultra vires, a number of writ petitions were filed in the High Court and it entertained them and issued interim directions. In implementation of those interim directions, the Government issued orders but they were made subject to the result in the writ petitions. Ultimately, it is now settled law that the Tribunal has jurisdiction. No doubt, in a recent judgment, a Full Bench of the High Court has held that the Tribunal is not on a par with the High Court and the exclusion of the High Court's jurisdiction was unconstitutional and it has also jurisdiction to decide the service matter. The controversy is now referred to a larger Bench of seven Judges and the same is pending in this Court. In view of the flux in the jurisdiction of the Tribunal,

several matters were entertained by the High Court. However, they will be subject to the final decision of this Court by the larger Bench. In view of the interim directions granted by the courts, the Government has implemented them. But those orders will be subject to the result in the pending matters.

6. The controversy raised in this case is covered by the decision of this Court in *State of A.P. v. G. Sreenivasa Rao* [(1989) 2 SCC 290 : 1989 SCC (L&S) 339 : (1989) 10 ATC 61]. Therein, this Court held that if some juniors, by the circumstance of the length of service, were drawing higher scale of pay, parity cannot be claimed by the seniors on that basis. Therefore, Article 39(A) has no application to such a situation. The same ratio applies to the facts in this case. As stated earlier, one of the juniors had been granted selection grade scale of pay, by necessary consequence, he would draw higher scale of pay, though he happened to be junior to others. Another candidate was drawing higher scale of pay due to length of service in the feeder cadre. It would be grant of special pay under Rule 22(a)(i) of the Fundamental Rules for the purpose of that candidate in the higher promotional post. That would not be a ground to grant parity of scale of pay to the seniors working in the cadre.

7. Under these circumstances, the directions given by the Tribunal are illegal. The appeal is accordingly allowed. The orders of the Tribunal are set aside. No costs.