Union Of India (Uoi) And Ors. vs E.S. Soundara Rajan And Ors. on 4 April, 1979

Equivalent citations: AIR1980SC959, (1980)3SCC125, [1980]2SCR1200, 1980(12)UJ352(SC), AIR 1980 SUPREME COURT 959, 1980 LAB IC 589, (1980) 2 LAB LN 33, 1980 (3) SCC 125, (1980) SERVLJ 344, 1980 UJ(SC) 352, 1980 SCC (L&S) 300

Author: V.R. Krishna Iyer

Bench: V.R. Krishna Iyer, V.D. Tulzapurkar

JUDGMENT

V.R. Krishna Iyer, J.

1. The main appeal with which we are concerned in this batch of civil appeals (and special leave petitions whose fate will depend on the decision in the civil appeals) is one where a Railway employee successfully challenged the refusal to pay certain emoluments by the Union of India in the Madras High Court. His writ petition in the Madras High Court was in the wake of similar one in the Andhra Pradesh High Court a few years prior thereto. The decision of the Andhra Pradesh High Court had become final, especially because the special leave petition filed by the Union of India challenging it had been dismissed by this Court. The Madras High Court considered the reasoning given in the Andhra Pradesh decision and was inclined to dissent from it, but felt that the consequences of divergent decisions in the two High Courts might lead to anomalise and should, therefore, be avoided. The High Court expressed itself thus:

> With respect to the view of the Andhra Pradesh High Court, we are unable to agree with it.... But the decision of the Andhra Pradesh High Court has created a peculiar situation. The result of giving effect to it, as the Department is bound to give effect to that judgment which has become final is that employees like the petitioners in the Railway service in the Andhra Pradesh Area will be treated differently from the petitioners, who are in every way similar to them except for the region in which they happen to work, in the matter of pay-scales and other matters.
>
> Having regard to this odd potential consequence, the High Court of Madras fell in line with the Andhra Pradesh High Court and upheld the writ petitioners' claim.

2. A few facts, minimally necessary to bring out the two questions of law urged before us by the aggrieved Union of India, may now be narrated. We are concerned with the MSM Railway, one of

those British Indian companies, since merged in the Indian Railways. The employees under the MSM with whom we are concerned fell in two categories, namely, Commercial Clerks and Assistant Station Masters/ Station Masters. Their pay scales, at the various grades, were substantially similar although at the higher levels the Assistant Station Masters/ Station Masters had higher scales of pay. It was found at the lowest levels in the two categories of posts, there was long stagnation since around 90 per cent of these posts were occupied by the lowest categories. The Union of India, around 1956, felt that there was need for revision of this set-up and with a view to give more relief and opportunities for increments to the Commercial Clerks at the most congested levels, produced what has been called the New Deal. We may make it clear that the New Deal covered not merely Commercial Clerks and Asstt. Station Masters and Station Masters but also applied to other categories in the Railway service. The particular problem which confronts the Court now alone need be mentioned. That is why we are focussing attention on Commercial Clerks and ASM/SMs.

3. Way back in 1930 and from then on, several Commercial Clerks went over and became Asstt. Station Masters/Station Masters and to some extent they enjoyed certain advantages on this score. They continued to work out their respective fortunes in the administrative service on the basis of the then rules and scales of pay. When in 1956, the New Deal was brought in some Asstt. Station Masters/Station Masters found that although they were senior to certain Commercial Clerks at the early stages, their pay became less than then of Commercial Clerks. This, according to them, was unequal treatment of equals. It was on this grievance that with a constitutional veneer some of those employees moved a writ petition in the Andhra Pradesh High Court. That High Court took the view, right or wrong that Commercial Clerks and ASMs/SMs were substantially treated alike and when certain disparities in emoluments arose on account of the New Deal, discrimination ensued. On the basis of this logic the High Court directed as follows:

> In the result, the writ petitions are allowed and the respondents are directed to fix the pay of the petitioners in their present cadre so as not be less than the pay they would have drawn if they had been in the cadre of Commercial Clerks from which they were promoted, to be effective from the date of the implementation of the New Deal. The petitioners will get their costs. Advocate's fee Rs. 250/-(Rupees two hundred and fifty only). One set.

