(2003) 04 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) . No. 3237 of 2000

Sadhan Ranjan Dey Choudhrury APPELLANT

Vs

State of Mizoram and Others RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49
Constitution of India, 1950 — Article 226, 309

Citation : (2003) 3 GLT 615

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : H. Roy, for the Appellant; A. Dasgupta, for the Respondent

Judgement

I.A. Ansari, J.—Having granted monetary benefit of revised pay scale to an employee, on the date of his retirement, in accordance with relevant Rules, whether the Government of Mizoram can withdraw the benefit of such pay scale from the pension of such an employee by subsequent modifications in the application of the revised pay scale to such an employee is the moot question, which the present writ petition has raised.

2. In a narrow compass, the case of the Petitioner may be put as follows:

(i) The Petitioner joined as a Member of Mizoram Finance and Accounts Services, in the post of Accounts Officer, on 30.03.1976 and he retired, on superannuation, as Director, Accounts and Treasury, Mizoram, on 01.02.1996. On retirement, the pension of the Petitioner was settled by the Accounts and Treasury Department under the Central Civil Services (Pension) Rules, 1972. The Government of Mizoram does not have any pension rules of its own and, as such, has adopted the Central Civil Services (Pension) Rules, 1972, without any modification in accordance the powers vested in it by Mizoram adoption of Laws Order (No. 2) 1987. The 5th Central Pay Commission recommended a revised central pay scale and the Government of Mizoram vide its notification, dated 26.08.98(Annexure 1 to the Additional Affidavit of the writ Petitioner) granted the revised scale of pay to its employees with effect from 01.01.96. This notification was issued in exercise of powers under Article 309. The Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Pension and Pensioners'' Welfare, issued a circular, dated 17.12.98 (Annexure-C to the writ petition) stating to the effect that so far as persons governed by the CCS (Pension) Rules, 1972, are concerned, the pension of the pensioners, irrespective of their date of retirement, shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 01.01.96. Thereafter, by another notification, dated 09.07.99 (Annexure-B to the writ petition) issued in exercise of powers under Article 309 of the Constitution of India, Mizoram Civil Services (Revised Pay) Rules, 1999, were framed with retrospective effect from 01.01.96. These Rules provided that for all the employees and new pensioners to whom these Rules shall apply, scale of the revised pay would be effective from 01.01.96 for the purpose of notional fixation of pay and pensionary benefits, while the actual monetary benefits shall be available only with effect from 01.05.99. In exercise of powers under Article 309, the Government of Mizoram framed yet another set of Rules known as Central Civil Services (Revised Pay) (Extension to State Government Employees of Mizoram) Rules, 1999, making the same effective from 01.01.96. These Rules were given overriding effect on all the relevant Rules including the Mizoram Civil Services (Revised Pay) Rules, 1999. By office Memorandum No. G. 19011/23/99- F.APF-I, dated 15.10.1999, it was notified that the revised provisions would be applicable to the cases of Government servants, who stood retired on or after 01.01.96, notionally with effect from 01.01.96 and with actual monetary benefits from 01.05.99. The pay of the Petitioner has been revised as per recommendations of the 5th Central Pay Commission with effect from 01.01.96, but the monetary effect of such revised pay scale has been given to him only with effect from 01.05.99.

(ii) Feeling aggrieved by the denial of monetary benefits, which the notification, dated 26.08.98, aforementioned had given to the Petitioner, the Petitioner has, now, approached this Court with the help of the present application made under Article 226 of the Constitution of India seeking, inter-alia, issuance of writ(s) commending the Respondents to pay the differences in the salary of the Petitioner for the month of January, 1996, in accordance with the revised pay scale as per the recommendations of the Fifth Central Pay Commission and for payment of the arrears of the difference in pension w.e.f. 01.02.96 to 30.04.99.

3. The Respondents have contested the case by filing their affidavit-in-opposition, their case being, in brief, thus: The notification, dated 26.08.98, gave merely interim relief of revised pay scale to the employees concerned and the same were subject to the financial benefits, which have been given to them by notification, dated 09.07.99 (Annexure B to the writ petition) aforementioned. As per the notification, dated 04.10.99, aforementioned the revised pay scale was only notionally made applicable to all the Government employees including those, who had retired since after 01.01.96, and the monetary benefit was fixed for all of them had w.e.f. 1st of May, 1999. Though whatever monetary benefits

of pay scale a government servant receives on the day of his retirement cannot be reduced, yet in the case at hand, since the benefit of revised pay scale was not actually received by the writ Petitioner on 01.02.96 i.e., the date on which he retired, the Petitioner is not entitled to receive monetary benefits of the revised pay scale w.e.f. 01.02.96.

