

(2000) 12 MAD CK 0010
In the Madras High Court

U. Palani

APPELLANT

Vs

The Registrar, Annamalai University and Another

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Citation : (2001) 1 LW 643 : (2001) 1 MLJ 340

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Division Bench

Judgement

V.S. Sirpurkar, J.—This writ appeal is directed against the judgment of the learned single Judge whereby, the claim of the petitioner for

enhancement of his pension by adding his earlier services in various other institutions to his qualifying service was refused.

2. Petitioner retired from the post of Lecturer in Tamil in Annamalai University on 6.5.1979. Once his pension was fixed, he not being satisfied with

that pension, represented to the University that his earlier service rendered as Lecturer in other educational institutions should also be counted as

qualifying service for the purpose of computation of his pension. He calculated the total service to be 26 years, 10 months and 15 days whereas,

as per the University, his qualifying service was calculated at 10 years, 10 months and 17 days only. Petitioner based his claim on the resolution

passed by the University in a meeting held on 29.11.1980, whereby Statute 3(ii) was amended so as to count as qualifying service the service

rendered by a teacher under all managements previously, viz., Government, Local Bodies, Aided Colleges, High Schools and Technical

Educational Institutions before entering the University service of a temporary, officiating or permanent nature.

3. The University, however, had taken a defence that this advantage of enhanced qualifying service was available only to those persons, who were

in service of the University on or after 1.10.1979. According to the University, since the petitioner had already retired on 6.5.1979, he could not

claim this advantage and as such, not entitled to the enhanced qualifying service and resultantly enhanced pension.

4. It is an admitted position that if the previous service of the petitioner in other institutions is counted, his qualifying service would be 26 years, 10

months and 15 days. In addition to this the petitioner also claimed by way of a relief implementation of the University Grants Commission scales of

pay and the consequent revision of the pensionary benefits in the light of the resolution of the Syndicate of the University passed on 30.11.1983.

By that resolution the University had resolved to implement the University Grants Commission scales of pay for all lecturers, who were serving on

1.1.1974 as well as those who came to be appointed upto 31.12.1980 with monetary benefits from 1.1.1981 only. By another resolution, dated

23.6.1984, the University also resolved that the pay of all teachers, who had retired from service of the University between 1.1.1983 and

1.11.1983 to be refuted giving the benefit of higher start of Rs. 1,100 applicable to lecturers for the purpose of pensionary benefits and that such

teachers should be paid the revised pension.

5. The learned single Judge has granted the petitioner the second prayer but, refused the main relief in the writ petition whereby, the petitioner had

claimed the advantage of the enhanced qualifying service on the ground which we have indicated earlier. The only question, therefore, which has to

be decided in this writ appeal is whether the learned Judge was right in refusing the advantage of the added qualifying service on the ground that the

resolution of the University was applicable only to the teachers who were in service on 1.10.1979 and refusing the benefit to the petitioner on the

ground that he had already retired from the service.

6. Learned Counsel for the petitioner/appellant has pointed out that the University had passed the aforementioned resolution and amended the

Pension Rules to bring the position on par with the rules adopted by the Government of Tamil Nadu. The learned Counsel pointed out that the

concerned rule prior to the amendment was extensively amended and the

following clauses came to be added:

(a) Service rendered by a teacher under all managements", viz., Government, Local Bodies and Aided Colleges, High Schools and Technical

Educational Institutions before entering the University Service, whether temporary, officiating or permanent shall also count as qualifying service

subject to the condition that the teacher should surrender to the University the Managements" as well as the Government's contribution, if any,

paid to his Provident Fund, together with interest thereon.

(b) The University teacher who opts for counting his previous service as qualifying service shall be required to refund the Management's as well as

the Government contribution, if any, paid to his Provident Fund together with interest thereon in monthly instalments not exceeding thirty-six in

number, the first instalment beginning from the month following the month in which he is required to refund it. The right to count previous service as

qualifying service shall not revive until the whole amount has been refunded.

(c) For the purpose of counting as qualifying any period of service in the above manner it will be relevant, (1) whether the teacher was contributing

to Provident Fund or not during that period; (2) whether his life was insured or not during that period.

