

R. R. DALAVAI

v.

STATE OF TAMIL NADU

May 7, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Pension scheme to anti-Hindi agitators—Constitutional validity of—Constitution of India, Article 351.

Budget sanction through Appropriation Act 38 of 1974 for payment of pension to anti-Hindi agitators by an executive order is unconstitutional—Madras Budget Manual.

The appellant challenged the constitutional validity of the pension scheme of the respondent-State by which the anti-Hindi agitators were to be paid pension from the Consolidated Fund of the State. The High Court dismissed the writ holding that (1) the spirit and letter of Art. 351 was not violated and (2) in view of the Appropriation Act 38 of 1974, the payment was not illegal.

Allowing the appeal by special leave, the Court

MELD: (1) The pension scheme formulated by the Tamil Nadu Government contains the vice of disintegration and fomenting fissiparous tendencies. If any State will be engaged in exciting emotion against Hindi or any other language, such provocation has to be nipped in the bud because these are anti-national and anti-democratic tendencies. [602C-D]

(2) There is no legislative sanction in the instant case for such pension scheme. The Government by an executive order could not authorise payment of pension scheme. The pension scheme is unconstitutional and the Budget sanction is equally unconstitutional. [602D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1116 of 1975.

Appeal by Special Leave from the Judgment and Order dated 21st January, 1975 of the High Court of Madras at Madras in Writ Petition No. 3962 of 1972.

Petitioner in person; for the Appellant.

A. V. Rangam and (Miss) A. Subhashini; for the Respondent.

The Judgment of the Court was delivered by

RAY, C.J. This appeal is by special leave from the judgment dated 21 January, 1975 of the Madras High Court.

The appellant made an application under Article 226 challenging the power of the Government of Tamil Nadu to grant of pension to Anti-Hindi agitators. The appellant further challenged the power of the State to make payment from the Consolidated Fund of the State Exchequer.

Article 351 of the Constitution says that it shall be the duty of the Union Government to promote the spread of the Hindi language to

A develop so that it may serve as a medium of expression for all the elements of the composite culture of our country. The appellant contended that the spirit and letter of Article 351 is violated by the Pension Scheme of the Tamil Nadu State. The appellant said that the agitators who brought about violence broke the law and were honoured by the pension scheme of the State.

B The High Court said that the State Legislature has control over purse and that in the view of the State Legislature the agitators against Hindi fought for a cause and, therefore, those who are eligible should be granted pension. The High Court found that if a scheme is provided which is not destructive of the Directive Principles but aimed at ameliorating those who the legislature thought deserve that treatment Article 351 was not violated.

C The High Court found that because of Appropriation Act No. 38 of 1974 it could not be said that payment was illegal.

In our opinion the pension scheme formulated by the Tamil Nadu Government contains the vice of disintegration and fomenting fissiparous tendencies. If any State will be engaged in exciting emotion against Hindi or any other language such provocation has to be nipped in the bud because these are anti-national and anti-democratic tendencies.

D The Madras Budget Manual 4th Edition was referred to by the appellant. The appropriation in the present case shows that a fund was kept apart to meet the pension scheme. There is no legislative sanction for such pension scheme. The Government by an executive order could not authorise payment of pension scheme. The appellant is right in his contention that the pension scheme is unconstitutional and the budget sanction is equally unconstitutional.

E For these reasons the judgment of the High Court is set aside.

F A *mandamus* will go directing the respondent to forbear from implementing the pension scheme. The State will be competent to claim refund of moneys illegally and unconstitutionally paid. The appellant is entitled to costs to be paid by the State.

S.R.

Appeal allowed