(1997) 06 GAU CK 0008

In the Gauhati High Court

Case No : Writ Appeal No. 582 of 1996

Bhupendra Kumar Bhattacharjee APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 17-06-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 14

Citation : (1997) 2 GLJ 272 : (1997) 2 GLT 355

Hon'ble Judges : D.N.Chowdhury, J and V.Dutta Gyani, J

Bench : Division Bench

Advocate : V.M.Thomas, B.P.Bora, A.K.Phukan, Advocates appearing for Parties

Judgement

D. N. Chowdhury, J.—This writ appeal is directed against the judgment and order dated 28.8.96 passed by the learned Single Judge of this Court in Civil Rule No. 1112 of 1995 thereby dismissing the writ petition.

2. The Govt of Assam on the basis of the recommendation of the Pay Commission issued Notification No.FPC 24/90/128 dated 6.12.90. Clause 13 (1) of the said notification is extracted below :

"13. Retirement benefit: (1) Pension: The recommendation of the Commission to grant pension to Govt servants retiring after 3 3 years of qualifying service on or after 31st January 1989 at the rate of 50% of basic pay of last 10 months'' average has been accepted by Govt. For calculation of pension basic pay will mean basic pay as defined under FR 9 (21) (a) (i) of the State FRs and SRs. The minimum pension will be Rs.450/ pm and the maximum pension Rs.3,150/ pm.

Govt servants retiring upto 30th September, 1989 will, however, have the option to choose the old system of calculation of pension in slab system or come over to the new principle of calculation of pension."

In the writ petition the said clause 13 (1) of the notification dated 6.12.90 was assailed as arbitrary and violative of Article 14 of the Constitution. The petitioners challenged the categorisation of the petitioners into two categories, namely those who retired on or before 31.1.1989 and those who retired on or after 31.1.1989. According to the petitioners by the aforesaid scheme the special pay was excluded in computing the pensioners those who retired on or after 31.1.1989 whereas the special pay was included in the case of pensioners those who retired prior to 31.1.1989. The petitioners questioned the rationale of the classification of pensioners in two groups without any discernible reason.

3. The respondents submitted its return and disputed the assertions of the petitioners.

4. The learned Single Judge upon consideration of the respective cases did not accept the contention of the petitioners and accordingly the same was dismissed. Hence this appeal.

5. Mr. AK Phukan, the learned senior counsel appearing on behalf of the b petitioners/appellants raised the same issues which were mostly advanced before the learned Single Judge. Mr. Phukan submitted that the choice of the cut off date which was basically introduced to effectuate the benefits is subject to the scrutiny of the Court and such choice of date must conform to the equality clause as contained in Article 14 of the Constitution of India. The differential treatment meted out to those who retired prior to 31.1.1989 and those who retired subsequent thereto without any valid reason offended the philosophy of equality. Mr. Phukan drew our attention to Rules 114 and 114A of the Pension Rules which contained the provisions of special pay and in the absence of amendment of the rule it was not open to the authority to exclude the special pay in respect of those who retired after 31.1.1989 by limiting the definition of basic pay by an executive order. The learned counsel in support of his contention mainly relied on the decision of the Supreme Court in DS Nakara vs. Union of India, reported in AIR 1983 SC 130, B. Prabhakar Rao vs. State of Andhra Pradesh, repoited in AIR 1986 SC 210 and AH India Reserve Bank Retired Officers'' Association vs. Union of India, reported in AIR 1992 SC 767.

6. Mr. BP Borah, learned Senior Govt Advocate, Assam appearing on behalf of the Govt supported the decision of the learned Single Judge and brought our attention to the report of the Assam Pay Commission, 1988 and the recommendations of the Pay Commission and other relevant aspects of the matter.

7. Pension is comprehended today as precious right of an employee. It is neither a philanthropy nor a generosity exclusively banking on the humour and impulse of the employer. The employee as a matter of fact earns the pensionary benefits by rendering service to the establishment and therefore described as a deferred payment of compensation for the past services. It is within the domain of ''the executive authority to make its choice of a cut off date with a view to give thebenefit of the report of the Pay Commission. But at the same time if the choice of cut off date brings in its train the germ of classification and the division

among members of a homogenous group the Court can scrutinise the consideration and reasons for the differential treatment. The position is obvious from the decision of the Supreme Court in DS Nakara vs. Union of India (supra), B. Prabhakar Rao vs. State" of Andhra Pradesh (supra), AH India Reserve Bank Retired Officers'' Association vs. Union of India (supra).

8. The Pay Commission, 1988 in its report made its recommendations. The relevant clauses of the recommendation are quoted below :

"6.5 With the reduced number of pay scales in the pay structure proposed by us we have recommended special pay in respect of certain posts for proper reflection of their hierarchical status and functional identity in lieu of a higher scale of pay. Such special pay where specifically attached to the scale of pay prescribed for the post will count for all purposes. In other cases the prescribed special pay will have a general connotation. Obviously, therefore, these posts should remain outside the purview of the committee proposed above. Detailed particulars of the existing posts with special pay are furnished at Annexure 6.1 and the posts for which special pay has been recommended by us are indicated department wise in Chapter 10. The existing posts with special pay will continue to have special pay at the present rates till any change is brought about by the State Govt on the basis of the recommendation of the committee suggested by us.