(d) If there are any breaks in service on account of any reason such breaks shall not have the effect of forfeiting the past service provided the

teacher has been discharged or retired as per rules and orders.

(e) The service rendered by a teacher before attaining the age of eighteen years shall not count, except for compensation gratuity.

(f) Resignation from a service or posts shall not entail forfeiture of past service.

(g) The Teacher's Service Register relating to previous service and/or other relevant records will be the basis for computing the length of service

for purposes of pension and gratuity.

(h) The authority competent to sanction the pension or gratuity of a teacher may, at his discretion, condone a deficiency up to a maximum period of

12 months in the qualifying service if the qualifying service exceeds nine years, but falls short of ten years, in the case of grant of pension and

exceeds four years, but falls short of five years, in the case of grant of gratuity.

7. Statute 3(ii), as it originally stood, defined the term ""qualifying service"" to

be the continuing pensionable service with the University. The additions by way of amendments, viz., Clauses (a), (c) and (d) are the most relevant clauses. A bare reading of clause (a) suggests that the service rendered by a teacher earlier with all other managements, viz., Government, Local Bodies, etc., or in the aided colleges or in the Technical Educational Institutions before entering the University service whether in a temporary, officiating or permanent capacity would also count as "qualifying service with a condition that the teacher should surrender to the University the contributions made by his employer to his Provident Fund with interest thereon. The learned Counsel points out that in his representation, the petitioner showed his readiness to return these contributions with interest and there is no dispute about the same. It can be seen from clause (c) that for the purposes of counting the qualifying service whether the teacher was contributing to Provident Fund or not during that period was to be relevant. Clause (d) suggests that even the breaks in the service on account of any reason were to be ignored provided, however, that the teacher was discharged or retired as per the rules and orders. In short, a liberalised pension policy was adopted by the University to fall in the line of the Tamil Nadu Government norms.

8. The learned Counsel points out that along with these amendments even the Provident Fund, Gratuity and Pension Schemes also came to be amended providing for increased gratuity, pension, etc. It was argued that the earlier schemes regarding the Provident Fund, etc., were bettered by the amendments and the pension rules were also amended in the same spirit. The learned Counsel pointed out that Statute 20 was amended so as to make the said amendments applicable to the teachers of the University who were in service on 1.10.1979 and that is why the University was taking the stance that the benefits bestowed by these amendments were not available to the petitioner. According to the learned Counsel, this was wholly impermissible as that would have been amounted hostile discrimination against the petitioner. The learned Counsel argues that the advantages of the amendments and thereby the enhanced qualifying service were meant for all the pensioners and, therefore, the petitioner also being a pensioner on the date when the resolution was passed in the year 1981 could not be discriminated by the University and the University

could not take out from its hat a date which had no rationale or nexus with the object of enhancing the advantages granted to the class of

pensioners to which the petitioner belong. In short, according to the learned Counsel, the introduction of this date, i.e., 1.10.1979 and the

incidence that the advantages would be available only to the teachers who were in service on that date was grossly illegal being discriminatory. The

learned Counsel very heavily relied upon the ruling in D.S. Nakara and Others Vs. Union of India (UOI), and some subsequent other rulings

following that ruling.

9. As against this, the learned Counsel appearing for the University very vehemently argued that the law laid down in D.S. Nakara and Others Vs.

Union of India (UOI), , was not only diluted later on but that case was also distinguished subsequently. According to the learned Counsel, it was

indeed permissible to create a new class of pensioners by fixing a date to give them the retiral benefits. According to the learned Counsel, the

amendments were not the betterment of the existing pension scheme but provided a new retiral benefit and, therefore, it was always permissible for

the University to fix a date for the grant of that new retiral benefit. The learned Counsel pointed out in Nakara case, cited supra was distinguished

in some other decisions and it is consistent view of the Supreme Court now that where the benefits was by way of a new retiral benefit and not as

part of the old pension scheme, the fixation of a date for giving benefit to the persons was permissible.

10. On these conflicting stands, we have to see whether firstly the ratio in D.S. Nakara and Others Vs. Union of India (UOI), , which was

followed in further decisions, applies to the present situation. For this, essentially we will have to see as to whether the benefits awarded by the

amendments were in the nature of ""betterment of the existing scheme"" or ""entirely a new retiral benefit"".

