

Secretary, Finance and Planning Department and Others

Vs

Salada S. Rao and Another

Govt. of A. P. and Others

Vs

Sov Sudhakar Rao and Others

Secretary to Govt. of Finance and Planning Department and Others

Vs

Bammidi Lokanadham and Others

Secretary to Govt. of Finance and Planning Department and Others

Vs

Ramisetfy Hari Prasad and Others

Secretary to Govt. of Finance and Planning Department and Others

Vs

Bhamidipati Nageshwara Rao

Secretary to Govt. of Finance and Planning Department and Others

Vs

Sahukaru Sarvesh Kumar and Others

Civil Appeals No. 1525 of 1999 with Nos. 1529

(M. Jagannadha Rao, A. P. Mishra JJ)

16.03.1999

ORDER

M. JAGANNADHA RAO, J. -

1. Leave granted.

2. These are six appeals preferred by the State of Andhra Pradesh against the judgments of to Andhra Pradesh High Court. In CA arising out of SLI (C) No. 10167 of 1997, the appellants have questioned the correctness of the judgment of the High Court in WP No. 20512 of 1996. The

judgment under, appeal in the above case was followed by the High Court in WP No. 3696 of 1997 by its judgment dated 26-3-1997. WP No. 12883 of 1997 was allowed on 14-10-1997, WP No. 16083 of 1997 was allowed on 27-10-1997, WP No. 1426 of 1997 was allowed on 9-9-1997, following the judgment dated 26-3-1997 in WP No. 3696 of 1997. So far as CA arising out of SLP (C) No. 13440 of 1998 is concerned, it arises out of WP No. 11063 of 1996 which was allowed much earlier on 24-6-1996, following an earlier judgment of the Andhra Pradesh High Court dated 28-9-1995 in, Mohd. Azamathulla Khan v. State of A.P. ((1996) 1 ALT 432)

3. We shall first take up civil appeal arising out of SLP (C) No. 10167 of 1997 which is filed against judgment in WP No. 20512 of 1996. Here the two writ petitioners are Typists working in the subordinate courts. This civil appeal stands on a separate footing from the other five civil appeals wherein the writ petitioners are Stenotypists. We shall, therefore, refer to the facts in WP No. 20512 of 1996.

4. It may be noticed that Writ Petition No. 20512 of 1996 was filed by the two petitioners both working in the subordinate courts in Andhra Pradesh. The first writ petitioner was promoted as a Junior Assistant and later he was converted as an Additional Typist on 26-1-1983 while the second writ petitioner was appointed as an Examiner and was converted as Telugu Typist on 6-2-1985. It was stated before us that both had passed the LL B Examination after they were appointed as Typists. In the writ petition they claimed an advance increment as permitted by GOMs No. 182 Finance and Planning (FWPRC-1) Department dated 17-7-1987. They claimed that inasmuch as they were having higher qualification of LL B Degree after appointment as Typists, they were entitled to one advance increment as mentioned in this GO. The appellant-State contended that the question whether the Typist was entitled to an advance increment was already decided by a judgment of the Andhra Pradesh High Court dated 28-9-1995 in Mohd. Azamathulla Khan v. State of A.P. ((1996) 1 ALT 432) and that in the said judgment, it was held that amongst others, Typists were not entitled to an advance increment on passing LL B inasmuch as the acquisition of the said degree had no relevance so far as their work was concerned. Clause (b) of para 4 of GOMs No. 182 dated 17-7-1987 provides as follows :

"The higher qualifications, the acquisition of which entitles one for additional increments now being sanctioned should be relevant to the post held by them."

5. According to the State, the Division Bench in Azamatitulla Khan case ((1996) 1 ALT 432) had already decided that certain categories including rapists were not entitled to advance increments inasmuch as the acquisition of an LL B Degree was not relevant to the post of Typist. The High Court in its judgment in WP No. 20512 of 1996 under appeal dated 26-12-1996 after noticing that in the earlier judgment of the High Court it was held that an LL B Degree had no relevance to the post of Typist, however, observed that the post of Typist was "equivalent" to the post of Junior Assistant and for that reason the Typist could not be denied the advance increment. On that basis, the High Court in the impugned judgment granted the advance increment to the two writ petitioners (respondents herein). The High Court also held that the subsequent GOMs No. 142 dated 3-4-1996 which was issued by the State Government in implementation of the judgment of Azamathulla Kitan case ((1996) 1 ALT 432) would not come in the way of grant of these advance increments to the writ petitioners.

