

(1999) 03 SC CK 0087

In the Supreme Court Of India

Case No : C.A. No's. 1721-1725 of 1999

Tamil Nadu Electricity Board

APPELLANT

Vs

R. Veeraswamy and Ors

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Constitution of India, 1950 — Article 12
Electricity (Supply) Act, 1948 — Section 5, 79

Citation : AIR 1999 SC 1768 : (1999) AIRSCW 1505 : (1999) 2 JT 429 : (1999) 2 LLJ 783 : (1999) 2 SCALE 276 : (1999) 3 SCC 414 : (1999) 2 SCR 221 : (1999) 3 Supreme 289 : (1999) 2 UPLBEC 1180

Hon'ble Judges : Sujata V. Manohar, J;R. C. Lahoti, J;K. Venkataswami, J

Bench : Full Bench

Advocate : R. Mohan, M.A. Krishna Moorthy and R. Nedumaran, K.V. Viswanathan and K.V. Venkataraman, for the Appellant;

Final Decision : Disposed Of

Judgement

K. Venkataswami, J.—Leave granted.

2. The law on the common issue that arises for decision in these cases is well settled and, therefore, we do not propose to write a detailed judgment. The common issue that arises in all these cases can be broadly stated as follows :-

Whether the appellant-Board has acted illegally or contrary to law in introducing a pension scheme to the employees, who were hitherto not governed by such pension scheme, prospectively from 1.7.1986. To put it differently, whether the employees (respondents) who were all retired before 1.7.86 after receiving all retiral benefits available to them as per the law existing on their dates of retirement, can compel the appellant-Board to extend the benefit of newly introduced pension scheme with retrospective effect.

3. Let us now give facts in brief to appreciate the common issue raised in these cases.

4. The appellant-Board was brought into existence on 1.7.1957 in accordance with Section 5 of the Indian Electricity (Supply) Act, 1948 (hereinafter called the 'Act'). The employees of the Electricity Department of the Govt. of Tamil Nadu were transferred to the appellant-Board on and from 1.7.1957 and the erstwhile employees of the Government became the employees of the Board. It is not in dispute that the employees (respondents), termed as workmen in Regular Work Charged Establishment, were governed by Contributory Provident Fund Scheme on the date when they were transferred from Electricity Department of Tamil Nadu to the appellant-Board. It is also not in dispute that on their retirement prior to 1.7.1986 all the employees (respondents), who were governed by the Contributory Provident Fund Scheme, had received all retiral benefits in full settlement.

5. After the formation of the appellant-Board, separate proceedings were issued in all matters connected with it by virtue of powers conferred u/s 79 of the Act including pension regulations after taking into account the financial commitment involved in adopting Government orders in the matter of terminal benefits as well as the service conditions of the employees. It appears that the Government of Tamil Nadu in G.O.M.S. No. 797 dated 30.6.1969 introduced pension scheme to its employees who were not governed earlier by such pension scheme. However, the appellant-Board had not adopted the orders issued by the Government in G.O. No. 797 dated 30.6.1969. It is a fact that the employees (respondents) were making representations to the appellant-Board from time to time to extend the benefit of pension scheme to those who were hitherto governed by Contributory Provident Fund Scheme. It is also a fact that the appellant-Board acted upon such representation and it had to comply with certain formalities before introducing the pension scheme. After getting exemptions from the purview of the Family Pension Scheme, 1971 and Employees Deposit Linked Insurance Scheme, 1976 from the Central Government, the appellant-Board could introduce the pension scheme w.e.f. 1.7.1986. The retired employees (respondents), aggrieved by the prospective introduction of the pension scheme from 1.7.1986, moved the High Court to quash that part of the Board's proceedings in BP MS (FB) No. 5 dated 26.6.1986 which fixed the date of the application of the proceedings on or after 1.7.1986.

6. A learned Single Judge of the High Court in his elaborate judgment found that the date fixed as 1.7.1986 is neither arbitrary nor offends Article 14 of the Constitution of India and consequently dismissed the writ petition. The retired employees (respondents) moved the Division Bench of the High Court. The learned Judges accepted the contention of the learned Counsel for the Electricity Board that the ratio laid down by this Court in D.S. Nakara and Others Vs. Union of India (UOI), may not apply to the facts of the case. However, the Division Bench held that the retired employees (respondents) are entitled to the benefit of the pension scheme though they had retired long before the introduction of the pension scheme mainly on the ground that it was because of the delay on the part of the Electricity Board in bringing into existence the pension scheme, the

erstwhile employees (respondents) were deprived of the benefit of such pension scheme. The learned Judges observed as under :-

But, the contention is whether the Board can extend the benefits giving a cut off date without any nexus to the policy of extending the pension scheme. In this connection we have already noticed that the regular workmen of the work charged establishment had been making representations, for extension of the scheme for more than ten years. The mere delay on the part of the Board in issuing the impugned proceedings and stating that from the date of the proceedings only the benefit will be extended to is in our opinion arbitrary and without any nexus to the policy of extension of the scheme. We are clearly inclined to agree with the Petitioners that the scheme should be extended to all regular work charged establishment personnel's retiring/expiring even before 1.7.1986. But, the actual benefits will be extended to only from the date of the proceedings viz., 26.6.1986. In this view of the matter, the writ appeals are allowed. Consequently the writ petitions will stand allowed. The order in the writ petitions shall not be interpreted to mean that the impugned Board's proceedings have been struck off, but on the other hand it shall mean that the benefit of pension shall be extended to all the regular work charged establishment personnel's irrespective of the date of retirement. But, the benefits shall be given only with effect from the date of the proceedings of the Board viz. 26.6.1986 provided the amounts paid under Provident Fund Scheme are adjusted. The Respondents are directed to give effect to this order by effecting payment to all the eligible retirees with all other incidental benefits. There will be no order as to costs in these writ appeals.

