

(1996) 02 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 15309 of 1984

Moti Lal Agarwal and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 33, 38, 39

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 109

Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 — Section 47(4), 47(a)

Uttar Pradesh Nagar Palika (Centralised) Service Rules, 1966 — Rule 3

Citation : (1996) 02 AHC CK 0049

Hon'ble Judges : B.M.Lal, J and R.K.Mahajan, J

Final Decision : Disposed Of

Judgement

R. K. Mahaian, J.

1. The above writ petition was earlier come up for hearing before a Division Bench of this Court. The Division Bench vide its order, dated 24th March, 1988 allowed the petition directing the respondents to pay the petitioners similar amount of pension including dearness allowance and family pension etc. admissible to State Government employees or the employees of Nagar Mahapalika, Kanpur since July 2, 1981 within a period of four months from the date a certified copy of this order is produced before them. In the order, it was clarified that the relief would not extend to payment of gratuity.

2. Against the aforesaid order, SLP (Civil) No. 7917 of 1988 was preferred in the Supreme Court of India by the Nagar Mahapalika, Allahabad. The Hon'ble Supreme Court vide its order, dated August 9, 1988 disposed of the Special Leave Petition as well as the appeal remitting the matter back to the High Court for decision with the following observations :

".. ..Since the writ petitioners seeks to rely on the other contentions also, the appropriate course to adopt after hearing both the sides appears to be to grant special leave and to remit the matter back to the High Court for a decision on the

remaining points also after affording reasonable opportunity of hearing to the parties. We accordingly grant special leave and remit the matter to the High Court for the aforesaid purpose. We request the High Court to dispose of the matter as early as possible preferably within four months from the date of receipt of the writ of this Court. We direct the order passed by the High Court should not be given effect to till the matter is finally disposed of by the High Court on all points subject to any other order that may be passed by this Court. The appeal will stand disposed of accordingly. There will be no order as to costs."

In this way, the above writ petition again came up for hearing before us.

3. It is appropriate here to describe the main reliefs sought in the writ petition. Relief Nos. (i) and (iii) are the main relief, which are being quoted as under :

"(i) a writ, order or direction in the nature of mandamus directing the respondents to grant the claim of the petitioners for payment of dearness allowance to them in accordance with the scale of relief admissible to the State Government pensioners from time to time and that the same be paid to them with effect from July 2, 1981, as enforced by the Nagar Mahapalika, Kanpur.

(iii) a writ, order or direction in the nature of mandamus directing the respondents to grant family pension to the petitioners in accordance with the scale and dearness allowance admissible to the family of State Government employees retiring after July 1, 1979."

4. The relevant facts, in brief, are these : Petitioner No. 1 Sri Moti Lal Agrawal, retired after completing 60 years of age on 1281976 as Sahayak Nagar Adhikari, Allahabad and petitioner No. 2 Sri V. P. Kohli retired on 141970 after attaining the age of superannuation as Tax Superintendent. Both the petitioners are governed by U. P. Palika (Centralised) Services Rules, 1966 (for short Rules). Under Rule 3, petitioner No. 1 was as Sahayak Nagar Adhikari at serial No. 2 of U. P. Palika Administrative Superior Services whereas petitioner No. 2 was Office Superintendent in the U. P. Palika Ministerial Service. It was alleged that they were not getting similar amount as pension and gratuity including D.A. as was payable to the pensioners of State Government corresponding to the last amount of pay which was drawn by the petitioners. The U. P. Palika Centralised Services (Retirement) Benefit Rules, 1981 have been enacted but the benefits as permissible under Part I, Rule 4 dealing with calculation of pension and gratuity, were not being paid to them. It was further asserted that U. P. Pay Commission (Local Bodies) 197778, made a recommendation that U. P. Palika Pensioners must get parity in pension. Medical facilities and other relief admissible to the employees of the State Government. The State Government took follow up actions and accepted the recommendations of U. P. Pay Commission (Local Bodies) and issued an order, dated 2821984 recommending that the Palika should give the same relief to its pensioners including family pension etc. available to any Government servant drawing similar pay scale immediately

before the date of retirement (vide Annexure 6 to the writ petition). The Nagar Mahapalika, Kanpur made an amendment in its Pension Regulations to the effect that since 27/1981, whatever relief is provided to the State Government pensioners as regards gratuity, D.A. and family pension, would be payable to the employees of Nagar Mahapalika Kanpur (vide Annexure 5) and there was no reason why should there be any discrimination between the employees of Nagar Mahapalika, Allahabad and that of Kanpur, when both were governed by the same enactment, namely, U. P. Nagar Mahapalika Adhiniyam (for short the Adhiniyam). The Pensionary Regulations and Dearness Allowance have been described illegal under Article 14 of the Indian Constitution.

5. Sri Ashok Mohiley, learned counsel appearing on behalf of the Nagar Mahapalika, Allahabad urged that the Nagar Mahapalika did not have sufficient means for making payment of Dearness Allowance or family pension etc. as employees of Nagar Mahapalika, Kanpur have been getting. On account of lack of resources, there was inability of respondent No. 2 to pay the petitioners Dearness Allowance payable on the pension and family pension and other emoluments including gratuity etc. on equal level as U. P. Government employees or those of Nagar Mahapalika, Kanpur are paid.

