

State of Rajasthan and Another

Vs

Prem Raj

Civil Appeals No. 5450 of 1994

(G. B. Pattanaik, S. C. Agarwal JJ)

14.02.1997

JUDGMENT

G. B. PATTANAIAK J

1. These two appeals involve a common question of law and as such were heard together and are being disposed of by the common judgment. The respondents in both the appeals are pre-1979 retirees, the respondent in Civil Appeal No. 5450 of 1994 having superannuated on 14-11-1969 and the respondent in the other appeal having superannuated before December 1968. On superannuation, their pension had been computed in accordance with Rule 256 of the Rajasthan Service Rules, 1951, (hereinafter referred to as "the Rules") whereunder dearness allowance received by them while in service had not been taken into account for computation in the amount of pension. On 18-3-1971 the Governor of Rajasthan in exercise of powers conferred by proviso to Article 309 of the Constitution amended the Rules giving it retrospective effect w.e.f. 1-4-1970, which was inserted as Rule 250-C (1) (a). The said provision stipulates that in case of government servants retiring from service on or after 1-4-1970 the term "emoluments" used for purpose of pension, service gratuity and death-cum-retirement gratuity shall mean the "pay" as defined in Rule 7(24) and dearness pay appropriate to pay, if any, which the officer was receiving immediately before his retirement. The aforesaid provision is extracted hereinbelow in extenso :

"Notwithstanding the provisions contained in Rules 250, 250-A, 250-B in case of government servants retiring from service on or after 1-4-1970, the term 'emoluments' used for purposes of pension, service gratuity and death-cum-retirement gratuity shall mean the 'pay' as defined in Rule 7(24) and dearness pay appropriate to pay, if any, which the officer was receiving immediately before his retirement, provided that -

#(1) \* \* \*##

(2) The special pay, if any, granted for performance of additional duties or a post in addition to duties of his own post shall not be taken into account for the purpose of this rule."

2. By the said Notification dated 18-3-1971 Rule 250-A (1) was also amended giving it retrospective effect w.e.f. 1-4-1970, which is extracted hereinbelow in extenso :

"Notwithstanding the provisions contained in Rule 256, in case of a government servant retiring from service on or after 1-4-1970 the amount of superannuation,

retiring, invalid and compensation gratuity and the pension shall be admissible as follows :

|                          |                                                   |
|--------------------------|---------------------------------------------------|
| #-----                   | Completed six-monthly                             |
| Scale of Maximum Pension | periods of qualifying Gratuity/Pension (in Rs per |
| annum)service-----       | 1 2 3-----                                        |
| -----                    | 60 30/80th " " 8100"-----                         |
| -----                    | ##                                                |

3. By Notification dated 2-12-1974 giving it retrospective effect w.e.f. 31-10-1974 Rule 256-B was also amended which is extracted hereinbelow in extenso :

"Notwithstanding the provisions contained in Rule 256-A, in respect of a government servant retiring on or after 31-10-1974 the amount of superannuation, retiring, invalid and compensation gratuity and pension admissible shall be as follows :

|                          |                                                   |
|--------------------------|---------------------------------------------------|
| #-----                   | Completed six-monthly                             |
| Scale of Maximum Pension | periods of qualifying Gratuity/Pension (in Rs per |
| annum)-----              | 1 2 3-----                                        |
| -----                    | 66 33/80th " " 12,000.00-----                     |
| -----                    | ##                                                |

