
(1998) 09 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 565 of 1996

Sukdeb Roy

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 229
Tripura Judicial Service Rules, 1974 — Rule 15

Citation : (1998) 3 GLT 410

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B. Das, S.M. Chakraborty and S. Chakraborty, for the Appellant; S. Deb, R. Dasgupta, A. Ghosh and S. Talapatra, for the Respondent

Judgement

D. Biswas, J.—Shri Sukdeb Roy, the Petitioner herein, a Grade-I officer of Tripura Judicial Service was superannuated with effect from 30.4.1992. He was then the Registrar of the Gauhati High Court, Agartala Bench. Before his retirement in the year of 1991, the High Court, while disposing of Civil Rule No. 42 of 1981 filed by Shri B.K. Goswami, Anr. Judicial Officer, observed as follows:

The post of Legal Remembrancer and Secretary, Law Department, Registrar of High Court and Secretary, Legislative Assembly are ordinarily to be manned by senior District Judges. We find that earlier the pay- scale of these 3 posts was the same. However, in recent years, the pay- scales of Legal Remembrancer and Secretary, Law Department, Secretary, Legislative Assembly have been enhanced without at the same time enhancing the pay-scale of Registrar, who is the Chief Executive officer of the High Court It is therefore, necessary that these 3 posts should carry the same pay-scale and that should be the same as the pay-scale of the Selection Grade District Judges.

2. The Government in pursuance of the aforesaid judgment dated 22.11.1991 enhanced the pay scale of the Registrar of the Gauhati High Court, Agartala Bench to the scale of Rs. 5900-200/2-6700/- vide Notification dated 15.12.1993

(Annexure-1). In this Notification, the pay scale of the Selection Grade District Judges was also stepped up. The Notification reads as follows:

THE GAUHATI HIGH COURT AGARTALA BENCH: AGARTALA. NOTIFICATION

In pursuance of the judgment dated 22.11.1991 of the Hon'ble Gauhati High Court, Agartala Bench in Civil Rule No. 42 of 1986 (Sri Benoy Krishna Goswami v. the State of Tripura and Ors.), the Governor of Tripura has been pleased to enhance the pay scale of the Registrar of the Gauhati High Court, Agartala Bench, in the scale of Rs. 5900-200/2-6700/- and the pay scale of selection Grade District Judges appointed in accordance with the Rule 15(ii) of the Tripura Judicial Service Rules, 1974 in the pay scale of Rs. 5900-200/2-6700/- vide Memorandum No. F. 4 (6) FIN (PC)/88, dated 9th December, 1993 issued by the Under Secretary, Finance Department, Govt. of Tripura.

Sd/-15.12.93. REGISTRAR Gauhati High Court, Agartala Bench, Agartala.

3. Mr. B. Das, learned senior counsel appearing for the Petitioner argued that the Petitioner was deprived of the benefit of the enhanced scale as the Notification was issued subsequent to his retirement. According to the learned Counsel, it is a case of discrimination between the Petitioner and the other officers of the same rank and status and, as such, this Court should issue a writ of mandamus directing the Respondents to extend the benefit of said scale to the Petitioner for the period between 20.3.1990 and 30.4.1992. when he was posted as Registrar of the High Court.

4. To counter the aforesaid argument, Shri S. Deb, learned senior counsel for the state pointed out that the enhanced pay scale was given to the officers on service and the Petitioner being a retired officer is not entitled to the aforesaid scale obviously for a period prior to the date of issue of the Notification.

5. The language employed in Annexure-1, although has a reference to the judgment dated 22.11.1991, does not incorporate any clause about the date of its enforcement. When a Government Notification does not provide the date of its commencement/enforcement, the normal rules of interpretation would apply and its enforcement has to be construed as intended from the date when the notification was issued. Therefore, it can be concluded that the Notification (Annexure-1) has come into operation with effect from 15.12.1993 i.e. the date when it was issued.

6. Now, the question arises whether this Court has the powers to vary the date of its enforcement to predate its birth in the given circumstances of this case. It is, therefore, necessary to comprehend the scope and powers of this Writ Court to interfere with the cut-off date. Before I delve deeper into the question, it is necessary to mention here that a classification made amongst a homogeneous group of employees without any rational basis could be unsettled by a Court only to achieve the objective and not otherwise.

