

(2002) 03 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 22470 of 1997 (S)

K. Narayana Mayya

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Life Insurance Corporation Act, 1956 — Section 48 (2) (ec)

Citation : (2002) 4 KarLJ 369

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Ashok Haranahalli, for Respondent - 1 and Brahmarayappa, for Respondent - 2, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—The petitioner, a party-in-person is questioning Rule 9(1) of the Notification dated 18-7-1996 styled as "Life Insurance Corporation of India Class I Officers" (Revision of Terms and Conditions of Service) (Amendment) Rules, 1996", vide Annexure-A. The petitioner is also questioning Instruction 11 of the "Life Insurance Corporation of India Class I Officers" (Revision of Terms and Conditions of Service) Instructions, 1996", vide Annexure-B, insofar as it relates to the fixation of date as 1-8-1994 for payment of gratuity as violative of Article 14 of the Constitution of India. The petitioner is also seeking for a direction to recalculate the gratuity payable to the petitioner on the basis of such rules and pay as per 1996 pay scale rules.

2. The petitioner entered the service of the Life Insurance Corporation of India as an Assistant on 23-5-1958. He became an officer on 29-10-1966 in the cadre of Assistant Administrative Officer and thereafter he was designated as Administrative Officer in the year 1976. A promotion was given to the petitioner in the year 1984 as Assistant Divisional Manager. A subsequent promotion was given as a Divisional Manager in the year 1991. The petitioner retired from

service on 30-6-1994. The petitioner states that the revision of pay was done by the Life Insurance Corporation during the year 1985, making it effective from the year 1983. Pay scales were revised during 1989 and the same was made effective from the year 1987. In both these revisions, for the purpose of increasing the pay and payment of gratuity, same day has been taken into account uniformly, without fixing a different date for revision of pay and gratuity. In the year 1996, revision of pay was done as per the rules called "Life Insurance Corporation of India Class I Officers" (Revision of Terms and Conditions of Service) (Amendment) Rules, 1996, Annexure-A. Annexure-B was issued providing for application and eligibility by way of instructions. In terms of 1996 Rules as well as 1996 instructions, no arrears of pay is payable for the period from 1-8-1992 to 31-3-1993 to the officers. The petitioner states that the 2nd respondent has acted in an arbitrary manner by not extending the benefit of gratuity with effect from 1-8-1992 and instead of a grant from 1-8-1994. According to him, Clause 11 provides for no increase for those who retire prior to 1-8-1994 is arbitrary and illegal.

3. Notice was issued and the respondents have entered appearance. They justify their action. They say that u/s 48(2)(ec) of the LIC Act, the Central Government is empowered to issue rules providing for the terms and conditions of service of the employees of the Corporation. While determining the terms and conditions of service of the employees of the Corporation, the Central Government keeps in view the terms and conditions of service applicable to the employees of other Public Sector Financial Institutions especially in the Banking Industry. Before the impugned notification dated 18-7-1996, was issued by the Central Government, elaborate discussions were held between the Corporation and the Federation of the LIC of India Class I Officers" Association. It was only thereafter the present notification was issued. They say that the grant of gratuity from 1-8-1994 has the concurrence of the federation of the Class I Officers" and it is based on the banking sector. They want the petition to be dismissed.

4. The party-in-person appears before me. He reiterates the facts and grounds raised in the petition. He places before me a judgment of the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), . He has also filed a chart showing how the cut-off date imposed by the respondent would affect the petitioner. According to the chart, the petitioner states that equals are treated unequally in violation of Article 14 of the Constitution of India. He further says that all officers on 1-8-1992 share the burden in the right proportion. All are to be treated equally.

5. Per contra, the Counsel for the LIC contends that no arbitrariness is done in the case on hand, He relies on the judgment of the Gujarat High Court in identical circumstances in the case of LIC Class I Retired Officers" Association v. Government of India . He also relies on another writ petition in the case of Retired Insurance Employees" Association and Ors. v. Union of India. The Counsel also has placed some reliance on several judgments to which I am

adverting to in my subsequent para graphs.

6. The only question that requires consideration by this Court is as to whether Rule 9(1) and Instruction 11 of the Instructions (Annexure-A and B) are required to be set aside as violative of Article 14 or not. It is necessary to quote Rule 9. which reads as under:

In Rule 9--

(1) After sub-rule (5), the following explanation shall be inserted, namely.--

"Explanation.--For the purpose of this rule the provisions of Rule 4 shall be deemed to have come into force on the 1st day of August, 1994".

