
(2013) 03 MP CK 0096
In the Madhya Pradesh High Court
Case No : W.P. Nos. 263/2001

T.P. Mamtani

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2013) 3 MPJR 195

Hon'ble Judges : M.A. Siddiqui, J;Krishn Kumar Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.A. Siddiqui, J.—This common order shall govern the disposal of all the three Writ Petitions as they have been filed for common cause. These petitions have been filed under Article 226 of the Constitution of India, to quash the notification dated 18.2.2000 by which the new rates of commutation of pension came into force.

2. (a) In brief the facts of the petitions are that M.P. Government is paying pension to its retired employees and in the year 1976 by framing rules introduced the theme of "commutation". The idea behind the scheme was that at the time of retirement an employee may have urgent need of lumpsum money to settle down and solve his problems like education of children, marriage of children, construction of house etc. so the scheme of commutation was formulated through the rules in which some portion of pension was given in lumpsum in advance and retired employee is given limited pension, upto certain years and after that he would get full pension. This scheme of commutation was captioned as "M.P. Civil Services (Commutations of Pension) Rules" 1996 under Article 309 of the Constitution of India.

(b) Under Rule 6 of M.P. Civil Pension (Commutation) Rules, State Government have prescribed table of values of commutation of pension as under. This table is based on the rate of interest of 4.75 percent per annum and the improvement in

the mortality rate as indicated by the experience of Postal Life Insurance Policy holders. This table came into force w.e.f. 1/1/1976.

These amendments came into force with effect from the date of publication of this notification in official Gazette. The above notification is under challenge.

(d) The petitioners being aggrieved with the amendment of table of commutation urged that by making amendment in the rate of commutation, on a bare perusal of the old rates of commutation (i.e. rates prior to 18.2.2000) and the revised rates of commutation (i.e. the rates after the amendment w.e.f. 18.2.2000) it would be clear that the rates of commutation have been reduced to 50%. These revised rates affected interest of the employees who have retired on or after 18.2.2000, very adversely. The lower rates would discourage the retired employee from resorting to commutation at the time when their need for lumpsum amount is optimum. They cannot resort to private loans as the rate of interest is very high and dry.

(e) To quash this amended notification dated 18.2.2000 these petitions have been filed, to declare it ultra vires.

3. We have heard counsel for the parties and gone through the record.

4. Return has been filed by respondent No. 1 and 3 and rejoinder has been filed by the petitioners. Petitioners have also filed written submissions.

5. (a) In written submission the petitioners have submitted that there has been harsh and drastic reduction in values of commutation of pension w.e.f. 18.2.2000, vide commutation table Annexure P-I Vide notification dated 18.2.2000 commutation rate has been lowered to 50% and it has affected the employees who have retired after 18.2.2000 which is very harsh and drastic and has diminished the commutation value. As retirees are in urgent need of lumpsum amounts to meet the requirement at the time of retirement which is met by GPF, commutation, gratuity and leave encashment and commutation. Commutation fetches maximum amount by which the retiree can convert the part of his pension not exceeding 1/3rd into lumpsum amount. This conversion is provided with the aid of commutation table. The rates of the table are based on 3 factors i.e. (a) years of purchase (b) Average age of mortality (c) rate of discounting (i.e. Rate of interest). If the rates of interest are increased the commutation value gets decreased. From 1.1.1976 to 17.2.2000, the commutation table, in force, was based on the rate of discounting at 4.75% per annum. The hiked rate of discounting at 13% p.a. w.e.f. 18.2.2000 is nearly three times more and has brought down the values to half. This is very harsh and drastic.

(b) According to Rule 5 of the commutation rules of 1996, a retiree has a right to commute his monthly pension upto 1/3rd. He can apply for commutation along with his application for pension at the time of retirement or thereafter before attaining the age of 70 years. If he commutes his monthly pension, the pension

is reduced by that amount. The reduction continues till the age of 70 years or 15 years from the date of retirement whichever is later. The commutation amount is recovered from reduction of pension each month.

(c) Initially after commutation pension was reduced for the rest of the life but after the verdict of Common Cause, A Registered Society and Others Vs. Union of India (UOI), the rider of 15 years was held to be reasonable and hence M.P. Government in 1985 amended the scheme and now the commuted pension has to be restored fully after 15 years.