7. Shri B. Das learned senior counsel for the Petitioner, put much emphasis in the

decision rendered by Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), In Nakara, the Supreme Court dealt with the question whether the date of retirement is a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and whether the division of pensioners into two groups made in introducing the date of effect would attract the provisions of the Article 14 of the Constitution.

8. Let us avert to the decision rendered by their lordships of the Supreme Court in the following words:

If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits from a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory.

9. In M.C. Dhingra Vs. Union of India and Others, the question before the Supreme Court was whether a decision of the Government in prescribing 31st March, 1992 as cut-off date for extending the benefit of tagging the previous service rendered in the State Government for the purpose of computation of pension to the denial of employees who had retired prior to 31st March, 1982 would be violative of Constitutional provision. The Supreme Court held that the cut-off date is violative of Article 14 of the Constitution as the classification was made amongst employees situated on similar circumstances.

10. In Krishena Kumar and Others Vs. Union of India and others, the Supreme Court had the occasion to discuss the ratio in Nakara (Supra). In para 32 of this judgment, the Supreme Court held that in the case of Nakara it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. It was further observed that the ratio decidendi in Nakara was not that the State is obligation towards its PF retirees must be the same as that towards the pension retirees. The observation of the Supreme Court in Krishna Kumar wherein the decision in Nakara was distinguished, is applicable in this case. The officers who have already retired and the officers who are still in service cannot be grouped

into a homogeneous class and treated as equal for the purpose of service benefits whether it relates to pay scale or retiral benefits. Distinguishing the decision of Nakara, the Supreme Court has again upheld the ratio of Krishnakumar in a recent decision in State of U.P. and Anr. v. Jogendra Singh and Anr. AIR 1998 SC 658.

11. To augment the case of the Petitioner, reliance has also been placed on the decision of the Supreme Court in Indra Sawhney Vs. Union of India (UOI) and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Govinda Naik G. Kalaghatagi, v. West Patent Press Co. Ltd. AIR 1980 Kar 95, Jagannath v. State of Maharashtra 1979 SC 1145 , H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , The Regional Manager and Another Vs. Pawan Kumar Dubey, , Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, and Shri Monoranjan Chakraborty and Ors. v. State of Tripura and Ors. (1990) I G.L.R. 147.

12. After careful consideration of the above citations it would appear that the law laid down by Supreme Court lead to the conclusion that when a classification is made amongst a homogeneous class of employees without any rational basis, such classification, which has no nexus to the objective sought to be achieved, has to be dubbed and denounced as arbitrary and unreasonable.

13. Shri S. Deb, learned senior counsel for the Respondents, however, relied upon the decisions in State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti, , Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, , M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , Rabindranath Mukhopadhyay and Another Vs. Coal India Ltd. and Another, and Sewa Ram and others Vs. Union of India and others,

14. In Sevanivatra Karmachari Hitkari, while dealing with a case of retiral benefit to the service employees only, the Supreme Court held that it is permissible to introduce different retiral benefit scheme for Government servant on the basis of the date of retirement. In Capt. Biplabendra Chand (Supra) the Supreme Court, in para 4 observed that in D.S. Nakara (Supra) discrimination has been prohibited between pensioners forming a single class and governed by the same rules, distinguishing thus, the Supreme Court allowed the appeal holding that the Respondents could not be made retrospectively eligible for pension as it was not a case of discrimination made among pensioners. Thus, it would appear that the Supreme Court in all the above cases without any reservation laid down the law that a classification made in respect of employees- retired or serving, who cannot otherwise be grouped into a homogeneous class, is permissible if it is done in good faith. To further elucidate, we may refer to the observation of the Supreme Court in Sri Sitaram Sugar (supra) quoted below:

52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi- judicial, is open to challenge if it is

in conflict with the Constitution or the governing Act or (he general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.

In *Rabindranath* (supra), in para 3, the Supreme Court did not find any unreasonable classification in introducing the cut-off date i.e. 1.1.1997 for the purpose of encashment of L.T.C. with a prospective effect thereby depriving the existing employees from the benefit of encashment of leave travel concession. According to the Supreme Court, this was not a case of unreasonable classification where the Court should interfere. In *Rai Chand Jain*, the payment of back wages for a restricted period of 38 months was considered not to be arbitrary. In para 5 of the judgment, the Supreme Court made it clear that it is for the Government to decide as a part of the executive policy as to from which date the arrears would be granted to the employees.

