

PETITIONER:
KARNATAKA LOKOPAYOGI ILAKA TANTRIKA, SAHAYAK NOUKARARA SANGHA

Vs.

RESPONDENT:
THE STATE OF KARNATAKA & ANR.

DATE OF JUDGMENT: 03/02/1999

BENCH:
Sujata V. Manohar, R.C.Lahoti

JUDGMENT:

Mrs. Sujata V. Manohar, J.

This is an appeal from a judgment and order of the Karnataka Administrative Tribunal dated 4.9.1992 in various applications including Application No.16 of 1990. By the said judgment and order the Tribunal dismissed the application of the appellant and upheld the legality of an order of the Karnataka Government dated 27.11.1989 by which the Government rejected the representation of the appellant for grant of a pay scale equal to the pay scale of Senior Work Inspectors to all the Junior Work Inspectors who were members of the appellant-association. By that order the Government also directed recovery of excess salary paid to Junior Work Inspectors. The present appeal is filed on behalf of Junior Work Inspectors in the work charged establishment of the Public Works Department of the Karnataka Government.

Prior to 1.9.1971 in the work charged establishment of the Public Works and Electricity Department of the Karnataka Government there were several categories of posts available to the supervisory staff. These posts included the posts of Maistries, Work Inspectors, Karkoons, Road Inspectors, Augur Measurer, Labour Maistries, Gang Maistries and so on. By a Government order dated 20.9.1971 the Government reclassified various posts in the work charged establishment of the Public Works Department with effect from 1.9.1971 into two categories. Some of the posts were clubbed together and reclassified as the post of Senior Work Inspectors. These posts were posts which, prior to 1.9.1971, carried the pay scale of Rs.90-3-105-4-145-EB-5-200. Some of the posts, however, had the pay scale from Rs.80-145. All these posts, after being reclassified as Senior Work Inspectors with effect from 1.9.1971 were given the new pay scale of Rs.120-240. By the same order a number of other posts which carried, prior to 1.9.1971, the pay scale of Rs.65- 95 were clubbed together and reclassified as Junior Work Inspectors. The post of Junior Work Inspectors was given the pay scale of Rs.90- 200 with effect from 1.9.1971.

Thereafter representations were received from the Mangalore circle of the Public Works Department relating to certain anomalies which had arisen in respect of the staff under the Mangalore circle. It was represented on behalf of the Mangalore circle employees that originally with effect

from 1.9.1964 the pay scale of Work Inspectors Grade II, carried the pay scale of Rs.55-2-75-3-90 for old entrants and the pay scale of Rs.55-1-65-2-75 for new entrants. When the pay was revised with effect from 1.1.1970 as per Government order dated 7.7.1970, a common scale of pay of Rs.65-1-70-2-95 was sanctioned for both the old entrants and the new entrants. The old entrants represented that as a result of this common scale of pay which was given, their increments were substantially reduced under the revised scales of pay. They, therefore, submitted that there was a monetary loss to the old entrants in the category of Work Inspectors Grade II, and there should be a revision of their scales of pay to get rid of this anomaly. It was recommended by the Chief Engineer (C & B) Bangalore that the Government should sanction a revised scale of pay of Rs.80-2-90-3-120-4-140-5-145 with effect from 1.1.1970 in respect of the old entrants. Ultimately, by an order of 23.4.1980 the Government directed that the Work Inspectors Grade II (old entrants) of Mangalore circle be assigned the scale of pay of Rs.120- 240 with effect from 1.9.1971.

It seems that this order of 23.4.1980 was misunderstood by some of the Executive Engineers and Assistant Executive Engineers as extending the scale of pay of Rs.120-240 to Junior Work Inspectors also, while in fact, the Junior Work Inspectors were given the pay scale of Rs.90-200. Some of them made payments accordingly. Therefore, by an order dated 11.4.1989 issued by the Chief Engineer, it was directed that the Junior Work Inspectors should be granted the pay scale of Rs.90-200 and that the scale of pay of Rs.120-240 to Junior Work Inspectors should be cancelled and the arrears paid should be recovered.

Prior thereto, the various Junior Work Inspectors had filed applications before the Karnataka Administrative Tribunal, Bangalore in 1986 and 1988 for giving them the same pay scale as that given to the Work Inspectors in the Mangalore circle. All these applications were heard together and by a judgment and order dated 29th of September, 1988 the Tribunal directed the State Government to take a decision on the question within a period of three months. The Government thereafter considered the question of granting to the Junior Work Inspectors pay scale of Rs.120-240. It also considered the direction given by the Karnataka Administrative Tribunal in its order of 29.9.1988 as also the earlier order of the Government in connection with Work Inspectors (old entrants) dated 23.4.1980. Thereafter the respondents passed the impugned order dated 27.11.1989 rejecting the proposal to sanction a higher pay scale of Rs.120-240 for all Work Inspectors whether junior or senior with effect from 1.9.1971.

