

Tamil Nadu Electricity Board

Vs

R. Veerasamy

Civil Appeal Nos. 1721-1725 of 1999

(Sujata V. Manohar, K. Venkataswami, R.C. Lahoti JJ)

26.03.1999

JUDGMENT

K. Venkataswami, J.

1. Leave granted.

2. The law on the common issue that arises for decision in these cases is well settled and, therefore, we do not propose to write a detailed judgment. The common issue that arises in all these cases can be broadly stated as follows :-

"Whether the appellant-Board has acted illegally or contrary to law in introducing a pension scheme to the employees, who were hitherto not governed by such pension scheme protectively from 1.7.1986. To put it differently, whether the employees (respondents) who were all retired before 1.7.86 after receiving all retiral benefits available to them as per the law existing on their dates of retirement, can compel the appellant-Board to extend the benefit of newly introduced pension scheme with retrospective effect."

3. Let us now give facts in brief to appreciate the common issue raised in these cases.

4. The appellant-Board was brought into existence on 1.7.1957 in accordance with Section 5 of the Indian Electricity (Supply) Act, 1948 (hereinafter called the 'Act'). The employees of the Electricity Department of the Govt. of Tamil Nadu were transferred to the appellant-Board on and from 1.7.1957 and the erstwhile employees of the Government became the employees of the Board. It is not in dispute that the employees (respondents), termed as workmen in Regular Work Charged Establishment, were governed by Contributory Provident Fund Scheme on the date when they were transferred from Electricity Department of Tamil Nadu to the appellant-Board. It is also not in dispute that on their retirement prior to 1.7.1986 all the employees (respondents), who were governed by the Contributory Provident Fund Scheme, had received all retiral benefits in full settlement.

5. After the formation of the appellant-Board, separate proceedings were issued in all matters connected with it by virtue of powers conferred under Section 79 of the Act including pension regulations after taking into account the financial commitment involved in adopting Government orders in the matter of terminal benefits as well as the service conditions of the employees. It appears that the Government of Tamil Nadu in G.O.M.S. No. 797 dated 30.6.1969 introduced pension scheme to its employees who were not governed earlier by such pension scheme. However,

the appellant-Board had not adopted the orders issued by the Government in G.O. No. 797 dated 30.6.1969. It is a fact that the employees (respondents) were making representations to the appellant-Board from time to time to extend the benefit of pension scheme to those who were hither to governed by Contributory Provident Fund Scheme. It is also a fact that the appellant-Board acted upon such representation and it had to comply with certain formalities before introducing the pension scheme. After getting exemptions from the purview of the Family Pension Scheme, 1971 and Employees Deposit Linked Insurance Scheme, 1976 from the Central Government, the appellant-Board could introduce the pension scheme w.e.f. 1.7.1986. The retired employees (respondents), aggrieved by the prospective introduction of the pension scheme from 1.7.1986, moved the High Court to quash that part of the Board's proceedings in 8P MS (FB) No. 5 dated 26.6.1986 which fixed the date of the application of the proceedings on or after 1.7.1986.

6. A learned Single Judge of the High Court in his elaborate judgment found that the date fixed as 1.7.1986 is neither arbitrary nor offends Article 14 of the Constitution of India and consequently dismissed the writ petition. The retired employees (respondents) moved the Division Bench of the High Court. The learned Judges accepted the contention of the learned counsel for the Electricity Board that the ratio laid down by this Court in *D.S. Nakara and others v. Union of India, 1983(1) SCC 305* may not apply to the facts of the case. However, the Division Bench held that the retired employees (respondents) are entitled to the benefit of the pension scheme though they had retired long before the introduction of the pension scheme mainly on the ground that it was because of the delay on the part of the Electricity Board in bringing into existence the pension scheme, the erstwhile employees (respondents) were deprived of the benefit of such pension scheme. The learned Judges observed as under :-

"But, the contention is whether the Board can extend the benefits giving a cut off date without any nexus to the policy of extending the pension scheme. In this connection we have already noticed that the regular workmen of the work charged establishment had been making representations, for extension of the scheme for more than ten years. The mere delay on the part of the Board in issuing the impugned proceedings and stating that from the date of the proceedings only the benefit will be extended to is in our opinion arbitrary and without any nexus to the policy of extension of the scheme. We are clearly inclined to agree with the Petitioners that the scheme should be extended to all regular work charged establishment personals retiring/expiring even before 1.7.1986. But, the actual benefits will be extended to only from the date of the proceedings viz., 26.6.1986. In this view of the matter, the writ appeals are allowed. Consequently the writ petitions will stand allowed. The order in the writ petitions shall not be interpreted to mean that the impugned Board's proceedings have been struck off, but on the other hand it shall mean that the benefit of pension shall be extended to all the regular work charged establishment personals irrespective of the date of retirement. But, the benefits shall be given only with effect from the date of the proceedings of the Board viz. 26.6.1986 provided the amounts paid under Provident Fund Scheme are adjusted. The Respondents are directed to give effect to this order by effecting payment to all the eligible retirees with all other incidental benefits. There will be no order as to costs in these writ appeals."

7. Aggrieved by the judgment of the Division Bench of the Madras High Court, these appeals by special leave are preferred by the Tamil Nadu Electricity Board.

8. As noticed earlier, the law is very well settled on the issues on hand. In the latest judgment dated

9.10.1998 of this Court in *V. Kasturi v. Managing Director, State Bank of India, Bombay and another*, 1998(8) SCC 30 after noticing all the judgments of this Court up to that date on this issue, it was held as follows :-

"However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they service such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : *Commander, Head Quarter v. Cap. Biplabendra Chanda and Govt. of T.N. v. K. Jayaraman and others* to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within