

Supreme Court of India

E. Gopalakrishnan & Ors vs Union Of India on 31 October, 1995

Equivalent citations: 1996 AIR 707, 1995 SCC Supl. (4) 205

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

E. GOPALAKRISHNAN & ORS.

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 31/10/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

KIRPAL B.N. (J)

CITATION:

1996 AIR 707

1995 SCC Supl. (4) 205

JT 1995 (8) 152

1995 SCALE (6) 218

ACT:

HEADNOTE:

JUDGMENT:

**O R D E R** The appellants, nine in number, admittedly had retired prior to September 1, 1985 as either head clerks or chief clerks, the last being June 30, 1985. It appears that a practice was in vogue at one point of time that for the discharge of special duties, a sum of Rs. 35/- p.m. as special pay was granted to the upper division clerks working in certain special posts. Decision was taken that on promotion as head clerk or special clerk, they would not be entitled to carry with them the special pay of Rs.35/- per month. Admittedly, the appellants had been promoted as stated earlier, as head clerks or chief clerks and they were not given the special pay of Rs.35/- per month from the date of their promotion till the date of their retirement prior to September 1, 1985. It is also clear that in the memo dated July 11, 1979, it was expressly stated that the special pay would not be paid to the promoted head clerks or chief clerks. Subsequently, it appears that there was an agitation and a reference to the Board of Arbitration was made which had decided that with a view to remove the anomaly in the pay structure, the special pay of Rs.35/- per month shall be paid to the promoted head clerks/special clerks w.e.f. September 1, 1985 but without paying arrears. Challenging the

non-avallment thereof, some of the employees had approached the CAT at Delhi which appears to have held that the persons who had not been paid from July 11, 1979 till August 31, 1985 would also be entitled to the special pay at Rs.35/- per month but they were not entitled to the arrears of the of the salary. In other words, the result of the decision of the Board of Arbitration and the CAT is that the persons, who continued in service between July 11, 1979 and August 31, 1985 and thereafter, would be entitled to the special pay of Rs.35/- per month though promoted as head clerks/chief clerks but without arrears of salary. This was also the decision taken by the respondents.

The question that emerges is whether the head clerks/chief clerks who retired prior to September 1, 1985 are also entitled to step up their pay by including Rs.35/- per month for the purpose of calculating the pension. The Tribunal in this case held that they are not entitled.

Shri Sundarvaradan, the learned senior counsel appearing for the appellants, contended that since the appellants had actually worked as head clerks/chief clerks on par with other persons to whom the benefit of the pay of Rs.35/- per month had been granted by the Board of Arbitration and also the CAT, they have been unjustly discriminated violating Article 14 of the Constitution and that, therefore, the Tribunal was not right in denying the benefit of stepping up of the scale of pay for computation of pension. Having considered the argument, we find that there is no justification in the stand taken by the appellants. Admittedly, they have retired prior to September 1, 1985. The benefit that was given by the Board as well as the order of the Tribunal and the respondents was to remove the anomaly in the pay structure and bring uniformity applying notional scale of pay of those promoted as head clerks/chief clerks between July 11, 1979 to August 31, 1985 but denied payment of arrears. In other words, on salary with Rs.35/- as special pay was made to any one. That benefit was given only to those who continued in service after September 1, 1985. The notional pay is considered in that perspective only for the purpose of removing the anomaly. The pension is required to be computed on calculation of average of 10 months pay actually drawn by the employee. Since the appellants admittedly were not in service as on September 1, 1985, the dated on which the notional pay was given effect to, they had not actually drawn the pay including Rs.35/- per month. Accordingly, the scale of pay including Rs.35/- per month cannot be stepped up for computing the pension. The appeal is accordingly dismissed but, in the circumstances, without costs.