

AND :

1. THE REGISTRAR GENERAL
HIGH COURT OF KARNATAKA
BENGALURU – 560 001

RESPONDENTS

(BY SHRI. B.V. VIDYULATHA, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS AND QUASH THE MEMO DATED: 03.09.2021 ISSUED BY THE R-1 PRODUCED AT ANNEXURE-A AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.12.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition is presented with following prayers:

- (i) *Call for records;*
- (ii) *Issue a writ of Certiorari or any other writ or order quashing the Memo bearing No.HCE.13/2021 dated 3rd September, 2021 issued by the 1st Respondent produced at **Annexure-A**;*
- (iii) *Issue a Writ of Mandamus or any other Writ, Order or Direction for curing the anomaly in the Pay Scale*

*with regards to Section 6(b) of the High Court of Karnataka (Officers and Officials) Revised Pay Rules, 2018 produced herein as **Annexure-B** in so far as the petitioners are concerned;*

(iv) *to pass such further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in the interest of justice and equity.*

2. The petitioners are before this Court, calling in question a Memo dated 03-09-2021, which rejects the joint representation submitted by the petitioners, seeking setting right of the anomaly of pay fixation *qua* the 2nd respondent who despite being the junior to the petitioners is given a higher pay scale than that of the petitioners.

3. Heard Sri.Sridhar Prabhu, learned Advocate for petitioners and Smt.B.V.Vidyulatha, learned HCGP for the respondent No.1.

4. Brief facts of the case are:

Petitioners are employees of the High Court of Karnataka and are presently serving as Court Officers. Petitioners were initially appointed as Second Division

Assistants and thereafter have been promoted first as, First Division Assistants and then as Assistant Court Officers and presently as, Court Officers. It is averred in the petition that the 2nd respondent is also in the cadre of Court Officer. A seniority list was notified on 08.04.2021 by the 1st respondent which depicts petitioners to be senior to 2nd respondent. The grievance of the petitioners is with regard to the pay scale that is granted to the petitioners and that of the 2nd respondent.

5. According to the petitioners, the 2nd respondent despite being junior to the petitioners, is drawing a higher pay scale. Owing to this disparity in the pay scale, petitioners submit a representation to the 1st respondent on 29.10.2020 projecting the anomalies while adopting certain rules. The said representation was rejected without petitioners being given an opportunity of being heard and without considering the grievance of the petitioners. This was served upon the petitioners. A memo dated 03.09.2021 was issued on this behalf. Petitioners

approached this Court in W.P.No.1189/2022 which was withdrawn on 21.01.2022, with liberty to file a fresh petition. Hence, this petition.

6. Shri. Sridhar Prabhu for petitioners submitted that:

- while Central Rules were adopted by this Court on 06.03.2018 in terms of a notification, the anomaly with regard to pay scale of the 2nd respondent and the petitioners has come into light. Petitioners, in terms of Rule 6(b) of the High Court of Karnataka (Officers and Officials) Revised Pay Rules, 2018 ('Karnataka Rules 2018' for short) sought to cure the anomalies. The said prayer was rejected by the impugned memo without considering the contents of the representation of the petitioners;
- petitioners are entitled to their pay to be equivalent to that of 2nd respondent, as all of

them are presently in the same cadre and the 2nd respondent is junior to the petitioners;

- Rule 6(b) of the Karnataka Rules 2018, permits setting right any anomaly consequent upon adoption of the Central Pay Rules of 2008 or 2016. He placed reliance on several judgments of Apex Court to buttress his submission with regard to the principle of equal pay for equal work.

7. Opposing the petition, Smt. Vidyulatha for first respondent submitted that the petitioners have no right to claim that they are entitled to equivalent pay to that of the second respondent. While adopting the pay rules, what has emerged is beneficial to the 2nd respondent and petitioners cannot claim as a matter of right that they should be granted that particular pay scale. Petitioners are being given the pay scale applicable to the Court Officers and what is granted to the 2nd respondent is also the same.

