
(1991) 04 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 3174 of 1990

Gati Krushna Mishra

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-04-1991

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 17A(1)

Citation : (1991) 71 CLT 860 : (1991) 2 OLR 176

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; A. Mohanty, Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner is a retired Chief Justice of this Court. He had so retired on 31-10-1975. He is receiving his pension in accordance with the High Court judges (Conditions of Service) Act, 1954 (for short the Act") as amended by Act 38 of. 1986. He took up the case of entitlement of his wife to pension after his death. According to him, his wife would be entitled to a substantive pension of Rs. 1,125.00 per month along with other reliefs as would be admissible provided she survives the petitioner in view of what has been laid down in Section 17-A(1) of the aforesaid Act, as amended by Act 38 of 1986, which reads as below :

"Where a Judge, who being in service on or after the commencement of the High Court and Supreme Court judges (Conditions of Service) Amendment Act, 1986 dies, whether before or after retirement in circumstances to which Section 17 does not apply. Family Pension calculated at the rate of fifty per cent of the pension admissible to him on the date of his death shall be payable to the person or persons entitled thereto and the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period up to the date on which the Judge would have attained the age of sixty

five years had he survived, whichever is earlier, and thereafter at the rate of half of the family pension so admissible.

2. The case of the petitioner is that though in terms of the afore- said section benefits, of the same in so far as the entitlement of wife to pension is concerned applies to those Judges who were tot service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, this part of the statute is arbitrary and discriminatory and the benefit made available by the aforesaid section should accrue to those High Court Judges also who were not in service on the date mentioned in the aforesaid section. This contention advanced by the petitioner has been rejected by the Accountant General, who has held that the wife of the petitioner would be eligible to get family pension at the rate of Rs, 655.00 only per month. Feeling aggrieved at the reduction of the claim of the petitioner, this application under Arts. 225 and 227 of the Constitution of India has been filed.

3. The question for examination is whether the benefit made available by the aforesaid section would be available to the wife or the petitioner, even though he was not in service when the amendment Act came into force. The case of the petitioner is that the requirement of the section that to get benefit of it the Judge must have been in service when the amendment Act came into force is void being discriminatory and as such is hit by Art. 14.

4. In support of the case of the petitioner, Shri Misra has first referred to Bidhu Bhusan Mallik v. Union of India AIR 1983 All 209 in which case the question of eligibility of liberalised pension made available by the Act as amended in 1976 had come up for consideration, and the Division Bench of the Court held that the liberalised pension which was restricted to the Judges who had retired on or after the 1st day of October, 197- was unconstitutional, and the liberalised pension was made available to all the Judges irrespective of the date of retirement. In coming to this conclusion, strong reliance was placed on the epoch making decision of the apex Court in D.S. Nakara and Others Vs. Union of India (UOI), . The Union of India challenged this decision of the Allahabad High Court in Union of India v. Bidhu Bhusan Mallik AIR 1984 SC 1133 but the SLP was dismissed by the Apex Court,

5. Shri Misra has then referred to Smt. Laxmi Devi Vs. Union of India (UOI) and Others, which was dealt with the availability of pension under the Act as"amended by Act 38 of 1986. By relying on the earlier decision of the Court in Bidhu Bhusan Mallik (supra), which was upheld in appeal by the Supreme Court, it was held that the provision contained in the amending Act of 1986 restricting its applicability to the judges who were in service on or after the commencement of the amending Act was discriminator/ and as such liable to be struck down. Being of this view, the benefit of the Act as amended was nude available even to the judges who were not in service at the commencement of the same.

6. We have duly considered the aforesaid two decisions of the Allahabad High

Court and have in particular noted that the decision rendered in Bidhu Bhusan Millik's case was affirmed by the Supreme Court, and as the ratio of that case would apply to what has been stated about the offending words of the amending Act of 1986, we would respectfully, agree with what has been stated in Laxmi Devi (supra). This being the position we would direct the Accountant General (O.P. 2) to accept the claim of the petitioner regarding the entitlement of the pension of his wife as per the provisions of the Act as amended by Act 38 of 1986, more particularly what has been stated in Section 17-A(1) of the aforesaid Act.

7. The writ petition is allowed accordingly.

B.N. Dash, J.

8. I agree.