

(1998) 03 SC CK 0092
In the Supreme Court Of India
Case No : C.A. No. 9392 of 1996

Dhan Raj and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Constitution of India, 1950 — Article 177

Constitution of Jammu and Kashmir, 1956 — Section 124, 92

Citation : (1998) 5 AD 163 : AIR 1998 SC 1747 : (1998) AIRSCW 1535 : (1998) 79 FLR 160 : (1998) 2 JT 590 : (1998) 2 SCALE 435 : (1998) 4 SCC 30 : (1998) SCC(L&S) 982 : (1998) 2 SCR 404 : (1998) 3 Supreme 294 : (1998) 1 UJ 834 : (1998) 2 UPLBEC 1525

Hon'ble Judges : K. Venkataswami, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.P. Misra, J.—The short question for consideration is, whether the appellants, who were all drivers and conductors in the Jammu and Kashmir State Road Transport Corporation, are entitled to the pensionary benefits in terms of Government order dated 3rd October, 1986 when they retired from service of the Corporation prior to 9th June, 1981.

2. In the year 1947, the Government Transport Undertaking (hereinafter referred to as 'Undertaking' was formed in the State of Jammu and Kashmir to render transport services to its people. The appellants were employed as drivers and conductors from the year 1950 onwards. Initially, they were in service with the aforesaid undertaking and later with the Road Transport Corporation (hereinafter referred to as 'Corporation'). This corporation was formed in the year 1976. All the appellants served in the State organisations for various terms ranging from 30 to 40 years. On 9th April, 1969 the State Undertaking was made a permanent department of the State Government. On. 1st September, 1976, the aforesaid Corporation was formed in terms of State Road Transport Corporation Act, 1950, which was made applicable to the State of Jammu and Kashmir by virtue of Act

No. 25 of 1968. As a consequence, the Government employees serving with the State Undertaking were treated on deputation with the State Corporation. The Government oscillated with its decision the terms on which to confer pensionary benefits. Hence, it issued various orders in the years 1972 to 1974, all being made applicable from 9th April, 1969 vide Government's order dated 27th March, 1979. By this, the option for drawing pension and other benefits was given to the appellants and others retired or seek to retire from the Corporation. The appellants, however, continued to be the State Government employees. Thereafter, on 9th June, 1981 through Regulation No. 177 the States Civil Services Regulation was amended by adding 3rd proviso to it. By that, a temporary Government servant with 20 years' service on the date of superannuation was also entitled to draw pension. Then came the aforesaid Government order dated 3rd October, 1986 for exercising option even to those already retired for drawing pension as admissible under the normal rule applicable to a permanent government employee which was also given to the appellants and others to which the appellants opted. Admittedly, with reference to this Government order dated 3rd October, 1986 vide a Notification dated 20.4.1987, the appellants and others belonging to the erstwhile Undertaking were declared permanent in the aforesaid Corporation retrospectively to all those who were temporary upto 31st August, 1976. The case of the appellants is that some of the drivers similarly placed were granted pension under it but the same is refused to the appellants.

3. The appellants forcefully on the aforesaid Government order dated 3rd October, 1986, urged that the order, clearly, unequivocally without any reservation grants the pensionary benefits to all the retired personnel who retired from the Corporation including the appellants. For the respondents, the stand is, yes it is applicable but not to those who retired prior to 9th June, 1981. Admittedly, all the appellants retired prior to this date. Aggrieved by the said stand, the appellants filed a writ petition which was allowed by the learned single Judge, who directed the respondents to give them pensionary benefits under the order dated 3.10.1986. Aggrieved by the said order, the respondents filed a Letters Patent Appeal before the Division Bench of the High Court. The said appeal was allowed in which it was held that the aforesaid Government order dated 3rd October, 1986 was contrary to the service conditions and the law governing the Writ petitioners. The writ petition stood dismissed. As against this order, the present appeal arises.

4. It is clear that the question of absorption and giving pensionary benefits to the employees in the aforesaid Undertaking and the Corporation was drawing the attention of the State Government right from the year 1969 which is evident from the various orders and letters issued. The first step towards it is a Cabinet decision and the order dated 9th April, 1969 by which the aforesaid Transport Undertaking was declared as a permanent department prospectively. The employees were given option either to become permanent or continue to be temporary on certain condition. On 7th March, 1972 the aforesaid order was

