

(2001) 10 AP CK 0012

Andhra Pradesh High Court

Case No: Writ Appeal No. 1411 of 2001

A.P.S.E.B. and Others

APPELLANT

Vs

P. Ramachandra Rao and
Another

RESPONDENT

Date of Decision: Oct. 10, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: S. Ravindranath, for the Appellant; A. Ramalingeswara Rao, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, J.

This appeal is directed against judgment and order dated 6.6.2001 passed by a learned single Judge of this Court whereby and whereunder the writ petition filed by the writ petitioner-respondents herein was allowed.

FACTS:

2. The respondents have retired from the 1st appellant-Board on attaining the age of superannuation on 30.4.1990 and they have also put in qualifying service to be eligible for pension. The pay scales were revised with effect from 1.7.1986 by which time the respondents herein were drawing maximum pay. The revised pay scales allow grant of three annual increments beyond the time scale in respect of those who had reached or had crossed the maximum pay as on 1.7.1986. However, in respect of the respondents herein the additional amount was shown as personal pay and the stagnation increments were adjusted towards the said additional amount. Assailing the same the respondents herein filed the writ petition seeking the following prayer:

To issue a writ or order particularly one in the nature of writ of mandamus directing the respondents to fix the pension and other terminal benefits of the petitioner on par with the other U.D.Cs retired on or after 1.7.1990 and pay all the arrears of pension and other terminal benefits.

3. The learned single Judge having regard to the intent and purport of the scheme held that the respondents had been discriminated against while calculating the pension on the ground that they had retired prior to the introduction of the scheme.

4. Mr S. Ravindranath, the learned counsel appearing on behalf of the appellants would submit that the learned single Judge erred in so far as he failed to take into consideration B.P.Ms.No.481, dated 4.2.1991 which is applicable only to those who are on rolls as on 1.7.1990. The learned counsel would contend that having regard to the fact that the respondents retired on 30.4.1990, the said scheme cannot be said to have any application. Alternatively the learned counsel would contend that the said scheme having been introduced keeping in view the settlement dated 29.1.1991 entered into between the Wage Negotiations Committee and the A.P.S.E.B. before the Joint Commissioner of Labour and State Conciliation Officer in terms of Section 12(3) of the Industrial Disputes Act, the same could not have been the subject matter of interpretation in a writ petition. The learned counsel would submit that even the definition of pension has not been correctly interpreted.

5. On the other hand, the learned counsel for the respondents supported the judgment of the learned single Judge.

FINDINGS:

6. The revised scales of pay of Office Staff, O&M Staff, Construction Staff, Medical Staff, Fire Fighting Staff and Security Staff were issued in B.P. (P&G Per.) Ms. No. 481 which was published on 4.2.1991. Paragraphs 2, 3, 4, 5, and 6 of the said scheme which are relevant for the purpose of this case are as follows:

2. A Wage Negotiation Committee was therefore constituted by the Board in the B.P. sixth read above. The Committee held detailed discussions with the representatives of the Unions and finally reached a negotiated settlement with the recognised Union under the code of discipline on 29.1.1991 before the Joint Commissioner of Labour and State Conciliation Officer u/s 12(3) of the I.D. Act.

3. The Andhra Pradesh State Electricity Board, after careful consideration, directs that scales of pay to the various categories of employees, viz., O&M staff, Construction staff, Office staff, Teaching staff, Medical staff, Fire Fighting Staff and Security Staff etc., shall be revised with effect from 1.7.1990 as indicated in Schedule-I to this B.P.

The full time contingent staff, who were hitherto drawing the scale of ... shall draw the corresponding revised scale as shown in the Schedule-I to this B.P. with effect from 1.7.1990.

4. The corresponding revised Special Grade Post/Special Adhoc Promotion Post I/Special Adhoc Promotion Post II scales in the revised scales, shall be as in columns 3, 4, and 5 respectively of the Schedule II to this B.P.