8. I have carefully considered rival contentions and perused the records.

9. Based on the submission on both sides, the question that arises for consideration is:

Whether there is any anomaly in the pay scale of the petitioners in comparison to that of the 2nd respondent?

Re-point(i)

10. Undisputed facts of the case are, the entry of service of the petitioners is with the cadre of Second Division Assistants and have travelled upto the cadre of Court Officers. In terms of the notification dated 06-03-2018 the High Court of Karnataka (Officers and Officials) Revised Pay Rules, 2018 was notified adopting Central Civil Services (Revised Pay) Rules, 2008 and Central Civil Services Pay Rules, 2016 to all the officers of the 1st respondent with effect from 06.10.2004.

11. Anomaly had arisen in the pay scale after adoption of the Rules 2008 and 2016 *supra* and therefore a

representation was submitted to the first respondent seeking correction of the anomaly. Representation dated 29.10.2020 reads as follows:

"We the Court Officers who are all seniors to Sri. S.N.Nataraj in the Court Officers' cadre are submitting the below few lines for kind consideration, with regard to anomaly caused, as a consequence of adoption of Central Pay Scales and Fixation of Pay.

1. It is submitted that though, we the undersigned Court Officers are seniors to one Sri. S.N. Nataraj, in the cadre of Asstistant Court Officer, as well as, in the cadre of Court Officer. While adopting Central Pay Scale to the High Court employees, our pay is fixed at lesser levels. It is very pathetic situation that, the Pay of those who were promoted as Assistant Court Officer, even earlier to Sri. Nataraj is also fixed at the lower levels. In fact, in the State Pay structure, the Pay of earlier promotees was at higher level than the later promotees. However, because of the adoption of Central Pay Rules, those who are seniors to Sri. Nataraj, are now drawing lesser pay than him.

2. It is very germane to note that before adopting the Central Pay Scale structure, there was no such anomaly. A seniority wise comparative statement of the Basic pay of Sri. Nataraj and his seniors, is produced at Annexure-A for kind perusal.

3. It may also be noted that, if the Hon'ble Court in its dictum had ordered for pay fixation from the prospective date, our pay

would not have been less than Sri. S.N.Nataraj. We are very much obliged that the Court has directed for Pay fixation from retrospective date, but unfortunately, because of some unscientific method of Pay fixation adopted by the Central Government between 2006 and 2015, we are deprived of availing our promotional benefits, as all our promotions have taken place during the said period. As a consequence of adopting the said unscientific method of Pay fixation, anomaly has been caused to seniors. The detailed facts narrating the cause for anomaly is produced at ANNEXURE-B.

4. Under these circumstances, it is most respectfully submitted that to overcome all such anomalies, while adopting Central Pay Structure to High Court employees, a provision has been enacted in High Court of Karnataka (Officers and Officials) Revised Pay Rules, 2018. The relevant para 6(b) of the Notification bearing No.HCE 1174/2011 Dated 06th March 2018 notified in the aforesaid Rules reads as under. -

6(b) Consequent upon adoption of Central Pay Scales and Fixation of Pay to the Officers and Officials of High Court of Karnataka, anomaly, if any, shall be cured after obtaining necessary orders from the Hon'ble Chief Justice, High Court of Karnataka.

Accordingly, under the aforesaid Rules the Hon'ble Chief Justice is vested with the Powers to cure the anomaly caused to the senior Officers.

5. In addition, it may be noted that the Government had relaxed the rules to the extent of fixing minimum basic pay to the promotees in the cadres in which there is an element of

Direct recruitment. It is learnt that the Accountant General has addressed a letter to the Registry in this regard. The same may be called for from the Establishment branch. This aspect of relaxing the rules goes to show that the Pay Fixation Rules are not mandatory in nature and they are directory in nature and they can be relaxed, in order to meet the ends of justice.

