(2006) 02 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17900 of 2005

Union of India (UOI) and Others APPELLANT

Vs

P.S.R. Kumar Sinha and Another RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Citation : (2006) 3 ALD 57 : (2006) 2 ALT 354

Hon'ble Judges : M.E.N. Patrudu, J;J. Chelameswar, J

Bench : Division Bench

Advocate : C. Vani Reddy, for the Appellant; Siva, for the Respondent

Final Decision : Dismissed

Judgement

M.E.N. Patrudu, J.

Petitioners:

1. Union of India and its officials are the petitioners.

2. Respondents

2:01. The two respondents in the writ are the retired senior Scientists.

2:02. They worked in the Central Government before retirement.

3. Facts

3:01. The service and the retirement of the respondents with the petitioners is an admitted fact.

3:02.They retired with effect from 31-12-1995 (AN) on attaining the age of superannuation.

3:03. Thereafter, the respondents have submitted the proposals for fixation of pension requesting that their pension may be fixed by calculating their basic pay as Rs. 14,940/-. It is on the revised scale.

3:04.Since the pensionary benefits are not released they approached the Central Administrative Tribunal at Hyderabad through O.A. No. 384 of 2001 for a direction to the petitioner to release the benefits with interest at the rate of 12% per annum.

4. Impugned Order

4:01.The Tribunal allowed the prayer of the respondents and directed the petitioners to compute the pension on the basis of basic pay as Rs. 14,940/- and release the difference amount out of such calculation, and also pay interest at 12% per annum till the date of payment.

4:02. Aggrieved by the same the present writ is preferred by the Government of India.

5. sides.

Heard the learned Counsel for both

6. Point

The short point for our decision is

Whether the basic pay as Rs. 14,940/- is to be taken into consideration or the last drawn pay as on the date of retirement is to be taken for fixing the pensionary benefits ?

6:01. Smt. Vani Reddy, the learned Counsel appearing for the petitioners highlighted various previsions under the law and attacked the impugned order.

6:02. Sri Siva, the learned Counsel for the respondents resisted the said arguments.

6:03.The core contention of the petitioners is that the fixation of pension by taking the revised pay scales of Rs. 14,940/- as basic is erroneous. It is stated that the revised pay scales have come into effect from 1-1-1996 and admittedly the respondents having been retired from service with effect from 31-12-1995, as such they are not eligible to claim the pension on the revised pay scales. The grievance of petitioners is that the Tribunal misinterpreted and allowed the prayer of the respondents. The petitioners also made serious attempt to succeed on their contention by relying on the decision of Full Bench of this Court in W.P. No. 22042/2005 and Batch. The strong argument of Smt. Vani Reddy _ is that fixation of pension on the basis of the revised pay scales is bad in law.

6:04. Sri Siva, the learned Counsel for the respondents submitted that the respondents have retired with effect from 31-12-1995 and there was a revision of pay with effect from 1-1-1996 and as per the revision the minimum scale for the senior Scientist was fixed at Rs. 14,940/- and as both the respondents have put in more than five years of service in the said capacity they are entitled to claim the same and the petitioners have not considered this aspect and fixed the pension on the old pay. It is also contended that they have submitted a detailed representation to all the concerned but the same is not taken into consideration.

6:05. While considering this fact, the Tribunal specifically held that the orders issued by the Government of India makes it clear that irrespective of the date of retirement, all the pensioners are entitled to the pension of not less than 50% of the minimum pay in the revised scales of pay introduced with effect from 1-1-1996 of the post last held by them and since the word ''irrespective of the date of retirement'' is mentioned in the order all the pensioners are entitled to the benefit of minimum pay in the revised scale of pay with effect from 1-1-1996, and as the respondents retired from service with effect from 31-12-1995, their pensionary benefits are to be fixed on the basic pay of Rs. 14,940/- the revised basic pay.

The Tribunal also relied on the judgment of the Hon''ble Supreme Court of India reported as S. Banergee v. Union of India reported in AIR 1990 SC 285, and finally held that the date of retirement of respondents would be 1-1-1996 but not 31-12-1995.

6:06. At this stage, it is but necessary to verify the Government orders.

6:07.The Government of India issued orders in Office Memorandum dated 17.12.1998 by the Department of Pension and Pensioners Welfare through O.M. No. 45/ 10/98-P & PW (A), dated 17-12-1998. It deals with the Minimum Pension and Minimum Family Pension. The Government clarified that it had received large number of representations from the Pensioners'' Association and had considered its decision on the recommendations of the Fifth Central Pay Commission regarding revision of pension/family pension. The Memorandum contains the following,

The President is now pleased to decide that with effect from 1-1-1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1-1-1996 of the post last held by the pensioners.

(emphasis supplied)

6:08. According to the Government the minimum pension as per the existing rules shall continue with effect from 1-1-1996, family pension shall not be less than 30% of the minimum pay in the revised scale introduced with effect from 1-1-1996 and it is issued through Office Memorandum of 45/86/97-P & PW (A)-Ptl, dated 27.10.1997 wherein it is also clarified that the pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1,275/- per month and a maximum of upto 50% of the highest pay applicable in the Central Government, which is Rs. 30,000/- per month.

