

State of U.P.

Vs

Jogendra Singh

(Sujata V. Manohar, M. Jagannadha Rao JJ)

28.11.1997

JUDGMENT

MRS. SUJATA V. MANOHAR, J.

1. At the material time, respondent No.1 was holding the post of Senior Prosecuting Officer, Agra. The date of birth of respondent No.1 was 20.10.1919. In the ordinary course, he would have retired on superannuation on attaining the age of years on 20th of October, 1977. The first respondent, however, took voluntary retirement after completion of thirty one and a half years of service on 12th of April, 1976. He has been granted retirement benefits including pension and gratuity accordingly. Respondent no.1 took voluntary retirement under the provisions Fundamental Rule 56 Uttar Pradesh Fundamental Rules. Under Rule 56(c), "the Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years." By the Uttar Pradesh Fundamental Rule 56 (Amendment Act), 1976, certain amendments were made to Rule 56. Under one such amendment, sub-clause (e) of Rule 56 was amended by adding a proviso. Original Fundamental Rule 56(e) provided as follows:

"56(e): A retiring pension shall be payable and other retirement benefits, if any shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule."

The proviso which was added was as follows:

"Provided that where a Government servant voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have serviced if he had continued till the ordinary date of his superannuation, whichever be less;" The amending Act is of 18.11.1976. Therefore, the proviso came into effect on 18.11.1976.

2. The first respondent contends that although he had retired at a time when the proviso was not incorporated in the Fundamental Rules, he should be given the benefit of the proviso and an additional service of one and a half years should be counted for the purposes of his pension and gratuity. He filed in February, 1989, about 13 years after the amendment, a writ petition in the High Court claiming the benefit of the proviso to Fundamental Rule 56 (e). His writ petition has been allowed by the High Court and hence the present appeal has been filed before us by the State of U.P. The claim of respondent No.1 has been allowed by the High Court on the basis of the ratio of the decision of this Court in D.S.Nakara's & Ors. Vs. Union of India [(1983) 1 CC 305]. The ratio in

Nakara's case [supra], however, is not applicable in the present case. In Nakara's case (supra), a specific cut-off date was provided for the grant of pensionary benefits. Those who had retired prior to that date were not given the benefits. This was considered as arbitrary in the facts and circumstances of that case. There is no question of any cut-off date being prescribed in the present case. The first respondent was governed by the Uttar Pradesh Fundamental Rules. On the date when he took voluntary retirement and left service, he was given retirement benefits on the basis of the Fundamental Rules and other provisions which were then in force. Fundamental Rule 56 has been subsequently amended by an amendment which came into force on 18th of November, 1976 because the amendment inserting the proviso came on the statute book on that date. It will, therefore, be applicable to all those who take voluntary retirement after the proviso was inserted. All laws, in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. The Amending Act did not make the amendment retrospective. Therefore, persons who retired at a time when the proviso was not on the statute book cannot claim the benefit of the proviso. The first respondent having retired prior to the insertion of the proviso in Fundamental Rule 56 (e), cannot claim the benefit of the proviso.⁴ The appeal is, therefore, allowed and the impugned order of the High Court is set aside. However, at the time when special leave was granted in the present appeal, it was limited to the question whether an employee who had retired before the introduction of the proviso would be entitled to the benefit of that proviso for the purpose of computation of pension or gratuity. This Court had made it clear that in the case of the respondent, the Court did not propose to interfere with the order granting any benefit to him of the impugned order in view of the special facts of the case. We order accordingly. There will be no order as to costs.