PUNJAB AND HARYANA HIGH COURT

V.P. Gautama

Vs

Union of India

Civil Writ No. 4685 of 1975

(S.S. Sodhi, J.)

15.07.1983

ORDER

S.S. Sodhi, J.

1. Does the date of retirement from service, being prior or subsequent to a specified date, constitute a valid criteria for classification of persons entitled to pension under the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as the 'Retirement Benefits Rules, 1958') justifying differential treatment in the matter of computation of pension so as to render it immune from attack under Art. 14 ? In other words, is not the vice of discrimination inherent in a situation where the amount payable pension is worked out by one formula if retirement from service was before a particular date and by another and more generous one if it happened to be subsequent thereto? Herein lies the main controversy raised in this petition.

2. The question posed stand; largely settled by the rationale of the judgment of the Supreme Court in *D. S. Nakara v. Union of India*[1] and, therefore, only a brief reference to the relevant facts here would suffice.

3. The petitioner Mr. V. P. Gautama was a member of the Indian Administrative Service, who originally belonged to he Punjab Cadre; but on reorganisation of the State came to he allocated to Haryana. He refired from service on April 29, 1967 on attaining the age of superannuation. On retirement, he was eligible for pension under the Retirement Benefits Rules 1958 and in accordance with the provisions of Rule 18 read with Sch. 'A' thereof, he was allowed pension at the maximum rate of ₹ 675/- per month. A sum of ₹ 24,000/- was also allowed to him as death-cum-retirement gratuity under Rule 19 (3) read with Sch. 'B' of the aforesaid Rules. The case of the petitioner being that as he had 32 years' service to his credit, he was entitled both to the maximum pension as also gratuity payable under the Retirement Benefits Rules, 1958.

4. After the finalisation of the petitioner's pension and gratuity, amendments came to he made in the Retirement Benefits Rules, 1958, liberalising pension payable thereunder. In pursuance of the recommendations of the Third Central Pay Commission. the Central Government amended the

Retirement Benefits Rules, 1958, with effect from Dec. 31, 1972 vide notification No. 33!12/73-AIS (II) dated Dec. 24, 1975 read with notification No. 25011/29/75AIS (II) dated Jan. 30, 1976. By this amendment, the maximum pension was raised to ₹ 1000/- per month and the death-cum-retirement gratuity to ₹ 30,000/- - Schedule 'B' of these Rules was deleted.

5. There was a further amendment in the Retirement Benefits Rules, 1958 with effect from Mar. 31, 1979 under notification No. 25011/14/79-AIS (III dt. Sept. 1, 1979, whereby Sch. 'A' was deleted and a new formula was incorporated for computation of pension with the ceiling on pensions being raised to ₹ 1500/per month.

6. Finally, there came the amendment in the Retirement Benefits Rules, 1953, whereby the maximum pension in the case of a member of an All India Service, who retires from the post of Cabinet Secretary and Secretary to the Council of Ministers, Government of India was raised to ₹ 1700/-. This was done vide notification No. 25011/80-AIS (II) dt. Feb. 19, 1981.

7. The provision in the Retirement Benefits Rules, 1958 which deserves note here is Rule 28 (6) thereof which reads as under

> "The claim of a member of the Service to the retirement benefits shall be regulated by the rules in force at the time when the member of the Service resigns, retires or is retired or discharged from service or where the member of the Service dies while in service, immediately before death." It was this rule which was invoked to deny to the petitioner the retirement benefits under the Retirement Benefits Rules, 1958 as amended w.e.f. 1975 and 1979, when his several requests for pension under the amended rules were declined. This now constitutes the main grievance of the petitioner. In answer the plea raised in the return being that as the petitioner had retired from service in 1967, he was entitled to retirement benefits under the Rules then in force, according to which, lie had already been granted the maximum pennon and gratuity payable under those Rules. The claim of the petitioner for pension and gratuity thus having already been settled and concluded, it was not a live issue when the aforesaid amendments came into force and, the matter could not, therefore, be reopened.

8. This is where D. S. Nakara's case (1983 Lab IC 1) (SC) (supra) provides a binding precedent as a similar plea had been raised and repelled there. This was a case concerning pension payable under the Central Civil Services (Pension) Rules 1972. The Government of India, Ministry of Finance, issued an office memorandum dt. May 25, 1979, whereby the formula for computation of pension was liberalised, but it was made applicable to only those government servants who were in service on Mar. 31, 1979 and retired from service on that or after that date. Similarly, in the case of pension payable to the members of the Armed Forces under the relevant regulations, by a memorandum dt. Sept. 28, 1979, a liberalised pension formula was extended to the Armed Forces Personnel, subject to the condition that the new Rules would be effective from April 1. 1979 and would be applicable to all service officers, who become/became noneffective on or after that date.

