State of Rajasthan

Vs

Sevanivatra Karamchari Hitkari Samiti

Civil Appeal No. 29 of 1995

(P. B Sawant, G. N. Ray, J.)

03.01.1995

ORDER

G. N. RAY, J. -

1. Special leave granted.

2. In this appeal a Division Bench decision of the Rajasthan High Court dated 21-12-1989 striking down the date i.e. 29-2-l964 mentioned in Rule 268-H of Rajasthan Service Rules, 1951 as being violative of Article 14 of the Constitution of India, is under challenge. The respondent, Sevanivatra Karamchari Hitkari Samiti, Jodhpur an unregistered association of retired employees of the Government of Rajasthan, moved a writ petition in the Rajasthan High Court inter alia contending that the expression "in service on 29-2-1964 who is" as used in Rule 268-H of the Rajasthan Service Rules was discriminatory and violative of Article 14 of the Constitution. It was also contended that such rule was also in conflict with the principle laid down in the decision of this Court rendered in D. S. Nakara v. Union of India. It was also contended that the said expression being severable from the other pan of Rule 268-H, the same should be struck down so that the validity of Rule 268-H without the aforesaid expression is not affected.

3. By the impugned judgment, the Rajasthan High Court has held that under Rule 268-H, the benefit of pension has been given only to the government servants who were in service on 29-2-1964 but such benefit under Rule 268-H was not extended to the government servants who had retired prior to that date. The Rajasthan High Court has held that there is no reasonable classification in excluding government servants who were not in service on 29-2-1964 and limiting the benefit of liberalised Family Pension Scheme under Rule 268-H only to such government servants who were in service on 29-2-1964. The High, Court has also held that such classification without any reasonable basis for discrimination cannot be sustained in view of the decision of this Court rendered in D. S. Nakara case.

4. Rule 268-H of Rajasthan Service Rules, 1951 the validity of which was the subject-matter of challenge before the Rajasthan High Court is to the following effect :

> "268-H. Options to elect benefits. - Under this Chapter a government servant in service on 29-2-1964 who is governed by the family pension rules contained in Chapter XXIII of these Rules shall have option to elect benefits under this Chapter in substitution of the existing family pension benefits as admissible under Chapter XXIII or retain their existing benefits. The option shall be exercised within a period of six months from the date of publication of the Rajasthan Service (Amendment)

Rules, 1964, in the Official Gazette, in the form given hereunder. An option once exercised shall be final. Persons who fail to exercise option will be deemed to have elected the benefits under this Chapter.

(2) The option under sub-rule (1) shall be communicated by the Officer concerned to the Head of Office, if he is a non-Gazetted Officer and to the Accountant General, Rajasthan, Jaipur, if he is a Gazetted Officer. The option when received from a non-Gazetted Officer shall be countersigned by the Head of the Office and pasted in the Service Book of the Officer concerned."

5. It appears that after the formation of the State of Rajasthan, Rajasthan State Service Rules came into force w.e.f. 1-4-1951. Chapter XXIII of the said Rules provides for grant of family pension in accordance with the provisions contained in Rules 261 to 268. Rule 261 provides :

"A family pension not exceeding the amount specified in Rule 262 may be granted to the family of an officer who dies, whether still in service or after retirement after completion of not less than 20 years' qualifying service for a period of ten years :

Provided that the period of payment of family pension will in no case extend beyond a period of five years from the date on which the deceased officer retired or on which he would have retired on a superannuation pension in the normal course, according as the death takes place after retirement or while the officer is in service."

6. Thereafter, a new Chapter being XXIII-A containing Rules 268-A to 268-H relating to the new Family Pension Scheme came into force w.e.f. 1-3-1964 by insertion of the said Chapter XXIII-A vide F. D. Notification No. 1(12) FDE-R/64 dated 25-9-1964. The said new Family Pension Rules were made applicable to all government servants on pensionable establishments whether temporary or permanent who were in service on 29-2-1964 or who would enter service on or after that date but such family pension shall not apply to :

(a) persons who retired before 1-3-1964 but may be re-employed on that date or thereafter,

(b) persons paid from contingencies,

(c) work-charged staff,

(d) casual labour,

(e) contract officers.