6. It is further submitted that, it is a common phenomenon that certain anomalies like junior drawing higher pay than his seniors will occur while implementing the New Pay Commissions both at Central and State Government levels. Hence, in order to overcome such anomalies, always, an option would be incorporated in the Rules itself to 'Step up' the Pay of Senior Officials to that of Junior, drawing higher Pay. This shows that pay of seniors has to be equated or stepped up with that of junior whose pay is fixed at higher level.

7. It is most respectfully submitted that, it is settled principles of law that the fixation of pay of Seniors at lower levels than a Junior employee, for no fault of the senior employees is unjust and against to the principles of law. If any anomaly or inconvenience is caused while framing the Rules, the same needs to be set right. Otherwise, it amounts to injustice. In our case, the anomaly caused is the combined effect of amending the Rules to the extent of creating new channel of promotion to the Assistant Court Officer cadre from Stenographer cadre, to which we the seniors were deprived. In addition, on adoption of Central Pay Structure we lost the monetary benefits of promotions. For no fault, our pay is fixed at lesser level than Sri. S.N. Nataraj, who is junior to us.

8. Hence, provision of para 6(b) of the Notification bearing No.HCE 1174/2011 Dated 06th March 2018 culled out above from the Rules needs to be exercised in order to overcome the anomalies caused to Court Officers consequent upon adoption of Central Pay Scales and Pay Fixation. Hence, this representation.

WHEREFORE, it is most respectfully prayed to direct the concerned to fix the Pay of Court Officers who are seniors to Sri.S.N.Nataraj, in the Court Officers cadres on par with his pay, from the date of his promotion as Assistant Court Officer in view of the powers vested with the Hon'ble Chief Justice vide Notification No.HCE 1174/2011 dated 06th March 2018, to cure the anomaly caused while adopting Central Pay Scale and Fixation of Pay."

12. The solitary grievance of petitioners is, the pay scale of one S.N.Nataraja, 2nd respondent herein is higher than that of the present petitioners. The claim of petitioners is that the 2nd respondent is junior to petitioners in any of the seniority lists of any of the cadres. In support of the same a seniority list dated 08.04.2021 is annexed to the petition. In the said seniority list, petitioners are shown as senior to 2nd respondent and it is an admitted fact that petitioners are drawing lesser salary than that of 2nd respondent. The pay scale of all the petitioners in comparison to 2nd respondent is that, petitioners are drawing

Rs.15,260/- as their basic for the year 2009, which is followed throughout and even as on date the petitioners are drawing lesser pay than that of the 2nd respondent. The 2nd respondent even for the year 2009, was drawing a basic pay of Rs.17,540/- which is definitely more than the basic pay of petitioners. Therefore, petitioners have prayed for setting right the anomaly.

13. The defence of the 1st respondent is, that the 2nd respondent was granted several increments between 2003 and 2008 in the cadre of Stenographer and thereafter was promoted as Assistant Court Officer on 01-08-2009 and his pay was refixed in terms of the Revised Pay Rules of 2018. It was at Rs.10,000/- on 01-08-2019, therefore the corresponding pay scale in the Central Revised pay scales of 2018 was at Rs.17,540/-. It is the further defence that in respect of the petitioners, their pay scale was fixed equivalent to the central scale in the cadre of Typist as on 06.10.2004 while granting 10 years Time Bound Advancement and they were all promoted as First Division Assistants, in the year 2008 and only one increment was granted to them. As such, there is no anomaly.

14. In substance, petitioners and the 2nd respondent are all working in the same cadre as Court Officers. The fact that the 2nd respondent is junior to the petitioners is not in dispute. Therefore, if petitioners are seniors to 2nd respondent and petitioners and the 2nd respondent are performing the same duties as Court Officers, there cannot be any anomaly while adopting a particular pay scale in favour of the petitioners in the year 2018.

15. Rule 6(b) of the Karnataka Rules, 2018 reads as follows:

".....

6. Other service Conditions:

.....

