
(1996) 09 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5986 of 1992

Rikhi Ram Sharma and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendments) Rules, 1991 — Rule 22A

Citation : (1997) 115 PLR 10

Hon'ble Judges : Sat Pal, J; R.S. Mongia, J; M.S. Liberhan, J

Bench : Full Bench

Advocate : Ashok Sharma Nabhewale, for the Appellant; M.L. Sarin, A.G., M.M. Kumar, Addl. A.G. and Jai Shree Thakur, DAG, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This judgment will dispose of this petition as well as C.W.P. Nos. 12588 of 1994, 12286 of 1994 and 12287 of 1994 as common question of law and factor is involved in all these cases.

2. The petitioners in all these writ petitions were the employees in the privately managed recognised aided Schools in the State of Punjab. They all had retired from service prior to February 5, 1987. Their service conditions were governed by the provisions of the Punjab Privately Managed Recognised Schools Employees (Security of Service.) Act, 1979, and the Rules made thereunder. The Rules made under the Act are known as Punjab Privately Managed and Recognised Schools Employees (Security of Service) Rules, 1981 (hereinafter called " the 1981 Rules"). By a Notification issued in the Punjab Government Gazette dated January 16, 1991, the 1981 Rules were amended by the Rules called the Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendment) Rules, 1991. By the amending Rules apart from substituting Rule 22 of 1981 Rules, Rule 22-A was introduced which is in the following terms :

"22-A, Retirement Benefits. - The Government shall make a scheme for the grant of retirement benefits to the employees of the privately managed recognised schools who,-

(a) are appointed to the aided posts on after the 5th day of February, 1987;

(b) were working on aided posts on the 5th day of February, 1987:

Provided that the provisions of the Scheme so made shall not apply to the employees who retired from such posts before the 5th day of February, 1987; provided further that the employees who were appointed to the aided posts,-

(i) before the 5th day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and

(ii) on or after the 5th day of February, 1987, but before the date of commencement of the Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendment) Rules, 1991;

shall have the right to exercise option within a period of four months from the date of publication of the Scheme to be or not to be governed by the provisions of the Scheme."

In exercise of powers conferred by the aforesaid Rule 22-A and all other powers enabling in that behalf, the State of Punjab promulgated a Scheme for the grant of February, 1987 and to continue to work as such after that date:

Provided that the employees who were appointed to the aided posts:-

(i) before the fifth day of February, 1987, and who have attained or will attain " the age of superannuation on or after that date; and

(ii) on or after the fifth day of February, 1987, but before the 16th day of January, 1991;

shall have the right to opt within a period of four-months from the date of publication of this Scheme to be or not to be governed by the provisions of the Scheme.

(2) The Scheme shall not apply to:-

(i) the employees appointed on part-time basis against aided posts;

(ii) the employees who retired from the aided posts before the 5th day of February, 1987 and the employees who attained the age of superannuation before the fifth day of February, 1987 and were re-employed on aided posts;

(iii) the employees who are governed by the Contributory Provident Fund; and

(iv) the employees employed on a leave-gap arrangement on ad hoc basis."

Clause 4 of the Scheme, inter alia, provided that the option under Sub Clause (1) of Clause 3 was to be exercised within four months of the date of the publication

of the Scheme in the official gazette. The petitioners have challenged clause 3(2) (ii) of the Scheme which makes the retirement benefits scheme inapplicable to the retirees of the privately managed recognised aided schools who retired prior to February 5, 1987.

3. The question posed by the learned counsel for the petitioner is whether it is open to the Government to grant the benefit of the pension scheme to only one group of retirees, who had retired from the privately managed recognised aided Schools on or after February 5, 1987 and deny the same to all those who had retired prior to February 5, 1987? Is this division of the retirees discriminatory and violative of Article 14 of the Constitution of India?

