

(2017) 05 CAL CK 0020
In the Calcutta High Court
Case No : 4388 of 2016

STATE OF WEST BENGAL & ANR

APPELLANT

Vs

RABINDRA NATH MUNSI & ORS

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 141](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Law declared by Supr

Citation : (2017) 05 CAL CK 0020

Hon'ble Judges : Biswanath Somadder, Sankar Acharyya

Bench : DIVISION BENCH

Advocate : Tapan Kumar Mukherjee, Somnath Naskar, Ashoke Kumar Banerjee, Sarajit Sen, Subir Kr Bhattacharyya

Final Decision : Disposed off

Judgement

1. The two appellants are the State of West Bengal and The Principal Secretary, Department of Finance, Government of West Bengal. They have challenged the judgment and order dated, 15th June, 2016 passed by the learned Single Judge in W.P. 25761 (W) of 2014, which was filed by seventy one writ petitioners.

2. Writ petitioner/respondent nos. 1 to 71 are erstwhile employees of the West Bengal Comprehensive Area Development Corporation (in short, CADC). They retired from service before 1st April, 2008. Till their retirement, there was no pension scheme for the employees of CADC although the employees had been demanding introduction of such scheme since long past. However, they were under the Contributory Provident Fund (in short, CPF) scheme where employer contributes its share in the accounts of individual employees and the Provident Fund Authority pays a small amount of pension to them during their life time after retirement. The writ petitioners availed all the retiral benefits on their retirements on different dates as per the CPF scheme before 01.04.2008.

3. CADC introduced "The West Bengal Comprehensive Area Development Corporation Employees" (Death cum Retirement) Benefit Regulations, 2008, (in short, WBCADC-DCRB) which was passed on 10.12.2008 with effect from 01.04.2008. In the writ petition, the petitioners alleged, in substance, that as per the said Regulations, the pension scheme has been adopted by CADC but they have been arbitrarily discriminated against, depriving them of pension facilities only because they retired from service before 01.04.2008. According to them, the cut-off date 1st April, 2008 is arbitrary and irrational. The benefit under these Regulations should be extended to all erstwhile retired employees of CADC. They expressed their willingness to refund the employer's share towards the CPF with interest which they received on retirement if they are included in the WBCADC-DCRB Regulations. During the course of hearing before the First Court as well as before this Court, they claim pensionary benefit relying on the principles as discussed in the judgment of the Supreme Court of India in the case of D.S. Nakara and others Vs. Union of India reported in (1983) 1 SCC 305.

4. The appellants herein contended before the First Court and also at the time of hearing of the instant appeal that the facts of the case of D.S. Nakara (supra) and others are not similar to this case and that the said judgment cannot be used as a precedent in this case. Learned counsel for the appellants argued before us that the WBCADC-DCRB Regulations has been framed by the Government taking into consideration all the relevant factors and they have been given effect from 01.04.2008, instead of prospective effect. He further argued that this was done because the ROPA 2009 also fixed that date, i.e., 01.04.2008 for giving financial benefit of revision of pay and allowances to the employees of the Government of West Bengal as per the financial capacity of the Government. Learned counsel for the appellant relied on the decision of the Supreme Court in the case of Krishena Kumar vs. Union of India and others reported in AIR 1990 SC 1782 where the decision in D.S. Nakara's case (supra) has been discussed and distinguished on facts.

5. In the impugned judgment, the learned Single Judge followed the judgment of D.S. Nakara's case (supra) and allowed the writ petition with the following observations :-

"The Nakara case has laid down that the court is entitled to read down an offending piece of legislation to make it compatible with the Constitution. This is not a piece of legislation at all. The regulations are administrative instructions. Applying the principle laid down in that case I am inclined to read down the regulations. In those circumstances the benefits of these regulations have to be extended to the petitioning retired employees also. The part of the Regulations fixing a cut off date is struck down. The petitioners will be entitled to the benefits of these regulations. They will have to return the entire amount of the employer's share towards Contributory Provident Fund with interest to avail of the benefit of this judgment".

