

V. K. Ramamurthy

Vs

Union of India and Another

Writ Petition (C) No. 174 of 1996

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

13.08.1996

JUDGMENT

PATTANAİK, J. –

1. This petition under Article 32 of the Constitution is by a superannuated railway employee seeking a mandamus from this Court to the railway administration directing them to allow the petitioner to switch over from the Provident Fund Scheme to the Pension Scheme and for a further direction that the petitioner should be granted the pensionary benefits w.e.f. the date of his superannuation i.e. 14-7-1972.
2. The undisputed facts are that the petitioner started his career as an employee under Madras and Southern Maharashtra Railway on 23-7-1938. The said Railways later on became the Southern Railway. On attaining the age of superannuation, after rendering 34 years of service the petitioner retired on 14-7-1972. The railway administration had sought for the option from the petitioner as to whether he would remain in Contributory Provident Fund Scheme or would switch over to the Pension Scheme. The petitioner, however, opted to continue in the Contributory Provident Fund Scheme and accordingly on his superannuation the entire dues which he was entitled to from the Provident Fund Scheme was paid to him. The further case of the petitioner is that since the railway administration had allowed some of its employees in the year 1984 to opt for the Pension Scheme even though earlier they had retired on receiving the provident fund dues, the petitioner also filed a representation to the General Manager, Southern Railway as well as to the Chairman, Railway Board. Not being favoured with any reply the petitioner filed a representation to the Hon'ble Minister for Railways. The petitioner also filed a representation in August 1986 to the Pension Adalat but the said Adalat gave the reply that his case could not come within the purview of Pension Adalat. The petitioner, thereafter, made one or two further representations to different authorities. Meanwhile, a retired employee had approached the Central Administrative Tribunal, Bombay Bench and the Tribunal granted the benefit of coming to the Pension Scheme to the said applicant - Ghansham Das. The petitioner also came to know that this Court in R. Subramaniam v. Chief Personnel Officer [(1996) 10 SCC 72] had allowed a retired employee to come over to the Pension Scheme who had earlier opted for Provident fund Scheme. The petitioner, therefore, finally approached this Court for the relief as already stated. The respondents filed a counter-affidavit taking the stand that in view of the Constitution Bench decision in Krishena Kumar v. Union of India [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] which has been followed in several other cases, the petitioner having opted to remain in the Provident Fund Scheme and having withdrawn the entire dues which he was entitled to under Provident Fund Scheme cannot be allowed to switch over to the Pension Scheme after a lapse of 24 years. It has also been stated in the said counter-affidavit that prior to the petitioner's retirement on 14-7-1972 as many as six options had

been given to him to choose whether he would remain in the Provident fund Scheme or would switch over to the Pension Scheme and the petitioner consistently and deliberately chose to continue in the Provident Fund Scheme and received all his dues from the said Scheme and, therefore, he cannot be allowed now to switch over to the Pension Scheme after this length of time. The short question that arises for consideration, therefore, is whether the Pension Scheme though was in operation while the petitioner was in service and option was sought for but the petitioner never opted for the same and on the other hand deliberately opted for Provident Fund Scheme, will he be entitled to come over the Pension Scheme after 24 years of his retirement ? The main plank of the argument advanced by the learned counsel for the petitioner is the decision of this Court in R. Subramaniam case [(1996) 10 SCC 72] as well as the decision of the Central Administrative Tribunal, Bombay Bench in Ghansham Das case against which decision the Railways had approached this Court in Special Leave Petition (Civil) No. 5973 of 1988 but the same was dismissed on 5-9-1988. Mr Goswami, the learned Senior Counsel appearing for the railway administration on the other hand contended that neither in Ghansham Das case nor in R. Subramaniam case [(1996) 10 SCC 72] the Constitution Bench decision of this Court in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] has been noticed. On the other hand in Ghansham Das the Tribunal relied upon the decision of this Court in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] which decision has been noticed and explained away and not followed in the Constitution Bench decision in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] and, therefore, dismissal of special leave petition against the judgment of the Central Administrative Tribunal, Bombay Bench, cannot have a binding precedent. After considering the rival submissions and after going through the Constitution Bench decision of this Court in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] referred to supra, we find much force in the contention raised by Shri Goswami, the learned Senior Counsel for the railway administration.

3. That the Pension Scheme was introduced by the Railway Board since 16-11-1957 while the petitioner was still in service is not disputed. Further, the assertion of the railway administration that prior to the superannuation of the petitioner on 14-7-1972 as many as six options had been given to the petitioner to come over to the Pension Scheme and yet he did not choose to come over to the Pension Scheme and on the other hand deliberately chose to continue in the Provident Fund Scheme is also not disputed. The question that arises for consideration, therefore, is whether still the petitioner can be allowed an option to go back to the Pension Scheme ? In the Constitution Bench decision in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] this Court was also considering an identical case of a retired railway employee who had opted for the Contributory Provident Fund Scheme but after his retirement wanted to switch over to the Pension Scheme. This Court did not allow the relief of switching over to the Pension Scheme on a conclusion that the Pension Scheme and the Provident Fund Schemes are structurally different and they do not belong to one class. It was also observed that in the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution. Referring to the earlier decision of the Court in Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] it was observed that in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] it was never held that both the pension retirees and the provident fund retirees form a homogeneous class and further in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] it was never required to be decided that all the retirees form a class. It was also observed that while deciding the case of pension retirees in Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] the provident fund retirees were not in mind. This Court also further held in Krishena Kumar case [(1990) 4 SCC 207 :

1991 SCC (L&S) 112 : (1990) 14 ATC 846] : (SCC p. 232, para 32)

"The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] that the State's obligation towards its PF retirees must be the same as that towards the pension retirees."

4. In *State of Rajasthan v. Rajasthan Pensioner Samaj* [1991 Supp (2) SCC 141 : 1991 SCC (L&S) 1176 : (1991) 17 ATC 342] this Court also came to hold that the contributory provident fund retirees form a different class from those who had opted for Pension Scheme according to the decision in *Krishena Kumar* case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the pension retirees. In yet another case of *All India Reserve Bank Retired Officers' Assn. v. Union of India* [1992 Supp (1) SCC 664 : 1992 SCC (L&S) 517 : (1992) 19 ATC 865] the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those belonging to the Pension Scheme and those belonging to the Contributory Provident Fund Scheme has been rightly emphasised by this Court in *Krishena Kumar* case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846].

5. In view of the aforesaid series of decisions of this Court explaining and distinguishing *Nakara* case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] the conclusion is irresistible that the petitioner who

retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time. The decision of Ghansham Das case on which the learned counsel for the petitioner placed reliance, the Tribunal relied upon Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] and granted the relief without considering that Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] decision has been distinguished in the Constitution Bench case of Krishena Kumar [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] and other cases referred to supra. Therefore, dismissal of the special leave petition against the said judgment of the Tribunal cannot be held to be law laid down by this Court, in view of what has been stated in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846]. The other decision of this Court, in the case of R. Subramaniam [(1996) 10 SCC 72] the Court merely relied upon the dismissal of special leave petition against the judgment of the Tribunal in Ghansham Das case and disposed of the matter and, therefore, the same also cannot be held to be a decision on any question of law. In the aforesaid premises and in view of the legal position as discussed above the writ petition is dismissed but in the circumstances without any order as to costs.