

State of West Bengal

Vs

Montosh Roy

Civil appeal No. 5406 of 1997

(S. Saghir Ahmed, M. Srinivasan JJ)

09.12.1998

JUDGMENT

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M. SRINIVASAN, J. –

1. The first respondent in this appeal was a member of the West Bengal Higher Judicial Service and retired as Chief Metropolitan Magistrate, Calcutta in February, 1981. At that time, he was drawing pay in the super time scale of Rs. 2500-2750 plus admissible allowances. His pension was fixed in accordance with the rules at the maximum rate of Rs. 1225/- per month. His retirement gratuity was settled at Rs. 30,000/-.

2. According to Rule 91 of the West Bengal Service (Death-cum-Retirement) Benefit Rules, 1971, the rules applicable to members of All India Services shall apply *mutatis mutandis* to members of West Bengal Higher Judicial Service. There is no dispute that the first respondent's pension was fixed in accordance therewith.

3. The Indian Administrative Service (Pay) Rules, 1954 was amended on the basis of the recommendation of the Fourth Central Pay Commission as per Government Order dated 13th March, 1987. Thereby the previous single supertime selection grade applicable to the central government officers in the ranks of Joint Secretaries at Rs. 2500-2750 was restructured into three categories :

A. Rs. 5900-200-6700,

B. Rs. 7300-100-7600,

C. Rs. 8000 (fixed) w.e.f. 1.1.1986.

Consequential amendment was made in All India Services (Death-cum-Retirement Benefits) Rules, 1958 by a notification dated May 22, 1987 whereby the pension of persons retiring after 1.1.1986 was to be calculated at 50% of the basic pay in the restructured supertime scale with a ceiling on pension at Rs. 4500/- per month for all categories of pensioners. The benefit of the said amendment was available only to persons retiring after 1.1.1986. In so far as persons who retired prior to 1.1.1986 are concerned, the Government of India rationalised the pension structure by Office Memorandum No. 2/1/87-PIC-1 dated 16.4.1987 to implement the Government decision on the recommendation of the Fourth Central Pay Commission. The above memorandum classified the

retirees before 1.1.1986 into A, B and C categories in *pari materia* with the Tables I, II and III of the Fourth Central Pay Commission report and provided dearness reliefs for them at the rate of 95%, 80% and 70% of their existing pensions respectively. In accordance with the said memorandum the first respondent's pension was refixed at Rs. 2355/- per month.

4. However, the first respondent filed a writ petition in the High Court of Calcutta under Article 226 of the Constitution of India praying for issue of a mandamus to the Union of India and the State Government to withdraw the aforesaid notification dated 16.4.1987, settle and pay the pension to the petitioner at the rate of Rs. 3800/- per month at par with the serving officers of his rank in the Indian Administrative Service after deducting the amount drawn already and to pay all the arrears thereof forthwith and for a declaration that the said notification dated 16.4.1987 was illegal, arbitrary, unfair and unconstitutional and as such liable to be struck down and quashed. In addition to the above prayers, the petitioner made several other prayers but it is not necessary for us to refer to them here. Suffice it to point out that the basis of the claim of the petitioner is that the benefits which were conferred on persons who retired after 1.1.1986 should be made available to persons who retired prior to that date.

5. The writ petition was dismissed by a single judge of the High Court who held that the principle laid down by this Court in D.S. Nakra's case, 1983(1) SCC 305 would not apply and the reliance placed by the writ petitioner on the said ruling was mis-conceived. The Court pointed out that the difference between the pension payable to persons who retired after 1.1.1986 and the pension payable to the persons who retired prior to that date was on account of restructuring the scales of pay and the writ petitioner having retired long prior to the said date when the old scale of pay was prevailing was not entitled to claim the benefit. As against the judgment of the single judge, an appeal was filed which was disposed of by a Division Bench. The Bench opined that for the purpose of determining the pensionary benefit to the writ petitioner, the basic pay should also include the dearness relief or interim relief which was granted to such persons in the same manner as it was made applicable in respect of persons who retired after 1.1.1986. The Bench also held that the perquisites which were allowed to 'post-1.1.1986' pensioners should also be added to the basic pay of the writ petitioner and thereafter 50% of that amount should be given by way of pension to him w.e.f 1.1.1986. The Respondents therein were directed to re-fix the pension of the writ petitioner in terms of the said order.

6. Aggrieved by said judgment and order, the State of West Bengal has preferred this appeal.

7. The contention of the appellant is that the impugned judgment of the Division Bench of the High Court is vitiated by a misunderstanding of the rule in "Nakara" and the overlooking of the relevant rules applicable to the writ petitioner. Before advertng to the rule in Makara, we would like to point out that the petitioner does not come within the purview of the relevant rules, as amended by the Notification dated 22nd May, 1987.

