

(2021) 05 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No.432 Of 2020

Raghavendra Anantrai Mehta

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 06-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2021) 05 BOM CK 0003

Hon'ble Judges : R. D. Dhanuka, J;V. G. Bisht, J

Bench : Division Bench

Advocate : Piyush Shah, Jay Vora, A.A.Alaspurkar, P.G.Jagdale, Shailendra Kanetkar

Judgement

V. G. Bisht, J

1 Rule. The learned counsel for the respondents waives service. By consent of parties, petitioner is heard finally.

2 The petitioner by way of present writ petition under Article 226 of the Constitution of India impugns Government Resolution No.HCT-

2015/PRA/KRA 77/KA.TEEN dated 10th May 2016 being discriminatory to the effect that it does not include those pensioners who retired pre-1996

and thus is in violation to Article 14 of the Constitution of India and further seeks direction to respondent no.1 State to pay increased / revised pension

as per the Government Resolution No.HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016 uniformly to the petitioner irrespective of any cut-

off date.

3 The facts of the present petition in nutshell are as under :

(a) The petitioner retired as a District and Sessions Judge, Selection Grade, Satara on 30th September 1991 on attaining the age of superannuation.

The petitioner is governed by the Maharashtra Civil Services (Pension) Rules, 1982.

(b) The petitioner contends that the State of Maharashtra issued a Government Resolution dated 5th January 2011 (as amended on 30th March 2011)

by which recommendations of the Padmanabhan Committee were accepted. The said Government Resolution gives effect to the recommendations of

Padmanabhan Committee regarding the pension payable to the Judicial Officers in the State. By further Government Resolution dated 25th July 2011

the benefits of the Government Resolution dated 5th January 2011 were also extended to the Judicial Officers who retired prior to 1st January 2006.

(c) It is the case of the petitioner that the Andhra Pradesh Retired Judges Association being aggrieved by certain recommendations of the

Padmanabhan Committee Report filed I.A. (No.5 of 2009) in Writ Petition No.1022 of 1989 in the Hon'ble Supreme Court which was disposed

off by an order dated 8th October 2012. The Hon'ble Supreme Court allowed the said I.A. (No.5 of 2009) preferred by said Judicial Officers who

retired after 1st January 1996 but prior to 1st January 2006.

(d) It is then contended that based on the aforesaid order dated 8th October 2012 the present respondent no.1 State of Maharashtra by its

Government Resolution No. HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016 (Exh. C) has raised the pension by 3.07 times. However, this

increase / revision of the pension is given to only those pensioners who retired after 1st January 1996. The relevant portion of the said Government

Resolution reads as under :

â??2(i) The existing pensions of all past pensioners who retired after 01.01.1996 and the pensioners whose pensions were consolidated as per

Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to minimum of 50% of the revised pay scale of pay of their

respective post.â??

(e) According to the petitioner, as he retired prior to 1st January 1996, he is aggrieved by the said cut-off date specified in the Government Resolution

since it has now created two classes of pensioners i.e. pre-1996 and post-1996 for the purpose of revision of pension. This is absolutely arbitrary and

violative of Article 14 of the Constitution of India. Despite making representations, no action has been taken by the respondents. Therefore, the

present petition.

4 Respondent no.1 State of Maharashtra has resisted the present petition by filing affidavit in reply through the Joint Secretary, Law and Judiciary

Department, Mantralaya, Mumbai. According to the respondent no.1 State, the Hon'ble Supreme Court passed the following order in I.A. (No.5 of

2009) preferred by Retired Judicial Officers. The order reads thus :

“(i) The existing pension of all past pensioners who retired after 01.01.1996 and the pensioners whose pensions were consolidated as per

Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to minimum of 50% of the revised pay of their respective

post.

This IA No.5 of 2009 has been decided on 08.10.2012, wherein following order has been passed :

“We accordingly accept the prayer of the applicants and allow this IA in terms of prayer clause (I) of the application.

IA No.5 stands disposed of.”

5 The respondent State further contends that considering the said direction of the Hon'ble Apex Court the Government of Maharashtra issued the

Government Resolution dated 10th May 2016 (Exh. C) in compliance with the direction given by the Hon'ble Apex Court. Since the cut-off date s1t

January 1996 is given by the Hon'ble Apex Court, the distinction between Retired Judicial Officers, if any, is not the creation of the respondent State.

The petitioner is indirectly seeking modification of the order of the Hon'ble Supreme Court through the present petition which is not maintainable and

thus being devoid of merits, is liable to be dismissed.

6 The respondent no.2 i.e. Retired Judicial Officers Association, Maharashtra, in its affidavit-in-reply has fully supported the claim of the petitioner

with a prayer that the same may be allowed.