6. We have heard the learned counsel for the parties in view of the observations made by the Hon'ble Supreme Court while remanding the case back to this Court.

7. On behalf of the petitioners, it was emphasised that Section 109 of the Nagar Mahapalika Adhiniyam read with Section 47(a) of the U. P. Nagar Mahapalika Seva Niyamawali, 1962 fully covers the case of the petitioners in respect of emoluments. Section 47(4) aforesaid is quoted below :

"47(4). A retiring person shall be paid and other emoluments benefits, if any, shall be available in accordance with and subject to the provision of Pension Regulations at the Mahapalika to every Mahapalika servants who retires or is required or allowed to retire under this rule."

Section 109 of the Nagar Mahapalika Adhiniyam also provides as under :

"" 109. Conditions of service etc. The emoluments and other conditions of service of officers, staff and other servants of the Mahapalika shall be such as may be prescribed by the State Government."

8. It is also contended by the learned counsel for the petitioners that Regulation 11 of the Regulations framed under Section 548(l)(g) of the U.P. Nagar Mahapalika Adhiniyam also provides the Pension Fund which is known as Mahapalika Pension Fund and the amount will be deposited in accordance with it.

9. On the other hand, the learned counsel Sri Ashok Mohiley, representing the Nagar Mahapalika, contends that the petitioners are being paid pension as well as dearness allowance as per Nagar Mahapalika Pension Rules and, therefore, the Government order, contained in Annexure 6 to the writ petition, is not applicable

in the present case as the same is applicable to noncentralised services only and if the petitioners want pension under the Centralised Services Rules, then they have to approach the Director of Local Bodies.

10. During the course of arguments of the writ petition, we have recorded the statement of Sri Ashok Mohiley on 19M996 in presence of Sri Rajesh Tandon in the following words :

"Sri Rajesh Tandon appears for the petitioners and Shri Ashok Mohiley appears for respondent Corporation.

The short dispute arising in this petition is in respect of payment of pensionary benefits including dearness allowance. Shri Mohiley made a statement at the bar that the dearness allowance is not being paid to the petitioners in accordance with the regulations framed by the Nagar Mahapalika.

This being so, in our opinion no dispute exists in respect of payment of the dearness allowance.

However, Shri Tandon submits that the dearness allowance is not being paid to the petitioners at the same rate at which it is being paid to the Government servants."

Sri Tandon submits that the impugned regulations are violative of Article 14 as they are arbitrary.

11. Thus, in view of the aforesaid statement, it is now to be decided whether the petitioners are liable to pay the dearness allowance at par with the employees of the State Government. Article 21 of the Constitution of India lays down that every person has a right to lead a life with dignity. It means more than survival, existence and reasonable livelihood. It is settled by Apex Court. The concept of Article 21 of the Constitution is that every citizen of India should be able to get social justice and equal treatment. The concept of pension is now equated with the social justice. It is no more a matter of bounty or grace or dependant on the pleasure of the Government. It has been equated recently with the right to the property by the Apex Court judgments i.e. Deokinandan Prasad v. State of Bihar,, (1971) Supp SCR 634 and famous Nakara's case AIR (1983) Vol 70 SC 130. The employees are entitled for pension as they have passed their young period of life in the organisation of the State and, therefore, the employers are expected to be compensated by way of providing sufficient pensionary benefits on which they can depend upon in the evening of their lives. Judicial notice can be taken that prices of essential commodities are rising day in and day out and the prices at Kanpur or Lucknow are more or less the same as at Allahabad.

12. The Nagar Mahapalika, Allahabad has given the relief of dearness allowance in respect of its employees as mentioned in para 15 of the writ petition from Rs. 5 to Rs. 10 per month on the pension ranging from Rs. 100 to Rs. 200 per month. Additional Relief was granted to the pensioners who retired prior to 181972 after a Gazette notification, dated 421978 and effective from the same

date in the following manner :

"(a) From Rs. 42.50 upto Rs. 100, .Rs. 10 p.m.

(b) Over Rs. 100 upto Rs. 200 . .Rs. 15 p.m.

(c) Over Rs. 200 .. Rs. 20 p.m.

(iii) Further additional relief sanctioned with effect from 151982 Rs. 20 p.m. to all pensioners."

It looks that arbitrary and irrational when every class of employees of different departments and constitutional functionaries are getting dearness allowance with rise in prices and also price index reaching at certain points but the Mahapalika employees were given dearness allowance which is a illusory and smacks of mockery. We would like to quote the substance of Annexure 6 to the writ petition wherein there is an instruction from the Government that the municipal corporations in such cases can pay dearness allowance at par with the State employees keeping in view of resources and also taking into consideration only the categories of employees corresponding to the State employees. The impugned regulations of the Nagar Mahapalika cannot be sustained in respect of the dearness allowance as it is arbitrary, unreasonable and is not inconsonance of Articles 14 and 21 of the Constitution of India.