6. It is against this judgment that the civil appeal has been preferred by the State of Andhra Pradesh. In this appeal we have heard the submissions of learned Senior Counsel for the appellant, Mr. P. P. Rao. The writ petitioners (respondents herein) who were served have remained ex parte.

7. The history of the various government orders in connection with the advance increments issued from time to time has been set out in the earlier judgment of the High Court dated 28-9-1995 in Azamathulla Khan case ((1996) 1 ALT 432). We do not propose to go into the history of these administrative orders. It will, however, be sufficient to start with GOMs No. 182 dated 17-7-1987 to which we have already made a reference.

8. That GO was issued pursuant to the recommendations of the Pay Commission to the effect that certain advance increments should be given on the basis of possession or acquisition of higher qualifications in the revised pay scales of 1986. The conditions for grant of advance increment are set out in para 4 of the said GO which reads as follows :

"in this connection, the following instructions are issued :

- (a) No advance increment shall be admissible to those possessing only the minimum qualifications prescribed for the post.
- (b) The higher qualifications, the acquisition of which entitles one for additional increments now being sanctioned should be relevant to the post held by them.
- (c) The advance increment is to be given only once in the category in which he was working at the time of acquiring the additional qualification.
- (d) The advance increment in the Revised Pay Scales, 1986 will be admissible only to those who acquire the additional qualification after 1st July, 1986. This will also be admissible to those recruited directly after 1st July, 1986 if they possess the requisite additional qualifications at the time of their appointment.
- (e) In respect of those who acquire the qualifications after 1st July, 1986, the advance increments will be admissible from the date following the last date of examination and in respect of those recruited directly after 1st July, 1986, the advance increments will be admissible from the date of appointment if they possess the requisite additional qualifications at the time of their appointment.
- (f) As the advance increments are intended to provide adequate incentive to acquire the higher qualification, the date of normal increment will not be disturbed and the subsequent increment will accrue on the normal date of increment.
- (g) These orders shall not apply to those who have acquired additional qualifications before 1st July, 1986.
- (h) The advance increments under this order shall be admissible to everybody acquiring additional qualifications irrespective of the fact whether higher qualifications are acquired either at their own cost or at the cost of the Government.
- (i) The advance increment given for higher standards of study shall be treated as personal pay and shall be paid to the individual throughout the service at that rate at which it was sanctioned.
- (j) The advance increments shall be equal to the rate of increments admissible on the date on which the employee becomes eligible for advance increments under these

orders."

9. It will be noticed that according to clause (b) of para 4 above, the higher qualification must be relevant to the post held by the employee and in view of clause (a), it should be something more than the minimum qualification. The Government also stated in para 2 of the said GO that the advance increments last sanctioned in the Revised Scales of Pay, 1978 be continued beyond 1-7-1986 subject to the same terms and conditions except the condition mentioned in Item (i) of para 4 relating to treatment of the advance increment as personal pay.

10. It appears that initially the High Court of Andhra Pradesh decided to extend the benefits of this GO to all the employees working in the High Court. But this was not approved by the Government and a batch of writ petitions were filed-which came to be disposed of by the judgment in Mohd. Azamathulla Khan case ((1996) 1 ALT 432). The High Court struck down the cut-off date 1-7-1986 as it found no nexus between the prescription of the date and the objects sought to be achieved. However, the High Court held that the acquisition of an LL B Degree was not relevant so far as the work of Record Assistants, Typists, Copyists, Bailiff, Amin, Process Servers etc. who according to the High Court were lower in status than Junior Assistants. The High Court also held that the High Court employees and Sheristadars, namely, Assistant Registrars, Section Officers, Deputy Section Officers, Court Masters, Court Officers, Translators, Assistants, both junior and senior, and all ministerial employees including Sheristadars squarely fell within GOMs No. 182 inasmuch as a Law Degree was relevant so far as these posts were concerned and, therefore, the officers holding the above posts were entitled to advance increments in accordance with the above GOMs No. 182 dated 17-7-1987. The writ petition, therefore, stood allowed partly so far as some of the categories were concerned and partly dismissed as far as other categories were concerned. It stood dismissed so far as Typists in the Judicial Department were concerned.

