
(2002) 02 RAJ CK 0169
In the Rajasthan High Court
Case No : Civil Writ Petition No. 680 of 2001

Rukmani T. Bhagat (Smt.)	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 18
Constitution of India, 1950 — Article 14

Citation : (2003) 4 RLW 2401 : (2002) 4 WLC 496

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Advocate : M.K. Sharma, O.P. Sharma, for Director of the Pension, for the Appellant; R.N. Mathur, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Calla, J.—A letter was sent by registered post (local) on 12th February, 2001 by the petitioner-Smt. Rukmani T. Bhagat, aged 75 years W/o Late Shri T.C. Bhagat retired Registrar of Rajasthan High Court, addressed to the then Chief Justice. It appears that this letter was placed before the then Chief Justice on 12th February, 2001 and he passed an order on 23rd February, 2001 that this letter be treated as a writ petition and be posted before the CJ's Bench on 23rd February, 2001. Though this letter the petitioner sought directions to Government of Rajasthan to allow family pension at the rate of 30% of the minimum pay in revised pay scale of 16400-20000 effective from 1.9.96 for Registrar, Rajasthan High Court as allowed by Government of India vide order dated 17th December, 1998 as per 5th Central Pay Commission recommendations on principle of equality under Article 14 of the Constitution of India. She came with the case that her husband-Shri T.C. Bhagat retired from the Government service on 17th November, 1972 while he was holding the post of the Registrar, 1972 while he was holding he post of the Registrar, Rajasthan High Court in the selection scale 900-1800 with 24 years and 6 months service to his credit and that he had expired on 31st October, 2000. The details have

been given with regard to the pay scales of Registrar from 1976 to 1.9.96 as under:-

From Scale 1976 1350-2200 1.9.81 1700-2600 1.9.86 3900-5300 1.9.87
5100-6300 with special pay 400 1.9.96 16400-20000

2. It has been then stated that under memorandum dated 11th June, 1998, the Director Pension and Pensioner Welfare Rajasthan, Jaipur vide Authority No. 106107 dated 3.3.99 revised the pension of her husband and her family pension by notional fixation in the pay scale (5100-6300 + Special pay 400) effective from 1.9.88 at Rs.5500 (5100 + 400 special pay). The 5th Central Pay Commission made certain recommendations for revision of pensions of existing pensioners/family pensioners and for implementation of 5th Central Pay Commission recommendations, the Government of India issued the following orders:-

(a) O.M. No. 45/86/97/P/P 2 (A) Part II Dated 27.10.1997

(b) O.M. No. 45/86/PT. III Dated 10.2.1998

(c) F.45(10/98) P & PW (A) dated 17.12.98 (Copy enclosed as annexure-1)

3. According to the petitioner, the recommendations of the 5th Central Pay Commission in paras 137.14 and 134.30 of its report were that the pensions so revised will not be less than 50% of the minimum of the revised pay scale and family pensions shall not be less than 30% of the revised corresponding pay scale to the scale from which pensioner retired. These recommendations were initially not accepted by the Government of India while issuing orders dated 27th October, 1997 and 10th February, 1998 as stated above. But, subsequently when large number of representations were received by the Prime Minister, the Government of India issued order dated 17th December, 1998, a copy of which was enclosed with this letter as Annexure-1. Through this letter dated 17th December, 1998, it was specified that pension of all pensioners with effect from 1.1.1996 irrespective of date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced from 1.1.1996 of the post last held by the pensioner with the condition that the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative. Similarly, family pension with effect from 1.1.1996 shall not be less than 30% of the minimum pay in revised scale introduced with effect from 1.1.1996 of the post last held by the pensioner/deceased Government servant.

4. This letter dated 17th December, 1998 was meant for persons governed by Central Civil Services (Pension) Rules, 1972; the Government of India, therefore, wrote to the Chief Secretaries of the different States under DO No. 14021/5/93 AIS (II) dated 31st December, 1998 for consent of the State Governments about extending of this benefit to All India Service Pensioners by amending Rule 18 and 22-B of All India Service (death-cum- retirement) Benefit Rules, 1958 indicating that if no reply is received within 15 days of the receipt of this letter, it will be

presumed that the State Government had no objection. However, the Government of Rajasthan did not send any reply to the aforesaid DO and, therefore, All India Service State cadre pensioners, whose class officers in service are influential, succeeded in getting the amendment issued and deriving benefit of 50% 30# pensions as explained above.

