(1994) 03 KL CK 0008

In the High Court Of Kerala

Case No : O. P. No''s. 13741 of 1993 and Connected Cases

M.V. Narayanan and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 22-03-1994

Acts Referred:
Constitution of India, 1950 — Article 226, 300A, 39(a)

Citation : (1994) 2 KLJ 600

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M. Rajagopalan, for the Appellant; S. Parameswaran, for the Respondent

Judgement

1. The petitioners who are retired employees of the Armed Forces have been re-employed in establishments of the State Government and public sector undertakings. In these petitions under Article 226 of the Constitutions of India they impugn the validity of the orders of the Central Government by which the payment of relief on pension earned upon retirement from the armed forces, has been suspended during the period of re-employment.

In this judgment the petitioners shall be referred to as ex-servicemen or pensioners. I. THE FACTS

The facts fall in a narrow compass and are uncontroverted. As is well known, employees in the armed forces retire at a relatively young age. The Central Government has a number of schemes designed to provide employment to ex-service men, by relaxation of age and qualifications and by preferential treatment. In pursuance of these schemes, the petitioners, upon their retirement, have been re-employed in different public sector undertakings such as the nationalised banks. National Cadet Corps, establishments of the State Governments and so on. Upon their retirement from the Armed Forces the petitioners earned pension. They also receive an allowance known as "relief of pension" which is in the nature of Dearness Allowance paid to the serving employees. After their re-employment the petitioners continued to receive the pension earned by them together with the relief on the pension. They also receive salary plus the dearness allowance in their re-employment. The pay in the re-employed position was fixed after deducting the amount of pension. However, it is unnecessary to refer to the details like the ignorable amount of pension and the deductible amount of pension.

2. The Central Government has interest in all the public sector undertakings. It is concerned with the burden on the exchequer arisins out of the payment of relief on pension, in addition to the dearness allowance paid to the re-employed ex-service men. Therefore the Central Government considered that the Ex-service men are paid relief against erosion of money value, at two points. By a number of memoranda and circulars the Central Government issued instructions in regard to the payment and/or suspension of relief on pension. The memoranda No. F 13(1) (EV (A)/74 dated 6th April, 1974 and 27th August, 1974, the memorandum No. F. 10(26)-B (TR)/76 dated 29th December, 1976, and the memorandum of the Ministry of Finance bearing No. M/23013/152/79/MP/VI(pt)/1118 dated 26th March, 1984 in substance, suspended the payment of relief on pension to the re-employed ex-service men.

Another memorandum of the Ministry of Personnel, Public Grievances and Pensions bearing No. 2/5/87-PIC dated 22nd April, 1987 on the subject of "Grand of Dearness Relief to Pensioners" is significant for its definition of pension and family pension Broadly stated pension/family pension has been defined to mean "the basic pension basic family pension as the case may be."

The Controller, Defence Accounts, Allahabad issued circulars Nos AT/ORS/Tech/263-VI and AT/ORS/263-VII dated respectively 23-1-1989 and 15-3-1989 directing that the payment of relief on pension be stopped forthwith except in those cases where the High Courts had issued orders of stay.

II QUESTIONS FOR CONSIDERATION

3. The following points were urged by learned counsel for the petitioners.

(i) Pension is the compensation or reward for past services. It is a proprietory right of a retired employee. The relief on pension is the amount added to the original pension to make up for the loss of its value due to inflation and erosion of the value of rupee. Relief on pension is therefore a part of pension.

(ii) Since pension is a right in property, its deprivation by the executive orders is illegal.

(iii) All ex-service men who have been re-employed are not alike in their circumstances. The ex-service men in re-employment represent diverse groups of employees each distinguished by special circumstances. There are employees who secured re-employment not because of the schemes prescribing concessions to ex-service men but on their own merit. There are those who are employed on such a low scale of pay that stoppage of relief on pension reduces their incomes to poverty levels. Again there are re-employed personnel on leave without pay for years and therefore not in receipt of any re-employment pay. The respondents have made a blanket order suspending payment of dearness relief, without regard to the circumstances of different classes of employees. The impugned orders are therefore arbitrary.

III THE CONCEPT OF PENSION

4. The question whether the relief on pension is a part of pension has been considered by the Punjab and Haryana High Court in Ex-Risaldar Major''s case Ex-Risaldar Major Basheshar Singh & Others vs. Union of India & Others (Civil Writ Petition No. 8245 of 1991), by the Delhi High Court in the case of National Ex-Service men Co-ordination Committee National Ex-Service Men Co-ordination Committee & Others vs. Union of India & Others (Civil Writ Petition No. 1966 of 1992). and by the Madras High Court in S. Venkatesan S. Venkadesan & 69 Others vs. Union of India & Others (W. A. No. 89 & 134 of 1990 and Writ Petition No. 8805/1987 & Other writ petitions). All these cases accepted that pension is compensation for the past services. Upon analysis of the reports of the Central Pay Commissions, the Punjab & Haryana, Madras and Delhi High Courts emphasised certain aspects of the relief on pension. They highlighted the factors like (a) the absence of a recommendation by the Pay Commissions that the relief on penision should be absorbed in pension, (b) that the relief on pension was always "considered" as a distinct element of remuneration which may or may not be consolidated with the pension and (c) that the relief on pension was never "considered" or "treated" as part of the pension. Inview of this perception of the idea of pension they held that relief on pension is not a part of the pension.