(b) Consequent upon adoption of Central Pay scale and Fixation of Pay to the Officers and Officials of High Court of Karnataka anomaly, if any, shall be cured after obtaining necessary orders from the Hon'ble Chief Justice, High Court of Karnataka.

....."

16. In terms of Rule 6(b), the employees of the Court are entitled to seek curing of the anomaly from the hands of Hon'ble the Chief Justice. Therefore, the representation was submitted.

The same came to be rejected by the impugned memo. The memo reads as follows:

"With reference to the above subject, I am directed to inform that, the joint representation submitted by you requesting to set right the anomaly caused due to pay fixation on par with your Junior Sri S.N.Nataraja, Court Officer has been rejected by the Hon'ble High Court Staff Committee and the same has been approved by Hon'ble Chief Justice, that as per the opinion of Financial Advisor, that the conditions as per Rule 7 read with Note 10 of both 6th Central Civil Service (Revised Pay) Rules 2008 and 7th Central Civil Service (Revised Pay) Rules 2016 are not fulfilled."

17. The memo takes shelter under Rule 7 r/w Rule 10 of the 6th Central Civil Service (Revised Pay) Rules 2008 and 7th Central Civil Service (Revised Pay) Rules of 2016 to reject the claim of petitioners that they do not fulfill the conditions prescribed in the Rules.

18. It is the case of the petitioners that those Rules are inapplicable to petitioners' claim. I find merit in the said contention.

19. Rule 7 r/w Note 10 of the Rules 2008 is applicable to a senior Government servant promoted to higher post before

01.01.2006. Petitioners were not promoted to the cadre of Court Officers before 01.01.2006. Therefore, the issue requires to be reconsidered by the 1st respondent, in the light of the judgments of the Apex Court, which clearly depicts that the junior should not be permitted to draw a higher pay scale to that of the seniors in a solitary cadre.

20. In support of their contention petitioners have placed reliance on the following authorities

(i) In **JAIPAL V. STATE OF HARYANA**¹ the Apex Court has held as follows:

“....”

6. We have given our anxious consideration to the material placed before us. On a careful analysis of the same we find that the nature of duties and functions performed by instructors are similar to those performed by squad teachers. The functions and duties of both classes of persons are primarily directed to advance the cause of education to bring social awareness among the people in the rural areas and to create interest in various social economic and educational activities. Bringing adults to centre for educating them is a difficult task and to impart education to drop-outs children is not an easy job. One of the main duties of the instructors is to motivate the adults and drop-out children to participate in the

¹ (1988) 3 SCC 354

activities and to motivate them for taking education. The instructors teach 4 hours a day and thereafter they have to do survey work and motivation work in addition to that the instructors are required to carry out additional duties which are assigned to them by the Department. This is evident from the circular letter dated 4-3-1987 issued by the Joint Director, Adult Education (Annexure B) to the affidavit of Rajender Singh petitioner. The letter was circulated to all the instructors of adult and informal education, it reads as under:

"Dear

To bring adults in centres is a very difficult task. This is possible only when our centres are attractive and adults feel happy to come to the centres and forget all their worries after coming to the centre. Instructors should behave with the adults in such a way that they think him their friend and guide. The adults should be told that by hearing, reading and writing, they can know about the government schemes made for their benefit and progress. Every Instructor is supposed to know about all such schemes so that they can guide their students. The adults should get the guidance from the instructors as to how they can get loans from various banks and cooperative societies. In the coming year we must equip the instructors with training so that they can fulfil the responsibility given to them.

In a meeting held at Karnal you were told about the facilities being given to widows and old persons. You have to properly propagate the same.

I will be very grateful to you for circulating this letter to all the instructors and supervisors.

Office Distt. Adult Education Officer, Karnal. Page No. A-d-4/3480-659, Karnal dated 13-3-1981.

One copy of the letter to be circulated to all instructors and supervisors of Adult and Informal Education for necessary action.

District Adult Education Officer, Karnal, 13-2-1987."