7 Mr.Shah, learned counsel for the petitioner, submits before us that the creation of two classes of pensioners i.e. pre-1996 and post-1996 within the

same homogeneous is wholly contrary to the settled principle of law laid down by the Hon'ble Supreme Court in the case of D.S.Nakara and Others

vs. Union of India (1983) 1 SCC 305 and more particularly placed reliance on paragraphs 42 and 65. According to the learned counsel the

classification of the same homogeneous class into two different groups is absolutely arbitrary and thus violative of the Article 14 of the Constitution of

India. According to the learned counsel the Hon'ble Supreme Court in the case of All Manipur Pensioners Association vs. The State of Manipur and

Others AIR 2019 Supreme Court 3338 dealt with a similar situation and after discussing the judgment of D.S.Nakara (supra) directed the State to

provide revised pension to all pensioners irrespective of the date of their retirement i.e. pre-1996 or post-1996.

8 The learned counsel then pointed out order passed by the Hon'ble Supreme Court in IA No.(5 of 2009) and would submit that the Hon'ble Supreme

Court was dealing with the percentage of revised pension of the pensioners and the issue of increase of pension by 3.07 times of pensioners retired

prior-1996 was never decided by the Hon'ble Supreme Court. The impugned Government Resolution whilst implementing the said order of the Hon'ble

Supreme Court has by itself suo-moto restricted the benefit of increase of pension to only those pensioners retired post-1996 without any justifiable

reason to exclude the pensioners retired pre-1996. Since both the alleged classes created by the respondent no.1 State i.e. pensioners retired pre-1996

and post-1996 are governed by the Maharashtra Civil Services (Pension) Rules, 1982, there ought not to be any discrimination whilst revising the

pension of pensioners retired post-1996 and that of pensioners retired pre-1996.

9 Mr.Jagdale, learned counsel for respondent no.2 Retired Judicial Officers Association, has supported the submissions advanced by Mr.Shah, learned counsel for the petitioner.

10 Mr.Alaspurkar, learned AGP for respondent no.1 State, vehemently opposed the submissions advanced by the learned counsel for the petitioner

and would submit that the impugned Government Resolution came to be issued by the respondent State in line with the order passed by the Hon'ble

Apex Court in IA No.5 of 2009 and it would be wrong to say that it is the respondent State who has created two different groups of retirees arbitrarily

and in violation of Article 14 of the Constitution of India. According to the learned AGP the ratio laid down in the case of D.S.Nakara (supra) and All

Manipur Pensioners Association (supra) are not applicable to the facts and circumstances of the present case. The learned AGP would submit that in

those cases the fixation of pension etc. was the decision taken by the concerned

government and Union of India under the Service Rules. Since the petition is indirectly seeking modification of the order of the Hon'ble Supreme Court passed in IA No.5 of 2009, the present writ petition is not maintainable and as being devoid of merit is liable to be dismissed with costs.

11 We have perused the record. It appears that the impugned Government Resolution No.HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016

was passed on the basis of order dated 8th October 2012 passed in IA No.5 of 2009 in IA No.244 in Writ Petition (C) No.1022 of 1989 preferred by

Andhra Pradesh Retired Judges Association who retired after 1st January 1996 but prior to 1st January 2006. The order reads thus :

Â?? ORDER

IA No. 223/2007

Put up next week.

IA No. 5 of 2009 in IA No.244 in WP (C) No.1022/1989

The applicants in this IA are judicial officers who retired after January 01, 1996, but prior to January 2006. They are aggrieved by the

recommendation of Justice Padmanabhan Committee, as contained in paragraph 31 of its report. Paragraph 31 of the recommendations of the

Committee, insofar as it is relevant, is as under :

Para 31 : The recommendations of the First National Judicial Pay Commission with respect to past pensioners are given in paragraph 23.18 which are

as under :

1) The revised pension of the retired judicial officers should be 50% of the minimum of the post held at the time of retirement, as revised from time to time.

xx xx xx ??

Mr. P.P.Rao, learned senior advocate appearing for the applicants, pointed out that the Padmanabhan Committee, apparently due to oversight, fixed

the revised pension of the concerned judicial officers at 50% of the minimum of the post held at the time of retirement, as revised from time to time.

Consequently, as a result of the revision, the concerned judicial officers are getting as pension an amount which is lower than what they earlier

received before revision.

The grievance of the applicants appears to be justified and it is significant to note that both the High Court of Andhra Pradesh and the State

Government of Andhra Pradesh, in their respective responses, have supported the case of the applicants.

Mr. A.T.M.Sampath, learned amicus curiae, also submitted that there was evidently some error in the recommendation of the One Man Committee.

We, accordingly, accept the prayer of the applicants and allow this IA in terms of prayer clause (I) of the application.

IA No.5 stands disposed of.

IA No. 1 of 2008 in IA No.213 of 2007

As prayed on behalf of the applicant, put up after four weeks.â??