8. In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 the Central Government issued a Notification on 22nd May, 1987 amending the All India Services (Death-cum-Retirement Benefits) Rules, 1958. The word "emoluments" has been defined thereby to mean the pay that a member of the service was receiving before his retirement or death, as the case may be. The proviso to the definition clause is to the effect that in the case of a member of the service retiring from service within ten months of the date of coming over to the revised scales of pay, the emoluments in respect of any period prior to coming over to the revised scales of pay shall include the pay other than special pay in the pre-revised scale, dearness allowance,

additional dearness allowance and *ad hoc* dearness allowance appropriate to pay upto Cost of Price Index 608 actually drawn during the relevant period and interim relief appropriate to pay actually drawn during the relevant period. The expression "Revised scales of pay" has been defined to mean the scales of pay introduced with effect from 1st day of January, 1986. Thus, the definition clauses themselves exclude the petitioner who retired from service in February, 1981 long before the revision of scales of pay came into force. Rule 18 provides for the amount of gratuity and pension, in the case of a member of the service who retires from service in accordance with the rules. The note at the end of the rule reads that a member of the service before 1st day of January, 1986 shall be granted such additional relief in pension, as may be sanctioned by the Central Government. Hence, the provisions of Rule 18 fixing the amount of gratuity or pension will not apply to the writ petitioner.

9. In the Writ Petition there is no challenge whatever to the provisions of the rules, as amended by the Notification dated 22nd May, 1987; nor has the writ petitioner chosen to challenge the Notification as such. On the other hand the prayers in the Writ Petition are directed only against the Memorandum dated 16th April, 1987, as stated already. Consequently, the first respondent is not entitled to any relief whatever in the Writ Petition and it deserves to be dismissed. This aspect of the matter has been completely ignored by the Division Bench of the High Court. This appeal has to be allowed on that short ground.

10. We have already referred to the fact that the new provisions for payment of pension introduced by the amendment of 1987 were only consequential to the restructuring of the pay-scales of the members of the service. The Division Bench of the High Court has recognised the position that the writ petitioner cannot claim benefit of higher pay-scale having retired from service long before the introduction of such pay-scales. The Division Bench also pointed it out that the petitioner cannot claim a pension higher than the pay drawn by him. The Division Bench observed :

"We agree with the view of the learned Trial Judge that the petitioner cannot claim a pension higher than the pay drawn by him; but at the same time, the value of rupee 20 years ago and the value of a rupee now cannot be treated to be the same by any logic. The appellant is not entitled to get the benefit of the higher pay scale, but the appellant is entitled to get the benefit of calculation of pension by merging the dearness allowance and other allowances along with the basic pay which has been introduced subsequently."

It is quite obvious that the Division Bench has usurped the functions of the Central Government and thus travelled beyond its jurisdiction.

11. Much reliance is placed on the decision in *D.S. Nakara v. Union of India, 1983(1) SCC 305*. That was a case in which the Central Government liberalised the formula for computation of pension but made it applicable to Government servants who were in service on March 31, 1979 and retired from service on or after the specified date. This Court struck down the said classification and held that the liberalised formula was applicable to all the pensioners whether they retired before or after the specified date. That principle cannot apply in the present case where the pension benefits have been fixed on the basis of the revised pay structure to those members who are in service on 1.1.1986.

12. In *All India Reserve Bank Retired Officers Association and others v. Union of India and another, 1992 Supp(1) SCC 664* a bench of this Court distinguished the judgment in *Nakara* and pointed out

that it is for the Government to fix a cut-off date, in the case of introducing a new pension scheme. The Court negated the claim of the persons who had retired prior to the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in *Union of India v. P.N. Menon and others*, 1994(4) SCC 68 : 1994(4) SCT 91 (SC). In *State of Rajasthan v. Amrit Lal Gandhi and others*, JT 1997(1) SC 421 : 1997(1) SCT 699 (SC) the ruling in P.N. Menon's case (supra) was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.

13. In *State of U.P. v. Jogendra Singh and another*, 1998(1) SCC 449 : 1998(1) SCT 274 (SC) a Division Bench of this Court held that liberalised provisions introduced after employee's retirement with regard to retiral benefits cannot be availed of by such employee. In that case the employee retired voluntarily on 12.4.1976. Later on the statutory rules were amended by Notification dated 18.11.1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalised provision which came into existence after his retirement. A similar ruling was rendered in *V. Kasturi v. Managing Director, State Bank of India Bombay and another*, JT 1998(7) SC 147 : 1998(4) SCT 662 (Patna).

14. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the Writ Petition. The Division Bench of the High Court was, therefore, in error in granting a part of the prayer of the first respondent. Hence, this appeal is allowed. The judgment of the Division Bench is set aside and the judgment of the Single Judge of the Calcutta High Court dated 10.7.1992 dismissing the Civil Order No. 9993(W) of 1988 filed by the first respondent herein is restored. There will be no order as to costs.

Appeal allowed.