

(2024) 08 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 22739 of 2021

Dr. K.K. Kaul

APPELLANT

Vs

The State Of Madhya Pradesh & Ors.

RESPONDENT

Date of Decision : 02-08-2024

Acts Referred:

Citation : (2024) 08 MP CK 0015

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Aditya Sanghi, Lokesh Jain

Final Decision : Disposed Off

Judgement

Anand Pathak, J

With the consent of parties, the matter is heard finally.

1. Present petition has been preferred by petitioner, who is in twilight zone of his life span, seeking following reliefs :-

"i. Mandamus commanding the respondents to grant the benefits super-senior pensioners from the date which means one year before the day that hitherto was taken as the 80th year / or 90 year and earlier benefits also by one year before the date of birthday.

ii. Mandamus commanding the respondents to give all the benefits to the petitioner vis-a-vis super-senior pensioners as directed by the Gauhati High Court as well as by the Hon'ble Supreme Court in W.P.No.4224/2016 decided on 15/03/2018 and thereafter SLP decided on 08/07/2019."

2. Precisely stated facts of the case are that the petitioner is a Professor Emeritus and retired as Dean of Netaji Subhash Chandra Bose Medical College, Jabalpur. He was formerly professor of Paediatrics and Director Residency Training Program, King Faisal University and King Fahd Teaching Hospital, Al

Khobar, Saudi Arabia.

3. Petitioner was born on 13th of October, 1932 and retired as Dean of Netaji Subhash Chandra Bose Medical College, Jabalpur on 30th of June, 1991 and was getting pension under the Madhya Pradesh Civil Services (Pension) Rules, 1976. Grievance of petitioner is that the moment he enters into 80 years, he is entitled to receive 20% additional pension from the State Government as per the circular dated 30-10-2010. This is in respect of slab for the persons like petitioners within the age '80-85 years'. Since, he enters into age 80 years on 13th of October, 2011, therefore, he is entitled to get 20% additional pension from such date (13th of October, 2011). Since, respondents did not consider the representation and case of petitioner, therefore, this petition has been preferred.

4. It is a submission of learned counsel for the petitioner that in the case of Virendra Dutt Gyani Vs. The Union of India & Others, learned Division Bench of Gauhati High Court in WP(C)No.4224/2016 considered this aspect and held that from the first day of age of 80 years, age shall be reckoned from the date when person enters into 80 years of age, rather than when he completes it. SLP(C) No.18133/2019 preferred by Union of India against said order of learned Division Bench got dismissed vide order dated 08/07/2019. Therefore, order attained finality.

5. Learned counsel for the respondents opposed the prayer. However, could not dispute the passing of orders as referred above.

6. Heard the learned counsel for the parties and perused the documents appended thereto.

7. In the instant case, age of petitioner is 92 years. He is seeking additional pension (20%) as per relevant circular from the date when he completed 79 years of age and entered into 80 years of age. So far as granting additional pension to a person who attains 80 years of age is concerned, it is no longer in doubt. One such circular of State Government dated 03-08-2009 is quoted hereinbelow for ready reference:

1.3. o`) isa'kujksa dks fuEukafdr rkfydk ds vuqlkj vfrfjDr isa'ku izkIr gksxh%&

isa'kuj@ifjokj / isa'kuj dh mez

vfrfjDr jkf'k

80 o"kZ ls rFkk 85 o"kZ ls de

ewy isa'ku@ifjokj isa'ku dk 20%

85 o"kZ ls rFkk 90 o"kZ ls de

ewy isa'ku@ifjokj isa'ku dk 30%

90 o"kZ ls rFkk 95 o"kZ ls de

ewy isa'ku@ifjokj isa'ku dk 40%

95 o"kZ ls rFkk 100 o"kZ ls de

ewy isa'ku@ifjokj isa'ku dk 50%

100 o"kZ ;k vf/kd

ewy isa'ku@ifjokj isa'ku dk 100%

8. Perusal of the said circular indicates that for age group 80 years with age to less than 85 years, 20% hike in original pension is referred. Second slab is from 85 years to less than 90 years. Now if the interpretation as considered by the respondents in respect of first expression i.e. from 80 years to 85 years (means he would not be completing 85 years), consequence would be that on completion of 80 years to less than 85 years, a retired employee would be entitled to first scale of additional pension (20%) and again on completion of 85 years to less than 90 years, a retired employee would be entitled to second scale of additional pension (30%) and so on. In computation, as projected by the respondents not only 80th year would stand excluded and would not fall in any of the category, even 85th and 90th year would also be excluded. This cannot be the intention of Lawmakers.

