
(2005) 12 AP CK 0041

In the Andhra Pradesh High Court

Case No : WA No. 1950 of 2001 and WP No. 24002 of 2001

Executive Officer, Tirumala Tirupathi Devasthanams and
Another

APPELLANT

Vs

B.M. Subbuswamy

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 1 ALD 591 : (2006) 1 ALT 750

Hon'ble Judges : G. Yethirajulu, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : A. Ramalingeswara Rao, in WA No. 1950 of 2001 and K.S. Murthy, in WP No. 24002 of 2001, for the Appellant; K.S. Murthy in WA No. 1950 of 2001 and S. Venkateswara Rao in WP No. 24002 of 2001, for the Respondent

Judgement

B. Prakash Rao, J.—The appellants/Management in Writ Appeal No. 1950 of 2001 seek to assail the order dated 24-8-2001 of the learned Single Judge allowing the writ petition filed by the respondent-employee in W.P. No. 14524 of 2001.

2. The respondent/writ petitioner, who is a retired employees, sought a writ of mandamus declaring the action of the appellants in not implementing the G.O. Ms. No. 235, dated 27-10-1998 and not paying him the pensionary benefits after granting increment on notional basis as laid down in the said G.O. as unconstitutional, illegal and consequently direct the respondents to sanction the notional increment of Rs. 420/-and then calculate the pensionary benefits and pay interest at the rate of 18% p.a. along with arrears.

3. The petitioner in Writ Petition No. 24002 of 2001, seeks similar such prayer for a writ of mandamus to extend the benefit in terms of G.O. Ms. No. 235, dated 27-10-1998.

4. In these two cases, since the question involved being common, both these cases are being taken up together for disposal.

5. The case of the writ petitioner, who is the respondent in W.A. No. 1950 of 2001, is that he joined the educational service of the appellants' institution on 9-9-1966 as Demonstrator in Botany and later he was promoted as Lecturer. The UGC scales were made applicable to him with effect from 1-4-1976 and he was given the revised UGC scales of 1986 from 1-1-1986. The selection grade lecturer's post in the scale of pay of Rs. 3700-5700 was given to him from 1-4-1996. He attained the age of superannuation on completion of 58 years by 31-3-1996. However, the date of increment fell due on 1-4-1996. There was a challenge raising the age of retirement upto 60 years. The petitioner was retired on 1-11-1997 and his pension was calculated based upon the last drawn salary i.e., Rs. 12,420/- in the UGC scales of 1996 with effect from 1-1-1996. However, in terms of the aforesaid G.O., if notional increment is added to his salary at the rate of Rs. 420/-, his last drawn pay would be Rs. 12,840/- and thus he will be getting into further pension accordingly. In this connection, the petitioner stated that he had submitted representations to the authorities on 4-5-1999, 6-12-1999 and 29-1-2001 for giving effect to the aforesaid G.O. and according to the petitioner, it falls due on the date of following the day of his retirement and he may be given the benefit of increment notionally purely for the purpose of pensionary benefits. However, the said representations have remained unconsidered. It was pointed out that similar such benefit was given to one Mr. D. Chandal Raju, Principal (Retired), S.G.S. Arts College from which College, he too retired. Therefore, the petitioner is entitled to similar such benefit on par with him. The petitioner is being discriminated which is violative of Article 14 of the Constitution of India. He further stated that he is now drawing monthly pension of Rs. 6,275/- after computation. In spite of the same, the proceedings of the pensionary benefits were issued on 15-3-2001 which was received by him on 30-3-2001 without extending the benefit under the aforesaid G.O. to him. Hence, the writ petition.

