(2011) 04 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (C) No. 446 of 2000

Dr. Sudhangshu Kr. Bhattacharjee, Retired Reader and Others — APPELLANT

Vs

The State of Tripura — RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Constitution of India, 1950 — Article 16
Tripura State Civil Services (Revised Pay) (Amendment) Rules, 1999 — Rule 12, 2

Citation : (2011) 04 GAU CK 0010

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; T.D. Majumder and S. Chakraborty, State counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The Petitioners are the retired college teachers. They have retired from their services on attaining the age of superannuation on various dates between 1.1.1996 and 30.9.1998. During their services, they received the benefits of pay scales recommended by the University Grants Commission (U.G.C.). The prescription of revised pay scale by the U.G.C. was accepted by the Government of India in July, 1998 and thereafter, requested the State Governments to adopt and implement the same revised pay scale by letter dated 6.11.1998. Pursuant thereto, the State of Tripura brought out a notification dated 26.3.1999 enforcing and implementing the Revised U.G.C. pay scales in respect of the college teachers in the Government Degree Colleges. The grievance of the Petitioners in a nutshell is that they being the beneficiaries of U.G.C. scale stood excluded from the purview of the R.O.P. Rules, 1999 of the Government of Tripura and thus, class of beneficiaries who retired between 1.1.1996 and 1.10.1998 shall not be given effect to by the provisions of Rule 12 (d) of the ROP Rules of 1999. Consequently, their pension should be determined on the basis of the emoluments on the date of retirement.

2. The Petitioners have made the prayer for declaration that the Annexure-2 office memorandum dated 25.3.1999 applying the modified Pension Rules, 1999 is inapplicable to the Petitioners and their pension should be calculated on the basis of the emoluments drawn on the last working day before retirement. Another prayer made in the writ petition is that the Respondents should be directed to pay gratuity in the Central rate applicable w.e.f. 1.1.1996.

3. The Respondents filed their counter affidavit denying any discriminatory treatment to the Petitioners, who retired from service between 1.1.1996 and 30.9.1998 after drawing the revised UGC pay scale. It has been stated in the counter affidavit that the State Government had to strike a balance between the needs of the employees/pensioners and resources at the disposal of the State Government. It has been stated that keeping in view the financial position of the State Government, it was decided that the State Government employees, who retired from service between 1.1.1996 to 30.9.1998 would be provided with actual benefit in cash on account of pay revision only w.e.f. 1.10.1998. Similarly, for the pensioners, no cash benefits would be given within the period from1.1.1996 to 30.9.1998. It has been stated in the affidavit that implementation of the revised UGC pay scale for the teachers was dependant on financial assistance to the extent of 80% of the additional expenditure involved in giving effect to the said revised pay scale. However, the additional expenditure required for the arrear pension and pensioner benefits in implementing the revised UGC Scale, no assistance is provided from the Central assistance, but the same is guided by the State Government Pension Rules. In a nutshell, it is the stand of the Respondents that although the Petitioners are due to the emoluments in the revised UGC pay scale but for the purpose of pension, the ROP Rules of 1999 was made applicable by the aforementioned Annexure-2 office memorandum dated 25.3.1999.

4. I have heard Mr. D.K. Biswas, learned Counsel for the Petitioners as well as Mr. S. Chakraborty, learned State counsel.

5. While Mr. Biswas, learned Counsel for the Petitioners emphasizing the need to pay pension on the basis of the last emoluments drawn and as has been placed reliance on the decision of the Apex Court reported in AIR 2006 SCW 2676 (U. Raghavendra Acharya and Ors. v. State of Karnataka and Ors.), Mr. Chakraborty, learned State counsel submits that the issue raised in this writ petition is no longer res integra and as has been decided by the Division Bench of this Court by its judgment and order dated 15.12.2004 passed in the writ appeal being W.A. No. 41/2001. In this connection, he has specifically referred to the observation made in the said judgment in paragraphs 23, 26 and 31 which are quoted below:

23. What can thus be deducted from the above pronouncement is that fixation of a date by the State for grant of service benefits by itself is not abhorrent to the constitutional guarantee of equality and that the capability of the State exchequer to bear the burden is a relevant and valid consideration, therefore, the State being the guardian of its finance. It is understandable that before deciding

to confer fresh financial benefits, proper estimate of financial outlay have to be made within the fiscal infrastructure of the State and if a perceptible nexus between the two is discernible, the fixation cannot be branded as arbitrary, whimsical or discriminatory.

