

M. C. Dhingra

Vs

Union of India and others

Civil Appeal No. 3371 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

05.02.1996

JUDGMENT

1. Leave granted

2. We have heard counsel for the parties. The appellant while working in the State Service from January 31, 1948, was selected as a Railway Magistrate and had taken charge on February 1, 1973. The Government of India had issued a Circular on March 31, 1982 which envisaged with the concurrence of the State Government, the following :

"1. The Government of India had been considering in consultation with the State Government, the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State Governments prior to securing posts under the various State Governments/Central Government on their own violation in response to advertisement or circulars, including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that the proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Government to the extent under the Rules of the respective Government, will be shared by the Governments concerned, on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Government will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of above decision are likely to fall into one of the following categories:

(1) Those who having been retrenched from the service of the Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and the date of new appointment.

(2) Those who while holding temporary post under Central/State Government apply for posts under State/Central Government through proper channel with proper

permission of the Administrative Authority concerned;

(3) Those who while holding temporary post under Central/State Governments apply for posts under State/Central Governments direct without the permission of the Administrative Authority concerned and resign their previous post to join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (92) is required for administrative reasons, for satisfying a technical requirement, to tender resignation on the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation has been tendered for administrative reasons and/or to satisfy a technical requirement to join, with pro-permission, the new post, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servant in category (3) will obviously, not entitled to count their previous service for pension.

3. The above arrangement will not apply to the employees of the Governments of Jammu and Kashmir and Nagaland.

4. These orders come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter will be regulated accordingly.

(G.I. Dept. of Per. & A.R. Letter No.3(20) Pen. (A)/79, dated 31st March, 1982 addressed to all State Governments except Jammu and Kashmir and Nagaland)

Note :- Sharing of pension liability between Central and State Governments has since been dispensed with effect from 1-4-1987".

3. When the appellant had asked for proportionate pension computing the previous service, it was denied to him. Consequently, he filed O.A. No. 2335/89 in the Central Administrative Tribunal, New Delhi. By order dated 19-10-1994, it was dismissed on the ground of delay. Thus, this appeal by special leave.

4. It is seen that though the appellant had retired on February 1, 1973, since the question of tagging the previous service rendered in the State Government on temporary basis and the similar cases are pending, the Government had taken a decision on March 31, 1982 to tag the previous service for computation of the pension. Learned counsel appearing for the respondents contended that clause 4 of the above said Circular is one of the conditions which prescribes that it would be applicable to the Government servants who retired from that date, namely, March 31, 1982. Since the appellant had retired on February 1, 1973, he is not eligible. We find no force in the contention. All the persons who rendered temporary service prior to their joining the Government of India Service have been given the benefit of fixation of the pension payable by tagging the temporary service. The cut-off date is arbitrary violating Article 14 of the Constitution of India. Having grouped all the similar circumstanced employees, fixing the cut-off date and giving benefit to those who retired thereafter is obviously arbitrary. In similar circumstances, following the ratio in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305 : (AIR 1983 SC 130), this Court held in the case of *R.L. Marwah v. Union of*

India, (1987) 3 SCR 928, that such a restriction is arbitrary violating Article 14. On the facts and circumstances, we find that the restriction imposed in clause 4 of the Circular is violative of Article 14. It is, therefore, unconstitutional. However, the appellant will be entitled to the pro rata pension from March 1982.

5. The appeal is accordingly allowed. No costs. The respondents are directed to work out and release the pension of the appellant within a period of six months from the date of the receipt of this order. Appeal allowed.