4. According to the learned counsel for the petitioner, clause 3(2) (ii) of the Scheme creates an invidious discrimination between the two sets of retirees - one, who retired prior to February 5, 1987, and the other who might have retired or retire after February 5, 1987. The submission of the learned counsel was that all the retirees from the privately managed recognised aided schools form one class whether they retired prior to February 5, 1987, or thereafter. The cut off date (i.e. February 5, 1987) fixed under clause 3(2) (ii) of the Scheme is wholly artificial and has no relation to the object sought to be achieved by the introduction of the retirement benefits Scheme. The counsel went on to contend that the Government has by drawing an artificial classification between those who retired before February 5, 1987, and those, who retired after that date, has violated the letter and spirit of the fundamental right guaranteed under Article 14 of the Constitution of India. No doubt, Article 14 permits reasonable classification but,, according to the counsel, that classification must satisfy the twin test of the same being founded on an intelligible criterion which distinguishes the person or things which are grouped together from those left out and the said differentia must be shown to have a rational nexus to the object sought to be achieved by the relevant Rules and Regulations. The State Government has to justify the fixing of the cut off date as February 5, 1987 in the present case. The primary reliance of the learned counsel for the petitioner was on the judgment of the apex Court reported as D.S. Nakara and Others Vs. Union of India (UOI), , and some other judgments of this Court and Supreme Court of India, to which we are not making any reference as according to us, the point raised by the learned counsel for the petitioner has been fully answered in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, .

5. On the other hand, learned counsel for the respondents submitted that the State Government had introduced an entirely new scheme for giving retirement benefits. There was no existing scheme which was sought to be revised or liberalised by giving some additional benefits. The 1992 Retirement Benefits Scheme came into existence for the first time by the notification dated February 12, 1992. While introducing an entirely new scheme, which has no connection with any existing scheme a cut off date can be fixed by the Government by taking into consideration financial implications of the Scheme and the extent of

capacity of the Government to bear the burden. Other considerations for fixing the cut off date can be the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, the date when the matter was taken up for consideration, the date of announcement by the Government that it is going to introduce a particular scheme etc. etc. In support of his contention, learned counsel relied upon the judgment of the apex Court in All India Reserve Bank Retired Officers Association's case (Supra). As to why February 5, 1987, was fixed as the cut off date in the Retirement Benefits Scheme, 1992, the reasons have been given in paras 4, 5, 9 and 10 of the additional affidavit filed on behalf of the respondents, which are reproduced below for ready reference:

"4. That the State Government adopted the Delhi Pattern of grant-in-aid rules for the Schools in the State of Punjab. In terms of the grant-in-aid, pay, dearness allowance and management contribution of the contributory provident fund (hereinafter to be referred as CPF) was to the extent of 95% and the remaining 5% was to be paid by the management. The employees working in the Schools in the State of Punjab have been agitating since long in connection with the acceptance of their demands including the grant of retirement benefits i.e. pension and gratuity like the government employees for the employees of the Schools. The then Chief Minister, Punjab, Shri Surjit Singh Barnala after hearing the organisation of these employees agreed in principle to give retirement benefits like pension and gratuity in lieu of CPP. For this a Committee was constituted. Necessary follow up action was to be initiated by the Committee in consultation with the Finance Department and the matter was brought before the cabinet. The Committee was to be headed by the Finance Minister and was to have the following members:

- (i) Chief Secretary;
- (ii) Finance Secretary;
- (iii) Education Secretary
- (iv) One representative of the teachers union of be nominated by them.

The Committee was duly constituted under the Chairmanship of the Finance Minister. However, with the imposition of the President rule in the State of Punjab, a new Committee was constituted with the Chief Secretary as the Chairman. The committee mainly decided to introduce pension scheme modelled to some extent on the lines similar applicable to the teachers of the Government schools. Keeping in view the recommendations of the Committee the employees working in the Schools were to be given benefit like DCRG/Pension/Family Pension etc. These benefits of the scheme were made applicable with effect from 5.2.1987 i.e. the date when the demand of the union was accepted by the then Chief Minister, Punjab, in principle. The year wise proposed expenditure for giving benefits to the staff working in the Schools was prepared. The expenditure on the primary side was also duly drawn up. The Finance Department had preferred

that the Scheme is enforced from the date of its promulgation. However, it had also observed that if the Administrative Department is of the view that the same may be given retrospective effect from 5.2.1987 on the consideration that a decision to implement this scheme was announced by the then Chief Minister on that day, the Finance Department would have no objection to the Scheme being given retrospective effect accordingly i.e. with effect from 5.2.1987.

