
(2009) 01 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 52720 of 2007

Roop Chandra	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2009) 121 FLR 133

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Awadh Narain Rai, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—By means of present petition, the Petitioner is seeking a direction to the Respondents to grant gratuity and other retiral benefits.

2. The Petitioner was appointed as Class IV employee on 7.8.1971 by a competent authority in a institution named as Mahamana Malviya Inter College Khekhada, District Aligarh imparting secondary education and is under grant-in-aid by the State Government. The provision for payment of salary of 1971 is applicable. The Petitioner attained the age of superannuation at the age of 58 years 31.10.2005. Admittedly, when the Petitioner retired he was not entitled for gratuity and other retiral benefits. The State Government by the Government Order dated 19.4.2006 provided the benefits of gratuity and other retiral benefits to the non-teaching Class IV employees. The Petitioner claimed the benefit of gratuity and post retiral benefits on the basis of the Government Order dated 19.4.2006 and accordingly filed a representation in this regard. The representation has not been decided. The Petitioner has filed the present writ petition.

3. The Respondent has filed the counter-affidavit stating therein that the Petitioner is not entitled for the gratuity and other retiral benefits as he has retired prior to 19.4.2006 and under the Government Order dated 19.4.2006

only those non-teaching staffs are entitled for the benefit of the gratuity and post retiral benefits, who retires after 19.4.2006. This position has been clarified by the Government Order dated 23.11.2007.

4. Learned Counsel for the Petitioner submitted that the Government Order dated 19.4.2006 is applicable to those employees also who have retired prior to 19.4.2006. Thus, the Petitioner is entitled for the benefit of gratuity and other post retiral benefits under the Government Order dated 19.4.2006. In support of the contention he relied upon the decision of the Apex Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), scc 305 Dhanraj and Ors. v. State of Jammu and Kashmir and others, 1998 (79) FLR 160 (sc) Shanti Devi (Smt.) v. State of U.P., 2001 (45) ALR 254 and Mohan Lal Sharma and etc. v. State of Rajasthan and another. 2004 (3) ESC 1690

5. Learned Standing Counsel states that the Petitioner is not entitled for the gratuity and post retiral benefits as the Government Order dated 19.4.2006 was prospective and the benefit of post retiral benefits and gratuity is available only to those who retired after 19.4.2006. In alternative he submitted that if the Government Order dated 19.4.2006 is made applicable to those who retired before 19.4.2006, the retired employees would be entitled for the benefits only w.e.f. 19.4.2006 and not prior to that, which is also clear from the Government Order dated 23.11.2007.

6. Heard learned Counsel for the parties.

7. I have given my anxious consideration to the rival submissions and also perused the relevant Government Orders. The Government Order dated 19.4.2006 and a subsequent clarificatory Government Order dated 23.11.2007 read as follows:

8. In the case of Shanti Devi (Smt.) v. State of U.P. and Ors. (supra) the family pension was provided vide Government Order dated 24.2.1989 w.e.f. 1.1.1989. The family pension was denied to the Petitioner-Shanti Devi on the ground that her husband who was the Class IV employee in the State aided Junior High School died on 20.11.1987 i.e., before 1.1.1989. This Court following the decision in the Writ Petition No. 34835 of 1995 Mahmooda Begum and Writ Petition No. 23609 of 1995 Smt. Akhtari Begum v. Director of Education held that the Petitioner was entitled for the benefit of family pension in view of the Government Order w.e.f. 1.1.1989. Similar view has also been taken by another learned Single Judge in the case of Rajnuni Devi v. District Inspector of Schools, Ghazipur and Ors. 2002 (1) ESC 136 . In this case also the benefit of family pension was denied on the ground that husband of the Petitioner who was the employee died on 31.8.1987 prior to 1.1.1989. Learned Single Judge has held that denial of family pension to the Petitioner on the aforesaid ground is illegal following the decision of the Apex Court in the case of D.S. Nakara v. Union of India (supra).

9. In the case of Dhan Raj and Ors. v. State of Jammu and Kashmir and Ors.

(supra), the question was whether the drivers and conductors of Jammu and Kashmir State Road Transport Corporation who retired prior to 9th June, 1981 were entitled for the benefit of the pension under the Government Order dated 3.10.1986 granting pension w.e.f. 9th June, 1981. The Apex Court held that the drivers and conductors of Jammu and Kashmir State Road Transport Corporation who retired prior to 9th June, 1981 are also entitled for the benefit of the pension under the Government Order dated 3.10.1986 in as much as denial of the pension to those drivers amounts to discrimination and violative of Article 14. Relying the decision of Constitution Bench of the Apex Court in the case of D.S. Nakara and Ors. v. Union of India (supra) wherein it has been held that the criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14. The Apex Court further held that even otherwise, while considering the question of grant of pensionary benefits the State has to act to reach the constitutional goal of setting up a socialist State as stated and the assurance as given in the directive principles of State policy. A pension is a part and parcel of that goal, which secures to a person serving with the State after retirement of his livelihood. To deny such a right to such a person, without any sound reasoning or any justifiable differentia would be against the spirit of the Constitution.

10. In the case of Mohan Lal Sharma and etc. v. State of Rajasthan and Anr. (supra), the Rajasthan High Court has also held that there was no justification in denying the pensionary benefits to those who retired prior to 1.10.1987 and granting benefits to those who retired after 1.10.1987.

11. In the case of D.S. Nakara and Ors. v. Union of India (supra), the Constitution Bench of the Apex Court held that all the pensioners have equal right to receive the benefits of liberalised pension scheme. Pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revision pension. Criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date, held, violative of Article 14.

12. From the above proposition of law laid down by the Apex Court and this Court it is clear that the benefit of the Government Order dated 19.4.2006 cannot be denied to the employees who retired prior to 19.4.2006 and such benefits are also available to them, including the Petitioner. The notification is always read prospectively unless it is made retrospective. The Government Order dated 19.4.2006 has been further clarified by the Government Order dated 23.11.2007 which says that the benefit is available w.e.f. 19.4.2006. In this view of the matter, the Petitioner is entitled to the benefit of the Government Order dated 19.4.2006 w.e.f. 19.4.2006 and not prior to that.

13. In the result, writ petition is allowed in part. The Respondent is directed to allow the benefit of the Government Order dated 19.4.2006 to the Petitioner

w.e.f. 19.4.2006 if till date nothing has been paid to the Petitioner, the entire dues may be paid forthwith preferably within a period of two months from the date of presentation of the certified copy of the order along with simple interest at the rate of 5%.

14. There shall be no order as to costs.