

SUPREME COURT OF INDIA

Union of India

Vs.

A. J. Fabian

C.A.No.16861 of 1996

(K. Ramaswamy and G. T. Nanavati JJ.)

09.12.1996

ORDER

1. Delay condoned. Leave granted.

2. This appeal by special leave arises from the order of Central Administrative Tribunal, Ernakulam Bench passed in O. A. No.686/95, on September 29, 1995.

3. The respondent was a railway employee. He retired from service, on attaining superannuation, on April 21, 1972, as Chief Inspector of communications. Consequent on the switching over from the Provident Fund Scheme to the Pension Scheme, options had been given to the employees. In fact option for six times was given to the respondent, but he did not avail of the same. However, an application had been made on December 19, 1993, requesting the appellants to permit him to opt to the Pension Scheme which was rejected by the Government by order dated January 19, 1994. Thereafter, the respondent, filed O. A. in the Tribunal which in the impugned order, has allowed the petition relying upon the judgment of the CAT, Bombay Bench in O. A. against which S. L. P. No. 5973/88 was filed and the same was dismissed by this Court in limine. The controversy is no longer

res integra. A. Constitution Bench of this Court in *Krishena Kumar v. Union of India*, (1990) 3 SCR 352 : (AIR 1990 SC 1782), had held that since the retirees with Provident Fund Scheme and those with Pension Scheme do not have the same pay-scales, there is no discrimination in matter of extending the benefit of Pension Scheme since they did not exercise the option within given time. The Pension Scheme having been formulated and options having been given to the retired employees after failure to avail of the remedy, they are not entitled to come back for the benefit of pension. It was held that it is not violative of Article 14 of the Constitution. This Court had distinguished 'the decision of the Constitution Bench decision in *D. S. Nakara v. Union of India*, (1983) 1 SCC 305 : (AIR 1983 SC 130), and accordingly allowed the appeal and held that they are not entitled to those benefits. The same question was again considered by this Court in *W. P. 174/94* titled *V. K. Ramamurthy v. Union of India*, by judgment dated August 13, 1996, (reported in 1997 AIR SCW 3315). Therein this Court surveyed the entire case law and held thus (at Pp. 3316 and 3317 of AIR SCW):

"In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara's case 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's case and granted the relief without considering that Nakara's decision has been distinguished in that Constitution Bench case of *Krishena Kumar* 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's* case. The other decision of this Court, in the case of *R. Subramaniam*, (1995 AIR SCW 963), (Writ Petition (Civil) No. 881 of 1993), the Court merely relied upon the dismissal of Special Leave Petition against the judgment of 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."

Accordingly the Writ Petition was dismissed.

4. It is contended by Smt. Sarada Devi, learned counsel for the respondent, that in *Krishena Kumar's* case, (AIR 1990 SC 1782), this Court had upheld the decision of the Bombay Bench which was followed by Ernakulam Bench and that, therefore, the view taken by the Tribunal is correct in law. We fail to appreciate the contention. This Court having laid down the law distinguished that judgment only on facts, but that is not to say that the view expressed by the Bombay Bench was approved by this Court in *Krishena Kumar's* case. Therefore, it does not form any basis to be followed. On the other hand, *Krishena Kumar's* ratio binds the Tribunal as law under Article 141 and should be followed.

5. It is then contended that since the respondent died and the legal representatives of the retiree would be entitled to the benefits, it would not be a case warranting interference. In support thereof,

she relies upon an order passed by this Court in C. A. @ S. L. P. (C) No. 17730/95, titled P. Lakshmana Rao v. Union of India, on April 2, 1996. In that case on the basis of the concession made by the counsel for the Union, that order came to be passed. Under those circumstances, we do not think that it is a case entitling the respondent to the same benefit.

6. The appeal is accordingly allowed. The order of the Tribunal stands set aside, but in the circumstances, without costs.

Appeal allowed.