Union Of India (Uoi) And Anr. vs R.G. Kashikar And Anr. on 20 December, 1985

Equivalent citations: AIR1986SC431, 1986(34)BLJR479, [1986(52)FLR308], (1986)ILLJ435SC, 1985(2)SCALE1433, (1986)1SCC458, 1986(1)SLJ475(SC), 1986(1)UJ263(SC), AIR 1986 SUPREME COURT 431, 1986 (1) SCC 458, 1986 LAB. I. C. 445, 1986 BLJR 479, 1986 SCC (L&S) 180, (1986) 1 LAB LN 524, (1986) 52 FACLR 308, (1986) 1 LABLJ 435, (1986) 1 SCWR 170, (1986) 1 SERVLR 319, (1986) 1 SERVLJ 475, (1986) 1 CURCC 1024, (1986) 2 SUPREME 148, (1986) 1 CURLR 87

Bench: A.P. Sen, D.P. Madon

ORDER

1. The short point involved in this Special Leave Petition directed against the judgment and order of the Karnataka High Court dated April 11, 1985 is whether the learned Single Judge was right in issuing a writ in the nature of mandamus directing the petitioners to extend the benefit of the revision of pay-scales from January 1, 1967 to January 1, 1973 upon the view that denial to the respondent R.G. Kashikar, who was an Instructor Grade II in the National Fitness Corps, of the benefit of revision of pay-scales as accorded to all other Central Government employees, was tantamount to denial of equality before law or equal protection of law and was thus violative of Article 14 of the Constitution.

2. Facts giving rise to the Special Leave Petition are these. In 1954, the Government of India in the Ministry of Education introduced the National Discipline Scheme which, in the year 1965, came to be redesignated as the National Fitness Corps. The respondent was appointed as an Instructor Grade II under the National Discipline Scheme in the year 1963. While the respondent was continuing as an employee of the Central Government, a proposal was made for the transfer of Instructors of the National Fitness Corps to the administrative control of the State Governments. Though the proposal for such transfer of the establishment of the National Fitness Corps to the administrative control of the State Governments was made as far back as in the year 1965, the actual transfer of the services of the respondent and other Instructors to that of the State Government of Karnataka took place with effect from August 1, 1976. Accordingly, the respondent became an employee of the State Government from the said date. During this period, there were other revisions of pay-scales made in respect of employees of the Central Government, but the revision of pay-scales of Instructors on the establishment of the National Fitness Corps was not made by the Central Government. This was the third or the fourth occasion that the respondent knocked at the doors of the High Court for redressal of the wrong. The first writ petition filed by the respondent along with other Instructors in the National Fitness Corps allocated to the State of Karnataka, being Writ Petition No. 3375 of 1975 was decided by Venkataramiah, J. by his judgment dated November 5, 1975. The learned Single Judge characterized the order passed by the Union of India, Ministry of

Education & Social Welfare, Department of Education dated April 3, 1974 placing the services of the respondent and other Instructors at the disposal of the Director of Public Instructions, State of Karnataka as being one under Article 258(1) of the Constitution, but declined to issue a writ of mandamus for extending to them the benefit of revision of pay-scales applicable to other Central Government employees on the ground that there was nothing to show that they had made a demand on the Central Government for extending to them the benefits such as revision of pay-scales, etc. which were extended to all other Central Government employees saying that it was open to them to make a representation to the Central Government in that behalf. In the meanwhile, the respondent had already made a representation to the Central Government on October 17, 1975 requesting the Government of India to consider and extend revision of pay-stales to the Instructors as accorded to all other Central Government servants and in particular to Teachers of the Central Schools as per recommendations of the Third Pay Commission, complaining that Instructors under the National Fitness Corps was the only category of Central Government employees discriminated against.

3. Incidentally, the Third Pay Commission in its report stated :

> The Instructors of the National Discipline Scheme who had joined the National Fitness Corps are to be transferred to the State Governments. The emoluments of the Instructors are to be protected. The transfer is said to be in the process of implementation under terms to be mutually agreed upon. Since the organisation is now in a transitional state, we do not think it would be necessary to recommend any revised pay-scales.
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> In accordance therewith the Government of India, Ministry of Education by letter dated November 20, 1975 addressed to Secretaries to the Education Departments of the State Governments a communication which stated inter alia that the pay-scales of Instructors of the National Fitness Corps allocated to the States would not be revised. Administrative control of the Instructors working in the State of Karnataka was taken over with effect from April 1, 1973 and they were absorbed in State service with effect from August 1, 1976.

4. In view of the aforesaid direction of the Central Government, the respondent had no other alternative but to move the High Court again by another writ petition being writ Petition No. 2979 of 1976, and the same was allowed by Rama Jois, J. by his judgment dated April 6 1979, and he made the rule absolute. The learned Single Judge expressed a view that there was no justification for not revising the pay-scales of the Instructors under the National Fitness Corps during the period while the proposal for transfer of the establishment of the National Fitness Corps to the State Government was under consideration of the Central Government and the State Government when the pay-scales of all other Central Government employees were being revised from time to time. He further pointed out that the proposal was given effect to only on October 31, 1976 i.e. it took nearly eleven years to implement the proposal and absorb these Instructors in the State service, and the delay in implementation of the proposal deprived the Instructors of the benefit of revision of pay-scales in the State Government service which they would have got had their services been transferred from the Central Government to the State Government immediately after the proposal was made or at any

rate, before January 1, 1971 because the State Government also revised its pay-scales with effect from that date. On account of this delay, the Instructors were deprived the benefit of revision of pay-scales under the Central Government as well as under the State Government. Upon his view, he held that when a representation was made by the respondent to the Central Government, the Central Government should have considered the representation and passed a considered order as to why he was not entitled to a revision of pay-scales with effect from January 1, 1971. As no such order had been passed by the Central Government, he directed the Central Government to deal with the representation while reserving liberty to the respondent to approach the High Court if the order of the Central Government was against him. The Government of India, Ministry of Education by endorsement dated November 19, 1970 declined to consider the claim for revision of pay-scales on the ground that the Third Pay Commission had not made any recommendation for the revision of scales to the InstructOrs.