"Treating" dearness relief as part of the pension, involves an element of fiction. The reason is that if pension, in its true character includes the relief granted to restore the lost value of pension, "treating" the relief as distinct from pension does not alter the true conception of pension. The fictional "treatment" does not help in determining the concept, character or content of pension itself. While I propose to bear in mind these judgments and the report of the Fourth Pay Commission from which I have immensely benefitted, 1 propose to attempt a conceptual analysis of pension. My endeavour is to understand, not the external form of the payment expressed as the basic pension plus the relief on pension, but to unravel what is the true character of the payment.

5. The Pension Act and the Rules relating thereto do not throw light on the questions arising in this case. I have therefore not referred to them.

6. The concept of pension originated as compensation to retired employees including members of the armed forces or their dependants, for old age, death or disability. The basic idea is to provide a sense of security and independence to the retired employee, and to make the service efficient. Article 39 (a) of the Constitution of India introduced the directive to the State to secure to its citizens "adequate means of livelihood." If such citizen is an employee of the State, "it

inheres in the concept of such a provision (pension) that it should be adequate Report of the Fourth Central Pay Commission Part II "Pension", Paragraphs 2.16 & 2.17." The object of pension is that even in retirement, the pensioner may live and maintain a standard of living considered reasonable by the society where he belongs. For this purpose costs of living adjustments to neutralise the increase in prices have to be made. This neutralisation of the erosion of the pensioner''s buying capacity by payment of additional relief is a part of the concept of pension. The Fourth Pay Commission, aware that the concept of pension is not static, described the costs of living adjustments'' which is another name for the relief on pension, as "a necessary concomitant of the very concept of pensionary benefits. Report of the Fourth Central Pay Commission Part II "Pension", Paragraphs 2.16 & 2.17."

7. Having summarised the concept of pension, I will now state its legal character enunciated by the Supreme Court.

Once rules in regard to pension are framed receipt of pension within the rules is a legal right. D.S. Nakara and Others Vs. Union of India (UOI), Pension is a determined amount of money payable to an employee upon retirement or to a dependant upon the death of the employee in consideration of the past services. Pension has two objects. Firstly, it rewards the past service and secondly it is intended to save the employee from destitution in old age. It follows therefore that the pension is intended to ensure that the pensioner would (i) be able to live (ii) free from want, with decency, independence and self respect and (iii) at a standard nearly equal to his pre-retirement standard of living. D.S. Nakara and Others Vs. Union of India (UOI),

Again, pension is property of the retired employee. Deokinandan Prasad Vs. The State of Bihar and Others, Consider the concept of pension and its purpose enunciated by D.S. Nakara and Others Vs. Union of India (UOI), and its legal character as property laid down in Deokinandan Prasad Vs. The State of Bihar and Others, What emerges is the true picture of pension, as the amount intended to be adequate to enable the retired employee to live free from want, with decency, independence and self respect and at a standard nearly equivalent to that at the pre-retirement level. It is reasonable to hold that the Central Government intended that the pensioner continues to receive pension with all its attributes declared in D.S. Nakara and Others Vs. Union of India (UOI), case.

IV PENSION IS THE VALUE OF BASIC PENSION

8. It follows that having decided to grant pension of a stated amount with the object of enabling the ex-service men, to live free from want decency, self respect, independence and at the pre-retirement standard, the Central Government did not countenance, diminution of the value of this amount of pension.

9. As time passed by, the pensioner found that his money was not able to buy, as much as it did on the date of his retirement. Inflation eroded his capacity to buy

the necessities within the amount of pension. The Union of India, aware of the need to keep the ex-service men living in dignity, stepped in by accepting the reports of the Pay Commissions and decided to make up for the lost value of the pension. The device adopted by the Central Government was to pay to the pensioners the dearness relief on pension, just as dearness allowance is paid to its employees. The amount of dearness relief, is an additive to the original pension. It has not been absorbed into the original pension to make the two sums into one whole fixed sum of money. The relief on pension is, by its very nature variable-it increases or decreases with the cost of living. Therefore it is illogical to test the validity of the petitioner''s submission on the consideration whether the relief on pension has been absorbed into the basic pension. The exaggerated emphasis on the separate existence of the number, representing the relief on pension is misleading. It ignores the fundamental fact that pension is not an arithmatical figure. Pension is the value of the reward or compensation for past services.

