

(2002) 02 DEL CK 0101
In the Delhi High Court
Case No : LPA No. 448 of 1999

Kailash Nath Singhal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Citation : (2002) 6 AD 38 : (2002) 97 DLT 602 : (2002) 64 DRJ 209 : (2002) 2 LLJ 1048

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : A.K. De, for the Appellant; Chandrika Shah, Piyush Sharma and Raj Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.

1.The Appellant is dissatisfied with an order dated 30th August, 1999 passed by a learned Single Judge of this Court dismissing his writ petition being CW No.3830/1999. The Appellant was compulsorily retired from the services of the Punjab National Bank (for short the Bank) on 21st February, 1991. The compulsory retirement was a punishment for misconduct. The punishment has been accepted by the Appellant and is not a matter in issue. Subsequently however, the Bank came out with a pension scheme and, as a result of the punishment, the Appellant was not entitled to pension and that is why he filed a writ petition in this Court claiming pension. Therefore, the issue before us is whether the denial of pension is legally sustainable or not.

2.Sometime in the early 1990s, negotiations took place between the workmen and employees of various banks and the Indian Banks Association. During these negotiations, an agreement was reached between the parties whereby the Indian Banks Association agreed to introduce a pension scheme in lieu of the employers contribution to the provident fund. This agreement, u/s 2(p) and Section 18(1) of

the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 was reduced to writing on 29th October, 1993. Clause 1 and Clause 2(iii) of the Settlement are relevant for our present purposes and they read as under:-

"1. The member banks set out in the schedule 1 hereto shall introduce pension as second retirement benefit scheme in lieu of contributory provident fund where it does not exist for the workmen employees of the member banks with effect from 1st November, 1993.

2. Pension as a second retiral benefit scheme in lieu of contributory provident fund shall be available to the following category of employees/ retired employees from 1st November, 1993 or the date of retirement, whichever is later.

(i) & (ii) xxx xxx xxx

(iii) Retired employees who were in service of the bank/merged bank on or after 31st December, 1985 and retired on or after 1st January, 1986 but before 1st November, 1993 provided that such retired employees apply for it on their own on the format prescribed by each bank and refund within a period of six months reckoned from 1st November, 1993, the bank's entire contribution to the provident fund including interest received with further simple interest at the rate of 6 percent per annum from the date of withdrawal of the provident fund amount till the date of refund.

(iv) xxx xxx xxx"

3. The Bank was one of the 58 banks which had agreed to implement the pension scheme, and there is no dispute about this.

4. Clause 11 of the Settlement, reads as follows:-

"11. Actual payment of pension in all cases shall commence from 1st November, 1993."

5. A bare perusal of the aforesaid clauses shows that it was agreed that the pension scheme was to be operational from 1st November, 1993.

6. Clause 8 of the Settlement permits the withholding of the benefits of the pension scheme, subject to certain conditions. This reads as follows:-

"8. Conditions on which pension in part or full can be withheld or withdrawn shall be set out in the Scheme to be formulated in terms of this Settlement."

7. pursuant to the Settlement dated 29th October, 1993, the Bank formulated the Punjab National Bank (Employees) Pension Regulations, 1995 (for short the Pension Regulations). The Pension Regulations were published in the official Gazette on 29th September, 1995 (which is the notified date).

8. The application of the Pension Regulations is dealt with in Regulation 3, the relevant portion of which reads as follows:-

"3. Application

These regulations shall apply to employees who, -

1(a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

(2) to (9) xxx xxx xxx"

9. The bone of contention between the parties is with regard to Regulation 33 which reads as under:-

"33. Compulsory Retirement Pension

1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

2) & 3) xxx xxx xxx"

10. The Appellant had prayed, in his writ petition, for a declaration that Regulation 33(1) of the Pension Regulations is unconstitutional. However, it appears that during the hearing of the writ petition, the Appellant was aggrieved only by the fixing of the cut-off date of 1st November, 1993. According to the Appellant, there was no reason why persons who had been compulsorily retired by way of punishment after 1st November, 1993 were granted pension while those who had been compulsorily retired before this date (like the Appellant) were denied pension. According to the Appellant, there was no rationale in fixing the cut-off date of 1st November, 1993. The learned Single Judge disagreed and concluded that the date of 1st November, 1993 had not been arbitrarily fixed by the Bank and, Therefore, dismissed the writ petition.