4. The effect of the aforesaid amendment was that while the maximum pension in respect of government servants retiring from service on or after 1-4-1970 was 8100, but those who retired on or after 31-10-1974 it became 12000 and while in case of the former pension was to be computed on 30/80th but in case of later it became 33/80th. By Notification dated 2-12-1974 Rule 250-C (3) was also amended providing therein that in case of government servants retiring on or after 31-10-1974 the term "emoluments" used for the purpose of pension, service gratuity and death-cum-retirement gratuity shall mean pay as defined in Rule 7(24) and shall include dearness allowance, dearness pay (where admissible) and ad hoc reliefs admissible on 31-12-1972. By Notification dated 21-1-1980, the Government of Rajasthan provided a revised formula for calculation of pension on slab basis in respect of government servants retiring on or after 31-3-1979. By yet another Notification dated 2-9-1985, the Government of Rajasthan extended the benefit of revised pension formula to pre-31-3-1979 pensioners. This benefit was extended to pre-31-3-1979 retirees possibly because of the decision of this Court in D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 L (1983) 2 SCR 165). The respondent in the first case approached the Rajasthan High Court in the year 1989 which was registered as Civil Writ Petition No. 575 of 1989 claiming the benefits of the three amended provisions referred to earlier and contended that the amended provisions so far as they provided a cut-off date for its application are arbitrary. It may be stated that the circular of 2-9-1985 by which revised pension formula was extended to pre 31-3-1979 pensioners was not challenged and on the other hand it was prayed that after determination of the emoluments in accordance with the amended provisions of 1970 and 1974, the relief may be granted in accordance with the circular dated 2-9-1985. The Division Bench of the Rajasthan High Court following the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) referred to supra struck down the cut-off date of 1-4-1970 in Rule 256-A as well as struck down the cut-off date of 1-4-1973 in Rule 250-C and also struck down the cut-off date provided a under sub-rule (3) of Rule 250-C. It also held that the computation of pension as per Rule 256-B should be made applicable to all government servants irrespective of date of retirement and the provision making it applicable to those government servants who have retired on or after 31-10-

1974 is invalid. The High Court further directed that the pension of the respondent should be refixed as per the Notification dated 2-9-1985 after determining the emoluments of the respondent under the amended provisions.

5. In the second case, the writ petition was heard by a learned Single Judge who allowed the same on identical grounds and an appeal against the same to the Division Bench by the State of Rajasthan was dismissed and thus the appeal by special leave therein.

6. Mr. Aruneshwar Gupta, the learned counsel appearing for the appellant, contended that the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) has been watered down by the subsequent decisions in Krishena Kumar case (Krishena Kumar v. Union of India, (1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846) Indian Ex-Services League v. Union of India ((1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488), State of W. B. v. Ratan Behari Dey ((1993) 4 SCC 62 : 1993 SCC (L&S) 1123 : (1993) 25 ATC 574) and in State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti ((1995) 2 SCC 117 : 1995 SCC (L&S) 415 : (1995) 29 ATC 199) and under the law as it stands now it is permissible for the State Government to provide different modes of computation of pension in respect of government servants retiring on different dates and it cannot be challenged on the ground of discrimination so long as the cut-off date thus provided has a reasonable nexus with the change in the mode of the computation. The learned counsel went to the extent of urging that the principles laid down by this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) is no longer being followed in recent cases and, therefore, the High Court was in error in allowing the writ petition following the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165). Mr. Gupta also urged that the respondent in each of the appeals having superannuated in 1969 and 1968 respectively and having not challenged the different amended provisions which came into existence between 1970 and 1974 and having approached the High Court in the year 1989 long 19 years after the first amended provision was made in 1970, the High Court should not have entertained the writ petition at all. The learned counsel lastly urged that in any of the matters the Notification of 2-9-1985 having provided for a revised pension formula to pre-31-3-1979 pensioners which includes the respondents' case and the said notification having indicated the mode of computation of pension and as well as having defined the expression "emoluments" and without challenging the said notification the respondent is not entitled to the relief as granted by the High Court.

7. Mr. Srivastava, the learned counsel for the respondent, on the other hand, contended that the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) has not been overruled and what has been indicated in the subsequent cases is that if the Government provides a new scheme and makes the said scheme applicable from a particular date then the retirees prior to that date will not be entitled to the benefit under the new scheme. But if a pension scheme which was in vogue is liberalised from time to time then all pensioners would be entitled to the benefit of such liberalised rules and that is what has been granted by the High Court in the present case. The learned counsel fairly conceded that Notification of 2-9-1985 providing for a liberalisation of pension by introduction of slab system even in respect of pre-31-3-1979 retirees has not been assailed by the respondent.

8. Having examined the rival contentions and on a closer scrutiny of the Notification of the Government of Rajasthan dated 2-9-1985 we are of the considered opinion that the High Court committed gross error in examining the validity of the earlier amended provisions and striking down the same and granting the relief to respondent without striking down the Notification dated 2-9-1985

or at least paras 3 and 5 thereof. In this view of the matter it would not be necessary to examine the bigger issue raised by Mr. Gupta as to whether the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) is really not being followed in the later decision, though we would briefly notice the extent to which the Nakara ((1983) 1 SCC 305; 1983 SCC (L&S) 145 : (1983) 2 SCR 165) decision has been explained in the later decision.