Mr. Parameswaran, learned counsel for the Central Government, urged, with his characteristic tenacity, that pension is always a fixed sum and therefore the "additive" known as the amount of relief on pension never absorbed in basic pension, is not a component of pension. This argument is based on the traditional concept of pension when the amounts of Pension were unalterable, because in those days the value of money was stable. In the current economy of the country the value of money is not stable. Therefore it is not rational to expect that the amount of relief on pension together with the original pension could be expressed as an unalterable fixed constant sum. Pension is the value of the compensation for past services. It is realised through the mechanism of granting relief on pension. In this process of the cost of living adjustment, it is inevitable that the total sum received by the pensioner varies with the cost of living. The argument of Mr. Parameswaran is not tenable.

10. To simplify the matter I propose to illustrate why relief on pension is the inseparable component of pension.

Aware of the bewildering rate at which the value of the rupee fell, eroding the capacity of the original amount, received by the pensioner, to provide a decent living, the Central Government stepped in to restore the amount of pension to its intended value. This cost of living adjustment may be illustrated thus :

The pension granted, say, in 1970 = Rs. X

Suppose in 1975 the inflation reduced the amount of pension to = Rs. X - 5

The Central Government added Rs. 5 to secure to the pensioners the intended value of Rs. X = Rs. (X - 5) 5 = Rs. X

Therefore the additional amount of Rs. 5 was granted for the purpose of continued receipt by the pensioner, of the original value of Rs. X. Therefore the pension is always the value of Rs. X. in the words of the Fourth Central Pay

Commission, this adjustment by granting relief on Rs. 5 "is a necessary concomitant of the very concept of pensionary benefits."

11. For the reasons stated in paragraphs 5-11 above I hold that the amount of relief on pension is a part of the pension. Pension is composed of the basic pension plus the amount of relief on pension.

V PENSION IS PROPERTY-ITS DEPRIVATION LACKS AUTHORITY OF LAW

12. Article 300A of the Constitution of India lays down that no person shall be deprived of property save by authority of law. In the case of Deokinandan Prasad Vs. The State of Bihar and Others, pension bas been held to be property. Deprlvation of property may take place in various ways such as by destruction, confiscation or revocation of a proprietory right granted, In this case the payment of relief on pension stands "suspended" during the period of re-employment. The word "suspended" must be understood in the context, of the denial of relief on pension during the period of re-employment. During the period of re-employment of the petitioners the payment of relief on pension has been completely stopped. This amount is not payable to the pensioner after termination of such employment. The loss is irretrievable. Therefore the stoppage of payment of relief on pension is deprivation of pension.

13. The executive Government cannot deprive a person of his property of any kind without specific legal authority Wazir Chand Vs. The State of Himachal Pradesh, In this case there is no legislative sanction for depriving the petitioners of the relief on pension.

Therefore the stoppage of relief on pension by the orders impugned in these petitions is unconstitutional.

VI POINT No. (iii) NOT CONSIDERED

14. In view of my conclusions on point Nos. (i) and (ii) referred to in paragraph 4 of this judgment, it is unnecessary to consider the point No. (iii). VII DELAY AND OTHER ARGUMENTS

It was urged that the stoppage of relief on pension commenced in 1975 and that the petitions filed in 1993 should be dismissed on the ground of delay. I do not consider that these petitions should be dismissed on this ground.

The payment of relief on pension involves a burden on the exchequer. Mr. Parameswaran asserted that the modem legal thought does not favour judicial interference in cases involving financial burden of the State. I was willing to consider this modern thought. But nothing-arguments or literature-was brought forth to substantiate this assertion.

VIII ORDER

For the reasons stated in this judgment I allow all the original petitions and make the following order: (i) The orders of the Central Government in its various departments suspending payment of relief on pension to the petitioners during the period of their re-employment after retiring from the armed forces of India are illegal and are hereby quashed.

(ii) In particular the memorandum No. F13(1) EV(A)/74 dated 6th April, 1974, memorandum No. F13(1)EV(A)/74 dated 27th August, 1974, memorandum No. F 10 (26)-B (TR)/76 dated 29th December, 1976, memorandum of the Ministry of Finance No. M/23013/152/79/MP/VI (pt)/1118 dated 26th March, 1994 and the Circular No. AT/ORS Tech/263-VI dated 23-1-1989 issued by the Controller Defence Accounts, Allahabad, and the Circular No. AT/ORS/263-VII dated 15-3-1989 issued by the Controller, Defence Accounts, Allahabad, are also quashed.

(iii) The respondents to each of these petitions shall pay to the petitioners the amount of relief on pension as if the orders suspending/stopping the payment of relief on pension during the petitioners'' re-employment were never made.

