

SUPREME COURT OF INDIA

Government of Andhra Pradesh

Vs.

N.Subbarayudu

C.A.No.3939-3941 of 2002

(H.K.Sema and Markandey Katju, JJ.)

26.03.2008

ORDER

1. These appeals have been preferred by the State against the judgment and order of the Division Bench of the High Court. By the impugned order, the High Court directed that the respondents be paid the pensionary benefits from the respective date of their retirement under the provisions of Pension Rules 1980.
2. We have heard the parties at length.
3. Briefly stated the facts are as follows.

“The respondents were Lecturers in private aided college. The age of superannuation of the respondents was 60 years. By an amendment of the Education Code in 1993, the age of superannuation of the respondents has been brought down to 58 years. In the said amendment it was also provided that the respondents shall be entitled to pension with effect from 1st November 1992. Aggrieved thereby, the respondents preferred writ petition before the High Court. The Division Bench of the High Court, after hearing the parties, was of the view that the cut off date 1/11/1992 fixed by the Government was arbitrary and discriminatory. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab & Ors. Vs. Amar Nath Goyal & Ors.*¹, No doubt in *D.S. Nakara & Ors. vs. Union of India*² this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in *State of Punjab & Ors. vs. Amar Nath Goyal & Ors.* (supra). There may be various considerations in the mind of the executive authorities

due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide *State of Bihar vs. Ramjee Prasad*³ *Union of Indian & Anr. vs. Sudhir Kumar Jaiswal*⁴ (vide para 5), *Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors*⁵. (vide para 31), *University Grants Commission vs. Sadhana Chaudhary & Ors.*⁶ etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

As has been held by this Court in *Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr*⁷. and in *Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi*⁸ the Court must maintain judicial restraint in matters relating to the legislative or executive domain.

For the reasons afore-stated, the impugned order of the High Court is set aside. The appeals are allowed.

Judgment Referred.

1(2005) 6 SCC 0754
2(1983) 1 SCC 0305
3(1990)3 SCC 0368
4(1994) 4 SCC 0212
5(2004) 2 SCC 0076
6(1996) 10 SCC 0536
7(2008) 3 JT 0221
8(2008) 2 8 JT 0639