5. The Government of Rajasthan on the principle of equity extended the benefits at Par with All India Service State Cadre Pensioners/Central Pensioners to its other pensioners also and as such, the benefit as per Government of India's order dated 27th October, 1997 and 10th February, 1998 had been allowed under the orders dated 21st March, 1998 and 11th June, 1998 respectively with a difference in effective date to be 1.9.1996 instead of 1.1.1996. The benefits as per Government of India's order dated 17th December, 1998 were allowed to the State Cadre All India Service pre 1.1.1996 pensioners and family pensioners from the consolidated fund, but the other State pensioners/family pensioner are still suffering. A grievance was raised that had the State Government extended the benefits as per the Government of India's order dated 17th December, 1998 on the lines it had been allowed to All India Service State cadre pensioners, the petitioner's husband during life time would have got pension at the rate of Rs. 6091/- per month. The petitioner stated that a loss of Rs. 387/- per month was suffered beside the usual D.A. from time to time for the period 1.9.1996 to 31.10.2000 and petitioner claimed that she was entitled to get the pension at the rate of 30% of 16400 i.e. Rs. 4920/- per month instead of 3185 per month and thus, she was suffering a loss of 1735/- beside D.A. admissible from time to time from 1.11.2000. The petitioner's case is that depriving the pre 1.1.1996 pensioners and family pensioners on death of pensioner/Government servant from the benefits as allowed to state cadre All India Service Pensioners as per Government of India's order dated 17th December, 1998 amounts to discrimination and that, it is arbitrary and violative of the Constitutional provision contained in Article 14 of the Constitution. The petitioner tried to illustrate this discrimination by giving the comparative position of a retired I.A.S., officer vis-a-vis R.H.J.S. Officer, both retired in 1972.

6. In case of I.A.S. Officers, revised selection grade from 1.1.1996 is 15100-18300 and the family pension allowed is Rs. 4530/- whereas in case of R.H.J.S. Officers revised selection from 1.1.1996 is 16400-20000 and yet the family pension is only Rs. 3185/-. The implementation of the provisions of Government of India's order dated 17th December, 1998 by Rajasthan Government has resulted in creating anomalies, as a result of which status of the family whose husband's revised pay scale is higher than that of an I.A.S. officer in lower scale, has been lowered down. Had it been implemented, she would have got family pension at the rate of Rs. 4920/- per month. In the letter, a reference has been made to D.S. Nakra's case decided on 17th December, 1982 by the Supreme Court and it has been submitted that other States i.e. Delhi, Haryana, Punjab, Uttar Pradesh, Maharashtra, Tamil Nadu and West Bengal have already extended the benefits to their pensioners as per the Government of

India's order dated 17th December, 1998. It was also prayed in this letter that the petitioner was a 75 years old lady and wife of the deceased officer of Rajasthan Higher Judicial Service and while claiming exemption from appearing in person, the benefit for extending the benefits to pre 1996 pensioners as per Government of India's order dated 17th December, 1998 was sought so as to get the family pension at the rate of Rs. 4920/-per month as against the present rate of Rs. 3185/- per month for the short period of ill-luck.