6. Upon going through the impugned judgment, it appears that the part of the

Regulations fixing a cut off date has been ordered to be struck down. However, no order has been passed about the date of giving effect to the said Regulations. Unless retrospective effect is expressly given to the Regulations, the writ petitioners cannot get benefit of the same. Unless an enactment expressly provides that it should be deemed to have come into effect from a past date, it is to be considered as of prospective effect.

7. The WBCADC-DCRB Regulations contain the provisions for assistance of the old aged employees after their retirement and framing of such regulations are within the Constitutional scheme. Appellants claim that these have been framed within the limits of its economic capacity, giving its effect from 01.04.2008.

8. The matter for consideration is whether the cut off date, i.e., 01.04.2008, in the said Regulations, violated fundamental rights of writ petitioners as enshrined under Article 14 of the Constitution of India. Ancillary questions are whether the said cut off date is arbitrary or irrational or discriminatory and if the writ petitioners are entitled to get pensionary benefits as per the said Regulations as a matter of their fundamental right.

9. Both the judgments of the Hon'ble Supreme Court reported in (1983) 1 SCC 305 (supra) and AIR 1990 SC 1782 have been delivered by the same strength of five Hon'ble Judges. In *Krishena Kumar*, Nakara has been discussed and distinguished.

10. In the instant case, the writ petitioners/respondents are CPF retirees and they were never governed by any Pension rule beyond their CPF benefits till their retirement from service. In *Nakara's* case, petitioners were enjoying pensionary benefits but they were deprived of liberalised pension benefits upon issuance of Office Memorandum putting a cut off date for giving effect to liberalised pension benefits to those who were in service on 31.03.1979. Present writ petitioners/respondents are not similarly situate or circumstanced as the petitioners in *Nakara's* case (supra).

11. The doctrine of precedent has been discussed in paragraphs 18 and 19 in AIR 1990 SC 1782, which are set out hereunder:

"18. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required". This was what Lord Selborne said in *Caledonian Railway Co. V. Walker's Trustees* (1882 (7) AC

259) and Lord Halsbury in *Quinn v. Leathem* (1901) AC 495 (502). Sir Frederick Pollock has also said : "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision".

19. In other words, the enunciation of the reason or principle upon which a

question before a Court has been decided is alone as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol. 26, para 573 :

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi".

12. The petitioners before the Hon^{ble} Supreme Court in Krishena Kumar (supra) were also under Provident Fund Scheme till retirement and after retirement they intended to switch over to the pensionary benefits but their claim was not accepted and their petitions were dismissed. In paragraph 30 of that judgment it was held -

"30. In Nakara (AIR 1983 SC 130) it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F.

scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other

hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be decided questions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of Court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same Court, or in other Courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible".

13. In the light of discussions made in the two cited decisions of the Hon'ble Supreme Court, this Court is of the view that the writ petitioners in the present case and the petitioners in the Nakara's case before the Hon'ble Supreme Court are not similarly situate or circumstanced. In contrast, the writ petitioners/respondents in the present case are similarly situate and circumstanced quite substantially with the petitioners in Krishena Kumar's case. As such, this Court is of the view that the writ petitioner/respondent nos. 1 to 71 are not similarly situate or circumstanced with the employees of CADDC who were in service on 01.04.2008. The writ petitioners, therefore cannot be treated to be of a homogeneous class with the employees who were in service on 01.04.2008. The view expressed in the impugned judgment cannot be upheld. In our opinion, there was no arbitrary framing of the WBCADC-DCRB Regulations with effect from 01.04.2008 by the authority concerned in violation to Article 14 of the Constitution of India. The writ petitioners, who already received all retiral benefits available to them as per extant law before 01.04.2008, did not acquire any right to get benefit of the newly introduced pension scheme as per the said Regulations, which is found to be neither irrational nor arbitrary or discriminatory.

14. In the light of our above observation, the impugned judgment and order is set aside and the writ petition, being W.P. 25761 (W) of 2014 stands dismissed. However, considering the fact that the writ petitioners are retired persons we refrain ourselves from passing any order as to costs.

15. The appeal along with the application for stay, being CAN no. 9373 of 2016, is accordingly disposed of.

16. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis. I agree with the conclusion