11. Learned counsel made their submissions over a period of time on 8th, 23rd, 28th and 31st January, 2002 when judgment was reserved.

12. Before us, learned counsel for the Appellant reiterated his contention that there was no rational basis in fixing the cut-off date of 1st November, 1993. It was contended that this made that part of the Pension Regulations

unconstitutional which denied pension to his client. Reliance was placed by him on D.S. Nakara and Others Vs. Union of India (UOI), . If this contention is upheld, the Appellant says that he will be entitled to pension from the Bank.

13. Learned counsel for the Bank contended, on the other hand, that Nakara was clearly distinguishable inasmuch as the pension scheme was created out of a pension fund, which in turn was constituted, inter alia, out of the Bank's contribution to the provident fund with interest accrued thereon and the amounts refunded by the employees. It was contended that the decision of the Supreme Court in Krishena Kumar and Others Vs. Union of India and others, was more apposite to the facts of the present case.

14. We need not dwell upon Nakara because it was considered by the Supreme Court in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, . In paragraph 8 of the Report, the Supreme Court said:-

"There is no doubt that whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12 of the Constitution, the choice of the cut-off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touchstone of Article 14. If the choice of the date results in classification or division of members of a homogeneous 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. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution. This is quite clear from the ratio of Nakara case as well as the decision of this Court in B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, ."

15. It was further said in paragraph 10 of the Report:-

"Nakara judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making

process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc."

16. What Nakara decided was also stated in *State of West Bengal and Others Vs. Ratan Behari Dey and Others*, . In paragraph 7 of the Report, the Supreme Court stated that "The precise principle enunciated in Nakara has been duly explained in *Krishena Kumar* by a coordinate Bench." Thereafter, in paragraph 10 of the Report, the Supreme Court stated:-

"As rightly pointed out in *Krishena Kumar*, Nakara was a case where an artificial date was specified classifying the retirees, governed by the same Rules and similarly situated, into two different classes, depriving one such class of the benefit of liberalised Pension Rules. It was found in that case that the specification of the date (from which the liberalised Rules were to come into force) was arbitrary."

17. With this in mind, the Supreme Court held in paragraph 7 of the Report that:-

"Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf."

18. The above passage was cited (with approval) by the Supreme Court in *State of Rajasthan and another etc. Vs. Amrit Lal Gandhi and others etc.*, . The

Supreme Court in Amrit Lal Gandhi also cited (again with approval) the following passage appearing in Union of India Vs. P.N. Menon and others, , :-

"Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post- retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat", as was said by this Court in the case of D.R. Nim, I.P.S. Vs. Union of India (UOI), in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

19. The Supreme Court once again considered the law on the subject in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, . The last word, it appears, has been said in paragraphs 21 to 23 of the Report, where it is held as under:-

"21. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over the years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of 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. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

Category II

23. 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 the 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 Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, and Government of Tamil Nadu and another Vs. K. Jayaraman, 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 the 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 the coming into operation of the new scheme would disentitle him from getting such a new benefit."

20. On the basis of the law laid down by the Supreme Court, we are required to consider whether the pension scheme propounded in the Pension Regulations is a new scheme vis-a-vis employees who have been compulsorily retired by way of punishment, or is it a revision of an existing scheme.

Learned counsel for the Appellant did not contend that a pension scheme had existed prior to 1st November, 1993 in respect of those employees who were compulsorily retired by way of punishment, or that his client was entitled to any pension prior to 1st November, 1993. No such case was orally made out before the learned Single Judge or even in the writ petition. We have, Therefore, no option but to proceed on the basis that a pension scheme was first introduced for employees compulsorily retired by way of punishment only through the Pension Regulations. As such, the Appellant falls in Category II identified in Kasturi and his appeal deserves dismissal.

21. There can, however, be no doubt that employees of the Bank who have been compulsorily retired by way of punishment form a homogenous group or are a class apart. To that extent, their date of compulsory retirement is irrelevant. Therefore, can it be said that dividing this group into two categories, that is those compulsorily retired before 1st November, 1993 and those after, creates an artificial or arbitrary classification? The answer to this question depends on whether the cut-off date was arrived at on some rational basis or whether it was plucked out of thin air.