11. In implementation of the said judgment, the Government issued GOMs No. 142/Finance and Planning (FWPC-II) Department dated 3-4-1996 incorporating the various directions given in the judgment and squarely Specifying some categories which were referred to in the judgment either as, entitled to the benefit of advance increment or as not entitled thereto. The benefits were to be enjoyed with effect from 1-7-1986.

12. Inasmuch as the High Court in Mohd. Azamathulla Khan case ((1996) 1 ALT 432) stated that the acquisition of an LL B Degree was not relevant to the post of Typist amongst other posts, GO No. 142 dated 3-4-1996 also stated likewise but even so, the two writ petitioners (respondents herein) filed WP No. 20512 of 1996 and contended that they too were entitled to advance increments notwithstanding the earlier judgment of the High Court in Mohd. Azamathulla Khan case ((1996) 1 ALT 432). This writ petition, as stated earlier, was allowed by the High Court holding that the first writ petitioner was promoted as Junior Assistant initially and was then posted as Additional Typist on 26-1-1983, that the said post was admittedly a post equivalent to that of Junior Assistant and this appointment as Typist was made due to administrative exigencies. Similarly, the second writ petitioner who was an Examiner was appointed as Telugu Typist which was also a post equivalent to the post of Junior Assistant. This was also done on account of administrative exigencies and in view of the typing qualification of the second writ petitioner. In the counteraffidavits filed by the State, it was admitted that certain persons who were juniors to the writ petitioners but were promoted as Junior Assistants were drawing additional increments after acquiring a Law Degree. The High Court, therefore, held that in the above circumstances, the provisions of Article 14 of the Constitution of India would be violated if the writ petitioners were denied the benefit even when they were holding posts equivalent to that of Junior Assistants. The

High Court further held while arriving at this conclusion that it was keeping in view the judgment of the Division Bench in Mohd. Azamathulla Khan case ((1996) 1 ALT 432). GOMs No. 142 dated 3-4-1996 had expressly included Junior Assistants working in subordinate courts and the Judicial Department in the category of persons entitled to the additional increments after acquiring a Law Degree. This GO was interpreted by the High Court to mean that those promoted to the post equivalent to the post of Junior Assistants should also be given the benefit of the additional increment. On the above reasoning, Writ Petition No. 20512 of 1996 was allowed.

13. The learned Senior Counsel appearing for the State submitted that the judgment of the High Court in Mohd. Azamathulla Khan case ((1996) 1 ALT 432) had negated the claim of Typists for additional increments on the ground that an LL B Degree was not relevant so far as their post was concerned and that judgment had become final and, therefore, the Division Bench in the impugned judgment could not have deviated from Mohd. Azamathulla Khan case ((1996) 1 ALT 432). Alternatively, it should have referred the matter to a Full Bench if it felt that Typists should also be held entitled to an advance increment. In any event, the reasoning that the persons holding posts equivalent to that of Junior Assistants would also be entitled to the advance increments was bad. The original GO No. 182 dated 17-7-1987 which was extended to the Judicial Department by GO No. 142 dated 3-4-1996 after the judgment in Mohd. Azamathulla Khan case ((1996) 1 ALT 432) could not be extended to apply to the post of Typist by invoking Article 14 of the Constitution of India. The condition that the qualification must be relevant to the post held by an employee was a valid and reasonable condition for making a distinction.

