Hari Ram Gupta (Dead) Through L. R. Kasturi Devi

Vs

State of U. P.

Civil Appeal No. 3433 of 1998

(Sujata V. Manohar, G. B. Pattanaik JJ)

22.07.1998

JUDGMENT

PATTANAIK, J. –

1. Leave granted

2. This appeal by grant of special leave is directed against the judgment dated 13-11-1995 of the Allahabad High Court in Civil Miscellaneous Petition No. 557 of 1987. Hari Ram Gupta, husband of the present appellant, had filed the writ petition seeking a mandamus from the Court to the appropriate authorities to give him the benefits of the Uttar Pradesh Palika (Centralised) Service Retirement Benefit Rules, 1981 (hereinafter referred to as "the Rules"). But the said Hari Ram Gupta had retired from service on superannuation in the year 1980. He, however, claimed that he would be entitled to pension under the Rules as the Rules are intended to apply retrospectively and at any rate, following the principle of the judgment of this Court in D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) the Court should grant him the relief. The High Court by the impugned judgment came to hold that the Rules have no retrospective operation, and therefore, the applicant was not entitled to claim pension under the Rules. Soon after the judgment of the Allahabad High Court, the husband of the appellant having died, the widow filed the special leave application out of which this appeal arises. The sole question for consideration is whether the Rules can be said to have any retrospective application to those employees belonging to the Palika (Centralised) Service, who retired from service prior to the coming into force of the Rules. It is disputed that before the Rules came into operation, there were no rules providing pension for the employees of the centralised services.

3. The learned counsel for the appellant strenuously contended that a conjoint reading of sub-rules (2) and (3) of Rule 3 would make it crystal clear that the Rule is applicable even to those employees who have retired from service on the date the Rules came into operation, provided they exercise their option in accordance with the Rules within the stipulated period of 90 days from the enforcement of the Rules and they deposit the amount finally withdrawn from the Palika's contribution and bonus deposited in his provident fund account into the pension fund established under Part VI of the Rules. According to the learned counsel, unless such an interpretation is given, the provision of sub-rule (3) would become otiose inasmuch as an officer is entitled to finally withdraw the amount from the provident fund on superannuation and not while he continues to be service. The learned counsel further contended that under identical circumstances, an employee of a school under the New Delhi Municipal Committee had approached this Court in case of Shakuntala Mehrishi v. New Delhi Municipal Committee ((1990) 3 SCC 521 : 1990 SCC (L&S) 487) and this Court had granted the retrial benefits to the employee. The aforesaid decision, contends the learned

counsel for the appellant, should with full force to the case in hand. The learned counsel further urged that the Rules in question providing for pension, if is held to apply to only those employees who retired subsequent to the coming into force of the Rules and not to those to have already retired, then it would be violative of the law laid down by this Court in the case of D. S. Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) inasmuch as pension paid is not a bounty nor an ex gratia payment for past services rendered and is a social welfare measure rendering socio-economic justice to those who in the heyday of their ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch.

4. Learned counsel for the respondents, on the hand contended that there is no ambiguity in the Rules and nowhere do the Rules indicate that they would apply retrospectively on certain conditions being fulfilled. He further contended that under the provisions of the regulation for payment of provident fund made by Nagar Palika, Jhansi an employee is entitled to finally withdrawn after rendering 25 years of service or when such employee has less than 8 years of service to attain the age of superannuation, and therefore, it is not correct that final withdrawal is permissible only on the date of superannuation. In that view of the matter the expression "final withdrawal" in sub-rule (3) of Rule 3 of the Rules cannot be interpreted to mean that the Rules have a retrospective operation. The learned counsel also urged that the rule determining the service conditions of an employee under the service jurisprudence is usually prospective in nature unless there is anything in the rule which indicates the legislative intent of making the rule retrospective or the rule is expressly made retrospective. Since neither of these conditions are satisfied in the case in hand, the Rules must be held to be prospective, and therefore, would not govern the case of those who retired prior to the coming into force of the Rules. On the question of applicability of the decision of this Court in Shakuntala Mehrishi case ((1990) 3 SCC 521 : 1990 SCC (L&S) 487) the learned counsel contended that the ratio laid down in that case has no application and the said decision is no guidance for deciding the question as to whether the Rules in the present case have any retrospective operation. On the question of the applicability of the ratio in D. S. Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) the learned counsel for the respondent urged that the appellant has not challenged the validity of the Rules and on the other hand seeks relief on the basis of the said Rule, therefore, the Rule cannot be struck down. He further contended that the decision of this Court in D. S. Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) has been watered down by this Court in several subsequent cases and it is the settled position now that the employees retiring on a particular date would be governed by the benefits of the rules then existing and cannot complain of, if at a subsequent stage, certain other rules confer some additional benefits. Thus judged, the principles enunciated by this Court in Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) have no application to the case in hand.

5. In view of the rival submission, the first arises for consideration is whether the Rules can be said to have any retrospective operation.

6. We have examined the Rules carefully and there is no express provision in the giving them retrospective operation. The question then arises as to whether from any of the provisions contained in the Rules, it is possible to infer that the Rules have been given retrospective operation. The argument of the learned counsel appearing for the appellant in this context is based upon the language used in sub-rule (2) and sub-rule (3) of Rule 3. For better appreciation of the point in issue, sub-rules (1), (2) and (3) of Rule 3 are quoted hereinbelow in extenso :

> 3. Application of the rules. - (1) These Rules shall apply compulsorily to all those officers who were appointed on or after 9-7-1966 under clause (1) of Rule 21 of the

Uttar Pradesh Palika (Centralised) Services Rules, 1966 and would become permanent on any post in the centralised services.

