(1988) 03 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4269 of 1986

Bhagalpur District Pensioners Samaj — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 16-03-1988

Acts Referred:

Citation : (1988) PLJR 363

Hon'ble Judges : U.P. Singh, J;N.P. Singh, J

Bench : Division Bench

Advocate : Bibhuti Prasad Pandey, Ashok Kumar Jha, Dinesh Kumar Singh, Choubey Jawahar and J.K. Pandey, for the Appellant; R.B. Mahto, A.G. N.P. Sinha, G.A. and A.K. Mishra and Subodh Pd ., J.C. to G.A., for the Respondent

Judgement

N.P. Singh, J.—The petitioner of this application is an association of pensioners and a prayer has been made to quash a part of the resolution dated 6.5.1986 issued by the Finance Department, Government of Bihar, applying the Liberalised Pension Scheme to Government servants who retired prior to 1.4.1979. By the aforesaid resolution, the State Government has notified that since Government of India have extended the benefit of the Liberalised Pension Formula to their pensioners who were in receipt of the pension, as on 1.4.1979, on the basis of the judgment of the Supreme Court, the State Government has also decided that the benefit of the Liberalised Pension Formula (Slab System) may be extended to all pensioners who were in receipt of the pension, as on 1.4.1979. In that very resolution, other details regarding the application of the Liberalised Pension Formula to persons who have retired prior to 1.4.1979 have been set out. The petitioner has grievance in respect of paragraph 3 of aforesaid resolution dated 6.5.1986, which is as follows:--

3. It has also been decided that the payment of arrears according to these orders may be made from 1.4.79. But the arrears of pension in respect of the period from 1.4.79 to 31.12.85 will be released in the following manner:--

(a) Arrears up to Rs. 500/- will be released in two quarterly instalments.

(b) Arrears above Rs. 500/- to Rs. 2000/-will be released in four quarterly instalments.

(c) Arrears above Rs. 2000/- will be released in eight quarterly instalments.

Payment of pension at the revised rate after deducting the commuted amount, except in such cases where the commuted amount has been restored as per order contained in Finance Department resolution No. 646 dated 8.3.83. will be made w.e.f. 1.1.86.

The relief in pension, wherever admissible, will be revised with reference to the revised ''pension based on these orders. But there will be no revision in respect of temporary increases and relief in pension which have already been allowed to pensioners between 1.4.79 to 31.12.85. Relief admissible on the pension, as now revised will be allowed from 1.1.86 as per orders issued from time to time. (emphasis added)

2. According to the petitioner, when the State Government accepted in principle to extend the pensionary benefits of Liberalised Pension Formula (Slab System), on the lines of the decision taken by the Government of India, there was no justification to release the arrears to which the pensioners were entitled for the period 1.4.1979 and 31.12.1985 in instalments. The more serious challenge was made in respect of the other part of paragraph 3 of that resolution which says that there will be no revision in respect of temporary increase and relief in pension which have already been allowed to pensioners between 1.4.1979 to 31.12.1985. On behalf of the petitioner it was pointed out that the decision not to allow the revision in respect of temporary increases and relief in pension which have already been allowed to pensioners between 1.4.1979 to 31.12.1985 has been taken only in respect of such persons who retired from the Government service prior to 1.4.1979, whereas those who have retired on or after 1.4.1979 the aforesaid bar is not applicable to them, which amounts to discriminating the petitioner without there being any rational basis.

3. In order to appreciate the grievance made of the petitioner I consider it necessary to refer to the background in which the aforesaid decision appears to have been taken by the State Government. On 25th May, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19 (3)-EV-79 whereby the formula for computation of pension was liberalised but it was made applicable to Government servants who were in service on March 31, 1979 and retired from service on or after that date. The formula introduced a slab system for computation of pension. The aforesaid decision to apply the Liberalised Pension Scheme to persons who have retired on after 1.4.1979 was challenged before the Supreme Court by. one D.S. Nakara who had retired prior to that date from the service of the Central Government. He made a grievance that all the pensioners from a class and there was no justification on the part of the Central Government to fix 1.4.1279 as a date for application of the Liberalised Pension Scheme which decision was hit by Article 14 of the Constitution.

4. The Supreme Court in the case as D.S. Nakara and Others Vs. Union of India (UOI), came to the following conclusion "if it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a 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 be 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 these who retire later. Therefore, this division 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 be 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 bucket, 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."