7. The new Rule 268-H gave option to elect benefits under Chapter XXIII-A to those government servants who were in service on 29-2-1964 and who were governed by the Family Pension Rules contained in Chapter XXIII of Rajasthan Service Rules, in substitution of the existing family pension benefits as admissible under Chapter XXIII, or to retain their existing benefits. On 4-1-1965, the State of Rajasthan again liberalised the existing provisions in regard to the family pension drawn by the widows or minor children of the employees under the Family Pension Rules contained in Chapter XXIII who were actually in receipt of family pension on 29-2-1964, even though such pension would have been stopped on expiry of five years since the death of the government servant. The State Government extended the period of eligibility of such family pension up to the death or

remarriage, whichever is earlier, in the case of widows and the date of attaining majority in the case of children and until marriage, if earlier, in case of daughters.

8. The State of Rajasthan further liberalised the existing provisions contained in Chapter XXIII by providing relief to the widows of government servants/pensioners who expired before 1-3-1964 and ceased to draw their family pension in terms of the Chapter XXIII of Rajasthan Service Rules. For such pensioners, the State Government allowed family pension w.e.f. 1-3-1978.

9. On 1-4-1988, the State Government extended the benefits of the provisions of new Family Pension Rules, 1964 as contained in Chapter XXIII-A of the Rajasthan Service Rules w.e.f. 1-4-1988 to the widows of government servants of pensionable establishments who retired or died before 1-3-1964 or who opted for the family pension benefits as admissible under Chapter XXIII of Rajasthan Service Rules.

10. The said Sevanivatra Karamchari Hitkari Samiti challenged the vires of Rule 268-H in Chapter XXIII-A of Rajasthan Service Rules by contending that the said rule was violative of Article 14 being discriminatory between two sets of government employees entitled to get family pension only on the basis of such government servants remaining in service on 29-2-1964 and thereafter. In the case of the government servant who was not in service on 29-2-1964, the benefit of liberalised pension as contained in Rule 268-H in Chapter XXIII-A was not made available initially but such government servant or his dependant family members were entitled to draw family pension only under the old Family Pension Scheme under Chapter XXIII.

11. At the hearing of this appeal, Mr. Aruneshwar Gupta, learned counsel for the appellant, has contended that Rule 268-H under Chapter XXIII-A merely provides for option to elect benefits under this Chapter i.e. Chapter XXIII-A "to the government servants in service on 29-2-1964" in substitution of the existing family pension benefits as admissible under Chapter XXIII or retain their existing benefits.

12. Mr. Gupta has submitted that Rule 268-H although introduced in 1964 was never challenged as being unconstitutional until 1988 by moving the aforesaid writ petition. He has submitted that the government servants and/or their family members continued to take benefits of the family pension under Chapter XXIII even when there was liberalisation of the existing provisions contained in Chapter XXIII vide Memorandum dated 4-1-1965 and no grievance was made on the score of alleged discrimination for introducing the benefits of Rule 268-H under Chapter XXIII-A. Similarly, no grievance was also made regarding Rule 268-H when there was further liberalisation under the provisions contained in Chapter XXIII as introduced in 1978. There was also no grievance regarding Rule 268-H when by order dated 31-12-1982, the benefit of ex gratia pension to families of those government servants who retired before 1-3-1964 and whose family members did not get any family pension under the rules in force i.e. the provisions of Chapter XXIII, was given.

13. Mr. Gupta has submitted that it is really unfortunate and also surprising that when the Government of Rajasthan decided to give further benefit to the families of the government servants who had retired or died before 1-3-1964 and covered by the provisions contained in Chapter XXIII of the Rajasthan Service Rules by extending the benefit of new Family Pension Rules contained in Chapter XXIII-A w.e.f. 1-4-1988 vide order dated 18-7-1988, that the said writ petition was filed by the respondent making a belated grievance regarding Rule 268-H.

