(2001) 09 JH CK 0058

In the Jharkhand High Court

Case No : CWJC No''s. 607, 845 and 3409 of 2000 and 2150 of 2001

Chandra Prabha Devi and Others with Jago Mandal with Veena Devi and Others with Ram Das Mandal and Others — APPELLANT

Vs

The Regional Institute of Technology and Others — RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226

Citation : (2001) 09 JH CK 0058

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.M. Prasad, R.N. Sahay, SC I, S.K. Sinha and D.K. Bharati, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all the cases as the petitioners have claimed for common relief of grant of death-cum-retiral benefits under the Triple Benefit Scheme--Scheme for short--they ware heard together and are being disposed of by this common order.

2. The husband of petitioner Chandra Prabha Devi of CWJC No. 607 of 2000, Late Pashupati Lal was in the services of Regional Institute of Technology. Jamshedpur--RIT for short. It is stated that the deceased husband of petitioner Late Pashupati Lal opted for benefit under the Scheme but it was not allowed and, in the meantime, he died on 10th November 95 in harness. The grievance of the petitioner Chandra Prabha Devi is that the respondents had not paid the retrial benefits of family pension : gratuity; and Provident Fund under the Scheme.

3. CWJC No. 845 of 2000 has been preferred by Smt. Veena Devi and four others. According to first petitioner Veena Devi, her husband Late Satyanarayan Prasad was in the services of RIT and also opted for benefit under the scheme

but the benefit of family pension etc. has not been allowed in terms of the scheme after death of her husband who died in harness on 12th July. 1996.

Petitioner No. 2. M. Suresh; petitioner No. 3 Ram Swarath Singh and petitioner No. 4. Rameshwar Prasad Verma and petitioner No. 5. Brahani Deo Yadav, who claimed to have retired from the services of the RIT on 30th June. 1996; 31st January, 1997: 30th June. 1995: and 31st January, 1997 respectively, also claimed to have opted for benefits under the Scheme, but the benefits of pension etc, having not granted, they have moved this Court by filing the writ petition.

Petitioner Jago Mandal of CWJC No. 3409 of 2000 was an Assistant Professor in RIT and retired on 31st January. 1998. He has also made similar grievance of non-receipt of benefits under the Scheme in spite of option given by him.

The other writ petition CWJC No. 2150 of 2001 has been preferred by Ram Das Mandal and Bishwanath Ram who retired from the services of RIT on 1st March, 1993 and 1st March, 1994 respectively and having not granted benefits under the Scheme inspire of option, have also claimed for benefits like pension etc.

4. The respondents have taken plea that the petitioners having retired/or deceased husband of one or other petitioner having died prior to 6th September, 1999, were not entitled for retiral benefits under the Scheme.

5. The admitted fact is that the RIT Jamshedpure is a Society under the Societies Registration Act. It is being funded by Government of India and the state Government (state of Bihar when the petitioners retired or the employees died), the share being 50 : 50 amongst them.

6. The Government of India. Ministry of . Education and Social Welfare (Department of Education) issued letter No. F-53-2/71-74 on 27th May, 1972, whereby and whereunder it intimated the Regional Engineering Colleges of India of its decision, subject to approval of the concerned Board of Governors and the State to provide benefits of retirement/gratuity/General provident fund/ contributory provident fund, as admissible under the State Government or the University Rules. It remained pending for consideration with the Board of Governors of the RIT. Jamshedpur and the State of Bihar. The Board of Governors of RIT by its meeting held on 17th June. 1992 decided to give benefits to the employees of RIT at par with the State Government employees, namely the Triple Benefit Scheme. The Principal-cum-Secretary, RIT, Jamshedpur thereafter issued Order No. KIT (PF) 3810/ 92 dated 22nd September. 1992 referring the decision of Board of Governors aforesaid and intimated that the Triple Benefit Scheme will be applicable to the Institute employees retiring on or after 1st April, 1992. subject to approval of the (participating employees) State Government and the Central Government, Pending approval of the Scheme by the participating Government as the Board desired to obtain option from the employees of the RIT. Head of the Department/Sectional Officers were required to obtain option from the employees by 31st October, 1992.

The employees petitioners and the deceased employees whose widows are petitioners before the Court opted for benefits under the Scheme within the time i.e. 31st October, 1992. The matter remained pending with the State of the Bihar which ultimately issued Resolution vide Memo No. 1953 dated 6th September, 1999 and decided to apply the benefit of scheme to the employees of RIT from the date of issue of the order. It was also decided that the expenditure will be borne 50 : 50 by the State Government and the Central Government by grant for which the Central Government has agreed.

7. The grievance of the petitioners is that the Board of Governors having agreed to grant benefits of the Scheme to the employees of the RTF w.e.f. 1.4.1992 and the petitioners/ their deceased husband having opted in time, the respondents, cannot discriminate the petitioners nor can deny the benefits of Scheme. The counsel also raised the question relating to nexus of giving a cut-of-date of application of the Scheme i.e. the date of issuance of the order i.e. 6th September, 1999.

8. The cases were taken up on 2nd March, 2001 when the respondent were allowed time to obtain instruction and file affidavits to reply to the queries made by the Court, namely the authority empowered to decide the question of payment of retiral benefit of the employees of RIT requirement of approval of such benefit by the State and the Union, benefit is which RIT employees were entitled prior to 1992. Whether the State and the Union of India both approved the Scheme and whether the respondents were paying the contributory provident Fund to its employees prior to 1992 or not and the retrial benefits being allowed to corresponding employees of other Regional Engineering Colleges.

