

(1992) 06 KL CK 0073

In the High Court Of Kerala

Case No : O.P. No's. 6548 and 98491/87 in W.A. No's. 824, 464, 486 and 590 of 1992

C.S. Santhosh Kumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (1992) 06 KL CK 0073

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : Pirappancode V.S. Nair and S.P. Aravindakshan Pillai, in O.P. 6548/87 and K. Ramakumar, in O.P. 9849/87, for the Appellant; Krishna Kumari, Government Pleader, for the Respondent

Judgement

K.P. Balanarayana Marar, J.—The main aspect that arises for consideration in these Original Petitions is whether the classification in Clause 15 of the dying-in-harness scheme, G O. (P) No. 34/87/P and A.R.D., dated 17th December 1987 is unreasonable and liable to be struck down as violative of Article 14 of the Constitution of India. By that clause employment assistance under the scheme has to be given without considering the annual income of the family of the applicant in respect of Government servants dying-in-harness on or after 1st July 1983. In respect of Government servants who died in-harness on or after 1st January 1982 the income of the family should not exceed Rs. 9,000 per month to make a dependant eligible for the employment assistance. In cases where the Government servants died prior to 1st January 1982 the income limit applicable will be Rs. 6,000. In the note to Clause 15 it is clarified that the benefit of giving employment under the scheme without reference to income limit will however be available to the minor dependants of Government servants who died prior to 1st July 1983 and who become eligible for making their application for employment assistance on or after 1st July 1983, on attaining majority or within the permissible period of three years after attaining majority.

2. Petitioner in O.P. 6548/87 is the son of Sri N. Gangadharan Nair who was a teacher in a Government Lower Primary School. He died in harness on 24th January 1967. Petitioner was a minor at that time. Within one year of attaining majority an application was submitted for employment assistance. That was rejected on 30th October 1979. Another application submitted by Petitioner was also rejected by Ext. P-4 order. On 7th January 1983 Petitioner made Anr. request seeking relaxation of the condition regarding the ceiling fixed in the matter of annual income and also pointing out that the Government had relaxed in some other cases. That application also was rejected. Aggrieved by those orders Petitioner moved this Court by O.P. 4885/83. That was disposed of on 30th October 1986, observing that prima facie there are no grounds to interfere. In view of the representation of the Petitioner that he was proposing to make a fresh application in the light of the latest modifications to the concerned Government Order a final pronouncement was not made by this Court. It was thereafter that Ext. P-8 representation was made by Petitioner. That also was rejected by Ext. P-12 order. Hence the Original Petition seeking a writ of certiorari to quash Exts. P-3, P-4, P-6 and P-12 and to declare that the condition in Ext. P-10 which disentitles the dependants of Government servants who died in harness prior to 1st July 1983 and who became eligible for making an application, for employment assistance under the scheme prior to 1st July 1983 ineligible to apply for the same without reference to income limit as void. A declaration that Petitioner is entitled to employment assistance under the scheme is also sought. No counter statement is seen filed on behalf of the Respondents.

3. O.P. 9849/87 is filed by one Chandra Babu, son of Mrithunjayan, a Head Constable attached to the Fort Police Station, Thiruvananthapuram. He died in harness on 29th June 1979. At that time Petitioner's mother was employed in the Kerala State Electricity Board. Petitioner applied under the dying-in-harness scheme. The request was rejected on the ground that the family income exceeded Rs. 4,200 per annum. The income was subsequently enhanced to Rs. 6,000. The further request made by Petitioner was also rejected as per Ext. P-2. Still Petitioner repeated his request. Based on the Government Orders Exts. P-5 and P-6 dated 31st October 1986 and 15th January 1987 respectively an application was presented by the Petitioner. That request also was rejected by Ext. P-8 dated 17th June 1987 on the ground that the income of the family exceeded the ceiling limit. Hence this petition seeking a writ of certiorari to declare Exts. P-5 and P-6 to the extent to which they debar the consideration of Petitioner's claim as violative of Articles 14, 16 and 21 of the Constitution of India and for issue of a writ of mandamus to consider the case of Petitioner under the scheme. On behalf of first Respondent a counter affidavit was filed contending that the claim of Petitioner is not sustainable in view of the earlier rejections under the then existing orders and that the benefits of the revised G.Os. can be availed of only by dependants of persons who die after 1st July 1983.

