

(2001) 03 AP CK 0090
In the Andhra Pradesh High Court
Case No : WA No. 297 of 2001

M.V. Chalapathi Rao and others

APPELLANT

Vs

State of A.P. and another

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 22(1), 46(1)
Constitution of India, 1950 — Article 14

Citation : (2001) 3 ALD 3 : (2001) 3 ALT 36

Hon'ble Judges : S.B. Sinha, C.J; S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. V.V. Prabhakar Rao, for the Appellant; Government Pleader, for Finance and Planning and Mr. A. Ramalingeswara Rao, SC for TTD, for the Respondent

Judgement

S.B. Sinha, CJ.

1. This appeal by the appellants-writ petitioners is directed against the Judgment dated 19-1-2001 passed by a learned single Judge of this Court, whereby and whereunder the writ petition filed by the appellants herein claiming the following reliefs :

(a) to declare that the provisions of paras 7 to 10 of G.O. Ms. No.242 (Finance and Planning FW/Pen/I) Dept., dated 4-5-1990 fixing a cut off date on 31-3-1990 and confining the benefit of revision of gratuity to Rupees one lakh to persons who retired on or after that date is without jurisdiction, invalid, illegal, arbitrary, unconstitutional and violative of Article 14 of the Constitution of India.

(b) to further declare that all the petitioners are entitled to the said benefit of enhanced gratuity and to receive from the Government the difference of amount payable to them between the amount of gratuity drawn by them and the enhanced gratuity of Rs.1 lakh.

(c) to direct the respondents to pay the said difference of amount;

was dismissed.

2. The appellants herein are the retired Lecturers/Professors worked in various Colleges in Tirupati run by Tirumala Tirupati Devasthanams. All the petitioners except petitioners 3 and 7 retired from service between the dates 1-1-1986 and 31-3-1989. Petitioners 3 and 7 retired between the period 31-3-1989 and 31-3-1990. It is not in dispute that they are governed by the A.P. Revised Pension Rules, 1980 (for short "the Rules").

3. According to the appellants, in terms of Rule 46(1) of the Rules which was in force prior to 31-3-1989, the amount of gratuity payable was equivalent to $\frac{1}{3}$ of the emoluments drawn by the employee for each completed monthly period of qualifying service subject to a maximum of 20 times thereof or Rs.36,000/- whichever is less. Except petitioners 3 and 4, all of them were paid gratuity at Rs.36,000/-. By G.O. Ms. No. 150, dated 4-4-1989, the limit was enhanced to Rs.50,000/- and such benefit was made applicable to those employees who retired after 31-3-1989. Petitioners 3 and 4 who retired on 31-5-1989 and 31-8-1989 were paid gratuity at Rs.50,000/-.

The Government again issued orders in G.O. Ms. No.242, dated 4-5-1990 further revising the gratuity limit to Rupees one lakh. By the said orders, however, the Government fixed cut-off date as 31-3-1990 in terms whereof the benefit of revision of gratuity to Rupees one lakh was confined only to those employees who had retired after that date.

4. The main provisions of G.O. Ms. No.242, dated 4-5-1990 reads thus:

"4. After careful consideration of various aspect, the Government consider it appropriate to give the employees the benefit of an option to get.

a. gratuity under the present formula of $\frac{1}{3}$ rd of pay last drawn for every six monthly period of service subject to the limit of 20 months pay last drawn or Rs.50,000/- whichever is less

b. the formula of $\frac{1}{4}$ th of pay last drawn for every six monthly period of service subject to the limit of $16\frac{1}{2}$ months of pay last drawn or Rs.1.00 lakh whichever is less.

5. The Government accordingly order that the employee be given a choice regarding the method of calculation of gratuity as indicated below:

(i) $\frac{1}{3}$ rd pay last drawn for every six monthly period of service subject to the limit of 20 monthly pay last drawn or Rs.50,000/- whichever is less; or

(ii) $\frac{1}{4}$ th pay last drawn for every six monthly period of service subject to the limit of $16\frac{1}{2}$ months pay last drawn or Rs.1.00 lakh whichever is less.

6. Government further order that the existing limit of Rs.2,400/- per mensem under Rule 46(4) of the Revised Pension Rules, 1980 be deleted. This will enable the employees concerned to get the benefit of gratuity according to para 5 above

without the earlier restriction of Rule 46(4) of the A.P. Revised Pension Rules, 1980.