(2) The officers who were finally absorbed on any post in the centralised services under clause (2) of Rule 6 of the Uttar Pradesh Palika (Centralised) Services Rules, 1966 will have an option to elect whether they would be governed by the existing Pension/Provident Fund Rules of the Palika as hitherto or would like to be governed by those Rules. This option shall be exercised within ninety days from the enforcement of these Rules and the option once exercised, shall be final.

(3) If an officer opting for these Rules has finally withdrawn the amounts of the Palika's contribution and bonus deposited in his provident fund account, the same shall have to be deposited by him into the pension fund established under Part VI of these Rules along with interest at the rates fixed from time to time by the Reserve Bank of India."

7. Sub-rule (1) of Rule 3 clearly indicated that the Rules should apply to those officers who were appointed on or after July 1966 under clause 1 of Rule 21 of the Centralised Services Rules of 1966 and would become permanent in the centralised services. This sub-rule obviously has no application. The learned counsel appearing for the appellant, however, urged that if sub-rules (2) and (3) of Rule 3 are read together, it unequivocally indicated that the Rules do apply to those persons who have already retired. Inasmuch as sub-rule (3) gives an option to officers to exercise option to be governed by the Rules and if they have finally withdrawn the amounts of the Palika's contribution and bonus deposited in the provident fund account, the same will have to be deposited into the pension fund. It is contended by the learned counsel that an employee can finally withdraw the amount from the provident fund only on his superannuation and not at any earlier point of time while he continues to be service and, therefore, this sub-rule clearly indicates that the Rules apply to those who have already superannuated on the date the Rule came into force. But on examining the provisions contained in the Pension and General Provident Fund Regulations or Rules which governed the case of the employees of the Palika, more particularly the provisions of clause 5-C(1), we find that final withdrawals under the Regulation is permitted in the case of municipal servants who have either rendered 25 years' service or have less than 8 years to attain the age of superannuation. The purpose for which such final withdrawal is permissible is enumerated in other sub-clauses of the said clause 5-C. In this view of the matter, the argument of the learned counsel appearing for the appellant that final withdrawal is permissible only on the date of superannuation cannot be sustained and the expression "final withdrawal" as envisaged under sub-rule (3) of Rule would mean those final withdrawals made by an employee while continuing in service for the purposes mentioned in sub-clause (2) of clause 5-C. Consequently, the argument that a combined reading of sub-clause (3) and sub-clause (2) of Rule 3 indicated that the Rules have retrospective application is devoid of any force and the same accordingly stands rejected.

8. The next question that arises for consideration is whether the judgment of this Court in Shakuntala Mehrishi v. New Delhi Municipal Committee ((1990) 3 SCC 521 : 1990 SCC (L&S) 487) any way helps the appellant in getting the relief sought for ? In the aforesaid case, the teacher of a recognised aided school opted for pension and gratuity within the stipulated period in the prescribed pro forma as desired by statutory notification. But notwithstanding his superannuation, he did not receive the benefits as the modalities about contribution towards pension fund and approval of Government of India had not been obtained. This Court held that payments to the employee cannot be deferred on such grounds over which the employee has no control and

accordingly directed that the necessary payment be made. We fail to understand how the aforesaid decision is in any way applicable to the case in hand for deciding the question as to whether the Rules providing for pension would retrospectively apply to the case of an employee who had already retired before the Rules came into operation. In our considered opinion, the aforesaid of this Court does not help the appellant in any manner.

9. The only other question that survives for our consideration is whether the ratio in Nakara case ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) will assist the appellant in getting the relief sought for. In D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision some benefits to one group denying the others. In the aforesaid case, the provisions for pension were applicable to all retirees and, therefore, pensioners form a class as a whole. But when the Liberalised Pension Scheme was introduced, the said Scheme was made applicable to a group of pensioners and not to all and therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution Bench judgment of Krishena Kumar v. Union of India ((1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846) wherein the decision of Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand, the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees also equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement whereafter no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of pension retirees, the obligation continues till the death of the employee. This Court categorically held that Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) cannot be an authority for the decision in Krishena Kumar ((1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846). In Union of India v. P. N. Menon ((1994) 4 SCC 68 : 1994 SCC (L&S) 860 : (1994) 27 ATC 515) a similar question came up for consideration and distinguishing Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) and following Krishena Kumar ((1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846) and other similar cases, the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such, any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. When the army personnel claimed the same pension irrespective of their date of retirement, this Court in the Constitution Bench case of the Indian Ex-services League v. Union of India ((1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488) considered the grievance of ex-servicemen who had laid the claim on the basis of Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) but ultimately negatived the same and followed Krishena Kumar ((1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846). In 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) when the validity of the introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1-1-1986 have not been given

the benefit of the said Scheme, it was held by this Court that there is no arbitrariness in the same.

10. This being the position, the appellant having superannuated prior to the Rules coming into force cannot claim the right to pension under the Rules with the help of the decision of this Court in Nakara ((1983) 1 SCC 305 : 1983 SCC (L&S) 145) and further, in view of our conclusion that the Rules do not have any retrospective operation, the relief sought for by the appellant to get pension under the Rules cannot be granted.

11. In the premises, as aforesaid the appeal fails and is dismissed. But in the circumstances, there will be no order as to costs.