(1984) 09 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Writ petition Nos. 934 and 935 of 1983

Avtar Krishen Mengi APPELLANT

Vs

State of Jammu and Kashmir RESPONDENT

Date of Decision : 13-09-1984

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 32

Citation : (1984) JKLR 513 : (1984) SriLJ 317

Hon'ble Judges : M.L.Bhat, J

Bench : Single Bench

Advocate : S.A.Salaria, A.V.Gupta, Advocates appearing for the Parties

Judgement

1. In writ petition No. 934/83 Art. 240AAA introduced in the J&K Civil Service Regulations Vol. 1 by virtue of SRO 586 dated 23.10. 19 9 is

challenged to the extent it classifies pensioners of the State Govt. On the basis of their date of retirement. This petition is by an individual petitioner.

Art 240 AAA relevant for the purpose of this writ petition and for understanding the challenge is reproduced as under:

240AAA Notwithstanding any thing contained in Article 240 A and 240AA with regard to fixation of pension and the maximum limits thereof the

amount of superannuation special retiring compensation and invalid pension in respect 'of Government servants who retire on or after 31st March

1979 shall be appropriate to the amount given , hereunder:

2. The benefit of this article is given to those only who have retired on or after 31st March 1979. A table showing the benefit is illustrated at the

foot of this Article. The petitioner contends that the pensioners constitute a single class have been divided in two classes i.e. those who have retired before 31.31979 and those who have retired on or after 31.3. 1979 who have retired prior to 31.3.1979 are not entitled to the benefit of Art.

240AAA. Therefore the words on or after 31.3.1979 appearing in the said Article are illegal, unconstitutional and violative of Art. 14 of the

constitutional of India. A prayer is made for quashing the said words from said Article.

3. Writ petition No. 935/83 has been filed on behalf of petitioner No 1 in his personal capacity and on behalf of petitioner No. 2 as the

Association. The writ petition involves the same question of law which is involved in writ petition No. 934/83 The Two writ petitions shall,

therefore, be decided by a common judgment.

4. The state has filed counter affidavit on 4.4.1984 in writ petition No. 934/83. Thereafter on 20.4.1984 the writ petitions were admitted and

posted for hearing. The writ petitions came up for hearing on 31.8.1984. The learned advocate General submitted that the reply affidavit filed in

writ petition No. 934/83 be treated as reply affidavit in writ petition No. 935/83 also and he did not wish to file any further reply affidavit. The writ

petitions, therefore, were heard on merits. In fact writ petition No. 934/83 only was argued and it was submitted that writ petition No. 935/83

being of similar nature be decided alongwith writ Petition No. 934/83 learned counsel for the parties agreed that judgment in writ Petition No.

934/83 will govern the disposal of write Petition No, 935/83 also.

5. The admitted facts, revealed from the pleadings, are that the petitioners have retired before 31.3.1979 and in the matter of pension they were

governed by the Rules pertaining to the grant of pension. Art. 240 A of Civil Service Regulations governed the petitioners. Before the year 1965 all

Government servants were entitled to get pension at the rate of 50% of their last drawn salary. In 1965, however, the respondent modified the

Pension Rules and by virtue of the modidefication Govt. servants were given option to receive by way of gratuity an amount equivalent to 15

months salary provided they had 30 years of qualifying service and 16 months salary as gratuity who had 32 years or more qualifying service.

Those of the Government servants who opted for gratuity at the time of retirement were entitled to receive pension at the rate of the last .drawn

salary. In the year 1979 Pension Rules were further liberalised and by virtue of

SRO586 Art 240AAA was added to the Central Service

Regulation. However, this Article was made applicable only to those pensioners who retired on or after 31.2.1979. la this manner pensioners were

categorised in two groups; one, who had retired before 31.3.1979 and other, who had retired on or after 31.3,1979,. Classification made on the

basis of date of retirement in Art. 240AAA is therefore, challenged by the petitioners and justified by the respondent. The challenge is based on its

being violative of Art. 14 of the Constitution of India and being discriminatory. It is further contended that classification made by the Article

amongst the pensioners on the basis of their date of retirement is unreasonable and has no nexus with the object sought to be achieved. The

differentia amongst the pensioners on the basis of date of retirement is unintelligible and irrational. State's justification is voiced by Mr. A.R.Paray,

