

(2000) 08 CAL CK 0062

In the Calcutta High Court

Case No : A.P.O. No's. 327 and 328 of 1992 in M. No's. 3672 of 1990 and 4113 of 1991

Kamalandu Roy and Others

APPELLANT

Vs

Calcutta Improvement Trust and Others

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Calcutta Improvement Act, 1911 — Section 31
Constitution of India, 1950 — Article 14

Citation : (2002) 4 LLJ 270

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Barin Ghosh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C. J.

1. Both these appeals arise out of an order passed by the learned single Judge dated December 5, 1991, whereby the learned single Judge has dismissed both the writ petitions filed by the appellants. Aggrieved against this order passed by the learned single Judge both these appeals have been preferred by the appellants. For convenient disposal of both these appeals it is necessary to narrate necessary facts. The petitioners are the employees of the Calcutta Improvement Trust and they retired from service prior to January 1, 1982. They prayed for a writ of mandamus against the Calcutta Improvement Trust under the Calcutta Improvement Trust Employees" (Death-cum-Retirement Benefit) Rules, 1988 (hereinafter referred to as "the Rules of 1988"), for grant of benefit of pension scheme. It is alleged that all the employees should be granted the benefit of the pension scheme ignoring the cut-off date, i.e., January 1, 1982, appearing in Rule 1(2) in Chapter 1 of the said Rules. It may also be relevant to mention that the State Government superseded the board of trustees under the Calcutta Improvement Trust and a new enactment called the Calcutta Metropolitan Development Authority constituted u/s 3 of the Calcutta

Metropolitan Development Authority Act, 1972. It is alleged that the Calcutta Improvement Trust prepared a scheme for grant of death-cum-retirement benefits and framed rules known as the Calcutta Improvement Trust Employees" (Death-cum-Retirement Benefit) Rules, 1988, and the same were sanctioned by the State Government on or about December 7, 1988. The Rules came into force with effect from January 1, 1982. Therefore, the grievance of these employees, who are earlier provident fund holders, that the pension scheme which has been made effective from January 1, 1982, should also be made applicable to all the employees who have retired prior to January 1, 1982, and this artificial cut-off date, i.e., January 1, 1982, is arbitrary and should be struck down. The stand of the State Government was that the fixation of the cut-off date as January 1, 1982, is not arbitrary. It is submitted that the then Calcutta Improvement Trust sent the scheme in 1982 and it was approved by the State Government in 1988, therefore, it has been made applicable from the 1st day of January, 1982. It was also contended that in the background of the financial resource and constraint of the Trust and other reasons assigned by the Trust, Government decided to give approval to the cut-off date from January 1, 1982, and could not give beyond the said date. It was further submitted that the employees who have retired from January 1, 1982, to September 7, 1988, when the Rules came into force were given an opportunity to exercise their option and those who exercised their option have been given the benefit of the pension scheme and those who did not exercise their option they were given the retirement benefits in full. The State Government also denied that the fixation of the cut-off date is arbitrary or whimsical or was an attempt to create two classes of employees. It was also submitted that the cut-off date was arrived at after consultation with all unions and officers association. In the light of the facts the learned single Judge examined the matter at length and came to the conclusion that the fixation of the cut-off date with effect from January 1, 1982, is not arbitrary or irrational so as to be declared ultra vires hence he dismissed both the writ petitions. Aggrieved against this order both these appeals have been preferred by the appellants.

2. Learned counsel for the appellant submitted that the fixation of this cut-off date is artificial and arbitrary and has no nexus to achieve. In this connection, learned counsel for the appellant invited our attention to R.L. Marwaha Vs. Union of India (UOI) and Others, T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, ; M.C. Dhingra Vs. Union of India and Others, ; Dhan Raj and Others Vs. State of Jammu & Kashmir and Others, . As against this learned counsel for the respondent has invited our attention to State of West Bengal and Others Vs. Ratan Behari Dey and Others, ; Union of India Vs. P.N. Menon and others, ; State of Rajasthan and others etc. Vs. Amrit Lal Gandhi and others etc., ; Sita Ram Bansal and others, etc., etc. Vs. State of Punjab and others etc., etc., ; Union of India and Others Vs. K.G. Radhakrishana Panickar and Others, ; In the Matter of: Hari Ram Gupta (D) Thr. L.R. Kasturi Devi Vs. The State of Uttar Pradesh, ;

Transport Manager, Pune Municipal Corporation Transport Undertaking Vs. Vasant Gopal Bhagwat (Dead) by LRS. and others, ; and Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors, .

