
(2015) 08 MAN CK 0006
In the Manipur High Court
Case No : W.A. No. 3 of 2009

State of Manipur and Others

APPELLANT

Vs

Vungkhonem and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 08 MAN CK 0006

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : S. Nepolean, GA, for the Appellant; G. Puspa, Advocates for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, C.J—This writ appeal has been filed by the State authorities against the judgment and order of the learned Single Judge dated 14.12.2007 in W.P.(C) No. 372 of 2004.

2. The respondent/writ petitioner is the mother of late G. Liankhomang who served as Forester Grade-II from 12.8.1976 for a period of about 11 years and expired on 8.1.1987. The respondent filed the writ application seeking for payment of family pension on the basis of office memorandum dated 21.4.1999 issued by the Government of Manipur in the Finance Department amending/modifying the Manipur Civil Service (Pension) Rules, 1977. Though the modified rules are made applicable to those Government servants who retired or expired after 1.1.1996, the learned Single Judge in the impugned judgment allowed the application of the respondent for payment of family pension even though her son, late G. Liankhomang, expired on 8.1.1987.

3. The case of the respondent in the writ petition is that her deceased son, late L.G. Liankhomang, entered into service as Forester Grade-II on 12.8.1976 but did not marry and died in harness on 8.1.1987. During his life time, he looked

after the welfare of the respondent/petitioner and his younger brother and sister. His income was the only source of family income and the entire family was depended on him. After modification/amendment of the Manipur Civil Services (Pension) Rules, 1977 the definition of "family" was expanded and "parents" were included in the definition of family. Accordingly the mother of late G. Liankhomang filed the writ application praying for payment of family pension.

4. The present appellants resisted the writ petition solely on the ground that the modified/amended rules are only applicable only to those government servants who retired or died in harness on or after 1.1.1996 and no orders had been passed in respect of the employees who retired or died in harness prior to 1.1.1996. The son of the respondent having expired on 8.1.1987, the said amended Rules dated 21.4.1999 have no application and even under expanded definition of family, the respondent/petitioner would not be entitled to the family pension, her son having died much prior to 1.1.1996.

5. The learned Single Judge mainly relied upon the decisions of the Apex Court in the Case of D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 as well as the decision of the Apex Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, AIR 1971 SC 1409 : (1971) 1 LLJ 557 : (1971) 2 SCC 330 : (1971) SCR 634 Supp and came to a conclusion that for the purpose of pension there can only one class and the cut of date shall have no bearing as further classification is not permissible.

6. Since facts are admitted, the only question for determination is as to whether the modified/amended Manipur Civil Service (Pension) Rules, 1977 vide office memorandum dated 21.4.1999 can be pressed into service to allow the claim of the respondent.

7. On perusal of the said office memorandum, we find that in pursuance of a government decision following the introduction of Manipur Civil Service (Pension) Rules, 1977, the State Govt. was pleased to introduce certain modifications in the Rules regulating pension, DCRG and family pension under the Manipur Civil Service (Pension) Rules, 1977 as well as commutation of pension under CCS (Commutation of Pension) Rules, 1981. It was further decided that the revised provision shall apply to government servants who retired/died in harness on or after 1.1.1996. It was also decided that separate orders will be issued in respect of the employees who retired or died in harness on or before 1.1.1996. In the said modified rules, the definition of family was expanded so as to include "parents" who are wholly dependant on the government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child. Admittedly in the present case, the deceased employee was not married and it is the claim of the respondent that the entire family was depending on her son's income. Therefore, the respondent being the mother of the deceased employee comes within the definition of "family" as per the amended/modified Rules. However, the Rules having been made applicable to those government

servants who retired from service or died in harness on or after 1.1.1996, the question that falls for consideration is as to whether the respondent under the amended rules, is entitled to family pension, her son having died in harness prior to 1.1.1996.