The regulations in B.P.Ms. No. 652 dt 24.8.82 and B.P.Ms. No. 927 dt 27.9.88, as subsequently amended from time to time, governing the appointments to S.G.P., S.P.P.I/S.P.P.II and S.A.P.P.I/S.A.P.P.II and the clarifications issued thereon from time to time will continue to apply. The pay of the employees in the existing S.G.P./S.A.P.P.I/S.A.P.P.II scales shall be fixed in accordance with these regulations in the correspondent revised S.G.P., S.A.P.P.I and S.A.P.P.II scales mentioned in Schedule-II against the Ordinary grade revised pay scales.

5. The A.P.S.E. Board also directs that the amount of stagnation increments not released earlier in 1986 pay scales but adjusted against .P. shall now be released on 30.6.90 but effect shall be given from 1.7.90, or from the date of going over to the revised scales, as the case may be. This amount will be taken into account for the purpose of fixation of pay in the revised pay scales.

6. Option: The date of option for the revised pay scales shall be 1.7.90 or the date on which an employee earns his next increment in the existing scale of pay.

7. Pursuant to the aforementioned B.P.Ms. No. 481, dated 4.2.1991 a notification had been issued by the 1st appellant herein in exercise of the power conferred upon it u/s 79(c) of the Electricity (Supply) Act, 1948 whereby and whereunder regulations are made known as the A.P. State Electricity Board Revised Pay Scales for Office Staff, O&M Staff, Construction Staff, Medical Staff, Teaching Staff, Fire Fighting Staff and Security Staff Regulations, 1990. The said regulations came into force with effect from 1.7.1990. "Pensioner" has been defined in regulation 2 (iv) to mean an employee who retired on or after 1.7.1990 but before the date of issue of the order. By reason of para 5 of the scheme all the employees became entitled to stagnation increments which were directed to be released by reason of 1986 pay scales. It is not in dispute that the revision of pay scale was effected from 5.10.1981 for a period of 4 years and the same was required to be revised upon expiry thereof. The pay scales were revised with effect from 1.7.1986 by reason of B.P.Ms.No.643, dated 1.6.1987. The three stagnation increments were due to the writ respondents from 1.7.1986. The stagnation increments were deducted from the personal pay of the respondents for the purpose of classification who retired prior to 1.7.1990.

8. In V.KASTURI v MANAGING DIRECTOR, STATE BANK OF INDIA, BOMBAY, AIR 2001 SCW 2189 the apex court held:

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension

provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force.

9. The apex court in [D.S. Nakara and Others Vs. Union of India \(UOI\)](#), clearly held that the expression "pensioner" is generally understood in context to one in service. Those who render service and retire on superannuation or in receipt of pension comprehend in the expression "pensioner" and they for such retiral or terminal benefits form a homogenous class. They cannot further be sub-divided with a view to give some more benefits to one and deny the same to the other who is equally placed. Such denial of benefit amongst the same class of persons would be discriminatory and violative of Article 14 of the Constitution. It is not in dispute that the respondents were eligible for grant of pension on the date of their retirement. It is also not a case that pension scheme had been introduced only with effect from 1.7.1990. The question which arises for consideration is only the computation of the amount of the pension payable. As indicated hereinbefore they were entitled to add stagnation increments without any deduction from personal pay. However, stagnation increments had been sanctioned to the respondents but the same had been adjusted. The stagnation increments had been released to those persons who had retired after 1.7.1990 without any deduction. Entitlement of the respondents to draw three stagnation increments is not in dispute. By reason of the aforementioned action on the part of the appellants herein, a class within a class had been created which in our considered opinion would attract the wrath of Article 14 of the Constitution. In other words, persons retired prior to or after 1.7.1990 would be entitled to stagnation increments.

10. Mr Ravindranath has placed strong reliance upon the decision in [Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors](#), In that case pension scheme was prospective in nature. By reason of such scheme whether the scheme applies fell for consideration before the apex court. It was held that the pension scheme would not be applicable to those who retired prior to the date the scheme was notified. This aspect of the matter is now squarely covered by a decision of the apex court in [V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another](#), .

11. For the reasons aforementioned, there is no merit in this writ appeal which is accordingly dismissed. There shall be no order as to costs.