

SUPREME COURT OF INDIA

State of Bihar

Vs.

Sudhir Chandra Kumar

C.A.No.200 of 2011

(H.L.Gokhale and J.Chelameswar JJ.)

23.07.2013

ORDER

1. We have heard Mr.Manish Kumar, learned counsel appearing for the appellant State of Bihar and Mr.P.N.Mishra, learned senior counsel appearing for the respondent no.1 and Mr.Atul Jha, learned counsel appearing for respondent nos.2 to 6 in C.A.No.200 of 2011 etc. and other respective counsel in the connected appeals.

2. Since the facts arising from all these appeals are similar, we take Civil Appeal No.200 of 2011 as the lead case.

Civil Appeal No.200/2011:

3. This appeal, by special leave, seeks to challenge the judgment and order dated 23rd July, 2008 passed by the High Court of Judicature at Patna in L.P.A.No.439 of 2008. This judgment allowed the appeal filed by the respondents concerning their right to receive pension as per the revised formula.

The short facts leading to this appeal are this-wise:

4. The respondents are the teachers working in T.M.Bhagalpur University. Their case was that the State of Bihar had merged 50% of the Dearness Allowance (for short 'D.A.') into the basic pay for the purposes of calculating the pension, vide its resolution dated 11.04.2005 and which resolution was to be given effect from 01.01.2005. It was pointed out by them that in spite of passing of this resolution,

the benefit thereof was not being given to them. In this regard, it may be pertinent to quote Statute 16 of the University, which reads as follows :

“16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in schedule 'A' (I) if he ceased to be in University service between 1-4-72 and 31-12-72 and schedule A(ii) if he ceased to be in University service between 1-1-73 and 30-3-79. For those who ceased to be in University service from 31-3-79 onwards, the scales given in Schedule A(iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules will be equally applicable to the University employees (emphasis supplied)”

5. It was their submission that the Statute was specifically enacted for the purposes of calculating the pension. Any further change in the rate of pension as also relief in pension under the Bihar Government Pension Rules will, therefore, be automatically applicable to the University employees. The learned Single Judge had disposed of their Writ Petition in the light of the orders passed by the Court in an earlier Writ Petition bearing No.CWJC 13925 of 2006, dated 31.10.2007. The effect of that would be that only those who retire subsequent to 1st January, 2005 would be getting the benefits of this changed formula. The respondents, therefore, filed an L.P.A. wherein the aforesaid submission, based on Statute 16, has been accepted by the Division Bench.

6. Being aggrieved by this judgment and order, present Civil Appeal has been filed by the State of Bihar.

7. Mr.Manish Kumar, learned counsel appearing for the appellant-State, submitted that the State Government cannot be made to bear the burden which will arise out of this responsibility. His submission is that this resolution of the State Government was meant only for the State Government employees and not for anybody else. There is no dispute that under this resolution of 11th April, 2005, the State Government has decided that 50% of the D.A. will be merged in the basic pay for the purposes of calculating the pension, and this will be with effect from 1st January, 2005. This was in the back-drop of the Central Government taking a similar decision earlier from 1st March, 2004. Obviously, there must have been similar demands from the State Government employees and, therefore, this decision from the State Government.

8. Mr.Manish Kumar, submits that the University is not supposed to create financial liabilities for the government and his submission has been that wherever there is any financial implication under any of the statutes, those financial implications are not enforceable unless prior approval of the State Government has been obtained. He has relied upon Statute No.36(6) and, particularly, the proviso thereof. The Statute 36(6) proviso reads as follows:

“...36(6).....

“Provided that if there be any financial implication which may arise under the statute, it shall not be enforceable unless prior approval of State Government has been obtained.”

9. He also pointed out that as far as the creation of the posts and payment to the teachers and the employees in the University are concerned, though the decisions are taken by the University, the responsibility with respect to the payment of salaries etc. is on the State Government and that is why the above provision is made into the proviso in Statute No36(6).

10. It is, however, material to note that, as far as this proviso is concerned, it has been substituted by Act No.16 of 2008. As far as present resolution of the State Government is concerned, it is dated 11th April, 2005, which is much prior to the coming into force of this proviso to Statute 36(6). That apart, as we have seen, under the Statute 16 (which has been in force from 1982), it is specifically provided that any change in the rate of pension or relief therein into the service conditions of the State Government employees would be extended to the University. Therefore, in our view, the Division Bench cannot be faulted for taking the view that the reading of Statute read with the resolution passed by the State Government, University employees will be entitled to include 50% of the D.A. into their basic pay for the purposes of calculating their pension.

11. It is interesting to note that the University was a party to the Writ Petition but the University did not challenge the decision rendered either by the Single Judge or by the Division Bench.

12. In view of this position, in our view, there is no reason to entertain this appeal. The Civil Appeal is, accordingly, dismissed. No costs.C.A.NO.205/2011, 206/2011, 207/2011, 208/2011, 209/2011, 210/2011, 202/2011, 203/2011, 201/2011 AND 204/2011.

13. In view of the order passed in Civil Appeal No.200 of 2011, all the appeals stand disposed of with similar order.