8. The two decisions relied upon by the learned Single Judge are required to be looked into.

8.1. The Constitution Bench in *Deokinanda Prasad v. State of Bihar and Ors.* (Supra) held that pension is not a bounty payable on the sweet will and pleasure of the Government and on the other hand the right to pension is a valuable right. By mere executive order the State has no power to withhold the same. The Court, further, held that grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to the officer employee not because of the said order but by virtue of the Rules. This Constitution Bench decision has only laid down the right of the government employees for getting pension after completion of required number of years of service and does not have a direct bearing with the facts of the present case.

8.2. In the case of *D.S. Nakara and Ors. v. Union of India* (Supra), the Constitution Bench of the Supreme Court considered the provisions contained in the Central Civil Services (Pension) Rules 1972 and the Ministry of Finance Memorandum dated 25.5.1979 as well as 28.9.1979 introducing a classification in revised pension formula between pensioners on basis of date of retirement specified in the said memoranda. The Court ultimately came to the conclusion that the fundamental principle is that Article 14 of the Constitution of India forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification 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. The doctrine of classification was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. The Court, further, held that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can it be done after retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula

affording unequal treatment solely on the ground that some retired earlier and some retired later. The case of D.S. Nakara (Supra) has been followed by the Apex Court in a batch of cases, the first case being Kallakkurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, (2013) 2 AD 133 : (2013) 136 FLR 764 : (2013) 2 JT 42 : (2013) 2 LLJ 9 : (2013) 1 LLN 360 : (2013) 1 SCALE 424 : (2013) 2 SCC 775 : (2013) 2 SCC(L&S) 452 : (2013) 1 SCT 780 : (2013) 1 SLJ 413 . However, the case of D.S. Nakara (Supra) was distinguished on facts in the case of In the Matter of: Hari Ram Gupta (D) Thr. L.R. Kasturi Devi Vs. The State of Uttar Pradesh, AIR 1998 SC 2483 : (1998) 5 JT 127 : (1998) 4 SCALE 242 : (1998) 6 SCC 328 : (1998) SCC(L&S) 1485 : (1998) 3 SCR 854 : (1998) AIRSCW 2484 : (1998) 6 Supreme 63 . It was also distinguished in the case of Krishena Kumar and Others Vs. Union of India and others, AIR 1990 SC 1782 : (1990) 3 JT 174 : (1991) 1 LLJ 191 : (1990) 2 SCALE 44 : (1990) 4 SCC 207 : (1990) 3 SCR 352 . These two cases relate to the difference between pension retirees and provident fund retirees and Court held both classes do not form one homogenous class.

9. So far as the present case is concerned, the relief claimed in the writ petition does not relate to payment of pension but it relates to payment of family pension.

9.1. Admittedly, prior to office memorandum dated 21.4.1999 under the Manipur Civil Services (Pension) Rules, 1977, the parents were not entitled to family pension. Only by office memorandum dated 21.4.1999 the Manipur Civil Services (Pension) Rules 1977 were modified and the definition "family" included parents also. However, the modified Rules specifically provide that the same shall be made applicable only to those government servants who either retired from service or died in harness on or after 1.1.1996. Admittedly the son of the petitioner who was holding a government service died in harness on 8.1.1987, i.e. much prior to introduction of the modified Rules. In this connection a decision of the Apex Court in the case of State of Punjab and Another Vs. Devinder Kaur, (1999) 10 JT 549 : (1999) 9 SCC 12 : (2000) SCC(L&S) 159 is relevant. In the said reported case, there was a family pension scheme promulgated by the State of Punjab, known as Punjab Pension Rules 1951, which included parents of the deceased government servant amongst the beneficiaries under the definition of "family". But the said scheme underwent a metamorphosis in 1964 and as per the Family Pension Scheme of 1964, the parents of the deceased government servant were excluded from the definition of "family". The son of the respondent in the reported case died in 1985 when the 1964 Pension Scheme was in operation. In view of the said 1964 Scheme, the respondent in the reported case was not entitled to family pension. Therefore, his claim was rejected by the State and respondent in the said reported case moved the High Court of Punjab and Haryana for payment of family pension. A learned Single Judge of the High Court allowed the writ petition on the ground that the pension was not a bounty and the Scheme which did not provide for granting family pension to the parents was arbitrary in nature. State carried out an appeal against the judgment and order of the learned Single Judge by way of