13. In Maneka Gandhi's case (Maneka v. Union of India) AIR 1978 SC 597, it was observed that if law, notifications, procedures, if any, is not inconsonance with natural justice or reasonableness, it would be struck down. In other words, the impugned pensionary regulation has to be reasonable and not oppressive and arbitrary. Under Article 21 of the Constitution, a person cannot be deprived right to livelihood or right to bare necessities of life without fair procedure established by Law. The needs of the State employees and the Mahapalika in respect to bare necessities is the same and there cannot be discrimination in paying dearness allowance to the retiring employees of the Mahapalika. It is for the Nagar Mahapalika to raise its resources by imposing taxes or by other means. The Nagar Mahapalika can also request the Government for grantinaid. Under such circumstances, we are of the view that the regulations regarding fixing of dearness allowance is violative of Articles 14 and 21 of the Constitution of India and as such the same is liable to be struck down and as such the impugned regulations are struck down.

14. Sri Rajesh Tandon, learned counsel for the petitioner also submitted that the notification of December 1,1993 regarding the payment of dearness allowance sanctioning an instalment of Dearness Relief with effect from January 1, 1995 admissible to all civil/family pensioners of the Government to compensate them for the rise in the costs of living beyond average Consumer Price Index 608 at the following rates with effect from July 1, 1995 in supersession of the rates mentioned in the O.M. dated 161995 referred to above :

Pension/Family Pension Rates of Dearness

per month Relief per month

(i) Not exceeding Rs. 1,750 136 per cent of pension/family pension

(ii) Exceeding Rs. 1,750 but 102 per cent of pension/family pension

Not exceeding Rs. 3,000 subject to a minimum of Rs. 2350

(iii) Exceeding Rs. 3000 MM per cent of pension/family pension

subject to a minimum of Rs. 3060

Regarding the payment of pension at par with the employees of the State, it may be noticed that the Kanpur and Lucknow Mahapalikas are paying the same to their employees. We are of the view that since these Nagar Mahapalikas have been created under U. P. Nagar Mahapalika Adhiniyam and as such there should be uniformity in all the Nagar Mahapalikas lying within the State of Uttar Pradesh. It is desirable and reasonable that employees of corporations should have been given the same pension as they are performing the same kind of duty and there cannot be discrimination within the same class as it would be arbitrary. All the corporations and their employees form one class. There is no rational shown in discrimination and purpose to be achieved.

15. The only submission for discrimination, which has been advanced by Sri Mohiley, learned counsel for the respondents, is that the Nagar Mahapalika, Allahabad has no financial resources. We do not agree with the said submission. Allahabad is a well established town not only in Uttar Pradesh but in India and even in the world. Merely Allahabad is not an industrial town having advantage of industries, does not mean that Nagar Mahapalika, Allahabad should not evolve the scheme in raising its resources. Allahabad Nagar Mahapalika enjoys better avenues to raise resources. It is a place known for cultural heritage of the Sangam of rivers Ganges, Yamuna and Saraswati, called Triveni. Big offices such as, High Court of Uttar Pradesh, perhaps prestigious High Court in the whole of Asia, Accountant General, C.D.A., Board of Revenue, Police Head Quarters, Allahabad University, Anand Bhawan etc. are located here, it is for the corporation to raise its taxes or mobilise resources and pay uniform pension with other employees of corporations, such as Kanpur and Lucknow in U. P. and take suitable measures in future. We hope and trust that the corporation may evolve a scheme to raise its resources within a reasonable time of one year and also approach to the Government and other appropriate authorities for grant-in-aid to meet this social obligation.

16. It may be pointed out here that there is an obligation for the State to pay living wage etc. to the workers. In this regard, it may be mentioned that in the directive principles of State policy, under Article 38 of the Constitution, the State is to secure a social order for the promotion of welfare of the people and thereby promote social justice. Under Article 39 of the Constitution, the State is also to see that the goal of equality of income by way of distributed justice is achieved. Under Article 33 of the Constitution, the State has to make efforts towards the liv

ng wages of the workers. Under Article 41 of the Constitution, the State has to provide public assistance in old age etc. Under Article 33 of the Constitution, these directives, which have been mentioned, would be fundamental for the governance of the country and it shall be the duty of the State to apply the principles in making the laws. The Corporations are State within the meaning of Article 12 of the Constitution and they are to make efforts to improve a lot of pensioners. In Nakara's case (supra) AIR (1983 SC 130, paras 3233) it was observed that the State would endeavour to secure a decent standard of life and economic security to the working people. The reasonableness and arbitrariness can also be judged in the light of Article 14 of the Constitution and the directive principles of the State and while striking down, we have kept these aspects in view.

17. In view of the aforesaid discussion, we direct the respondents to pay the dearness allowance to the petitioners at par with the employees of Municipal Corporation, Kanpur immediately as envisaged in G. O. No. 866A/11NaVI. O7. 8410K/19, dated 28th February, 1984, contained in Annexure 6 to the writ petition. We further direct the respondents to pay the pension also to the petitioners at par with the employees of the State (Municipal Corporation Kanpur) within 4 months failing which it shall carry interest at the rate of 13% per annum.

18. The writ petition is disposed of accordingly.