6. The case of the petitioner in W.P. No. 24002 of 2001 is that he initially worked for some time in Zilla Parishad, Nellore District and later joined the service in Sri Venkateswara Music and Dance College, Tirupati as a Tutor on 17-12-1968 and later he was promoted as Lecturer on 12-2-1970 and he attained the age of superannuation initially on 31-1-1996 and in view of interim directions given by this Court for extension of the age of retirement, he continued in service till 1-11-1997 and his increment date was 1-2-1975 and the last increment was effected on 1-2-1995. In October 2000, a final settlement took place. In spite of his several representations for extending the benefit under the aforesaid G.O., the same was not given effect to. Therefore, he had to file a Writ Petition No. 20423 of 2000 which was disposed of as per the orders on 27-10-2000 directing the respondents to consider the case as per the G.O. Ms. No. 235. In the light of the principles laid down in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , he made a representation. Since no action was taken, he had to file C.C.No.543 of 2001. Since the authorities passed orders on 3-2-2001 rationalizing the earlier service in Z.P. Schools but not referring to the orders of

this Court, the contempt was closed. Once again since no action forthcoming, the petitioner had to file another C.C. No. 1157 of 2001, whereupon the impugned orders were passed on 1-11-2004 revising to extend the benefit and in view of the same, contempt case was closed. On behalf of the petitioner, similar arguments were advanced as the one in the other case.

7. In the counter-affidavit sworn to by Sri P. Krishnaiah, the Executive Officer of the appellants Institution in W.P. No. 24002 of 2001, it is stated that the G.O. Ms. No. 235, dated 27-10-1998 is not applicable to the petitioner since it is given effect from the date of issuance of the said G.O. i.e., 27-10-1998 and the petitioner retired in the afternoon of 31-3-1996. Further placing reliance on the decision reported in *V. Kasturi v. Managing Director, State Bank of India, Bombay* (supra), it was held that having regard to the principles laid down, the revision of the pension scheme would not apply to the petitioner. Further, it is pointed out that though the retirement of the writ petitioner as per the age of superannuation of 58 years fell on 31-1-1996, he continued till 1-11-1997 as per the directions of this Court and consequently he was relieved in the afternoon of 1-11-1997 in pursuance of the judgment in Writ Petition No. 28887 of 1995. Since the petitioner is not eligible for the benefit of sanction of increment in pursuance of the aforesaid G.O. the orders have been issued on 1-11-2001 in Roc.No. D6/3468/98 rejecting his plea for extending the benefit of the said G.O. since he retired from service prior to the issuance of the said G.O.

8. The learned Single Judge after taking into consideration the aforesaid allegations and especially in view of the fact that similar such benefit was extended to one Mr. D. Changal Raju, a retired Principal and there is a clear discrimination on the part of the appellants for not granting the said benefit to the petitioner, allowed the writ petition with a direction to the respondents to implement G.O. Ms. No. 235, dated 27-10-1998 and pay pensionary benefits by granting notional increment to the petitioner. Hence, the appeal.

9. Sri S. Venkateswara Rao, the learned Standing Counsel appearing on behalf of the appellants in appeal and for the respondents in the writ petition strenuously contended that having regard to the fact that the petitioner retired much prior to the issuance of the G.O. Ms. No. 235, dated 27-10-1998 which has no retrospective effect, the same cannot be made applicable. Further, it is his contention that the aforesaid G.O. is only intended to give one time benefit to the persons retiring one day prior to the date of increment on or after the issuance of the G.O. and hence the petitioner is not entitled to the benefit under the aforesaid G.O. It is also further contended that the petitioner no where stands on the same footing as that of Mr. D. Changal Raju who in fact had retired only after issuance of the aforesaid G.O.

10. The learned Counsel appearing for the respondent in appeal and the Counsel for the petitioner in the writ petition countering the aforesaid submissions, submitted that the sanction of a notional increment under G.O. Ms. No. 235 is not a fresh one nor would it amount to a fresh scheme conferring any right for

the first time and it is only an amendment to the existing scheme where a further benefit is sought to be provided and therefore, the question of its applicability prospectively as contended on behalf of the appellants does not arise.