9. In D. S. Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) the memoranda issued by the Government of India dated 25-5-1979 and 23-9-1979 liberalising the form for computation of pension in respect of employees governed by the Central Civil Services (Pension) Rules, 1972 who retired on or after 31-3-1979 was challenged to be arbitrary and violative of Article 14. This Court came to the conclusion that when the State considered it necessary to liberalise the Pension Scheme in order to augment the social security in old age to government servants, it could not grant benefit of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Article 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda.

10. This Constitution Bench decision was considered by another Constitution Bench in Krishena Kumar case (Krishena Kumar v. Union of India, (1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846). In the said case prior to 1957 the only scheme for retirement benefits in the Railways was the Provident Fund Scheme. The same scheme was replaced in the year 1957 by a pension scheme. Thus all the employees who were in service prior to the introduction of pension scheme were given option either to retain the Provident Fund benefits or to switch over to pensionary benefits on the condition that the contribution made by the Railways to the provident accounts would revert to the Railways on exercise of option. The employees who did not opt for pension scheme even though they had ample opportunity to opt for the same, came forward with a claim that they should be given the benefits of pensionary scheme following the principle of Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165). This Court held that the pension scheme and the provident fund scheme are structurally different and applying the principles of Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165), it cannot be held that the pension retirees and the provident fund retirees form a homogeneous class. The Court also further held that the rules governing the provident fund are entirely different from rules governing pension scheme and, therefore, it would not be reasonable to argue that the rules applicable to the pension retirees was also equally applicable to provident fund retirees. It was noticed by the Court that in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) the provident fund retirees were not in mind before the Court and only the pension retirees were treated as a homogeneous class. The Court further held that there would be no discrimination in treating the provident fund retirees differently from the pension retirees.

11. In the case of Indian Ex-Services League v. Union of India ((1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488), in yet another Constitution Bench case the liberalised pension scheme and fixation of cut-off date for applicability of the same came up for consideration before the Court. The petitioners therein claimed "one rank one pension" for all retirees in the armed forces irrespective of the date of retirement by application of Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165). The Court held that the decision in Nakara case ((1983) 1 SCC 305

: 1983 SCC (L&S) 145 : (1983) 2 SCR 165) has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different. In the aforesaid case, consequent upon the decision of this Court in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) a Notification was issued on 3-12-1983 by the Government of India for recomputing the revised pension of pre-1-4-1971 retirees according to liberalised pension scheme. The recomputation was made according to the liberalised pension scheme giving the same benefit to all retirees irrespective of their date of retirement. But the petitioners contended that ratio of Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) is that all retirees who held the same rank irrespective of the date of retirement must get the same amount of pension. This court rejected the said contention. On reading the memorandum of the Government of India the Court held that the benefit of liberalised pension scheme was made applicable even to pre-1-4-1979 retirees of the armed forces and the computation according to the liberalised formula for them was done by Government order dated 22-11-1983 and 1-12-1983. In other words, what was held by this Court in the Indian Ex-Service League case ((1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488) that after introduction of the liberalisation scheme, from a specified date, even the retirees earlier to the same manner and to the same extent to which persons in service and retiring after the date would get.

12. In State of W. B. v. Ratan Behari Dey ((1993) 4 SCC 62 : 1993 SCC (L&S) 1123 : (1993) 25 ATC 574) this Court considered the question whether in providing pension scheme the State could fix up a particular date and make it applicable to those who retired on or after that date. The Court distinguished Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) by holding that in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) an artificial date had been specified classifying the retirees governed by the same rules and similarly situated into two different classes depriving one such class of the benefit of the liberalised pension rules and that was held to be bad. Following the decision of the Court in Krishena Kumar case (Krishena Kumar v. Union of India, (1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846) it was held that the State can specify a date with effect from which the Regulations framed or amended conferring the pensionary benefits shall come into force but the only condition is that the State cannot pick a date out of its hat and the date has to be prescribed in a reasonable manner having regard to all the facts and circumstances.

