(2014) 09 KL CK 0175

In the High Court Of Kerala

Case No : Writ Appeal Nos. 365 and 444 of 2013

P.S. Parameswaran Namboothiri	APPELLANT
Vs	
The Travancore Devaswom Board	RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:
Constitution of India, 1950 — Article 14, 21

Citation : (2014) 09 KL CK 0175

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : R. Rajasekharan Pillai and Sabina Jayan, Advocate for the Appellant; A.N. Rajan Babu, S.C. and Travancore Devaswom Board, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—These appeals are filed against the common judgment dated 3.12.2012 in W.P(C) Nos. 3343/12 and 23266/2011. The writ petitioners are the appellants.

2. W.P(C) No. 3343/2012 is filed for quashing Ext. P4 and for a direction to the respondents to modify the date of applicability of equality in the increase in D.A. between the establishment pensioners and temple employees with effect from 1.7.2011 as 1.7.2009 in Ext. P2 and for a further direction to extend the increase in D.A. to the temple family pensioners and for other consequential reliefs.

3. The facts involved in the writ petition would disclose that the petitioner, a pensioner, who retired as Santhi from a temple is paid basic pension of Rs. 800/- with Dearness Allowance. The complaint of the petitioner is that the establishment employees are treated at par with the State Government employees in the matter of pension, D.A. etc. whereas such benefits were not extended to temple employees and hence discriminatory. Temple employees are treated as contingent employees whereas the W.A. Nos. 365 & 444 of 2013 establishment employees from the rank of Watcher/Guards up to Commissioner are treated as establishment employees. It is pointed out that by order dated

14.12.2010, the 1st respondent Travancore Devaswom Board addressed to the Assistant Commissioners that all the establishment employees are given a hike of 94% of their pension, which includes family pensioners on par with State Government pensioners. Subsequently, by another order dated 25.1.2011, the same has been extended to the Karazhma employees, including part time temple employees and scavengers. It is pointed out that persons like the petitioner were excluded. Petitioner therefore complaining about the discrimination meted out against temple employees, filed W.P(C) No. 3761/2011 seeking for a direction to sanction increased D.A. in terms of the Board orders with retrospective effect. This Court directed consideration of the request of the petitioner. Following the said directions in the judgment, an order was passed on 1.7.2011 revising the pension of temple employees. The petitioner submits that on the same day, another order was passed with respect to establishment employees as well. The petitioner points out that the aforesaid order would show that there is discrimination between temple employees and establishment employees. Revised pension for the temple employees who retired prior to 1.7.2009 was considerably less than what has been provided to establishment employees who retired prior to 1.7.2009. Petitioner and other similarly situated persons challenged the above discrimination by filing W.P(C) No. 23266/2011, which is the other writ petition.

4. In the meantime, as per proceedings dated 16.2.2011, orders were passed extending all the benefits at par with establishment employees. Ext. P2 is the said proceedings. The petitioner further complains that though it is provided in Ext. P2 that the grant of reliefs in regard to sanction of increased D.A. as per communication dated 21.12.2011 addressed to the Manager, Dhanalakshmi Bank as per Ext. P4, it was indicated that the directions at Ext. P2 was not applicable for the family pensioners and ex-gratia pensioners. It is in the said circumstances the petitioner had approached this Court seeking the reliefs as aforesaid.

5. It is inter alia contended that in Ext. P2, the Devaswom Board has restricted the parity regarding the hike in the D.A. with the establishment employees with effect from 1.7.2011, whereas the establishment employees are given the increase with effect from 1.7.2009. This, according to the petitioner, is without any basis or rationale. Further, it is contended that despite a provision being made in Ext. P2 that the periodical increase in D.A. sanctioned shall apply to the temple pensioners also, which includes family pensioners and ex-gratia pensioners, by issuing Ext. P4, the Board has deliberately excluded such category of persons the benefit of increased DA. When the establishment employees and temple employees are treated equally in the matter of grant of increase in D.A., the Accounts Officer cannot unilaterally restrict and deny family pension, is the contention.

6. Counter affidavit is filed by the respondents in W.P(C) No. 23266/2011. It is inter alia contended that there exists two categories of employees in Travancore Devaswom Board, viz. establishment employees and temple employees. Establishment employees are given pensionary benefits in accordance with the

provisions contained in Part III K.S.R., since their services are regulated by those Rules. Pension Rules have not been adopted as far as temple employees are concerned. However, by Ext, R1(a) dated 30.10.1985, a pension scheme was formulated and implemented to the temple employees from 1.4.1985 and pursuant to the same, they were given a fixed amount as pension. No D.A. was being paid. In order to pay them pension, a separate fund was constituted and the expenditure has to be limited to the interest accrued in such earmarked fixed deposit made for the said purpose. Temple employees were allowed D.A. @ 5% in 2004 Pay Revision, which was enhanced by stages to 32% as on April, 2009 onwards. Minimum pension was only Rs. 800/-, family pension was Rs. 700/- and D.A. is not allowed to family pensioners. In the 2009 Pay Revision, a decision was taken to address the grievance of temple employees as they were claiming pension as that of establishment employees as well. A committee was formed and after a detailed study of the entire aspects, including financial commitment, on the recommendation of the committee, the Board sanctioned the following benefits to temple pensioners.