4.1 have perused the materials on record including the various notifications. I have heard Mr. H. Roy, learned Counsel appearing on behalf of the Petitioner, and Mr. A. Dasgupta, learned State Govt. Counsel appearing on behalf of the Respondents.

5. It has been submitted by Mr. H. Roy that on 01.02.96, when the Petitioner retired from service on superannuation, his pay scale already stood revised and the benefits, which he was entitled to receive on 01.02.96 as per notification, dated 26.08.98, aforementioned cannot be taken away from him by subsequent notifications, dated 09.07.99 and/or 04.10.99 and/or 15.10.99 aforementioned inasmuch as pension is not a mere bounty, but a valuable right and the Central Government vide its circular, dated 17.12.98, aforementioned has made it clear that irrespective of the date of retirement, pension of a Government servant cannot be reduced to less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.96. Having given such a benefit, contends Mr. Roy, the Respondents cannot subsequently withdraw the same. Support, in this regard, is ought to be derived by Mr. Roy from the decision in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others,

6. Controverting the above submissions made on behalf of the Petitioner, Mr. A. Dasgupta has submitted that since the Petitioner''s pension has to be calculated, in terms of Rule 49 of the Civil Services(Pension) Rules, 1972, on the basis of the emoluments, which he had received on that day, it clearly follows that since on 01.02.96, when the Petitioner retired, he had actually not received the benefits of the revised pay scale as per government notification, dated 26.08.98, aforementioned, he cannot be given the monetary benefit of revised pay scale w.e.f. 01.02.96, while fixing his pension. The monetary benefits of the revised pay scale have been finally fixed for the government employees of Mizoram, according to Mr. Dasgupta, by the notification, dated 04.10.99, aforementioned and as per this notification, the monetary benefits have given to the government employees serving or retired w.e.f. 01.05.99. In short, what Mr. Dasgupta contends is that in terms of Rule 49, a government servant''s pension has to be calculated in accordance with the emoluments, which he received on the date of his retirement, and in view of the fact that the Petitioner had not actually received, on 01.02.96 (i.e., the date on which he retired) monetary benefits of revised pay scale as per notification, dated 26.08.98, aforementioned, he is not entitled to pension on the basis of the revised pay scale and since the monetary benefits of revised pay scale have been subsequently made applicable w.e.f. 01.05.99, the Petitioner is entitled to receive the monetary benefits of the revised pay scale w.e.f. 01.05.99 only. It is also contended by Mr. Dasgupta that

it is the scale received by a government employee on the date of his retirement which is material for the purpose of determination of his retiral benefits, and once the pension is settled, the question cannot be re-opened on the ground fact that subsequently, monetary benefits of a particular pay scale has been given to others after he stands retired. In support of this contention, Mr. Dasgupta has placed reliance on Indian Ex-Services League and others Vs. Union of India,

7. Before entering into the merit of the rival submissions made before this Court on behalf of the parties, it is pertinent to emphasize that the essential facts for disposal of this writ petition are not in dispute and these facts are: The Petitioner retired from service on 01.02.96. By notification, dated 26.08.98, aforementioned, revised pay scale was made applicable to all the Govt. employees including the Petitioner w.e.f. 01.01.96 without making any distinction between notional or monetary arising out of such pay scale. Subsequent thereto, by notification, dated 09.07.99, aforementioned (Annexure B to the writ petition) a distinction was made between the notional fixation of revised scale of pay and actual monetary benefits to be derived thereunder. This notification, for the first time, laid down that the revised scale of pay shall be effective from 01.01.96 for the purpose of nominal fixation of pay and pensionary benefits, while the actual monetary benefit shall be available only w.e.f. 01.05.99 for all the employees as well as those pensioners to whom the rules apply. This was subsequently emphasized by notification, dated 04.10.99(Annexure-A to the affidavit-in-opposition) aforementioned. It is not in dispute that the Govt. of Mizoram does not have any pension Rules of its own and that the CCS(Pension) Rules, 1972, are applicable to the State Govt. employees of Mizoram and that by a circular dated, 17.12.98(Annexure C to the writ petition), aforementioned, the Central Government has clarified that irrespective of their date of retirement, the pension of all the pensioners w.e.f. 01.01.96 shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.96 of the post last held by the pensioner meaning thereby that since the Petitioner retired on 01.02.96, his pension shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.96.

8. In view of the fact that it is not in dispute that as per the Circular, dated 17.12.98, aforementioned, the pension of a government servant on the date of his retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.96, it clearly follows that if the monetary benefits of the revised pay scale were available to the Petitioner on the date of his retirement, his pension cannot be less than 50% of the revised pay scale introduced w.e.f. 01.01.96.

