
(2003) 02 KL CK 0054
In the High Court Of Kerala
Case No : OP No. 20134 of 1999 (S)

P.J. Abraham, Ex. Addl. Chief Mech. Engineer	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Constitution of India, 1950 — Article 226, 32

Citation : (2003) 97 FLR 511

Hon'ble Judges : Jawahar Lal Gupta, C.J.; Kurian Joseph, J

Bench : Division Bench

Advocate : P. Radhakrishnan, K. Meera, Madhu Radhakrishnan and Nithin George, for the Appellant; Varghese P. Thomas, for R1 and R3, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—The petitioner joined Indian Railways as an Assistant Mechanical Engineer on April 16, 1956. On March 1, 1983, he was sent on deputation to a Public Sector Undertaking - Balmer Lawrie and Company Ltd. On August 31, 1983, the petitioner was permanently absorbed in the company.

2. On his absorption in the Company, the petitioner claimed retrial benefits from the Railways. He was asked to exercise an option in terms of the Circular issued by the Indian Railways vide letter dated February 18, 1970. The petitioner had the choice of accepting monthly pension or a lump sum amount of money. The petitioner had opted for the lump sum payment. As a result, the petitioner was paid, as stated by his counsel, an amount of Rs. 1,63,422/-.

3. On April 16, 1987, the benefit of liberalised pension was granted to the persons who had opted for payment of monthly pension. Thus, the amount of pension was revised. The petitioner approached the authorities with the request

that even he should be given a chance to exercise fresh option as there was change in policy. He pointed out that in the Circular dated February 18, 1970 it had been provided that the benefit of liberalisation shall not be available to persons absorbed in a public enterprise. Since there was a change in the policy, he was entitled to exercise his option afresh. His request was declined.

4. The petitioner felt aggrieved. He filed a petition u/s 19 of the Central Administrative Tribunal's Act, 1985 before the Bangalore Bench. He alleged that the lump sum payment made to him meant that there was 100% commutation of pension. Since persons who had opted for monthly pension were being given the benefit of liberalisation despite the stipulation in the original circular, he was entitled to a parity of treatment. He challenged the validity of Para. 10(A) of the Circular dated April 16, 1987. Resultantly, he prayed for a declaration that he was entitled to exercise a fresh option.

5. The claim made by the petitioner was contested by the respondents. It was pointed out that the petitioner having accepted a lump sum payment he was no longer a pensioner and was, thus, not entitled to exercise any fresh option.

6. The matter was considered by the Tribunal. It found that the action of the respondents was in strict conformity with the decision given by their Lordship of the Supreme Court in *Des Raj Bhatnagar and Another Vs. Union of India (UOI)*, . A copy of the decision dated April 23, 1993 delivered by the Tribunal has been produced as Ext. P5.

7. The petitioner challenged the correctness of the view taken by the Tribunal before their Lordships of the Supreme Court. He filed a petition for the grant of Special Leave viz. SLP (Civil) No. 21358 of 1993. It was dismissed vide order dated December 14, 1993. Undaunted, the petitioner filed a Review Petition (Civil) No. 205 of 1994. Even this attempt had failed.

8. On December 15, 1995, the Supreme Court decided two petitions under Article 32. The claim in those petitions related to the restoration of 1/3rd portion of the fully commuted pension. This claim was upheld on the basis of the provisions contained in the Central Civil Services (Pension) Rules, 1972. Relying upon this decision, the petitioner submitted a representation to the Ministry of Railways on August 7, 1996. Thereafter, he approached the Central Administrative Tribunal through a petition u/s 19. He prayed that in view of the decisions of their Lordships of the Supreme Court in *Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another*, he was entitled to "exercise fresh option to receive monthly pension....."

9. The matter was considered by the Tribunal vide order dated March 4, 1999. It was held that the decision of the Tribunal in the petitioner's case rendered on April 23, 1993 had attained finality. Thus, the petitioner was not entitled to re-agitate the matter. A copy of this order has been produced as Ext. P12. Aggrieved by this order, the petitioner has approached this court through the

present petition under Article 226 of the Constitution.

10. Notice of the petition was issued to the respondents. No one appears. However, a counter affidavit has been filed on behalf of respondent Nos. 1 and 3. The petitioner's claim has been controverted.

11. Mr. Radhkrishnan, learned counsel for the petitioner, has made a two-fold submission. Firstly, it has been contended that despite the lump sum payment in the year 1983, the petitioner remains a pensioner. Thus, he is entitled to all the benefits of liberalisation that have been given to the officers, who had exercised option for payment of monthly pension. The counsel has further submitted that the subsequent decision of the Supreme Court in P.V. Sundararajan's case lays down the correct law. Thus, the position of law as laid down in the later decision shall be deemed to have existed from the very beginning. As such the earlier decision is illegal and non-est. Consequently, the benefits as claimed by the petitioner should have been granted by the Tribuna. Is it so?