Immediately thereafter a number of other applications filed on behalf of Junior Work Inspectors of the work charged establishment came up for consideration before the Karnataka Administrative Tribunal. The Tribunal by its order dated 21st of December, 1989, in those applications (B.N. Thimmaiah v. The State of Karnataka & Ors.) noted that there was an earlier litigation on the same question which was disposed of by the Karnataka Administrative Tribunal on 29.9.1988 where the Junior Work Inspectors had asked for the same scale of pay as given to the old entrants in the Mangalore circle (Mahadev & Ors. v. State of Karnataka & Ors.). The Tribunal also noted that in the application before it as also in the previous application

(Mahadev & Ors. v. State of Karnataka & Ors.), the State had not filed any counter-affidavits. In Thimmaiah's case, however, the Karnataka Administrative Tribunal examined in detail the various orders relating to reclassification of various posts in the work charged establishment and division of these posts into Senior Work Inspectors and Junior Work Inspectors by the order of 20.9.1971. It also noted the difference in the pay scale between Senior Work Inspectors and Junior Work Inspectors. While the former were granted the pay scale of Rs.120-240 the latter were granted the pay scale of Rs.90-200. After examining, in detail, the various subsequent orders passed and after noting the circumstances which led to a separate order being passed in respect of Work Inspectors (old entrants) in the Mangalore circle, the Tribunal held that there was no justification for giving to the Junior Work Inspectors the same scale of pay as Senior Work Inspectors. The Tribunal also held that there was no violation of the principle of 'equal pay for equal work'. It held that the work done by Senior Work Inspectors cannot be equated with the work done by Junior Work Inspectors. There was a qualitative difference in the work of the two cadres and the responsibilities were also different. It, therefore, dismissed the applications before it. It is this judgment which has been followed by the Tribunal in the impugned judgment which also raises the same question.

From the above narration it is clear that the demand of the Junior Work Inspectors for the same pay scale as Senior Work Inspectors arose only after the order dated 23.4.1980 by which, in order to remove certain anomalies relating to the pay scales given to Work Inspectors (old entrants) in the Mangalore circle, the said order was passed giving Work Inspectors (old entrants) in the Mangalore circle the pay scale of Rs.120-240 from 1.9.1971. This order was confined only to the old entrants and it did not apply to new entrants who remained in the pay scale of Rs.90-200. However, misunderstanding the said order some of the Executive Engineers gave to Junior Work Inspectors the pay scale of Rs.120-240 instead of Rs.90-200. It is surprising that for a long period of nine years the State Government did not notice this. It realised the mistake only in the year 1989 when it tried to rectify the situation by restoring to the Junior Work Inspectors the pay scale of Rs.90-200 and ordering recovery of arrears. Looking to the long period of time over which some Junior Work Inspectors had received the higher pay scale, this naturally caused resentment. Even prior thereto, considerable litigation had been generated because of the mistake committed by some Executive Engineers in giving to some Junior Work Inspectors the higher pay scales on the basis of the order pertaining to the Mangalore circle dated 23.4.1980.

It is unfortunate that this kind of uncertainty should have been generated about the pay scale to be given to Junior Work Inspectors when the order of 20.9.1971 is quite clear. It is also unfortunate that in attempting to remove an anomaly pertaining to the old entrants in the Mangalore circle the respondents should have allowed Executive Engineers to grant higher pay scales to even other Junior Work Inspectors in some other circles. The narrow question, however, is whether the Junior Work Inspectors do the same work as the Senior Work Inspectors or whether there is any basis for making a distinction between the two posts. The Karnataka Administrative Tribunal in its order dated 21.12.1989 in Thimmaiah's case has held that the work done

by the persons holding these two posts cannot be equated. Once again an attempt was made before us to show that the two posts have at times been filled as if they were interchangeable. The respondents have filed a statement of objections before this Court and have categorically stated that there is a difference between the two posts and their work is not interchangeable. The respondents have also said that Junior Work Inspectors could not be compared with Senior Work Inspectors and their pay scales were also different. Even from the original order of 20.9.1971 reclassifying posts, it is quite clear that certain posts which then carried a higher scale of pay, were clubbed together and classified as Senior Work Inspectors while some other posts which then also carried a lower pay scale were clubbed together and re-designated as Junior Work Inspectors. Therefore, right from the year 1971 there has been a clear distinction between the two posts and the scales of pay attached to the two posts. The order of the Administrative Tribunal in Thimmaiah's case was also not challenged further and has become final and binding.

The respondents have also pointed out in their affidavit that since all these posts are in the work charged establishment they shall cease to exist immediately after the retirement of the incumbents. There is no promotional avenue in the work charged establishment. There is also no fresh recruitment. It is only in the case of absorption that the persons in the work charged establishment will be fitted into appropriate posts. Looking to all these circumstances, we do not see any reason to disagree with the view taken by the Tribunal in the present case. The State Government may consider the question of recovery of arrears in the light of the directions given by the Tribunal. The appeal is accordingly dismissed. There will, however, be no order as to costs.