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(1996) 06 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No. 729/93

Ananthasubramanian and Others — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 11-06-1996

Acts Referred:
Kerala Service Rules, 1958 — Rule 25

Citation : (1996) 06 KL CK 0016

Hon'ble Judges : K. Sreedharan, Acting C.J.;C.S. Rajan, J

Bench : Division Bench

Advocate : N. Sukumaran, for the Appellant; P.K. Behanan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The Appellants in the appeal who are the Petitioners in the Original Petition are three retired District Judges. Appellants Nos. 2 and 3 could not see the final fate of these litigations since they died pending the appeal. The legal representatives of Appellants Nos. 2 and 3 have been impleaded. The Appellants retired from service on superannuation on 30th June 1983, 30th October 1983 and 31st August 1985 respectively. They had 7 years, 11 years and 9 years experience respectively at the Bar before they were appointed as Munsiffs. Originally the maximum years of qualifying service required for full pension was 25 years. Later the rules were amended making it obligatory to have 30 years qualifying service in order to become eligible for full pension. There is provision in the Kerala Service Rules for treating the experience at the Bar for the purpose of computing the period of qualifying service. Rule 25(a) in Chapter III, Part III of the Kerala Service Rules as it stood on the date of retirement of the Appellants read as follows:

25(a) Persons recruited from the Bar after the age of 25 years to appointment in Government service may add to their service qualifying for superannuation pension (but not for any other kind of pension) the actual period not exceeding

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five years by which their age at the time of recruitment exceeded 25 years provided that no employee can claim the benefit of this rule unless his actual qualifying Service at the time becomes eligible for superannuation pension is not less than eight years. This concession is also subject to the condition that the period that may be so added shall not at any time exceed the actual period of the employees practice at the Bar.

No application will be entertained for pension or extra pension on the ground that the appointee did not get an opportunity for service for the qualifying period.

Provided that the benefit under this Sub-rule shall be available only to employees who are recruited when practicing at the Bar to posts requiring law qualification and experience at the Bar.

Thus a pensioner can add to their service qualifying for pension the actual period not exceeding 5 years by which their age at the time of recruitment exceeded 25 years, provided that no employee can claim the benefit of this rule unless his actual qualifying service at the time he becomes eligible for superannuation pension is not less than 8 years.

2. The Fifth Kerala Pay Commission recommended that the Bar service for superannuation pension might be raised to 10 years. Accordingly Rule 25(a) of Chapter III, Part III K.S.R. was amended by incorporating the above recommendation of the Pay Commission. But the above amendment was given effect to only from 1st April 1990. The Appellants filed representations to re-fix their pension taking into account the amended provision referred to above. The above representations were rejected by Exts. P-3, P-5 and P-7 orders respectively. The Original Petition was filed challenging the above orders and praying for a declaration that the Appellants were entitled to the benefits of the amended provisions with regard to the addition of 10 years Bar service in computing pension. The Original Petition was dismissed by the learned Single Judge and hence the appeal.

3. Sri N. Sukumaran, learned Counsel appearing for the Appellants heavily relied on the ruling reported in D.S. Nakara and Others Vs. Union of India (UOI), On the basis of the above ruling it was contended on behalf of the Appellants that the pensioners formed a class by themselves and that they are not to be treated differently on the basis of different dates of retirement. Therefore it was argued on behalf of the Appellants that the Appellants even though retired in 1983 and in 1985 were entitled to the benefits of the amended rules which came into effect with effect from 1st April 1990. It was further contended that the date 1st April 1990 fixed by the Respondents was unreasonable, arbitrary and discriminatory.

4. On the other hand Sri P.K. Behanan, learned Government Pleader contended that the dictum laid down in D.S. Nakara and Others Vs. Union of India (UOI), had been watered down by the Supreme Court in subsequent decisions and therefore the argument of the learned Counsel for the Appellants could not be accepted in order to give relief to the Appellants.

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5. Another Constitution Bench of the Supreme Court had occasion to consider D.S. Nakara and Others Vs. Union of India (UOI), in Krishena Kumar and Others Vs. Union of India and others, . In the above case the Supreme Court considered elaborately the impact of the dictum laid down in D.S. Nakara and Others Vs. Union of India (UOI), . It was held by the Supreme Court as follows:

18. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain ''propositions wider than the case itself required.'' This was what Lord Selborne said in Caledonian Rly. Co. v. Walker''s Trustees [1882 (7) A.C. 259] and Lord Halsbury in Quinn v. Leathem (1901) A.C. 495 (502). Sir Frederick Pollock has also said: ''Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.

Finally the Supreme Court held that in D.S. Nakara and Others Vs. Union of India (UOI), it was never required to be decided that all the retirees form a class and no further classification was permissible.