7. This letter petition when came up before this Court on 23rd February, 2001, in presence of the Additional Advocate General Shri R.N. Mathur, the petition was admitted the notice was issued to Director, Pension and Pensioner's Welfare, Rajasthan, Jaipur. A copy of the letter was directed to be furnished to Shri R.N. Mathur, learned Additional Advocate General for seeking instructions from the Government. It appears that Shri M.K. Sharma, Advocate entered appearance on behalf of the petitioner on 31st July, 2001 and thereafter, the copy of the reply to the writ petitioner was furnished to him by the State of Rajasthan on 11th September, 2001 and this reply and this reply and affidavit in support of the reply sworn on 17th September, 2001 was filed in this Court by learned Additional Advocate General on 24th September, 2001. In the meantime, on behalf of the petitioner, a rejoinder to the reply bearing date 18th September, 2001 was filed in the Registry on 19th September, 2001, a copy was furnished to the office of Additional Advocate General on 18th September, 2001, thereafter, when the matter came up before the Court on 20th September, 2001, this matter was assigned to this Bench. On 24th September, 2001, when the matter came up before this Court, it was noticed that reply had been filed and rejoinder thereto, had already been filed and, therefore, the Registry was directed to include all the pleadings in the file and the matter was posted on 25th September, 2001. On 25th September, 2001, learned Additional Advocate General sought time to take further instructions and the matter was directed to be listed for final disposal on 29th October, 2001. On 29th October, 2001, the matter was adjourned to 20th November, 2001. On 20th November, 2001, the matter was again adjourned to 29th November, 2001 on the request of learned Additional Advocate General. Thereafter, when the matter came up before the Court on 4th January, 2002. It appears that on 20th December, alongwith an affidavit dated 22nd November, 2001 sworn by the Deputy Director, Pension Department, Government of Rajasthan, Jaipur alongwith a zerox copy of the Cabinet order under signature of the Chief Secretary to the Government of Rajasthan was filed wherein it was decided that it was not possible for the Government to give the benefits as per the Government of India's order dated 17th December, 1998. Thereafter, the matter has been heard on different dates and the arguments were concluded.

8. From the documents which have been filed alongwith the rejoinder dated 18th September, 2001, it appears that on 23rd December, 1997, a settlement was arrived at between the State of Rajasthan and the Provincial President and General Secretary of the Employees Federation in the matter of applying the recommendations of the 5th Central Pay Commission to the Government

employees. On behalf of the State of Rajasthan, the signatory was Principal Secretary to the Government, Finance Department namely Shri Adarsh Kishore Mathur and Shri Udai Singh Rathore as provincial President of Employees Federation (Rathore) Group and the Joint Secretary Shri Virendra Mishra. This settlement shows that Government had taken 12 decisions and decision at item 0.8 was that the State Government had decided to implement the Central Government orders with amendments relating to pension and the pension of the pensioners of the State of Rajasthan shall also be amended and the amended pension shall be payable from 1st June, 1997. This decision is also manifest in the document, Annexure-3, dated 27th October, 1997. A reference may be made to Annexure-3 dated 27th October, 1997 issued by the Ministry of Personnel, Public Grievances and Pensions Department of Pension and Pensioners Welfare, New Delhi in the matter of implementation of Government decision on the recommendations of the 5th Central Pay Commission - Revision of pension of pre 1996 pensioners/family pensioners etc. The decision at para No. 9 was that the arrears of increased pensions for the period 1st January, 1986 to 31st December, 1997, the option will be given to the pensioners to deposit the amount in General Provident Fund Amount by opening a fresh account for a period of five years or the amount of arrears be obtained in sixty regular monthly installments alongwith the new revised pension. Thereafter, on 21st March, 1998, the Finance Department (Rules Division) of the Government of Rajasthan issued a memorandum and thereby, it was ordered that the pension/family pension of all the pre 1.9.1996 State pensioners/family pensioners be revised w.e.f. 1.1.96 in the manner indicated in the succeeding paragraphs of this memorandum. Thereafter yet another memorandum dated 11th June, 1998 was issued by the Finance Department (Rules Division) of Government of Rajasthan in the matter of revision of pension of pre 1988 pensioners/family pensioners etc. whereby the governor was pleased to order that the pension/family pension of all pre 1.9.1988 service pensioners/family pensioners hereinafter called pre 1988 pensioners/family pension as on 1.9.1996 under Rajasthan Service Rules as amended from time to time shall be revised in the manner indicated in the succeeding paragraphs of this memorandum.

