

Smt J. S. Rukmani and Others

Vs

Government of Tamil Nadu and Others

Writ Petitions (Civil) Nos. 6756, 6806, 8483, 4309 and 9179 of 1982

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

17.10.1984

JUDGMENT

BHAGWATI, J. –

1. These writ petitions raise a common question of law relating to the liability of the State of Tamil Nadu for payment of family pension to widows of employees who were in the service of the former State of Madras and who retired from service before reorganization of States under the State Reorganization Act, 1956. The facts giving rise to these writ petitions are almost identical and it will therefore be enough if we state the facts of only one writ petition, namely, Writ Petition No. 4309 of 1982.

2. This writ petition came to be initiated as a result of a letter addressed to this Court by the petitioner complaining that though she was the widow of an employee of the former State of Madras, who retired before the reorganisation of the States under the State Reorganisation Act, 1956, she was not being given the benefit of family pension which was granted by the State of Tamil Nadu under a Notification dated May 26, 1979. The letter of the petitioner was treated as a writ petition and notice was issued to the State of Tamil Nadu and since it appeared that the State of Tamil Nadu was disputing its liability to pay family pension to the petitioner on the ground that the deceased husband of the petitioner was serving in Cannoneer at the time of his retirement and that Cannanore having become part of the State of Kerala as a result of the provisions of the State Reorganisation Act, 1956 it was the State of Kerala which was liable to pay family pension, if at all, to the petitioner, the Court also joined the State of Kerala as a respondent to the writ petition and issued notice to the State of Kerala. It was common ground between the parties that the husband of the petitioner was in the employment of the former State of Madras and was serving as Deputy Inspector of Schools until August 19, 1954 when he retired from service on superannuation. The place where he served last as Deputy Inspector of Schools was Cannoneer and after his retirement, he settled down in his ancestral house in village Kunniseri in Palghat District which was originally part of the former State of Madras but which on the reorganisation of the States came to belong to the State of Kerala. The husband of the petitioner was, for the sake of convenience, drawing his pension from the nearest Sub-Treasury in Palghat until his death which occurred in July, 1963.

3. It appears that the State of Tamil Nadu introduced New Family Pension Rules, 1964 granting benefit of pension to the family of a government servant on his death but this benefit was confined only to the members of the family of those government servants who retired from and after April 1, 1964. The questioned extending this benefit to the members of the family of government servants who retired prior to April 1, 1964 was considered by the Third Tamil Nadu Pay Commission and in its report it recommended "extension of the family pension benefits to the families of the

government servants who retired prior to April 1, 1964". Pursuant to this recommendation made by the Third Tamil Nadu Pay Commission, the State of Tamil Nadu issued the Notification dated May 26, 1979 extending the benefit of family pension to the members of the family of government servants who retired prior to April 1, 1964. Paragraph 7 of this Notification is material and we may therefore reproduce it in extenso :

7. Employees not covered by the New Family Pension Rules, 1964, fall under the following three categories :

- (i) those who are still in service, (ii) those who have retired and are alive, and
- (iii) those who have died.

(a) Considering the hardship to the families of employees not covered by the New Family Pension Rules, 1954, the Government directed that the family of an employee belonging to any of these three categories and having completed at least a year's service be sanctioned, on death of the employee, family pension at a flat rate of Rs 100 per month. Families of employees who have already died will be sanctioned family pension at this flat rate of Rs 100 per month with effect from April 1, 1979.

(b) A person in receipt of family pension under the old Rules shall have the option to retain it, if it is found to be more advantageous than what would be available under (a) above. In this case, such family pension and the dearness allowance thereon immediately before the coming into force of these orders shall be taken together and the sum total of these amounts shall henceforth constitute the family pension.

4. The contention of the petitioner based on this paragraph of the Notification dated May 26, 1979 was that she was entitled to family pension at the rate of Rs 100 per month with effect from April 1, 1979 since her husband was an employee for the former State of Madras and had retired prior to April 1, 1964 and subsequently died. The petitioner made an application to the Secretary to the Government of Tamil Nadu on July 5, 1981 for grant of family pension at the rate of Rs 100 per month under Paragraph 7 of the Notification dated May 26, 1979 and on this application, the Government of Tamil Nadu intimated to the petitioner through a letter dated November 22, 1981 addressed by the Joint Director of Schools Education that the family pension of Rs 100 per month was sanctioned to the petitioner with effect from April 1, 1969. The petitioner was accordingly paid family pension at the rate of Rs 100 per month for a period of about 6 months. Surprisingly, on April 20, 1982, the Under Secretary to the Government of Tamil Nadu addressed a letter to the petitioner stating that because the petitioner's husband last served in Cannanore at the time of his retirement and Cannanore does now form part of the present State of Tamil Nadu, the petitioner was not entitled to the grant of family pension under the clarification issued by the Government of Tamil Nadu in its G.O. MS/63 (Finance) dated March 18, 1982. This Notification sought to clarify that if the place of retirement of an employee or the place where he was last serving at the time of his death while in service, did not form part of the present State of Tamil Nadu, the widow of such employee would not be entitled to the benefit of family pension under the Notification dated May 26, 1979 and it was on the basis of this clarification that the family pension which was being paid by the State of Tamil Nadu to the petitioner was discontinued by the letter dated April 20, 1982. The petitioner being obviously a woman without any means, it was not possible for her to get relief by filing a regular writ petition and she therefore sought to invoke the jurisdiction of this Court by addressing a letter complaining of discrimination against her and praying that family pension at the

rate of Rs 100 per month should be directed to be paid to her by the State of Tamil Nadu under Notification dated May 26, 1979.