We have heard learned counsel for the parties and perused the records. In order to appreciate the controversy involved in the matter reference may be made to the relevant provisions of the Rules. The Calcutta Improvement Trust Employees' (Death-cum-Retirement Benefit) Rules, 1988, were framed in exercise of the powers conferred u/s 31 of the Calcutta Improvement Trust Act, 1911. The Board of Trustees framed the Rules and sent to the Government for sanction in 1982 but the sanction came to be accorded in September, 1988. Sub-rule (2) of Rule 1 says that they shall be deemed to have come into force with effect from the 1st day of January, 1982. Therefore, the Rules have been made effective with effect from January 1, 1982. Rule 2 of the Rules says that this rule will apply to all employees of the Calcutta Improvement Trust except, (a) persons paid at daily rates; (b) employees not in whole time employment; and (c) persons engaged on payment of stipend, fees, honorarium or allowances. Rule 7 of the Rules gave an option to every employee of the Calcutta Improvement Trust who has retired on or after January 1, 1982, and who is in service on the date of promulgation of these rules and is willing to be covered under these Rules shall exercise option in the prescribed pro forma within one year from the date of issue of the notice by the Calcutta Improvement Trust. An option once exercised shall be final. Therefore, as per these rules they came into force with effect from January 1, 1982, and an option was given to the employees who have retired after January 1, 1982, to exercise their option within one month failing which they will be governed by the old rules. All the employees, who have filed the present writ applications, are employees who retired prior to January 1, 1982. Therefore, their grievance is that Sub-rule (2) of Rule 1 should be declared ultra vires and the same benefit should be made applicable to all the employees irrespective of the fact whether they retired after January 1, 1982, or prior to January 1, 1982. Learned counsel submitted that such fixation of the cut-off date is arbitrary and sought from the decision of R.L. Marwaha v. Union of India (supra). In this case, the petitioner served the Central Government on a temporary basis from October 4, 1950, to November 23, 1953, and on the said day, i.e., November 23, 1953, he joined the service of ICAR, an autonomous body. The post held by him under the Central Government and, thereafter, under the ICAR were pensionable. He retired from service of the ICAR on September 30, 1980. On retirement he demanded that his pensionary benefits should be counted by counting the period of service put in by him in the Central Government as par of his qualifying service in view of para. 3(A)(i) of OM No. 28/10/84 pension unit dated August 20, 1984. This was denied and he was accorded pensionary benefits by reckoning his qualifying service from November 23, 1953, only on the ground that he retired before issue of the OM No. 28/10/84, dated August 20, 1984, he was not entitled to the benefit of para. 3(A)(i) in view of the prospective effect given to the OM by para. 7 thereof. The

petitioner contended that it was not open to the Government to deny the benefits of the order to those employees who had retired prior to the date of the order as it would bring into existence two classes of pensioners. The Supreme Court allowing the SLP held that paragraph 7 of the Government order cannot be used against persons in the position of the petitioner to deny them the benefits of the past service for the purpose of computing the pension. It was observed by the Supreme Court that the denial of benefit for past service put in by him which was also pensionary service will be unfair. It Was also observed that in the absence of any acceptable explanation, the classification of the pensioners who were working in the Government or autonomous body into two classes merely on the basis of the date of retirement must be held to be unconstitutional as it bears no nexus to the object sought to be achieved by the order. Therefore, this case is wholly distinguishable because the employee before joining the post in the autonomous body was holding a pensionable post in the Central Government but the Government denied the benefits by virtue of para. 7 of the Government order which states that the benefit of this order will be effective from the date of issue of the - revised policy and will be applicable to those employees who had retired from service of the Government or autonomous body on or after issuance of the said order. But the petitioner retired on September 30, 1980, therefore, he was not accorded the benefit of this order. Therefore, this case turned on peculiar facts that the petitioner was already holding pensionable post before joining this autonomous body, therefore, the benefit of earlier service cannot be denied to him.

4. Our attention was also invited to *Thiruvengadam v. Secretary to the Government of India* (supra). In this case also, the appellant after completion of 15 years pensionable Central Government service was sent on foreign service to a public sector undertaking and therein he was permanently absorbed in 1964. At the time of retirement Government issued a memorandum denying revised pensionary benefits to the persons who have joined public undertaking prior to June 16, 1967. The Supreme Court held that the object of bringing into existence the revised terms and conditions in the memorandum dated June 16, 1967, was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum would be defeating the very object and purpose of the revised memorandum and contrary to fair play and justice. Their Lordships further held that the memorandum dated June 16, 1967, is prospective which only means that the benefits therein can be claimed only after June 16, 1967. Therefore, this case is also distinguishable on the facts.

5. Similarly, in the case of *M.S. Dhingra v. Union of India* (supra), their Lordships held that computation of the previous service or grant of pension of the employees who have held such pensionable posts in the State Government or the Central Government cannot be denied to them. Applying the principles enunciated in the decision of Apex Court in *D.S. Nakara and Others Vs. Union of*

India (UOI), and R.L. Marwaha v. Union of India (supra), their Lordships directed to give the same benefits to the appellants also. In this case, the Government decided to take into consideration the temporary service of the persons for grant of pension, but the temporary service of the petitioner was not considered as he had retired prior to February 1, 1973. Their Lordships held that all the persons who have rendered temporary service prior to their joining Government service have been given the benefit of fixation of the pension payable by tagging the temporary service and there is no justification to deny these benefits to the incumbent appellant. Their Lordships relying on the case of D.S. Nakara v. Union of India (supra) and R.L. Marwaha v. Union of India (supra), granted the pensionary benefits to the appellant. Therefore, this case also stands distinguished on the peculiar facts of the case.