9. In the reply the respondents have taken plea that the Board of Governors of RIT Jamshedpur is empowered to decide the question of the payment of retiral benefits of its employees being autonomous. The recurring expenditure as being cleared by the Union of India and the State Government is 50 : 50 basis, the approval of both the State Government and the Central Government is required, prior to 1992, the employees were getting CCPF under the old Scheme. The Government of India had already instructed/ approved the Triple Benefit Scheme in 1972, followed by its acceptance by the Board of Governors RIT in 1992 and acceptance/approval by the State Government made vide order dated 6th September. 1999. It is also accepted that the employees prior to 1992 were also entitled for contributory provident Fund under the CCPF Scheme.

The information received from other RIT of India have been enclosed as Annexure-R/1 collectively. From such information, it appears that the RTFs situated in one or other State are allowing different retirement benefits according to State policy or their individual decisions. While the Calcutta RIT has allowed monthly pension, family pension, gratuity, leave encashment, commutation of pension like the State Government employees, the RIT Kali-cut has allowed gratuity and monthly pension under different scheme on the basis of date of retirement of one or other employees. These are Regional Engineering Colleges like Silchar which allowed the benefits of CPF Gratuity : leave encashment and no benefits like pension/family pension to the employees.

10. From the facts aforesaid, it will be evident that the employees of the Regional Engineering Colleges are being entitled for retrial benefits in terms with the Scheme as framed by the competent authority in terms with the Rules as framed by the individual Society.

11. The counsel for the petitioners gave much stress on the out off date. It was alleges to be discriminatory. The benefit of Scheme having allowed to the employees retired after 6th September 99 and not to those retired after 1992. i.e. after the decision taken by the Board of Governors.

In the case of D.S. Nakara v. Union of India. AIR 1983 SC 130, the Supreme Court held, on the facts and circumstances of the case that in a Socialist Republic and welfare State where emoluments are comparatively low and exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria, being in service and retiring subsequent to the specified date for being eligible for the liberalised pension Scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principal and being wholly unrelated to the objects sought to be achieved by liberalised scheme and the eligibility criteria devised being thoroughly arbitrary, it violates Article 14 and is unconstitutional and liable to be struck down.

12. The aforesaid decision in the D.S. Nakara was taken into consideration by the Supreme Court in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, . The Supreme Court in the said case held that whenever any rule or regulation having statutory favour is made by an authority which is a State within the meaning of Article 12. the choice of the cutt-off date which has necessarily to be introduced to denial such benefits is open to scrutiny by the Court and must be separated on the touch stone of Article 14. If the choice of the date results in classification or a division of members of a homogeneous group, it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touch stone of Article 14. for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution. The cut of date i.e. 1.1.1986 given in the said case was held to be not arbitrary. The Bank authorities or the Central Government while giving its approval having shown rationality being based on the recommendation of the 4th Central Pay Commission.

13. In the present cases, it will be evident that the proposal of scheme was made by the Central Government in 1972 and accepted by the Board of Governors of RIT Jam-shedpur in 1992, but the State Government accepted vide order dated

6th September. 1999, from prospective date.

14. Now the only question arises as to whether any cut off date has been fixed by the Government of Bihar, vide Resolution dated 6th September, 1999 and if so, whether such cut off date has any nexus to achieve object or not?

15. The general principle is that any order if issued always comes into effect from prospective date till the appropriate authority/ Legislature gives effect from some other retrospective or future date. If any such cut off retrospective or future date is given by the authority/Legislature, the question of looking into the rationality of such cut off date arises. However, if no such cut off date is fixed and the order comes into effect prospectively of its own, the question of determination of rationale of any cut off date does not arise.

16. By the impugned Resolution dated 6th September, 1999 the Government of Bihar merely stated that the order will come into effect from prospective date from the date of issuance of order. Even if such stipulation is not made or struck down, the effect of the decision given by Resolution dated 6th September, 1999 will always be prospective and cannot be given retrospective effect.

17. In the aforesaid background, there being no different cut off date given vide Resolution dated 6th September. 1999 and the said order having come into effect from prospective date, the question of determination of rationale of so called cut off date does not arise.

18. If the prayer of petitioner is accepted, it will amount to giving a retrospective effect to the Resolution dated 6th September, 1999, which power/authority is not vested to the Court under Article 226 of the Constitution of India, but with the competent authority/ Legislature.

19. Further, the Government of India having taken decision in 1972, the Board of Governors of RIT Jamsehdpur having accepted and concurred such decision in 1992 i.e. after about 20 years to grant benefit of Scheme and the Government of Bihar having agreed to grant such benefit, vide Resolution dated 6th September, 1999, it cannot be accepted that the Scheme is to be given from 1992 and not from 1972 or September, 1999 the prospective date.

20. In the circumstances, the petitioners are not entitled for any benefit under the Triple Benefit Scheme and such prayer is rejected. If any one or other petitioner has not received the death-cum-retiral benefits on the basis of earlier Scheme like contributory provident Fund : gratuity: leave encashment etc., may approach the competent authority, who will pay the admitted dues, if any. preferably within two months.

21. All the writ petitions are dismissed, but with the aforesaid observations.

22. Writ petitions dismissed.