9. The basic contention raised was that pensioners for the purpose of receiving pension formed a class and there was no criterion on which classification of pensioners retiring prior to a specified date and retiring subsequent to that date could provide a rational principle correlated to the object underlying the payment of pension.

10. The stand taken in opposition, on behalf of the Central Government, was that classification of pensioners on the basis of their date of retirement was a valid classification for the purpose of pensionary benefits and that it was nor correct that all pensioners formed one class. In other words, pensioners retiring from Central Government service governed by the relevant Pension Rules did not form a class and pensioners who retire prior to a certain date and those who retire subsequent to such date formed distinct and separate classes.

11. In dealing with this matter Desai. J. speaking for the Court adverted generally to the rationale and concept of pension and summed up the position by observing, "pension is. But only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socioeconomic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey (lay of life to your employer, in days of invalidity. economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison deter for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon".

12. Desai, J. further observed "the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and. therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad v. State of Bihar*[2], wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the Rules and a government servant coming within those rules is entitled to claim pension".

13. From this the Court went on to hold "If it appears to be un-disputable as it does to us that the pensioners for the purpose of pension benefits form it class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification he founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the Objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this divisions which classified pensioners into two classes is not based on any

rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would he discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to he subject to ceiling of ₹ 8,100/- p. a. average emolument to be worked out on 36 months' salary while the other will have a ceiling of ₹ 12,000/-1 p. a. and average emolument will he computed on the basis of last ten months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pennon scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counterproductive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art. 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Art. 14."

14. Turning then to the way out in the situation that emerged, the principle of reading down the enactment was adopted. The plea in opposition that the doctrine of severalty could not be applied to augment the class was negatived by the Court observing "We are not sure whether there is any principle which inhibits the Court from striking clown an unconstitutional part of a legislative action which may have the tendency to enlarge the width and coverage of the measure. Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the Court can strike down the words of limitation in an enactment. That is what is called reading down the measure. We know of no principle that 'severance' limits the scope of legislation and can never enlarge it."

15. Accordingly, both the impugned memoranda were read down by severing the provisions contained therein that they would be applicable to Government servants,/service officers retiring/becoming effective on or after March 31, 1979. The date mentioned in the memoranda being treated as relevant as being one from which the liberalised pension scheme became operative under the relevant rules irrespective of the date of retirement. It was consequently declared that all pensioners governed by the 1979 Rules and Army Pension Regulations would be entitled to the liberalised pension from the specified date irrespective of the date of their retirement.

16. The occasion to follow the principles set out above was not long incoming. It arose in the matter relating to payment of pension to retiring High Court Judges. Chapter III of the High Court Judges (Conditions of Services Act, 1954 provided for the payment of pension to High Court Judges in accordance with the scale and provisions of Part I of the first Schedule. This Act was amended by the Parliament by the High Court Judges (Conditions of Service) Act, 1976,

which came into force on March 18, 1976. The amending Act was given retrospective effect and it was further provided therein that it shall be deemed to have come into force on October 1, 1974. The pension admissible to Judges ans Chief Justices of the High Courts was liberalised by this Amending Act, but it was provided therein that pension at the enhanced rate shall be payable to only such Judges as retired from service on or after October 1, 1974. This was challenged in the High Court of Allahabad in *Bidhubhushan Malik v. Union of India*[3], The contention raised was that in the matter of pensionary benefits there was no rational basis for discriminating between Judges of the High Court who retired before October 1, 1974 and those retiring subsequent to this date, as all the Judges constituted a class for purposes of pension and the date specified to constitute the demarcating line between them for giving benefit of liberalised pension was arbitrary having no nexus to the object behind the statutory provision and it thus infringed Art. 14 of the Constitution.

