

[2023] 12 S.C.R. 235 : 2023 INSC 828

**CASE DETAILS**

B.C. NAGARAJ & ANR.

v.

THE STATE OF KARNATAKA & ORS.

(Civil Appeal Nos.5529–5530 of 2023)

SEPTEMBER 13, 2023.

[ABHAY S. OKA AND PANKAJ MITHAL, JJ.]

**HEADNOTES**

**Issue for consideration:** Whether the retired physical instructors of the Government College are entitled to the benefit of revised pay scale when the same benefit was granted to the similarly placed employees.

**Service law – Revised pay scale – Benefit of – Entitlement, to retired physical instructors of the Government College – When the same benefit of University Grant Commission pay scale under the Government order dated 15.11.1999 was granted to the similarly placed employees:**

**Held:** Retired physical instructors should not be denied the same relief, when the same benefit was granted to the similarly placed employees – Case of similarly placed retiree, decided by the Single Judge of the High Court was similar to the present appellants wherein the Single Judge held that he was entitled to the benefit of the revised UGC pay scale from 1.01.1996 based on the order dated 15.11.1999 – Said order attained finality upto this Court – It appears that the Order dated 19.10.2006 issued by UGC and the Order dated 4.07.2008 issued by the State Government that the Government employees were not entitled to a revised pay scale with retrospective effect were not pointed out to the courts below as also this Court who decided the case of the similarly placed retiree – State Government never applied for the review and allowed the said order to become final – In the subsequent decision, the Division Bench of the same High Court noted the directions issued by the UGC on 19.10.2006 and the Order dated 4.07.2008 – However, even thereafter, despite the Government Order dated 4.07.2008, in 2014, to the employees who were similarly placed as the appellants, the benefits

of the revised UGC pay scale in terms of the Government order dated 15.11.1999 were granted – Now, the State Government cannot rely upon the Government Order dated 4.07.2008 – Thus, issuance of direction to the State Government to extend the benefits under the Government Order dated 15.11.1999 to the retired physical instructors within the stipulated period. [Paras 6-12]

#### **LIST OF CITATIONS AND OTHER REFERENCES**

*State of Karnataka & Anr. v. Puttaswamy and Ors.* Writ Appeal no.234 of 2007 dated 29th April 2011; *Irayya & Ors. v. The Secretary & Ors.* Writ Petition no. 62679 of 2012 30th July 2012 – referred to.

#### **OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5529-5530 of 2023.

From the Judgment and Order dated 09.10.2017 of the High Court of Karnataka at Bengaluru in WP Nos.1895 and 1896 of 2014.

#### **Appearances:**

Charudatta Vijayrao Mahindrakar, Mrs. Darshan Mahindrakar, Advs. for the Appellants.

Prateek K. Chadha, AAG, V. N. Raghupathy, Manendra Pal Gupta, Md. Apzal Ansari, Sreekar Aechuri, Ms. Muskan Singla, Ms. Pragya Ganjoo, Advs. for the Respondents.

#### **JUDGMENT / ORDER OF THE SUPREME COURT**

#### **JUDGMENT**

**ABHAY S. OKA, J.**

#### **FACTUAL ASPECTS**

1. The appellants were employed initially as Physical Instructors in Government Grade Colleges in Karnataka. The first appellant reached the selection grade pay scale of the University Grants Commission (UGC) on 1st January 1986. The second appellant was granted senior scale of pay on 1st January 1986 and selection grade of pay from 13th July 1990. The first

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appellant was superannuated on 31st January 1998, and the second appellant was superannuated on 31st May 2004. Both, at the time of retirement, were selection grade Physical Education Directors in the State Government colleges.

2. On 15th November 1999, the State Government issued an order revising the pay scale of Teachers, Librarians and Physical Education Directors in the Government colleges. Under the said Government order, the benefit of the University Grants Commission (UGC) pay scales as revised from 1st January 1996 was granted to these three categories of employees with retrospective effect from 1st January 1996. On the same day, by a separate order, the benefit of the revised pay scale was granted to Teachers, Librarians and Directors of Education in the Government-aided colleges. The order dated 15th November 1999 was partially modified on 29th July 2000. A circular was issued by the Government of Karnataka on 23rd October 2001 stating that physical education and library personnel drawing UGC pay scales of 1996 shall not be granted other government benefits under the Government Order dated 15th November 1999.

3. The appellants were denied the benefit of the Government Order dated 15th November 1999. Therefore, the appellants filed an application before the Karnataka Administrative Tribunal, which was rejected. They filed a Writ Petition before the High Court to challenge the order of the Tribunal. Writ Petition was dismissed by the impugned judgment. The impugned judgment relies upon a Government Order dated 4th July 2008, which records that the revised UGC pay scale shall be extended from 27th July 1998 notionally and all financial benefits shall be extended prospectively from 4th July 2008, and no arrears shall be paid.

**SUBMISSIONS**

4. The learned counsel appearing for the appellants pointed out that one Shri N. Ramesh, who retired as a Director of Physical Education (selection grade), was granted the benefit of the Government Order dated 15th November 1999. He superannuated on 28th February 2006. Later on, the benefits granted to the said employee were sought to be recovered from him, and therefore, he filed a Writ Petition before the High Court. The High Court held that the benefit of the revised UGC pay scale was rightly extended earlier to the said employee, and therefore, the High Court, by judgment

and order dated 13th February 2009, directed that all benefits be extended to him. He pointed out that the Division Bench confirmed the said order in a Writ Appeal filed by the respondents, and a Special Leave Petition filed against the orders has been dismissed. Placing reliance on the documents annexed to the application for permission to file additional documents (IA No.61474 of 2022), he submitted that even in 2014, full benefits under the Government Order dated 15th November 1999 were extended to similarly placed employees.