Dy: Secretary to Government finance Department who has admitted that the pension is paid to the petitioners and 'other pensioners under rules

and on the pension D. A. is paid to those of the pensioners who have retired prior to 31. 3 1979 at a higher rate and the gap between the two

groups is, therefore narrowed in so far as payment of pension to the pensioners of two groups is concerned. It was also contended that J&K Civil

Services Regulations provide that rules in force at the time of retirement of the pensioner shall govern payment of pension to him, and any Rule

framed thereafter will not have retrospective effect but will be prospective, the classification between the pensioners in two groups is sought to be

justified because the pension is payable on the basis of the Rule which was in existence on the date of retirement of the Government servant.

6. I have heard the learned counsel for the parties at length and have considerd the pleading of the parties als.

7. Learned counsel for the petitioners has relied on an authority of the Supreme Court viz: D. S. Nakara and others Vs. Union of India AIR 1983

S. C. 130. A memorandum of Ministry of Finance and defence dated 25. 5. 1979 and 2891979 respectively which had made classification in the

revised pension formulla between the pensioners on the basis of date of retirement specified in the memorandum was held to be arbitrary and

violative of Art '14 of the Constitution of India by the Supreme court The writ petitions were filed before the Supreme Court on behalf of individual pensioners and on behalf of an Union who had espoused the cause of retired pensioners and the Supreme Court upheld locus standi of Union to

file the writ petition on behalf of the pensioners as unquestionable. It was held by the supreme court that for the purposes of pension benefits the

pensioners from one class and for the purpose of revision of pension a homogenous class cannot be permitted to be divided or classified into two

groups. The eligibility criteria on the basis of date of retirement was held to be unrelated to the purpose of revision and based on irrational

principle. Objects underlining payment of pension were detailed out by the Supreme Court and if the State at any stage considered it necessary to

liberalise the pension scheme there was no rational principle in granting these benefits only to those pensioners who retired subsequently to the date

of commencement of liberalised pension scheme and simultaneously denying the same to those who retired prior to that date, As contended by the

respondents in their counter affidavit the liberalised pension scheme was framed to give social security to age old Government servants. If that was

the object, it is not intelligible as to how this benefit was denied to those who had retired prior to 31.3 1979. The petitioners whether they had

retired before 31.3.1979 or after 31.3.1979 for the purpose of receiving social security cannot be classified into two groups. Reasonable

classification under Art. 14 of the constitution of India is permissible but when the classification is unreasonable and irrational if will certainly offend

the guarantees contained in Art. 14 of the Constitution. Therefore, the scale question which fails for determination in these writ petitions is as to

whether classification of pensioners on the basis of date of retirement is reasonable or unreasonable?

8. The challenge in the writ petition is not to the validity of Art. 240AAA but is restricted to the date mentioned in the said Article. The petitioners

challenge only that portion of the Article which gives the benefits to those pensioners of the State who have retired on or after 31.3.1979 otherwise

the said Article, contend the petitioners, is valid and needs to be upheld. For purpose of computation of pension, the petitioners submit that

irrespective of date of retirement the scheme of liberalised pension should be enforced. Therefore, payment of pension is to be tested in the context

of the right of the pensioners to receive if, Payment of pension is neither a concession nor a bounty but is payable under Service Rules which have statutory force. It is not a payment which is made on the sweet will of the employer but is a payment for having rendered past service and is paid to

secure socio economic justice to those who is their old age are not supposed to be left to lurch. In D.S. Nakara's case (supra) the Supreme court

has held a"" uncler;

Having set out clearly the society winch we propose to set up, the direction in which the State action must move, the' welfare State which we

propose to build up, the constitutional goal of setting up a socialist Slate and the assurance in the Directive principles of State Policy especially of

security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension

as a retirement benefit is in consonance with the furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a

fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when

it is mostly needed and least available, namely, in the fail of life,

If such be the goals of pension, if such be the welfare state which we propose to set up, if such be the goals of socialism and conceding that any

welfare measure may consistent with economic capacity of the State be progressively augmented with wider width and a longer canvass yet when

the economic means permit the augmentation, should some be left out for the sole reason that while in the formative years of the nascent State they

contributed their might but when the fruits of their labour led to the flowering of economic development and higher gross national produce bringing

in larger revenue and therefore larger cake is available, they would be denied any share of it ? Indisputably, viewed from any angle pensioners for

payment of pension form a class. Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the

pay on the last day of retirement but ""average emoluments as defined in the scheme.