11. Having heard the Counsel on either side and on perusal of the material available on record, the question which arises for consideration in the facts and circumstances is as to whether the writ petitioners are entitled to the benefit under the aforesaid G.O. Ms. No. 235, dated 27-10-1998 or amounts to totally a new scheme to deny the said benefits ?

12. From the aforesaid backdrop, there is no dispute in regard to the fact that the respondent in W.A.No. 1950 of 2001 the petitioner in the writ, which was allowed, initially joined the appellants institution on 9-9-1966 and ultimately retired on 1-11-1997. The petitioner seeks extension of the benefit as conferred under G.O. Ms. No. 235, dated 27-10-1998. For convenience sake, it is necessary to extract the aforesaid G.O. Ms. No. 235, dated 27-10-1998 which reads as follows :

Government of Andhra Pradesh

Abstract

Pensions - Recommendations of Officers Committee for simplification and liberalization of Pension Rules - Orders - Issued.

---- Finance and Planning (FW - FR.II) Department

G.O.Ms.No. 235 Dated : 27.10.1998

Read the following :

1. G.O.Ms.No. 197, Finance and Planning (FW-Pen.I) Department, dated 11.7.1991.
2. G.O.Ms.No. 138, Finance and Planning (FW-Pen.I) Department, dated 19.4.1993.
3. G.O.Ms.No. 294, Finance and Planning (FW-Pen.I) Department, dated 31.7.1993.
4. UK.O Note No. 32207-A/413/A.2/Pen.1/94 dated 7.8.1998 of Finance and Planning (FW-Pen.I) Department.

Order :-Orders were issued in the reference 1st read above constituting a Committee of Officer to examine matters relating to Pensioners.

2. Among others the Committee has recommended that :-

Where an employee's date of increment falls due on the day following his retirement, he may be given the benefit of increment notionally purely for the purpose of pensionary benefits, as such cases may be rare and few.

3. Government after careful consideration of the above recommendation of Officers Committee hereby order that, where an employee's date of increment falls due on the day following his retirement, he may be given the benefit of increment notionally, purely for the purpose of pensionary benefits, subject to the condition that this should not be considered for any other purpose.

4. These orders come into force with immediate effect.

(By Order and in the Name of the Governor of Andhra Pradesh)

K. Pradeep Chandra Secretary to Government (IF)

13. On a reading of the aforesaid G.O., it envisages clearly that the Government by accepting the recommendations of Officers Committee for simplification and liberalization of an existing Pension Rules, issued orders for the purpose of extending the benefit of increment notionally for pensionary benefit and it was enforced with immediate effect. Therefore, it is not for the first time any new pensionary scheme is being introduced or brought into existence conferring a right for pension as such. But it is only an acceptance of recommendation extending the benefit of increment notionally for the purpose of pensionary benefits under a scheme in vogue. The benefit of increment is added for calculating pensionary benefits, and therefore, such liberalization as has been extended to by the Government on the recommendation made by the committee cannot be termed as if conferring a new pensionary benefit to any of the employees. The entire object apparently appears to be to enable the employee to avail such benefit of increment which falls to on the day following his retirement. Therefore, it is not a fresh scheme. No-doubt, the learned Single Judge allowed the writ petition mainly on the ground of discrimination since similar benefit was extended to one Mr. D. Chandal Raju. It is now brought to notice that in fact, said Raju retired much later to the said G.O. and therefore, the petitioner cannot place himself on par with him, since he retired much prior to the issuance of the said G.O. However, the main dispute boils down to the aspect as to whether such benefit can be extended to the petitioner, since he retired earlier to the G.O. In *V. Kasturi v. Managing Director, State Bank of India, Bombay* (supra) while considering the prospective amendment conferring enhanced pension under a new formula of computation of pension, the Supreme Court held the principle that:

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension. He would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid

additional benefit was conferred.

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, and subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and by then the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep.