(1) Minimum pension was enhanced to Rs. 1500/- from July, 2009 and the minimum family pension to Rs. 1400/- from 1.7.2009.

(2) Dearness Relief at the rate prevalent to regular establishment was allowed.

(3) Ex-gratia employees who retire before 1.4.1985 was enhanced from Rs. 700/- to Rs. 1,300/- with effect from 1.7.2011.

(4) The maximum DCRG payable to temple employees was Rs. 1,25,000/- and the same was doubled to Rs. 2,50,000/- with effect from 1.7.2011. It is therefore contended that substantial benefit had been given for the temple employees also after taking a lenient view. Under such circumstances, it is contended that there was no reason for them to complain about the scheme introduced to help them in the matter.

7. On the basis of these rival contentions, the learned Single Judge formed an opinion that when, after 1.7.2009, the basic pay of both temple employee and establishment employee came to be fixed on the basis of the applicable norms and D.A. is being provided to them in uniform scales, there is no reason for a further grievance to the petitioners in the matter of payment D.A. from 1.7.2009. With reference to persons who had retired prior to 1.1.2009, the learned Single Judge found that in so far as Ext. R1(a) Rules framed under the Travancore Devaswom Broad Temple Employees Pension and Gratuity Rules, 1985 is not under challenge, the petitioner is not entitled to any relief in that regard. As far as W.P(C) No. 3343/2012 is concerned, it is submitted that in so far as the petitioner is not a family pensioner, he has no locus standi to challenge Ext. P4 produced in the said case.

8. Learned counsel for the appellants impugns the aforesaid judgment inter alia contending that clause 5 of Ext. R1(a) is unreasonable and opposed to the principles of Articles 14 and 21 of the Constitution of India. It is argued that

discrimination of the petitioners, i.e. persons who had retired prior to 1.7.2009 amounts hostile discrimination, which offends Article 14 of the Constitution. It is also argued that based on the decision in D.S. Nakara and Others Vs. Union of India (UOI), that the classification made is not on the basis of intelligible differentia. There is no rationale for making the classification with reference to objects sought to be achieved. While impugning the judgment in W.P(C) No. 3343/2012, it is argued that when family pension is an essential feature of a pension, treating the family pensioners differently from actual pensioners is bad in law. When the concept of Dearness Relief is to tide over the increase in price of essential commodities, treating the family pensioners differently from actual pensioners, amounts to discrimination and therefore all the categories are to be treated similarly and the same benefits are to be given to the family pensioners.

9. Heard the learned counsel for the appellants and the learned standing counsel for the respondents.

10. The short question to be considered in these appeals is whether there is any discrimination shown between the temple employees and establishment employees. Apparently, by issuing an order by which pensioners of establishment and temple employees are treated similarly, the substantial grievance of the appellants has been taken care of. Then the only question is whether there is any differentiation in the payment of Dearness Relief.

11. The learned Single Judge, after considering the factual issues in the matter, formed an opinion that there is no such differentiation between the amounts payable to the pensioners of temple employees and that of establishment employees.

12. The main contention urged by the learned counsel for the appellants is that a cut off date has been fixed in respect temple employees, which is discriminatory. It is relevant to note that temple employees were not given pension at all, whereas establishment employees were paid pensionary benefits in terms of Part III of K.S.R. The respondent Board started giving pension to temple employees only after framing a scheme. Thereafter, there was continuous request from the temple employees to give pension in par with those given to establishment employees. After conducting detailed study in the matter through a committee formed for the said purpose they arrived at a decision. Therefore, all along, temple employees and establishment employees were treated differently. They have different scales of pay, they have different regulations and pension was differently computed. Hence, there was no reason to classify them as a single category. Temple employees are apparently Santhies who take care of the deity and do the rituals in the temple. They were all along treated differently and they cannot be categorized in par with establishment employees. However, when a parity has been given, there is nothing wrong in the respondent Board classifying them differently and giving a different cut off date for the applicability of pension as well as D.A.

13. Therefore, we do not think that the learned Single Judge had committed any error in arriving at the conclusion in W.P(C) No. 23226/2011.

14. As far as the claim of the petitioner in W.P(C) No. 3343/12 is concerned, family pension is also a scheme which cannot be termed as legal right available to the family of the pensioner. If a classification is made between actual pensioners and family pensioners, one cannot find fault with the respondent Board.

15. Though the learned counsel for the appellants relied upon DS Nakara''s case (supra), in so far as we have already found that there is a difference between temple employees and establishment employees, the factual circumstances available in the said case has no applicability.

16. Having regard to the aforesaid finding, we do not think that any grounds urged by the appellants warrant interference with the judgment of the learned Single Judge while exercising appellate jurisdiction.

In the result, the appeals are dismissed.