

State of Rajasthan

Vs

Rajasthan Pensioner Samaj, Respondent.

Civil Appeal No. 234 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

23.04.1991

### JUDGMENT

1. The above Civil Appeal is directed against the order dated 5-7-89 made by the High Court of Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 760 of 1988 (reported in 1989 (1) Raj LW 347), whereby the writ petition preferred by the respondent herein, namely, Rajasthan Pensioners Samaj was allowed and consequently the appellant was directed to provide an opportunity to the widows of the contributors of Jodhpur Provident Fund who died before the issuance of the memorandum dated 17-10-87 to opt for family pension and to pay them family pension on their exercising option for the same and further directed to issue necessary memorandum or amendment to the relevant rules for that purpose within six months from the date of the judgment. It appears that the issues in question have had a chequered history. We think that it is not necessary to restate the entire history of the case as it is well set out in the judgment of the lower Court and conveyed by the various memorandum issued by the Government of Rajasthan. The impugned judgment under Civil Appeal is mainly based on the decision of this Court in D. S. Nakara v. Union of India, (1983) 1 SCC 305 : AIR 1983 SC 130.

2. We heard both the learned Counsel for the respective parties for a considerable length of time. The main submission, urged on behalf of the appellant-State is that after the judgment of the Constitution Bench of this Court in Krishna Kumar v. Union of India, (1990) 4 SCC 207 : (AIR 1990 SC 1782), the impugned judgment of the High Court following D. S. Nakara's judgment cannot be sustained and that the contributory provident fund retirees (hereinafter called as CPF Retirees) form a different class from those who had opted for pension scheme according to the decision in Krishna Kumar's case and as such they are not entitled now to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the CPF Retirees are not entitled to the benefits granted to the Pension Retirees. It has been further contended that the widows of Jodhpur CPF Retirees and Pension Retirees do not form one homogenous class but form two different classes and therefore the widows of CPF Retirees are not entitled to opt for pension scheme in view of the judgment of Krishna Kumar's case and that moreover the right to opt for pension scheme was the right of the employees which right cannot be either inherited or exercised by the widows of the Retirees. Finally, it has been stated that in the light of the present position of law laid down in Krishnan Kumar's case the impugned judgment is liable to be set aside.

3. It may be noted that after the arguments were closed, a suggestion was made by us asking the appellant, Government to sympathetically consider the plight of the widows before us and submit a proposal so that, the long standing sufferings of the unfortunate widows could be ameliorated to some extent. Accordingly, a proposal is submitted by the appellant about which we will presently adhere to.

4. Though we are not inclined to go deep into the matter on account of the proposal placed by the Government, we are of the firm view that there is much force in the submission made on behalf of the appellant and hold that the order impugned cannot be sustained in the light of the principle laid down in Krishan Kumar's case (AIR 1990 SC, 1782), wherein the decision in D. S. Nakara's case (AIR 1983 SC 130) is explained and distinguished. Accordingly, the impugned order is set aside.

5. Learned Counsel appearing for the appellant submits that the State Government has agreed to grant exgratia payment Rs. 150/ - per month w.e.f 1-11-89 to the alive widows of the Jodhpur CPF Retirees which CPF Retirees did not opt for pension scheme as and when chances were given to them to switch over to the pension scheme and died after availing CPF benefits. Learned Counsel for the respondents agrees for this proposal.

6. In the result, we while setting aside the impugned order, direct the State Government to pay the admitted exgratia payment @ Rs. 150/ - per month w.e.f. 1-11-89 in addition to the admissible dearness allowance.

7. The appeal is allowed subject to the above directions.

Appeal allowed.

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