(2014) 12 MAD CK 0074

In the Madras High Court

Case No : W.P. No. 11739 of 2007 (T) (O.A. No. 2767 of 2003)

N. Subramanian APPELLANT

Vs

Government of Tamil Nadu RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0074

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : M. Ravi, Advocates for the Appellant; S. Navaneetham, Advocates for the Respondent

Judgement

D. Hari Paranthaman, J.—The petitioner entered into service as B.T. Assistant. He was promoted as Headmaster in 1966. He was permitted to retire voluntarily on 10.07.1983. He rendered more than 30 years of service, when he retired voluntarily from service.

2. Accordingly, pension pay order dated 20.02.1984 was passed by the fourth respondent, by taking into account the qualifying service as 30 years and 14 days in favour of the petitioner. Periodically, whenever there was a revision in pension, the pension of the petitioner was also revised. The same is not in dispute.

3. After his retirement in 1983, the Government issued G.O. Ms.No.1108, Personnel and Administrative Reforms Department, dated 18.12.1987 giving weightage of service for five years for the persons, who were going on voluntary retirement. Thus, the Government has liberalised the pension scheme by giving certain benefits. The Government could have thought that by giving such weightage more persons could leave the service.

4. Whenever, the pension scheme is liberalized by giving certain benefits, it has been well-settled by a catena of decisions including the decision of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), that the Government

cannot arbitrarily fix the cut off date for the liberalised scheme of pension.

5. The claim of the petitioner is that the weightage of 5 years in the case of voluntary retirement shall be given to him also and the monetary benefits could be given from the date of issuance of G.O. Ms.No.1108, P & AR Department, dated 18.12.1987 and he could not be denied the weightage of five years.

6. The petitioner made a representation in this regard. But the representation was rejected by the third respondent by the order dated 14.01.2003 directing him to approach the Departmental authorities. Accordingly, he approached the Department. The Departmental authority, namely, the second respondent also rejected the representation by the order 23.04.2003.

7. Hence, the petitioner filed the original application O.A. No.2767 of 2003 questioning G.O. Ms.No.1108, P & AR Department, dated 18.12.1987, letter dated 14.01.2003 of the third respondent and the letter dated 23.04.2003 of the second respondent and seeking a consequential direction to the respondents to grant him all the benefits as per the G.O. Ms.No.1108 and interest on belated payment and revised pensionary benefits. On abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No.11739 of 2007.

8. A counter affidavit is filed. The crux of the averments made in the counter-affidavit filed by the respondents 1 to 3 is that since the petitioner retired from service on 10.07.1983 before the issuance of G.O. Ms.No.1108, P & AR Department, dated 18.12.1987, the benefit of 5 years weightage could not be claimed by the petitioner. According to the respondents 1 to 3, the cut off date is 18.12.1987 and the persons, who retired voluntarily after 18.12.1987 alone are eligible for the benefit of 5 years weightage in service.

9. Heard both sides.

10. The facts are not in dispute. It is true that the petitioner retired on 10.07.1983 and the weightage of 5 years service along with the service rendered at the time of voluntary retirement was introduced only by way of G.O. Ms.No.1108, Personnel and Administrative Reforms Department, dated 18.12.1987.

11. But it is well-settled law that whenever the Government introduces any scheme liberalising pension, the same cannot be denied to the employees, who retired prior to the date of issuance of the G.O. But the Government could only say that the persons like the petitioner could get monetary benefits only from the date of issuance of G.O.

12. It has been held so categorically in D.S. Nakara and Others Vs. Union of India (UOI), ..

"65...... With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: ''being in service and retiring subsequent to the specified date'' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date'' in impugned memoranda, Exhibits P-I and P-2, violates Art. 14 and is unconstitutional and is struck down.......... Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible......"

13. The same principle is also reiterated in the judgment of the Apex Court in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, .

"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 nakara''s case (supra) would cover this category of cases."

14. In view of the categorical pronouncement of the Apex Court in the aforesaid judgments, I am of the view that the order of the third respondent dated 14.01.2003 and the order of the second respondent dated 23.04.2003 are liable to be quashed. However, I am not inclined to set aside G.O. Ms.No.1108, P & AR Department, dated 18.12.1987 and it has to be understood in the light of the judgments of the Apex Court that the said G.O. is also applicable to the persons like the petitioner, who retired prior to the date of issuance of the G.O. also, but the benefits shall be given only from the date of issuance of the G.O.

15. Accordingly, a direction is issued to the respondents 1 to 3 to send appropriate proposal revising pension and other terminal benefits of the petitioner to the fourth respondent within a period of eight weeks from the date

of receipt of a copy of this order and the fourth respondent is directed to authorise pension and other benefits within a period of three weeks thereafter.

16. This writ petition is ordered in the above terms. No costs.