The aforesaid duties which are required to be performed by the instructors are in addition to their four hour teaching duty. Further the instructors are required to organise sports like kho-kho, kabadi and athletics, and to participate in the local functions and to motivate affluent villagers to give donations for the adult education scheme. This is evident from a circular letter issued by the District Adult Education Officer, Ambala on 12-11-1986 (Annexure C to the affidavit of Rajender Singh). Having regard to these facts and circumstances we are of the view that there is no difference in the nature of duties of the instructors and squad teachers and both of them carry out similar work under the same employer. The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of "equal work equal pay" would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work."

(ii) In **MEWA RAM KANOJIA V.ALL INDIA INSTITUTE OF MEDICAL SCIENCES**², the Apex Court has held as follows:

"4. The doctrine of "Equal pay for equal work" is not expressly declared a fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal pay for equal work" is not abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "equal pay for equal work" is applicable when employees holding the same rank, performing similar functions and discharging similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. The principle of "Equal pay for equal work" has been enforced by this Court in Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] , Dhirendra Chamoli v. State of U.P. [(1986) 1 SCC 637 : 1986 SCC (L&S) 187] , V.J. Thomas v. Union of India [1985 Supp SCC 7 : 1985 SCC (L&S) 516] , P. Savita v. Union of India [1985 Supp SCC 94 : 1985 SCC (L&S) 826 : 1985 Supp 1 SCR

² (1989) 2 SCC 235

101] , *Bhagwan Dass v. State of Haryana* [(1987) 4 SCC 634 : 1988 SCC (L&S) 24 : (1987) 5 ATC 136] and *Jaipal v. State of Haryana* [(1988) 3 SCC 354 : 1988 SCC (L&S) 785 : (1988) 7 ATC 771] . In all these cases this Court granted relief on the application of the doctrine of "Equal pay for equal work".

5. While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality."

(iii) In **STATE OF PUNJAB V. JAGJIT SINGH**³ the Apex Court has held as follows:

"....

8.D.S. Nakara v. Union of India [*D.S. Nakara v. Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] , **decided by a five-Judge Constitution Bench:**

8.1. It is not necessary for us to narrate the factual controversy adjudicated upon in this case. In fact, the main

³ (2017) 1 SCC 148

issue which arose for consideration pertained to pension, and not to wages. Be that as it may, it is of utmost importance to highlight the following observations recorded in the above judgment : (SCC pp. 324-25, para 32)

*"32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice—social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v. Union of India* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under : (SCC p. 619, para 1)*

'1. ... Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for the rights and are

seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.'

*Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations [**Ed.** : The matter between two asterisks has been emphasised in original.] unsuited to their age or strength [**Ed.** : The matter between two asterisks has been emphasised in original.] . Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of [**Ed.** : The matter between two asterisks has been emphasised in original.] unemployment, old age, sickness and disablement [**Ed.** : The matter between two asterisks has been emphasised in original.] , and [**Ed.** : The matter between two asterisks has been emphasised in original.] in other cases of undeserved want [**Ed.** : The matter between two asterisks has been emphasised in original.] . Article 43(3)*

requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities."

(Emphasis Supplied)

It is however impossible to overlook, that the Constitution Bench noticed Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , and while affirming the principle of "equal pay for equal work", extended it to pensionary entitlements also."

21. In view of the above, the 1st respondent has to reconsider the case of the petitioners, strictly in consonance with the judgments rendered by the Apex Court referred to *supra* not with reference to Rule 7 r/w Note 10 of the Rules 2008. In the result, the following:

ORDER

- (i) Writ Petition is ***allowed in part.***
- (ii) Memo dated 03-09-2021 issued by the 1st respondent stands set aside.
- (iii) The matter is remitted to the first respondent to reconsider the case of the petitioners and set the anomaly right, in accordance with law.

(iv) First respondent shall pass orders within three months from the date of receipt of copy of this order.

No costs.

Sd/-
CHIEF JUSTICE

SPS