6. Our attention was also invited to the decision of Dhan Raj v. State of Jammu and Kashmir (supra). In this case, their Lordships, after considering the matter, came to the finding that once the Government has decided to grant pensionary benefits even to a temporary employee then there is no justification to deny the same benefits to other temporary employees who are similarly situated. Their Lordships held that by no positive words the employees have been excluded who have retired prior to the said date. It was also observed that if the Government itself reconsiders the matter and confers the same benefits even to those who retired prior to June 9, 1986, it cannot be said to be either violation of Article 177 of the Jammu and Kashmir Civil Service Regulations (as amended in 1981) or it granted benefit to all the persons. This case is also distinguishable on peculiar facts. As against this our attention was invited to a judgment of the Apex Court arising from this State being State of West Bengal v. Ratan Behari Dey (supra). In this case, on identical facts pertaining to the Calcutta Municipal Corporation Act, the cut-off date, i.e., January 1, 1977, was upheld by the Apex Court. It was observed that the Calcutta Municipal Corporation Pension Scheme was in force prior to 1914. Later, that scheme was given up and the Provident Fund Scheme was introduced. The employees in 1977 demanded the reintroduction of the pension scheme. The State Government appointed a commission to examine this demand and to make necessary recommendations. The three member committee sent their recommendations differing. The State Government examined their recommendations and accepted them with certain modifications in 1981. After processing - the matter through the relevant departments, regulations were issued and published in 1982. In the above circumstances, the State Government gave effect to the regulations on and from April 1, 1977, i.e., the first day of the financial year in which the Pay Commission was appointed by the Government. This was sought to be challenged on the ground that the fixation of the cut-off date of April 1, 1977, is not reasonable. Their Lordships, after examining the matter, came to the conclusion that the State Government had acted reasonably specifying the cut-off date as April 1, 1977, that might have been the year in which the Left Front came into power in the State, but that does not detract from the validity of the reasons for fixing the

date. It cannot be said that the reasons assigned by the State Government are neither irrelevant nor non-acceptable and their Lords distinguished the decision of *D.S. Nakarav. Union of India (supra)*. In the present case, the employees retiring prior to April 1, 1977, and those retiring thereafter are governed by different sets of Rules. Hence, their Lordships affirmed the distinction and reversed the judgment of this Court. Therefore, this case is almost identical to the case in hand, In our case also the cut-off date has been fixed as January 1, 1982, because the recommendation of the Trust was sent in 1982 and they expressed their financial constraint and the Government ultimately approved the recommendation in 1988 and, therefore, they extended the benefit to the persons who have retired after the cut-off date. Therefore, this case squarely covers the present case.

7. Our attention was also invited to other cases of the Supreme Court, viz., *Union of India v. P.N. Menon (supra)*, where a view was taken that the cut-off date fixed by the Pay Commission was justified. Similarly in the case of *State of Rajasthan v. Amritlal Gandhi (supra)*, the cut-off date for introduction of pension scheme with effect from January 1, 1990, was held to be justified under the Jodhpur University Pension Regulations, 1990. Similarly, our attention was invited to the decision of *Sitaram Bansal v. State of Punjab (supra)*. In this case also, the benefit of pension scheme was extended to non-provincialised employees of the municipalities and it was not extended to persons who have retired earlier to April 1, 1990. Their Lordships held that this cut-off date is not violative of Article 14 of the Constitution and affirmed the same. In the cases of *Union of India v. Radhakrishna Panicker (supra)*; *Hariram Gupta v. State of U.P. (supra)*; and *Transport Manager, Pune Municipal Corporation Transport Undertaking v. Vasant Gopal Bhagwat (supra)*, the cut-off date under the relevant Rules was upheld. Lastly in the case of *Tamil Nadu Electricity Board v. Veeraswamy (supra)*, their Lordships has affirmed the cut-off date with regard to grant of pension to the employees of the Tamil Nadu Electricity Board. Hence, as a result of the above discussion, it appears that wherever the cut-off date has been found to be reasonable and has nexus then such cut-off date as been held to be valid.

8. Now, coming to the facts of the present case, it is more than apparent that the scheme was conceived by the Trust in 1982, and it was sent to the Government and the Government, after examining the financial implications of the State as well as of me improvement trust and other relevant factors, came to the conclusion that the scheme being sanctioned from the year in which it was sent to the Government and it was sent in 1982. This fixation of the cut-off date in the present scheme of things cannot be said to be arbitrary so as to be declared as violative of Article 14 of the Constitution. Hence, as a result of the above discussion, we are satisfied that the view taken by the learned single Judge is correct and there is no merit in both these appeals and consequently they are dismissed with no order as to costs.