(2011) 02 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 11589 of 2010

Bangalore Water Supply and Sewerage Board Pensioners Association and Sri J.N.N. Murthy, retd. Public Relations Officer, BESSB and Sri T. Ramaiah, Senior Asst. retd., BWSSB — APPELLANT

Vs

Bangalore Water Supply and Sewerage Board and Secretary to the Government of Karnataka — RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

State Government Pension Rules — Rule 34

Citation : (2011) 02 KAR CK 0050

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : H.N. Narayan for and Lakshmi Iyengar, for the Appellant; Venkatesh Dodderi, for R-1 and Manjula R. Kamadolli, AGA for R-2, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The grievance of the second and third Petitioners and of those pensioners, who are members of the first Petitioner-Association, is that, R-l BWSSB (''the Board'' for short) had formulated its own pay scales for its employees and (he same was implemented with effect from 1.7.1986. The pay scales were revised at different times and the revisions took place on 1.7.1990, 1.7.1994. 1.7.1998. 1.7.2003 arid 1.7.2008. Consequent to the revision of pay scales with effect from the aforesaid dates, even the pension of the employees, who had retired from service, was also revised on two occasions i.e., 1.7.1990 and 1.7.1994. But, subsequently, no pension revision took place in respect of revision of pay scales effected from 1.7.1998 and 1.7.2003 and the latest being 1.7.2008.

2. Apart from this, during 1998, R-1 Board classified the pensioners into two categories i.e., those who retired before 1.7.1990 and those who retired after 1.7.1990. Thus, the pensioners, who are the members of the first, Petitioner-

Association, are deprived of the benefit: of revised pay scales from 1.7.1998 onwards and secondly, R-l Board could not have classified the pensioners into two categories taking into account a specified date.

3. It is the case of the first Petitioner-Association that the Association, which represents the pensioners of R-l Board, gave several representations to the Board and two of them are at Annexures-A and B dated 6.10.2008 and 5.10.2009 respectively and these representations have not been considered by the Board and. therefore, having regard to the low pension that the members of the first Petitioner-Association get and also taking note of the cost of living and rise in the prices of various things, the Petitioners are, therefore, constrained to approach this Court seeking a direction to the Board to effect revision of pensionary benefits which were stopped from 1.7.1998 onwards and also to consider the other facilities which have been sought for by the Petitioners as per their representations at Annexures-A and B.

4. Learned senior counsel Shri H.N. Narayan for the Petitioners, relying on a Constitutional Bench decision of the Apex Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), , and pointing to the observations made at paragraph-49, therefore, sought for directions to the Board as prayed by the Petitioners.

5. Learned Counsel Shri Venkatesh Dodderi appearing for R-1 Board, on hispart, referring to the objections filed by R-l, contended that the Board has adopted the State Government Pension Rules from 1986 and, therefore, the relief now sought by the Petitioners cannot be granted. It is also admitted in the objections of R-l that the pension has not been revised from 1.7.2008. The learned Counsel for R-l E3oard also placed for my perusal a letter addressed by the Principal Secretary to Government, Urban Development Department, to the Chairman, BWSSB, in this regard. Learned Government Advocate Smt. Manjula R. Kamadolli also adopted the very same submission made by the learned Counsel for the Board.

6. From what has been submitted by the respective counsel for the parties, what is clear is that the Board had gone on to revise pension also every time there was a revision of pay scales. The pay scales were revised with effect from 1.7.1990 and thereafter from 1.7.1994, 1.7.1998, 1.7.2003 and 1.7.2008. The pensioners were given the benefit of revised pension in respect of the pay revision that took place from 1.7.1990 and again from 1.7.1994. This fact is not disputed by the learned Counsel for R-l Board.

7. When the Board could revise the pensioner benefits of the pensioners when the pay scales were revised from 1.7.1990 and again from 1.7.1994 it could not have stopped extending the benefit of revised pay scales to the pensioners suddenly from 1.7.1998 onwards. As far as the contention of the learned Counsel for R-1 Board viz., that the Board has adopted the State Government Pension Rules from 1996 onwards is concerned, in the communication addressed to the Board''s Chairman by the Secretary to the Government dated 16.12.1999 in UDD

82 MNI 98, it has been clearly instated that the State Government has revised ilk-pension and pensioner benefits with effect from 1.4.1998 on general revision of pay scales. Therefore the Beard could not have deprived the pensioners the benefit of pay revision effected from 1.4.1998 when the Government itself had extended the benefit to the pensioners.

