
(2009) 09 P&H CK 0121
In the Punjab And Haryana At Chandigarh

Sita Devi and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Citation : (2009) 156 PLR 612

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition seeks for issue of a writ in the nature of certiorari to quash the order dated 5.5.1997 passed by the Commissioner and Secretary to Government of Haryana, Social Welfare Department rejecting the plea made by the petitioners for extension of pension scheme to the class of workmen working as field staff in the Social Welfare Department. The claim of the workmen for consideration had been directed at the instance of an order of this Hon''ble Court in CWP No. 17697 of 1994 when the very same petitioners had sought for the relief that the Management shall provide for introduction of a pension scheme in lieu of Contributory Provident Fund.

2. The claim was on the basis of a matter of policy statement issued by the Commissioner and Secretary to the Director, Social Welfare that the Governor of Haryana had been pleased to extend the benefit of gratuity and pension to the employees of Haryana State Social Welfare Advisory Board w.e.f. 1.4.1979 subject to certain conditions. Subsequent to this communication made on 3.3.1981 the Government of Haryana announced on 26.6.1992 the introduction of Pension Scheme in lieu of contributory funds in Boards and Corporations in Haryana which were fully owned by the State Government.

3. The petitioner's claim was that the Social Welfare Board was wholly owned by the Haryana Government and being the field staff working under the Board they were entitled to expect the Government to apply the pension scheme for them,

especially after they had introduced the scheme for workmen working in the headquarters. The petitioner's contention was that when the Social Welfare Board had implemented the scheme to one class of employees in the same establishment and they could not have discriminated against the field staff only. It was clearly violative of Article 14. It was also violative of the Scheme announced by the Government and adverted to in the letters dated 3.3.1981 and 26.6.1992 referred to above.

4. Learned Counsel appearing for the State Mr. Nalwa would defend the action of the government by reference to the fact that the field staff of the Social Welfare Board was fully funded by the State Government while the administration and extensions at the headquarters was shared with the Central Government on the 50:50 basis. The Social Welfare Board itself is not a creature of any State statute but a subsidiary of the Social Welfare Board established by the Centre. The field staff were employed on projects and the State Government was bound to take care of the entire extensions with no assistance from the Centre and it could not be taken as a wholly owned State Government undertaking to which the Government policy could apply. It was further submitted on behalf of the Government that there was a qualitative difference in the works at the projects and the nature of duties for the workmen and the work and the duties carried out at the head quarters. The persons working in the headquarters formed a different class and a different category. Consequently, even on the issue of extension of the Scheme of Pension, it was based on an intelligible differentia and hence a complaint of violation under Article 14 would not be available.

5. The right to claim pension is itself not a fundamental right in any sense except that in the scheme of welfare of persons in service, the State owes a responsibility to spread the fruits of labour to be valuable even after superannuation as a patent and deferred wage that has a bearing to the length of service and actual emoluments drawn at the time of superannuation, the nature of service, the financial viability of the scheme for the State to implement and so on. The introduction and implementation of a pension scheme is invariably a matter of Policy. These are governed by service rules of engagement. The regulation regarding payment of pension is itself a clue to an incident that a person is not always entitled to expect pension to be paid merely, because he is a government servant. The regulation governing the same will always be tested on the eligibility criteria that are mentioned in the applicability of service rules. While a workman cannot claim that a pension claim shall always be extended to him or that any other scheme if it is available such as Contributory Provident Fund or some retiral schemes should be substituted for a more beneficial scheme such as a pension scheme. A workman in an organization will be able to definitely contend if there is any discriminatory practice within the same organization. Here the challenge cannot be on the basis that he had a right to opt pension but on the other hand, like any other action that it is violative of the equality enshrined under the Constitution.

