

Chaudhary Kesava Rao and Others

Vs

State of Andhra Pradesh

With

Kazi Mohd. Hameedulla and Others

Vs

State of Andhra Pradesh

With

M. Shyamala Devi and Others

Vs

State of Andhra Pradesh

With

V. P. Jaya Chandra Reddy and Others

Vs

State of Andhra Pradesh

With

Mohammad Yaseen and Others

Vs

State of Andhra Pradesh

With

B. Janki Ram and Others

Vs

State of Andhra Pradesh

With

Mohd. Abdul Wali Farooqi and Others

Vs

State of Andhra Pradesh

Writ Petition (Civil) Nos. 888-892 of 1987, 757 of 1988 and 316 of 1989

(K. Jayachandra Reddy, N. M. Kasliwal JJ)

24.08.1990

JUDGMENT

N. M. KASLIWAL, J. -

1. The abovementioned bunch of writ petitions under Article 32 of the Constitution of India has been filed by the retired government servants of the Government of Andhra Pradesh having retired in between April 1, 1978 and October 28, 1979. The case of the petitioners is that in pursuance to persistent demands made by the State Government employees to revise their pay scales the Andhra Pradesh Government by Government order dated November 3, 1977 appointed Shri A. Krishnaswamy, IAS (Retd.) as the Pay Revision Commissioner. By another Government Order dated January 28, 1978 the Pay Revision Commissioner was also directed to review the existing retirement benefits inter alia to all employees of the State Government and to examine the question of extension of retirement benefits and make suitable recommendations in that regard. The Pay Revision Commissioner submitted a report comprising five volumes. The Commission recommended that the date from which the revised scales of pay would be given effect to should be April 1, 1978. In paragraphs 9.42 to 9.45 of its report the Pay Revision Commissioner specifically recommended that the age of retirement should be increased from 55 years to 58 years. It has been alleged that so far as the recommendations of the Commission in regard to the increased pay scales are concerned, the same were accepted and implemented by the State Government w.e.f. April 1, 1978. But so far as the recommendation in regard to increase in the age of superannuation from 55 years to 58 years, the same was implemented only w.e.f. October 29, 1979 through G.O.M.S. No. 283 Finance and Planning.

2. It has also been alleged by the petitioners that the State Government issued G.O. (P) No. 88 Finance and Planning dated March 26, 1980 whereby the Revised Pension Rules, 1980 were promulgated. The above Rules divided the government servants for the purpose of pension into two parts, Part I applying to all government servants who were in service on October 29, 1979 and Part II applying to such of the government servant who retired/died in between April 1, 1978 and October 28, 1979 (both dates inclusive). The contention of the petitioners is that by the above Rules two categories of pensioners were created with different rates of pension which is completely arbitrary and in violation of the law declared by this Hon'ble Court in D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165). The petitioners have, therefore, prayed that pension rules Part II which has been made applicable to government servants having retired between April 1, 1978 and October, 28, 1979 be quashed and it may be directed that they would also be governed by Part I of the Rules which is applicable to those government servants who were in service on October 29, 1979.

3. The counter-affidavit has been filed on behalf of the State of Andhra Pradesh. In the counter-affidavit it has been stated that Pay Revision Commissioner was appointed to review the structure of different scales of pay, dearness allowance and other compensatory allowances of all categories of employees of the State Government, Local Bodies and aided institutions as well as work charged

establishments. An additional term of reference was added for reviewing the existing retirement benefit of all categories. After carefully considering all the relevant factors the government implemented the recommendations relating to revision of scales of pay w.e.f. April 1, 1978. As regards the age of superannuation, the Government of Andhra Pradesh increased the age of superannuation to 58 years w.e.f. October 29, 1979. This increase in the age of superannuation could not be implemented retrospectively as it would have led to a lot of difficulties, but to compensate those who retired after April 1, 1978 and before October 29, 1979 the government gave them benefits as under :

(1) The pension formula was increased from 33/80 to 30/60 for all those who retired between April 1, 1978 and October 28, 1979. This increase was specifically given as they would not have otherwise been entitled to the revised pension formula of 33/66 which had been applied only to such government servants who retired after October 29, 1979.

