

(1998) 11 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No. 8038 of 1996

The Principal, Sainik School, Bijapur

APPELLANT

Vs

K.K. Naik and Others

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 3 KarLJ 16

Hon'ble Judges : S.R. Bannurmath, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Basavaprabhu S. Patil, for the Appellant; Sri Ananth Mandagi, for the Respondent

Judgement

1. This appeal is filed by the unsuccessful respondent being aggrieved by the order dated 5-8-1996 passed by the learned Single Judge in Writ Petition No. 18225 of 1989 allowing the writ petition and while quashing the impugned order dated 13-1-1989 issuing a direction to the present appellant to grant the benefit of Pensionary Benefit Scheme to the writ petitioner under the notification dated 1-4-1988.

2. The brief facts are as follows: Respondent 1 herein (hereinafter referred to as the "writ petitioner") was earlier working as Accountant in the Office of the Accountant General, Bangalore, and, after resigning the post, he joined the Appellant Sainik School, Bijapur, as an Accountant in the year 1964. On attaining superannuation he retired from service on 1-10-1986. It is to be noted here itself that during this period the writ petitioner was entitled for the benefit of Contributory Provident Fund (CPF) which he availed of after his retirement in the year 1986. Thereafter, by the notification dated 11-4-1988 the Government of India introduced Pensionary Benefit Scheme (PBS) for the employees working in autonomous bodies like the appellant herein with effect from and applicable to the persons who retired on or after 1-4-1988.

3. The writ petitioner approached the Government to extend the benefits under

the Pensionary Benefit Scheme vide the Notification dated 11-4-1988 to him also. This request was rejected by the impugned order dated 13-1-1989, vide Annexure-F, on the ground that, as the petitioner was covered under the Contributory Provident Fund Scheme and had retired much prior to 1-4-1988 on which date the new Pensionary Benefit Scheme was introduced. Aggrieved by the refusal, vide Annexure-F, the petitioner approached this Court in Writ Petition No. 18225 of 1989 on the ground that refusal of Pensionary Benefit Scheme to him was discriminatory creating 2 classes of retirees, viz., (1) those who retired before 1-4-1988 like the petitioner and (2) those who retired on or after 1-4-1988. It is contended that this discrimination is irrational, unequal and not based on any reasoned classification between the classes of employees who retired earlier to or after the cut-off date, i.e., 1-4-1988; that denying the benefit of Pensionary Benefit Scheme to the persons like the petitioner who have retired prior to 1-4-1988 contravenes the Directive Principles of the Constitution of India, etc. This claim of the petitioner was resisted by the appellant. The learned Single Judge on considering the rival claims, relying upon the decision of the Hon"ble Supreme Court in the case of R.L. Marwaha Vs. Union of India (UOI) and Others, , held that there cannot be any discrimination between those employees who had retired from service earlier to the date of the notification like the petitioner and those employees who retired after the date of notification. Accordingly, the writ petition was allowed, the impugned order dated 13-1-1989 was quashed and the authority (the appellant) was directed to grant the benefits of the Pensionary Benefit Scheme to the writ petitioner as per the Government notification dated 1-4-1988, provided the petitioner refunds the amount drawn by him under the Contributory Provident Fund Scheme. Hence, the present appeal.

4. Sri Basavaprahhu S. Patil, learned Counsel for the appellant, vehemently contended that the order passed by the learned Single Judge is contrary to law; that there is a clear distinction between the case of the petitioner and the one enunciated in Marwaha's case, supra, and as such the principles in that case ought not to have been applied to the present case. The learned Counsel also relied upon the subsequent pronouncements of the Hon"ble Supreme Court in the cases of (1) Krishena Kumar and Others Vs. Union of India and others, and (2) All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , to contend that the question of discrimination between 2 classes of employees arises only if those 2 classes are homogeneous one and as held in those two decisions, if the two classes are separate and distinct as in the present case the question of discrimination does not arise at all. As such, he prayed for setting aside the order of the learned Single Judge.

5. On the other hand, Sri Ananth Mandagi, learned Counsel for the contesting respondent 1 argued in support of the findings of the learned Single Judge.

6. Heard the learned Counsel in detail and perused the records.

7. It is undisputed that the petitioner, when in service, was introduced to the

Provident Fund Scheme, the benefit of which he received on his retirement on 1-10-1986. It is only thereafter in the year 1988 the Government introduced the Pensionary Benefit Scheme to be made applicable to the employees who retired on or after 1-4-1988. In Marwaha's case, *supra*, the question was whether the Government servant holding pensionable post and later absorbed in autonomous body was entitled to the benefits under the Pensionary Benefit Scheme and whether denial of it amounts to discrimination. The Hon'ble Supreme Court held the same in affirmative on the ground that in the absence of acceptable explanation there cannot be two classes of pensioners viz., those who retired earlier to the Government notification and those who retired after the notification, as the two classes of pensioners form one homogeneous class. But, these principles laid down by the Apex Court were later again considered by the Constitution Bench of the Hon'ble Supreme Court in Krishena Kumar's case, *supra*, including the case of D.S. Nakara and Others Vs. Union of India (UOI), and Marwaha's case, *supra*. In Krishena Kumar's case, *supra*, the question was whether the option given to Railway Employees covered by the Provident Fund Scheme to switch over to the Pensionary Benefit Scheme with a specific cut-off date would be violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court considering the earlier pronouncements held as follows:

"In Nakara's case, *supra*, 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 Article 14. 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. 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 the pension retirees must also equally be applicable to P.F. retirees".