5. That decision to implement the Scheme with effect from 5.2.1987 was taken by the Committee which included representatives of the teachers' union. The teachers' union was represented through its President Shri Sher Singh and also on some occasions through its General Secretary Shri K.K. Tandon. The financial implication of the scheme was worked out. The financial implication as worked out at that time in respect of Secondary School Teachers is attached as Annexure A-1 and that of the Primary School Teachers is attached as Annexure A-2. The perusal of Annexure A-1 and A-2 shows that the Scheme would be running deficit in the 11th year to the extent of Rs. 1.59 crores and by the 15th year the deficit would be to the extent of Rs. 20.40 crores in respect of Secondary Schools and the scheme would be in deficit in the 9th year to the extent of Rs. 96000/- and by the 5th year the deficit would be to the extent of Rs. 1,11,48,000/- in respect of Primary Schools.

9. That the Scheme notified on 10.2.92 (Annexure A-5) was made retrospective with effect from 5.2.1987 as the then Chief Minister, Punjab, had accepted the demand of the employees of - the Schools in principle. The finance Department of the Punjab Government wanted the Scheme to be made applicable prospectively from the date of the notification. However, it did not object to make it applicable retrospective from 5.2.1987. The president and the General Secretary of the Union who were represented and part of the Committee accepted the fact that the Scheme is to be made applicable from 5.2.1987 onwards. The financial implications were worked out in respects of Secondary Schools and Primary Schools vide Annexure A-1 and A-2, respectively, as referred above. The financial implications vide Annexures A-1 and A-2, respectively, were worked out at the time of framing of the Scheme. However, the projected figures as available now show that the scheme is a deficit scheme and copies thereof are attached as Annexures A-6. The projected expenses statements (Annexure A-6) are likely to vary from time to time according to the actual number of persons retiring in a particular year or on account of change of rate of dearness allowance and also by way of pension revision. The projected figures show that the Scheme is going to be running in loss to the extent of Rs. 32.6 crores by the end of the Financial Year 3008. In respect of the employees of the Schools who have retired prior to 5.2.1987, there is no record whatsoever with the Government. The record which is there with the: Government only pertains to the number of sanctioned posts with the Schools.

10. That it is submitted that the introduction of the Scheme vide notification dated February 10, 1992 (Annexure -5) is entirely anew scheme which was not

in existence prior to its introduction It is modelled on the lines of similar scheme applicable to the Punjab Government employees. The demand in principle was accepted with effect from 5.2.1987 and the teachers union through its President and General Secretary have,also accepted the cut off date as February 5, 1987. Besides, the scheme was duly notified vide notification dated August 16, 1990 (Annexure A-3) and objections were asked for. The financial implication in the Scheme would be a great burden on the State Exchequer, which the State cannot bear. The cut off date has been validly fixed keeping in view the demands of the teachers union. There is no method for the State Government to calculate the financial implications in case scheme is made applicable to those who retired prior to 5.2.1987 as the State Government is not possession of any records. However, it is submitted that since the scheme as it exists is to result in loss which the State Government will not be able to bear. Therefore, in case as in made applicable to those who retired prior to 5.2.1987 the end result would be unexpected heavy burden on the state exchequer wTiich the State cannot bear is any circumstances. The employees who were governed by the CPF Scheme their relation came to an end with the employer on their retirement. The petitioners have right in the Scheme. ? With the introduction of the retirement benefit scheme the additional "burden had been put on the state and extract of some of the cases are attached herewith as Annexure A- 7."