11. There can be no dispute that on the date when the amendments were introduced, i.e., in the year 1981, the petitioner was an existing

pensioner, drawing his pension from the University under the old pension scheme. There can also be no dispute that as a result of the amendments,

the pensioners on that date were entitled to a better deal in the sense that their qualifying service would enhance on account of addition of their

earlier service with some other managements, which advantage was not available to them earlier. Perhaps, it is with this idea that the learned

Counsel for the petitioner/appellant very heavily relied on. the observations in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and

Another, and more particularly on the observations in paragraph 22, which reads as follows:

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant

pension scheme, he would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force,

he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same

class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same

class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was

conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these

pensioners came into force. The line of decisions tracing their roots to the ratio in Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, ,

would cover this category of cases.

The observations are more than telling and there can be no dispute that these observations would apply to the petitioner's case on all fours.

12. The learned Counsel then relied on another decision of the Supreme Court in M.C. Dhingra Vs. Union of India and Others, and pointed out

that the factual situation in this case is almost identical to the one in the reported decision. The learned Counsel argues that the question in Dhingra

case, was as to whether the qualifying service of the petitioner in that case, who had retired as a Central Government servant could be enhanced

on account of his having served in the State Government, the benefit of which service was granted by the Central Government but with a rider that

this advantage was available only to the Government servants retiring on or after the date when the circular granting this benefit was issued, i.e.,

31st March, 1992 and thereafter. The learned Counsel invited out attention to paragraph 4 and points out that the fixation of a date was scoffed at

by the Supreme Court in paragraph 4 and the Supreme Court has chosen to follow the decision in Union of India (UOI) and Others Vs. Lieut

(Mrs) E. Iacats, .

13. The learned Counsel also invited out attention to the latest ruling of the Supreme Court in Union of India v. Dr. Vijayapurapu Subbyamma

(2000) 4 L.L.N. 574 and more particularly to the observations in paragraph 7. The observations are as under:

The conspectus of legal position that emerges from the aforesaid decisions are these:

(a) ...

(b) ...

(c) Where an employee at the time of retirement is entitled to pension under the relevant rules, any subsequent amendment to the relevant rules

enhancing pension or conferring additional benefit would also be applicable to him.

It is seen that in this case, M.C. Dhingra Vs. Union of India and Others, , as also the case of T.S. Thiruvengadam (1993) 1 L.L.N. 755, as also

the case of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , have been considered. It is quite another thing that

these cases have been held not to be applicable to the appellant in Kasturi case, on account of the fact that on the date when the benefits were

granted, the petitioner there was not in service and was also not earning any pension on account of her short service. It is, therefore, clear that the

abovementioned observations in Kasturi case, would be applicable to the petitioner as the petitioner was an ""existing pensioner"" on the date when

the pension benefits were ordered to be bettered by the amendments and the petitioner satisfies that aspect highlighted in Union of India (UOI) and

Others Vs. Lieut (Mrs) E. Iacats, .

14. However, in order to get out of this difficult situation, learned Counsel for the respondent University pointed out in Union of India (UOI) and

Others Vs. Lieut (Mrs) E. Iacats, , was distinguished in Indian Ex-Services League and others Vs. Union of India, and Krishena Kumar and

Others Vs. Union of India and others, , as also in All India Reserve Bank Retired Officers, Association v. Union of India (1992) 1 S.C.C. (Supp.)

664. The learned Counsel also relied upon State of West Bengal and Others Vs.

Ratan Behari Dey and Others, , State of Rajasthan Vs.

Sevanivatra Karamchari Hitkari Samiti, , Union of India and Others Vs. K.G. Radhakrishana Panickar and Others, , State of W.B. Vs. Monotosh

Roy and Another, and State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others, .