9. In the case of *Bengal Immunity Co. Ltd. Vs. State of Bihar*, AIR 1955 SC 661, the Apex Court has given guidance in respect of taking decision over the true interpretation of statute. It be as Penal or Beneficial, Restrictive or Enlarging Common Law. Four things are required to be considered which are follows:

"22. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – *Heydon's case*, (1584) 3 Co Rep 7a (V) was decided that –

".....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered.

1st. What was the common law before the making of the Act., 2nd. What was the mischief and defect for which the common law did not provide, 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

10. In the case of *Puran Vs. Rambilas and Anr.*, (2001) 6 SCC 338, mischief rule (rule in *Heydon's case*) has been discussed. In the case of *M/s New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax Bihar*, AIR 1963 SC 1207, the Apex Court laid stress over rule of harmonial construction by observing as under:

"8.....It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid....."

11. In the case of *Sunita Gandharva Vs. State of M.P.* reported in 2020(3) MPLJ(Cri.)247 this Court held that if the language used is capable of bearing more than one Construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See: Principles of Statutory Interpretation by Justice G.P.Singh, Tenth Edition. Chapter II, Synopsis 4).

12. Therefore, by applying Purposive Interpretation, this Court holds that interpretation put forward by the respondents is not only unreasonable but it leads to an anomalous situation where particular year would be left out for consideration and it would be unreasonable and irrational. It would also defeat the very object of helping the cause of old age employees.

13. Learned Division Bench of Guahati High Court in the case of *Virendra Dutt Gyani* (supra) considered this aspect in detail and thereafter held as under:

"20. To answer this question, it is necessary to examine the meaning of the expression "from eighty years" as appearing in Section 178. As noticed above, the benefit of additional quantum of pension would be entitled to a retired judge from eighty years to less than eighty five years. What precisely would be the meaning of the expression "from eighty years"?

21. In Collins English Dictionary, the word "from" has been defined to mean indicating the point of departure, source, distance, cause, change of state etc. Mr. Goswami had also argued that the word "from" is used to specify a starting point in spatial movement i.e. to specify starting point in an expression of limits. In Black's Law Dictionary, 6th Edition, the word "from" has been defined to mean implying a starting point, whether it be of time, place or condition, and having a starting point of motion, noting the point of departure, origin, withdrawal etc. However, it has been explained that the word "from" does not have an absolute and invariable meaning but should receive an inclusion or exclusion construction according to the intention with which such word is used.

22. Therefore, as per the dictionary meaning, the expression "from eighty years" would indicate the starting point of eighty years. However, as a note of caution, it has also been clarified that inclusiveness or exclusiveness associated with the

expression would have to be interpreted having regard to the intention for use of such word or expression.”

14. Petitioner is in twilight zone of his life span and the date for reckoning 80 years for benefit of additional pension is to be counted from the date when person enters 80th year of age and not when he completes 80 years. In the present case, the date of birth of petitioner is 13th of October, 1931 and therefore, he entered into 80th years of age on 13th of October, 2011, therefore, he is entitled to get the benefit from 13th of October, 2011 whereby respondents have to give additional pension of 20% as per their circular with this date. It is the duty of respondents that considering his age and past services, they shall promptly decide the case and disburse the benefits at an expeditious note preferably within one month from the date of submission of certified copy of this order, so that it may be a case of vindication of his services rendered to society.

15. In the conspectus of facts and circumstances of the case, petition preferred by the petitioner is allowed. Petitioner is entitled to get additional pension when he entered into 80 years of age on 13-10-2011. On similar analogy, other benefits of 85th year and 90th year would also be extended to the petitioner as per law if he is otherwise entitled for the same.

16. Petition stands disposed of.