4. Heard counsel for Petitioners and Government Pleader.

5. The dying-in-harness scheme was introduced for the first time in 1970. Since then there had been a large number of Government Orders and circulars making modifications to those orders. Since it was felt necessary to consolidate the orders and instructions regulating appointments under the scheme into one single order a Government order was issued on 17th December 1987 as G.O. (P) No. 34/87/P and ARD. Even before that by G.O. dated 31st October 1986 it was ordered that in respect of Government servants dying-in-harness on or after 1st July 1983 there will be no income limit of the family of the applicant for eligibility of appointment under the dying-in-harness scheme. It was clarified that in respect of Government servants who died before 1st July 1983 the annual family income stipulated in the Government Order dated 28th February 1986 shall continue in force. The eligible dependants of employees who died on or after 1st July 1983 and who had not made applications earlier were granted time till 30th April 1987 for employment assistance. In the case of applicants whose requests for employment assistance preferred on or after 1st July 1983 and rejected solely on the ground of income limit time was granted till 30th April 1987 to make fresh applications. It was made clear that applications rejected on any other ground will not be reconsidered. A further modification has been made in Clause 15 of G.O. dated 17th December 1987 which is under challenge in these Original Petition. The short point for consideration is whether the restriction of the benefits to dependants of Government servants who died on or after 1st July 1983 amounts to an unreasonable classification and whether such restriction is arbitrary and illegal.

6. The scheme for providing employment to dependants of Government servants dying-in-harness had been introduced in 1970 and modifications had been made periodically enlarging the scope of the benefits. The ceiling income was also raised periodically and ultimately by G.O. dated 31st October 1986 the limit was taken away in respect of Government servants who died on or after 1st July 1983. But the stipulation regarding the ceiling income was retained in respect of employees who died before 1st July 1983. Even those persons were classified into two, (1) who died prior to 1st January 1982 and (2) who died on or after 1st January 1982. In the first case the income limit applicable will be Rs. 6,000 and in the other Rs. 9,000. By G.O. (P) No. 20/92/P and ARD dated 10th April 1992 there shall be no income limit restriction for employment assistance under the scheme.

7. A classification is made in Clause 15 of the G.O. dated 17th December 1987. Dependants of employees who died in harness are grouped under different categories. Dependants of employees who died after 1st July 1983 are eligible to assistance without considering the annual income. Regarding persons who died before that date, they are classified into two, one regarding persons who died on or after 1st January 1982 and the other regarding persons who died prior to 1st January 1982. The question arises whether this classification is unreasonable and

violative of Article 14 of the Constitution.

8. The Supreme Court laid down the conditions to be fulfilled to pass the test of permissible classification in *D.S. Nakara and Others Vs. Union of India (UOI)*, The conditions are: (i) that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from those that, are left out of the group, and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question.

9. In that case the Supreme Court was considering the formula for computation of pension. The formula was liberalised by the Government but made applicable only to Government servants who were in service on 31st March 1979 and retired on and after that date. The Supreme Court held that the classification does not stand the test of Article 14, the reason being that the rules accord differential and discriminatory treatment to equals in the matter of computation of pension. While holding so the Supreme Court observed that the classification must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in Ors. who are left out. Those qualities or characteristics must have a reasonable relation to the object of the legislation. A reasonable classification can only be one which includes all persons who are similarly situated with respect to the purpose of the scheme. In the present case the scheme being one to benefit the dependants of employees who died in harness such a classification can only be one which includes all persons who are similarly situated.