7. Aggrieved by the judgment of the Division Bench of the Madras High Court, these appeals by special leave are preferred by the Tamil Nadu Electricity Board.

8. As noticed earlier, the law is very well settled on the issue on hand. In the latest judgment dated 9.10.1998 of this Court in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, after noticing all the judgments of this Court up to that date on this issue, it was held as follows :

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter v. Cap. Biplabendra

Chanda and Govt. of T.N. v. K. Jayaraman and Ors., to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit.

9. This Court in Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, , to which one of us (Sujata V. Manohar J.) was a party, had considered a case similar to the one on hand and held as follows:

The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensioner benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable.

10. In Hari Ram Gupta (dead) through Lr. Kasturi Devi v. State of U.P. [1998] 6 SCC 328, this Court held as follows :

9. The only other question that survives for our consideration is whether the ratio in Nakara case will assist the appellant in getting the relief sought for. In D.S. Nakara v. Union of India the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and their upon make provision granting some benefits to one group denying the others. In the aforesaid case, the provisions for pension were applicable to all retirees and, therefore, pensioners form a class as a whole. But when the Liberalised Pension Scheme was introduced, the said Scheme was made applicable to a group of pensioners and not to all and, therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, in principled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution Bench judgment of Krishena Kumar v. Union of India where in the decision of Nakara was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand, the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees must also

equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement whereafter no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of pension retirees, the obligation continues till the death of the employee. This Court categorically held that Nakara cannot be an authority for the decision in Krishena Kumar. In Union of India v. P.N. Menon a similar question came up for consideration and distinguishing Nakara and following Krishena Kumar and other similar cases, the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such, any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. When the army personnel claimed the same pension irrespective of their date of retirement, this Court in the Constitution Bench case of the Indian Ex-services League v. Union of India considered the grievance of ex-servicemen who had laid the claim on the bases of Nakara but ultimately negated the same and followed Krishena Kumar. In All India Reserve Bank Retired Officers' Assn. v. Union of India, when the validity of the introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1.1.1986 have not been given the benefit of the said scheme it was held by this Court that there is no arbitrariness in the same.

(Emphasis supplied)

11. On 17.11.1998 a three-Judge Bench in All India PNB Retired Officers Assn. v. Union of India and Ors., while negating an identical claim, held as follows :

This writ petition is squarely covered by the judgment of this Court in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, . That judgment has rightly noted the distinction that Syedabad Tea Company Limited Vs. State of Bihar, , drew between a continuing scheme and a new scheme.

12. In view of the fact that this Court, as seen above, has consistently taken a view, we do not want to multiply the authorities for the same proposition except to note down the undisputed facts relating to these cases.

13. The retired employees (respondents) while in the service of Government of Tamil Nadu Electricity Department were not governed by pension scheme but governed by the Contributory Provident Fund Scheme. As per the rules in force on the date of the retirement, the employees (respondents) received all retiral

benefits. The appellant-Board fixed 1.7.1986 as the date for introducing the pension scheme in view of the Central Government Notification No. 3.35012/21/84-SSIV (ss 11) dated 25.6.86 fixing the date as 1.7.1986, while granting exemption from the application of Family Scheme, 1971, and Employees Deposit Linked Insurance Scheme, 1976. If the date of 1.7.1986 had to be changed it would lead to many other complications such as reopening and revision of past cases from 1957 to 1986 as well as seeking retrospective exemption from Government of India. It is also brought to our notice that by giving retrospective effect to the pension scheme as per the impugned judgment of the Division Bench of the High Court, the financial burden that will have to be borne by the appellant-Board would be in the region of about Rs. 200 crores which is beyond the capacity of the Board.

14. The learned Counsel appearing for the employees (respondents) however placed reliance on a judgment of this Court in *Indian Bank Vs. K. Usha and Another*, . After going through the said judgment, we do not think that the said judgment is of any help to the retired employees (respondents). The issue that arose in that case was totally different which has no bearing on the facts of the present case.

15. As noticed earlier, the learned Judges even after noticing that the ratio in the judgment of this Court in *Nakara's case* (supra) cannot be pressed into service, erroneously granted relief on the alleged delay on the part of the appellant-Electricity Board in introducing the pension scheme which certainly cannot be a ground for the court to give retrospective effect to the pension scheme. Moreover, the appellant-Board had given well-founded reasons for introducing the pension scheme from 1.7.1986 including financial constraints, a valid ground. We are of the view that the retired employees (respondents), who had retired from service before 1.7.1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class.

16. In the light of the foregoing discussion and applying the rulings of this Court above-noted, we answer the issue set out at the outset by holding that the appellant-Board has not acted illegally or contrary to law in introducing the pension scheme prospectively from 1.7.1986 and that the employees (respondents) retired before 1.7.1986 cannot compel the appellant-Board to extend the benefit of the newly introduced pension scheme with retrospective effect.

17. In the circumstances, we set aside the judgment of the Division Bench under appeal and sustain the order of the learned Single Judge dismissing the writ petitions. The appeals are allowed. There will be no order as to costs.