14. Mr. Gupta has contended that the writ petition was filed by D. S. Nakara and others challenging

the validity of the Office Memorandum No. F. 19(3)-EV-79 dated 25-5-1979 issued by the Government of India, Ministry of Finance whereby the formula of computation of pension was liberalised and it was made applicable only to those government servants who were in service on 31-3-1979 and retired from service on or after that date. By the said government order, a slab system for computation of pension was introduced. Such liberalised formula was made applicable to the government employees governed by the 1972 rules retiring on or after the specified date.

15. Referring to the decision rendered by this Court in D. S. Nakara case Mr. Gupta has contended that the questions formulated by this Court in the said case were to the following effect : (SCC p. 311, para 2)

> "Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ('1972 Rules' for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14?"

It has been held by this Court in the decision in D. S. Nakara case that :

> (a) Pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 form one class.
>
> (b) Date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the Scheme and would bring under its umbrella all retiring pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. If the date is wholly removed, revised pensions will have to be paid from actual date of retirement of each pensioner. That is impermissible.
>
> (c) That the words being in service on the specified date and retiring subsequent to that date violates Article 14 and is unconstitutional and as such should be struck down.

16. Mr. Gupta has further submitted that in the said decision it has been specifically held by this Court that "unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the Scheme". It has also been held in the said decision that :

> "only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised Scheme comes into force and beware that it is not a new Scheme. It is only a revision of existing Scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it."

(emphasis supplied)

17. Mr. Gupta has contended that the members of the respondent-Association were governed by the provisions of rules contained in Chapter XXIII of Rajasthan Service Rules as amended from time to time. The new Family Pension Rules as contained in Chapter XXIII-A have been introduced for the benefit of government servants in service on a particular date and retiring on or after that date. Such benefit under Chapter XXIII-A was not introduced in substitution of the existing provision of family pension rules as on 1-3-1964. Hence, the decision rendered in D. S. Nakara Case is not applicable in the case of the members of the respondent Samiti. Mr. Gupta has submitted that unfortunately the Rajasthan High Court has failed to appreciate the basic distinctive feature, namely, the members of the said Samiti were governed by the existing pension rules under Chapter XXIII, but the government servants who were in service on 29-2-1964 were entitled to be governed by a new Family Pension Rules as contained in Chapter XXIII-A if they elected for the new Scheme. Mr. Gupta has further submitted that after the impugned decision was given by the Rajasthan High Court. there had been occasions for this Court to consider the import of the decision rendered in D. S. Nakara case. Mr. Gupta has referred to the Constitution Bench decision of this court in Krishena Kumar v. Union of India. In this case, this Court has pointed out that in the decision in D. S. Nakara case, this Court has considered a case where an artificial date was specified classifying the retirees governed by the same rules and similarly situated into two different classes, depriving one of such class of the benefit of liberalised pension rules. It was found in that case that the specification of the date for which liberalised pension rules were to come into force was arbitrary and as such the same was struck down as offending Article 14 of the Constitution. In Krishena Kumar case this Court pointed out that the employees retiring prior to 1-4-1977 and those retiring thereafter were governed by different sets of rules. Accordingly, different pension schemes were permissible for the said two classes of government servants.