12. Admittedly, the petitioner had approached the Central Administrative Tribunal in the year 1993. This petition was dismissed after hearing counsel for both sides by a detailed order passed on April 23, 1993. The petitioner was not satisfied with the order. He had challenged it by filing a petition for the grant of Special Leave. This petition viz. SLP (Civil). No. 21358 of 1993 was dismissed by the Apex Court vide order dated December 14, 1993. The petitioner had then filed a Review Petition. That too had met with the same fate. Resultantly, the Tribunal had rightly recorded a finding that a second petition was not maintainable.

13. Mr. Radhakrishnan submits that the provisions of the CPC do not apply to the proceedings. A such neither Section 11 nor Order II, Rule 2 applies. Thus, the second petition was maintainable.

14. The contention as raised by the counsel for the petitioner is wholly untenable. Leaving aside the strict provisions of the Code of Civil Procedure, the well known principal of law is that the court shall not re-decide a decided case. The purpose behind this principle is that there should be finality to the orders passed by a court and that an aggrieved party should not be allowed to re-agitate a matter which has already been heard and decided. In the present case, it is not only that the Tribunal had rejected the petitioners' claim, but even the petition for Special Leave was dismissed. The petitioner's Review Petition had also failed. That too was dismissed. That having happened, the decision had become final between the petitioner and the respondents. He should not have moved for reopening of the case after the dismissal of the Review Petition.

15. Mr. Radhakrishnan submits that their Lordships of the Supreme court had dismissed the SLP without assigning any reason.

16. There is nothing on record to support this submission. A copy of the order passed by their Lordships has not been produced with the paper book or even at the time of hearing of the case. In any event, even a simple order of dismissal

would mean that their Lordships had not considered it appropriate to interfere with the view taken by the Tribunal. Thus, the decision of the Tribunal had the imprimatur of their Lordships. That having happened, the petitioner is not entitled to re-agitate the matter.

17. Mr. Radhakrishnan submits that their Lordships of the Supreme Court had made a departure from the view expressed in Bhatnagar's case (Supra). They had accepted the claim of persons who had taken the benefit of 100% commutation of pension in the later decision viz. P.V. Sundararajan's case. Thus, it should be assumed that the later view was the law laid down by their Lordships even in the year 1993 when the petitioner's claim was rejected. That being the position, it is clear that the view taken by the Tribunal was wrong and, thus, a nullity.

18. It is undoubtedly true that when their Lordships interpret a provision, they declare the law. It is assumed that the law as interpreted by them was always the law in this country. Yet, it does not amount to saying that all those decisions which have been given earlier become a nullity. In fact, the decision of a judicial Tribunal or Court is a nullity only when there is lack of jurisdiction to take seisin of the case. If the court has jurisdiction to decide a matter and to settle the dispute between the parties before it, even if its decision is contrary to the law laid down by the Supreme Court, it would not be termed as nullity. Resultantly, the contention that the decision is a nullity cannot be sustained.

19. In view of the above, we find that the view taken by the Tribunal is absolutely just and fair. It calls for no interference.

20. Despite this, learned counsel for the petitioner has submitted that the action suffers from the vice of discrimination.

21. In view of our conclusion that the petition was not competent, it does not appear to be necessary to examine this matter in detail. However, we may only observe that the petitioner had exercised his option to accept a lump sum payment in the year 1983. He had taken a substantial amount of money viz. Rs. 1,63,422/- at that time. There were others who had opted for monthly payment of pension. It is the admitted position that no other person who had exercised option like the petitioner has been given an opportunity for a fresh option. Thus, the petitioner cannot complain that he has been treated unequally vis-a-vis a person who belongs to his category. If in the case of persons who had exercised their option for monthly pension, an extra benefit had been given, the petitioner cannot complain of discrimination. In any event, we are not satisfied that equals have been treated unequally. Still further, if the petitioner had such a grievance, he should have made it in the year 1993. He had approached the competent court for the grant of relief. If the petitioner had raised the issue, his claim would have been considered. If he did not, he cannot now be permitted to raise it for the first time. Of course, the plea was available to him at the time when he had initially approached the court.

22. The petitioner had admittedly exercised his option voluntarily. He had got a lump sum payment from the Indian Railways. He had also got a job with the Company. He had continued to draw salary besides enjoying the benefit of the payment that he had received from his principal employer. Having taken advantage of the lump sum payment about 20 years back the petitioner cannot now be permitted to claim that he is entitled to revise the option. If such a claim is accepted there would never be an end even to the exercise of option.

23. No other point has been raised.

24. In view of the above, we find no merit in this petition. It is wholly frivolous. The Tribunal had committed no error in declining the relief to the petitioner. It is a fit case for the award of costs. However, since the petitioner is a retired person, we make the costs easy.