8. Again, similar question was considered by the Hon'ble Supreme Court in the case of All India Reserve Bank Retired Officers Association, *supra*. In that case by the Reserve Bank of India Pension Regulations, 1990 Pension Scheme was introduced for the employees of the Reserve Bank to be brought into effect from 1-11-1990 in substitution of the existing Contributory Provident Fund Scheme. The introduction of Pensionary Benefit Scheme from the cut-off date was again challenged before the Hon'ble Supreme Court on the ground of discrimination and the Hon'ble Supreme Court observed thus:

"The scheme introduced by the Regulations is a totally new one. It was not in existence prior to its introduction with effect from 1st November, 1990. The

employees of the Reserve Bank who had retired prior to that date were admittedly governed by the CPF Scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the extent rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement..... There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer".

Reiterating the principles in Nakara's case, supra, the Hon"ble Supreme Court further held thus:

"That is why in Nakara's case, supra, this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced".

9. Keeping in view the aforesaid principles laid down and also the facts of the present case, it is to be observed that the writ petitioner had availed of the benefits under the Contributory Provident Fund Scheme on his retirement in the year 1986. His right had crystallised on his retirement and, thereafter, there was no continuing obligation remained with the authorities, so that they could be treated on par with those who retired on or after the introduction of the Pensionary Benefit Scheme with effect from 1-4-1988. It is also to be noted that the Pensionary Benefit Scheme and the Provident Fund Scheme are structurally different as noted by the Central Pay Commission in its reports. On the other hand, in Marwaha's case, supra, the Hon"ble Supreme Court was concerned with 2 sets of pensioners only and there was no much distinction between them as they formed homogeneous class. As noted by us, the case of the writ petitioner who was beneficiary under the Contributory Provident Fund Scheme cannot be said to be in the same class of retirees entitled for pensionary benefits as per the Government notification of the year 1988, as they are two distinct and separate classes by themselves.

10. Yet in another decision in the case of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , the Hon"ble Supreme Court observed as follows:

"If an employee is already covered by an existing scheme and the main determinative factor for computation of his pension, at the time of his retirement, undergoes any modification with respect to the other determinative factor, namely, qualifying service then such a modification can be treated as elongation of the already accrued retiral benefit. On the facts of the present case, the said observations cannot be of any avail to the learned Counsel for the appellant for the simple reason that when the appellant retired in 1984, no right had accrued to him to get pension from the fund as per Rule 22(1)(c) as existing then. He was not a pensioner at all when he retired. Consequently, any subsequent amendment in the said pension scheme by which a new class of pensioners was brought it cannot be said to be enhancement of a prior existing retiral benefit already earned by the concerned employee. Effort made by learned Counsel for the appellant by submitting that in the present case the question is of in service experience and hence observations in the aforesaid case help him cannot be of any avail as apart from the question of the consideration of in service experience only or clubbing it with pre-service experience, the first requirement for earning the said benefit of clubbing would be to postulate that the concerned employee becomes a pensioner at the time of his retirement. If he was not a pensioner then he is out of the arena of contest for getting any enhanced rate of pension subsequently. For him there is no retiring pension at all".

(emphasis supplied)

11. In view of these pronouncements of the Constitution Bench and the subsequent decisions referred to above, in our considered view, as the writ petitioner who was covered by Contributory Provident Fund Scheme till his retirement on 1-10-1986 and who availed of the benefits under that scheme cannot claim entitlement for the benefit of the new Pensionary Benefit Scheme vide the Government notification dated 1-4-1988. In our view, the principles relied upon by the learned Single Judge in Marwaha's case, supra, are not at all applicable to the writ petitioners's case and in fact the later pronouncements of the Hon'ble Supreme Court in Krishena Kumar's case, supra, Reserve Bank's case, supra and Kasturi's case, supra, are applicable. In view of the same, the learned Single Judge was in error in allowing the writ petition and issuing direction to the appellant to give the writ petitioner the pensionary benefits.

12. In the result, the writ appeal is allowed. The order dated 5-8-1996 passed by the learned Single Judge in Writ Petition No. 18225 of 1989 is set aside. Consequently, the writ petition fails and the same is dismissed.