6:09. In the same memorandum it is further stated that the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January, 1996 for the post last held by the employee at the time of his retirement.

(underlining is ours).

6:10. The Office Memorandum dated 17-12-1998 issued by the Government of India at ''C is dealing with the retired prior to 1-1-1996 and it is with regard to the implementation of Government''s decision on the recommendations of the Fifth Central Pay Commission and the Revision of Petition of Pre-1996 pensioners/ family pensioners etc., clearly says that in pursuance of the Government''s decision on the recommendations of Fifth Central Pay Commission, the President of India has accorded the sanction and regulated the payment of pension with effect from 1-1-1996 to all Pre-1996 pensioners/family pensioners in the manner indicated in the succeeding paragraphs and those succeeding paragraphs clarify that the orders of the President of India shall apply to all the pensioners who are drawing pension on 1-1-1996 under Rules 1972 and who are retried from service on or after 1-1-1973. At para 4.1, it is clarified that the pension/family pension of existing Pre.96 by adding the pension, DA etc. and the amount so arrived will be regarded as consolidated pension with effect from 1-1-1996 and it shall not be less than 50% of the minimum of the revised pay scales of pay introduced with effect from 1-1-1996 for the post last held by the pensioner at the time of his retirement.

At para-9.1 it is clarified that the consolidated pension/family pension as worked out in accordance with provisions of para 4.1 above shall be treated as final ''Basic Pension'' with effect from 1-1-1996 and shall qualify for grant of Dearness Relief sanctioned thereafter in respect of the following categories of pensioners/ family pensioners who are pensioners who retired between the period from 1-1-1986 to 31-12-1995.

6:11. Thus, close perusal of the Office Memorandum, dated 17-12-1998, clarifies that the pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be, subject to a minimum of Rs. 1,275/- per month and a maximum of upto 50% of the highest pay applicable in the Central Government which is Rs. 30,000/- per month and the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1-1-1996 for the post last held by the employee at the time of his retirement.

6:12. In the instant case, admittedly the respondents have completed five years of service as on 31-12-1995 hence they are entitled to be considered for payment of pension as per the revised scales.

6:13. The Government orders in Office Memorandum clarifies that the President of India was pleased to issue orders after accepting the recommendations of the Fifth Central Pay Commission regarding the revision of pension/family pension and the Government orders are issued with irrespective of the date of retirement the pension of all the pensioners shall not be less than 50% of the pay as introduced with effect from 1-1-1996.

6:14. Therefore, our decision is that the petitioners have no other option except to pay the pension strictly in accordance with O.M. dated 17-12-1998.

6:15. The Counsel for the writ-petitioners stoutly contended that the Government orders are applicable in respect of the pensioners retried prior to 1-1-1996.

6:16. We do not accept this contention. The Government through its office memorandum extended the benefit to those who have retired prior to 1-1-1996, by saying that irrespective of the date of retirement all the pensioners are entitled to the benefit of minimum pay in the revised scales of pay with effect from 1-1-1996.

6:17. Supreme Court Ruling

In S. Banerjee Vs. Union of India (UOI) and Others, , a definite finding is on record by their Lordships of the Supreme Court of mdia that when the employee has retired on the last date of the month, his date of retirement has to be treated as 1st date of succeeding month.

6:18. It is a direct decision on the issue before us.

6:19. Full Bench Decision of A.P. High Court

P. Rajalingam Vs. Deputy Commissioner of Endowments and Another,

While answering Point No. 2 the Full Bench of this Court categorically held as follows:

A Government servant who would be retiring on the last day of the month would cease to be Government servant by mid-night of that day and he would acquire status of pensioner and therefore he would be entitled for all the benefits given to a pensioner with effect from first day of the succeeding month."

"In Banerjee ''s case the Supreme Court laid down the law that as soon as first day of the succeeding month commenced, the petitioner retired and, therefore, he is entitled to get the benefits on the enhanced DA. The same view has been consistently followed in all subsequent decisions as well. To that extent it must be held that the learned Tribunal has taken correct view.

Therefore, the dictum in Banerjee''s case and the observations of the Full Bench of this Court clarifies that the Government servant who would be retiring on the last day of the month would be entitled for all the benefits given to the pensioner with effect from the first day of the succeeding month.

6:20. Therefore, we do not find any illegality or irregularity in the impugned order. As can be seen from the Government orders mentioned supra and on a careful scrutiny of the averments made in support of the representation for payment of pension, and pleadings of both sides and the rival contention, we are of the considered opinion that the order of the Tribunal is sustainable, more so, when the Tribunal has exercised its judicial power by considering all the facts and circumstances of the case and there is no necessity for our interference. The writ is being devoid of merits.

6:21.Accordingly, the writ petition is dismissed. No order as to costs.

