

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 62
T.A. No.

1989

DATE OF DECISION 31.7.90

K. M. D. Unnithan & another Applicant (s)

M/s. K. Ramakumar Advocate for the Applicant (s)

Versus

UOI rep. Finance, New Delhi Respondent (s)
and another

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

A peculiar plea is arising for consideration in this case. Whether the policy decision taken by the Government at different rates *h* for giving/personal incentive financial benefit to inspire or induce Government servants for adopting certain small family norms in the larger interest of the nation can be attacked by the Government employees as violative of Articles 14 and 16 of the Constitution of India is the question.

2. The facts in a nutshell are as follows. The applicants are ministerial employees of the Central Excise, Government of India, Cochin. While they are working as such, the Government has taken a policy decision at Annexure A-1

for making some payment, to the employees who undergo sterilization after having two or three surviving children by way of a special increment in the form of personal pay not to be absorbed in future increments. The relevant portion of Annexure A-1 is extracted below:

"The President is now pleased to decide that the Central Govt. employees who undergo sterilisation after having two or three surviving children may be granted a special increment in the form of personal pay not to be absorbed in future increases in pay either in the same post or on promotion to higher posts. The rate of personal pay would be equal to the amount of the next increment due at the time or grant of the concession and will remain fixed during the entire service."

3. According to the applicants while the sterilisation operation is alike in the case of all employees those employees who are in the higher scale of pay are getting much larger amounts for the simple reason that the rates of ^{increments are more} ~~the rates of~~ in the higher scale of pay than others who are getting lower scale of pay. As a result, ^{when} ~~a~~ Class IV employee is getting about Rs. 12/- as increment for the sterilization operation, ~~xxxxx~~ a Class I officer who undergoes the same operation will be entitled to get Rs. 250/- per month. This method of granting incentive payment under Annexure A-1 is discriminatory and violative of Articles 14, ~~and~~ 16 and 21 of the Constitution of India. The applicants also contended that the incentive should have been in the reverse form i.e. more amounts may be paid to the low paid employee and less to affluent officers. The Association in which the applicants are members submitted Annexure-C representation in the year 1988.

Annexure E is another representation sent by the first applicant. Annexures D & F are two communications received from the respondents informing that the demand of the Association and the first respondent cannot be accepted. The applicants have challenged these two communications in this application.

4. The respondents have filed a detailed counter affidavit in which they have submitted that the applicants' legal rights have not been infringed and the incentive payment mentioned in Annexure A-1 can never be brought within the purview of condition of service. The application is itself time-barred. Even on the merits there is no substance in the contention because the payment envisaged in Annexure A-1 is only in the form of personal financial benefit to be granted to the persons who volunteer for undergoing the sterilization operation. There is no violation of Article 14, 16 and 21 and the application is liable to be dismissed.

5. Having heard the matter in detail we over-rule the preliminary objection because we thought it fit to dispose of this case on merits. We are not persuaded to accept the contention that Annexure A-1 is vitiated by the vice of violation of the provisions of Article 14, 16 and 21 of the Constitution. Admittedly the incentive payment contemplated in Annexure A-1 is based on a policy decision of the Government. It is only a concession. h
The Government of India

decided to grant some personal financial benefit to the Government servants who offer themselves voluntarily for undergoing sterilization operation as a measure of incentive to attract more persons for adopting small family norms in the national interest. This benefit cannot be deemed as a legal right nor can it confer any personal right on the Government employees so as to attack the same as violative of Article 14 and 16. More over the equality contemplated in Article 14 applies only in cases where persons similarly situated are treated differently or in other words equals are treated unequally in the matter of conferments of legal benefits. The applicants have no case that they and the officers who are getting more amount for the same operation are xxx similiary situated. On the other hand, their contention is that since the operation undergone by the employees are the same, there is equality; but the payments given for xx undergoing the operation differs based on the salary received by the employees. We are afraid whether this situation will attract the vice of discrimination.

6. However this matter can be disposed of on the main ground that the policy decision taken by the Government in the public interest cannot be attacked by the employees on the ground of discrimination. The policy decision would not confer any legal right on the employees and the court will not sit in judgment over the decisions rendered by the

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authorities in this behalf in the implementation of the same. The Supreme Court in R. C. Cooper v. Union of India, AIR 1970 SC 564 held as follows:

"The Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law."

Again in Chairman Ramappa Gundappa Sahakari Samyakt Besava Singh Ltd. V. State of Mysore, AIR 1974 SC 856 the Supreme Court observed:

".....
'but we have no doubt whatever that the land belonged to Government, that it was free to give leases or rights to cultivate to whomsoever it chose, that its policies could change from time to time in accordance with its own social objectives and that any order modifying or nullifying the earlier policy decision by a subsequent resolution cannot be privatory of anyone's rights."

7. It is for the Government to decide the measures which they think beneficial to the Government servants especially when such ^{benefits} are personal to be disbursed by way of an incentive measure/ ^{and concessions.} 4 The financial benefits are being granted to the employees in the larger interest of the nation and the Court will not interfere in those matters. There may be casualties and martyrs in the actual implementation of the policy decisions taken by the Government. But this may not be ground for attacking such policies leading to a challenge against the implementation of the very scheme. The Supreme Court in State of M.P. and others V. Nandlal Jaiswal and others (1986 4 SCC 566 held:

"The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of

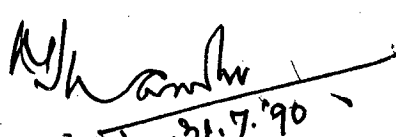
freedom or 'play in the joints' to the executive. "The problem of government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Co. v. State of Chicago*


"are practical ones and may justify, if they not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void.

The Government, as was said in *Permian Basin Area Rate cases*, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."

8. Under these circumstances it is difficult to accept the contentions of the applicants. In fact there is no substance in the application. In the result it is only to be dismissed. Accordingly the application is dismissed as devoid of any merits.

9. There will be no order as to costs.


(N. Dharmadan) 31.7.90
Judicial Member


(N. V. Krishnan)
Administrative Member

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