14. In our view, the contention of the learned Senior Counsel for the appellant-State is entitled to be accepted. The earlier judgment of the High Court in Mohd. Azamathulla Khan cases ((1996) 1 ALT 432) clearly held that an LL B Degree was not relevant to the post of Typist and certain other categories. That judgment had become final and it was therefore not open to the High Court to deviate from the abovesaid judgment by applying Article 14 of the Constitution of India for granting relief to the two writ petitioners. Admittedly, the two writ petitioners were working as Typists and, therefore, they were squarely covered by the earlier judgment in Mohd. Azamathulla Khan case ((1996) 1 ALT 432). We, therefore, do not agree with the High Court. We allow this appeal and set aside the judgment and dismiss WP No. 20512 of 1996 subject however to some observations which we would like to make in this context.

15. In the earlier judgment in Mohd. Azamathulla Khan case ((1996) 1 ALT 432) which has no doubt become final, the Division Bench took the view that for certain categories of officers in the High Court and subordinate courts, the acquisition of an LL B Degree was not relevant. We have certain doubts about the correctness of the said opinion expressed by the High Court in regard to the Typists and we have also some doubts as to whether in regard to some of the other categories also, the acquisition of an LL B Degree would not be relevant. We have pointed out to the learned counsel for the appellant that on the question whether the acquisition of an LL B Degree could be relevant in the sense that it would improve the efficiency of the Typists or some of the other categories, the best judge in that matter would be the High Court on the administration side and that the High Court should be allowed to reconsider the matter and recommend to the Government as to in respect of which post or posts including Typists which were held earlier as not entitled to the advance increments, the High Court would opine that the acquisition of an LL B Degree would add to their efficiency.

16. In the event of the High Court coming to the conclusion that in respect of some of the other categories including Typists which were denied the benefit of advance increments earlier,

acquisition of an LL B Degree would be useful and would improve the efficiency, it would then be necessary for the Government to reconsider the matter afresh giving adequate weightage to the opinion of the High Court. In that event, it would also be necessary for the Government to extend the benefit to some other categories also. However, we are of the view that it would be open to the Government to extend the benefit prospectively. Subject to the above observations, CA arising out of SLP (C) No. 10167 of 1997 is allowed and the judgment of the High Court in WP No. 20512 of 1996 is set aside.

17. With regard to the other five civil appeals, we have already mentioned that in all of them, the respondent-writ petitioners are Stenotypists. Learned counsel for the State, Shri K. Ram Kumar has contended that the case of Stenotypists stands on the same footing as Typists and the High Court has erred in these five writ petitions in granting the benefit of advance increment to Stenotypists on the ground of acquisition of an LL B Degree.

18. Shri Y. Raja Gopala Rao, the learned counsel for the respondent-Stenotypists has, however, contended that there is a passage in the judgment in Mohd. Azamathulla Khan case ((1996) 1 ALT 432) dated 28-9-1995 that an LL B Degree was certainly relevant so far as those who take "dictations" are concerned, and that the said passage is referable to Stenotypists and that judgment having become final, was binding on the Government. He contended that GOMs No. 142 dated 3-4-1996 which was issued by the Government in implementation of the judgment in Mohd. Azamathulla case ((1996) 1 ALT 432) ought to have included the category of Stenotypists among others who were held entitled to the advance increment.

19. The learned counsel for the respondent-Stenotypists also contended that the cause title in Mohd. Azamathulla case ((1996) 1 ALT 432) itself shows that one Madhusudbana Rao who was at Sl. No. 8 in WP No. 11053 of 1988 (Mohd. Azamathulla being the first writ petitioner in that case), was himself a Stenotypist and that, therefore, the said judgment must be treated as one in favour of the Stenotypists. The learned counsel for the respondents relied upon the following passage from Mohd. Azamathulla Khan case ((1996) 1 ALT 432). It reads as follows :

"As already discussed by us supra, the test is whether LL B degree is a higher qualification and relevant for the posts held by the petitioners. The duties of court employees in different branches - taking down dictation of judgments, preparing cases for bearing, preparing decrees in accordance with the judgments, supervising service of process and execution proceedings, translating depositions of witness and documents into English, to name only a few - are all but integral part of effective court management warranting high degree of proficiency, for the attainment of which the contributory factor is a degree in law. When the object of the scheme of advance increments as adumbrated in the two GOs, GOMs No. 89 and GOMs No. 182 - and several other subsequent orders, being promotion of excellence, exclusion of the judicial employees fulfilling the prescribed criteria clearly smacks of arbitrariness."