13. In State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti ((1989) 3 SCC 329 : 1989 SCC (Tax) 409 : (1989) 177 ITR 377) the provisions contained in Rule 268-H of Rajasthan Service Rules came up for consideration as to whether the aforesaid provisions restructuring the rights of government servants in service on 29-2-1964 can be held to be violative of Article 14. The Court applied the principle in Krishena Kumar case ((1981) 130 ITR 385 : (1980) 16 CTR 248 (Mad)) and Indian Ex-Services League case ((1980) 4 SCC 25 : 1980 SCC (Tax) 335 : ((1980) 124 ITR 1) and held that the fixation of 29-2-1964 as the cut-off date with effect from which the new liberalised pension scheme in Chapter XXIII-A was introduced cannot be said to be arbitrary or violative of Article 14 of the Constitution. As has been stated earlier for deciding the present controversy it is not necessary for us to further delve into the question as to the extent to which the decision of this Court in Nakara case ((1966) 60 ITR 52 : AIR 1966 SC 1053) has been followed or explained. But suffice it to say that the contention of Mr. Gupta, the learned counsel for the appellant, that the decision of this Court in Nakara case ((1966) 60 ITR 52 : AIR 1966 SC 1053) has been given a complete go-by cannot be sustained.

14. The real question that arises for consideration in the present two appeals is whether it is at all permissible to examine the validity of the earlier notifications of the Government issued in the years 1970 and 1974 without considering the effect of Notification dated 2-9-1985 by which notification even the pre-31-3-1979 retirees were extended the benefit of revised pension formula. It appears that State of Rajasthan had liberalised the pension scheme and introduced the revised pension formula by Notification dated 21-1-1980 for calculation of pension on slab basis in respect of government servants retiring on or after 31-3-1979. By 2-9-1985 Notification the Government was pleased to order that the benefit of the revised formula for calculation of pension on slab basis would be extended to all pensioners provided they were in receipt of pension as on 1-4-1979 under Rajasthan Service Rules as amended from time to time. In other words, the principle of Nakara case ((1966) 60 ITR 52 : AIR 1966 SC 1053) was made applicable and the Notification dated 2-9-1985 was issued. Para 3(1) of the aforesaid Notification dated 2-9-1985 stipulated that the last emolument immediately preceding the date of retirement may be taken into account for the purpose of calculation of revised pension wherever the average emoluments were earlier computed on the basis of 36 months' emoluments. The last emolument for this purpose shall be as per rules in force at the time of retirement of the respective government servants. Para 3 provided the mode of computation of the pension of such pre-31-3-1979 retirees. Para 4 mentions the classes of pensioners to whom the order will not be applicable. Para 5 provides an ad hoc formula developed on certain assumptions and a ready reckoner saying the rate of existing pension and revised pension was annexed. It further provides that each pensioner would exercise an option as to whether he would receive the revised pension on the ad hoc formula or with reference to the actual calculation based on service records and the option once exercised would be final. The ad hoc formula was devised as it was thought that recomputation of pension on the basis of actual emoluments which a pensioner was drawing and qualifying service being a time-consuming process and considerable time may be necessary for locating the old records which may not be readily available. Thus, it would appear, by the Notification dated 2-9-1985, that the Government of Rajasthan also extended the benefit of the revised pension formula on slab basis to pre-31-3-1979 retirees and we see no infirmity with the said notification. The High Court in our considered opinion without noticing the aforesaid notification and without examining the same unnecessarily examined the earlier liberalisation orders and erroneously struck down the same. The Notification dated 2-9-1985 not having been challenged and the High Court not having quashed the same, the pre-31-3-1979 retirees like the respondents in both the appeals would be governed by the same and depending upon the question whether they have exercised their option to get the revised pension on the basis of ad hoc formula or to be computed on the basis of the last emoluments drawn and the number of years of service therein, the computation of pension has to be done. The 2-9-1985 Notification in the present case is somewhat similar to the notifications which were for consideration by this Court in Indian Ex-Services League case ((1980) 4 SCC 25 : 1980 SCC (Tax) 335 : (1980) 124 ITR 1) referred to earlier. In this view of the matter the impugned judgment of the High Court cannot be sustained and we accordingly set aside the same. These appeals are allowed and the writ petitions filed by the respondents stand dismissed but in the circumstances there will be no order as to costs.