5. Again; the respondent approached the High Court by a petition under Article 226 of the Constitution being Writ Petition No. 5450 of 1980 which has been allowed by Doddakale Gowde, J. by his judgment under appeal. Petitioners adopted a stand before the High Court that the exclusion of Instructors and Supervisory staff of the National Fitness Corps from the benefit of revision of pay-scales by the Third Pay Commission was based on an intelligible differentia which distinguished them from other classes of employees of the Central Government. The learned Single Judge rejected the contention observing that failure to revise their pay-scales and/or not to extend the benefit of revised pay-scales on other Central Government employees on the pretext that they were liable to be transferred to the State service was arbitrary and irrational and has resulted in their being discriminated against without any reasonable classification. According to the learned Single Judge, denial of such benefit to them amounted to denial of equality before law or equal protection of laws in violation of Article 14 of the Constitution. Upon this view, following the course adopted by this Court in Randhir Singh v. Union of India and Ors. . the learned Single Judge issued a writ in the nature of mandamus directing the petitioners to extend the benefits of revision of pay-scales to the respondent between the period from January 1, 1967 to January 1, 1973.

6. We have heard learned additional Solicitor-General appearing for the petitioners. He challenges the correctness of the view taken by the High Court and relies upon the judgment of Deshpande and Joshi, JJ. of the Bombay High Court in their judgment in Eknath Dattatraya Ekbote and Ors. v. Union of India and Ors. (Special Civil Application No. 1753 of 1974 decided on July 28, 1976) taking a view to the contrary. In rejecting the claim of Instructors like the respondent, the learned Judges observed that all the Instructors were already discharging their duties in schools run or financed or aided by the State Government long before July 1, 1972. This, according to them, had the effect of making it entirely the State Government's activity and dissociating the Central Government entirely from it. They added :

> The plain implication of transferring the entire activity to the States, is to make the posts of such Instructors, like the petitioners before them, surplus, in the Central Government.

> The learned Judges were therefore of the view that the posts of such Instructors on decentralisation of the activities were liable to be retrenched as being surplus. In that view, the learned Judges held that such Instructors ceased to be Central Government employees with effect from July 1, 1972, and added :
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> The exclusion, of the Instructors like the petitioner, from consideration in the matter of revision of pay scales, seems to us to have been founded on rational and reasonable basis. The Pay Com- mission was appointed to consider revision of pay scales and dear-ness allowance for the employees of the Central Government. The Pay Commission was right in excluding the cases of the Instructors from the consideration on being found that they had ceased to be connected with any Central Government activity with effect from 1.7.1972 and were liable thereafter either to be absorbed in State Government service or to be retrenched.

7. Upon that view, the learned Judges held that it would have been idle for the Third Pay Commission to proceed with the revision of pay-scales of this category of Central Government employees who had virtually ceased to have any connection with the Central Government activity, although they accepted that the adoption of this course resulted in meting out differential treatment to a class of Government servants from the one meted out to its other employees, and added :

> Mere difference in treatment may not necessarily be violative of Article 16, as long as there exists some basis for the difference in treatment and such basis has some rational foundation.

8. We find it rather difficult to subscribe to the view expressed by the learned Judges that although the petitioners before them i.e. Instructors like the respondents here, as Central Government employees should have also been given the benefit of revised pay-scales, the proposal to transfer the establishment of the National Fitness Corps to the State Governments had the effect of decentralising the National Discipline Scheme and the Instructors had become surplus at the center. Nof can we support their conclusion that classification between the Central Government employees who work on Central Government activities and those who work on State Government activities, was founded on rational and reasonable foundation and therefore the Instructors belonging to the former class could be treated on a different basis in the matter of their pay-scales and other benefits. The underlying fallacy of the reasoning lies in assuming that the Instructors under the Scheme ceased to be Central Government employees merely because of the proposal to transfer the establishment of the National Fitness Corps to the State Governments. They continued to be employees of the Central Government till the process of absorption was completed. Until then they were still retained in Central Governments service although allocated to different States, and as such employees they were entitled to be treated alike. In order to pass the test of permissible classification, two conditions must be fulfilled, namely: (1) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (2) That the difference must have a rational relation sought to be achieved by the act. That test is clearly not fulfilled in the case of Instructors under the Scheme. The distinction sought to be drawn by the learned Judges between two classes of Central

Government employees i.e. Those who work on Central Government activities and those who work on State Government activities, is without any rational basis and the Instructors under the Scheme could not be treated as a class distinct and separate. Such classification or differentiation of the Instructors under the Scheme as a class of Central Government employees for depriving them of the benefits in 'matters relating to employment' which expression includes matters relating to salary, periodical increments, leave, gratuity, pensions, age of superannuation etc., although they continued to remain Central Government employees till the date of absorption, was per se discriminatory and violative of Articles 14 and 16 of the Constitution. The Judgment of the Bombay High Court in Eknath's case, supra, does not lay down good law and is accordingly overruled.

9. The Special Leave Petition is wholly devoid of substance and is accordingly dismissed with costs.