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In the Madhya Pradesh High Court

Case No : 20576 of 2013

P.V. Sreenivasaiah and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:
Constitution Of India, 1950 — Article 14

Citation : (2017) 2 JLJ 141 : (2017) 3 MPLJ 400

Hon'ble Judges : Sanjay Yadav

Bench : Single Bench

Advocate : Hemant Shrivastava, Ajay Pratap Singh

Final Decision : Dismissed

Judgement

1. Petitioners, retired State Government servants, having superannuated prior to 1.1.2006, are aggrieved by the action of respondents in fixation of their pension under Sixth Pay Commission by adopting criteria different than post 1.1.2006 retirees.

2. It is not in dispute that the Govt. of Madhya Pradesh vide resolution dated 10.9.2008 published in Madhya Pradesh Gazette (Extraordinary) adopted recommendations of Sixth Pay Commission for its employees and pensioners w.e.f. 1.1.2006. It resolved :

"VERNACULAR MATTER OMITTED"

3. That, for the employees, State Government revised the

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pay scale with effect from 1.1.2006 vide Finance Department''s

Notification No.F-8/2009R/IV dated 28.2.2009. The

pension/family pension of the pensioners retired/died before

1.1.2006 was revised vide Finance Department''s Notification

No.F9/2/2009/R/IV (Part-I) dated 3.8.2009 as follow :

1.1 The amount of basic pension (before commutation)/family pension, without dearness pension and dearness relief, as on 31 st August, 2008

multiplied by 2.26 shall be the consolidated amount payable with effect from 1st September, 2008 (paid in October, 2008). 1.2 The minimum pension/family pension shall be Rs.3,025/- per month and the additional pension payable to old family pensioners will be in addition to this. 1.3 The additional pension payable to old pensioners/family pensioners shall be as per table given below : -

Age of Pensioner/ Family pensioner Additional Pension

80 years to less than 85 years 20% of basic pension/ family pension

85 years to less than 90 years 30% of basic pension/ family pension

90 years to less than 95 years 40% of basic pension/ family pension

95 years to less than 100 years 50% of basic pension/ family pension

100 years or above 100% of basic pension/ family pension

4. Pertinent it is to note that the State Government vide

Finance Department''s Notification No.F9/2/2009/ "VERNACULAR MATTER OMITTED" dated 3.8.2009, has revised the pension/family

pension of the Government servant retiring post 1.1.2006 in

the following terms :

"VERNACULAR MATTER OMITTED"

5. We are presently concerned with Clause 1.1, whereby

the amount of basic pension (pre-commutation)/family

pension without dearness relief has been revised by multiply it

by 2.26, payable with effect from 1st September, 2008.

6. Grievance raised by the petitioners are two fold. Firstly,

that the State Government cannot lay down two different

criteria for fixation of pension, one for pre 1.1.2006 retirees by

multiplying the basic pension by 2.26 and the another for post

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1.1.2006 retirees, by giving 50% of the basic pay last drawn by the employee. Second grievance is with regard to the choice of cut off date. For pre 1.1.2006 retirees, the benefit of revised pension is being given from 1.9.2008 and for post 1.1.2006 retirees, it is w.e.f. 1.1.2006. In addition, it is urged that even the family pensioners are being discriminated. Whereas, pre 1.1.2006 family pensioners, a minimum family pension is fixed at Rs.3025/-. Whereas, for post 1.1.2006, family pensioners, it is 30% of the basic pay with minimum of Rs.3025/- per month.

7. It is pertinent to note at this stage that there were certain anomalies in the rate of pension while implementing the recommendations of 5th Pay Commission vide M.P. Revision of Pay Rules, 1998. The State Government to remove such anomaly, had constituted a Brahma Swaroop Committee which recommended the eradication of such anomaly by bringing at par the pension earned by pre 1.1.1996 retirees with those who retire after 1.1.1996. Accepting the recommendation, the State Government through its Finance Department issued a Circular No.F-09/01/2007/ fu;e@pkj dated 16.5.2007 whereby it was decided -

"VERNACULAR MATTER OMITTED"

8. Contention of the petitioner is that with the recommendation of 6th Pay Commission similar anomaly as it existed at the time of implementation of the recommendation of 5th Pay Commission has cropped up wherein the State Government has created two different class of pensioners, one those who retire prior to 1.1.2006 and the other retiring after 1.1.2006.

9. It is in the backdrop of these facts, the question arises is

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as to whether the State is justified in laying down two different criteria for computation of pension, one for those retiring prior to 1.1.2006 and another retiring after 1.1.2006.

10. Apparently, the petitioners have not chosen to challenge the validity of the Circular dated 3.8.2009, fixing the pension of pre 1.1.2006 retirees. And, rightly so, as it is within the competence of the State to have different criteria for fixing the pension for pre and post 1.1.2006 retirees. In Indian Ex-Services League vs Union of India AIR 1991 SC 1182, the Supreme Court rejected the argument that all pre 1.4.1979 retirees were to be paid the same pension (amountwise) as the post 1.4.1979 retirees. It was held : -

