

(2003) 04 AHC CK 0232

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17009 of 2003

D.B. Kauser

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2003) 2 UPLBEC 1404

Hon'ble Judges : Ghanshyam Dass, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : D.B. Kauser, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed challenging the judgment and order of the Central Administrative Tribunal dated 30th December, 2002 by which the application of the petitioner for a direction to the respondents to pay him the gratuity pension commuting valued of pension together with appropriate dearness allowance obtainable since 1993 to December, 1995 and consolidated pension of Rs. 5129/- per month with interest. He also claimed for some other relief.

2. Facts and circumstances giving rise to this case are that petitioner stood retired from service as Assistant Branch Officer on 30th June, 1993 and was paid the retrial benefit as admissible to him according to the Rules. Petitioner raised the dispute before the learned Tribunal that pension and other retrial benefits should have been determined and paid to him taking dearness allowances with pay as has been paid to other retirees who retired after 1.1.1996. The Tribunal rejected the claim of the petitioner on the ground that taking the decision to merge with any part of dearness allowance with pay for all purposes of determining the retrial benefits is a policy decision of the Government, which is taken after considering so many factors and the Tribunal was ill equipped to take a decision in such matters. Nor the Tribunal could interfere with policy decision

taken by the Government unless there is a clear cut case on arbitrariness and mala fide. Hence, this petition.

3. Shri Kauser petitioner-in-person submitted that the decision taken by the Government is arbitrary, unreasonable and violative of legitimate expectation, as it had been made applicable in favour of certain persons with a particular cut-off date, i.e., 1.1.1996, and therefore, the judgment of the Tribunal is liable to be reversed.

4. We have heard the learned Counsel for the parties and perused the record.

5. So, far as the challenge to the cut-off-date is concerned, the Court should not forget that while fixing the cut-off date, the Authority has to consider various aspects of the case and there is very limited scope of judicial interference in such matters. It is settled proposition of law that a cut-off date can be introduced, but it is not permissible to do in such an artificial manner that it may discriminate the similarly situated persons. Cut-off date may be introduced by creating a fiction but while doing so, the consequences must be examined thoroughly and the date must have some nexus to the object sought to be achieved. Generally, it should be prospective but may have retrospective effect also. Consideration of financial constraints on public exchequer etc. are good and valid reasons for fixing particular cut-off date by the legislature directly or by the executive instructions.

6. The issue has been considered by the Hon'ble Supreme Court time and again in a large number of cases and some of which are *Jaila Singh and Another Vs. State of Rajasthan and Others*, ; *D.S. Nakara and Others Vs. Union of India (UOI)*, ; *Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others*, ; *Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikan Abhiyan Samiti, Varanasi Vs. State of U.P. and Others*, ; *Krishna Kumar and Others Vs. Union of India and others*, ; *State of Rajasthan Vs. Rajasthan Pensioner Samaj*, ; *All India Reserve Bank Retired Officers Association and others Vs. Union of India and others*, ; *T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others*, ; *Union of India and Another Vs. Sudhir Kumar Jaiswal*, ; *M.C. Dhingra Vs. Union of India and Others*, ; *University Grants Commission Vs. Sadhana Chaudhary and Others*, ; *State of Rajasthan and others etc. Vs. Amrit Lal Gandhi and others etc.*, ; *Rabindranath Mukhopadhyay and Another Vs. Coal India Ltd. and Another*, ; *State of Haryana v. Rai Chand Jain and Ors.* 1997 SCC 2621 . *Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats*, ; AIR 1998 91 (SC); *Dr. Ami Lal Bhat Vs. State of Rajasthan and others*, ; *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, ; *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, and *Union of India (UOI) and Another Vs. M. Bhaskar and Others*, .

7. The ratio of the aforesaid judgments is that if the State cannot bear the financial burden to meet a particular requirement, it may be a sufficient cause to fix a particular cut-off date and even to make the law with retrospective effect.