clarified that the permanent and temporary posts in the Undertaking will be notified by the Government from time to time. Further, those employees, who opted for permanency, will be confirmed subject to the availability of posts. Further, the Government recast para 4 in the order dated 7th March, 1972 by means of Government order dated 6th July, 1973. Under this, it was clarified that all the posts declared as permanent shall only for the purposes of pension be deemed to have been made permanent retrospectively from the date of their creation. This order was made retrospectively with effect from 9th April, 1969. Then came the Government order dated 11th April, 1974 under which the order for refund of bonus/reward/ex-gratis payments by the aforesaid earlier three orders were withdrawn. Then came the Central road Transport corporation Act under which all the employees of the erstwhile Undertaking were taken on deputation in the Road Transport Corporation from 1st September, 1976. All the Government servants, who opted for service in the said Corporation, were treated to have been on deputation with the said Corporation from the date of its formation to the date of their exercising option. u/s 124 of the Constitution of Jammu and Kashmir which is similar to Section 309 of the Constitution of India, the Government in exercise of the powers conferred by proviso to the said section made amendments through Notification dated 9th June, 1981 in the Jammu and Kashmir Civil Service Regulations by inserting 3rd proviso to Article 177 of the said Regulation, which is quoted hereunder:-

"Provided also that a temporary Government servant who on his retirement from service on attaining the age of superannuation or on his being declared permanently incapacitated for further government service by the appropriate Medical authority after he has rendered temporary service of not less than twenty years shall be eligible for all pensionary benefits admissible to a permanent Government servant under these rules and condition of holding a pensionable post in a substantive capacity or a continuous quasi permanent service of 5 years or more, shall be dispensed with in his case.

In schedule ix the following shall be inserted as a 3rd proviso below Rule 11:

Provided also that a temporary Government servant with 20 years service retiring on superannuation or on this being declared permanently incapacitate will be granted all pensioner benefits, as admissible to permanent Government servants."

5. It is under this Notification the respondents demarcated lines to give the pensionary benefits to only those who retired after this date, i.e., 9th June, 1981, and not prior and since all the appellants retired prior to this date they were excluded. The appellants thereafter made various representations to the Government for admitting them to this benefit. The stand taken was, they were all working for the last about 30 to 40 years as temporary Government servants but when all similarly placed persons under the aforesaid amendment were made eligible for pension who have worked only for 20 years service prior to the date of superannuation then there is no justification to exclude the appellants from

this benefit only on the basis of retiring earlier to this dated viz. 9th June, 1981. The case of the appellants is that the Government favourably considered the said representation and decided to grant the pensionary benefits even to other temporary employees of the Corporation, who retired prior to 9th June, 1981. It is this decision which resulted into the aforesaid order dated 3rd October, 1986. It is not in dispute that under this order all the appellants are entitled to receive pensionary benefits, namely, even those who have retired prior to 9th June, 1981.

6. Learned counsel for the respondent - State has contradicted this stand and urged that the order dated 3rd October, 1986 has to be read with the notification dated 9th June, 1981 and hence the benefit under it, can only be granted to such employees who have retired after 9th June, 1981. In other words, the case of the respondents is that prior to 9th June, 1981, Article 177 of the aforesaid Regulation only provided permanent Government employees or such quasi-permanent employees, who have been working for more than five years, were only entitled to the grant of pensionary benefit. It is for the first time through the aforesaid amendment dated 9th June, 1981, even temporary Government servants were conferred with pensionary benefits and who had rendered temporary service of not less than 20 years.

7. It is significant that learned Single Judge has clearly recorded a finding, which is also clear from the records that the order dated 3rd October, 1986 was the result of the representations made by the appellants. At this relevant time, the State was under the Governor's Rule and by virtue of Section 92 of aforesaid State Constitution, the Governor accepted the demands of the appellants by granting pensionary benefits to them also by means of the said order. Learned Single Judge recorded that this fact is set in para 12 of the writ petition and the same was not refuted by the State in the counter affidavit. This fact and the finding of the learned single Judge to this extent has not been set aside.

8. After hearing learned counsel of the parties, we do not find any substance in the contention of the respondents that this order when read with the earlier notification dated 9th June, 1981 the benefit is only to be give to those who retired after the said date. If that be so, there was no need to issue this order on 3rd October, 1986. Government was aware of the amendment already made through the aforesaid notification to Article 177 of the Said Regulation. If the stand of the respondent - state is to be accepted then the representations of the appellants should have been rejected but that was not so. We find that in spite of the said amendment the Government issued the order dated 3rd October, 1986 making applicable pensionary benefit to temporary employees of the erstwhile Undertaking who opted for temporary service in the years 1969, 1972 and 1979. The relevant portion of the said Government order dated 3rd October, 1986 is quoted hereunder:-

"It is hereby ordered that all temporary employees of erstwhile Government Transport Undertaking who have opted for temporary service in the State Road

Transport Corporation or those employees who have opted for Corporation Service in the State Road Transport Corporation, in pursuance of Govt. Order No. 25-TP of 1979 dated 27.3.1979 shall be given a fresh option to:

a...

b....

i...

