

R. Gandhi

Vs

U.O.I.

Civil Appeal No. 4667 of 1999

(K. Venkataswami, S. S. Mohammed Quadri JJ)

23.08.1999

JUDGMENT

Syed Shah Mohammed Quadri, J. –

1. Leave is granted.
2. This appeal, an off-shoot of the judgment of this Court in *Common Cause v. Union of India, 1987(1) SCC 142*, arises from the judgment and order of a Division Bench of the Madras High Court in Writ Petition No. 12381 of 1996 dated January 22, 1998.
3. The appellant, who is a Senior Advocate and a member of the Madras High Court Bar, filed writ petition No. 12381 of 1996, a public interest litigation, in the High Court of Madras challenging Memorandum No. 34/2/86-P&PW(G) dated August 22, 1990 issued by Department of Pension and Pensioner's Welfare and also the letter dated September 26, 1990, applying the above said Memorandum to the Department of Justice, and seeking declaration that it does not apply to the Judge of the High Courts and the Supreme Court of India.
4. The substance of the appellants' case before the High Court was that the Supreme Court had issued direction that payment of reduced pension on account of commutation of a part of the pension of a Government employee should be only for a period of 15 years "from the date of retirement", but the Union of India issued impugned Memorandum changing it to "from the date of commutation of pension". The Union of India, in its counter-affidavit, stated that the Supreme Court clarified the direction given in *Common Cause* (supra) in its subsequent judgment that the period of 15 years be reckoned from the date of commutation and not from the date of retirement. Pursuant to the subsequent judgment of this Court, Government of India revised its earlier Memorandum No. 34/2/86-P&PW dated March 5, 1987 and brought into force the impugned Memorandum.
5. A Division Bench of the Madras High Court, taking note of the various judgments of this Court, dismissed the writ petition by order dated January 22, 1998. It is against that judgment, this appeal is preferred.
6. Mr. R. Venkataraman, learned senior counsel for the appellant, strenuously contended that once the Government of India accepted in principle that the commuted pension would be recovered for a period of 15 years from the date of retirement and the same had culminated into a direction of this Court, they could not have unilaterally changed the same to reckon the period of 15 years from the date of commutation of pension. The learned counsel has submitted that under the Pension Rules, a pensioner can commute a part of his pension only within one year of the date of retirement,

therefore, the stand of the Government that those who applied for and got their pension commuted just on the verge of the completion of 15 years would be able to claim their full pension after a few months of deduction was without any basis.

7. Mr. A.S. Nambiar, learned senior counsel appearing for the respondents, has argued that the period of 15 years is fixed on the basis that the commuted pension would normally be recovered within the said period; when the commutation of pension and the date of retirement synchronize, no difficulty would arise but if the pension is commuted long after the date of retirement, the period of 15 years will be cut short when counted from the date of retirement and in the result the pensioners will get an undue and unintended benefit of the order of the Supreme Court.

8. In the case of *Common Cause* (supra), it was represented before this Court in a Writ Petition under Article 32 of the Constitution that on commutation of pension the amount paid to the pensioner in lump sum by the Government would be recovered from his pension within period of 12 years, there was, therefore, no justification for the Government to pay reduced pension for the rest of the life of the pensioner. This Court desired that the Government might give a new look to the application of Central Civil Service (Commutation of Pension) Rules, 1981. The Government took decision in the matter and communicated the same through the learned Attorney General, which is in the following terms :

"(i) Recovery from pension payable every month towards commuted value of pension will stop on the completion of 15 years from the date of retirement on superannuation or on the pensioner completing the age of 70 years, whichever is later.

(ii) The formulation will apply to all civilian pensioners in whose case the age of retirement on superannuation is 58 years and the personnel of Armed forces in whose case the retirement age varies in accordance with the colour service prescribed for the rank (attaining the age of 37/38 years or more).

(iii) Government have taken this decision as an act of goodwill to pensioners and to extend to them some measure of relief in the evening of their lives. It is sincerely believed that there will be no further demand on this issue and that the pensioners will accept the decision of the Government without dissent or reservation.

(iv) The decision will take effect prospectively (from April 1, 1986)."

9. In hoc the first point, this Court considered it unnecessary to refer to the age of commuting pensioner for restoration of full pension to him but on taking note of the facts that the lump sum amount would fetch benefit like interest and there is also an element of risk factor, directed by its judgment dated December 9, 1986 that "on the expiry of 15 years from the period of retirement" full pension should be restored. In terms of the said judgment, the Government issued Memorandum dated March 5, 1987.

10. In *Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India and others*, 1991(2) SCC 265, the question canvassed before this Court was whether Central Government employees, who had taken benefit of the judgment in *Common Cause* (supra) and subsequently got absorbed in Public Enterprises, were entitled to the benefit of that judgment again on retirement from public enterprises. While negating their claim, it was observed, "*this*

*court for the reasons indicated in the judgment came to hold that on expiry of 15 years from the date of commutation the entire pension revived.*" From this observation it can be noticed that the judgment in Common Cause (supra) was neither modified nor clarified. What all can be inferred is that this Court in Welfare Association's case (supra) understood the words "on the expiry of 15 years from the period of retirement" in Common Cause (supra) as "15 years from the date of commutation...". The judgment in Welfare Association case (supra) was rendered on April 12, 1990. It is only pursuant to that judgment, the counter affidavit recites, the Government revised its earlier Office Memorandum dated March 5, 1987 and brought into force the impugned Office Memorandum dated August 22, 1990.

11. In *Bharat Petroleum Corporation Ltd. Ex-Employees Association and others v. Chairman & Managing Director Bharat Petroleum Corporation Ltd., Bombay and others, 1993(3) Scale 424*, this Court extended the benefit of the judgment in Common Cause (supra) to the clerical employees of Bharat Petroleum. There also the words "period of 15 years from the period of retirement" were understood as "15 years from the date of commutation".

12. In *Welfare Association of Absorbed Central Government Employees in Public Enterprises and others v. Union of India and another, AIR 1996 SC 1201*, the relief sought by the pensioners in their petition under Article 32 of the Constitution was : restoration of 1/3rd portion of the fully commuted pension as per the decision of this Court in Common Cause (supra). A three-Judge Bench, of which one of us (Venkataswami, J.) was a member, retired the principles applied in the aforementioned cases. Indeed, the date from which 15 years pension was to be reckoned was not in issue there.

13. This Court strikes at arbitrary action of the State and accordingly it did in Common Cause (supra), by interdicting the arbitrary action of the Government in paying the reduced pension as a result of commutation of 1/3rd pension for the rest of the life of the pensioners and issued an equitable direction to restore the full pension after 15 years "from the period of the retirement" to the pensioners who had commuted 1/3rd of the pension. The period of 15 years has been arrived at after taking into consideration various factors mentioned above. It is well-settled principle that the words in the judgment of the Court cannot be interpreted as the words in a statute. By the said direction this Court never intended to confer any unfair or undue advantage on the pensioners. It only ensured fairness in the treatment of pensioners at the hands of the Government in respect of deduction of pension consequent upon the commutation of the portion of the pension. The decision in Common Cause (supra) has been understood in all subsequent judgments of this Court as 15 years from the date of commutation and we are in respectful agreement with the same. This neither prejudices the rights of any of the parties nor confers any undue or unfair advantage upon any party.

14. From the above discussion, it follows that the impugned Memorandum does not incorporate any condition contrary to the judgment of this Court in Common Cause (supra). The High Court was, therefore, right in dismissing the writ petition. We find no illegality in the order of the High Court. The appeal fails and it is accordingly dismissed. No costs.