(2000) 08 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 28774 of 1994 (S)

I.S. Kalappa — APPELLANT

Vs

Director General, Border Security Force, New Delhi and Others — RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 8 KarLJ 9

Hon'ble Judges : V. Gopala Gowda, J

Judgement

1. The petitioner was formerly working as a Security Guard in Border Security Force. Thereafter, he joined service in 4th respondent-Bharath Heavy Electricals Limited. He requested for settlement of pensionary benefits under Annexure-A2, dated 26-11-1985 in respect of the services rendered in B.S.F. as he was entitled to the same under C.C.S (Pension) Rules, 1972. The same was not considered till 1989. In the meantime, new pension scheme was brought into force with effect from 1-1-1986 by way of instructions fixing minimum pension at Rs. 375/-. The petitioner submitted representation seeking to extend the benefit of new scheme. However, the same was turned down under Annexure-A12, dated 11-12-1989 on the ground that petitioner had earlier opted for payment of lump sum payment on commutation of 100% pension. The same view was reiterated in Annexure-A13, dated 8-6-1990 and Annexure-A16, dated 5-10-1993. Being aggrieved by the same, the petitioner has filed this writ petition seeking to quash the aforesaid annexures and to declare that he is entitled to the minimum pension under the new scheme.

2. Statement of objections is filed on behalf of the respondents denying the claim of the petitioner. It is stated that since the petitioner has exercised the option to receive lump sum pension, the same had been paid and he is not entitled to the pension under the new scheme. Consequently, respondents have prayed for dismissal of the writ petition.

3. A similar case came up for consideration before the Supreme Court in the case of V. Kasturi v Managing Director, State Bank of India, Bombay, AIR 1909 SC 81. The matter had been considered and it has been clarified in paragraphs 21 and 22 of the said decision as under:

Category I "21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, 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 on all the members of the same class of the pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara''s case, D.S. Nakara v Union of India, AIR 1983 SC 130: (1983)1 SCC 305: 1983-I-LLJ-104 (SC): 1983 Cri. L.J. 164 (SC), would cover this category of cases.

Category II:

22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force 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. The decisions of this Court covering such second category of cases are: Commander, Headquarter, Calcutta v Captain Biplabendra Chanda, AIR 1997 SC 2607: (1997)1 SCC 208: 1997 AIR SCW 2564: 1997 SCC (L and S) 444 and others to which we have made a reference earlier, if the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But, if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit".

4. Learned Counsel for the petitioner submits that the case of the petitioner

comes under Category I while the learned Counsel for the respondents submits that the case falls under Category II as clarified in the aforesaid decision. According to the learned Counsel for the petitioner, since the petitioner was not a pensioner as on the date of coming into force of new scheme, since he had opted for lump sum pension, he was not entitled to the said benefit. The Counsel further submits that it was not open to the petitioner to turn round and claim the pension under new scheme after a lapse of 28 months.

5. After considering the rival contentions and the law laid down by the Supreme Court, I proceed to examine the case of the petitioner on merits. A reading of opening portion of paragraph 21 of the decision extracted above makes it clear that in order to be eligible for enhanced pension or more pension, two conditions are to be fulfilled, viz., (1) The retiring employee should be eligible for pension; and (2) He shall be survived till the time by subsequent amendment of the relevant pension scheme. It is not in dispute that the petitioner is entitled for pension. It is also not in dispute that petitioner was alive as on the date of coming into force of the new pension scheme. Thus, the petitioner has fulfilled both the conditions enumerated in Category I as clarified in the decision cited supra. Hence, the petitioner is entitled for the enhanced or revised pension under the new scheme from the date it came into force.

6. From the date of retirement in B.S.F. till the new pension scheme came into force, the petitioner is entitled to the pension as is being paid under CCS. (Pension) Rules, 1972. Since the petitioner has received the lump sum pension, the respondents have to workout the actual pension payable to the petitioner as indicated. In order to complete the process expeditiously, petitioner shall file an application claiming pension under the new scheme within four weeks from today. The same shall be disposed of by the concerned authority within six weeks thereafter.

8. Accordingly, this writ petition is allowed and the impugned orders/ communications are quashed with the above observations. After calculating the "pension under the new scheme from the date of entitlement upto date, if any difference amount is to be payable to the petitioner than the lump sum already paid, the same shall be paid to him within four weeks thereafter.

9. It is made clear that the relief granted to the petitioner is confined only to this case and the same shall not be construed as a precedent for other cases.

