
(1998) 12 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 2186 of 1998

Mrs. Shaila D. Varerkar

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 2

Citation : (1999) 1 ALLMR 1 : (1999) 1 BomCR 685 : (1999) 82 FLR 769 :
(1999) 2 MhLj 529

Hon'ble Judges : Ashok Agarwal Actg., C.J.; S.S. Parkar, J

Bench : Division Bench

Advocate : A.P. Rege, for the Appellant; Ms. Madhubala Kajle and Ms. Kalyani, for the Respondent

Judgement

Ashok Agarwal, Actg. C.J.

1. Rule, By consent rule is made returnable forthwith.
2. Denial of pensionary benefits to the petitioner is impugned in the present petition. The petitioner who was employed on the non-teaching staff i.e. to the post of Librarian in respondent No. 2 College retired on 7th January, 1987. By a circular issued by the Government on 16th November, 1996 provisions of Maharashtra Civil Services (Pension) Rules, 1982, were made applicable to persons working in Government recognised and aided Non-Governmental Art Educational Institutes. The same was made effective from 1st April, 1995. Respondent No. 2 College was covered under the said circular. Petitioner accordingly by his communications dated 11th April, 1998 and 21st April, 1998 claimed benefits arising out of the pension scheme which was made applicable to respondent No. 2. Since the same were denied to the petitioner she has filed the present petition.
3. Pensionary benefits are denied to the petitioner on the ground that the circular

makes the pensionary benefits applicable with effective from 1st April, 1995. Petitioner who had retired earlier on 7th January, 1987 is, therefore, not entitled to the same. A question similar to the one which arises under the present petition had also arisen in the case of Shri N.S. Waikar and others v. State of Maharashtra and others, in Writ Petition No. 3854 of 1997, to which one of us (Ashok Agarwal, J.) was a party. By judgment and order dated 21st November, 1997, rule issued in that petition was made absolute and pensionary benefits claimed in that petition were directed to be granted. Reference was made on a decision in the case of Retired Employees of Non Government Colleges Association, Nagpur Vidharbha Region and others v. State of Maharashtra and others, in Writ Petition No. 2632 of 1985 decided by Dharmadhikari & Dhabe, JJ., as also on a decision of the Supreme Court reported in the case of D.S. Nakara and Others Vs. Union of India (UOI), . In the aforesaid case decided by this Court in Writ Petition No. 2632 of 1985, it has been observed as under :

"If the principle laid down in the said judgment is applied to the present case in our view the conclusion is inevitable that the cut out date prescribed by the Government viz., 1-10-1982 is wholly irrational and results in hostile discrimination between persons who have retired before 1-1-82 or after that date. It is not disputed that the persons who have retired either prior to 1-10-82 or thereafter are similarly circumstanced and belong to the same class. But for the statement made during the course of arguments there is nothing on record to show as to why the date 1-10-1982 was chosen. If it was chosen because an assurance was given by the then Minister for Education on the floor of the House on that day, then it has no nexus with the object sought to be achieved by the pension-cum-gratuity scheme. In this context, it is worthwhile to note in view of the recommendation, made by the Kothari Commission and the Sen Committee, the pay-scales for the said class of teachers came to be prescribed with effect from 1-1-1973. Superannuation age was also prescribed by the said resolution. Pension or gratuity is payable under the scheme in view of the superannuation of the persons concerned. If this is so, then the said scheme must apply even to the persons who retired on or after 1-1-73, when for the first time the age for superannuation and pay scale came to be prescribed for them. Therefore, without deciding the larger question as to whether the same scheme should apply even to the pensioners who retired prior to the date 1-1-73, it can safely be held that members of the petitioner Association, the petitioner No. 2 and 3 as well as the persons who retired after 1-1-73 are entitled to this pension-cum-gratuity scheme. Prescription of the cut out date viz. 1- 10-82 being irrational is wholly violative of Article 14 of the Constitution. Hence rule is made absolute and it is declared that the date fixed by the G.R. dt. 21-7-83 viz. 1-10-82 for entitlement of retirement benefits is violative of Article 14 of the Constitution and the pensioners and other employees similarly circumstanced who retired on or after 1-1-73 will also be entitled to the benefits granted by the said G.R."

4. In the case of D.S. Nakara and Others Vs. Union of India (UOI), the Supreme Court held the classification made in revised pension formula between pensioners

on the basis of date of retirement specified in the memoranda under Central Civil Services (Pension) Rules, 1972 to be arbitrary and violative of Article 14 of the Constitution of India and made the revised pension scheme operative and applicable to all the pensioners governed by the said Rules from the specified date irrespective of their date of retirement.

5. In our view if one has regard to the aforesaid decisions, a conclusion is irresistible that members of staff of non-Governmental Article Educational Institutes would be entitled to pensionary benefits even though they may have retired prior to 1st April, 1995. Hence petitioner will also be entitled to pensionary benefits even though he has retired on 7th January, 1987 which is prior to 1st April, 1995. Pensionary benefits, however, will be payable only with effect from 1st April, 1995. In the circumstances we direct the respondents to release the pensionary benefits to the petitioner as also others who are similarly placed as provided in the aforesaid circular dated 16th November, 1996. Rule is accordingly made absolute in the aforesaid terms. There will be, however, in the facts and circumstances of the case no order as to costs.

6. Expedite the issuance of certified copy.

7. Petition partly allowed.