After Rule 9 of the said Rules, the following rule shall be inserted and shall be deemed to have taken effect from the 1st day of November, 1993.

Instruction 11 reads as under:

"11. Gratuity.--There is no revision in the rate of gratuity payable to a Class I Officer but for the purpose of calculating gratuity, the revised scales of pay shall only be effective from the 1st day of August, 1994 or the date of actual fixation in the revised scales, whichever is later. In view of this, in the cases of those who have retired prior to 1st August, 1994 there shall be no change in the amount of gratuity already paid. In these cases the difference, if any, can only be to the extent of gratuity calculated on the basis of the increment for computerisation or the increment component included in the Fixed Personal Allowance that is now granted in terms of the provision of Rule 9-A of the Revision Rules and para 13 of these instructions".

7. A combined reading of these two would show that those who retired prior to 1-8-1994 would not have the benefit of the revised pay structure. It is necessary to refer to the case-laws on the subject. Leading case is D.S. Nakara, supra. The Supreme Court in the said case has ruled that the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. The Court ruled as under:

"The fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. The doctrine of classification was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can

only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. . . . Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later".

8. The Supreme Court in *All India Reserve Bank Retired Officers Association and others Vs. Union of India and others*, , has noticed *D.S. Nakara's* case, *supra* and thereafter ruled that the choice of cut-off date which has been introduced is open to scrutiny by the Court and must be supported on the touch-stone of Article 14. If the choice of the date results in classification or division of members of a homogenous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof.

9. The Supreme Court in *V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another*, , has ruled that if any amendment results in a new class of employees, it would not be a case of class discrimination.

"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 enhanced pension or 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 pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. . . . 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".

10. The latest judgment in *Subrata Sen and Ors. v. Union of India and Ors.* 2001 3 SCC 1237, has ruled that the State is to give pensionary benefits to the petitioner (in that case) on the basis of a notification dated 10-3-1995 by deleting the words "retiring from December 1994 onwards". The Supreme Court has ruled that in case of an employee governed under the Pension Scheme Rules that the employer merely indicates a change but not snapped altogether. There is no new scheme of payment of pension, but it is only a revision .of the existing pension scheme. In the light of this clear pronouncement of law, let me see as to whether a case of violation of Article 14 is made out or not. Admitted facts reveal that the pay revision is done after retirement of the petitioner and it was made effective from 1-8-1992 but the said pay revision is denied for the purpose of payment of gratuity. Rule 9 provides that it has come into force only from 1-8-1994 and Regulation 11 states that in case of those who are retired prior to 1-8-1994, there shall be no change in the amount of gratuity. The respondents in their statement of objection have explained the circumstances, resulting in this situation. They have stated in para 4 that several rounds of discussions were held between the Federation and the Corporation and thereafter, it was decided that the revision of gratuity would be applicable only from 1-8-1994. This was the pattern available in the banking sector as well. This is also stated that a performing institution like LIC should resolve its own pattern of emoluments of its employees on its capacity to pay and other relevant factors like, tremendous growth and financial strength of LIC. The idea was particularly relevant in the context of the effects of liberalisation. The Corporation has stated in unmistakable terms that the denial of gratuity for pre 1-8-1994 period has the sanction of the Federation. It is a decision taken with the facit approval in terms of the objection statement of the LIC. In this connection, it is also necessary to notice a judgment of the Gujarat High Court, which has decided this very question in *LIC Class I Retired Officers" Association"s case*, supra. The very cut-off date was challenged by the LIC Class I Retired Officers" Association. In the said case, the Court noticed the facts resulting in the present cut-off date.

11. A reading of the objection statement in the light of these judgments would make it clear that it is not as though this cut-off date was introduced for the purpose of denying gratuity to the petitioner. The factors like costs of administration and interest of the policy holders have been taken into consideration by the Board. In the said case, the petition was dismissed in similar circumstances by the Gujarat High Court. The only difference between this case and that case is that in this case, the Rule is challenged. In the light of the facts narrated above, it cannot be said that Instruction 11 is arbitrary or unsustainable. Materials have been placed before the Court and the said decision has been taken taking into consideration the economy of LIC in consultation with the Federation. The challenge to the cut-off date by the association representing LIC Class I Retired Officers" Association is rejected in the year 1997 in another case in *Retired Insurance Employees" Association*, supra. The cut-off date of