6. It is submitted by learned counsel for the petitioner that in common cause case (Supra) it was held in para No. 9 as under:--

In dealing with a matter of this nature it is not appropriate to be guided by the example of Life Insurance equally unjust it would be to adopt the interest basis. On the other hand the conclusion should be evolved by relating it to the years of, purchase basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 years rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of nation at great sacrifice.

7. Learned counsel for the petitioner has also placed reliance on D.S. Nakara and Others Vs. Union of India (UOI), , wherein it has been stated that pension is deferred compensation. Commutation is mere capitalized value of a part of pension. In this way it is the own money of the pensioner. It cannot be therefore treated as loan to the pensioner/retiree.

8. It is further submitted that the rate of interest (discounting) at 13% per annum was the rate of interest being charged by the Government on house building loan to its employees in the year 2000. Government have treated commutation as a loan to retiree/pensioner. This is unprincipled, irrational and harsh and against the judgment of "Common cause" (supra). It is also submitted that in the year 1993 to 1996 interest rates were around 13% to 14%. From 1999 they started reducing. They were in the range of 10-11% in the year 2000. Thus adoption of discounting rate at 13% p.a., in the year 2000 when it did not exist is unrealistic, unreasonable and arbitrary.

9. It is also submitted on behalf of the petitioners that commutation rules were a part of service rules applicable to the petitioners when he had entered in service. Government cannot alter the rules harshly and drastically under proviso of Article 309 putting retirees in a disadvantageous position. Government have powers to alter service rules but article 309 does not confer exercise of power arbitrarily. It was also submitted that as per para 9 in the "common case" supra the Apex Court have laid stress on the principle that rates of commutation should be based only on years of purchase. The respondents have obviously disregarded the obiter of Hon"ble the Apex Court.

10. It was further contended that pension is the liability of the State Government in respect of its employees under entry 4-ii list, VII Schedule to the Constitution of India. Expansionary liability of officers of All India Services is borne wholly by the Government of India. State government gets its share from proceeds of revenue collected by Government of India in accordance with part XIII of the Constitution of India. Hence, the assertion of respondents about non assistance lacks foundation.

11. It is also urged that State of Madhya Pradesh was the first in India which had resorted to such drastic reduction of rates of commutation value of pensions in the year 2000. The discounting rates in 2003 were around 7-8%. Tamil Nadu Government was the second government in India who by Government order No. 73 dated 9.3.2003 substituted its earlier commutation table based on discounting rates of 4% Since 1963, by revised table based on rate of discounting at 8% p.a. w.e.f. 1.4.2003. This was double of the existing rate and caused reduction in commutation value of pension. The writ petitions filed in Madras High Court were allowed by the Madras High Court in Tamil Nadu Secretariat Officers Association v. State of Tamil Nadu and other on 23.10.2003 held that:--

(a) Rate of discounting for commutation can't be valued in comparison to commercial transactions especially when commutation can't exceed 1/3rd of monthly pension.

(b) Doubling the discounting rate from 4% to 8% was irrational.

(c) It made the option illusory.

The notification was held to be arbitrary, irrational and without any semblance of foundation, it was hence quashed. Hon'ble Apex Court have also dismissed the S.L.P., of Tamil Nadu Government against such order. The Tamil Nadu Government thereafter restored the earlier table based on discounting rate of 4%.

12. Learned counsel for the State has opposed the arguments advanced by the learned counsel for the petitioners and it was submitted on behalf of the State that on commutation of pension benefits to a pensioner accrues only to the extent that he receives lumpsum amount and also covers the risk factor. Other than two advantages a pensioner, does not draw any other benefit and his commutation portion of pension is restored from the first day of the following month in which he attains the age of 75 years or 15 years from the date of retirement, whichever is later. The table/chart submitted by the petitioner has not been disputed but it has been argued that as an example in order to project the reduction in quantum of commutation value, that before reducing the quantum of commutation value relevant factors have been taken into consideration by the respondents and the table for determining the commuted value of pension prior to the effective date of amendment was payable from the year 1976. As per the said table the rate of interest applied was 4.75% which was the prevailing rate of interest given on investment like fixed deposits etc. by financial institutions and private companies. From the year 1976 till the year

