
(1994) 02 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 132 of 1991

Bhimasen Prusty and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Citation : (1994) 78 CLT 357 : (1994) 1 OLR 439

Hon'ble Judges : L. Rath, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : P. Mohanty and S.K. Das, for the Appellant; Debasis Das, Additional Government Advocate, for Opp. parties 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The petitioners except petitioner Nos. 3 and 6 are non-Government Primary School teachers who were retired prior to 1-9-1988 are before this Court seeking protection of safeguarding the rights of their survivors after their deaths to family pension as has been made allowable to such teachers who retired after 1-9-1988 or would so retire. Family pension is payable under Chapter VIII of the Orissa Pension Rules, 1977. The provisions were made applicable to the non-Government fully aided primary school teachers by amendment of the Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit (Amendment) Rules, 1989 providing that an employee shall be eligible for pension, gratuity or death-o/n-retirement gratuity at the rate admissible to his counterpart in the State Government service and in the event of his death, his family shall be eligible for family pension as admissible to the family of his counterpart in the State Government service. The amendment was stated to be made effective from 19 1988. As a consequence, the petitioners submit, it is only families of those teachers whose retirement comes after 1-9-1988 that would become entitled to family pension in accordance with the Orissa Pension Rules but the families of those teachers who were retired prior to that date are not so eligible.

2. It is submitted by the learned counsel for the petitioners that such artificial cut-off date has no rational basis and is a blatant discrimination. Notice having been issued, counter affidavit has been filed by the State justifying the cut-off date as 1-9-1988 on the ground that on the grievance made by the representatives of the Teachers' Association, the Hon'ble Chief Minister of Orissa declared on 30-9-1988 before the representatives that the teachers of the aided educational institutions shall be entitled to family pension and because of such assurance given, the Rules were amended and were effective from 1-9-1988.

3. The cause shown to treat 1-9-1988 as the cut-off date can hardly be taken as an intelligible dividing line. Law is well settled that between one homogenous class artificial discrimination cannot be made in the matter of grant of pensionary rights and that once any revised scheme of pension is introduced, it becomes equally applicable to all existing pensioners. So far as gratuity is concerned, it being an one- time payment, the quantum of it payable by any particular date or revision of it is not retrospectively applicable to the existing pensioners. Law has been fully brought out in State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, where their Lordships said, after referring to famous Nakara's case D.S. Nakara and Others Vs. Union of India (UOI), , that since the revised scheme was operative from the date mentioned in the scheme, i. e. 1-4-1978, the continuing rights of the pensioners to receive pension and family pension must also be revised according to that scheme. Hence, whenever there is an introduction or revision in the family pension scheme, it becomes applicable to all the existing pensioners, and there cannot be any reason to confine the right to get the family pension to only families of teachers retired after 1-9-1983. Hence the amendment to the rule in Annexure-3 has to be interpreted that way and held as having not introduced any such discrimination. Even so it is to be made clear that since the Rules have come into force with effect on 1-9-1988, no arrear payment of pension is permissible but the families of such teachers who are retired prior to 1-9-1988 and have otherwise become entitled to family pension in accordance with the Orissa Pension Rules, shall be entitled to get the family pension in accordance with those Rules for the period for which payment is payable.

4. In the result, the writ petition is allowed. The notification No. 50413 dated 5-12-1989 vide Annexure-3 is quashed. There will be no order as to costs.

D.M. Patnaik, J.

I agree.