9. Mr. M.K. Sharma, Advocate appearing for the petitioner has submitted that there is no justification for not giving the benefit of the recommendations of the 5th Central Pay Commission and the amendments made therein and the Government of India's order issued in this regard on 17th December, 1998, more particularly in the context of settlement which had been arrived at between the representatives of the Employees Federation and the representative of the State. He has also submitted that in case, the Government of India's order dated 17th December, 1998 is not given effect to with regard to pre 1996 employees, it will create discrimination and the petitioner cannot be subjected to discrimination vis-a-vis other officers of Indian Administrative Service which are in the State cadre and it will be absolutely arbitrary exercise of the power, in the case, the benefits are not extended to the employees of the State. He has further

submitted that date which has been chosen by the State Government in this regard is wholly arbitrary and the same is against the principles laid down by the Supreme Court in various decisions and he has submitted that the paucity of funds is no ground to defeat the claim, if it is otherwise justifiable. In support of his submissions, he has first of all placed reliance on the decision, rendered in the case of D.S. Nakara and Ors. v. Union of India (1). In para 15 of this judgment, the Supreme court has held that:

"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 classifications being founded on an intelligible differentia which distinguishes persons 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".

10. In para 38 of this judgment, the significance of choosing the specific date has been considered and the Supreme Court has observed that "what then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?"

11. In para 65, the Supreme Court has observed that:

"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 memorandum violates Article 14 and is unconstitutional and is struck down."

12. In case of Subrata Sen and Ors. v. Union of India and Ors. (2), in the end of para 17, it is observed that there cannot be any discrimination between the employees who retired prior to or after a particular date, as held in D.S. Nakara's case which was followed by the Supreme Court in various decisions including V. Kasturi's case (3). In para 18, the Supreme Court also considered its earlier decision in case of All India Reserve Bank Retired Officers Association v. Union of India i.e. (4) in which case the following observations made in D.S. Nakara's case by the Supreme Court were highlighted "the pension will have to

be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it."

13. In case of *Ajay Hasla v. K.M. Sehravardi* (5), it was observed by the Supreme court in para 15 thereof that the true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification which forbids discrimination and there is no discrimination where the classification making the differentia fulfils two conditions, namely, (1) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action while referring to *E.P. Royappa v. State of Tamil Nadu* (6) case quoted as under:-

".....In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 arbitrariness in State action and ensure fairness and equality of treatment."

14. In case of *Dhan Raj v. State of Jammu and Kashmir* (7), it was observed by the Supreme Court that "even otherwise, we do not find any justifiable criteria for the State Government to draw the line between those who retired earlier and those retired after 9th June, 1981. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organisations for more than 20 years. 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, 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.

15. In case of *V. Kasturi v. M.D., State Bank of India, Bombay* (supra), it was observed in para 21 that if the persons retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of

computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. We may observe that this has been considered in the case of *Subrata Sen and Ors. v. Union of India and Ors.* (supra). On the other hand, Mr. R.N. Mathur, learned Additional Advocate General has submitted that it is not a case in which it can be said that any date has been arbitrarily chosen.

16. Mr. Ajeet Kumar Sharma, Advocate cited before us the decision rendered in the case of *State of Maharashtra v. Manubhai Pragaji Vashi* (8) and invited our attention to the following observations made in the end of para 17 of this judgment:-

"In this perspective, we hold that Article 21 read with Article 39-A of the Constitution mandates or casts a duty on the State to afford grants-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear."

17. On the other hand, Mr. R.N. Mathur, learned Additional Advocate General has submitted that it cannot be said to be a case of choosing a date arbitrarily and the employees of the State cannot claim parity with the I.A.S. Officers who are working in the cadre of the State; it is not obligatory for the State to apply the recommendations made by the Central Government and he has further submitted that the settlement which was arrived at between the representatives of the employees federation and the States was not to follow any amendments or the orders which are issued by the Central Government even subsequent to the date of settlement. He has submitted that Government of India's order dated 17th December, 1998 is subsequent to the date of the settlement and the decisions which were taken by the Government as are manifest in the settlement at No. 8 & 9 do not provide that the amendment which will be issued in future by the Central Government or any orders which may be issued in future shall also not be enforced with regard to the State employees. Mr. R.N. Mathur has laid much stress that it depends upon the financial position of the state, paucity of the funds is valid ground not to implement the order as has been passed by the Central Government. In support of his submissions, he has placed reliance on the decision rendered in the case of *State of Punjab and Ors. v. Boota Singh* (9) in which it was held that there was no liberalised benefits which were introduced after the retirement and it was further held that granting of additional benefits has financial implications and, therefore, prescription of date for such benefits cannot be termed as arbitrary, in this case, the respondents had claimed the benefit which was conferred by orders/notifications subsequent to their

retirement. Person who retired after coming into force of these orders/ notifications are governed by different rules of retirement than those who retired under the rules applicable at the time of their retirement. Two categories of persons are governed by two different sets of rules. They cannot be equated and further granting of additional benefits has financial implications also. Specifying the date for conferment of such additional benefits cannot be considered as arbitrary.