9. The plea raised by the State that those of the pensioners who have retired prior to 31.3.1979 are getting D.A. at an enhanced rate is hardly

relevant in the present controversy. Present controversy is to be resolved in the light of guarantees contained in Art. 14 of the Constitution.

Violation of Art. 14 cannot be oured by paying D.A. to the pensioners who have been denied the benefit of liberalised pension scheme. Rate at

which pensioners get their pension of course is relevant but the importance of removing discrimination on the basis of date of retirement cannot be

said to be insignificant. It is the essence of Art. 14 of the Constitution which makes it necessary for this court to strike down classification which is

violative of this Article.

10. In view of the law laid down by the Supreme Court, this court cannot accept the contention of the respondents that classification based on date

of retirement is reasonable. It is rather obliged to hold Â£that classification for payment of pension made on the basis of date of retirement is

unconstitutional and offends Art. 14 of the Constitution of India After having held that payment of pension is a right vested in the petitioners and this

right flows from the statutory Rules and is not dependant on the whim of the respondents any discrimination made by the State between the

pensioners who form one homogenous class is bad and violative of their fundamental rightsy there is no reason as to why mini classification

between the class for purpose of drawing of pension can be accepted. The Supreme Court in D.S. Nakara's case (supra) has dealt with the matter

of pension and its payment and the classification made on the basis of the date of retirement in a detailed manner and findings of the supreme Court

have became law of the land. This authority squarely applies to the facts of the present case and the date appearing in Art. 240AAA, which fixes

the slab on ceiling of the pension payable to the pensioners on the basis of their retirement prior or on or after 31.3.1979 cannot be upheld. It can

not be countenanced as to why those pensioners who have retired before 31.3.1979 are denied the benefit of liberalised pension scheme

envisaged by the said Article. Therefore, a declaration is required to be made to strike down the words ""who retired on or after 31.3.1979"" from

Art.240AAA, framed in terms of SRO 586 dated 23.10.1979. After omitting the unconstitutional part,, it is to be declared that all pensioners

governed by Article 240A, and 240AA shall be entitled to pension as computed under the liberalised pension scheme in terms of Art.240AAA

from the specified date irrespective of their date of retirement. Arrears of pension prior to 31.3.1979 are not admissible but the payment of

pension is to be made in accordance with the libseralised scheme irrespective of date of retirement of the pensioners' ,

11. The learned Advocate General contended, half heartedly that financial implications involved in the case by giving benefit of liberalised pension

scheme to the pensioners as a class may be considered. I am afraid that I cannot refuse the relief simply because application of liberalised pension

scheme to all pensioners as a class increases the liability of the State. In a welfare State which aims to achieve socioeconomic justice by

constitutional means, this type of argument can hardly be accepted. The judges have a duty to redeem their Constitutional oath and to justice. The

goal set up in the Constitution is to be achieved by preventing die executive from violating the Const tutional guarantees. As noted above the

penioners form a class, they cannot be given unequal treatment on the ground of their date of retirement. Amongst other things directive principles

of the State policy unjoins upon the courts to achieve the Constitutional goal and the state also is enjoined to securesocioeconomic justice for its

subjects In this background it was observed by the Supreme Court in Minerva Mills Ltd., Vs. Union of India, AIR 1980 SC 1789:

This is not more semantic. The edifice of our Constitution is built upon the concepts crystallised in the Preamble we resolved to constitute

ourselves into a Socialist State which carried with it the obligation to secure to our people justice social, economic and political. we therefore, put

part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved.

12. Viewed from this angle this would not detract the Government from covering the old pensioners under the liberalised scheme.

From the reasons stated above, the writ petitions are allowed and the impugned words appearing in the Article 240AAA to the effect that ""who

retired on or after 31.3.1979"" are hereby quashed and liberalised pension scheme is made applicable to all pensioners irrespective of their date of

retirement, fn view of the peculiar circumstances of the case, there will be no order as to costs.

