

(2010) 06 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No's. 27757 of 2008 and 8800 of 2009 and M.P. No. 2 of 2009

M.P. Parthasarathy and Others

APPELLANT

Vs

The Chairman, The Chief General Manager and The Trustees, IBI/SBI Employees Pension and Guarantee Fund, State Bank of India
R. Balakrishnan and Others Vs State Bank of India, Trustees of SBI Pension and Provident Fund, State Bank of India, The Secretary to Government, Ministry of Finance, Department of Banking, Government of India and The Secretary to Government, Department of Pension and Pensioners' Welfare, Ministry of Personnel, Government of India

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16
State Bank of India Act, 1955 — Section 50, 50(1), 50(2)
State Bank of India Employees Pension Fund Rules, 1955 — Rule 23

Citation : (2010) 06 MAD CK 0091

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Ashok Chakravarthym, in W.P. Nos. 27757 and 27758 of 2008 and N. Seshadri, in W.P. No. 8800 of 2009, for the Appellant; P. Sukumar in W.P. Nos. 27757 and 27758 of 2008 and R1 in W.P. No. 8800 of 2009 and M. Ravindran, Addl. Solicitor General of India for V. Viswanathan, SCGSC for RR3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—In the first two writ petitions, a group of persons who are ex-employees of the State Bank of India have filed writ petitions,

seeking for a direction to respondents 1 to 3 to revise the pension payable to the petitioners on the basis of last 12 months average salary drawn

by them at the time of opting for retirement under SBI Voluntary retirement

scheme by implementing the terms of circular, dated 11.1.2001 issued in this regard and consequently, revise the pension to be made effective from 1.4.2001 and also to give effect to enhanced pension in terms of the circular.

2. In W.P. No. 8800 of 2009, there are 72 petitioners, who are seeking to challenge the Rule 23 of the SBI Employees Pension Fund Rules dated

21.5.1997 and letter, dated 31.10.2000 as disclosed in MOU dated 25.2.2008 and minutes dated 16.10.2008 and after quashing the same, to

direct the respondents to discharge the statutory obligation to pay pension from the date of retirement on a single uniform percentage ceiling of

50% of last drawn pay to avoid multiple ceilings of 50% or 40%.

3. In the first two writ petitions, petitioners were given liberty to serve the respondents privately. The third writ petition was admitted on

30.4.2009. Pending writ petitions, no interim relief was granted and only notice was ordered.

4. According to the petitioners, by circular dated 11.1.2001, the petitioners are eligible for revision of salary for payment of pension with effect

from 1.11.1997 for Award staff and from 1.4.1998 for the Supervising staff subject to the approval of the Government of India and Reserve Bank

of India. The said circular reads as follows:

In this connection, we invite a reference to para (6) of circular No. Cir. D.O. PER: 68 dated 05.12.2000. As mentioned therein, the revision in the

amount of substantive salary for the payment of pension on account of revision of salary w.e.f. 01.11.1997 (Award Staff) and 01.04.1998

(Supervising Staff) is subject to approval from the Government of India and Reserve Bank of India. The Bank has already taken up the matter

suitably. Till the necessary approvals are received, the pension and the commutation payable to employees who retire under SBIVRS shall be

calculated with reference to pre-revised pay and allowances.

5. Subsequently, on 18.3.2008, the Bank informed that they are taking up their legitimate aspirations of 7th Bipartite wage settlement with the

Government of India and until such time they heard from the Government of India, they will be paid pension as per the existing rules. It is the case

of the petitioners that while the bank chose to revise family pension as per 7th Bipartite wage settlement, they did not revise the pension to the

retirees and persons similarly situated cannot be discriminated. Being the retirees, all of them should get the same rate of pension. A group of

similarly placed persons filed a writ petition before this Court in W.P. No. 23523 of 2001 and in batch cases in N.R. Sridharan v. State Bank of

India and Ors. The said batch of writ petitions came to be disposed of by an order dated 16.10.2008 directing the Union of India to consider the

proposals made by the State Bank of India seeking for approval of draft amendment.

6. In the counter affidavit filed by the State Bank of India, it was stated that the writ petitioners are not entitled for pensionary benefits as per 6th

Bipartite settlement. Subsequently, the bipartite settlement relating to wage settlement and the issue was taken up by the bank with the Government

of India and the Reserve Bank of India for the purpose of revising the payment of pension and the approval of the Government is awaited. In fact,

on directions issued by this court, the Government of India is yet to take a decision. Therefore, the writ petitions are liable to be rejected on the

short ground. It was also stated that the earlier circular relied on by the petitioner relates to pensioners who retired before 1.5.2005 and not to the

case of the petitioners. The State Bank of India's service condition cannot be compared with Government service. When pension was introduced

as optional benefit in lieu of CPF in Nationalised Banks pursuant to the bipartite settlement with all Banks, the SBI was not a party and it had its

own pension scheme.

