

(1989) 12 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule Nos. 1874 of 1988 and 629 of 1989

Nikunja Mohan Choudhury : Satish Chandra Chakraborty

APPELLANT

Vs

Deputy Commissioner, Karimganj District

RESPONDENT

Date of Decision : 19-12-1989

Acts Referred:

Citation : (1990) 1 GLJ 233

Hon'ble Judges : B.L.Hansaria, C.J. and M.Sharma, J

Bench : Division Bench

Advocate : N.Choudhary, H.Roy, G.N.Sahewalla, A.K.Goswami, N.M.Lahiri, P.Prasad, Advocates appearing for Parties

Judgement

B. L Hansaria, C J. (Acting)

1. A step forward was taken by the State Government in 1983 in coming to the aid of retired Government servants. Before the recommendation of the Assam Pay Commission 1979 for short the Commission was accepted, the temporary Government servants were not eligible to receive any pension. The Commission however recommended that pensionary benefits as available to a permanent Government servant may be extended to a temporary Government servant who had rendered not less than 20 years of service. This recommendation was accepted by the State Government vide Office Memorandum No. EMP. 48/83/0 dated 10. 8. 83. Para 5 of this Memorandum deals with this aspect and is in the following language.

"A temporary Government servant, who retires after rendering temporary service of not less than 20 years without being confirmed in any post, may be allowed the pensionary benefit as available to a confirmed Govt. servant either on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority. This provision will come into force with effect from 1st September, 1982."

2. The stumbling block in the way of the temporary Government servants like the two petitioner in hand who had retired before 1.9.82 is [the last line of para 5 which has stated that the provision will come into force with effect from 1st September, 1982. This provision has been interpreted by the respondents to mean that the pensionary benefits made available by this para shall accrue only to the benefit of those temporary Government servants who had retired on or after 1st September, 1982. It is this interpretation which has been assailed in these two applications under Article 226 of the Constitution.

3. It is submitted by Shri Lahiri that bringing into existence two classes of temporary Government servants, those who had retired before 1.9.82 and others retiring on or after 1.9.82, would be a classification which would not be warranted by Article 14 of the Constitution inasmuch as there is no nexus between this classification and the object sought to be achieved. In this connection reference has been made to the well known case of *Nakara vs. Union of India*, AIR 1983 SC 130 wherein the denial of revised pensionary benefit to persons who had retired before 31.3.79 was not approved and the Apex Court directed to make available the liberalised pension to those Government servants who had retired before the cut off date.

4. Our attention has also been invited in this connection to *R. L. Marwaha vs. Union of India*, (1987) 4 SCO 31, wherein the benefit of counting the period of Government servants as part of qualifying service for computing pension was made applicable to those employees of the autonomous bodies who had retired on or after the date of the issue of the office memorandum in question. As the petitioner in the aforesaid case had retired before the date of the memorandum he was not accorded the benefit of the order. The Apex Court did not approve the same as there was no explanation worthy of consideration to satisfy the Court that the classification of the pensioners who were working in the Government autonomous bodies in two classes merely on the basis of the date of retirement was constitutional. Despite this the relief of pension was made available with effect from the date of the office memorandum which was August 29, 1984.

5. In the present case also we have nothing before us to satisfy as to why pension made available to temporary Government servants who had put in not less than 20 years of service should be confined to those only who had retired or would be retiring after 1.9.82. However, because of the language of the last sentence of paragraph 5 quoted above we observe that the pensionary benefit shall be made available to all the temporary Government employees who had put in not less than 20 years of service from 1.9.82 only. Though it has been contended by Shri Lahiri that pension should be made available not from 1.9.82 but from the date of retirement we are not in a position to concede to this submission as much as the right to get pension in the case of the present nature accrued only after the recommendation of the Commission was accepted by the Government on 10.8.82. On the language of paragraph 5 of the aforesaid office memorandum and the aforesaid two decisions of the Supreme Court we are

satisfied that persons like the petitioners would be eligible to get their pension w. e. f. 1. 9. 82 only. May we point out here that even in Nakara's case though the liberalised pension Rules were made available to the employees who had retired prior to 30. 3. 79, the date of effect of making available liberalised Rules was fixed not from the date of retirement but from the date fixed by the memorandum.

6. In the result the petitions are allowed and the respondents are directed to pay pension to the petitioners as per the terms of the aforesaid memorandum and to finalise the same as observed above within a period of 2 months from the date of receipt of this order by them.

7. Before parting we put on record our appreciation for the fair stand taken by Sri Prasad as well as by Shri Roy on behalf of the State in stating that the pensionary benefit made available to the temporary Government servants should not be denied to those employees who had retired before 1. 9. 82 though the benefit should be made available from 1.9.82.