

CASE NO.:
Appeal (civil) 247-251 of 1993

PETITIONER:
Government of Andhra Pradesh

RESPONDENT:
P. Hari Hara Prasad & Ors.

DATE OF JUDGMENT: 10/10/2002

BENCH:
Y.K.Sabharwal & H.K. Sema.

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

The respondents are the writ petitioners who have succeeded before the High Court in their claim of parity of pay. The writ petitions were filed by the employees of the High Court of Judicature, Andhra Pradesh, Hyderabad and also by employees of various subordinate courts in the said State claiming that their scales of pay should be on par with the Assistants, Typists and Steno-typists of the Andhra Pradesh Secretariat Service. Their claim was based on G.O.Ms. No.316 dated 13th September, 1971 and G.O.Ms. No.80 dated 28th March, 1973. These Government Orders have been issued by Finance (Pay-Commission), Department of Government of Andhra Pradesh. The 1971 order was issued to comply with judgment of the High Court of Andhra Pradesh in Writ Petition No.3713 of 1969 filed by certain L.D.Cs., Typists and Steno-typists working in the Departments of Secretariat. By that order the Government directed that the revised pay scale of Rs.110-225 be given to all graduate L.D.Cs., graduate Typists and graduate Steno-typists. The 1973 Government Order was issued extending the same benefit of non-graduates on acceptance of their representations. The writ petitioners submitted before the High Court that the benefit of these two Government Orders was not extended to them, viz. employees of the High Court and subordinate courts and they were kept in dark till filing of the writ petitions.

In opposition to the writ petition, it was submitted that the Government Order dated 13th September, 1971 was not applicable to the employees of the High Court and the subordinate courts and that it was applicable only to the employees of the Secretariat.

Reliance was also placed by the Government upon a judgment of a learned Single Judge of the High Court in Writ Petition No.4357 of 1982 dated 3rd September, 1987 wherein dealing with the applicability of Government Order dated 13th September, 1971, it was held that the claim of the members of the Andhra Pradesh Judicial Ministerial Service for payment of the salaries and allowances on par with the LDCs and Steno-typists in the Secretariat is unfounded and cannot be granted.

It was further pleaded by the Government that the claim of the writ petitioners was barred by latches. On another learned Judge expressing the view that the aforesaid judgment requires reconsideration, the writ petitions of the respondents were heard by a Division Bench of the High Court. Allowing the writ petitions by the impugned judgment dated 31st March, 1992, the High Court has held that the posts of LDCs and Typists in the High Court Service or in the Judicial Ministerial Service and in the Secretariat Service are not only identical but also involve the performance of same nature of duties and, therefore, it will be unreasonable and unjust to discriminate between the two in the matter of pay.

It was held that the writ petitioners are also entitled for the same scale of pay as was being drawn by the Secretariat employees in the same or equivalent posts from time to time from 1969. Their pay was directed to be fixed from 1969. It was directed that the pay be revised on par with that of the employees working in the Secretariat. The High Court, however, directed that the writ petitioners were not entitled for the arrears of salary till 3rd September, 1987, when the decision was rendered in writ petition No.4357 of 1982 holding that the claim of parity is unfounded and the petitioners having slept over the matter for a long time thereafter. It has been further noticed in the impugned judgment that majority of the employees filed writ petitions in the year 1992. It was, therefore, directed that the

y are entitled to half of the arrears of salary from 1987 to 1992 and full pay after re-fixation from 1st April, 1992. The further direction that has been issued is that the order would be applicable not only to the petitioners but all employees of the High Court and the subordinate courts who are similarly situated. In Civil Appeal Nos.247-251 of 1993, the Government has challenged the correctness of the impugned judgment.

There are two sets of the respondents before us: (1) employees of various subordinate courts and (2) the employees of the High Court.