However, the basis must be shown to have a nexus with the object of classification as well as of legislative exercise. If the choice of fixing a particular date is shown to be wholly arbitrary" and introduces discrimination, which violates the mandate of Article 14 of the Constitution, the date can be struck down for the reason that a purpose of choice unrelated to the object sought to be achieved cannot be accepted as valid. However, in a given case, the fixing of a period of experience or from what particular date it will run, are within the legislative competence and wisdom and there is nothing which may warrant a Court to invalidate such an enactment/executive instruction. If the law/Rules/regulation is based on experience and the legislature has the freedom to choose the minimum period of experience required and the date from which such experience is to be computed, i.e., fixation of a certain tenure of service for the purpose of grant of advanced increment(s)/ absorption/regularization promotion, then fixation of such criteria has a rational nexus with the object sought to be achieved. In such matters, the homogenous class of existing employees cannot be divided in two separate classes on arbitrary and irrational basis. If fixing of a cut-off date is not devoid of rational consideration and wholly not whimsical and the Authorities had not acted mala fide with a view to deprive a particular section of employees of such benefits and the cut-off date has been fixed on the recommendation of the Expert Committee/Board or on proper consideration by the Authority concerned, it may meet the test of reasonableness and cannot be held arbitrary. While examining the cases like the instant the Court has to be very conscious because judicial review is not permissible unless the Court is satisfied that the cut-off date is "very wide off the reasonable mark or so capricious or whimsical as to permit judicial interference." In all such matters, the Government/Authority has to fix a particular date for computing the eligibility and if the date so adopted meets the test of reasonableness, it cannot be invalidated merely on the ground that it may adversely affect some persons. In such a case, the rationality behind the Policy has to be examined.

8. In *State of Rajasthan and Anr. v. Amrit Lal Gandhi* (supra), the Hon'ble Supreme Court has held that for the purpose of fixing the cut-off date, the "paying capacity" of the Authority/State is a relevant consideration. Similar view has been taken in *State of U.P. v. Jogendra Singh and Anr.* AIR 1998 SC 658, wherein the Hon'ble Supreme Court distinguished the case of *D.S. Nakara* (supra) and held that liberalised provisions introduced giving a particular benefit to a particular class of employees cannot be said to be arbitrary. In *State of Orissa and Another Vs. Aswini Kumar Dash and Others*, , the Court examined the validity of the cut-off date while giving benefit of pay scale to the teachers of aided Non-Government Colleges and found it neither arbitrary nor unreasonable as the burden of providing the grant-in-aid for the said purpose was on the Public Exchequer. Similar view has been reiterated in *Union of India and Others Vs. K.G. Radhakrishana Panickar and Others*, , wherein the Court held that the principle laid down by the Hon'ble Supreme Court in *D.S. Nakara* (supra) can have application between similar set of employees and the said principle has no

application where a new benefit is conferred to another set of employees with effect from a particular date and in such circumstances, the conferment of the benefit with effect from a particular date cannot be held to be violative of Article 14 of the Constitution on the basis that such benefit has been conferred on certain categories of employees from earlier date. The same view has been reiterated in *In the Matter of: Hari Ram Gupta (D) Thr. L.R. Kasturi Devi Vs. The State of Uttar Pradesh*, and the principle laid down in *D.S. Nakara (supra)* has not been applied holding that the employees recruited prior to the cut-off date form a class in itself and Articles 14 and 16 of the Constitution are not attracted. In *Transport Manager, Pune Municipal Corporation Transport Undertaking Vs. Vasant Gopal Bhagwat (Dead) by LRS. and others*, ; *State of W.B. Vs. Monotosh Roy and Another*, and *Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors*, , the same view has been reiterated.

9. A Constitution Bench of the Hon'ble Supreme Court, in *Union of India and Others Vs. M.V. Valliappan and Others*, , has held that a cut-off date cannot be held to be invalid unless, it is shown to be capricious or whimsical and it cannot be held to be so merely in absence of any particular reason for choosing the same. The Court observed as under :

"It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless, it is shown to be capricious or whimsical in the circumstances; while fixing a line of point is necessary and there is no mathematical date or way of fixing it, precisely the decision of the Legislature or its delegate must be accepted unless it is very wide of reasonable mark. *University Grants Commission Vs. Sadhana Chaudhary and Others*, . The learned Counsel for the respondents was not in a position to point out any ground for holding that the said date is capricious or whimsical in the circumstances of the case."

10. In *Bhupinderpal Singh and Others Vs. State of Punjab and Others*, , the Hon'ble Supreme Court placed reliance upon large number of its earlier judgments, particularly in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, ; *A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others*, ; and *Dr. M.V. Nair Vs. Union of India (UOI) and Others*, , and observed as under :-

"The High Court has held that (i) the cut-off date, by reference of which the eligibility required must be satisfied by the candidate seeking a public employment, is the date appointed by the relevant Rules and if there be no cut-off date appointed by the Rules, then such date, as may be appointed for the purpose in the advertisement seeking for application; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed, by which the application has been received by the Authority. The view taken by the High Court is supported by several decisions of this Court and is, therefore, well settled and hence, cannot be found fault with."

