

PETITIONER:
RAO SOMASHEKARA & OTHERS

Vs.

RESPONDENT:
STATE OF KARNATAKA & ANOTHER

DATE OF JUDGMENT: 16/09/1997

BENCH:
SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

W I T H
(Writ Petition Nos. 827/90, 822, 416 & 718/91)
J U D G M E N T

M. JAGANNADHA RAO, J.

These five writ petitions filed under Article 32 of the Constitution of India are all connected and raise the same questions. The petitioners are Secondary School Teachers in the State of Karnataka serving in Government and Government aided Secondary Schools.

Certain Secondary grade teachers in the former State of Hyderabad which were allotted to the State of Karnataka as on 1.11.1956. After reorganisation, the corresponding posts in former State of Mysore were equate with the posts of the allotted personnel. There was revision of pay scale on 1.1.1957 and again on 1.1.1961 but the disparity in pay scales was allowed to continue. This anomaly was continued till 1.1.1970 - for nearly fourteen years, when for the first time under the concerned Karnataka Civil Services (Revised Pay Rules), 1970 which came into force on 1.1.1970, based on the report of the pay Commission headed by Justice Tukol, the scales were brought on par with scales of allotted Hyderabad officers prospectively by enhancing the scales of the all Karnataka teachers w.e.f. 1.1.1970. But the grievance of the Secondary School teachers of Government of Karnataka for the period from 1.1.1957 to 31.12.1969 continued and has not been removed. That is the subject of these writ petitions.

It is stated that, so far as disparities in pay among Mysore and Karnataka Primary school teachers on the one hand and allotted Hyderabad primary school teachers are concerned, Government orders as late as 1986 showed that those grievance also arise out of the States Reorganisation Act, 1956 in respect of pay scale disparities and have been removed by the Government of Karnataka. On that basis, petitioners, Secondary school teachers of Mysore and Karnataka claim that distance of time is no bar to relieve their legitimate grievance for the period 1.1.57 to 31.12.69.

In support of this contention, reliance is placed on two sets of facts.

Firstly the non-allottee primary school teachers of Karnataka filed Writ Petition No.2801 of 1971 in the Karnataka High Court for equating their pay scale with the Hyderabad area primary school teachers. The High Court dismissed the said writ petition on 10.1.1975 on the ground of laches after however holding that the denial of equal pay was discriminatory. In SLP No.908 of 1975 preferred by the Writ petitioners therein to this Court in Sri Raghuram Hegde & others vs. State of Mysore, a compromise was arrived at with prospective effect from 1.1.1978 stating that 50% of the difference between the pay scales will be given. The pay as on 1.1.1978 of the Karnataka Primary School teachers was to be increased by 50% prospectively w.e.f. 1.1.78. The scales were increased only for purpose of computation and fixation of pay but not for payment of arrears upto 31.12.77. Various details as contained in the compromise so arrived at were incorporated in the proceedings of the Government of Karnataka dated 10.8.1979. Again, when the above compromise was being implemented, the Government stopped the benefit of this compromise from accruing to primary school teachers recruited in the State of Karnataka after 1.11.56. This was challenged successfully in B.T. Ramaswamy vs. State of Karnataka (W.P. 54/82 and batch) before the High Court of Karnataka by judgment dated 6.12.1985. Thereafter Government issued an order as late as 8.7.1986. extending the benefit of its order dated 19.8.1979 by giving increased scales of pay to all primary school teachers i.e. not only to those of erstwhile Mysore State but also to the primary teachers recruited after 1.11.1956. This was restricted to primary teachers who were recruited upto 31.12.1969. The Government directed the payment of the higher pay scale as per their earlier order dated 10.8.1979 and arrears for the period 1.1.78 to 31.4.1986 were to be credited to the General Provident Fund Account and the difference payable after 1.1.1986 to the primary school teachers was to be paid in cash. Thus as late as 8.7.96 the state of Karnataka removed grievances of primary teachers in regard to pay etc. as compared to erstwhile Hyderabad primary teachers allotted to Karnataka.

Secondly, the Karnataka High Court by judgment dated 7.9.1975 extended the benefits of the Government order dated 10.8.79 to primary school teachers in grant-in-aid schemes. This was not interfered with by this Court in State of Karnataka vs. A Venkatappayya (CA No.13757/96 dated 28.10.97). In that judgment this Court also referred to the dismissal of SLPs (C) 21003-113 etc. of 1993 dated 22.8.94 whereby this Court refused to interfere with the order of the State Administrative Tribunal extending the benefits of the order dated 10.8.79 to the primary school teachers under the local authorities of Karnataka.

In view of the above said two positive developments in favour of primary school teachers, the Secondary school teachers approached the Karnataka Administrative Tribunal in OA 2205 and 2206 of 1987 contending that they should get pay scale equalisation for the period from 1.1.1957 to 31.12.1969 also. The Tribunal rejected the petition the ground of laches on 14.12.1989. Thereafter, the present Writ petitions have been filed by other Karnataka Secondary Grade Teacher in this Court claiming equalisation of pay scales from 1.1.1957 to 31.12.1969 and payment of arrears for that period. That is how these writ petitions have arisen.

