

A.Geetha Vs. Union of India and ors

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Court : Chennai

Decided On : Apr-26-2012

Judge : Elipe Dharma Rao; M. Venugopal, Jj.

Acts : Railway Services (Revised Pay) (RSRP) Rules, 1997 - Rule 8, 1316-(R)(2), 1316(F.R.22C); [Constitution of India](#) - Articles 226, 16.4(A), 16.4(B), 21

Appeal No. : Writ Petition No.29198 of 2010 and M.P.No.2 of 2012

Appellant : A.Geetha

Respondent : Union of India and ors

Advocate for Def. : Mr.V.G.Suresh Kumar, Adv.

Advocate for Pet/Ap. : Mr.R.Singgaravelan, Adv.

Judgement :

Prayer:- Writ Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondents 2, 5, 3 and 4 in connection with the orders passed by them in No.PB/SIC dated 7/9-8-2003, No.PB/SIC/60/8 dated 28.10.2004, PC-VI/80/No.PC-V/99/1/6/1, RBE No.37/2009, dated 19.02.2009 and No.PB/SI.26/659796/AG dated 07.04.2009 and the order passed in O.A.No.490 of 2009 dated 23.08.2010 respectively, and quash the same and direct the respondents to either grant the Special Pay with effect from the date of the grant of the same to the petitioner's

junior, namely, Smt.Salma Begum or award equal scale of pay to that of the petitioner's junior above named with effect from the date of higher pay that of the petitioner received by her junior with all monetary and service benefits.

ORDER

(Order of the Court was made by Justice Elipe Dharma Rao.)

1. Challenging the orders, dated 28.10.2004 passed by the second respondent rejecting the petitioner's representation, dated 07.10.2004, for stepping up her pay on par with her junior, and the order, dated 19.02.2009, passed by the fifth respondent with regard to stepping up of pay of Head Clerks at par with Senior Clerks in receipt of Special Pay of Rs.70/- per month and upgradation as Head Clerk in the same scale of Rs.5000-8000 with effect from 01.01.1996 as per the recommendations of the Fifth Pay Commission as well as the order, dated 07.04.2009, passed by the third respondent thereby rejecting the letter sent by the petitioner seeking stepping up of pay on par with her junior and also the order, dated 23.08.2010, passed by the Central Administrative Tribunal in O.A.No.490 of 2009 dismissing the original application filed by the petitioner to set aside the orders passed by the second and third respondents, referred to above, the present writ petition has been filed, seeking a direction to the respondents to either grant Special Pay with effect from the date of the grant of the same to the petitioner's junior, namely, Smt.Salma Begum or award equal scale of pay to that of her with effect from the date of higher pay received by her junior with all monetary and service benefits.

2. It is the case of the petitioner that she joined in the cadre of 'Office Clerk' in the Integral Coach Factory in the scale of pay of Rs.950-1500 in the year 1986 and promoted to the posts of Senior Clerk and Head Clerk. It is the further case of the petitioner that 10% of the Senior Clerks were privileged with Special Pay of Rs.35/-, which was later revised as Rs.70/-, and initially Special Pay extended to 10% of the Senior Clerks was not reckoned as pay for the purpose of fixation of pay and however, by way of an award by the Board of Arbitration, Special Pay was sought to be reckoned as pay for the purpose of fixation of pay and thereby an anomaly of junior drawing higher pay than his/her senior/seniors arose and hence,

the Rule making authorities have postulated mandatory instructions providing for stepping up of seniors' pay on par with juniors.

3. It is the grievance of the petitioner that the aforesaid statutory provision of stepping up of seniors' pay on par with juniors was deliberately denied to the petitioner vide the impugned order, dated 28.10.2004, issued by the second respondent and also the order dated 07.04.2009, issued by the third respondent, against which, the petitioner has approached the Central Administrative Tribunal by filing O.A.No.490 of 2009.

4.The Tribunal, on consideration of the facts and circumstances of the case, dismissed the original application by holding that there were no justified grounds in the claim of the applicant/petitioner for interference by the Tribunal with the impugned orders, which are reasoned one and in accordance with the Rules. Aggrieved by the aforesaid order passed by the Tribunal, the present writ petition has been filed by the petitioner.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents 1 to 3 and 5.

6.It is seen from the orders, which were impugned in the original application, that the petitioner's representation dated 07.02.2003 for grant of Special Pay in the post of Senior Clerk was rejected on the ground that when her turn came for posting her against a Special Pay post, she was on Maternity Leave and in fact, her turn for Head Clerk also came during the said leave period and she could assume higher responsibilities only after returning from the Maternity Leave, i.e., on 02.09.1994 and moreover, she was promoted as Head Clerk against a post reserved for Scheduled Caste Community and thus, she went ahead of some UR employees above her and it was only in view of these reasons that she could not officiate in a post carrying Special Pay. It is further stated by the second respondent that notwithstanding the above reasons, there were various factors, because of which, an employee might not have officiated in a Special Pay post and irrespective of the fact whether the same was within his/her control or beyond him/her, he/she is not entitled to any comparison with other employees, who have drawn Special Pay. For the aforesaid reasons, the Department advised the

petitioner that it is not permissible to step up her pay on par with her junior, Smt.Salma Begum.