9. The question, which, therefore, falls for consideration is this: what was the pay scale of the Petitioner on 01.02.96? The answer to this question is not far to seek. By the notification, dated 26.08.98, aforementioned the revised pay scale was made applicable to all the government employees w.e.f. 01.01.96. This notification drew no line of distinction between notional fixation of pay and actual

monetary benefits to be derived thereunder. Viewed from this angle, it is abundantly clear that on 01.02.96, when the Petitioner retired, the scale of pay applicable to him was the revised pay scale on 01.01.96 both notionally as well as monetarily. Since the Petitioner was entitled to draw monetary benefit of the revised pay scale on 01.02.96, it is evident that by subsequent notification(s), this monetary benefit cannot be taken away so far as his retiral benefits in the form of pension are concerned, What Central Civil Services (Revised Pay) (Extension to State Government Employees of Mizoram) Rules, 1999, seek to do in such a case is it to give notional benefits of the pay scale from 01.01.96 and monetary benefits of the pay scale w.e.f. 01.05.96. Since the Petitioner was in government service between 01.01.96 and 31.01.96, his pay between 01.01.96 and 31.01.96 can be treated notionally just like any other government employee, but in view of the fact that he was entitled to draw monetary benefits as per the notification, dated 26.08.98, aforementioned, w.e.f. 01.02.96, the same cannot be subsequently taken away by making any rules.

10. It needs to be noted that the Petitioner, as a retired person, does not stand on the same footing as does a person serving the government and as a retired person, he falls in a category, which is different from the ones, who are in service. In the case of government servants, who are in service, the Government''s decision to give monetary benefits of the revised pay scale w.e.f 01.05.99 may be justified, but in the case of retired persons, such as the Petitioner, the monetary benefits having, once, been given to him cannot be withdrawn. Reference, in this regard, made by Mr. Roy to the case Chairman, Railway Board and Ors. (supra) is, therefore, not misplaced on record.

11. It is pertinent to mention that the revised scale of pay the Petitioner has been fixed at Rs. 14,700/-, whereas before the benefit of the revised pay scale was granted, which, his scale was Rs. 4,950/-. By no means, Section 49 of the Civil Services (Pension) Rules, 1972, can be taken to have restricted the pensionary benefits of a government servant to the actual scale that he may have received on the date of his retirement, for, there may be variety of reasons, which may lead to errection of pay scales and if the pay scale is corrected, retiral benefits will have to be accordingly given. If a person enjoys Rs. 100/- as pay scale on the date of his retirement and subsequent to his retirement if it is found that his pay scale ought to have been Rs. 150/-, the Government cannot insist on fixing his retiral benefits on the basis of pay scale, which he had actually received and not on the basis of the scale, which he was legally entitled to received.

12. What logically follows from the above discussions is that it is immaterial as to what actual pay the Petitioner had drawn on 01.02.96, what is material is as to what pay scale he was lawfully entitled to on the date of his retirement. Since the notification, dated 26.8.98, aforementioned had put no restriction on the monetary benefits of the revised pay scale to be drawn by the Petitioner, it becomes clear that the Petitioner was entitled to the monetary benefits of

revised pay scale on 01.02.96 and his pension cannot be reduced to less than 50% of what he was so entitled to receive.

13. So far as the decision in Indian Ex-Services League (supra), referred to by Mr. Dasgupta is concerned, the same appears to be somewhat misplaced. In this case, a government servant had drawn a particular pay scale, but subsequent thereto, when persons, who retired subsequently, were given enhanced pay scales, the government servant concerned agitated the matter by claiming that he too was entitled to receive the benefit, which the other government servants were receiving. This plea was turned down by the Apex Court.

14. In the case at hand, since the monetary benefits of revised pay scale were extended to the Petitioner in terms of the notification, dated 26.8.98, aforementioned, w.e.f. 1.1.96 and was applicable to the Petitioner on 1.2.96 (i.e., the date on which the Petitioner retired), by subsequent notification mentioned hereinbefore, the monetary benefits so given to the Petitioner could not have been legally withdrawn inasmuch as it would lead to reduction of the pay scale applicable to the Petitioner on the date of his retirement.

15. It is, however, made clear that the benefit, which has been given to the Petitioner, shall remain confined only to his arrear pension and not to his arrear salary and the benefits given to the Petitioner in this case have been made applicable to him in the face of the peculiarity of the facts and circumstances of the case at hand and may not be applicable, generally, to others.

16. The Respondents shall, within a period of three months from today, make available to the Petitioner, in terms of the directions contained hereinabove the monetary benefits of the arrear pension w.e.f. 1.2.96 to 30.4.99.

17. With the above observations and directions, this writ petition shall stand disposed of.

18. No order as to costs.