(1985) 09 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 186 of 1984 (R)

Jai Prakash Dubey APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:
Constitution of India, 1950 — Article 14, 38(1), 41

Citation : (1985) PLJR 100

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : T.R. Bajaj and B.K. Dubey, for the Appellant; Ram Balak Mahto, Advocate General, for the Respondent

Judgement

S.B. Sanyal, J.—This petition is at the instance of a retired Assistant Head Master from S.S. High School, Simaria, who on his retirement on 1.4.80 at the age of 62 years, challenges clause (3) of the order of Government of Bihar, dated 2nd March, 81 contained in the notification no. 530, which relates to grant of pension to those non-government High School teachers retiring between 1.1.79 to 1.10.80. Clause (3) of the aforesaid notification reads:-

"For such teachers who have retired between 1.1.79 to 1.10.80 at the age of sixty two years, the benefits stated in para two above will not be acceptable."

To appreciate the dispute, it is necessary to state the background of the case.

2. Some time in the year 1962, Government introduced a scheme of pension for the teachers rendering service in private schools retiring at the age of 62 years. According to the said scheme, the teachers retiring at the said age were entitled to insuarance, provident fund and fixed pension of Rs. 75/-. On 29.11.78 (annexure-1) while considering the representation of the non-government Secondary school teachers, for payment of similar pension like the teachers of the government schools, government took a decision that in place of triple benefit scheme aforesaid, the teachers of non-government secondary school may

be allowed government pension, provided they retire at the age of 58 years instead of 62 years. Teachers giving their option before 31.12.78 to the effect that they would like to retire at the age of 58 and not at the age of 62 shall be entitled to regular government pension. Two years thereafter by an Ordinance no. 146/80, non-government schools were taken over and the retirement age under the ordinance was fixed at 58 years like the teachers in government schools and those teachers who continued beyond 58 years, were made to compulsorily retire. The question immediately arose as to what pension they shall be entitled to, because of compulsory retirement by virtue of take over. It was held by this court in C.W.J.C.no. 2441/80/disposed of on 1.10.80, that they should be deemed to have opted to retire by 31st December 1978 and they shall be entitled to pensionary benefit of the government scheme dated 29.11.78.

3. It will, therefore, be seen that (a) non-govt. school teacheas who retired from 1.4.78 to 31.12.78 were allowed government pension payable to Govt. teachers (b) teachers who opted to retire at the age of 58 years before 31.12.78 were also given the said benefit and (c) the teachers who did not opt with the hope to continue in service till the age of 62 years but were retired compulsorily on 17th November, 1980, the date of take over, were allowed government pension admissible to teachers of Govt. school.

4. Therefore, the persons who retired between 1.1.79 to 1.10.80 at the age of 62 and had opted to continue till that age and did not desire to retire at the age of 58, are to get pensionary benefit as obtainable in the year 1962, known as "Triple benefit" with a fixed pension of Rs. 75/-. The petitioner falls in this class and is being paid the pension at the rate of Rs. 75/- per month. The petitioner''s claim is, if the persons who retired between 1.4.78 and 31.12.78 even at the age of 62 years were entitled to the benefit of regular pension obtainable to Government servant, why shall the petitioner be deprived of the benefit merely because he did not opt for government petition by agreeing to retire at the age of 58 years (annexure-1). In short, the contention of the petitioner is that every body retiring between the period 1.4.78 till November 1980 should also be entitled to regular pension whether they retired at the age of 58 years or 62 years or at any age in between.

5. Mr. Bajaj, learned counsel appearing for the petitioner contended, firstly that leaving out a limited class of people retiring between 1.1.79 to 1.10.80 to the benefit of liberal scheme for pension is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. He further contended that a fixed pension of Rs. 75/- is against socio-economic justice and he cannot be deprived from the scheme of liberal pension and in this mailer the date of retirement is irrelevant. All the petitioners of non-government Secondary school teachers irrespective of their date of retirement must be allowed liberal scheme of pension as was done in C.W.J.C. no. 2441/80(R), decided on 1.10.80. Learned counsel relied in support of his contention on the case reported in D.S. Nakara and Others Vs. Union of India (UOI),