5. The State of Tamil Nadu as also the State of Kerala appeared in answer to the notice issued by the Court and each tried to throw the responsibility for payment of the family pension on the other, without disputing that the amount of family pension was payable to the petitioner but only raising the question as to who should be made liable to pay same. Since the hearing of this writ petition as also the other three writ petitions filed by widows similarly circumstanced was likely to take some time in reaching hearing, the Court made interim order directing each of the States of Tamil Nadu and Kerala to pay a sum of Rs 50 per month to the petitioner as also to the widows who had moved the other three writ petition in order to enable them to survive. On these facts, the question which falls for consideration is as to which State is liable to pay the amount of family pension to the petitioner, the State of Tamil Nadu or the State of Kerala.

6. Now one position is clear namely that the petitioners cannot claim any family pension under the Kerala Pension Rules since the Kerala Pension Rules admittedly on their terms apply only in cases of government servants who retired from and after April 1, 1964 while the husband of the petitioner retired in August 1954 and the respective husbands of the petitioners in the other three writ petitions also retired before August 31, 1964. Moreover, the husband of the petitioner was at no time an employee of the State of Kerala which comes into being on October 1, 1956 under the States Reorganisation Act, 1956 since he retired from service long before that date and obviously therefore the petitioner could not claim any family pension from the State of Kerala under the Kerala Family Pension Rules. The same position obtained also in regard to the respective husbands of the petitioners in the other three writ petitions. The only question which therefore calls for consideration is as to whether the petitioners in these four writ petitions are entitled to claim family pension under the Notification dated May 26, 1979 and if so, whether they are entitled to claim such family pension from the State of Tamil Nadu or from the State of Kerala. The learned Additional Solicitor-General appearing on behalf of the State of Tamil Nadu placed strong reliance on Section 86 of the States Reorganisation Act, 1956 read with the Fifth Schedule of that Act. Section 86 reads as follows :

Section 86. Pensions. - The liability of the existing State in respect of pensions shall pass to, or apportioned between, the successor States in accordance with the provisions contained in the Fifth Schedule.

7. The fifth Schedule consists of 5 paragraphs but we are concerned only with paragraphs 1 and 3 which are in the following terms :

1. Subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of pensions granted before the appointment day by an existing State, pay the pensions drawn in its treasuries.

3. In any case where there are two or more successor States, there shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1957 and in respect of each subsequent financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the existing State in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount

by the successor State or States paying less.

8. It is obvious on a plain grammatical construction of Section 86 that the liability of an existing State in respect of pension which passes to or is apportionable between the successor State or States in accordance with the provisions of the Fifth Schedule is a liability in respect of pension under an existing law. The liability may be in presenti or it may be a liability to arise in future, but it must be a liability under an existing provision of law and it is that liability which is to pass to or be apportionable between the successor State or States in accordance with the provisions contained in the Fifth Schedule. Section 86 could not possibly be intended to refer to a liability which may subsequently be created by a provision of law which may be enacted in future by any particular State. The words of the section are "the liability of the existing States". It must therefore be a liability of an existing State and not a liability of a successor State which may come into being as a result of a future legislation passed by that State. If the construction canvassed on behalf of the State of Tamil Nadu were accepted, it would lead to a startling result, namely, that a successor State by enacting legislation creating a liability for pension would be able to pass on that liability to the other successor States which could never have been intended by the Legislature. This view which we are taking is reinforced by Paragraphs 1 and 3 of the Fifth Schedule. Paragraph 1 on its plain terms refers to "pensions granted before the appointed date by an existing State". It applies only in respect of a pension which is granted before October 1, 1956 being the appointed date under the States Reorganisation Act, 1956 and it has no reference whatsoever to any pension granted subsequent to that date. Moreover Paragraph also makes it clear that it is only the liability of an existing State in respect of pension which is required to be apportioned between the successor States in the population ratio. It is therefore clear beyond doubt that Section 86 and Paragraphs 1 and 3 of the Fifth Schedule do not cover a case where a liability for pension is created by a successor State subsequent to the appointed date, namely October 1, 1956. The reliance placed by the learned Additional Solicitor-General on behalf of the State of Tamil Nadu on Section 86 read with Paragraphs 1 and 3 of the Fifth Schedule is therefore misconceived and the argument based upon it must be rejected.

