

(1985) 11 OHC CK 0007
In the Orissa High Court
Case No : O. J. C. No. 2495 of 1984

Harekrushna Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 15-11-1985

Acts Referred:

Citation : (1986) 61 CLT 75 : (1986) 1 OLR 4

Hon'ble Judges : J.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : B.H. Mohanty, in O. J. C. No. 2495/85 and S. Misra-2, in O. J. C. No. 913/85, for the Appellant; Additional Government Advocate and Addl. Standing Counsel in O. J. C. No. 2495/84 and Addl. Standing counsel in O. J. C. No. 913/85, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty, J.—The petitioners in both the cases were serving under the Government of Orissa and have retired from service prior to 1.4.1979. Petitioner No.4th O. J. C. No. 2495/64 is the Cuttack Retired Government Employees Association, a society registered under the Societies Registration Act, represented by its Secretary. The petitioners have challenged paragraph 5 of the resolution dated 14.1.1980 (Annexure-1) of the Government of Orissa in the Finance Department known as "Liberalised Pension Scheme", wherein the employees who have retired prior to 31.3.1979 have been deprived of the benefits of the said scheme. They have also challenged the subsequent restriction imposed in the resolution dated 11.4.1985 (Annexure-4) of the Government of Orissa in the Finance Department by which the liberalised pension rule has been made applicable to the pensioners retiring on or before 31.3.1979 with effect from 1.1.1985 though those retiring after that date have been made entitled to the liberalised pension with effect from 1.4.1979.

2. According to the petitioners, the liberalised pension scheme made by the Government of Orissa in Annexure I is on the basis of a similar resolution dated

25.5.1979 (Annexure-2) of the Government of India in the Ministry of Finance. In Annexure-2 the persons retiring before 31.3.1979 were not made entitled to the additional benefits allowed by the said resolution. The above limitation imposed was challenged before the Supreme Court. The Supreme Court by its judgment reported in D.S. Nakara and Others Vs. Union of India (UOI), directed that all pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1-1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those the retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. The petitioners have prayed that in view of the above decision of the Supreme Court, they are entitled to the liberalised pension scheme as per Annexure-1. with effect from 1.4.1979 like others who have retired after 31.3.1979. According to them, there cannot be any discrimination between the pensioners. The distinction between the pensioners retiring prior to 31.3.1979 and after 31.3.1979 is discriminatory and violative of Article 14 of the Constitution of India.

3. On the other hand, it is stated by the opposite party (State of Orissa) that by resolution dated 15.4.1985 (Annexure-4), the liberalised pension scheme has been extended to the pensioners who retired prior to 31.3.1979 with effect from 1.1.1985. The petitioners cannot claim as a matter of right that they would be entitled to the benefits of the liberalised pension scheme with effect from 1.4.1979. There is no question of discrimination or any violation of Article 14 of the Constitution.

4. The Supreme Court by its decision reported in A. I. R. 1933 S.C. 130 (supra) observed :

"...With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P. 1 and P. 2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under : In other

words, in Ext.P-1. the words :

"that in respect of the Government servants who were in service on the 31st March 1979 and retiring from service on or after that date and in Exhibit P-2, the words :

"the new rates of pension are effective from 1st April,1979 and will be applicable to all service officers who became/become non-effective on or after that date"

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part, it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. ..."

No doubt, following the Supreme Court decision, the Government of Orissa has extended the benefit of the scheme to the pensioners who have retired before 31.3.1979, but has imposed the restriction that the same would be available to them only from 1.1.1985 vide Annexure-4. Thus Annexure-4 has made discrimination between employees who have retired prior to 31.3.1979 and after that date inasmuch as the pensioners retiring after 31.3.1979 would be entitled to the liberalised pension scheme with effect from 1.4.1979, but others would get the same only from 1.1.1985. In view of the Supreme Court decision cited above, this is clearly discriminatory and hence unsustainable.

5. Considering the argument of both sides and in the facts and circumstances of the case, we declare that all pensioners governed by the Orissa Pension Rules, 1951 shall be entitled to pension as computed under the liberalised pension scheme from the specified date (1.4.1979) irrespective of the date of retirement. Arrears of pension prior to the specified date is not admissible. Let a writ to that effect be issued. However, we make it clear that the Government of Orissa is free to decide on the mode of payment of the arrears of pension prior to 1.1.1985.

6. These writ petitions are accordingly allowed. But in the circumstances of the case, there will be no order as to costs.

D.P. Mohapatra, J.

7. I agree.