(ii) the option now exercised shall be final and shall be available for a period of three months from the date of issue of formal notification in this behalf."

9. We find that the learned Single Judge has held with reference to the order dated 3rd October, 1986;

"...that the intention of the Government while issuing order dated 3rd October, 1986 was very clear that, notwithstanding Article 177 of the C.S.R. and notwithstanding the fact that the petitioners had all retired prior to 9th June, 1981, they were declared entitled to the grant of pensionary benefit."

10. Learned counsel for the state submits that the said order dated 3rd October, 1986 is not retrospective in operation, hence cannot confer benefit to those prior to this date. Firstly, no such stand was taken by the State either before the learned Single Judge nor before the Division Bench. Even otherwise, this interpretation is misconceived. In fact the heading - 'Subject', to the said order dispels all the doubt which is quoted hereunder;

"Subject: Grant of normal retirement benefits to the retired employee of the state Road Transport Corporation sanction to the...."

11. The subject refers to cover and confer benefits to all the retired employees of the Corporation meaning thereby to those retired prior to the date of the order. Hence, contention to the contrary by the respondents have no merit.

12. This order clearly gave fresh right to exercise the option to all the employees of the Corporation, who retired earlier, to be made within a period of three months. It is not in dispute that all the appellants exercise their option within the said period. Admittedly, this benefit, by this order, was conferred on the basis of representations made by the appellants to the Government, hence their right cannot be rejected on the basis of submission of the learned counsel for the State.

13. Learned counsel for the State then made an alternative submission that the order dated 3rd October, 1986 is in violation of Article 177 of the said Regulation, hence the appellants cannot draw any benefit under it. It seems that it is this submission which led to the mis-direction even by the appellate court. We are surprised that the State is taking such a stand on its own order to be held to be ultra virus of a Regulation. Neither such a submission was made nor any ground raised even in the appeals filed against the order of learned single Judge nor

such a stand is expected to be raised on the facts and circumstances of this case. Even otherwise, examining this submission we find that the amendment to Article 177 has given benefit to all the retiring employees, i.e., it would accrue to all retiring after 9th June, 1981 viz. the date of amendment. But it has not, by any positive words, excluded expressly to those who retired prior to the said date. If later the government itself reconsidering the matter confers the same benefits even to those who retired prior to 9th June, 1981, it cannot be said to be either violating Article 177 or in conflict with that. It is a case, which is not covered under Article 177 is dealt with later. If Government desired otherwise, it could have, even after issuing order dated 3rd October, 1981, withdrawn the same. On the contrary, it permitted to continue. Hence, even this submission of the said order being violative of Article 177, has no force.

14. Even otherwise, we do not find any justifiable criteria for the State Government to draw the line between those who retired earlier and those retired after 9th June, 1981. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organisations for more than 20 years. In fact, appellants have served with the Government for more than 30 to 40 years. The person serving for such a long period earns his legitimate expectation. It is not something which he seeks as a begging bowl. It is inappropriate for a State Government to take up a stand to get its own order to be held illegal, by giving restrictive interpretation to deny benefit to its own employees who had worked for such a long period. In fact, in the Constitution Bench decision of this court in D.S. Nakara and Others Vs. Union of India (UOI), , this Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14. Even otherwise, while considering the question of grant of pensionary benefits the State has to act to reach the constitutional goal of setting up a socialist State as stated and the assurance as given in the Directive Principles of State Policy. A pension is a part and parcel of that goal, which secures to a person serving with the State after retirement of his livelihood. To deny such a right to such a person, without any sound reasoning or any justifiable differentia would be against the spirit of the constitution. We find in the present case the stand taken by the State Government to be contrary to the said spirit. In the aforesaid D.S. Nakara (supra), this court has very clearly recorded the following:-

"Para 36. - Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a tulip and push to the policy of setting up

a welfare State because by pension the socialist goal of Security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life."

15. For the aforesaid reasons and the findings recorded on the facts and circumstances of this case, the appeal stands allowed. The impugned order of the High Court dated 5th September, 1995 passed in L.P.A. No. 62 of 1993 is set aside. The appellants would be entitled for the pensionary benefits in terms of and as held by learned Single Judge in its order dated 29th June, 1993. On the facts and circumstances of the case, cost on the parties.