22. There is more than enough intrinsic evidence to show that the cut-off date was not arbitrarily fixed. For one, the Settlement between the management of 58 banks represented by the Indian Banks Association and their workmen

represented by the All India Bank Employees Association had agreed, as per Clause 1 of the Settlement, on the cut-off date of 1st November, 1993. This date, as a cut-off, was reiterated in Clause 2 of the Settlement. In fact, several other clauses of the Settlement (such as Clauses 10, 11 and 13) provide that 1st November, 1993 be treated as the cut-off date for employees contribution to the provident fund, payment of pension and calculation of dearness allowance. Both the parties to the Settlement have consciously and deliberately chosen 1st November, 1993 as the cut-off date for determining their rights and liabilities.

23. Learned counsel for the Bank had handed over to us a document called "Joint note on agreed conclusions reached between All India Bank Officers' Confederation and Indian Banks Association." This note was signed and executed on 29th October 1993 that is the same date as the above Settlement. This document also accepts 1st November, 1993 as the cut-off date for several purposes.

24. It cannot, Therefore, by any stretch of imagination be said that the date of 1st November, 1993 was arbitrarily or whimsically arrived at or that it created an artificial distinction within a homogenous group. Indeed, if the Pension Regulations were to take effect from a date which was not in close proximity to 1st November, 1993 then that date could more plausibly be said to have been arrived at arbitrarily or whimsically.

25. Learned counsel for the Appellant did contend that the Pension Regulations were intended to confer a second retiral benefit on the employees of the Bank, in lieu of the employers contribution to the Provident Fund. It was submitted that this being so, it hardly matters what the date of his clients compulsory retirement is - he should be made entitled to pension like others similarly placed, except for the date of compulsory retirement.

26. At first blush, this argument looks attractive. But, one cannot lose sight of the fact that the cut-off date was arrived at after due deliberations and negotiations between the affected parties, one of whom represented the interests of the Appellant. The agreement between the parties, which is statutory in nature, cannot be varied at the instance of one, or a few of the employees who were (in any case) adequately represented through the All India Bank Employees Association. The compromise is binding on both the parties and those whom they represent until and unless the terms thereof are changed mutually. It is not possible to hazard a guess about what weighed with either of the parties to the Settlement to agree that those who had been compulsorily retired by way of penalty prior to 1st January, 1993 will not be entitled to pension. But, whatever the reason, the decision of both the parties in this regard has to be respected.

27. Keeping out those who were compulsorily retired by way of punishment prior to 1st November, 1993 from the scope of the Pension Regulations appears to have been deliberate and not an error or omission. This is so because Clause 8 of the Settlement specifically mentions that conditions can be formulated to

withhold or withdraw pension in respect of some of the employees. It was, Therefore, postulated that some categories of employees will be left out of the pensionary benefits or that pensionary benefits will not automatically be granted to all employees who were in employment with the Bank as on 1st January, 1986. It is in pursuance of Clause 8 of the Settlement that the category that we are concerned with was left out of the ambit of the Pension Regulations. Regulation 33 of the Pension Regulations effectively traces its roots to Clause 8 of the Settlement and to that extent it cannot even be held to be beyond the scope of the Settlement much less being arbitrary or vocative of Article 14 of the Constitution. In this context, learned counsel for the Bank rightly submitted that "No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled .Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these." (V.T. Khanzode and Others Vs. Reserve Bank of India and Another, of the Report).

28. We have already held that the cut-off date of 1st November, 1993 was not arbitrarily fixed, or plucked out of thin air. That the cut-off date agreed to by those representing the Appellant actually works to his detriment, cannot be helped. In any scheme a cut-off date has to be fixed and we see nothing wrong in the Bank having fixed the cut-off date (as indeed several other banks have) as 1st November, 1993. On the other hand, if the contention of learned counsel is taken to its logical conclusion, the date of 1st January, 1986 (for being in the service of the Bank) mentioned in Regulation 3(1) of the Pension Regulations may also have to be struck down. Surely, this was not intended or contemplated by either of the parties to the Settlement.

29. Learned counsel for the Appellant placed strong reliance on Canara Bank, Head Office, J.C. Road, Bangalore Vs. B.M. Ramachandra and Others, to contend that his client is entitled to pension for the same reasons which weighed with the Karnataka High Court in granting pension to the Respondents in that case, that is those who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993.

30. In Ramachandra, some employees had taken voluntary retirement from Canara Bank between the two dates abovementioned. Pursuant to the Settlement (which is the same as in the present case), a pension scheme was formulated by Canara Bank. This pension scheme was made applicable to only those employees who had voluntarily retired on or after 1st November, 1993. This cut-off date was challenged by the Respondents, as in the present case. A learned Single Judge of the Karnataka High Court held that the Respondents were entitled to pensionary benefits under the pension scheme even though they had taken voluntary retirement prior to this date. This was upheld by the Division Bench of the Karnataka High Court.