11. The said judgment was considered and approved by the Hon"ble Supreme Court in *Jasbir Rani and Others Vs. State of Punjab and Another*, . Similarly, in *State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others*, , the Hon"ble Supreme Court approved the cut-off date fixed by the State for the purpose of revising the pay scale, observing that the cut-off date cannot be set-aside unless on the facts it is proved to be arbitrary and unreasonable.

12. A person can have a legitimate expectation only in consonance with the statute and the Rules framed thereunder and not in contravention of the same. This doctrine cannot be invoked for doing something contrary to law. [Vide *A. Mahudeswaran and Others Vs. Govt. of T.N. and Others*, ; *Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; *Punjab Communications Ltd. Vs. Union of India and Others*, ; *State of West Bengal and Ors. v. Niranjan Singha* (2001) 2 SCC 326 ; *State of Bihar Vs. S.A. Hassan and Another*, and *Dr. Chanchal Goyal v. State of Rajasthan*. AIR 2003 11321.

13. The doctrine of legitimate expectation has a meaning that the statements of policy or intention of the Government or its Department in administering its affairs should be without abuse or discretion. The policy statement could not be disregarded unfairly or applied selectively for the reason that unfairness in the form of unreasonableness is akin of violation of natural justice. It means that said actions have to be in conformity of Article 14 of the Constitution of which non-arbitrariness is a second facet. Public Authority cannot claim to have unfettered discretion in public law as the authority is conferred with power only to use them for public good. Generally, legitimate expectation has essentially procedural in character as it gives assurance of fair play in administrative action but it may in a given case be enforced as a substantive right. But, a person claiming it has to satisfy, the Court that his rights had been altered by enforcing a right in private law or he has been deprived of some benefit or advantage which he was having in the past and which he could legitimately expect to be permitted to continue unless, it is withdrawn on some rational ground or he has received assurance from the decision making Authority which is not fulfilled, i.e., the kind of promissory estoppel.

14. Change of policy should not violate the substantive legitimate expectation and if it does so, it must be as the change of policy, which is necessary and such a change is not irrational or perverse.

15. This doctrine being an aspect of Article 14 of the Constitution by itself does not give rise to enforceable right but, it provides a reasonable test to determine as to whether action taken by the Government or Authority is arbitrary or otherwise, rational and in accordance with law.

16. It is settled legal proposition that the policy decision taken by the State or its

authorities/instrumentalities is beyond the purview of judicial review, unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the rights of individual's guaranteed under the statute. The policy decision cannot be in contravention of the statutory provisions for the reason that if Legislature in its wisdom provides for a particular right/guarantee/benefit etc. Act. the authority taking in policy decision cannot nullify the same.

17. In Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, , the Hon"ble Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot struck down a circular/Government Order or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether malafides vitiates or irrationality and extraneous factors fouls. This Court held as under :-

"Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy."

18. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Hon"ble Apex Court considered the scope of judicial review in a case of policy decision and held as under :-

"The Court cannot sit in judgment over, the wisdom of the policy evolved by the Legislature and the subordinate regulation making body. It may be the policy evolved by the Legislature and sub-ordinate regulation making body. It may be wise policy, which will fully effectuate the purpose of the enactment or it may be lacking ineffectiveness and hence calling for revision and improvement. But, any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is even foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide to decide what policy should be pursued in relation to matters covered by the Act and there is no scope of any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

19. Similar view has been reiterated in Delhi Science Forum and others Vs. Union of India and another, ; U.P. Kattha Factories Association Vs. State of U.P. and others, ; Collector and Anr. v. B. Suresh and Ors. (1999) 5 SCC 512 and

Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, .

20. In *Netai Bag and Others Vs. The State of West Bengal and Others*, , the Hon''ble Supreme Court held that violation of a statutory provision would not render the State action arbitrary or illegal in each and every case. Each individual case has to be examined in the light of the facts and circumstances thereof as the State is entitled to make pragmatic adjustments and policy decision which may be necessary or call for under the prevalent circumstances. The Court cannot be justified in striking down a policy decision taken by the State merely because it feels that another decision would have, been forthcoming or better or more scientific or logical while deciding the said case, the Court referred to and relied upon its earlier judgments in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, . wherein the Court had held that judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or malafide.