8. Therefore, it is apparent from the aforesaid factors that there has been revision of the pensioner benefits to the pensioners every time there was a revision of pay scale right from 1.7.1990 onwards. Such being the position, the Board, therefore, could not have stopped extending the pensioner benefits to the pensioners from 1.7.1998 onwards and consequently, the subsequent revision of pay scales effected from 1.7.2003 and 1.7.2008 also ought to have been extended to the pensioners.

9. As far as the bifurcation of the pensioners into two categories is concerned, it is admitted in the objections filed by R-1 Board that the pensioners have been categorized into two categories i.e., one class of pensioners who retired before 1.7.1990 and the other class of pensioners who have retired after 1.7.1990. This i8 also has affected the pensionary benefits that the pensioners would get in the sense, the persons who retired before 1.7.1990 will not be on par with those employees who retired alter 1.7.1990. In this regard, it would be proper to refer to the observations of the Apex Court in the case of D.S. Nakara, supra, referred to by the learned senior counsel for the Petitioners.

10. In the case of D.S. Nakara, supra, the Apex Court, through a Constitution Bench, after referring to the arbitrary selection of the happening of an event subsequent to a specified date, which has the effect of denying equality of treatment to persons belonging to the same class, has gone on to observe thus at paragraph-49:

49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalized pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum

the old lower ceiling will not deny him what is otherwise justly give due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be served without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

11. In the light of the aforesaid observations of the Constitution Bench, the date of retirement, therefore, becomes irrelevant and the revised scheme or for that matter, in the instant case, the revised pay scales and the revised pensionary benefits, would be operative in such a way so as to bring within it all the existing pensioners.

12. That apart, even in the objections filed by tin-Board, it is also stated at paragraph 4(i) that the pension has not been revised from 1.7.2008. In other words, it will have to be construed from the aforesaid statement made in the objections that the Board has not denied the revised pensionary benefits with effect from 1.7.2008.

13. As far as the other benefits claimed by the Association are concerned, no doubt, as rightly submitted by learned senior counsel Shri H.N. Narayan for the Petitioners, need for medical assistance would be more during the old age than in the younger days of a person''s life. It may not be out of place to refer at this juncture to the Constitution Bench decision referred to earlier and to quote what was said by the Apex Court in the very opening paragraph of the decision and the court has observed thus:

I fall on the thorns of life I bleed. Old age, ebbing mental and physical prowess, atrophy of both muscle and brain powers permeating these petitions, the Petitioners in the fall of life yearn for equality of treatment which is being meted out to those who are soon going to join and swell their own ranks.

Therefore, there is enough weight in the benefit of medical facilities sought for by the retired employees of the Board and, therefore, the Board also will have to consider the aforesaid facilities sought for by the Association sympathetically and if medical facilities are also allowed even in respect of the retired employees that would also be a step in the right direction insofar as giving effect to providing some sort of social security to the retired employees, who are in the evening of their life.

14. For the aforementioned reasons, the writ petition allowed oh the following terms:

i) R-1 Board is directed to accord pensioners, whom the first Petitioner represents and to which Association the other two Petitioners are also members, to revise the pensionary benefits of the pensioners with effect from 1.7.2003 onwards upto 1.7.2008 and thereafter, whenever there is a revision of pay scales, the pensionary benefits also shall be revised accordingly. If. however, the revised pensionary benefits have not been given effect from 1.7.1998, the same shall be given.

ii) In view of the Pensioners Association having given an undertaking that the pensioners will not insist on payment of arrears for the earlier periods, i.e. prior to 1.7.2008. consequently, us has been observed by the Apex Court in the aforementioned paragraph-49 of D.S. Nakara''s case, no arrears would be payable consequent upon the revision of pension retrospectively.

iii) R-1 Board shall also consider the request of the Association for extending the medical facilities on such terms as the Board deems it fit to the pensioners and to their spouses.

iv) R-1 Board shall give effect to the aforesaid directions now given, within a period of three months from the date of receipt of a copy of this order.