20. The learned counsel for the respondent-Stenotypists also pointed out that long before the judgment dated 26-12-1996 rendered in the case of the two Typists in WP No. 20512 of 1996, the High Court had in fact allowed WP No. 11063 of 1996 filed by the five Stenotypists working in the subordinate courts by a judgment dated 24-6-1996 and in that case, another Division Bench of the High Court applied Mohd. Azamathulla Khan case ((1996) 1 ALT 432) rightly. The State had not challenged the judgment in WP No. 11063 of 1996 earlier but has now chosen to file a special leave petition belatedly with an application for condonation of delay of about two years.

21. The learned counsel for the State, Shri K. Ram Kumar on the other hand submitted that a general reading of the judgment in Mohd. Azamathulla case ((1996) 1 ALT 432) shows that Stenotypists were dealt with on a par with Typists. The learned counsel also mentioned that according to para 4(c) of GOMs No. 182 dated 17-7-1987, an employee working in a category would not be entitled to an additional increment on acquisition of higher qualification more than once and, therefore, in any event, even assuming that the various respondent-Stenotypists could claim that acquisition of an LL B Degree was relevant for the post of Stenotypist, in cases where a Stenotypists got an additional increment upon obtaining a graduate degree after he had been appointed as a Stenotypists, he would not be entitled to a further advance increment on acquisition of an LL B Degree. While working in the same category, acquisition of higher qualification than the minimum qualifications would not enable one to earn an advance increment more than once.

22. We are of the view that the learned counsel for the respondent-Stenotypists has rightly relied upon the above-extracted passage in Mohd. Azamathulla case ((1996) 1 ALT 432). The said passage clearly refers to "those taking down dictations of judgments" and those words were in our opinion clearly referable to Stenotypists because it is to them the judgments are dictated. Unfortunately, in the concluding paragraph of the judgment in Mohd. Azamathulla case ((1996) 1 ALT 432) Stenotypists were not specifically mentioned among the categories entitled to advance increments under GOMs No. 182 dated 17-7-1987. We are, therefore, of the view that Stenotypists are entitled to the advance increments as mentioned in GOMs No. 182 dated 17-7-1987 inasmuch as the acquisition of an LL B Degree was relevant to the functions performed by them even as per Mohd. Azamathulla case ((1996) 1 ALT 432). We direct inclusion of the category of Stenotypists in GO No. 142 dated 3-4-1996.r

23. The contention of the learned counsel for the State, Shri K. Ram Kumar based on para 4(c) of GOMs No. 182 dated 17-7-1987 is also liable to be accepted. As already noticed, the said para 4(c) reads as follows :

"The advance increment is to be given only once in the category in which he was working at the time of acquiring the additional qualification."

24. In a given case, where graduation is a minimum qualification and if a person appointed as Junior Assistant in that post on the basis of such a minimum qualification, acquires an LL B Degree later on, he would certainly be entitled to an advance increment. Similarly, where an LL B Degree is a minimum qualification required for a post and a person holding that post acquires an LL M Degree while in the said post, he would certainly be entitled to advance increment. So far as the respondent-Stenotypists are concerned, we do not have all the factual data relating to them before us. If while working as Stenotypists they had acquired one advance increment upon acquisition of a higher qualification other than the minimum prescribed qualification, then they would not be entitled to a further increment while working in the same category of Stenotypists, in the event of their acquiring an LL B Degree. Therefore, in each case of the respondent-Stenotypists, the fact has to be verified. Subject to the above, they would be entitled to the benefit of GOMs No. 182 dated 17-7-1987. However, if any of the Stenotypists are held not entitled to increment on passing LL B because he had got one increment upon graduation, no recovery of increments already drawn will be made. Subject to the above modification, the above five appeals filed by the State in the case of Stenotypists are dismissed.

25. All the civil appeals stand disposed of accordingly. There will be no order as to costs.