6. In Anr. ruling of the Supreme Court reported in V.B. Rao Vs. Steel Authority of India Ltd., the Supreme Court again considered both D.S. Nakara and Others Vs. Union of India (UOI), and Krishena Kumar and Others Vs. Union of India and others, . It was held by the Supreme Court that there was much force in the submission made on behalf of the Appellant that the order impugned could not be sustained in the light of the principle laid down in Krishena Kumar and Others Vs. Union of India and others, wherein the decision in D.S. Nakara and Others Vs. Union of India (UOI), was explained and distinguished.

7. Again the Supreme Court had occasion to consider D.S. Nakara and Others Vs. Union of India (UOI), in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, wherein they discussed D.S. Nakara and Others Vs. Union of India (UOI), and Krishena Kumar and Others Vs. Union of India and others, and found that the dictum laid down in D.S. Nakara and Others Vs. Union of India (UOI), is not an eternal answer to all the questions relating to the validity of classification of pensioners and each case had to be decided on the facts of that case.

8. In the case of State of West Bengal and Others Vs. Ratan Behari Dey and Others, the Supreme Court considered the legality of prescription of a cut off date. In the above case the cut off date was the first day of the financial year in which the Pay Commission was appointed. Dealing with the above contention the Supreme Court held that it was within the power of the Corporation to enforce regulations either prospectively or with retrospective effect from such date as they might specify. The only condition is that in such case the State could not pick a date out of its hat. It has to prescribe the date in a reasonable manner having regard to all the relevant facts and circumstances. Once this was done,

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the question of discrimination did not arise. In the present case the amendment was given effect to from 1st April 1990, the first date of the financial year.

9. Another case in which the Supreme Court had to deal with the above aspect is Union of India Vs. P.N. Menon and others, In the above case also D.S. Nakara and Others Vs. Union of India (UOI), (1) Krishena Kumar and Others Vs. Union of India and others, and All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, were considered. Ultimately it was held that the cut off date fixed was neither arbitrary or unreasonable.

10. Yet Anr. decision where the Supreme Court held that the cut off date is not arbitrary of unreasonable is in State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti, The last word spoken by the Supreme Court on this matter is the case reported in Dr. V.P. Malik and others Vs. Union of India, . There also the Supreme Court considered that the implementation of the recommendations of a committee report for granting higher pay scale and abolishing distinction between functional and non-functional cadre with effect from 1st December 1991 was far from arbitrary and whimsical and it was held to be really reasonable and had not been picked out from a hat but is founded on logic.

11. In this connection it is also useful to advert to yet Anr. ruling of the Supreme Court reported in Indian Ex-Services League and others Vs. Union of India,

13. Ordinarily, it would suffice to mention the gist of Nakara D.S. Nakara and Others Vs. Union of India (UOI), decision without extensively quoting there from. However, we have done so for the reason that the impassioned plea of Shri G. Viswanatha Iyer, learned Counsel appearing for Army Officers which was reiterated with an added emotive appeal by Sri K.L. Rathee, appearing for the remaining ranks of Armed Forces seems to suggest that denial of Petitioner''s claim amounts to misreading the Nakara decision and refusal of the logical relief flowing there from. It is only to dispel this incorrect impression we have quoted from Nakara at some length. We have merely to decide whether the Petitioner''s claim flows from the decision in Nakara and we are unable to find anything in Nakara to support such claim.

14. D.S. Nakara and Others Vs. Union of India (UOI), decision came up for consideration before Anr. Constitution Bench recently in Krishena Kumar and Others Vs. Union of India and others,). The Petitioners in that case were retired railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that P.F. retirees and pension retirees constitute different classes and it was never held in Nakara that pension retirees and P.F. retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classifications was permissible. We have referred to this decision merely to indicate that Anr.

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Constitution Bench of this Court also has read Nakara decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

12. A Division Bench of this Court had occasion to consider almost a similar matter wherein the legality of implementation of a revised scheme in respect of post retirement benefits with a cut off date was involved. In the decision reported in State of Kerala v. Dr. M. Sreenivasan ILR 1996 Ker 428 after analysing the various decisions beginning from D.S. Nakara and Others Vs. Union of India (UOI), to Union of India Vs. P.N. Menon and others, it was held that the cut off date for the purpose of implementation of the retirement benefits was reasonable and rational. We are in respectful agreement with the observations made by the Bench that whenever a revision takes place, a cut off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government.

13. The argument solely based on D.S. Nakara and Others Vs. Union of India (UOI), cannot be accepted in toto without considering the subsequent pronouncements of the Supreme Court on the above aspect. The dictum laid down by the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), was not followed and applied in the various decisions cited supra and distinguished depending upon the facts of each case. Therefore we find that it is idle to contend that D.S. Nakara and Others Vs. Union of India (UOI), is to be applied blindly without looking into the facts of each case to hold that the classification of pensioners with reference to date of retirement was arbitrary, unreasonable and discriminatory in all types of pension cases.

Therefore we are in respectful agreement with the findings of the learned Single Judge and we hold that the writ appeal is liable to be dismissed. We do so.

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