It is also relevant to extract clauses 7 to 10 of the said GO, which are sought to be attacked in this writ petition and they read as under:

7. Government further direct that these orders shall have effect from 31-3-1990 and they shall apply to all Government servants who retire or whose death takes place while in service on or after that date.

8. Government servant who are in service on the date of issue of these orders can exercise their option to get eligibility for gratuity as per the formula at para 5(i) or para 5(ii) above, as the case may be, at any time one year prior to the date of retirement on superannuation.

9. In case of invalidation from service or voluntary retirement or compulsory retirement, the option should be exercised within one month from the date of such invalidation/voluntary retirement/ compulsory retirement.

10. In case of Government servants who have already retired on or after 31-3-1990 the option shall be exercised within three months from the date of these orders....."

5. The question which was raised by the learned single Judge as also before us is as to whether the cut-off date "31-3-1990" fixed by the Government is ultra vires Article 14 of the Constitution of India.

6. The learned single Judge held that payment of revised gratuity from a particular date of fixing cut-off date by the Government does not offend Article 14 of the Constitution of India.

7. The learned Counsel appearing for the appellants, inter alia, submitted that the learned single Judge erred in delivering the impugned judgment insofar as it failed to take into consideration the decision of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), , in its proper perspective. Our attention has also been drawn to a recent decision of the Supreme Court in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, .

The learned Counsel appearing on behalf of the respondents, on the other hand, submitted that fixation of such cut-off date is valid in law and this Court cannot interfere with the classification made by the Government. In support of the same, the learned Counsel relied upon the decision of the Apex Court in State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, .

8. In D.S. Nakara's case, the Apex Court does not state in absolute terms that any liberalised scheme of terminal benefits applies to all cases of retirees irrespective their classification. According to the Apex Court, it applies only to a case where the cut-off date specified is found to be wholly arbitrary and thus offending Article 14 of the Constitution. D.S. Nakara's case has been explained by the Apex Court in Indian Ex-Services League and others Vs. Union of India, ,

Krishena Kumar and Others Vs. Union of India and others, , All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others, , Dnanraj v. State of J&K (1998) 4 SCC 30.

9. In *V. Kastitri v. M.D. State Bank of India, Bombay*, (supra) also it was held that Nakara's case could not effectively be pressed into service on the facts thereof. In that case, the petitioner resigned from service on 31-7-1984 which was treated as voluntary retirement. In terms of Rule 22(1)(c) of the State Bank of India officers (Determination of Terms and Conditions of Service) Order of 1979, he was not entitled to the pensionary benefits as he did not complete twenty five years of pensionable service. However, the said eligibility condition was relaxed with effect from 20th September, 1986, whereby the original clause (c) of Rule 22(1) was replaced by another clause (c) providing that an employee retiring after completion of twenty years of pensionable service irrespective of the age could get benefit of the pension scheme by his request in writing. The petitioner therein had completed twenty years and nine months of pensionable service by the date of his voluntary retirement. The Apex Court held that having regard to the subsequent prospective amendment of the rules, if a class of persons are brought within the sweep of pension provisions, then the same have to be treated as a new scheme of pension which cannot apply to those employees who retired prior to the advent of such a new pension scheme. Reliance in this connection has been placed on *Government of Tamil Nadu and another Vs. K. Jayaraman*, and *Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats*, . The Apex Court held:

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

Category-I

21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by 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 *D.S. Nakara and Others Vs. Union of India (UOI)*, would cover this category of cases.

Category -II

22. However, if an employee at time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of 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-pensioners might have survive, then only if such extension "of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating any such scheme, the erstwhile non-pensioner who has retired prior to the advent of such extended 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 Govt. of Tamil Nadu v. K. Jayaraman (1977) 9 SCC 606 : (1977 AIR SCW 1434) (supra) 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 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 coming into operation of the new scheme, would disentitle him from getting such a new benefit".