6. Mr. Ram Balak Mahto, learned Advocate General appearing on behalf of the State contended that the question of discrimination do not at all arise in this case. No body forced the petitioner not to opt for better pension. The petitioner out of-his sweet will chose the "Triple benefit Scheme" in order to enjoy the extended age of super-annuation therefore, he is bound by his option. The option of the petitioner was not interfered with by any legislative Act and or executive interference, as was done in C.W.J.C.no. 2441/80(R). In the said case, the option of 62 years was not allowed to operate and as such they were given the benefit of liberal scheme of pension. It is for this reason that they should be treated as a class falling in the category who either retired between 1.4.78 to 31.12.78 and/or who opted between the said period, to retire at the age of 58 years. C.W.J.C.no. 2441/80(R) is, therefore, clearly distinguishable. The submission of Mr. Bajaj that one Ramlakhan Singh was allowed the liberal government pension, even though his case is same and similar as that of the petitioner was replied to as being done under mistake and is being enquired into and if it is found that he falls in the zone as that of the petitioner, he will be treated alike the petitioner. Learned Advocate General further contended that the persons who opted to retire at the age of 62 years constitute a class by themselves, those who opted to retire at the age of 58 years constitute another class and those whose retirement was brought about by the force of statute, constitute the rest class. Persons falling in these three zones cannot complain of discrimination so as to attract article 14 of the Constitution. If there is any inter se discrimination in the aforesaid three classes, the court can interfere to rectify the same.

7. Having heard the learned counsel, I find considerable force in the argument of the learned Advocate General. The petitioner is bound by his option. He chose to serve till the age of 62 years and to take the triple benefit under Govt. scheme of 1902. He cannot complain that he should be paid the same pensionary benefit like those who opted to retire at the age of 58 years, nor can he complain any discrimination with respect to that class of persons who did not opt to retire at the age of 58 years but were per force retired by statutory interference. In C.W.J.C.no. 2441/80(R), it was held that as their option to retire at the age of 62 years was not allowed to run, they will be deemed as if they opted to retire at the age of 58 years. The said case is clearly distinguishable. So far as the complain of the petitioner, that one Ramlakhan Singh was allowed liberal pension, it has been submitted that the Government is taking steps to rectify the mistake. I am, therefore, not persuaded by the first point urged by the learned counsel, that the denial of liberal pension to the persons who retired between 1.1.79 to 1.10.80 is discriminatory in nature.

8. Coming to the second question of the learned counsel that fixation of pension at the rate of Rs. 75/- irrespective of rise in the price of commodities is arbitrary and against the very concept of socio-economic justice, I find some substance and it needs consideration. Articles 38(1) and 41 of the Indian Constitution, enjoins the State to strive to promote welfare of the people by securing and protecting, as effective as it may, a social order in which justice, social, economic

and political shall inform all institutions of national life. It further enjoins the State to secure public assistance in old age, sickness and disablement. It was such a "socialist state" which the preamble directs the centres of power, legislative, executive and judiciary to strive to set up. The basic framework of socialism is to provide a decent standard of life to the working people and specially provide security from cradle to grave. Article 41 obligates the State within the limits of its capacity and development to make effective provisions for securing right to work, to educate and to provide assistance in cases of unemployment, old age, sickness and disablement. Can it be said, that a fixed pension of. Rs. 75/- to a teacher who is exposed to vagaries of continuously rising prices, the falling value of rupee consequent upon the inflationary input is just and real. I think it is not based on any discernible rational principle and is wholly unrelated to the objectives sought to be'' achieved. It is true, that in the instant case, the petitioner is not denied the liberal scheme of pension from a specified date, which was under consideration in the case of D.S. Nakara and Others Vs. Union of India (UOI), . It is also true that the differential treatment to the petitioner did not relate to the date of his retirement but according to his own option to continue in service for four more years, all the same, in my opinion, a fixed pension of Rs. 75/- for all times to come is arbitrary, irrational illusory and violative of Articles 14,38(1) and 41 of the Constitution of India and contrary to the very concept of sovereign, socialist, secular democratic republic. The word "socialist" was introduced in the preamble of the Constitution by the 42nd amendment Act of 1976 for achieving the objectives of socio-economic revolution which would end proverty, ignorance and decease (objectives and reasonings for 42nd amendment Act, 1976).

9. I, while not agreeing with Mr. Bajaj on the first point, do direct the State Government to revise the scheme of fixed payment of Rs. 75/- formulated in the year 1962 to make it more viable and realistic and not a pittance of pension, bearing in view the mandate of the Constitution as envisaged under Articles 38(1) and 41 of the Constitution of India. The State Government must bear in mind as stated by the Supreme Court in the case of D.S. Nakara vrs. The Union of India (Supra) "that pension has a broader significance in that it is a measure of socio-eonomic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on saving. Pension is earned by rendering long and efficient service and is really a deferred portion of the compensation for service rendered and not a charity on behalf of the Government to the retired employees It is, therefore, directed that 1962 scheme of payment of Rs. 75/- as fixed pension needs revision as expeditiously as possible making it more humane and keeping in view the amount of pension paid to other teachers some of whom have even been fortunate to have retired at the age of 62 between the period 1.4.78 to 31.12.78 or some who were compuisorily retired while almost completing the age of 62 years by the take over ordinance. In the result, this application is disposed of with the directions indicated above, to be carried out

preferably within six months.