21. Similar view has been reiterated in *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, . In *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, , it has been held that in exercise of their power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of malafide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and malafide; render the policy unconstitutional. However, if the policy cannot be touched on any of these grounds, the mere fact, that it may affect business interests of a party does not justify invalidating the policy.

22. In *State of Himachal Pradesh and Another Vs. Padam Devi and Others*, , the Apex Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the constitution cannot a subject of a judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view, has been reiterated in *State of Rajasthan and Others Vs. Lata Arun*, .

23. The Hon''ble Supreme Court in *Kailash Chand Sharma Vs. State of Rajasthan and Others*, , upheld the Full Bench judgment of the Rajasthan High Court in *Deepak Kumar Suthar v. State and Ors.* 2000 Lab IC 1, wherein the Court had struck down the policy decision of the Government granting bonus marks on the ground of residence in public employment being unconstitutional and ultra vires of the provisions of Articles 14 and 16 of the Constitution. The Hon''ble Apex Court held that policy decision giving weightage to the candidates in public employment on the ground of residence was impermissible in view of the constitutional provisions, therefore, the policy decision was bad.

24. In view of the above settled legal proposition, the law emerges that the

policy decision should not lightly be interfered by the Courts unless it is found to be arbitrary, discriminatory, unreasonable or violative of any provisions of the Constitution or any other statute.

25. In view of the above, once the Legislature in its wisdom has taken a policy decision and we do not find any arbitrariness in it considering the financial burden etc., upon the State and there is nothing on record to show, that the policy decision suffers from arbitrariness or unreasonableness, we find no ground for interference. No fault can be found with the judgment and order of the learned Tribunal.

26. Before parting with the case, we would like to mention that petitioner has also sought the following relief:-

"to issue a writ, order or direction in the nature of mandamus commanding the respondents to sanction Consolidated Family Pension @ Rs. 3198 per month that would be reasonably sufficient for the sustenance of petitioner's wife in case of death of the petitioner."

27. Nobody knows who will survive whom. Therefore, we fail to understand as under what circumstances such a relief can be claimed from a writ Court. It shows, that the petitioner does not know the limitations of a writ Court to seek a particular relief, which he cannot be expected to for the reason that after retirement he is regularly practicing as lawyer in this Court. We fail to understand how he could ask us to decide such an academic question. In case, the petitioner survives his wife what would be the fate of such a determination. The Court cannot be asked to decide such academic questions. Courts are meant to determine the real existing controversies and not contingency which may occur or may not in future and it shows that petitioner is not serious in pursuing his case. Courts should not waste its time considering such frivolous issues. [Vide Smt. Ujjam Bai v. State of Uttar Pradesh and anr. AIR 1962 SC 1621 ; Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, ; R.S. Nayak Vs. A.R. Antulay, ; Podipiratty Atchuta Desai v. Chinnam Joga Rao and Ors. AIR 1987 Supp. 42; Dahrtipakar Madan Lal Agarwal v. Rajiv Ghandi and Ors. AIR 1987 Supp. 93 ; Harsharan Verma Vs. Charan Singh and Others, ; Loknath Padhan Vs. Birendra Kumar Sahu, ; Anil Phukan Vs. State of Assam, ; Rajasthan Adult Education Association and Another Vs. Ashoka Bhattacharya (K) and Another, ; State of Rajasthan and Others Vs. Vatan Medical and General Store and Others etc. etc., ; Basant Kumar Vs. State of Rajasthan and Others, and Arnit Das Vs. State of Bihar,

28. Raising such an issue shows, non-seriousness of the petitioner and he considers that he has a licence to waste Court's time asking the Court to determine such irrelevant and frivolous issues. Merely because, the petitioner after retirement has been permitted to practice in law Court, he cannot abuse the process of the Court. Such, practice requires to be deprecated and conduct of the

petitioner becomes reprehensible.

29. Thus, in view of the above discussions, the cut-off date fixed by the legislature cannot be held to be arbitrary. No fault can be found with the judgment and order passed by the learned Tribunal. Petition does not present any special feature warranting interference by this Court. Courts are meant to decide the actual controversies and not academic issues.

30. Petition is devoid of any merit, and accordingly, dismissed.