9. If Section 86 read with Paragraphs 1 and 3 of the Fifth Schedule has no applicability, the question before us resolves into a very narrow one, namely, whether the liability for family pension created by the State of Tamil Nadu under the Notification dated May 26, 1979 is limited only to cases of those government servants who were last employed at a place which falls within the territorial limits of the State of Tamil Nadu. The argument of the petitioners was that their respective husbands were in the service of the former State of Madras and they retired as such government servants at a time when the State of Madras was in existence and if the State of Tamil Nadu which is the successor State to the State of Madras has issued a Notification dated May 26, 1979 granting the benefit of family pension to the widows of government servants who retired prior to April 1, 1964, the petitioners must be held to be entitled to the benefit of such family pension, since they satisfied all the conditions requisite for the applicability of grant of family pension under the Notification dated May 26, 1979. Now it was not the contention of the State of Tamil Nadu that government servants who were in the employment of the State of Madras and who retired before the State of Tamil Nadu came into being as a result of the States Reorganisation Act, 1956 were not entitled to the benefit of family pension under the Notification dated May 26, 1979. The State of Tamil Nadu conceded that the widows of such government servants were entitled to grant of family pension under the Notification dated May 26, 1979 provided such government servants were at the date of superannuation serving at a place which on the reorganisation of the States fell within the territories forming part of the State of Tamil Nadu. Only ground on which the State of Tamil Nadu sought to exclude the petitioners from the benefit of the family pension was that their respective husbands

served at the time of their superannuation at places which as a result of the States Reorganisation Act, 1956 were no more in the State of Tamil Nadu but became parts of other successor States. We do not think any such limitation can be read in the Notification dated May 26, 1979. It is true that by reason of the subsequent Government Order dated March 18, 1982 issued by the State of Tamil Nadu clarifying the Notification dated May 26, 1979 the petitioners would be excluded from the benefit of the family pension since the places where their respective husbands were serving at the time of superannuation became part of States other than the State of Tamil Nadu. But the learned counsel appearing on behalf of the petitioners challenged the constitutional validity of the Government Order dated March 18, 1982 and contended that the place where as government servant was serving at the time of superannuation has no rational nexus with the object of granting family pension under the Notification dated May 26, 1979 and that the Government Order dated March 18, 1982 is therefore discriminatory and void. This contention is, in our opinion, well founded and must be accepted. The object of granting family pension under the Notification dated May 26, 1979 is obviously to alleviate the economic distress of widows and other members of the family of government servants who retired after faithfully serving the State of Madras as also the successor State of Tamil Nadu and who subsequently died leaving widows and other members of the family. Now admittedly the widow of a government servant who was in employment of the former State of Madras and who retired before the reorganisation of the States would be entitled to family pension under the Notification dated May 26, 1979 if the place where her husband was serving at the time of superannuation was situate in the territories of the successor, State of Tamil Nadu. If that be so, then it is difficult to see how the widow of a government servant who served the former State of Madras in the same manner and who retired before the reorganisation of the States should not be entitled to family pension under the Notification dated May 26, 1979 merely because the place where her husband was serving at the date of superannuation subsequently came to form part of the territories of a State other than the State of Tamil Nadu as a result of the reorganisation of the States. The object of the Notification dated May 26, 1979 does not warrant any such distinction to be made between the widows of one class of government servants and the widows of another class merely on the basis of the place where the government servant last served at the time of superannuation, although in both cases the government servant served the same State, namely, the former State of Madras and superannuated before the reorganisation of the States. We are therefore of the view that the restrictive limitation imposed by the Government Order dated March 18, 1982 confining the benefit of family pension to the members of the family of only those government servants who last served at a place falling within the territories of the successor State of Tamil Nadu must be held to be violative of Article 14 of the Constitution and hence unconstitutional and void.

10. We must accordingly hold that the State of Tamil Nadu is liable to pay to the petitioners in these four writ petitions as also to the widows of other government servants falling within Paragraph 7 of the Notification dated May 26, 1979 family pension at the rate of Rs 100 per month with effect from April 1, 1979. We would therefore issue as writ directing the State of Tamil Nadu to pay to the petitioners in all these writ petitions arrears of family pension calculated at the rate of Rs 100 per month from April 1, 1979 after deducting the amount, if any, already paid by the States of Tamil Nadu and Kerala to the petitioners in terms of the interim order made by us. The State of Kerala will not be entitled to claim refund of any payment made to the petitioners nor reimbursement in respect of such payments from the State of Tamil Nadu. The arrears of family pension shall be paid by the State of Tamil Nadu to the petitioners within four months from today and the State of Tamil Nadu will continue to pay to the petitioners family pension at the rate of Rs 100 per month on or before tenth day of each succeeding month in terms of the Notification dated May 26, 1979. We may make it clear that the State of Kerala will not be liable in future to make any payment to the

petitioners since the future liability for payment of family pension rests on the State of Tamil Nadu. The State of Tamil Nadu will pay to the petitioners costs quantified at a consolidated figure of Rs 2000 in all the writ petitions.

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