

(2009) 10 MAD CK 0305

In the Madras High Court

Case No : Writ Petition No. 33879 of 2006 (O.A. No. 5695 of 1998)

Dr. T. Lakshmipathi

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Madras Pension Code — Article 404(AA)
Tamil Nadu Pension Rules, 1976 — Rule 27
Tamil Nadu Pension Rules, 1978 — Rule 27, 5

Citation : (2009) 10 MAD CK 0305

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; R. Neelakandan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner was a retired Additional Professor of Surgery from the Madras Medical College, Chennai. He filed O.A. No. 5695 of 1998 before the Tribunal, seeking for a declaration that Rule 27 of the Tamil Nadu Pension Rules, 1976 was unconstitutional and illegal in so far as the applicant is concerned and it will have force only prospectively i.e. 1.1.79. Consequently, the petitioner wanted Article 404AA of the Pension Code to be extended in his favour and also to grant arrears arising out of such pension.

3. According to the petitioner, he joined the Government Service on 2.8.1967 as a Civil Assistant Surgeon. He got retired from service on 30.11.1995 after rendering 28 years of service. At the time of joining service, the petitioner was 29 years old. When the petitioner joined service during 1967, he was governed by the Pension Code. Subsequently, rules known as the Tamil Nadu Pension Rules were made and brought into effect from 1.1.1979.

4. It is the case of the petitioner that since the Pension code was applicable and by virtue of Article 404 AA, if an officer is appointed and retired on or after 1.7.60, he may add to his service qualifying for superannuation pension, the actual period not exceeding 1/4th of length of his service or the actual period by which his age at the time of recruitment exceeds 25 years or a period of five years whichever is the least.

5. Article 404 AA as it stood prior to 7.1.1971 read as follows:

0404.AA : An Officer appointed to service or post and who retires from service on or after 1st July 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or actual period by which his age at the time of recruitment exceeds twenty five years or a period of five years, whichever is the least, if the service or post is one:

a) for which post graduate, research or specialist qualification or experience in scientific, Technological or professional fields is prescribed not merely as desirable but as obligatory qualification; and

b) for which the age of recruitment prescribed in the service rules applicable to the service or post concerned is above twenty five years

An officer appointed to a post specified in column 2 of the Table under this Article may add to his service qualifying for superannuation pension (but not for any other class of pension) a period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twentyfive years or the period specified against that post in column (3) of the said Table whichever is the least:

The Table	Serial	Name of the post	Maximum number of	Number years that may
be	added	to	service	qualifying for superannuation pension
-----	1	XXXXXX		

2 XXXXXX

3	Civil Assistant Surgeon	2*	Revised as	5 years from 25.09.1971.

6. Therefore, it is the case of the petitioner that since he had entered the service before the introduction of the Tamil Nadu Pension Rules, the pension code alone is applicable and he will be eligible to add five years of service for calculating his pension by virtue of the Code. When the petitioner made a representation to the State Government (by addressing a letter to the Minister for Health), the State Government by its order, dated 11.3.1998 informed the petitioner that his request was not feasible for compliance.

7. Rule 27 of the Tamil Nadu Pension Rules reads as follows:

27.Addition to qualifying service in special circumstances.-(1)Any person appointed to a service or post and who retires from service on or after the 1st July 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds thirty years or a period of five years, whichever is less, if the service or post is one.

8. It is because the rule is being disadvantageous, the petitioner seeks for a declaration that Rule 27 is invalid.

9. On notice from the Tribunal, the respondents have filed a reply affidavit, dated 5.10.2001. In paragraph 7 of the reply affidavit, it was averred as follows:

