

(2006) 03 DEL CK 0135
In the Delhi High Court
Case No : LPA No. 47 of 2001

National Institute of Public Cooperation and Child
Development

APPELLANT

Vs

Dr. D. Paul Choudhary

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Citation : (2006) 03 DEL CK 0135

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : A.K. Singla and Pankaj Gupta, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 7.11.2000 by which the petition was allowed.

2. Heard learned counsel for the parties and perused the record.

3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. By means of the writ petition, the petitioner had prayed for a writ of certiorari to quash the impugned order dated 4.11.1988 copy of which is annexure P-XIII to the writ petition which extends the pension scheme to Respondent No. 2's institute (the appellant herein) w.e.f 8.8.1988 instead of 1.1.1986, and to direct the institute to extend the Pension Scheme to the employees of the institute w.e.f. 1.1.1986.

5. The petitioner was appointed as a Director of the National Institute of Public Cooperation and Child Development (the appellant herein) in 1980 and he superannuated on completing the age of 60 years on 31.10.1987.

6. It is alleged in paragraph 13 of the writ petition that a pension scheme had been framed by the Government of India for its employees fixing 1.1.1986, as the date of its application. The petitioner contends that the scheme became applicable to the employees of the Institute also from 1.1.1986 but as pointed out in paragraphs 21 to 24 of the counter affidavit this allegation is not correct. The pension rules for the Institute entitled "National Institute of Public Cooperation and Child Development Employees Pension and Other Benefit Scheme" were framed and forwarded on 3.5.1988 for the approval of the Chairman of the Institute who gave sanction and approval to the same on 8.8.1988. Hence the pension scheme came into force for the employees of the Institute only from 8.8.1988 and not before that date.

7. The impugned order dated 4.11.1988 which has been challenged in the writ petition states as follows:-

NATIONAL INSTITUTE OF PUBLIC COOPERATION & CHILD DEVELOPMENT 5, Siri Institutional Area, Hauz Khas, New Delhi-110016

No. NI/XI/27/85-Pers.

4th November, 1988

Sub:- Extension of Pension Facilities to the Staff of NPCCD

Pension Scheme for the staff of NIPCCD has been approved w.e.f. 8th August, 1988. The Scheme includes the extension of Central Civil Services (Pension) Rules, 1972, Central Civil Services (Commutation of Pension) Rules, 1981, CCS (Extra-ordinary Pension) Rules, 1960, and G.P.F, (CS) Rules, 1980. The salient features of the Scheme are circulated for the information of the staff members.

2. It may be noted consequent on the implementation of the Scheme in NIPCCD, retirement age in respect of the employees of the NIPCCD shall be as follows:-

For those employees who are already in regular service of the NIPCCD as on 1 January, 1986 the age of superannuation will be sixty years and in respect of persons who are appointed on or after 1 January, 1986, the age of superannuation shall be fifty eight years, except, however, for group "D" employees in whose cases the age of retirement will be sixty years.

4. Persons who are on the regular employment of the Institute as on 8th August, 1988, shall have the option either to remain as CPF beneficiaries or have the retirement benefits and the general provident fund under the New Scheme. It is, Therefore, requested that those who are interested to remain as CPF beneficiaries, may exercise their option in the enclosed proforma within 3 months from the date of this notification. The option once exercised shall be final.

5. It may be noted that persons who have not exercised any option shall be deemed to have been opted for pension scheme and shall be eligible for general provident fund, pension, gratuity, commutation pension, family pension, etc. as per the rules applicable to the employees of the Central Government.

6. The option may be submitted to the undersigned in duplicate.

(A.C.Jana)

Joint Director (CS)

8. A perusal of the above order shows that the pension scheme was approved only w.e.f 8.8.1988 whereas even on his own allegations the petitioner had retired on 31.10.1987 i.e. much before the pension scheme for the Institute came into force. Hence, it is evident that the petitioner (respondent in this appeal) had no right to claim pension under the pension scheme which came into effect from 8.8.1988.

9. Learned counsel for the writ petitioner relied on the decision in D.S. Nakara and Others Vs. Union of India (UOI), . However that decision has been distinguished in the subsequent decisions of the Supreme Court e.g. All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, in which it was observed:

10. D.S. Nakara and Others Vs. Union of India (UOI), has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalized all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalization and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalization on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara's case this Court drew a distinction between continuance of an existing scheme in its liberalized form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the

fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc.

10. Admittedly, the writ petitioner was not working in the appellant institute on the date when the pension scheme was adopted and made applicable for the first time. Hence, in our opinion, the writ petitioner was not entitled for the benefits of the said scheme. During his tenure in the appellant institute there was no pension scheme whatsoever for the employees of the appellant institute. As such the petitioner was not entitled to the benefit of the pension scheme which was adopted for the first time on 8. 8.1988 as he had retired before that date.

11. It is no doubt true that while he was in service the process for applying the pension scheme in the Institute had been initiated in the appellant institute but the fact is that the scheme was finalized and adopted only on 8.8.1988 i.e. after the writ petitioner had retired.

12. The Executive Council of the Institute in its meeting held on 22.12.1986 considered only a proposal for having such a scheme by observing that before the pension scheme was implemented the rules had to be framed and the Institute needs to examine about reduction of the age of retirement and obtaining an option from the employees to accept GPF rules instead of CPF benefits. This proposal dated 22.12.1986 does not in our opinion amount to adoption of any pension scheme.

13. In view of the above, this appeal is allowed and the impugned judgment of the learned Single Judge is set aside and the writ petition is dismissed.