State Government Pensioners' Association and Others

Vs

State of Andhra Pradesh

Special Leave Petitions (Civil) Nos. 14179-80 of 1985

(M. P. Thakkar, B. C. Ray JJ)

25.07.1986

JUDGMENT

THAKKAR, J. –

Does that part of the provision which provides for payment of a larger amount of gratuity with prospective effect from the specified date offend Article 14 of the Constitution of India ? Whether gratuity must be paid on the stepped up basis, to all those who have retired before the date of the upward revision, with retrospective effect, even if the provision provides for prospective operation, in order not to offend Article 14 of the Constitution of India ? A Division Bench of the High Court of Andhra Pradesh says 'no'. In our opinion it rightly says so. The petitioners, erstwhile government employees who had retired "before" April 1, 1978, inter alia claimed and contended before the High Court that they were entitled to the benefit of the Government Order No. 88 dated March 26, 1980 providing that :

> (b) Retirement gratuity may be one-third of pay drawn at the time of retirement for every 6 monthly service subject to maximum of 20 months pay limited to Rs 30,000.

The said order insofar as gratuity is concerned is made effective from April 1, 1978. Says the High Court :

> Therefore, we are now only concerned whether this G.O.Ms. No. 88, dated March 26, 1980, should be made applicable to the pensioners that retired prior to April 1, 1978 by revising their gratuity payable to them. The learned Advocate-General, contends, that gratuity is something different from the other pensionary benefits like the pension and the family pension, which are continuing ones. The gratuity that accrued to the petitioners prior to April 1, 1978 was celebrated on the then existing Rules and paid. In that way, the pensioners retired prior to April 1, 1978 will form themselves into a distance class for purposes of the payment of benefit of gratuity from the others that retired after April 1, 1978, from which date, the revised pension rules are made to be applied by the government. On the other hand, it is the contention of the writ petitioners that gratuity is a part and parcel of the pensioner benefits and the same cannot be looked separately from the other pensionary reliefs. The learned counsel for the writ petitioners, no doubt, cited two decisions (1) V. P. Gautama v. Union of India (1963 SLR 346) and (2) M. P. Tandon v. State of U.P. (1984 Lab IC 677 (All)), where their Lordships that decided the above two cases, held, that no distinction can be made in the pensionary benefits including death-cum-retirement gratuity benefit between the pensioners that retired prior to the stipulated

date and after the stipulated date.

In the decision D. S. Nakara v. Union of India (AIR 1983 SC 130 : (1983) 1 SCC 305, 344 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165), their Lordships of the Supreme Court enunciated the principle as follows :

> With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria, 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in the memoranda Exs. P-1 and P-2, violated Article 14 and is unconstitutional and liable to be struck down.

After thus enunciating the principle, their Lordships have taken care to observe as follows : (SCC p. 334, para 49)

But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective.

In our opinion, the arrears relating to gratuity benefit computed according to the Revised Pension Rules of 1980 may not be paid to the pensioners that retired prior to April 1, 1978 because at the time of retirement, they are governed by the then existing Rules and their gratuity was calculate on that basis. The same was paid. Since the revised scheme is operative from the date mentioned in the scheme, i.e. April 1, 1978, the continuing rights of the pensioners to receive pension and family pension must also be revised according to that scheme. But the same cannot be said with regard to gratuity, which was accrued and drawn. The reason why their Lordships of the Supreme Court in Nakara case (AIR 1983 SC 130 : (1983) 1 SCC 305, 344 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) refused to grant arrears to the pensioners that retired prior to the stipulated date would ipso facto apply for refusing to grant the revised gratuity, since that would amount to asking the State Government to pay arrears relating to gratuity after revising them according to the new scheme for those that retire prior to April 1, 1978 and would amount to giving retrospective effect to the A.P. Revised Pension Rules, 1980, which came into effect from October 29, 1979 and in the case of Part II of those Rules from April 1, 1978. The scheme is prospective and not retrospective.

Moreover, we must remember that when the State Government appointed the Pay Revision Commissioner to review the then existing scales of pay under G.O.Ms. No. 745, General Administration (Spl. A) Department, dated November 3, 1978, the Pay Revision Commissioner was asked to take into account, while making his recommendation, the economic conditions in the State, the financial implications of his recommendations, and the impact thereof on the resources available for the plan and other essential non-Plan expenditure. Surely, the Pay Revision Commissioner, when he made his recommendations to revise the pensionary benefits, is not contemplating to make his recommendations retrospective. Otherwise, he would have taken financial implications of those

recommendations and the impact thereof on the resources available for Plan and other essential non-Plan expenditure of the State. For this reason also, we cannot direct the State Government to revise the gratuity benefit, which was already paid to these petitioners who retired prior to April 1, 1978. The Supreme Court has clearly stated in Nakara case (AIR 1983 SC 130 : (1983) 1 SCC 305, 344 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) that arrears are not required to be paid because to that extent the scheme is prospective. Similar is the case with regard to the case of gratuity that was accrued and paid prior to the stipulated day mentioned in the G.O. promulgating the Revised Pension Rules of 1980.

2. We fully concur with the view of the High Court. The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara case (AIR 1983 SC 130 : (1983) 1 SCC 305, 344 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165). There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation - not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it dies not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on January 26, 1950 and before the date of issuance of the notification on March 26, 1980, the court will have to rewrite the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing most of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf. For the sake of record we may mention that our attention was allied to an order to a Division Bench of the High Court of Gujarat (LPA 280 of 1983 dated September 8, 1983, per P. D. Desai, Acting C.J.) which does not discuss the issues involved but is based on a concession said to have been made by the Advocate-General who appeared for the State. And also to a decision of the Allahabad High Court (1984 Lab IC 677 (All)) and Punjab and Haryana High Court (V. P. Gautama

v. Union of India, (1984) 1 SLJ 120). In none of these decisions the relevant passage from Nakara case (AIR 1983 SC 130 : (1983) 1 SCC 305, 344 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) was considered. Nor was the aspect regarding prospective operation considered on principle. The High Court considered it shocking and was carried away by the fact that an employee who retired even one day before the enforcement of the upward revision would not get the benefit if the specified date of enforcement was not effaced by striking down the relevant provision. But in all cases of prospective operation it would be so. Just as one who files a suit even one day after the expiry of limitation would lose his right to sue, one who retires even a day prior to enforcement of the upward revision would not get the benefit. This cannot be helped, there is nothing shocking in it unless one can say legislation can never be made prospective, and nothing turns on it. These are the reasons which impelled us to dismiss the special leave petition on July 18, 1986.

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