
(1991) 04 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 345 of 1990

Sher Singh Ghuman (Retd.) and Another	APPELLANT
Vs	
The State of Haryana and Another	RESPONDENT

Date of Decision : 11-04-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Punjab Agricultural Produce Markets Act, 1961 — Section 43

Citation : (1992) 101 PLR 1

Hon'ble Judges : S.S. Sodhi, J; I.S. Tiwana, J; A.S. Nehra, J

Bench : Full Bench

Advocate : M.M. Kumar and Pawan Kumar, for the Appellant; S.C. Mohunta, A.G. and J.V. Yadav, D.A.G. for the Respondent No. 1 and Ashutosh Mohunta, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Chowdhri, J.—Notice.

All the petitioners in this writ petition are ex-employees of the Haryana Agricultural Marketing Board, having retired between 1975 and 1987. There were in force the Punjab State Agricultural Marketing Board and Market Committees Employees Provident Fund and Gratuity Rules, 1965 and the petitioners were given the benefit thereof at the time of their retirement. A scheme for payment of pension was introduced by framing rules u/s 43 of the Punjab Agricultural Produce Markets Act, 1961, by notification dated 24-7-1989 (Annexure P-2). The 1989 Rules have expressly been made prospective. They apply to (i) those entering service of the Board on or after the coming into force of the rules and (ii) existing employees who opt for the rules within three months. The petitioners have challenged the notification Annexure P-2 in so far as the rules applicable prospectively and leaves out of its purview those employees who had retired prior to coming into force of the said rules primarily on the ground of invidious discrimination under Article 14 of the Constitution.

2. The petition has been contested. Written Statements have been filed.

3. Learned counsel for the petitioners contends that all employees of the Board including those who retired prior to 24-7-1989 as well as those who retired after that date constituted a single homogenous class and their classification into two categories by arbitrarily providing a cut-off date had no nexus with the object sought to be achieved, namely conferment of a substantial retrial benefit on the retiring employees of the Board. He has placed reliance on D. S. Nakara and Ors. v. Union of India, A. I. R. 1983 S. C. 130, V.P. Gautam v. Union of India, 1983 (2) S. L. R. 346, Kundan Singh v. The State of Punjab, C.W.P. No. 3742 of 1984, decided by Division Bench of this Court on 22-1-1985, Civil Writ Petition No. 1646 of 1985, decided on 18-12-1986 and Khadi and Village Industries Commission v. Bhim Sen Vedatankar L. P. A. No. 1352 of 1989. In C.W.P. No. 9586 of 1987, decided on 23-3-1990.

4. Learned counsel for the respondents pointed out that even the rule laid down in D. S. Nakara's case had since been referred by their Lordships of the Supreme Court to a larger Bench for further consideration. The learned counsel vehemently disputed the correctness of the decisions relied on against them.

5. Having heard the learned counsel for the parties, we are of the view that the decisions in D. S. Nakara's case and V. P. Gautam's case (supras) are distinguishable on the ground that a classification was sought to be made by restricting the application of liberalised pension rules to employees retiring on or after a specified date and thereby excluding those who had retired prior to that date. In other words, the retirees prior to the specified date and those who retired on or after that date were treated differently. In the present case, on the other hand, the petitioners constitute a separate class of persons who had retired prior to the coming into force of the 1989 Rules.

6. With regard to the other authorities, we are of the opinion that they deserve to be considered by a larger Bench. With utmost respect, the line of reasoning which commended itself to the learned Judges, completely overlooks the constraint of finances. If the logic underlying those decisions is accepted it would follow that if the government wants to improve pensionary benefits for future retirees, it must wait till it can muster enough resources to cover all past retirees " as well. The substantial question of law raised in this petition which needs to be settled is; whether the prospective operation of the rules regarding pensionary benefits to the exclusion of persons already retired is per se violative of Article 14 of the Constitution as being discriminatory.

7. We direct that the papers be laid before Hon"ble the Chief Justice for referring this matter to a Full Bench.

JUDGMENT

I.S. Tiwana, J.

(3rd October, 1991).