10. In this case, we are not concerned with liberalised pension scheme. We are concerned with enhancement in quantum of gratuity. The dicta which can be culled out from a decision of the Apex Court must be confined to the fact situation obtaining therein. Referring to D.S. Nakara's case, the Apex Court in State Government Pensioners' Association and others v. State of Andhra Pradesh (supra) held:

"In our opinion, the arrears relating to gratuity benefit computed according to the Revised Pension Rules of 1980 may not be paid to the pensioners that retired prior to 1-4-1978 because at the time of retirement they were governed by the then existing Rules and their gratuity was calculated on that basis. The same was paid. Since the revised scheme is operative from the date mentioned in the scheme, i.e., 1-4-1978, the continuing rights of tiic pensioners to receive pension and family pension must also be revised according to that scheme. But the same cannot be said with regard to gratuity, which was accrued and drawn. The reason why their Lordships of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), refused to grant arrears to the pensioners that retired prior to the stipulated date would ipso facto apply for refusing to grant the revised gratuity, since that would amount to asking the State Government to pay arrears, relating to gratuity after revising them according to the new scheme for those that retired prior to 1-4-1978 and that would amount to giving retrospective effect to

the A.P. Revised Pension Rules, 1980, which came into effect from 29-10-1979 and in the case of Part II of those Rules from 1-4-1978. The scheme is prospective and not retrospective".

It was further held:

"The High Court has rightly understood and correctly applied the principle propounded by this Court in D.S. Nakara and Others Vs. Union of India (UOI), . There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the Notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation not retrospective operation. In that event (if the specified date line is effaced), it will operate only, prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on 26th January, 1950 and before the date of issuance of the notification on 26th March, 1980 the Court will have to re-write the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively".

11. In Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, , the Supreme Court held that the choice of a date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical.

12. In Rao Somashekara and Others Vs. State of Karnataka and Another, , the Apex Court dealing with the question from which date the revised pay scales given to original Karnataka Primary School Teachers on par with the scales of Secondary School Teachers of former Hyderabad State allotted to Karnataka State, should be given effect to, held:

"We are of the view that the State Government had before it the report of the Commission and on that basis it took a decision that the disparities should stand eliminated prospectively from 1-1-1970 and not retrospectively from 1-1-1957. The question as to whether the date from which the scales ought to have been quashed should be 1-1-1970 or an anterior or a later date was a matter which had to be arrived at by taking all factors into account. It will be difficult for this Court to decide as to from what date the continuance of the existing scales should be treated as discriminatory or the continuance would lose its temporary character arising out of Section 119 of the States Reorganisation Act. It may be that the State of Karnataka felt that the grievance of the non-allotted Primary School Teachers whose salaries were lesser than the salaries of non-allotted Secondary School Teachers was a matter of graver concern requiring redressal even as late as 1979 or 1986. Merely because the grievances of non-allotted primary teachers were remedied even after considerable lapse of time, we

cannot say that grievances of Secondary School Teachers- even if it was late - should have also been redressed for the period 1-1-1957 to 31-12-1969. Above all, the financial burden involved was also a matter of relevant consideration. We are not therefore inclined to hold that the cut-off date of 1-1-1970 fixed after the report of Justice Tukol Commission, in regard to Secondary School Teachers, is arbitrary or violative of Article 14."

13. In *West Bengal Headmasters Association v. State of West Bengal* 1995 LIC 1919, one of us, Satyabrata Sinha, CJ., speaking for a Division Bench of the Calcutta High Court observed:

"134. D.S. Nakara's case (supra) upon which strong reliance has been placed by the learned Counsel for the petitioners has no application in the instant case. The said decision has been distinguished by the Supreme Court and other High Courts in various decisions including the case of *Ratan Bihari DC* 1993 (1) CLT (SC) 8 : (1993 Lab IC 2199) and *West Bengal Headmasters Association* 1991 (2)CLJ 188.

136. In the *Indian Ex-Services League and others Vs. Union of India*, , the apex Court held that the decision in Nakara's case has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees. The Supreme Court in that case dismissed the claim of the petitioners of "one-rank-one pension" for all retirees.

137. In *Action Committee, South Eastern Railway Pensioners" v. Union of India*, reported in 1991 Suppl (2) SCC 544, the Supreme Court followed its earlier decision in *Krishena Kumar and Others Vs. Union of India and others*, , wherein Nakara's case was distinguished in the following terms:

"The argument of Mr. Shanti Bhattshan is that the State's obligation towards pension retirees is the same as that towards PF retirees. That may be morally so. But that was not the ratio decidendi of Nakara's case. Legislation has not said so. To say so legally would amount to legislation by enlarging the circumference of the obligation and covering a moral obligation".