"18. The above words leave no doubt that by this Memorandum the personnel of Armed Forces were extended the same benefit of liberalised pension formula for computation of their pension as was given to the civil servants'' on the same basis. The words which follow thereafter indicate that

appendices ''A'', ''B'' and ''C'' attached to the Memorandum specified the revised rates of pension calculated on the liberalised basis for each rank ''on the basis of reckonable emoluments payable as on 1-4-1979 since the memorandum when issued confined the benefits of the liberalised scheme only to post-1-4-1979 retirees. There is no scope for reading these appendices torn out of the context of the Memorandum in its original form to which they were appended. So read, it is obvious that the calculations given in the appendices ''A'', ''B'' and ''C'' to this Memorandum contain the computation according to the liberalised formula for each rank of the three wings of the Armed Forces for post-1-4- 1979 retirees only. It follows that as a result of the Nakara decision when the benefit of the liberalised pension scheme was made applicable even to pre-1- 4-1979 retirees of the Armed Forces, computation according to the liberalised formula for pre-1-4-1979 retirees had to be made in the same manner as it was done for post-1-4-1979 retirees and shown in appendices ''A'' ''B'' and ''C'' to this Memorandum. This was done by the impugned G.Os. dated 22-11-1983 and 3-12-1983. 19. The petitioners claim that all pre-1-4-1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices ''A'', ''B'' and ''C'' for each rank is clearly untenable and does not flow from the Nakara decision."

11. Similarly, in Chaudhary Kesava Rao vs State of Andhra Pradesh AIR 1990 SC 2043, it is held :

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"6 ... We are fully convinced that the claim of the petitioners is based on a complete misconception of the Rules. A perusal of the Rules clearly goes to show that Part I of the Rules was no doubt made applicable to all Government servants who would retire on or after 29-10-1979 while Part II was made applicable to such Government servants who were holding pensionable posts on 31 March, 1978 and

who retired between 1st April, 1978 and 28th October, 1979 and this distinction was necessary in view of the fact that the age of superannuation for retirement was increased from 55 years to 58 years w.e.f. 29th October, 1979. However, all the benefits have been granted to the pensioners like the petitioners who had retired between 1-4-1978 and 29-10-1979 in the amount of pension retirement gratuity and family pension as granted to the Government servants falling under Part I. So far as the amount of pension is concerned, the formula of completed six monthly periods of qualifying service was worked out as 30/60 of average emoluments which was equal to 50% of the pay. On account of the fact that the Government servants falling in Part I and retiring at the superannuation age of 58 years the above formula was calculated as 33/66 which was also 50% of the average emoluments. Similarly in the case of retirement gratuity and family pension no distinction has been made in the case of the two categories of pensioners. This clearly goes to show that neither there is any discrimination nor any disadvantage to the pensioners failing in the category of petitioners and the formula working out the amount of pension is based on a rational principle and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or the same are in any manner violative of Article 14 of the Constitution. 7. In view of the circumstances mentioned above the case of D.S. Nakara v. Union of India (supra) is not at all applicable in the facts and circumstances of this case and renders no assistance to the petitioners."

12. In Union of India vs P.N. Menon AIR 1994 SC

2221, it is held :

14. ... Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay-scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question will miss that pay- scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service.

13. What is true of revision of pay scale is equally true in

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respect of fixation/revision of pension.

14. In Govt. of Andhra Pradesh vs N. Subbarayudu

(2008) 14 SCC 702, it is held :

5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab vs Amar Nath Goyal 2005 (3) SCT 770 : (2005) 6 SCC 754). 6. No doubt in D.S. Nakara & Ors. v. Union of India, 1983(1) SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in

Nakara''s Case (supra), as observed in para 29 of the decision of this Court in State of Punjab & Ors. v. Amar Nath Goyal (supra). 7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

15. Furthermore, reference to the decision by the Central

Government fixing the pension of its pre and post 1.1.2006

retirees, is of no assistance. The pension of existing Central

Government pensioners was decided by the Central

Government as per resolution dated August 29, 2008 which

accepted Para 5.1.47 of the recommendation of 6 th Pay

Commission to the following effect :

"All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1.4.2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/ dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of

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computing revised pension as on 1.1.2006. This is consistent with the fitment benefit being allowed in case of the existing employees. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired."

16. The resolution by the Central Government is not shown to be binding on the State Government as would render any assistance to the petitioners.

17. Furthermore, reference to the decision by Division Bench of Delhi High Court in Union of India vs Central Government : W.P.(C) No.1535/2012 on 29.4.2013 is of no assistance for the reasons that in the cases before Delhi High Court, the only dispute was as to cut-off date for implementation of the recommendation without distinction as to rate of pension for pre and post 1.1.2006 retirees. This is evident from Paragraph 26 of the decision by Division Bench of Punjab and Haryana High Court, deciding W.P.(C) No.19641/2009 : R.K. Aggarwal vs State of Haryana relied and agreed by the Delhi High Court. It was observed :

26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.8.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs dated 3.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre- revised pay scale from which the pensioner had retired", this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed in such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix the pension of the petitioners accordingly, within a period of two months and pay the arrears of pension within two months. In case, the

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arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to costs."

18. In the case of Pensioners'' Federation, Madhya Pradesh vs The Govt. of Madhya Pradesh : Writ Appeal No.353/2015 decided on 22.1.2016 by the Indore Bench of this High Court, the Court was not concerned with the two different parameters for computation of pension of pre and post 1.1.1996 retirees, as they were equated vide circular dated 28.8.1998, but was concerned with the cut off date for grant of arrears which was different for pre and post 1.1.1996 retirees. Thus, the petitioners not benefited from the decision in Pensioners'' Federation (supra).

19. In view whereof, since no relief can be granted, no indulgence is caused.

20. Consequently, petition fails and is dismissed. No costs.

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