6. During the course of the hearing of the case, enquiry was put to the learned counsel for the respondent that if the scheme in question is made applicable w.e.f. December 1,1996, the date when the privately managed schools started getting aid from the Government , what will be the financial burden? The learned counsel for the state informed us that if the scheme is made applicable from December 1, 1967 ,the State Government will be burdened with the liability of Rs. 35 cores per year whereas it has on about 17 crores of Rupees to be spent per annum on this scheme . 7. After hearing learned counsel for the parties and going through the pleadings, we are of the view that there is no merit in the writ petitions. Fixing of the cut off date as Feb. 5,1987, in the Retirement Benefits Scheme, according to us, is not arbitrary or artificial or violative of Article 14 of the Constitution of India. The facts in All India Reserve Bank Retired officers Association's case (supra) before the apex court were almost identical to the one in the present case and identical arguments were raised in that case as have been raised in the present case. In the case before the Supreme Court, the Central Board of Reserve Bank of India in exercise of powers conferred under the provisions of the Reserve Bank of India Act, 1934 framed Regulations known as the Reserve Bank of India Pension Regulations Act 1990. By the said Regulations brought into force w.e.f. November 1,1990 a pension scheme was introduced for the first time in substitution of an existing contributory provident fund scheme. The newly introduced pension scheme was made applicable to all employees entering Bank service on or before November 1,1990. The Bank employees who had retired from service between January 1, 1986, to November 1,1990 were given the option to opt for the benefits of the pension scheme w.e.f. November

1, 1990 provided they refunded the Bank's contribution to the provident fund together with interest received thereon. However Bank employees who had retired from service before January 1, 1986, were not made eligible to opt for the newly introduced pension scheme. The All India Reserve Bank Retired Officer Association challenged the cut off date provided in the scheme which deprived the retirees who had retired prior to January 1, 1986 to opt for the newly introduced pension scheme. Precisely similar arguments as raised by the learned counsel for the petitioner were raised before the apex court which are noticed in para 2 of the judgment. Primary reliance was on D.S. Nakara's case (Supra). After noticing the distinction between a newly introduced scheme and where the state decides to revise and liberalise an existing pension scheme, the Supreme Court observed that on certain considerations a cut off date can be provided in newly introduced scheme. It may be noticed here that fixing January 1, 1986 as the cut off date by the Central Board of Reserve Bank of India for the applicability of the newly introduced scheme, one of the considerations was that this scheme had been introduced on the pattern of pension scheme admissible to the Central Government employees, which was made applicable from January 1, 1986. In paras 10 and 11 of the judgment, it was observed as under:

"10. Nakara's judgement D.S. Nakara and Others Vs. Union of India (UOI), has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the state desires to deny it to a group there of, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit or revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the state decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara's case this court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme, in the case of the former all the pensioners had a right on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principle of equality in treatment unless there is a strong rational discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new

scheme in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer came to an end on this retirement and receipt of the CPF amount but in the case of an employer governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this court in D.S. Nakara and Others Vs. Union of India (UOI), drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this court in Krishena Kumar and Others Vs. Union of India and others,

11. Besides it has been pointed out by the Bank authorities that under their manual service details pertaining to an employee who has retired are maintained for five years and thereafter they are destroyed and, therefore the cut off date was fixed as 1st January, 1986. This is clearly brought out in paragraph 3 of Deepak Bansal's affidavit. Secondly, this court had, during petition, asked both sides to prepare statements showing the financial implications if the cut off date is removed and the scheme is applied to all retirees. Both sides experienced difficulty for want of service records and whatever calculations were made from scanty service records available with them were disputed. This justifies the reason for not extending the benefit to those who had retired before five years or more."

From the perusal of the observations made by the apex court it is clear that it had been held that in a case of new scheme, in respect whereof the retired employees have no vested right, an employer can restrict the same to certain class of retirees having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it would throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of the record of every retiree etc. etc.

8. In the present case, as is clear from the averments made on behalf of the respondent in their affidavit dated May 10, 1994 (already reproduced above) one of the considerations for fixing the cut off date as February 5, 1987 was that that

was the date when the demand of the Union was accepted by the then Chief Minister, Punjab in principle. The financial implications were also taken into consideration by making it effective from that date. Even the General Secretary of the Union who took part in the proceedings of the Committee accepted the fact that the scheme be made applicable from February 5, 1987 onwards. The record of the employees who might have retired prior to February 5, 1987, is also not available with the Government and further that the Government will not be able to bear the burden if the scheme is made applicable prior to February 5, 1987. According to us these were valid considerations for fixing the cut off date as February 5, 1987, w.e.f. which date the newly introduced pension scheme was made applicable. These considerations cannot be said to be whimsical or arbitrary as per the dictum laid down by the apex court in All India Reserve Bank Retired Officers Association's case (Supra).

For the foregoing reasons, we find no merit in these writ petitions, which are hereby dismissed. We make no order as to costs.