6. The operation under Article 14 is extensive in its content and the constitutional limitations attached to it would only extend to make discrimination whether there is a valid differentia that bears a reasonable nexus to the ultimate object that is sought to be achieved. A person who is similarly placed in the same establishment could certainly attack a scheme as falling foul of Article 14 if he can show patent discrimination and when the government establishment cannot show the valid basis for such differential classification. In this case, the claim of the workman has been placed on two grounds i) within the same organization of Social Welfare Department of Haryana the persons working in the Head office are extended the benefits of pension scheme while the field staff do not obtain the same benefit. That they belong to two different classes could hardly be in doubt, the issue is whether this differentia are sufficient to deny the applicability of scheme to the field staff while it is given to the persons working in the headquarters. Learned Counsel for the State contends that the Social Welfare Board is not a Board constituted under a State statute but it is an extension of the department of the Ministry of Social Welfare at the Centre. The Centre extends 50% of support for all the expenses made by the department at the head quarters and there is no financial assistance for any project that the State undertakes at the field level. The whole of expenses shall have to be borne by the State Government at the Projects. The status of worker in a Project run by the State, although a unit of a Central Board was considered by the Hon''ble Supreme Court in State of West Bengal and Others Vs. Kaberi Khastagir and Others, . The Supreme Court held that anganwari workers employed in Projects by the State in Social Welfare Board can not be treated as under the control of the Central Government. The placement either at the headquarter or at the field cannot be purely fortuitous circumstance and shall be on a distinct classification with different service incidence.

7. If the justification of the State is only that the Centre has extended the pension scheme only to areas where it shares the burden and therefore extended only to the employees at the headquarters, it may not be that the Centre prohibits the extension of the scheme to the persons employed in the fields for various projects. It may be that the Centre has chosen not to extend the pension scheme to the persons working in the Projects by virtue of the fact that it shall be the State Government that bears the responsibility for the extensions for the whole project including the salaries to the employees. The principle that pensioners form a homogeneous class and there cannot be a discrimination amongst them, a, precept recognized in D.S. Nakara and Others Vs. Union of India (UOI), , have in the course of judicial pronouncements admitted of several exceptions stipulating a cut off date for employees of the same establishment for the applicability of the scheme in the most outstanding exception that has been dealt with in several cases. Vide Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, , Dhanraj v. State of J & K (1998)4 S.C.C. 30.

8. If the employees at the headquarters were a distinct class and the discrimination as regards the applicability based on type of service and central

finding, the further point of attack that has to be examined is, whether the State Government while declaring a policy of implementation of pension scheme to fully owned State Boards and Corporation, could they leave out the field staff of the Welfare Board controlled by the State Government. While rejecting the claim, pursuant to direction in CWP No. 17697 of 1994 the Government has set out the following justifications.

- i) The employees of the Projects are not the Govt. employees;
- ii) The Board has no source of its own to finance the pensionary liabilities;
- iii) The employees working in the Family and Child Welfare Projects cannot be considered at par with those working in the State Board Headquarter because the State Board Hqs. Staff is financed by the Centre and the State Govt. in the ratio of 50:50 whereas the project employees are financed 100% by the State Govt. and ;
- iv) They are not the Govt. employees and neither was this condition of their service;
- v) They are covered by CPF.

None of the grounds is irrelevant. The issue that the Board is non-statutory and is operated as a unit of the Centre has a bearing to the status of employees under the Board as not government servants. The financial burden that the scheme will cast and the viability are also relevant. It was held by the Hon"ble Supreme Court in State of A.P. and Another Vs. A.P. Pensioners Association and Others, that financial implication is a relevant consideration for the State Government to determine as to what rights could be granted pursuant to my recommendation by Pay Revision Commission. As far the headquarters employees, the Central Government had guaranteed 50% participation in expenses but such a finding had not been assured for field staff. It will amount to trading of policy of the Government if a direction as sought for, were to be issued to the Government. A conscious decision that finds expressed through a detailed consideration in the order dated 5.5.1997 cannot be supplanted by Judicial wisdom. Beyond examining the issue from constitutional parameters of what is not discriminatory and the reasonableness of the decision, no other consideration could enter the judicial kin.

9. The writ petition shall fail and it is dismissed as such. No costs.