7. It was also stated that persons who have retired under VRS scheme are bound by the terms of the scheme and they cannot compare themselves

with persons who retired in normal course as per pension rules. It was further stated that the SBI Employees' Pension Fund Rules were framed in

exercise of power conferred by Section 50 of the SBI Act, 1955 by the Central Board after consultation with the Reserve Bank of India and after

obtaining sanction of the Central Government and that the rules have been in force from 1.7.1955. The rules are statutory in character. Therefore,

the demand of the petitioners cannot be granted. It was also stated that in the first two writ petitions, the Union of India was not made as party

who alone is relevant for deciding the issue.

8. In the counter affidavit filed on behalf of first and second respondents in W.P.

No. 8800 of 2009, it was contended that retirees who retired from 1997 to 2002, the Government rejected the recommendation of the Bank and they are not eligible to get pension on the basis of revised pay.

It was also stated that superannuation package given by the SBI cannot be implemented unless the Central Government grants approval. The

judgment of the Supreme Court in *Nakara v. Union of India* was not applicable and it is not automatic that every time when the pay was revised,

pension amounts will also be correspondingly revised.

9. Mr. K. Ashok Chakaravarthy, learned Counsel for the first two writ petitions made an elaborate submissions and also relied on the following

judgments:

a) *Imperial Bank of India Pensioners' Association by its Secretary, C.L. Kapoor and Others Vs. State Bank of India by its Chairman and Others*,

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b) *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*,

c) *V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another*,

d) *Subrata Sen and Ors. v. Union of India and Ors.* 2001 (7) Supreme 140 and

e) *U. Rabhavendra Acharya and Ors. v. State of Karnataka and Ors.* 2006 AIR SCW 2676.

10. These judgments have no application to the case projected by the petitioners. Admittedly, the SBI Employees' Pension Fund Rules were

framed u/s 50 of the SBI Act by the Central Board of SBI after consultation with the Reserve Bank of India and with the previous sanction of the

Central Government. Therefore, any amendment also requires appropriate approval by the Central Government. Though the Bank has

recommended the case of the petitioners, until such time the Central Government grants approval, the question of this Court granting direction to

the Central Government to grant approval will not arise.

11. Section 50(2)(o) provides for estimation and maintenance of superannuation pension, PF and other funds and for the purpose of framing

regulations, Section 50(1) obliges the Central Board to consult the RBI and only with the previous sanction of the Central Government and by a

notification in the official Gazette can make regulations. The arguments of the petitioner was that there must be same percentage available to all

retirees in the light of the judgment in D.S. Nakara and Others Vs. Union of India (UOI), and that they should be paid uniform percentage of 50%

of last drawn pay.

12. When a similar question came up for consideration before the Supreme Court in respect of Indian Ex-Services League and others Vs. Union

of India, , a Constitution Bench of the Supreme Court after referring to Nakara's case, in paragraphs 11 to 14 had observed as follows:

11. The conclusion of the Constitution Bench in Nakara was that the benefits of liberalisation and the extent thereof given in accordance with the

liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined only

to the persons who retired on or after the specified date because for the purpose of grant of the benefits of liberalisation in pension, all retirees

constitute one class irrespective of their date of retirement. In order to give effect to this conclusion the only relief granted was to strike down that

portion of the Memoranda by which the benefit of the liberalised pension scheme was confined only to persons retiring on or after the specified

date with the result that the benefit was extended to all retirees, irrespective of their date of retirement. Once this position emerging from the

decision in Nakara is borne in mind, the fallacy in the petitioners'½ contention in these writ petitions becomes obvious and their claim based only

on Nakara is untenable.

12. The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to

a more liberal formula under which ""average emoluments"" were determined with reference to the last ten months'½ salary instead of 36

months'½ salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that

where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that

date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears

prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all

existing retirees irrespective of the date of their retirement, were held to

constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that "if the 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".

This according to us is the decision in Nakara and no more.

13. Ordinarily, it would suffice to mention the gist of Nakara¹ decision without extensively quoting therefrom. However, we have done so for the reason that the impassioned plea of Shri G. Viswanatha Iyer, learned Counsel appearing for the Army Officers which was reiterated with an added emotive appeal by Shri K.L. Rathee, appearing for the remaining ranks of Armed Forces seems to suggest that denial of petitioner's claim amounts to misreading the Nakara¹ decision and refusal of the logical relief flowing therefrom. It is only to dispel this incorrect impression we have quoted from Nakara¹ at some length. We have merely to decide whether the petitioner's claim flows from the decision in Nakara¹ and we are unable to find anything in Nakara¹ to support such claim.

14. Nakara decision came up for consideration before another Constitution Bench recently in Krishena Kumar v. Union of India. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in Nakara that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as one of limited application and there is no scope for enlarging the ambit of that

decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank

irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

13. Therefore, in the present case, in the absence of any regulation in favour of the petitioners, they cannot seek for direction from this Court to the

Government of India to accept the amendment proposed by the SBI. In fact, in the earlier set of writ petitions, this Court had given a direction to

consider the case. But, in the present case, seeking for positive direction on the basis of an alleged right flowing from Articles 14 and 16 of the

Constitution and also on the basis of the Nakara's case cannot be countenanced especially in the light of the judgment of the Supreme Court in

Indian Ex-Services League case (cited supra).

14. In the light of the above, all the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petition stand closed.