10. The Supreme Court had drawn a distinction between an existing scheme and a new scheme in *D.S. Nakara and Others Vs. Union of India (UOI)*, . This distinction was noticed by the Supreme Court in a later decision in *All India Reserve Bank Retired Officers Association and others Vs. Union of India and others*, . The Supreme Court was considering the pension scheme in lieu of contributory provident fund scheme made applicable to the employees of Reserve Bank of India. Referring to Nakara's case AIR 198 S.C. 130 the Supreme Court observed that where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle according to the Supreme Court is that when the State decides to revise and liberalise an existing pension scheme, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to Ors. by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. At the same time the Supreme Court held:

But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision

making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme.

11. That according to Supreme Court, is the reason why a distinction was drawn in Nakara's case AIR 198 S.C. 130 between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme. In the case of the former all the pensioners had a right to pension on uniform basis and any division which qualified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved.

12. The objects sought to be achieved by introducing the scheme is to give employment assistance to dependants of Government servants who died in harness. Dependants of Government servants who died in harness are therefore equals in the matter of consideration for employment assistance. By classification of such persons into different categories discriminatory treatment is accorded to them. That discrimination was ultimately removed by Government Order dated 18th October 1986 and subsequent Government Orders. When once the restriction regarding the income limit has been taken away there is no intelligible reason why that restriction should be imposed in the case of persons who died before a particular date. Even those persons are classified into two categories. The classification could have been sustained provided the income limit is retained but only enhanced taking into account the increase in income, the fall in rupee value, inflationary trend and other circumstances. In that case it can be said that the classification is founded on intelligible differentia since persons are classified on the basis of the income of the family at the time of death of the Government servant or at the time when the application for assistance was made. When once the limit has been taken away there is no justification of a further classification in respect of persons who died before a particular date. The stipulation of a cut-off date is therefore arbitrary and unprincipled. Dependant of a person who died on 30th June 1983 can claim the benefit only if the income of the family is within the limit stipulated in the Government Order whereas dependant of a Government servant who died on the next day is eligible for employment whatever be the income of the family. As observed by the Supreme Court in Nakara's case AIR 198 S.C. 130 a few hours difference in the matter of death of the Government servant would have a traumatic effect. The classification in Clause 15 of G.O. dated 17th December 1987 is therefore unreasonable, arbitrary and unprincipled and is liable to be struck down as violative of Article 14 of the Constitution of India.

13. The validity of a similar provision in Clause 17 of the G.O. had come up for consideration before this Court, in O.P. 1634/88. That relates to the minimum service required for the Government Servant so as to make the dependants

eligible for employment assistance. By that clause dependants of Government servants who have completed the period of probation or two years whichever is less shall be eligible for employment assistance under the scheme but this reduced period of service was made operative only from 1st July 1983. This Court by judgment rendered on 3rd June 1992 held the relevant portion of the clause making the benefit operative from 1st July 1983 as discriminatory and that part of the G.O. was struck down. In Anr. decision of this Court rendered in Elsamma Mathew and Ors. v. State of Kerala 1991 (2) KLT 683 this Court had struck down a similar provision in Clause 34 of the G.O. The reasons mentioned by this Court in those decisions support the view that I have taken.

For the aforesaid reasons these Original Petitions are allowed and the condition incorporated in Clause 15 of G.O. dated 17th December 1987 restricting the benefit to dependants of Government servants dying-in-harness on or after 1st July 1983 is struck down. The words and figures "on or after 1st July 1983" are to be deleted from subclause (ii) of that clause which has to be read as "in respect of Government servants dying-in-harness the employment assistance under the scheme will be given without considering the annual income of the family of the applicant". Subclause (i) and the note to Clause 15 are struck down. The first Respondent is directed to consider the claim of Petitioners in the light of observations contained in this judgment and provide employment assistance if they are otherwise eligible. Original Petitions are disposed of as above. No costs.