> 16-A. Viewed in the light of the law laid down in D. S. Nakara's case (1983 Lab IC 1) (SC) (supra) it was observed by the Court that except for the fact that the petitioners retired from service prior to October 1, 1974 there was no other basis for denial to them of the liberalised pensionary benefits created under the Amended Act of 1976. The amelioration in pensionary benefits, it was stated, must extend to all covered by this class without regard of the question whether the Judge/Chief Justice retired from service before or after October 1, 1974. The division was unsupportable being devoid of rational principle, the object being evidently to give something more in the form of additional pensionary benefit to persons otherwise equally placed the line drawn at the said date was clearly discriminatory. It was accordingly held that the eligibility for liberalised pension of having retired on or after October 1, 1974 in the High Court Judges (Conditions of Service) Act, 1976 (as amended) violated Art. 14 and was unconstitutional. The High Court Judges (Conditions of Service) Act, 1954 (as amended) was consequently read down by omitting the unconstitutional part of it and it was declared that Judges (including the Chief Justices) of the High Court were entitled to pension as computed under the High Court Judges (Conditions of Service) Act, 1954 (as amended) irrespective of their dates of retirement. The date October 1, 1974 being relevant only as being one from which the liberalised pension became operative irrespective of the date of retirement. A writ of mandamus was accordingly issued to the Union of India directing it to compute and pay pension to the Judges (including Chief Justices) of the High Court accordingly.

17. Both on principle as also on binding precedent therefore, it must be held that persons eligible for pension under the Retirement Benefits Rules, 1958 constitute a homogeneous class and the classification or division inter se for eligibility of pension thereunder on retiring from service before or after the specified date was not based on any discernible or rational principle and was also wholly unrelated to the object sought to be achieved by the grant of liberalised pension. The eligibility criteria for liberalised', pension of being in service on the specified date or retirement from service subsequent to that date in order to be entitled to the liberalised pension under the amendments which came into effect in 1975 and 1979 clearly violate Art. 14 of the Constitution and must accordingly be struck down. In other words, the provisions of Rule 28 (til of the Retirement Benefits Rules, 1958 in so far as they tend to restrict pensioners to the retirement

benefits as they were entitled on the date of their retirement and seeks to deny them liberalised pension under the Amended Rules referred to above which came into effect subsequent to that date are unconstitutional and are also accordingly struck down. It follows that the liberalised pensionary benefits including death-cum-retirement gratuity granted to pensioners by the amendments made in 1975 and 1979 shall be payable to all persons entitled :o pensionary benefits under the Retirement Benefits Rules, 1958 irrespective of the date of the retirement from service.

18. Further, in the circumstances it would be only fair and just that on the amounts becoming payable to pensioners including the petitioner by virtue of this '/ order, interest too be paid to them as a compensatory measure for the loss caused to them by their due payments being denied to them for so many years. Payment of interest at the rate of 12 per cent per annum compounded annually on the unpaid amounts due as liberalised pensionary benefits including death-cum-retirement gratuity under the Retirement Benefits Rules, 1958 as amended with effect from the date of the relevant notifications would clearly be in accord with the interests of justice.

19. The grant of interest on the amounts due, leaves no occasion to sustain the petitioner's further claim for damages. The petitioner sought to found this clam in torts. The claim, on the face of it being wholly untenable and misconceived cannot accordingly but invite notice only to be declined without further ado,

20. It now remains to deal with the other grounds of discrimination raised by the petitioner. In the first instance, an imputation of discrimination was levelled against the notification of February 2, 1981 whereby the maximum pension admissible to an incumbent retiring from the post of Cabinet Secretary and Secretary to the Council of Ministers, Government of India was raised to ₹ 1700/-. The contention being that the post held was not a (sic) rational principle justifying the fixing of different amounts as maximum pension for members of the service and therefore what has been prescribed as the maximum pension for the Cabinet Secretary should be treated as the maximum pension for all eligible pensioners under the Retirement Benefits Rules, 1958. This argument, in the context in which it has been raised cannot be accepted. There is no vice of discrimination inherent in a higher pension being provided for a person retiring from a particular post in the service unless it can be shown that having regard to the nature and requirements of the post and the qualifications required of the persons entitled to hold it, there is unreasonableness or arbitrariness in treating it as a category apart from the other posts, in the service. There is no material on record to reach any such conclusion here.

21. Discrimination was next alleged against pensioners in the matter of the grant of dearness relief, inasmuch as this relief, it was said, was granted at a rate and frequency lower than that extended to persons in service drawing a salary at par with the pension being paid to them. This again is a contention devoid of merit. Persons in service and, pensioners constitute separate and distinct classes and therefore, what is done for or granted to one and not the other cannot be looked upon as discrimination so as to render it open to challenge under Art. 14 of the Constitution.

22. In the result, a writ of mandamus is issued to the Union of India and the other respondents directing them to compute and pay pensionary benefits to the petitioner along with interest on the amounts becoming payable to him in terms of this order. The petitioner shall also he entitled to

the costs of this petition.

Order accordingly.

Cases Referred.

1AIR 1933 SC 130
21971 (Supp) SCR 634: (AIR 1971 SC 1409)
3AIR 1983 All 209