(2) Formula for calculation of gratuity was increased to one-third of emoluments for each completed six months period of qualifying service subject to a maximum of 20 months emoluments and limited to Rs. 30,000. Earlier the formula was one-fourth of pay for every six months service subject to a maximum of 16 1/2 times and emoluments limited to Rs. 30,000.

(3) The family pension was increased to 30 per cent of the last drawn pay without any maximum limit. Earlier the rates of family pension were different for different range of pay and minimum was Rs. 60 and maximum Rs. 250.

4. It was further submitted in the counter-affidavit that the distinction between the pensioners in Parts I and II is based on the date of retirement and is clearly connected with the age of superannuation which was raised from 55 years to 58 years. It is not correct to say that the government had arbitrarily divided the pensioners into two groups. As the date (sic age) of superannuation was enhanced to 58 years on October 29, 1979, it was necessary to draw a line between those who retired earlier to that date and those who retired subsequent to October 29, 1979. It was pointed out that the pension formula would be 30/60 for those who retired between April 1, 1978 and October 28, 1979 and their pension worked out on the basis of 30/60 of the average emoluments and in respect of those who retired on or after October 29, 1979, it would be worked out as 33/66. Thus both the rules guarantee 50 per cent of pension irrespective of date of retirement.

5. It was also pointed out in the counter-affidavit that a Writ Petition (Civil) No. 12605 of 1985 was filed by the Andhra Pradesh State Government Retired Officers Association and others versus the State of Andhra Pradesh and others on identical grounds and the same was dismissed by this Hon'ble Court by an order dated March 2, 1987. In the above case it was held that :

"In view of the averments contained in paragraphs 2(d) and 3 of the counter-affidavit, it is quite clear that the State Government was fully alive to improve the pensionary benefit of those who had already retired prior to October 29, 1979 and accordingly enhanced the rates of pension. We are satisfied that there is a discernible basis for differential rates of pension and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or that they offend Articles 14 of the Constitution. The writ petition is accordingly dismissed."

6. We have heard the arguments advanced by the learned counsel for both the parties and have thoroughly perused the records and the Andhra Pradesh Revised Pension Rules, 1980. We are fully convinced that the claim of the petitioners is based on a complete misconception of the Rules. A perusal of the Rules clearly goes to show that Part I of the Rules was no doubt made applicable to all government servants who would retire on or after October 29, 1979 while Part II was made applicable to such government servants who were holding pensionable posts on March 31, 1978 and who retired between April 1, 1978 and October 28, 1979 and this distinction was necessary in view of the fact that the age of superannuation for retirement was increased from 55 years to 58 years w.e.f. October 29, 1979. However, all the benefits have been granted to the pensioners like the petitioners who had retired between April 1, 1978 and October 29, 1979 in the amount of pension, retirement gratuity and family pension as granted to the government servants falling under Part I. So far as the amount of pension is concerned, the formula of completed six monthly periods of qualifying service was worked out as 30/60 of average emoluments which was equal to 50 per cent of the pay. On account of the fact that the government servants falling in Part I and retiring at the superannuation age of 58 years the above formula was calculated as 33/66 which was also 50 per cent of the average emoluments. Similarly in the case of retirement gratuity and family pension no distinction has been made in the case of the two categories of pensioners. This clearly goes to show that neither there is any discrimination nor any disadvantage to the pensioners falling in the category of petitioners and the formula working out the amount of pension is based on a rational principle and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or the same are in any manner violative of Article 14 of the Constitution.

7. In view of the circumstances mentioned above the case of D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) is not at all applicable in the facts and circumstances of this case and renders no assistance to the petitioners.

8. In the result we find no force in these writ petitions and the same are dismissed with no order as to costs.

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