It is contended by the learned counsel for the petitioners Secondary School teachers that as late as 1986 and now 1994 and 1996 all pay-scale grievance of primary

school teachers of almost all descriptions arising out of States Reorganisation Act, have been favourably removed by the State government, but the grievances of the Secondary School teachers, also arising out of State Reorganisation for the period 1.1.1957 to 31.12.1969 have not been redressed and this is discriminatory. It is pointed out that this was done by even directing the arrears to be credited to their P.F. account and extending all benefits to primary teachers recruited after 1.11.1956 upto 31.12.1969. The petitioners contend that the fixation of 31/12/96 as the date from which the equality will be maintained is not based on any rational criteria having nexus with the anomalies arising out of the State Reorganisation Act. Learned counsel for some of the petitioners Mr. S.R. Bhat argued that in regard to the period for 1.1.57 to 31.12.69 the very continuance of the grievance for 14 years after 1.11.1956 till 1.1.1970 was violative of Article 14 of the Constitution of India. Learned counsel placed strong reliance on the judgment of this Court in Motor General Traders vs. State of A.P. [1984 (1) SCC 222] and other cases.

On the other hand, counsel for the respondent submitted that on account of State Reorganisation in 1956, difference in scales of pay between allottee officers and Mysore officers are bound to arise and are justified on account of historical reasons attributable to different geographical areas. It is also contended that the petitioners who are Secondary School teachers, have the petitioners who are Secondary School teachers, have opted for Karnataka Scales after 1.11.1956 and cannot now raise these contentions. It is also stated that the case of primary teachers cannot be relied upon to raise a plea of discrimination, even if the grievances arise out of States Reorganisation. The State has various options while clearing grievances and if it opts for a particular formula or fixes a particular date upto which alone the pay scales can be revised. It is not permissible for the Court of judicial review to interfere with such a choice. The finances of the State do not permit grant of this benefit to the secondary school teachers.

This Court had occasion to go into the question of the temporary nature of the continuance of existing laws under Section 119 of the States Reorganisation Act, 1956 and whether delays in rectifying the inequalities arising out of the said Act should be rectified by the State within any particular time frame. In State of Madhya Pradesh vs. Bhopal Sugar Industries Ltd. [1964 (6) SCR 846 (852-854)] it was observed that though continuance of the laws of the old region after the States Reorganisation Act, 1956 by section 119 of that Act was not by itself discriminatory even if it resulted in differential treatment of persons, objects and transactions in the new State because of historical reasons, still 'passage of time' could make the continuance discriminatory. It was observed in the above case that:

"By the passage of time, considerations of necessity and expediency would be obliterated, and the ground which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to

assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared."

While accepting that continuance of existing laws in the new State could not be continued without rational basis, this Court pointed out further as follows:

"But whether the continuance of unequal laws by itself sustained the plea of unlawful discrimination in view of changed circumstances could only be ascertained after a null and thorough enquiry into the continuance of the grounds on which the inequality could rationally be founded, and the change of circumstances, if any, which obliterated the compulsion of expediency and necessity existing at the time when the Reorganisation Act was enacted."

Similar principles were laid down by this Court in H.H. Shri Swamiji of Shri Admar Mutt. etc. vs. The Commissioner. Hindu Religious & Charitable Endowments Department & Others [1980 (1) SCR 368 (387-388)] wherein it was observed that the "decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because the relevance of historical reasons is bound to wear out with the passage of time". On the facts of the case, the Court refrained from striking down the provision because the period under consideration was just five or six years and there was no adequate data available to decide the question whether the continuance of the legislation amounted to hostile discrimination. The above rulings were followed in Motor General Traders vs. State of A.P. cited by the petitioner's counsel.

It is to be noticed that in these writ petitions, after 1.11.1956, the disparities in the scales of pay continued till 1.1.1970 and it was only from that date that, on the basis of Justice Tukol Commission report, the scales of the Mysore/Karnataka Secondary School teachers were brought on par with those of the Secondary School teachers of the erstwhile Hyderabad State allotted to the State of Karnataka. In other words, the State took about fourteen years to set right the disparities. As to whether any inquiry is necessary for deciding about hostile discrimination, the petitioners contend that there is no dispute because the posts in the allotted areas of Hyderabad State and of Karnataka were equated soon after 1956. Question therefore is whether, in writ petitions filed in this Court in 1991, we are compelled to interfere?

We are of the view that the State Government had before it the report of the Commission and on that basis it took a decision that the disparities should stand eliminated prospectively from 1.1.1970 and not retrospectively from 1.1.1957. The question as to whether the date from which the scales ought to have been equated should be 1.1.1970 or an anterior or a later date was a matter which had to be arrived at by taking all factors into account. It will be difficult for this Court to decide as to from what date the continuance of the existing scales should be treated as discriminatory or the continuance would lose its temporary character arising out of section 119 of the States Reorganisation Act. It may be that the State of Karnataka

felt that the grievance of the non-allotted primary school teachers whose salaries were lesser than the salaries of non-allotted Secondary School teachers was a matter of graver concern requiring redressal even as late as 1979 or 1986. Merely because the grievances of non-allotted primary teachers were remedied even after considerable lapse of time, we cannot say that grievances of secondary school teachers - even if it was late - should have also been redressed for the period 1.1.1957 to 31.12.1969. Above all, the financial burden involved was also a matter of relevant consideration. We are not therefore inclined to hold that the cut-off dated of 1.1.1970 fixed after the report of Justice Tukoil Commission, in regard to Secondary School teachers, is arbitrary or violative of Article 14. In any event, principle of laches applies equally to application under Article 32 of the Constitution of India [Rabindra Nath vs. Union of India (1970 (2) SCR 1697)].

For the aforesaid reasons, these writ petitions are dismissed.