15. Keeping in mind the above principles of law, I would now like to examine whether the impugned notification (Annexure-1) suffers from the vices of arbitrariness. If the decision to make the notification effective prospectively was taken in good faith without any unreasonable classification, this Court will obviously have no powers to interfere with the same.

16. The Petitioner retired from service on 30.4.1992 and this notification was brought into force with effect from 15.12.1993 with a view to extend the benefit of enhanced scale to the officers on service. The retired officers, including the Petitioner, under no circumstances, can be equated with the officers on service in order to form a homogeneous group. The Petitioner on his retirement had been paid all amount payable to him under the rules. His status stood determined as a retired employee long before the decision to enhance the pay scale was taken. I find no reason to disqualify the decision as not being taken in good faith. Therefore, under no circumstances, the denial of the benefit of enhanced pay to the Petitioner can be treated as a case of discrimination.

17. The observation of the Division Bench which is the only basis of Petitioner's claim, inspired the Government to take a decision to enhance the pay scale of the Registrar, but the said observation being declaratory in nature, option was left to the executive to determine as to whether the scale was to be enhanced or not, and if so, from when. Para 12 of the judgment of the Division Bench of this Court 1992 1 G.L.R. 128 shows that the writ was dismissed subject to observation made in paragraph 5 to 11. The High Court dealt with the pay matter of the Registrar in paragraph 9. It was not an issue in that case. The refusal of the writ of mandamus and dismissal of the said writ petition also characterise that the observation made in paragraph 9 was a wish expressed by the Court without casting any obligation on the State Government. Therefore, the date of enforcement of the impugned notification (Annexure-1), being a policy decision of the State Government, cannot be unsettled by this Court in order to extend the benefit to an officer already retired.

18. It was further argued by Mr. Das, learned senior counsel, that Shri D. Purkayastha, the then Registrar, was given the benefit of enhanced scale with effect from 1.5.1992 i.e. from before the date of enforcement of the impugned notification, by an order of the Chief Justice. According to him, this Court can in exercise of its writ jurisdiction direct the Respondents to extend the same relief to the Petitioner. But, it would appear that the Chief Justice of the Gauhati High Court, in exercise of powers under Article 229 of the Constitution, has given the benefit to Shri D. Purkayastha with effect from an earlier date. This power exercised by the Chief Justice under Article 229 being executive in nature cannot impel this Court to follow-suit. If the Chief Justice, with the approval of the Governor, had extended the benefit to Shri D. Purkayastha, who was then a serving officer posted as Registrar, such extension of the benefit to him is distinguishable on the face of it. Therefore, this notification (Annexure-2) cannot form the basis for issue of a writ of mandamus by this Court.

19. The Petitioner also claimed the benefit of outfit allowance @ Rs. 200/- given to the Registrar of the High Court vide Notification dated 27th April, 1993 (Annexure-3) with prospective effect. Applying the same analogy which has been worked out above in respect of the notification (Annexure-1), I am of the opinion that the benefit of outfit allowance given to the officers on service also cannot be conceded to the Petitioner who had retired long before 27th April, 1993.

20. The Government vide Notification dated 25th April, 1994 (Annexure-4) amended the Tripura Judicial Service Rules, whereby wattage of 3 years towards qualifying service for computation of pension was permitted. This notification issued on 25th April, 1994 was brought into force from the 1st day of January, 1994. This is also a matter which squarely falls within the domain of executive decision. It was brought into force from the first day of the calendar year. Although the notification was given retrospective effect by a few months, the Petitioner could not show that it was so done with a view to cover the case of any officer who had retired during the period between 1.1.1994 and 25th April, 1994. There being no such instance, the introduction of this date cannot be discriminatory to the Petitioner. In respect of both the notifications, Annexure-3&4, the cutoff dates have been fixed by the executive in exercise of their discretionary powers. In the given circumstances of this case, there being no vice of malice or malafide, the irresistible conclusion that follows is that the petition deserves no consideration and has to be dismissed.

21. In the result, the Civil Rule is dismissed. The parties are to bear their respective costs.