

(1978) 12 DEL CK 0016
In the Delhi High Court
Case No : Civil Writ No. 757 of 1978

C.K. Karunakaran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-12-1978

Acts Referred:

Citation : (1980) 121 ITR 757

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : S. Venkiteswaran and R.S. Sodhi, for the Appellant; B.N. Kirpal and M.L. Verma, for the Respondent

Judgement

Anand, J.—This petition under Article 226 of the Constitution of India by a former civil servant, who was deemed to have retired from service on absorption in the Oil and Natural Gas Commission, raises an interesting question as to the taxability of terminal benefit payable to him under Clause (b) of Sub-rule (1) of Rule 37A of the Central Civil Services (Pension) Rules, 1972. The petition was filed in the following circumstances :

2. The petitioner joined civil service in 1959 in the Industrial Management Pool, Central Services Class I. The pool which was constituted in 1957 was, however, abolished with effect from March 31, 1977. The pool officers were, however, given the option to either seek permanent absorption in public sector corporations, in which they were serving on deputation, or to retire from service. The petitioner was required to give his option for absorption in the Oil & Natural Gas Commission. The petitioner exercised the option for permanent absorption in the Commission and elected the alternative of receiving the death-cum-retirement gratuity and a lump-sum amount in lieu of pension and, Therefore, became entitled to receive a lump-sum amount not exceeding the commuted value of 1/3rd of his pension as may be admissible in accordance with the provisions of the Civil Pensions (Commutation) Rules, for short, the "Commutation Rules") under Clause (a) of Sub-rule (1) of Rule 37A of the

Central Civil Services (Pension) Rules, 1972 (for short, "Pension Rules"), and a terminal benefit equal to twice the amount under Clause (b) of Sub-rule (1) of the said rule. It is a common case of the parties that the, amount payable in commutation of pension under the Commutation Rules by virtue of Clause (a) of Sub-rule (1) of Rule 37A is exempt from tax as income u/s 10(10A)(i) of the I.T. Act, 1961. A dispute has, however, arisen if the terminal benefit in addition to the aforesaid, payment to which the petitioner is entitled under Clause (b) of Sub-rule (1) of the aforesaid rule would also qualify for exemption under the aforesaid provision of the I.T. Act or not. The dispute came to a head when tax was sought to be deducted at source and that is how the petition was filed to enforce the payment of the entire amount of terminal benefit without any such deduction on the ground that the amount was exempt from tax.

3. Rule 36 of the Pension Rules incorporates the right of retiring pension. Where a civil servant, who is governed by these Rules, leaves service to be absorbed in another service, he would normally not be entitled to similar retiring pension, but for the provision of rule 37 which, inter alia, provides that if such absorption is declared by the Govt. to be in public interest, such civil servant would "be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or be deemed to have elected and from such date as may be determined in accordance with orders of the Govt. applicable to him". The extent of the retirement benefits and the terms on which these benefits were to be given to such a civil servant were determined by Govt. orders which were made from time to time. The interpretation of the Govt. orders involved a controversy as to the extent of exemption of the payment by way of retirement benefits from tax. In 1973, the question was examined and the President of India was pleased to decide that where a civil servant referred to in Rule 37 of the Pension Rules elected to receive death-cum-retirement gratuity in a lump-sum amount in lieu of pension, he shall be granted-

(1) on an application made in this behalf, a lump-sum amount not exceeding the commuted value of the 1/3rd of his pension as may be admissible to him in accordance with the provisions of the Commutation Rules; and

(2) a terminal benefit equal to twice the amount of the lump-sum referred to in (1) above subject to the condition that the Govt. servant surrenders his right of drawing 2/3rds of his pension.

4. The Pension Rules were accordingly amended with effect from April 21, 1973, by incorporating the aforesaid decision in the newly added Rule 37A. This is how the new rule runs :

"37A. (1) Where a Government servant referred to in rule 37 elects the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension he shall, in addition to the death-Cum-retirement gratuity, be granted :

(a) on an application made in this behalf a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules; and

(b) a terminal benefit equal to twice the amount of the lump sum referred to in Clause (a) subject to the condition that "the Government servant surrenders his right of drawing two-thirds of his pension :

(2) Notwithstanding anything contained in sub-rule (1) (where any lump sum amount, in addition to the death-cum-retirement gratuity), had been paid at any time between the period commencing on the 24th July, 1971, and ending with the commencement of the Central Civil Services (Pension) (Second Amendment) Rules, 1973, to any Government servant referred to in rule 37 who had elected the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension, such payment shall be deemed to have been made in accordance with this rule, if the requirements of this rule have been satisfied."