15. According to the learned Counsel, the consensus of the above referred cases was that even after the concerned petitioner was an existing

pensioner and if any new retiral benefit or new scheme is introduced in respect of the pensioners, any new class could be created for that purpose

and if such new retiral benefit or new scheme contemplates fixation of a date, such fixation is not necessarily arbitrary. Learned Counsel was at

pains to point out that in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , itself, the Supreme Court has made a

clear reference to the cases of Indian Ex-Services League and others Vs. Union of India, , Krishena Kumar and Others Vs. Union of India and

others, , as also All India Reserve Bank Retired Officers" Association (1992) 1 S.C.C. (Supp.) 664.. The Supreme Court has made the following

observations in Kasturi case in respect of these aspects:

Hence, it was certainly a new pension scheme for them and not old wine in a new bottle. For such classes of employees, there was no question of

any mini-classification as for the entire class of such employees for the first time the benefit of the pension scheme was made available by the

amendment. The decision of the Constitution Bench in Nakara case, therefore, cannot advance the case of learned Counsel for the appellant. We

may also mention that the ratio in Nakara case, was distinguished by two latter Constitution Bench decisions of this Court....

16. The Supreme Court thereafter in the same paragraph referred to Krishna Kumar case and quoted a paragraph in that case. The quoted

paragraph is as under:

In Nakara, the court treated the pension retirees only as a homogeneous class. 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. On the other hand the court clearly

observed that it was not dealing with the problem of fund.

17. The Supreme Court then proceeded to quote paragraph 45 in Nakara case,

and also referred to the judgment in All India Reserve Bank

Retired Officers" Association (1992) 1 S.C.C. (Supp.) 664 and observed particularly with reference to the All India Reserve Bank Retired

Officers" Association. The observations are as follows:

The pension scheme was being introduced for the first time from the cut-off date. In these circumstances, the employees who had retired earlier

when the pension scheme was not available could not make an effective grievance in connection with those of a few other categories who retire

later when the pension scheme had already come into force.

18. The Supreme Court then quoted the observations by Ahmadi, J., made in that case, wherein the learned Judge had highlighted the observations

in Nakara case, to the following effect:

...the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the

revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of the existing scheme. It is not a new retiral benefit.

It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that

those who had already retired could not expect it.

19. Very heavily relying on all the above observations, the learned Counsel pointed out that in this case also, if it can be shown that the

amendments did not amount upward revision of the existing pension scheme but could be seen as a grant of new retiral benefits then, there would

be nothing wrong in fixing the date for application of that revision because then there would be no question of a mini-classification amongst a large

class of pensioners.

20. To buttress his point, the learned Counsel heavily relied on three-Judge decision in State of Punjab Vs. Justice S.S. Dewan (Retired Chief

Justice) and others, , which we have already referred to earlier. It was pointed out that in Justice S.S. Dewan case, by a subsequent introduction of

a change, the practice at the Bar of a Judge prior to his appointment as a Judge was also liable to be taken into consideration in deciding upon the

qualifying service. The learned Counsel very heavily relied on the following observations in paragraph 8 which reads as follows:

On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then, it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of amendment does not appear to be to go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may be tempted to join it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22.2.1990, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in D.S. Nakara case A.I.R (1983) 1 S.C. 130, that if pensioners form a class computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. The learned Counsel says that in this case also, the situation is more or the less identical inasmuch as the earlier service rendered under other managements, including the private managements, which was otherwise irrelevant in determination of the qualifying service for computing the pension has now been decided to be computed and thereby a completely new retiral benefit is conferred. According to the learned Counsel, this cannot be "an upward revision" of the existing scheme but amounts to grant of a "totally new pension scheme" for which, the University being accused of discriminating against the existing pensioners.

21. It will, therefore, be our task to examine as whether the aforementioned amendments to Rule 3(ii) can be viewed as a "totally new retirement scheme" so as to come within an exception to the general rule evolved in D.S. Nakara and Others Vs. Union of India (UOI), , in which case in

spite of the fact that the petitioner was an existing pensioner at the time of the amendments, his claim would be defeated as he would clearly form a

different class of pensioners than the ones who are expected to be benefitted by the amendments.

22. The Supreme Court has actually held in *State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others*, that firstly, a provision of

counting the years spent at the Bar in the qualifying service was entirely a new concept as it did not pertain to the period of service but extended to

a period anterior to the joining of service and secondly, according to the abovementioned observations of the Supreme Court, the object of the

amendments was not to go for liberalisation but was to make the service conditions more attractive for those who were already in service so that

they may not leave it and for the new entrants so that they may be tempted to join it.