A careful reading of Ramachandra shows that there are several differences between that case and the present case.

a) The Respondents in Ramachandra had taken voluntary retirement under the existing Canara Bank (Officers) Service Regulations, 1979 which permitted an employee to take voluntary retirement, though without pension (pages 632 and 638 of the Report).

b) Pursuant to the Settlement dated 29th October, 1993 the Board of Directors of Canara Bank adopted draft pension regulations provided by the Indian Banks Association. Persons who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 were treated as eligible for pension under the draft regulations. Not only this, both the employees and Canara Bank had acted on these draft regulations on the basis that they were applicable to employees who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 (page 633 of the Report). It was only after the draft regulations were formally adopted by Canara Bank in 1995 that the employees were told that they were not entitled to any pension.

c) Although Canara Bank did say that the draft Regulations underwent some modifications before its final formulation, the Karnataka High Court found that "There is nothing on the record to show that the draft Regulations which held the retirees like the writ petitioners entitled to the grant of pension were changed or modified either by the Central Government or by the Reserve Bank of India." (Page 644 of the Report).

d) The Karnataka High Court also noticed that the

financial liability on Canara Bank was not so huge, which if accepted would frustrate the pension scheme (page 643 of the Report).

31. Taking all these factors into consideration, it was held on page 646 of the Report:

"The appellants have not referred to the existence of any circumstances or conditions which can be considered to be a ground for the change of the conditions of the statutory settlement arrived at between the parties. The draft Regulations, as earlier noted, were rightly understood by the parties concerned to confer the benefit of the Pension Scheme to the retirees of the banks prior to 1-1-1993 as well. Any other and contrary interpretation of the Pension Regulations would amount to frustrate the statutory settlement arrived at on 29-10-1993..."

32. Thereafter, it was held:

"The distinction sought to be drawn by the appellants with respect to the retirees before 1-11-1993 and retirees thereafter appears only to be imaginary and not real. The draft Pension Regulations were held applicable to the persons like the writ petitioners and the same were enforced obviously without any amendment

or alteration, w.e.f. 29-9-1995. The learned Single Judge was Therefore right in holding that the Regulations were applicable to all the employees who had opted for voluntary retirement notwithstanding the cut-off date of 1-11-1993"

33. The Karnataka High Court also noted that pensionary benefits were granted in similar circumstances to employees of the Reserve Bank of India and the Life Insurance Corporation of India. On these bases, the Respondents in Ramachandra were held entitled to pensionary benefits.

34. Unfortunately for the Appellant, none of these facts exist in the present case. Even if they are present, they have neither been pleaded nor brought to our notice. Ramachandra is clearly distinguishable and cannot be of assistance to the Appellant.

35. We may mention that in Bank of India v. Rajagopalan and Ors., (2000) 1 LLJ 1617SC the Supreme Court declined to interfere with the directions given in Ramachandra. Apart from other things, what appears to have weighed with the Supreme Court in Indu Rajagopalan is that there was no significant financial or other burden on the appellant banks.

36. Taking a cue from what was said by the Supreme Court in Indu Rajagopalan, we did inquire from learned counsel for the parties about the financial impact that a decision in favor of the Appellant would have. Neither counsel was in a position to enlighten us on this, except to say that hardly 3 or 4 similar cases were pending in this Court. We, Therefore, take it that the financial burden on the Bank is not considerable. Even then, we do not find it possible to decide in favor of the Appellant and others like him. For one, we are of the view that the law is not in favor of the Appellant. We cannot brush aside the legal position only because there is little or no financial burden on the Bank. We do not have such a power. Nor can we be asked to take a compassionate view of the matter, as submitted by learned counsel for the Appellant, because it is entirely within the domain of the Bank whether or not to view the case of the Appellant and others like him with compassion.

37. We may mention for the record that learned counsel for the Bank contended that the Pension Regulations actually create a "fund" (as defined in Regulation 2(q) read with Regulation 5 of the Pension Regulations) and Therefore, the case is governed by Krishena Kumar rather than Nakara. However, since we have held that Nakara is not applicable to this case, we refrain from expressing any opinion on the view canvassed.

38. For the reasons mentioned above, the appeal is dismissed but with no order as to costs.