138. In *State of Uttar Pradesh Vs. Uttar Pradesh University Colleges Pensioners" Association*, , the Apex Court distinguished Nakara's case (supra).

139. In *Mafatlal Group Staff Association and others Vs. Regional Commissioner, Provident Fund and others*, , the Supreme Court distinguished Nakara's case (supra) saying:

"Be that as it may, we find no substance in the said attack. Here is a Scheme newly being introduced. Those who come after the introduction of the scheme to become members of the Provident Fund are free to become members of the Pension fund or not. This is not an uncommon feature. Both of them represent two distinct categories. The reliance on the decision of this Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, is misplaced.

That was a case where a class of retired employees was sought to be deprived of the benefit of liberalised Pension Rules on the only - ground that they had retired prior to a particular date. Here, in the case, no one is being deprived of the benefit of the new Scheme. All that the option means is that if any employee who is already a member of the Provident Fund Scheme that, having regard to the number of years of service put in by him and/or for other reasons, it is not beneficial for him to join the Family Pension Scheme, he can stay out. While judging the validity of such schemes one should not pick out an individual instance- not representing the generality of the situation - and make it the basis. One has to take an overall view, ie., whether it is beneficial to the class concerned as a whole or not:

140. In *Union of India Vs. P.N. Menon and others*, , the Supreme Court was concerned with a Government Memorandum dated 25th May, 1979 treating a portion of the dearness allowance, as pay for the purpose of retirement benefits in respect of Government servants who retired on or after the 30th September, 1977. The writ petitioners who retired from service before 30th September, 1977, contended that the said benefits should have been extended to all retired Government servants, irrespective of their date of superannuation. The Supreme Court upon considering its earlier decision observed :

"According to us, for the reason disclosed on behalf of the appellant-Union of India for fixing 30th September, 1999 as the cut-off date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was at 272, appears to have been taken on basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Govt. decides to revise the pay scales of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question will pay the scales only by a day, which may affect his pension benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational consideration".

141. Yet recently in *Union of India v. Rama Murthy*, reported in 1995(2) JT SC 539, the Supreme Court held:-

"The benefit of the OM is to facilitate calculation of 10 months average pay for the purpose of pension. Earlier only 1/10th of the 10 months average pay was

computed for pension. Under the impugned order in para 3(iii) of the OM dated May, 25, 1979, the computation would be 5/10th i.e., half of the dearness pay for the purpose of computation of pension. In other words, the OM is more beneficial for the pensioner rather than earlier computation. Whether the notification is justified and valid in law, was considered by a Bench of this Court in *State of Rajasthan v. Seva Nivalra Kannachari Hitkari Satnitfii*, 1995 (1) Scale 40, wherein it was held that the ratio in *Nakara*'s case has no bearing in this matter and the introduction of the rule is not arbitrary or capricious. It is permissible to introduce different retrial benefit schemes for Government servants as indicated in the decisions held by this Court in *Krishena Kumar and Others Vs. Union of India and others*, , *Indian Ex-Services League and others Vs. Union of India*, , and *State of Rajasthan Vs. Rajasthan Pensioner Samaj*, ".

14. In *Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda*, , the Apex Court held:

"4. We are of the opinion that the ratio of *D.S. Nakara* has no application here. *D.S. Nakara* prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised pension Rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefore as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from January 1, 1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from January 1, 1986 were not given retrospective- effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences; even a person who had retired long earlier would equally became eligible for pension on the basis of the 1986 Rules. This cannot be."

15. In the light of the decisions of the Apex Court referred to above, we are of the view that the appellants herein are not entitled to claim the benefit of enhancement in quantum of gratuity allowed by the Government from 31-3-1990 in G.O. Ms. No.242, dated 4-5-1990. In our opinion, the classification made by the State cannot be said to be unreasonable and it does not offend Article 14 of the Constitution of India. The wisdom of the Government in making such classification cannot be interfered with and, in our view, the learned single Judge has rightly declined to grant the reliefs sought for.

16. For the reasons aforesaid, we do not find any merit in the appeal and the same is dismissed accordingly. There shall be no order as to costs.