

(2006) 10 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 18313, 18038 etc. of 2006

Union of India and Others

APPELLANT

Vs

V. Gopalakrishnan

RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 10 KL CK 0001

Hon'ble Judges : K.P. Balachandran, J; K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : John Varghese ASG, for the Appellant; C.S. Gopalakrishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—This batch of writ petitioners are filed by the Union of India assailing a common judgment of the Central Administrative Tribunal, Ernakulam bench. The point mooted for debate is whether the Central Government Pensioners are entitled to the payment in terms of CS(MA) Rules, 1944 for the treatment they had undergone. Admittedly, the said Rules are applicable only for those in service. Fifth Pay Commission recommended to Central Government that the CS(MA) Rules, 1944 shall be extended to the Central Government Pensioners as well. The recommendation of the Fifth Pay Commission with regard to the revision of pay and other conditions of service had been implemented by issuing necessary orders. But the extension of CS(MA) Rules to the Pensioners was under correspondence. The Ministry of Department of Pension and Pensioners' Welfare in O.M. No. 45/7497 PP & PW dated 15-04-1997 addressed the Department of Health Services with regard to the modalities for extension of the CS(MA) Rules and for evolving a scheme therefore. In reply, Annexure-A3 was issued conveying their "No Objection" in implementing the scheme, but with the reservation that they would undertake administration of CGHS scheme and the areas where CGHS scheme was not

applicable, the benefits in terms of CS(MA) Rules shall have to be worked out and paid by the concerned departments or Ministries, as the case may be. Taking Annexure-A3 in Ext. P 1 as extension of the benefit in terms of CS(MA) Rules, 1944, several claims were lodged by the pensioners and few departments were granting reliefs while few other departments were not. This gave rise to enormous litigation before the Central Administrative Tribunal. This led to issuance of Annexure-A4 order in Ext. P 1 whereby it was clarified as follows:-

It is therefore, considered necessary to clarify unequivocally that the O.M. dated 05-06-1998 was not intended to be a final order extending the applicability of CS(MA) Rules, 1944 to pensioners. In fact, it is not possible for any individual department to take such policy decisions without obtaining views of various departments and particularly, the Department of Expenditure. Such being the case, in the process of examining the recommendation of the 5th Pay Commission on this issue, the Department of Expenditure has categorically said that in view of huge financial implications, it is not feasible to extend CS(MA) Rules, 1944 to pensioners.

Therefore, the payment was stopped. In the meantime, there arose a question whether the payment could be made until the date of Annexure-A4 i.e. 20-08-04. Finally, a Division Bench of this Court in judgment in Writ Petition No. 1977/2005 found that the benefit which has been granted taking Annexure-A3 as extension of the CS(M A) Rules. 1944 could not have been denied in respect of the expenditure incurred until the date of Annexure-A4 i.e. 20-08-2004. But the Division Bench made it clear that they did not pronounce upon the legality or otherwise of Annexure-A4. It was in the above circumstances, Annexure-A4 was independently challenged before the Tribunal in a batch of original applications. The tribunal below relying on the decision reported in *State of Punjab v. Mohinder Singh Chawla* (AIR 1997 SC 1226) held that it is settled law that right to health is an integral part of right to life and therefore, Government has constitutional obligation to provide the health facilities and the contention of the Union about heavy burden in implementing such scheme could not have been heard. Therefore, the Tribunal quashed Annexure-A4. The Tribunal also directed payment in terms of CS(MA) Rules. This is impugned by the Union of India, the Counsel for the Union of India submits.

2. It is contended by the Union of India that no formal order has been issued accepting the Commission's recommendation in relation to extension of CS(MA) Rules to Central Government pensioners. Annexure-A3 was only an opinion expressed by the Health Department in response to a query made by the Pensioner's Welfare Department. It did not have the efficacy of extension of CS(MA) Rules to the pensioners. It was in order to clarify the position, Annexure-A4 was issued. However, the Government had made it clear that in the absence of necessary financial allocation, it could not have been extended. The Tribunal was not therefore, justified to quash Annexure-A4. The decision of the Tribunal has to be set aside, it is contended.

3. On the other hand, it is submitted by the Counsel for the respondents, who were the original applicants before the Tribunal, that the Tribunal had followed the decision of the Supreme Court in Mohinder Singh Chawla's case (cited supra). So, Annexure-A4 was quashed. Further, it is submitted that to discriminate the petitioners as against those getting the benefit in terms of CGHS scheme is illegal and will offend Article 14 of the Constitution of India. Therefore, there is no reason to set aside the impugned judgment, they contended.

4. It is true that there was a recommendation by the Fifth Pay Commission to extend the benefit of CS(MA) Rules to the Central Government Pensioners. But the recommendation, as such, will not confer a benefit. Consequential follow up order is required. The respondents were unable to point out any such order implementing the recommendation of pay commission except Annexure-A3. A close reading of Annexure-A3 will reveal that it did not contain any order implementing Pay Commission recommendation, obviously because Health Ministry could not have done so. On the other hand, Annexure-A3 only convey "No Objection" of the Health Ministry in implementing the scheme with the reservation that they are prepared to implement it only in respect of the area covered by the CGHS scheme and extension of benefit of CS(MA) Rules shall have to be considered by the independent department from where the pensioners retired on superannuation. Apart from that Annexure-A3 did not contain any order. Necessarily, no department or office could have taken Annexure-A3 as an order extending the benefit of CS(MA) Rules. It is one yet to be passed by the appropriate ministry of Central Government. It was in the above circumstances, to clarify the position, Annexure-A4 was issued. The extract given above from Annexure-A4 was issued. The extract given above from Annexure-A4 will reveal that Annexure-A3 is no longer in force. Necessarily, after the issuance of Annexure-A4 nobody could have claimed the benefit of CS(MA) Rules.

5. The contention of the discrimination also cannot be accepted because CGHS scheme is a different scheme as compared to the CS(MA) Rules. CGHS scheme is available only in notified areas like certain important cities. There is real nexus for covering the persons in important cities alone. Therefore, when there is such nexus for implementation CGHS, and implementation and extension of CS(MA) Rules is on a different footing, Article 14 cannot be pressed into service any more.

6. With regard to the application of the principles contained in Mohinder Singh Chawla's case (cited supra), it has to be noted that, that was a case with reference to the claim for the medical benefit as covered by a Medical Benefit Scheme. Board and residential charges in a hospital or in a hotel consequent on impatient treatment in a nearby hospital was directed to be paid. The observation contained shall have to be read along with fact frame of the said case. Therefore, that could not have been applied in this case as the scheme itself had not been evolved to cover the Central Government Pensioners under CS(MA) Rules. In such circumstances, we are of the view that the quashing of

Annexure-A4 in Ext. P3 judgment of the Tribunal was not justified. Therefore, Ext. P3 is set aside. Annexure-A4 will survive. In the result, all the above writ petitions are allowed setting aside the common judgment.