5. It was not disputed that Rule 37A was added primarily to introduce uniformity in the matter of exemption u/s 10(10A) of the I.T. Act because, but for this rule, the entire amount in lieu of pension receivable by a civil servant on absorption would be exempt from tax while the exemption in the case of an ordinary retiring civil servant would be confined to the commuted value of 1/3rd of the pension. Even so, learned counsel for the petitioner vehemently urged that while the amount payable under Clause (a), Sub-rule (1) of Rule 37A, would be exempt by virtue of being a payment in commutation of pension received under the Commutation Rules, as envisaged in Section 10(10A)(i) of the I.T. Act, the terminal benefit equal to twice that amount and payable under Clause (b) of Sub-rule (1) of that rule would be exempt under the latter part of Section 10(10A)(i) as being a payment in commutation of pension "under any similar scheme applicable to members of the civil service of the Union ". In other words, it was urged that Rule 37A(1)(b) of the Pension Rules constituted a similar scheme for payment in commutation of pension and would, Therefore, be within the terms of Section 10(10A)(i). Now, this is true that the terminal benefit under Clause (b) of Sub-rule (1) of Rule 37A of the Pension Rules is not a payment in commutation of pension under the Commutation Rules, but is a benefit which would become payable by virtue of Clause (b) of Sub-rule (1) of that rule. It is equally true that Sub-rule (b) is in the nature of a similar scheme in that it provides for payment of terminal benefit in lieu of pension. Unfortunately for the petitioner, however, Section 10(10A)(i) would not be attracted because to qualify for the latter part of that section another condition must also be satisfied and that is that the similar scheme must apply to members of the civil services of the Union or holders of post connected with defense or of civil post under the Union to whom the Commutation Rules do not apply. It is true that the Commutation Rules do not apply to the terminal benefit under Clause (b), but that is not relevant so long as the rules apply to the members of the service or the holders of posts and it was not disputed that, until absorption in the new service, the petitioner was

governed by the Commutation Rules. The intention of Section 10(10A)(i) appears to be to give exemption in respect of payment which may be made in commutation of pension either if it is received under the Commutation Rules or, if they are not applicable, under a similar scheme. The provision does not contemplate the benefit of exemption being given to payments of the same nature by two different sets of rules and that is why the provision that the persons, who are entitled to the benefit under a similar scheme, must not be persons to whom the Commutation Rules would apply. A contrary interpretation would apparently frustrate the very object of Rule 37A, i.e., to bring uniformity of treatment in the matter of exemption from tax between a retiring civil servant and a civil servant who is deemed to have retired because of absorption in another service. Any other interpretation would lead to an anomaly that a civil servant, who was absorbed in another service and had merely deemed to have retired from service, would be put in a more advantageous position than the civil servant who may finally retire. It is, Therefore, not possible to accept the contention that the terminal benefit under Clause (b) of Sub-rule (1) of Rule 37A would be exempt from tax u/s 10(10A)(i) of the I.T. Act.

6. Mr. Venkiteswaran, learned counsel for the petitioner, did not seem to be unaware of the infirmity of the reasoning on which the first contention was based and, Therefore, made a very forceful plea for relief on the basis of two larger questions, of taxation policy. In the first instance, he challenged the wisdom and propriety of taxing pension benefits or payments in lieu of pension or other terminal benefits on retirement or deemed retirement and characterised it as being wholly unjust and unfair in that these benefits are in the nature of a bare subsistence to a servant after he has spent a life-time in the service of the master. In the second instance, he challenged the taxation policy as being irrational and inequitable in that it did not give appropriate differential treatment in the matter of taxation to the fixed income groups in general and the civil servants in particular. The criticism of the taxation policy on both the counts appears to be fully justified. Any payment by way of pension or payment in lieu of pension or other terminal benefit to a retiring person, whether a civil servant or not, is certainly in the nature of a subsistence allowance on which it is not even possible for a retired person to adequately subsist. That such payments are to be treated as income for the purpose of tax, even though part of the payment is exempt u/s 10(10A), certainly appears to be unfair. There is also considerable justification for a differential treatment in the matter of taxation of incomes from diverse known or unknown sources with numerous legitimate devices for permissible avoidance and equally numerous concealed conduit pipes for illegal evasion and perhaps running into phenomenal figures, on the one hand, and moderate incomes from known sources or fixed incomes with little or no scope for permissible deductions or legitimate avoidance and fortunately none for evasion, on the other. Unfortunately for the petitioner, none of these matters are justiciable in view of their policy content and are matters that fall within the exclusive purview of the authorities that determine the taxation policy of the

country. It is not possible for this court to pronounce on these or to base any relief on them. All that this court can do is to express a pious hope that in any future reorientation of taxation policy, these features would perhaps enter due consideration of appropriate authorities. In the result, there is no option but to dismiss the petition. There would, however be no costs.