2000 the rate of interest being paid by financial institutions and private sector was 13 to 14%, so it became necessary and expedient to revise the table and determine the commuted value at the rate of 13%. It was further submitted that while finalizing the question for determining the quantum of commuted value, the respondents have worked on the presumption that 80% of the pensioners would draw their pension after the age of 70 years and 20% upto the age of 64 years, the discounting was to be done at the rate of 13% p.a. Thus, bearing in mind the factors that 80% pensioners would draw pension till the age of 70 years and 20% would draw pension till the age of 64 years, the discounting was to be done at the rate of 13% p.a., it became necessary and justified to reduce the quantum of commuted value. It is specifically submitted that the commutation of pension is a right accrued under the rule, the petitioners cannot claim commutation at the rate so desired by them. The impugned notification does not affect the right of the petitioner to draw pension and in the circumstances the notification does not warrant any interference.

13. It was also submitted that it is not correct to say that impugned orders are arbitrary and they do not have any basis. Commutation value has always been calculated on the basis of two factors, what are life expectancy of the pensioners and rate of discounting. Payment of commutation value is based on the principle of capitalization of the future stream of receivable or savings in the payment. Therefore, for any calculation of this capitalized value, the expected period of availability of stream of receivables/savings in payment is a must. To ascertain the average period it is assumed that 80% of the pensioners will live beyond the age of 70 years and will therefore be contributing for full 12 years in the form of saving government due to reduction in pension payment, further as 20% pensioners will live upto 64 years. It may be presumed that due to their early demise their contribution will be less than 12 years. For these pensioners they have taken an average period of six years of their contribution. It was also submitted that the average life expectancy in Indian is around 61 years and therefore the actual period of such contribution may be even lesser than that. But keeping in view the welfare of the pensioners the State Government have taken a factor which is considerably still in their favour and not deteriorative as alleged by the petitioners.

14. It was also submitted on behalf of the respondents that for any organization the rate of discounting for any investment has to be at least equal to the cost of capital, if not more. In 1996 when the earlier commutation factor was worked out the cost of capital to the State which is the average rate of interest on Government borrowings from various sources, was in the region of 4% to 5% p.a. Therefore, the discounting rate used for calculating the commutation value was 4.75%. The rate of discounting has been continuously adjusted according to the cost of capital, as before 1.2.1957 it was 3% p.a. this rate was increased later, when, the cost of capital for Government borrowings was increased. The years in which decision to amend the commutation value was taken, average cost of borrowing was 12.5 or 13%. Therefore, the rate of discounting has been

taken as 13% since the burden, of pension payments to State Government employee is borne entirely by the State Government and there is no contribution from Central Government or any other organization for meeting the liability of such payments, the State Government have to take its own decision, independent of the decision of Central Government based on the resources available with it.

15. It was also contended that scheme is optional for the commutation of pension and since it is not compulsory so it cannot be said to be harsh and unrealistic and as he has full choice as to opt for it or not. The amendment does not affect the rights of the petitioner to draw pension. That in the case of "Common cause" the case was related to the commutation of pension of the armed forces and the scheme of commutation of pension itself was not under question. That in Tamil Nadu Secretariat Officers Association (*supra*) the scheme was made optional by order of the court and the scheme was not compulsory.

16. We have gone through the records and arguments advanced by both the sides. We are in full agreement with the arguments advanced by the respondents that the commutation scheme is optional and the petitioners need not to opt it. But if the scheme could have been made compulsory the position would have been different. That this is a beneficial scheme and has to be formulated by taking all the necessary facts, circumstances, relevant financial factors, rate of interest, financial condition and as drastic changes have taken place since the year 1976 to the year 2000. By formulating new table though some hardship could have been done but it cannot be said to be unconstitutional.

17. It is also pertinent to note that Madhya Pradesh Government has made certain amendments in the year 2012 in the table which has been admitted by learned counsel for the petitioners.

18. The alleged Scheme of 2000 may be less beneficial to the employees but it does not violate the Fundamental Rights. Hence notification does not suffer from any illegality and cannot be declared ultra vires. In view of the aforesaid discussion, we find no merit and substance in the petitions and these are accordingly dismissed.

No order as to costs.