1-1-1986 was challenged as discriminatory in the matter of grant of pension. Nakara's case, supra, was pressed into service. After noticing Nakara's case, supra and the subsequent judgments, the Calcutta High Court has ruled in para 19 as under:

"The retired employees have to lay the foundation for establishing a right of getting pension. In the absence of any right as such, they cannot claim that a new scheme which was introduced for the benefit of serving employees should be made applicable to them. Their only grievance could be the arbitrariness in fixing the cut-off date. With regard to the cut-off date enough explanation has already been given by the respondents. If by fixing a cut-off date on arbitrary exercise of power or without any proper application of mind, an artificial division of a homogenous group, not based any logic or rational or having any nexus to the object sought to be achieved has been created, such artificial creation undoubtedly offends Article 14 of the Constitution of India. There is no doubt whatsoever that wherever the State promulgates or brings into force any new rules or regulations having the force of law, the choice of the cut-off date which, by the very nature of the things has to be introduced to effectuate such benefits is always open to scrutiny by the Court and must be supported on the touch-stone of Articles 14 and 16 of the Constitution of India. If the choice of the date results in a classification which is impermissible or which is not based on objective criteria, and which created irrational classification or forms division of members of a homogeneous group, contrary to the mandate of Articles 14 and 16 of the Constitution of India, it would be open, to the Court to insist that it be shown that the classification is based upon intelligible differentia and has a direct nexus to rational considerations and the purpose and object sought to be achieved. The differential and separate treatments given to those who retired prior to a specified date and those who retired subsequent thereto, must therefore be explained on the touch-stone of Article 14, otherwise it would be contrary to the concept of equality before law".

The Court again in para 21 has considered this very question and rejected the discriminatory theory.

"Coming to the argument of the learned Advocate for the petitioners that the LIC has the means to pay the pension to the petitioners and others who retired before 1st January, 1986 and that the LIC is also maintaining the records of all such pre-January 1986 retirees, it has to be clearly stated that the considerations of the capacity to pay or the maintenance of records are not relevant to the issues involved in this case. The main stay of the petitioner's grievance revolved around the charge of discrimination, as being opposed to Articles 14 and 16 of the Constitution of India. In support of this charge, the requirement is for the petitioners to assert, that they had a right to be treated at par with post-January 1986 retirees. In the light of the observation made in earlier parts of this judgment, it has clearly been found and held that neither the petitioners succeeded in proving nor establishing that any hostile discrimination was

practiced against them by the respondents nor could they establish or assert any vested right in being treated at par with post-January 1986 retirees. In other words, once it is found and held that the classification of the former LIC employees, for the purpose of their entitlement to receive pension, based on the cut-off dated of 1-1-1986 was objective, and reasonable as well as legitimate, the Court is not required to go into any question relating to the capacity of the LIC to grant pension or the fact that the LIC is still possessed of the records of all pre-1986 employees. Undoubtedly, in the body of the writ petition, the petitioners have furnished elaborate figures and submitted detailed facts regarding the means of the LIC in order to prove and establish that LIC is a profit making organisation and that sufficient funds are available for it to pay pension to even pre-1986 retirees, the fact still remains that unless, either the petitioners had a right to receive pension or that they could successfully establish discrimination against them, no directions can be issued for including them in the list of such retirees who are entitled to receive pension"".

12. In the light of these two judgments, it cannot be said that the denial of gratuity to the pre-1994 retirees is violation of Article 14 of the Constitution of India. If the twin tests of classification being founded on an intelligible differentia having a rational nexus to the object sought to be achieved is shown to the Court in the detailed statement of objection and this statement is accepted somewhat in identical circumstances in two judgments referred to above. Therefore, I have no hesitation in he (sic) that on the facts of this case, no ground? are made out for any interference. On the facts of this case, it cannot be said that there is class discrimination as in the case of V. Kastun, supra. Similarly the judgment of the Supreme Court in the case of Subrata Sen, supra, with regard to the pension is also not applicable to the facts of this case. In that case, the Supreme Court was considering with regard to non-availability of a new scheme. It was in those circumstances, the Supreme Court, in the absence of any scheme ordered deletion of the words "retiring from December 1994 onwards". Looking from any angle, no case is made out by the petitioner in the case on hand.

13. Moreover, this Court is firmly of the view that the terms of employment, if introduced with the implied or express approval of the Federation cannot be struck down, at the instance of a single employee, thereby unsettling a settled issue causing financial embarrassment to the LIC.

14. In the result, this petition stands rejected. Parties to bear their respective costs.