14. From the above, it is clear that in spite of such employees who on the date of retirement totally fall outside class of eligible pensioners, any subsequent variation, addition or denial by any amendment could not be extended. Thereby, distinction was sought to be drawn between two classes, one who is entitled under the scheme on the date of retirement and another though retired, can claim under a new scheme. Further while considering the benefit of amended pension scheme available to the old retirees, it was held that the claim for eligibility and non-eligibility falls relevant at the time of his retirement and he would get benefit of the amended pension provision from the date of such order. Since it is not an enhancement of prior existing benefits and therefore, no distinction arises. In *Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors*, , while considering a case of pension scheme with a prospective introduction, it was held that it cannot be extended to all those employees who already stood retired and availed the benefit under a scheme before such introduction of new pension scheme since such employees formed a separate class. In *Subrata Sen and Others Vs. Union of India and Others*, , while considering non-contributory pension scheme and revision thereof, the Supreme Court held that :

In this case the Pension Scheme including the liberalized scheme available to the employees is non-contributory in character. The petitioners were not required to contribute any amount for getting pension. Their right to get pension is crystallized as per the rules. Thus payment of pension was the liability undertaken by the Company under the rules and whenever becomes due and payable, is to be paid. May be that in the present case, the trust for Pension Fund is created for income tax purposes or for smooth payment of pension, but that would not affect the liability of the employer to pay monthly pension calculated as per the rules on retirement from service and this retirement benefit is not based on availability of Pension Fund. There is no question of pensioners dividing the Pension Fund or affecting the pro rata share on addition of new members to the Scheme. Right to get pension is obviously different from getting annuity on the basis of accumulated contribution. The Rules for grant of pension provide that an employee mentioned in a specified category shall automatically

be a member of the pension fund and is entitled to get pension on the date of his retirement. Amount of pension is to be determined as per the rules. That rule is modified and the petitioners seek relief on the basis of the amended rule on the ground that there cannot be any discrimination between the employees who retired prior to or after a particular date, as held in Nakara case. In case of an employee governed under the Pension Scheme, relations with the employer merely undergo a change, but are not snapped altogether. There is no new scheme of payment of pension, but it is only a revision of the existing Pension scheme of payment of pension, but it is only a revision of the existing Pension Scheme.

In *State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others*, , where a parity in pension and revision of pay was made for applying pre and post retirees, it was held that in the absence of any amendment to the definition of "emoluments", pre-revision retirees were not entitled to parity with post-revision retirees in the amount of pension. In *Pensioners' Assc., Ex-Assam Oil Officers and Others Vs. Union of India (UOI) and Others*, , considering the revision of pension and its application to previous retirees, it was held that they are entitled to the benefit under the said revised pension scheme in spite of the transfer of the management. In *Hari Chand and Others Vs. Faridabad Complex Administration and Others*, , a new pension scheme which has been introduced, it was held that those who retired prior to its introduction, are not entitled to the pensionary benefits.

15. From the aforesaid authoritative pronouncements, it only follows that as long as there is no introduction of any scheme afresh any change made in regard to the existing scheme which was applicable to employees, though retired, necessarily applies with all such variations and such retiree employees would be entitled to the extended benefits. In the present case, it is amply clear that neither new scheme has been introduced nor any new right is sought to be conferred. It is only a little liberalization extended to in a peculiar situation where the employee become entitled to an increment just a day next to the date of retirement such increment benefit is notionally sought to be added for the purpose of calculation of pensionary benefit under the scheme. In these circumstances, we hold that the aforesaid G.O. is applicable to the respondent in the appeal and the petitioner in the writ petition and they would be entitled to the benefit as conferred under the aforesaid G.O. Ms. No. 235, dated 27-10-1998. Hence, we do not find any merits in the writ appeal.

16. In the result, the writ appeal is dismissed and the Writ Petition No. 24002 of 2001 is allowed. No costs.