5. On the basis of the aforesaid judgment, as already mentioned above, the State Government also took a decision to extend the benefit of Liberalised Pension Formula to pensioners who had retired from the Government service prior to 1.4.1979. But, while applying the Liberalised Pension Scheme, the State Government introduced two conditions, namely, (i) regarding the payment of arrears to such pensioners in instalments and (ii) there shall be no revision in respect of temporary increases and relief in pension which have already been allowed to such pensioners between 1.4.1979 to 31.12.1985. Now the question is as to whether such pensioners can be treated as a class separate from persons who retired on or after 1.4.1979 for the purpose of denying the benefits which have been extended to persons who have retired on or after 1.4.1979.

6. In view of the series of judgments of the Supreme Court, if two equals are treated as an unequal, then there is a discrimination and any decision treating the two equals as unequal is hit by Article 14 of the Constitution. This aspect of the matter has been emphasised in the aforesaid judgment of the Supreme Court in the case of D.S. Nakara vs. Union of India (supra) in connection with two classes of pensioners in respect of payment of pension itself. As such before the validity of clause 3 is upheld by this Court, it has to be established on behalf of the State that the petitioner formed a class separate from persons who have retired on or after 1.4.1979. In my opinion, after the judgment of the Supreme Court, in the case of D.S. Nakara vs. Union of India (supra), it is not possible to

hold that merely because the persons who have retired from the Government service prior to 1.4.1979 form a separate class, for a separate treatment by the State Government in the matter of payment of pensionary benefits.

7. It has been pointed out by Courts from time to time that whenever two groups of persons are treated as separate classes, any such decision must survive the test of two conditions, namely, (1) that the classification is based on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia has a rational relation to the object sought to be achieved by the decision. In the instant case, as I have already said above, after the judgment of the Supreme Court in the case of D.S. Nakara v. Union of India (Supra), it cannot be urged that the persons who have retired prior to 1.4.1979 from the service of the State Government form a separate class; as such, if an attempt has been made to classify them separately, it has to be held that any such decision is not founded on any intelligible differentia because practically there is no difference between the two groups of pensioners. The same is the position so far the other condition regarding achieving any rational object is concerned. In spite repeated query, the learned Advocate General could not point out as to what was the object which the State Government purported to achieve by denying the benefit of revision in respect of temporary increases and relief in pension which have already been allowed between 1.4.1979 to 31.12.1985. When such revision has been allowed in cases of persons who have retired on or after 1.4.1979, there does not appear to be any reasonable object to deny the same to persons who retired prior to 1.4.1979. The learned Advocate General simply pointed out that if the revision is made even in respect of persons who were getting the pension prior to 1.4.1979, it will be a burden on the exchequer of the State. By no stretch of imagination this can be held to be a rational object. The Supreme Court rightly pointed out that the persons who have retired earlier are worse off than those who retired later. As such there is no justification on the part of'' the State Government to deny the benefit aforesaid to the members of the petitioner''s association when they have extended that benefit to persons who have retired on or after 1.4.1979.

8. Accordingly, I am of the view that that part of the resolution which says "But there will be no revision in respect of temporary increases and relief in pension which have already been allowed to pensioners between 1.4.79. to 31.12.85 is not only irrational but discriminatory and as such hit by Article 14 of the Constitution. It is, accordingly, quashed and I direct that the persons who have retired prior to 1.4.1979 should also be treated alike with persons who have retired on or after 1.4.1979 so far the revision in respect of temporary increases and relief in pension which have already been allowed to the pensioners between 1.4.1979 to 31.12.1985.

9. Coming to the other grievance-which has been made on behalf of the petitioner regarding release of arrears in instalments, it has been urged on behalf of the State that it was not possible under the existing financial condition of the

State to release the amount of arrears which ran into crores to the persons who have retired prior to 1.4.1979 in one lump sum. Any way, as the arrears have already been paid by now, no useful purpose will be served in examining that grievance in detail. On behalf of the petitioner it was urged that the State Government should be directed to pay interest on the arrears released in instalments. The fact cannot be overlooked that by applying the Liberalised Pension Scheme the State Government had to release the arrears to thousands of pensioners; as such a decision was taken to release the arrears in instalments. In that view of the matter, I do not find any justification to direct the State Government to pay interest over the arrears which have been released in instalments. Accordingly, this writ application is allowed in part to the extent indicated above. But in the circumstances of the case, there will be no order as to costs.

U.P. Singh, J.

I agree.