5. Learned Additional Advocate General appearing for the State of Karnataka submitted that the orders passed in the Writ Petition filed by Shri N. Ramesh are per incuriam since the Government Order dated 4th July 2008 which incorporated the clarification issued on 19th October 2006 by UGC was not brought to the notice of the Courts. He pointed out that by a judgment and order dated 29th April 2011 passed by the Division Bench of Karnataka High Court in Writ Appeal no.234 of 2007 (State of Karnataka & Anr. v. Puttaswamy and Ors.), the benefit of the Government Order dated 15th November 1999 was denied to the similarly placed employee on the basis of the order dated 19th October 2006 of UGC. He submitted that the order dated 4th July 2008 issued by the State Government is in terms of the order of UGC dated 19th October 2006, which lays down that the benefit of revised pay scales with effect from 1st January 1996 shall be extended from 27th July 1998 notionally and all financial benefits shall be extended prospectively from 4th July 2008 and that the employees will not be entitled to arrears. The learned Additional Advocate General, therefore, submitted that the view taken by the High Court is fully justified.

### **FINDINGS AND CONCLUSIONS**

6. It is not in dispute that the case of Shri N. Ramesh in Writ Petition No. 5855 of 2008, decided by the learned Single Judge of Karnataka High Court on 13th February 2009, was similar to the present appellants. The learned Single Judge held that the said Shri N. Ramesh was entitled to the benefit of the revised UGC pay scale from 1st January 1996 based on the order dated 15th November 1999. Shri N. Ramesh had superannuated on 28th February 2006 as Physical Education Director from a Government aided college. The judgment of the Karnataka High Court attained finality as a

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Writ Appeal preferred against the judgment and the Special Leave Petition have been dismissed.

7. It appears that the Order dated 19th October 2006 issued by UGC and the Order dated 4th July 2008 issued by the State Government were not pointed out to the learned Single Judge who decided Writ Petition of Shri N. Ramesh on 13th February 2009. Even in the appeal before the Division Bench and in the Special Leave Petition before this Court, both the orders were not brought to the notice of the Court. The State Government never applied for the review. It is true that in the subsequent decision of the Division Bench of the same High Court dated 29th April 2011 in Writ Appeal no. 234 of 2007, the High Court noted the directions issued by the UGC on 19th October 2006 and the Government Order dated 4th July 2008 based on the directions of UGC and held that the Government employees were not entitled to a revised pay scale with retrospective effect.

8. It must be noted here that the State Government implemented the order in the case of Shri N. Ramesh. In another order passed by a learned Single Judge of Karnataka High Court on 30th July 2012, in Writ Petition no. 62679 of 2012 and other connected matters (*Irayya & Ors. v. The Secretary & Ors.*), a direction was issued in favour of the similarly placed employees who were entitled to revised UGC pay scales with effect from 1st January 1996 along with all consequential benefits. The order was confirmed by a Division Bench by an order dated 27th August 2013.

9. Along with the same application, the appellants have produced a copy of the order dated 7th January 2014 in the case of one Shri K.C. Patil and Shri S.H. Hallur, who were retired librarians. By the said order, the two librarians, who were similarly placed as the appellants, were granted the benefit of the revised pay scale from 1st January 1996 along with consequential benefits in terms of the order dated 15th November 1999. Therefore, not only in the case of Shri N. Ramesh but even thereafter in 2014, to the employees who were similarly placed as the appellants, the benefits of the revised UGC pay scale in terms of the Government order dated 15th November 1999 were granted.

10. The State Government ought to have applied for review of the order of this Court in the case of Shri N. Ramesh. However, the Government had allowed the said order to become final. Notwithstanding the Government

Order of 4th July 2008, as can be seen from the additional documents, the benefit was granted to the employees who were similarly placed with the appellants even on 7th January 2014. It was a conscious decision of the State Government to accept the decision of the High Court in the case of Shri N. Ramesh. Now, the State Government cannot rely upon the Government Order dated 4th July 2008, which was not pointed out to the Courts which dealt with the case of Shri N. Ramesh as the State Government accepted the judgment in the case of Shri N. Ramesh and granted benefits to him of the Government Order dated 15th November 1999. There is no reason why the appellants should be denied the same relief, especially when even as of 7th January 2014, the same benefit was granted to the similarly placed employees.

11. Accordingly, the impugned judgment dated 9th October 2017 is hereby quashed and set aside. We direct the State Government to extend the benefits under the Government Order dated 15th November 1999 to the appellants within a period of three months from today. The appeals are, accordingly, allowed on the above terms with no order as to costs.

12. We make it clear that this judgment will apply to all cases, pending before either the Administrative Tribunal or High Court, of similarly situated employees in which a similar relief is claimed. However, this judgment shall not be used to file new cases by retired employees who have been denied the benefit and who have not challenged the action till date. No case, which has been concluded, shall be reopened on the basis of this judgment.

**Headnotes prepared by:**  
Nidhi Jain

**Appeals allowed.**