First we would consider the case in respect of employees of subordinate courts. The pay scales claimed by them on the basis of Government Order of 1971 have been accepted by the High Court holding that posts in two services are identical and the officials in two different services perform same nature of duties. The two set of employees are governed by different Rules and, therefore, their pay scales and other conditions of service are to be governed by the respective Rules applicable to them. Ordinarily, it is not permissible to go into the nature of duties of employees while exercising writ jurisdiction under Article 226 of the Constitution of India and on that basis direct grant of pay scales which are applicable to employees of a different service. The question of grant of parity of pay to the employees of the courts came up for consideration before a three Judge Bench in *State of Maharashtra v. Association of Court Stenographers, P.A., P.S. & Anr.* [(2002) 2 SCC 141]. Referring to the decision in *Supreme Court Employees' Welfare Association v. Union of India & Anr.* [(1989) 4 SCC 187], it has been held therein that the judgment of the High Court in exercise of its jurisdiction under Article 226 issuing writ of mandamus directing a particular scale to be given to the court stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges of the High Court cannot be sustained. It has further been held that it is no doubt true that the doctrine of "equal pay for equal work" is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under Article 226 to examine the nature of work discharged by the staff attached to the Hon'ble Judges of the Court and direct grant of any particular pay scales to such employees. The position is almost same here.

In view of the aforesaid, the issue of the writ of mandamus, directing the parity of pay scales on the assumption that posts are identical and the two sets of employees perform the same nature of duties cannot be sustained insofar as the employees of the subordinate courts are concerned.

Mr. Nageshwar Rao, learned counsel appearing for the employees, submitted that, in fact, what was being sought by the employees of the subordinate courts was not parity of pay scales but they were claiming difference of Rs.20 that was paid less to them when compared to the Secretariat staff. We are, however, unable to accept this submission. The main relief claimed in the writ petition was the scales of pay of these employees must be at par with the Assistants, Typists and Steno-typists of the Andhra Pradesh Secretariat Service. The claim was based on the two Government Orders referred to earlier. It is apparent that the said Government Orders are not applicable to the employees of the subordinate courts. Those Government Orders were applicable to the employees of the Andhra Pradesh Secretariat Service. Benefit of the said orders has been given to the corresponding employees of the subordinate courts in judgment under appeal holding that duties performed by them were similar. On principles, the present case is not different from that of *State of Maharashtra* referred to above. In view thereof, the impugned judgment in relation to employees of subordinate courts cannot be sustained.

Now we would examine the case of employees of High Court.

In respect of the employees of the High Court, the Government Order G.Os. No.426 dated 15th November, 1961, on the subject of revision of pay scales, stipulates as under :

"16. With the concurrence of the Chief Justice, High Court, the revised pay scales are also made applicable to persons serving on the staff of the High Court."

It may also be noticed that the Andhra Pradesh High Court Officers and Staff Scales of Pay Rules, 1975 which came into force on 1st January, 1974 and apply to all employees of the High Court, whether temporary, regular or permanent, appointed before 1st January, 1974, stipulate that for the purpose of pay and allowances the posts in column (1) of Schedule-II shall correspond to the posts in the Secretariat of the Government of Andhra Pradesh specified in column (2) thereof. The Schedule refers to the post with which we are concerned.

It would, thus, be seen that under G.O. dated 15th November, 1961 and the aforesaid Rules, the revised pay scales were made applicable to persons serving on the staff of the High Court.

The controversy in these matters is, however, restricted to the period from 1969 to 1974. It appears that the Government Order dated 13th September, 1971 was not received by the High Court. It does not appear to have been endorsed to the High Court. The stand that the said order was not received by the High Court has been accepted in the impugned judgment.

t. The Government Order dated 28th March, 1973, however, bears an endorsement in token of that order having been sent to the Registrar of the High Court. It seems that the problem in the concerned employees of the High Court not getting the benefit of the Government Order dated 13th September, 1971 arose on account of non-receipt of that order by the High Court. Except for the period between 1969 till 1st January, 1974, the employees of the High Court were being given the revised pay scales at par with the employees of the Government. In view of above, the direction in the impugned judgment in relation to the employees of the High Court is unassailable.

For the aforesaid reasons, we partly allow the appeals and set aside the impugned judgment to the extent it directs that the employees of the subordinate courts are entitled for the same scale of pay as was being drawn by the Secretariat employees in the same or equivalent post from time to time from 1969. The writ petitions filed by the employees of subordinate courts before the High Court would stand dismissed. Consequently, the Special Leave Petitions are also dismissed. In the facts and circumstances of the case, parties are left to bear their own costs.