7.Aggrieved of the above, the petitioner has approached the Central Administrative Tribunal by way of filing O.A.No.490 of 2009 to quash the orders passed by the second and third respondents, referred to above, and consequently, direct them to step up her pay on par with her junior and the Tribunal, after considering the reply given by the second respondent, dated 07.08.2003 and 28.10.2004, rejecting her representation and subsequently, the order, dated 07.04.2009, passed by the third respondent informing the petitioner that she is not entitled for stepping up of pay on the ground that the applicant/petitioner got promotion as Head Clerk even before becoming eligible for identified post carrying Special Pay, dismissed the original application by placing reliance on the order issued by the Railway Board, dated 19.02.2009, in which, paragraphs 4(e) reads thus:-

"4.Further, the stepping of pay will not be allowed in the following cases:-

(a)....

(b)where the Sr.employees declined to accept deployment/appointment or was appointed at a later date than the junior, to the identified posts for whatsoever reasons whereby he drawn less pay than the junior, in such cases, senior cannot claim stepping up of pay at par with juniors;

(c)...

(d)...

(e)where the employee has been promoted to the post of Head Clerk against quota reserved for SC/ST/OBC/Sports etc. even before becoming eligible for the identified post carrying special pay;

(f)...

(g)...

8. It is seen from the perusal of the order passed by the Railway Board, referred to above, that the Board has taken up the matter, examined the same in the Board's Office and it has been decided that in accordance with Note 1 Rule 8 of RSRP Rules, 1997, the pay of Head Clerks (grade Rs.1400-2300) may be stepped up at par with Senior Clerks (grade Rs.1200-2040) in receipt of special pay of Rs.70/- who, on the recommendation of the Fifth Central Pay Commission, were upgraded as Head Clerks and placed in the same scale of Rs.5000-8000 with effect from 01.01.1996 and the benefit of stepping up of pay, wherever admissible, will be allowed only in cases where the promotion was on a regular basis and from the date the junior employee started drawing more pay than his senior. It is also relevant for the purpose of disposal of this case to reiterate paragraph No.4(e) of the said order, which is to the effect that, 'The stepping of pay will not be allowed in the case where the employee has been promoted to the post of Head Clerk against quota reserved for SC/ST/OBC/Sports etc. even before becoming eligible for the identified post carrying special pay'.

9. In view of the above, the Tribunal has dismissed the original application, against which, the present writ petition has been filed by the petitioner, contending that she is entitled to Special Pay as per the Railway Board's letter dated 14.02.1995 and any interpretation given by the respondents against that letter is unconstitutional and ultravires and hence, the proceedings of the Board, dated 19.02.2009 and the order dated 07.04.2009, which are impugned in the original application and the order of dismissal of O.A.No.490 of 2009, dated 23.08.2010, are contrary to law and therefore, they are liable to be set aside.

10. It is further contended that the petitioner is entitled to stepping up of pay under Rule 1316-(R)-II on par with her junior and even assuming without admitting that she is not entitled to the stepping up of pay and the denial of the same by the respondents on the ground that she was promoted to the post of Head Clerk under the quota of Scheduled Caste is against the fundamental right guaranteed to the SC and ST candidates under Articles 16.4(A) and 4(B) read with Article 21 of the [Constitution of India](#) and therefore, both the order of the Tribunal and the proceedings of the Railway Board are acting contrary to the interest of those Scheduled Caste, Scheduled Tribe and Other Backward Community people. It is

also contended that it is the fundamental right of a woman employee to take Maternity Leave and failure to recognize such a right by denying the Special Pay on the ground of availing maternity leave is unconstitutional and ultravires and deserves to be set aside on the face of it.

11. It is seen from the perusal of the materials that the further ground for denial of the relief sought for by the petitioner is that when her turn came for posting her against the Special Pay post, she has applied for maternity leave, due to which, she was not posted against the said post carrying Special Pay. But, the petitioner was promoted as Head Clerk during the time, when she took Maternity Leave and the same analogy is also applicable for posting her against the post carrying Special Pay during the course of Maternity Leave.

12. We have gone through the entire materials placed on record, especially the order of the Railway Board, dated 14.02.1995. It is not in dispute that right of promotion as per Article 16.4(A) is guaranteed under the [Constitution of India](#) to the persons belonging to Scheduled Caste and Scheduled Tribe and therefore, the denial of the same, i.e., stepping up of pay of the petitioner under Rule 1316(F.R.22C) on par with her junior on the ground that she got promotion as Head Clerk and that she belongs to Scheduled Caste Community would amount to illegality. Secondly, the claim made by the petitioner was denied by the Railway Board merely because she was in maternity leave and hence, she could not be posted in the post carrying Special Pay. But it is seen from the materials that during the said period, she was promoted as Head Clerk. If the reason given by the respondents is accepted, they should not give promotion to the petitioner as Head Clerk and for the self same reason, they have not promoted the petitioner against the post carrying Special Pay.

13. Therefore, in view of the above, we consider it appropriate that the condition No.4(e) stipulated by the Railway Board, as per order dated 19.02.2009 made in RBE No.37/2009 runs contrary to the Article, viz., Article 16.4(A) of the [Constitution of India](#), which is liable to be struck down and it is, accordingly, struck down as unconstitutional and working against the interest of the people belonging to Scheduled Caste and Scheduled Tribe communities.

14. In the result, the order, dated 23.08.2010, passed by the Central Administrative Tribunal in O.A.No.490 of 2009 is set aside.

The writ petition is allowed. Connected M.P. is closed. However, there will be no order as to costs.

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