18. Mr. Gupta has also referred to another Constitution Bench decision of this Court in Indian Ex-Services League v. Union of India. In the said case, retirees of Armed Forces prior to 1-4-1979 claimed same benefit by contending that there should be one pension for one rank and they relied on the decision rendered in Nakara case. This Court considered the import of the decision rendered in Nakara case and pointed out that the decision in D. S. Nakara case' had a limited application and there was no scope for enlarging the ambit of the said decision to cover all claims made by the pension retirees or a demand for an identical claim of pension to any retiree from the same rank irrespective of the date of retirement. Mr. Gupta has also relied on a decision of this Court in State of Rajasthan v. Rajasthan Pensioner Samaj. In the said case, this Court considered whether contributory provident fund retirees and the employees opting for pension scheme form one class or they can be treated differently. This court has held in the said decision that the decision in Nakara case is not applicable because contributory provident fund retires and the employees opting for pension scheme belong to different classes and contributory provident fund retirees cannot as of right switch over to the pension scheme and get benefit of the pension scheme retirees. In that case, however, the proposal of the Government to grant ex gratia payment of Rs. 110 per month to the widows covered by the contributory provident fund scheme on the suggestion of this Court was appreciated and accepted.

19. Mr. Gupta has, therefore, submitted that the ratio of the decision in Nakara case has been noticed by this Court in the aforesaid decisions and it has been clearly indicated that the scope and ambit of the decision in Nakara case should not be extended and the said decision does not cover the case of the government employees who are governed by two different sets of retiral benefit rules. Mr. Gupta has submitted that in the instant case, the government servants who were in service on or after 29-2-1964 were governed by a new retiral benefit scheme under Chapter XXIII-A whereas the retirees prior to 29-2-1964 were governed by a different retiral benefit scheme under Chapter XXIII. It was

quite open to the Government to introduce a new retiral benefit scheme for the government servants who were in service on or after 29-2-1964. Accordingly, Rule 268-H was constitutionally valid and was not liable to be struck down. He has submitted that the appeal should be allowed and the impugned judgment should be set aside.

20. Mr. Surya Kant, learned counsel for the respondent has submitted that after the Notification dated 1-4-1988 the benefit under Chapter XXIII-A has also been made applicable to the government servants or the family members who had retired prior to 29-2-1964. But up to 1-4-1988, the government servants or their family members were deprived of the liberalised pension scheme under Chapter XXIII-A because of the words appearing in Rule 268-H to the following effect : "in service on 29-2-1964 who is".

21. Mr. Surya Kant has contended that the government servant who was in service on 29-2-1964 and the government servant who retired or died prior to 29-2-1964 constitute the same class because both were government servants and both were governed by the Family Pension Rules contained in Chapter XXIII. Mr. Surya Kant has contended that the whole purpose of making Chapter XXIII-A of Rajasthan Service Rules was that the legislature felt that family of a government servant who had given best part of his life in the service of the State should not be left destitute more so because the widow of the government servant will have hardly anything to fall back upon. It was felt that social justice will not be advanced by providing a family pension as stipulated in Chapter XXIII and the families of the deceased government servants will need benign protection of the State under the liberalised pension rules. Viewed from this angle, there will be hardly any justification to limit the benefit under Chapter XXIII-A only to government servants who were in service on 29-2-1964. Mr. Surya Kant has submitted that except that the date 29-2-1964 coincides with the date on which Rule 268-H was made, there is no discernible factor in fixing 29-2-1964 as the cut-off date on which the government servant should be in service so as to be entitled to get the benefit of liberalised pension under Chapter XXIII-A. He has submitted that the discrimination made between these two classes of government servants must be held as violative of Articles 14 and 16 of the Constitution inasmuch as the government servants who were in service on 29-2-1964 and those who ceased to be in service before that date basically belong to the same class of persons, namely, the class of persons who served Government of Rajasthan for a specified period for becoming eligible to pension. Both the said groups, therefore, form one class and the artificial distinction sought to be made under Rule 268-H has no intelligible criterion having nexus to the object for which such distinction was sought to be made. He has, therefore, submitted that in the facts of the case, the impugned decision of the Rajasthan High Court should be held to be correct and the appeal should be dismissed.