8. Minor matter magnified in this petition relates to the interpretation and application of the ratio of the Supreme Court judgment in Nakara's case (supra), to the facts of this case in which a challenge has been laid to the vires of the Haryana State Agricultural Marketing Board and Market Committees' Employees Pension, Provident Fund and Gratuity Rules, 1989, on the ground that these make an invidious discrimination between the retirees from the service of the respondent-Marketing Board, that is, those who retired prior to the coming into force of these Rules (24-7-1989) and those retiring later. These Rules have expressly been made prospective by laying down that these would apply to (1) those entering service of the Board on or after the coming into force of the Rules, and (ii) existing employees who opt for the Rules within three months. The petitioners concededly retired from the service of the Board during the years 1975 to 1987. It is again not a matter of dispute that at the time of their retirement the petitioners were governed by the Punjab State Agricultural Marketing Board and Market Committees' Employees Provident Fund and Gratuity Rules, 1965, and they have been granted all the benefits or dues payable to them at the time of their retirement. The presently impugned rules (copy annexure P-2) have been framed u/s 413 of the Punjab Agricultural Produce Markets Act, 1961, and these introduce a scheme for payment of pension to the employees of the Board. The petitioners impugn these Rules, as already indicated, on the solitary ground that these Rules leave out from their purview those employees who had retired prior to the coming into force of the Rules, that is, 24-7-1989 and this is violative of the ratio of the abovenoted Supreme Court judgment, wherein it has been ruled :-

"With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously raising prices, the falling value of the rupee consequent upon inflationary inputs, 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 homogenous 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", is violative of Article 14 of the Constitution."

The precise question considered by the Court was posed thus :-

"Is this class of pensioners further divisible for the purpose of "entitlement" and "payment" of pension into those who retired by certain date and those who retired after that date ?

Besides this pronouncement, the petitioners' learned counsel has also sought reliance on the following judgments of this Court :-

- (i) Annexure P-1 (Kundan Singh v. The State of Punjab, C.W.P. No. 3742 of 1984, decided on 22-1-1985);
- (ii) L. P. A. No. 1352 of 1989 in C. W. P. No. 9586 of 1987 (Khadi and Village Industries Commission v. Bhim Sen Vedalankar, decided on 23-3-1990;
- (iii) Harbans Lal and Ors. v. The State of Haryana, 1986 (2) S. L. R 290.
- (iv) V. P. Gautam v. Union of India.
- (v) Shamsheer Singh and Ors. v. The State of Punjab, 1988 (2) S. L. R 408. and
- (vi) Raghubir Singh v. State of Haryana, 1987 (4) S. L. R. 767.

in support of his stand.

9. In fact, doubt expressed by the Motion Bench about the correctness of some of these judgments required the admission of this petition to be heard by a large Bench. This is how the matter is before us.

10. However, before examining the validity of the abovenoted judgments, it appears appropriate to have a complete dichotomy of the Supreme Court judgment in Nakara's case. The matter appears to have been rendered easy by some of the subsequent pronouncements of their Lordships of the Supreme Court wherein the ratio of the abovenoted judgment has completely been brought out and pronounced upon.

11. The first judgment in this regard probably was in State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, wherein a clear distinction between the pension payable on retirement and the gratuity payable on retirement was brought out. In this judgment, the following question came up for consideration of the Supreme Court :-

"Does that part of the provision which provides for payment of a large amount of gratuity with prospective effect from the specified date offend Article 14 of the Constitution of India ?"

In other words, the matter examined was whether gratuity must be paid on the stepped up basis to all those who had retired before the date of the upward revision, with retrospective effect, even if the provision provided for prospective operation, in order not to offend Article 14 of the Constitution of India? While refuting a similar argument as raised in the instant case in the light of the abovenoted pronouncement in Nakara's case, their Lordships of the Supreme Court expressed themselves in the following manner :-

"In our opinion, the arrears relating to gratuity benefit computed according to the Revised Pension Rules of 1980 may not be paid to the pensioners that retired prior to April 1, 1978, because at the time of retirement, they are (were) governed by the then existing Rules and their gratuity was calculated on that basis. The same was paid. Since the revised scheme is operative from the date mentioned in the scheme, i.e., April 1, 1978, the continuing rights of the

pensioners to receive pension and family pension must also be revised according to that scheme. But the same cannot be said with regard to gratuity, which was accrued and drawn. The reason why their Lordships of the Supreme Court in Nakara's case refused to grant arrears to the pensioners that retired prior to the stipulated date would ipso facto apply for refusing to grant the revised gratuity, since that would amount to asking the State Government to pay arrears relating to gratuity after revising them according to the new scheme for those that retired prior to April 1, 1978, and that would amount to giving retrospective effect to the A.P. (Andhra Pradesh) Revised Pension Rules, 1980, which came into effect from October 29, 1979, and in the case of Part II of those Rules from April 1, 1978. The scheme is prospective and not retrospective."