7. With reference to para V(4) of the application, it is submitted that prior to 1.1.1979, Civil Service Regulations (Madras Pension Code) were applicable to the State Government Servants. The Tamil Nadu Pension Rules, 1978 have come into force on the 1st January, 1979. As such, the Tamil Nadu Pension Rules, 1978 will be applicable to the State Government servants with effect from 1.1.1979. As per Rule 27 of the Tamil Nadu Pension Rules, 1978, any person appointed to a service or post and who retires from service on or after the 1st July, 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of retirement exceeds thirty years or a period of five years whichever is less if the service or post is one. Further, as per Rule 5 of the Tamil Nadu Pension Rules, 1978, any claim to pension or family pension shall be regulated by the provisions of the said Rules in force at the time when a Government servant retires or is retired or is discharged or his allowed to retire from service or dies as the case may be. As the applicant retired from service on 30.11.1995 his accrued pensionary benefits should be derived with reference to the provisions of Tamil Nadu Pension Rules, 1978 only and not with reference to the provision of Civil Service Regulations (Madras Pension Code). Hence the applicant is not eligible for the weightage in service to the extent of 4 years, 8 months and 1 day.

10. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 33879 of 2006.

11. It must be stated that the petitioner cannot have best of both worlds. Inasmuch as the pension rules have been framed by virtue of the power vested on the State Government under Article 309 of the Constitution and they are also legislative in character, it can be challenged only on the touchstone of Articles 14 and 16 of the Constitution. Merely because the new rule did not provide an additional benefit to the petitioner, it will not become either invalid or unconstitutional.

12. In this context, it is necessary to refer to the following decision of the Supreme Court which will have a bearing on this case.

13. The Supreme Court in *Union of India v. Lieut E. Iacats* reported in *Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats*, has held that a cut of date provided in a pension scheme cannot be declared invalid and the decision in *Nakara's* case was distinguished. After the petitioner's entry into service, new rules were made and the old Code was replaced. The new rules also provide additional service to be counted based upon the actual length of service. But the petitioner did not qualify for counting such service. In this context, it is necessary to extract the following passages found in paragraphs 4 and 5 from the said judgment:

4. The next question relates to payment of pension. Under Army Instruction No. 14 which was in force at the material time, the respondent, either on the date of her appointment or on the date of her retirement, or at any time during her service, did not have the benefit of pension on retirement. The terms and conditions of service were known to her at the time when she joined the service. At the time of joining service she had signed an agreement to abide by the rules and regulations governing Military Nursing Service (Local) from time to time. She has claimed that pensionary benefits which were conferred for the first time on all those who retired on or after 1-10-1983 should be given to her although she retired much prior to that date. Although she has not challenged the cut-off date as arbitrary, reliance in this connection is placed by her on the decision in the case of *D.S. Nakara v. Union of India*. This decision has been subsequently explained and distinguished in a number of cases. In the case of *Sushma Sharma (Dr) v. State of Rajasthan* AIR at p. 1379: SCC p. 66, para 44 this Court cited with approval its earlier observations in *Union of India v. Parameswaran Match Works Ltd.* to the effect that the choice of a date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical. In the case of *State of W.B. v. Ratan Behari Dey* this Court considered the pension scheme introduced by the Calcutta Municipal Corporation from 1-4-1977. It upheld the validity of the cut-off date. *Nakara case1* was distinguished on the ground that in *Nakara case1* by an artificial cut-off date, distinction was sought to be made between retired employees who were governed by the same rules. However, when a pension scheme is introduced from a given date, there are two sets of employees who are governed by two different sets of rules. They cannot be treated as similarly situated. As the cut-off date was retrospective, this Court also examined the reasonableness of this retrospective operation. It found the cut-off date to be reasonable, it being based upon the date of appointment of the Pay Commission. In a recent decision in the case of *Commander, Head Quarter v. Capt Biplabendra Chanda* new rules reducing the minimum qualifying service for pension came into effect from 1-1-1986. The respondent who had retired prior to this date was not granted pension under the old rules as he did not qualify for pension under those rules. This Court, distinguishing *Nakara case1* held that he cannot be retrospectively made eligible under the new rules. Pensioners under the old rules and pensioners under the new rules are not similarly situated. Each set of retiring employees will be governed by their own rules in force when they

retire.

5. The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensionary benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable.

14. In the light of the above legal precedents, the challenge made to Rule 27 of the Tamil Nadu Pension Rules must fail. Accordingly, the writ petition will stand dismissed. No costs.