

(2019) 10 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (c) No. 667 Of 2013

N.K. Nair

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 10 MAN CK 0003

Hon'ble Judges : Ramalingam Sudhakar, CJ

Bench : Single Bench

Advocate : I. Lalitkumar, R.K. Umakanta, S. Suresh

Final Decision : Disposed Of

Judgement

Ramalingam Sudhakar, CJ

[1] Heard Mr. I. Lalitkumar, learned senior counsel appearing for the petitioner; Mr. R.K. Umakanta, learned Government Advocate for respondent No 1, 2, 3 & 4; and Mr. S. Suresh, learned ASG for respondent No. 5.

[2] The prayers in the writ petition are as follows :

(i) direct the respondents concerned to issue a specific order to re-fix the petitioner's pension as on 1/1/1996 and 1/1/2006 so as to enable to extend the pensionary benefits in favour of the petitioner in accordance with law.

(ii) In the interim, Your Lordship be pleased to direct the respondents concerned to dispose of the petitioner's representation dated 9/5/2013 (Annexure-A/15) within a Stipulated time."

[3] The petitioner retired from the service of the Government of Manipur with effect from 27.09.1989 while he was on deputation to Manipur Electronics Development Corporation Ltd. as Chairman-cum-Managing Director. At the time of deputation to the above stated post, the petitioner was in the cadre of Director of Police Wireless carrying pay scale of Rs. 5100-150-5400-150-6150/- as fixed

by the Government. The petitioner states that his pay was fixed on the basis of the post, namely, the Director of Police Wireless. He also pleads that pay scale prescribed for the post that he was holding was equivalent to that of the Deputy Inspector General of Police, namely, IPS cadre.

[4] The petitioner further pleads that the Government of Manipur has been issuing different pay scale / pay revision for all the posts and services of Government employees. However, in the case of the petitioner, rational and proportionate pensionary benefit applicable to the service and the post held by the petitioner was not granted. The petitioner's plea is that he is not enjoying the pensionary benefits that he is lawfully entitled to and proportionate to the post that he held at the time of his retirement.

[5] The petitioner gave several representations and reminders dated 05.10.2012 [Annexure A/13], 09.05.2013 [Annexure-A/15], 27.06.2010 [Annexure-A/16], 30.04.2012 [Annexure-A/17] and 04.09.2012 [Annexure-A/18].

The petitioner also relies upon a communication dated 13.03.2013 [Annexure-A/14] which reads as follows:

GOVERNMENT OF MANIPUR

SECRETARIAT : HOME DEPARTMENT

No. 9/1/2/9(3)/12-H(P-C)

Imphal,
13th March, 2013

the

To,

Shri N.K. Nair

Director, Manipur Police Wireless (Retd),

House No. 24/2010 A,

Mankav Post, Akoicut - 673007

Sub :- Orders for the re-fixation of pension - reg.

Sir,

I am directed to refer to your representation dated 5th October, 2012 addressed to the Chief Secretary, Government of Manipur on the above noted subject.

2. In this regard, Home Department had taken up the matter in consultation with Finance Department (PIC). It is to mention that one WP (C) No. 1455 of 2000 filed by All Manipur Pensioner's Association is pending for finalization of the case in the Hon'ble Gauhati High Court, Imphal Bench.

3. Since, the matter is sub-judice, the request for re-fixation of pension as requested cannot be actualized.

4. Kindly acknowledge receipt.

Yours faithfully,

Sd/-

(Dr. Rashini Yengkhom)

Under Secretary (Home)

Government of Manipur

[6] The case of All Manipur Pensioners Association was allowed by the Single Bench. The Division Bench reversed the judgment of the Single Judge. Thereafter, All Manipur Pensioners Association appealed to the Supreme Court in Civil Appeal No. 10857 of 2016. In view of the same, the present writ petition was kept pending for some time. The Supreme Court rendered its final decision in Civil Appeal No. 10857 of 2016 on 11.07.2019. Relevant portion reads as follows.

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre-1996 and another who retired post - 1996 for the purpose of grant of revised pension. In our view such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised

pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.1. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post - 1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore, such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and / or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in the case of D.S. Nakara (supra). The decision of this Court in the case of D.S. Nakara (supra) shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in the case of D.S. Nakara (supra) and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement, viz, pre-1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post-1996. The arrears be paid to the respective pensioners within a period of three months from today.

10. The instant appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs."

[7] The petitioner also relies upon the decision of Supreme Court in the case of State of Haryana and Another Vs. Yogender Paul; (1997) 11 SCC 591. Relevant Para 3 reads as follows:

3. The learned counsel for the appellants has submitted that the courts below were in error in holding that the respondent was entitled to payment of ADA - I and ADA - II. The submission is that on the revision of the pay scales in the State of Haryana with effect from 1-4-1979 the Dearness Allowance that was payable earlier was merged in the revised pay scales and after revision Dearness Allowance was not payable on the revised pay scales. We are unable to agree with this contention. The revision of the pay scale for the post of Superintendent of Police (Wireless) under order dated 23-7-1981 was not made on the basis of the revision in pay scales of the Haryana Government employees under the Haryana Civil Services (Revised Scales of Pay), Rules, 1980 which came into force with effect from 1-4-1979. The said Rules admittedly do not include the post of Superintendent of Police (Wireless). The revision of the pay scales for this post was made specially on the basis of the recommendation made by the Inspector General of Police in his letter dated 12-2-1981 to which reference has been made earlier. The basis underlying this revision in the pay scale was to bring the pay scale of Superintendent of Police (Wireless) in Haryana on a par with the pay scale of IPS(Senior Scale). Since the IPS officers having that scale were entitled to ADA - I and ADA - II, it has been rightly held that the respondent was also entitled to draw the said allowances.

[8] It is pleaded by Mr. I. Lalitkumar, learned senior counsel appearing for the petitioner that in view of the decision of the Supreme Court in Civil Appeal No. 10857 of 2016 in the light of [Annexure-A/14] which has already been extracted above, and also the case of State of Haryana and Another (supra), the authorities should decide the claim of the petitioner for proportionate pensionary benefit.

[9] Mr. S. Suresh, learned ASG appearing for respondent No. 5 refers to letter dated 24.03.2014 [Annexure-M2] in affidavit-in-opposition of respondent No. 5, to state that the petitioner in this case has not been conferred as IPS during his service period. This is a dispute on fact which can be resolved at the time when the claim of the petitioner is considered on the basis of the representations by the authorities as to the applicability of the decision of the Supreme Court in the case of All Manipur Pensioner's Association Vs. the State of Manipur to the facts of the present case.

[10] In view of the subsequent development, the petitioner's counsel is directed to file proper and comprehensive representation to the respondents No. 1, 2, 3 & 4 the basis of claim and by enclosing all the decisions that he relies upon so as to enable the authorities to consider the claim of the petitioner on its own merits. This Court, at this stage is not inclined to express any opinion on merits. As and when a fresh representation is submitted by the petitioner along with a copy of this order, the competent authority will decide the issue on its own merit preferably within a period of 3(three) months thereafter.

[11] Writ petition stands disposed of as above.