Again, in a latter case Union of India v. All India Services Pensioners Association 1988 (1) S. L. R. 353. their Lordships, while observing in the context of Nakara's case, that pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement, explained the matter further by giving illustration :-

"Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay-scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystalized on the date of retirement on the basis of the salary drawn by them on the date of retirement. And it was already paid to them on that footing. The transaction is completed and close. There is no scope for upward or downward revision in the context of upward or downward revision of the context of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf."

Similarly, distinction between provident fund retirees and pension retirees was also upheld by the Supreme Court in Krishena Kumar and Others Vs. Union of India and others, . after examining the ratio of Nakara's case with the observations that these retirees constituted different classes and "it was never held in Nakara that pension retirees and P. F. retirees formed a homogenous

class, even though pension retirees alone did constitute a homogenous class within which any further classification for the purpose of a liberalised pension scheme was impermissible". It was further highlighted that :-

"in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible."

This rationale or process of reasoning was again approved by the Supreme Court in *Indian Ex-Services League and Ors. v. Union of India* 1991 (1) S. L. R. 745. while rejecting the theory of "one rank, one pension" for all retirees of the Armed Forces irrespective of their date of retirement. The Court after examining Nakara's case observed that the said decision was one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

12. In the light of all these authoritative pronouncements it can, therefore, be safely concluded that what was held by the Constitutional Bench in Nakara's case was that the benefit of liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees, irrespective of their date of retirement and those benefits cannot be confined only to the persons who retired on or after the specified date because for the purpose of grant of benefits of liberalisation in pension all retirees constituted one class irrespective of their dates of retirement, but it cannot be and is not true in the case of retirees who at the time of their retirement were entitled to provident fund or/and gratuity only. It was in the context of this rationale that the only relief granted in Nakara's case was to strike down that portion of the memoranda by which the benefit of liberalised pension scheme was confined only to persons retiring on or after the specified date, with the result that the benefit was extended to all retirees irrespective of their date of retirement. Once this position emerging from the decision in Nakara's case is borne in mind, the fallacy in the petitioners' contention in this petition becomes obvious and their claim based only on that case is untenable. The petitioners concededly retired from the service of the Board much earlier to the coming into force of the impugned Rules on 24-7-1989 and at that time they were only entitled to the payments of provident fund and gratuity in terms of the 1965 Rules which were duly paid to them. Thus, concept of gratuity and provident fund being different from pension cannot easily be ignored in the light of Nakara's case. While pension is a term applied to periodic money payments to persons who retire at a certain age considered age of disability and usually continues to be paid for the rest of their natural life, the gratuity or provident fund is to be paid once at the time of retirement. Persons getting pension can be said to have a continuing right and the State a corresponding obligation to provide for such retirees but they cannot be equated with persons who are entitled to the

payment of gratuity or provident fund which in the very nature of things has to be paid once only, that is, at the time of retirement. Therefore, in the instant case there was no continuing right with the petitioners or a continuing obligation on the part of the respondent-Board to provide anything for such retirees on the date the impugned Rules came into force, that is, 24-7-1989.

13. In the light of the abovenoted analysis of Nakara's judgment, we find it wholly unnecessary to make a detailed reference to the rest of the judgments relied upon by the learned counsel for the petitioners. In some of these cases, the abovenoted analysis of Nakara's case v or the distinction between liability to pay pension and gratuity or provident fund was not taken notice of. Therefore, the said judgments to that extent obviously do not lay down good law and stand over-ruled to that extent.

14. For the sake of record it may be mentioned here that at one stage Mr. Kumar, the learned counsel for the petitioners, even chose to urge that fixation of 24th of July, 1989, as the date for enforcement of the impugned Rules is wholly arbitrary and the respondent-Board has made no effort to disclose any rationale or justification for the fixation of that date. We found it wholly difficult to appreciate the argument. The date of enforcement of a particular statute or rule cannot in the very nature of things helped and there is nothing shocking in it unless one can say that legislation can never be made prospective. The Court cannot possibly be carried away by the fact that an employee of the Board who retired even one day before the enforcement of the Rules in question cannot get the benefit of the Same as the date of enforcement cannot be effaced by striking down any relevant provision. In all cases the law has to have prospective operation. Even if for argument sake the said date of enforcement is obliterated, the rules cannot automatically have a retrospective operation. Therefore, we have no hesitation in repelling this stand of the learned counsel.

15. For the reasons given above, we find no merit in this petition and dismiss the same but with no order as to costs. Since at the very outset of the hearing of the case, the learned counsel for the parties had agreed that this decision of ours in this petition would govern the fate of two other similar writ petitions (Nos. 2419 and 7853 of 1990), in which identical contentions of fact and law have been raised, we dismiss the same but with no order as to costs.