8.7 The Fourth Central Pay Commission has simplified the method of computation of pension to a substantial extent and recommended pension to be calculated at 50% of the average pay for last ten months for all categories of Central Govt employees instead of present calculation on slab system. This has been accepted by the Govt of India. Since the State Govt has all along adopted the principles of pension as prescribed by the Govt of India, we feel that it would be in the fitness of things to adopt the principles suggested by the Fourth Central Pay Commission in this regard. Accordingly, we recommend that Govt employees who will be retiring in on or after 31.1.89 should be entitled to pension calculated on the basis of basic pay as defined under FR 9 (21) (a) (i) of the State FRs and SRs in accordance with the principles adopted by the Govt of India in terms of the recommendation of the Fourth Central Pay Commission.

8.8 However, persons retiring from 31.1.89 to 30.9.89 may at their option exercised in writing draw pension under the slab system as was in force prior to introduction of the revised system."

9. Consequent to the recommendations of the Pay Commission the Governor of Assam in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India made a set of rules known as the Assam Services (Revision of Pay) Rules. 1990. The relevant provisions of the said rules are extracted below:

"5 (i). ''Basic Pay'' means pay as defined in Assam FR 9 (21) (a) (i).

(ii) ''Existing scale''/''existing scale of pay'' as specified in column (2) of Schedule

A means the scale of pay applicable to a Govt servant in respect of the post/ service held by him in a substantive or officiating capacity on the date on which he is, under these rules, entitled to draw pay in the revised scale.

(iii) ''Emolument'' means the emolument of a Govt servant in relation to the existing scale on the date on which he becomes entitled, under these rules, to draw pay in the revised scale and includes :

(a) basic Pay,

(b) special pay, if any, merged in the revised scale,

(c) dearness allowance as admissible on 31st December, 1988 under Govt OM No.FEG 2/89/21, dated 19th June, 1989 but does not include any other allowance, special pay which is not merged in revised scale of pay or other emolument which may count as pay under Fundamental Rules.

(d) special relief as sanctioned by the Govt of Assam under OM No.FEG.57/ 77/213, dated 13th August, 1986 and drawn by employees on 31st December, 1988 (Appendix I).

(e) Interim relief of Rs.80/ PM as sanctioned by Govt of Assam under OM No.FPC/17/87/Pt/8? dated 15th December, 1987 (Appendix II)."

10. The State Govt considered the various representations of the individual pensioners as well as from the Govt Pensioners'' Association, Assam demanding the recomputation of pension of the pensioners who retired prior to 1.1.89 at the liberalised rate of 50% of the average emoluments applicable to the pensioners, retired on or after 31.1.89 in keeping with the Govt policy of extending liberalised pension computation formula. The Govt considered the entire matter and thereafter gave its decision dated 12.5.94 and published in the Assam Gazette Extraordinary June 1,1994.

11. From the materials on record it emerges that the pensioners who retired on or before 31.12.88 and their basic pension was determined under the slab system pension formula above Rs.500/ were covered by the new liberalised pension formula, but in other matters, reckonable emoluments and reckonable qualifying services for the purpose of estimating the pension remain the same. The respondents have extended the new Pension Scheme to those who retired on or before 31.12.88 (AN). The Special Pay is left out for computation of pension of those who retired on or after 31.1.89 as per the recommendation of the Pay Commission. Those who retired on or before 31.12.1977 (AN) the special pay is included in the average emoluments for the purpose of computation of their pension since the said persons were already enjoying the same benefit.

Article 14 guarantees equality before the law. It does not however represent that every law must have general application to all persons who are not similarly situated. Disparate classes may have variegated needs which are to be attended independently by offering individual treatment. Every classification and arrangements involve a degree imparity but all disparity cannot be lebelled as arbitrary. The State can discriminate on legitimate ground. Statutory provisions cannot always be all prevading. The legislature as well as the rule making authority can draw a line between the class or classes to be covered by the statute or the rule and exclude those outside the said category. Every classification is bound to bring some inequality and mere inequality by itself cannot be faulted at and render the legislative measure ultravires. Article 14 is a general provision and is to be looked into with the aid of other provisions of the Constitution. Article 14 cannot compel mathematical precision and logically sound formula. A Court of law will not intervene unless the classification in question causes obvious discrimination and pronounced inequality. There cannot be wooden equality as between all classes of employees regardless of the fact situation. "What is meant by inequality is equality amongst equals. It does not provide for an absolute equality to all persons in utter disregard of all conceivable circumstances of differences,'' such as sex. education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure the invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them, are no relevant for the purpose of applying on particular law reasonable classification is permissible. It does not mean anything more" (Ref T. Devandasan vs. Union of India, AIR 1964 SC 179 (183) : "To overdo classification is to undo inequality."

12. In the case in hand, on the basis of the Pay Commission Report the authorities considered the respective cases and reached its own decision. Essentially these are matters of policy. These policies as well as the provisions unless it appears to be obviously arbitrary, unreasonable and unfair, judicial policy is one of self restrain.

13. On overall consideration of the matter we do not find any infirmity in the impugned notification dated 6.12.90 in clause 13'' (1) (Annexure A) of the writ petition.

14. For the reasons stated above we do not find any ground to differ with the impugned judgment and order of the learned Single Judge and accordingly the appeal is dismissed. There shall be no order as to costs.