12 Based on the aforesaid order dated 8th October 2012 passed by the Hon'ble Supreme Court in IA No.5 of 2009, the present respondent no.1 State

of Maharashtra by its Government Resolution No.HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016 (Exh. C) has raised the pension by 3.07

times. However, this increase / revision of the pension is given to only those pensioners who retired after 1st January 1996. The relevant portion of the

said Government Resolution reads as under :

â??2(i) The existing pensions of all past pensioners who retired after 01.01.1996 and the pensioners whose pensions were consolidated as per

Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to minimum of 50% of the revised pay scale of pay of their

respective post.â??

13 It is apparent that the petitioner who retired on 30th September 1991 i.e. prior to 1st January 1996 is aggrieved due to the said cut-off date

specified in the said Government Resolution since according to him it has now created two classes of pensioners i.e. pre-1996 and post-1996 for the

purposes of revision of pension.

14 At the outset, it is required to be noted that in the case of D.S.Nakara (supra) such classification is held to be absolutely arbitrary and violative of

Article 14 of the Constitution of India. In paragraphs 42 and 65 relied by the learned counsel for the petitioner, the Hon'ble Apex Court has observed

and held as under :

â??42 If it appears to be undisputable, as it does to us that the pensioners for

the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension ? One retiring a day earlier will have to be subject to ceiling of Rs. 8,100 p a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000 p.a. and average emolument will be computed on the basis of last ten months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled.

Therefore the classification does not stand the test of Article 14.â??

â??65 That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we

endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to

vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an

arbitrary eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and

thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to

the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that

the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda,

Exhibits P-I and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read

down as under: In other words, in Exhibit P-1, the words:

â??that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date"" and in

Exhibit P-2, the words:

â??the new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non-effective on or

after that date.

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised

pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part

it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the

liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh

computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.â??

15 Similarly, in All Manipur Pensioners Association (supra) the Hon'ble Apex

Court observed and held as under :

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/cutoff 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 cutoff 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.

16 Intensive examination of Article 14 of the Constitution of India by the Hon'ble Apex Court in the aforesaid cases (supra) signifies the significance of Article 14 of the Constitution of India. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. It is well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality.

17 Thus, the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on intelligible differentia which distinguishes person or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

18 According to the learned counsel for the petitioner, there is no criterion on which classification of pensioner(s) who retired on or after 1st January 1996 and before 1st January 2006 can provide a rational principle co-related to object viz., object underlying payment of pension.

19 We are also unable to understand on what basis petitioner and others like him were left high and dry in as much as the same is neither discernible

nor decipherable. No rational principle is outlined and explained by the respondent State to such an absurd classification. As already pointed out, the classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be

achieved. We do not find any reason and rational on record subjecting the petitioner and alike to differential and discriminating treatment.

20 What appears to us is that the respondent State simply misinterpreted and misunderstood the order passed by the Hon'ble Supreme Court in IA

No.5 of 2009. The learned counsel for the petitioner has rightly pointed out that the Hon'ble Supreme Court in IA No.5 of 2009 was dealing with the

percentage of revised pension of the pensioners and the issue of increase of pension by 3.07 times of pensioners retired prior to 1996 was never

decided by the Hon'ble Supreme Court. We are also of the view that the direction so given in the said order is one of the limited application and its

scope cannot be stretched and enlarged to cover the retirees and exclude them who 21 The petitioner and others placed in similar situation and those

who retired on or after 1st January 1996 form only one homogeneous class as a whole and therefore they all cannot be bifurcated or divided into two

groups for the purpose of giving more financial benefits to one segment than the other. The classification has to be based on some rational principle

and the rational principle, as already said, must have nexus to the objects sought to be achieved. Division is, thus, both arbitrary and unprincipled.

Therefore, the classification does not stand the test of Article 14 of the Constitution of India.

22 In view of the above and for the reasons stated above, we are of the considered opinion that the issue in the present writ petition is squarely

covered by the decisions of the Hon'ble Supreme Court in the case of D.S.Nakara (supra) and All Manipur Pensioners Association (supra). The

decisions (supra) apply with full force to the facts of the case on hand.

23 In view of the above, we pass the following order :

ORDER

(i) It is hereby declared that Government Resolution No.HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016 is discriminatory to the effect that

it does not include those pensioners who retired pre-1996 and thus is in violation of Article 14 of the Constitution of India.

- (ii) The respondent no.1 State is directed to pay the increased / revised pension to the petitioner and other Retired Judicial Officers placed in similar situation as per Government Resolution No.HCT-2015/PRA/KRA 77/KA.TEEN dated 10th May 2016, within a period of four months from the date of receipt of authenticated copy of this judgment.
- (iii) Rule is made absolute in aforesaid terms.
- (iv) There shall be no orders as to costs.