4. The learned Additional Solicitor General, appearing for the Union of India, pointed out that the Madras High Court expressly dissented from this reasoning and further contended before us that Commercial Clerks and ASMs/SMs fall into two different categories and on the basis of the rulings of this Court there could not be any case of discrimination when distinct categories in Government service had different treatment in the course of the service. He cited before us a series of decisions, the, earliest of which was . Indeed a series of other decisions right down to have taken the view that even though two categories may be close cousins they are quite distinct. There cannot be any discrimination spelt out merely because they have been dealt with in regard to their salary scales or other conditions of service differently. Equality postulates identity of the class and once that is absent, discrimination cannot arise. This argument appeals to us and we are not prepared to agree with the conclusion reached by Andhra Pradesh High Court so long as Commercial Clerks and ASMs/SMs fall into two different categories-and this seems to be plain and is contained in the

narration of facts by the Andhra Pradesh High Court as well as the Madras High Court. It is equally important to remember the well-established proposition that there cannot be a case of discrimination merely because fortuitous circumstances arising out of some peculiar developments or situations create advantages or disadvantages for one group or the other although in the earlier stages they were, more or less, alike. If one class has not been singled out for special treatment, the mere circumstance of advantages accruing to one or the other cannot result in breach of Article 14 of the Constitution. On this basis we should agree that the reasoning of the High Court of Madras and so declare the law correctly.

5. Indeed the Madras High Court has also gone this for but has declined to reverse the result reached by the Andhra Pradesh High Court. We have earlier extracted the reason which weighed with the Madras High Court in doing so. We too feel likewise. The only persons who claim benefits on the basis of the Andhra Pradesh decision are those before this Court at the various civil appeals and special leave petitions and no more. They are somewhere around 547 or so. The exact figure is not necessary for us to mention except to make it plain that no one who is not before this Court now will be entitled to the ameliorative relief that we propose to give largely induced by the realism when appealed to the Madras High Court.

6. Having heard counsel on the sides on this aspect, we direct that while the law has been declared by us and it in effect reverse the position taken by the Andhra Pradesh High Court, the emoluments that the respondents in the appeals as well as the special leave petitions will draw will not be affected, subject of course to our observations regarding the second point urged by the last Additional Solicitor General.

7. We thus make it clear that the net result of the Andhra Pradesh decision will prevail while the law laid down by the said decision will stand set aside.

8. Now we proceed to the second point urged before us by Shri Soli J. Sorabjee, This takes us to the second decision of the Andhra Pradesh High Court. Certain events ensued after the first decision rendered by the Andhra Pradesh High Court. The employees who were beneficiaries under that decision sought a clarification of the decision with which the Union of India did not agree. Therefore, a second writ petition was filed where the High Court again went into the construction of the concluding or decretal portion of the first decision of the Andhra Pradesh High Court.

9. Here again we do not agree with the conclusion reached by the High Court because its reasoning appears to us to be fallacious. Thes contentions bearing on the interpretation of the first decision may be briefly stated before we express our opinion. The whole grievance of the employees concerned was that had the aggrieved Commercial Clerks not become Assistant Station Master or Station Masters they would have got the benefit of the New Deal and thereby got increased emoluments. This should not be denied to them merely because they had gone over to the category of Assistant Station Masters/Station Masters. The necessary consequence is that only such of them as had a chance of going up in emoluments or drawing increments attributable to the New Deal could claim any benefits or advantages under the decision of the Andhra Pradesh High Court. This was the contention pressed before us by Mr. Soli J. Sorabjee. On the other hand, Mr. M.K.

Ramamurthy, appearing for the employees-counsel for the others similarly situated have adopted his arguments-argued before us that the 2nd decision of the Andhra Pradesh High Court was correct and that the illustration given by the High Court graphically to clarify its conclusion was realistic and correct. We do not go into it in greater detail because we are clear in our mind that the employees (ASMs/SMs) who, had they continued as Commercial Clerks would not have had any increments on account of the New Deal, could not claim such increments on the basis of the Andhra Pradesh High Court decision. All that the Andhra Pradesh decision sought to do was to see that ASMs/SMs were not prejudiced merely by leaving their earlier position as Commercial Clerks. It did not put them in a better position than they would have if they had continued as Commercial Clerks. On this footing, we disagree with the decision of the Andhra Pradesh High Court in the second round which was rendered in a clarification of the conclusion in the first decision.

10. Pragmatism here again dictates the ultimate relief we propose to give. Assuming the clarification by the Andhra Pradesh High Court to be wrong-and it is in the light of what we have stated above-an intricate calculation will have to be made about things of long ago and a restructuring of the little benefits each one draw would have to be worked out. We do not think that this is worth the candle especially having regard to the fact that the employees belonging to the lower category and their emoluments are far from enviable.

11. We, therefore, uphold the law as contended for by the Union of India, but decline to interfere with the cash results and emoluments that the employees/respondents have been held entitled to under the decisions of the Andhra Pradesh High Court and the Madras High Court. We dispose of the appeals and the special leave petitions as above. No costs. The Union of India will implement the directions given by the High Court concerned within six months from today.