18. In the case of Tamil Nadu Electricity Board v. R. Verasamy (10), the Supreme Court considered its earlier decision in the case of Hari Ram Gupta v. State of U.P. (11) even after considering the law laid down in earlier decisions including D.S. Nakara's case as also the case of Krishna Kumar referred to in para 10 while quoting from Hari Ram Gupta's case observed in para 15 that the appellant-Board had given well-founded reasons for introducing the pension scheme from 1.7.1986 including financial constraints. The Supreme Court expressed the view that the retired employees who had retired from service before 1.7.1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class. The Supreme Court answered the issue set out that the Board had not acted illegally or contrary to law in introducing the pension scheme prospectively from 1.7.1986 and that the employees retired before 1.7.1986 cannot compel the board to extend the benefit of the newly-introduced pension scheme with retrospective effect.

19. Mr. R.N. Mathur, learned Additional Advocate General has also relied upon the decisions of the Supreme Court in the cases of Roshan Lal Tandon v. Union of India and Anr. (12) and State of W.B. v. Monotosh Roy and Anr. (13).

20. Having considered the submissions as have been made at the bar on behalf of both the sides and having given thoughtful consideration to the principles as have been laid down, we find that the cases in which a wholly new scheme is introduced, have to be treated differently than those where the pension is sought to be revised. The cases of revision of pension have to be tested differently in comparison to the cases in which a pension scheme is introduced only after the retirement and in the establishment, there was no pension scheme prior to the date of retirement. In the instant case, it is clear that the pension is sought to be revised on the basis of the recommendations made by the 5th Central Pay Commission and consequently, orders issued by the Central Government from time to time. The argument which has been raised that the order as has been issued by the Central Government in the year 1988 subsequent to the date of settlement does not impress us at all. It appears that in principle, the Government has no objection with regard to the grant of the pension in terms of the Central Government's order of 1998. However, the State is facing some financial hardship and therefore, it has been argued and pleaded before us that

there is paucity of funds and even in the Cabinet order, it has been mentioned that it is not possible for the Cabinet to exceed to the request of the employees for grant of pension in accordance with the Central Government order issued in the year 1998. On that ground, the benefit/family pension in case when the employees are retired prior to 1 st September, 1996 has been denied by saying that it was not possible for the State Government to grant the pension at the rate of 50% of the minimum and 30% of family pension of the minimum on the basis of the post which was last held according to the amended pay scales. It is very clear that different yard-sticks could not be applied more particularly when the employees, who are working on higher position have been given this benefit, the same could not be denied to the employees working at lower pay scales and it has been well demonstrates in the facts of the case as stated hereinabove that in certain cases even those persons who were getting less pension will not get the higher amount of pension even though there was a difference in their pay scales in the reverse order. Thus, it certainly creates a heart burning and the denial cannot be held to be justified. We of-course appreciate the ground which has been raised with regard to the paucity of the funds and the Government may be facing paucity of funds but as has been held in *State of Maharashtra v. Manubhai Pragaji Vashi (supra)*, the paucity of funds cannot be a answer to justify the denial of a claim which is otherwise is just and honest claim, such a claim cannot be denied by a welfare State on the ground of paucity of funds.

21. We, therefore, allow this writ petition and direct the State of Rajasthan to evolve out a scheme so as to give effect to the Central Government's order dated 17th December, 1998 in favour of the petitioner and other similarly situated employees of the State. Such scheme shall be evolved out within a period of three months from the date, the certified copy of this order is received by the State of Rajasthan or any of the respondent parties. It will be open for the State Government to implement such scheme in a phased programme with regard to the payment of arrears. So far the payment which becomes due from the date the scheme is evolved out and made known, within the period as above and which may become due in future, shall be paid immediately.

22. With these directions and observations, this writ petition is allowed as above with no order as to costs.