26. As recently as in State of West Bengal and Anr. v. W.B. Govt. Pensioners'' Associations and Ors. (2002) SCC 179, the Apex Court while dealing with the objections regarding acceptability of a cut off date for revision of pay scale held that such a fixation parse would not make the exercise invalid although the persons in service immediately before the cut off date would be deprived of the benefits of such revision and the acceptability thereof would depend upon the relevancy of the considerations underlying the choice of the date.

31. In the wake of the above, we conclude that Rule 12 of the 1999 Rules and the Pension Rules, 1999, contained in the Office Memorandum dated 25/3/99 are constitutionally valid. The cut off date of 1.10.98 fixed for extending the financial benefits consequent upon the pay revision following the Tripura 4th Pay Commission recommendations is neither arbitrary nor discriminatory; the learned Single Judge rejected the writ petition viewing the issue in the correct legal perspective. We concur with the ultimate conclusions recorded in the impugned judgment and order. The appeal, therefore, is without any merit and is accordingly dismissed. No costs.

6. In U. Raghavendra Acharya (supra), the Apex Court dealing with the provisions of the Karnataka Civil Services Rules,1958 (Rule 296) and the pensioner benefits there under vis-a-vis pay revision held that the retired teachers of private aided colleges and university should be treated on par with Government employees and be extended with the benefit of revised pay scale and are also entitled to pensioner benefits from the date, on which revision of pay scale was effected i.e. 1.1.1996. Fixing the cut off date by executing the Executive Instructions for extending pensioner benefits to them was held to be discriminatory and also volatile of Article 16 of the Constitution of India unless same amounted to reduction in pay with retrospective effect.

7. In the aforesaid decision, the Apex Court was concerned with Rule 296 of the Karnataka Civil Services Rules, 1958, which was made applicable; computation of pensioner benefits was also required to be carried in terms thereof. In the said case, the Pension Rules itself envisage that the pension should be calculated only on the basis of the emoluments last drawn.

8. In the instant case, the Tripura State Civil Services (Revised Pay) Rules, 1999 was made applicable to the categories of Government servants, as indicated in the Rules. Under Rule 2 of the said Rules, under which the Rules were made applicable to persons appointed in regular scales of pay to service and posts. It was also provided that unless specifically extended under express order of the Government, nothing in the Rules would apply to Government servants of the categories mentioned therein which include persons drawing pay in the UGC/

Executive Instructions.

9. As per the Annexure-2 office memorandum dated 25.3.1999, the said Rules were made applicable to the college teachers. It is in this context, the Petitioners have made a challenge to the said office memorandum.

10. The Division Bench of this Court in the aforementioned case of the Government Pensioners Association did not find any fault with the cut off date fixed for the purpose of pensioner benefits. It has been held in the said judgment that Rule 12 of the ROP Rules of 1999 and Pension Rules, 1999, contained in the impugned memorandum dated 25.3.1999 are constitutionally valid. It has further been held that the cut off date of 1.10.1998 fixed for extending financial benefits consequent upon the pay revision following the Tripura 4th Pay Commission recommendations is neither arbitrary nor discriminatory.

11. The points which have been raised in this writ petition have duly taken note of in the aforesaid Division Bench judgment, while rejecting the claim of the Petitioners involved in the said writ appeal It has been brought to the notice of this Court that the said appeal was carried on appeal before the Apex Court by way of Special Leave to Appeal (Civil) No. 7929/2005 and the same has also been dismissed by order dated 25.4.2005.

12. The above being the position, no relief can be granted to the Petitioners and consequently, the writ petition stands dismissed.