22. After considering the respective contentions made by the learned counsel for the parties, it appears to us that after the impugned decision was made by the Rajasthan High Court, this Court has considered the import of the decision rendered in D. S. Nakara case. This Court has noticed the ratio in D. S. Nakara case as indicated in Krishena Kumar case and in Indian Ex-Services League case and also in Rajasthan Pensioner Samaj case, it has been clearly indicated by this Court that the government servants can be govern by different sets of retiral benefit rules with a reference to their holding of office from a cut-off date. In Krishena Kumar case it has been indicated that in D. S. Nakara case this Court considered a case where an artificial date was specified classifying the retirees into two different classes even though they were governed by the same rules and were similarly situated. Such classification where both the groups were governed by the same rules amounted to deprivation of one group of the benefit of liberalisation of pension rules. It was only in that situation it was held in D. S. Nakara case that specification of the date from which the liberalisation pension rules were to come into force was arbitrary. This Court, in D. S. Nakara case

clearly indicated that it was not a new scheme but only a revision of the existing scheme and it was not a new retiral benefit but it was a case of upward revision of existing benefit. In D. S. Nakara case it was pointed out that if it was wholly a new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. The Constitution Bench in Krishena Kumar case has upheld different sets of retiral benefits being made applicable to the employees retiring prior to 1-4-1977 and retiring thereafter. It has been indicated by the Constitution Bench in Krishena Kumar case that any argument to the contrary would mean that the Government can never change the condition of service relating to retiral benefits w.e.f. a particular date. It has, however, been pointed out that the State cannot back a date out of its hat but it has to prescribe a date in a reasonable manner having regard to the relevant facts and circumstances.

23. In the instant case, the date 29-2-1964 in Rule 268-H under Chapter XXIII-A has not been taken out of hat. The Government had taken into consideration the need for a liberalised pension scheme for those government servants who were in service on 29-2-1964 and who would be retiring thereafter and the new liberalised pension scheme under Chapter XXIII-A was introduced w.e.f. March 1964.

24. It is not necessary to go into the question as to whether the liberalised benefit for pension should have also been accorded to the government servants retiring prior to 29-2-1964 because such exercise being a matter of policy decision for the executive, must be left to the consideration of the State Government. The wisdom in a policy decision of the Government, as such, is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the Rule of law as enshrined in Article 14 of the Constitution or such policy decision offends any statutory provisions or the provisions of the Constitution. Save as aforesaid, the Court need not embark on uncharted ocean of public policy.

25. It does not appear to us that the cut-off date mentioned in Rule 268-H was only an ipse dixit of the State Government and introduced in an arbitrary and capricious manner taking out of hat without any basis whatsoever. It is permissible to introduce different retiral benefit schemes for government servants on the basis of the date of retirement as indicated in the decisions of this Court in Krishena Kumar case, Indian Ex-Services League case and Rajasthan Pensioner Samaj case. Rule 268-H cannot, therefore, be held violative of Article 14 of the Constitution as indicated in the impugned decision of the Rajasthan High Court. We, therefore, allow this appeal and set aside the impugned decision rendered by the Rajasthan High Court.

26. Before we conclude, we may indicate that the State Government of Rajasthan has given the benefit of the liberalised pension scheme under Rule 268-H from 1988 to the pensioners even if the government servant concerned had retired prior to 29-2-1964 because the Government must have felt that such pensioners deserve the benefit of liberalised pension scheme. The learned counsel for the parties have not been able to enlighten us about the number of persons who would be benefited if the liberalised pension scheme under Rule 268-H is made effective even from a date prior to 1988 and made available to those government servants including their family members who had retired prior to 29-2-1964. We may reasonably assume that the number of such pensioners must not be high because of long lapse of time. In view of inflation and escalating cost of living, it does not require any special imagination to hold that government servants retiring before 29-2-1964, particularly the widows and dependant family members of such retirees must have been suffering from financial hardship and they deserve sympathetic consideration in the matter of granting liberalised retiral benefits including pensionary benefits. We hope and trust that the State Government being fully alive to the hard realities of the conditions of retirees prior to 29-2-1964 will review the question of

antedating the benefits under Rule 268-H to such retirees after taking into consideration all relevant factors. With this observation, the appeal is allowed without any order as to costs.

</html