23. The first aspect regarding the service would be clearly absent in the present case because it is only the service in the other educational

institutions, in contradistinction with the years spent at the Bar, that is being taken into consideration in the present amendments though both pertain

to a period prior to the incumbent joining the pensionable service. It is true that the amendments extend to the period before the joining of the

service, but it is of an identical nature of teaching though in different institutions. In that sense, the teaching activity of a teacher in different

institutions has been considered in the amendments which would be identical to the activity of the teacher in the University, viz., teaching in the

University. Such was not the situation in *State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others*, . There, the years spent at Bar

which had got nothing to do with the duties of a Judge, dispensing justice were taken into consideration and that was the reason why the Supreme

Court viewed it as a new retiral benefit. The incumbent there was not "serving" while at Bar. This, therefore, is a distinguishing factor.

24. Even on the second aspect, the case of *Justice Dewan*, appears to be distinguishable. The only purpose in bringing about these amendments in

the present case appears to be to bring them on par with the State Government's retirement scheme. That is clear from the words of Resolution

8(d), which are as follows:

The Syndicate placed before the Senate for consideration and adoption draft amendments to statutes relating to Provident Fund-cum-Gratuity-

cum-Pension Scheme providing for increased gratuity, pension, etc., as adopted in Government of Tamil Nadu and adopting other Government

Rules (for draft amendments, vide: appendix G).

[Italics supplied]

... ..

Appendix G

Amendments to statutes relating to Provident Fund-cum-Gratuity-cum-Pension Scheme providing for increased gratuity, pension, etc., as adopted

in Government of Tamil Nadu and adopting other Government Rules.

[Italics supplied]

... ..

25. On this backdrop, it cannot be forgotten that this advantage of consideration of the service in different managements was always available to

the teachers to whom the Tamil Nadu Non-Government Teachers Pension Rules were applicable. A clear reference can be made to G.O.Ms.No.

1098, (Education), dated 18th July, 1972. The object of the amendments appears to be to bring the University teachers on par with the teachers

serving in private educational institutions and to give them the same benefits which were available to the teachers under the Private Managements.

The concerned rule in Tamil Nadu Non-Government Teachers Pension Rules provides that in computing the qualified service, previous service

under all managements, viz., Government, Local Bodies and Aided Colleges shall be taken into account. Under the present amendments, it is only

this advantage which has been conferred on the University teachers to which these rules did not apply earlier. Therefore, it cannot be said that this

was meant to be a new benefit and not the liberalisation of the existing pension scheme. In fact, a look at clauses (4) and (5) of Statute 3(ii) in the

Tamil Nadu Non-Government Teachers Pension Rules and other concerned Government orders referred to in pages 11 to 13 of the compilation

supplied by the learned Counsel for the University would suggest that the subject was only of the liberalisation of the existing scheme and not

conferral of a new retiral scheme. In our opinion, therefore, on this second

aspect also, the reported decision in State of Punjab Vs. Justice S.S.

Dewan (Retired Chief Justice) and others, , is distinguishable. In that behalf, in our opinion, the reported decision in M.C. Dhingra Vs. Union of

India and Others, , appears to be more apposite where the earlier service rendered under the State Government was held to be a qualifying service

in case of a person who chose to join the service under the Central Government later on and retired therefrom. This law was not brought to the

notice of the learned single Judge who went on strictly by the language of the amended Rules. We are, therefore, unable to agree with the learned

single Judge and would choose to set aside that judgment. In view of what we have held, we consider it unnecessary to consider the other cases

which have been quoted by us but have not been expressly commented upon.

26. In the result, the appeal succeeds. The judgment of the learned single Judge is set aside. The writ petition will stand allowed. The concerned

respondents are directed to calculate the pension of the petitioner in the light of the observations made above counting the earlier service rendered

by the petitioner in different educational institutions. Since number of valuable years have been lost in the litigation, the authorities are directed to

comply with this order within two months from the date the order reaches the concerned authorities. In the circumstances, we, however, do not

grant any costs.