letters patent appeal but the appeal was also dismissed and the matter came before the Supreme Court. In paragraph-6 of the judgment, the Supreme Court observed that on a mere look at the relevant family pension scheme, 1964 which applied at the relevant time when the son of the respondent died, it becomes obvious that the parents, i.e. father and mother of the deceased government servant, were not entitled to get family pension under the scheme. The findings of the Supreme Court recorded in paragraph-8 of the judgment is quoted below:

"8. The other judgment on which reliance was placed by learned counsel for the respondent is *Bhagwanti v. Union of India*. Even in that case the wife of a deceased government servant was included in the definition of the term "family" but what was found fault with was that a restrictive condition was attached to the said definition to the effect that provided the marriage of the government servant concerned took place before the retirement of the government servant. Thus the surviving widows of government servants who had married after the government servants' retirement were excluded from the benefit of the Scheme. This restriction was found to be totally arbitrary and, therefore, this clause was struck down as being violative of Article 14 of the Constitution of India. Resultantly, the definition of "family" of the beneficiary as found by clause (b) of Rule 54(14) of the CCS (Pension) Rules, 1972 in relation to a government servant including wife in the case of a male government servant, or husband in the case of a female government servant, remained fully operative. It becomes at once clear that in that case the Family Pension Scheme was made available to the entire class of wives of the male government servants. But the restrictive condition attached to that clause was found to be arbitrary, with the result that by judicial interpretative surgery the other part of the restrictive condition was set aside. In the facts and circumstances of the present case there is no question of setting aside any arbitrary condition. In fact, the class of parents is not included at all in the Scheme of 1964. Therefore, there is no occasion for striking down any part of the said supposed illegal or arbitrary condition. It is also pertinent to note that the rule has neither been challenged in the proceedings before the High Court nor before us. Therefore, there remains no occasion for the same to be read up or to remove any obnoxious part of the restrictive condition. On the contrary all that the learned Single Judge and the Division Bench have done is to add a new class of beneficiaries which is not a permissible exercise for the court. A new policy is sought to be evolved by judicial intervention. It is, of course, true that parents now are included in the term "family" by a new amended scheme with effect from 1.1.1996. But that is entirely a different matter. If Daljit Singh had died after 1.1.1996 the benefit of that Scheme would have been legally available to the respondent. But that is not the case here. Consequently, even keeping in mind sympathy for the respondent widow who at the time when Daljit Singh died was dependent on him as her husband, the other claimant had already retired and was aged 65. The judgment of the High Court cannot be sustained so far as the legal position goes."

10.1. Mrs. Puspa Devi, learned counsel appearing for the respondent also placed

reliance on the above judgment but as is evident the law laid down by the Supreme Court in the above judgment negatives the claim of the respondent. Learned counsel, Mrs. Puspa Devi, also placed reliance on another judgment of Punjab and Haryana High Court in CWP. No. 21230 of 2012 (Smt. Geeta Devi v. The Financial Commissioner & Principal Secretary to Govt. Haryana & Ors.) disposed of on 10.04.2013 but on reading of the said judgment, we find that it is on a completely different issue and has no relevance for the purpose of this case.

11. In view of the above judgment, facts of which are similar to the facts of the present case, we are of the view that the respondent/writ petitioner shall not be entitled to family pension, her son having expired in harness prior to 1.1.1996.

11.1. Consequently, we allow the appeal and set aside the impugned judgment and order of the learned Single Judge.