

(1997) 07 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 1410/96

Union of India (UOI)

APPELLANT

Vs

M.R. Ramachandran Nair

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Army Rules, 1954 — Rule 122, 13(3)

Constitution of India, 1950 — Article 13, 336, 372, 51A, 5A

Citation : (1997) 07 KL CK 0016

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : M.A. Fayaz, for the Appellant; A.M. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—The Respondents 1 to 5 in O.P. No. 2941 of 1992 who are respectively Union of India, Secretary, Ministry of Personnel Public Grievances and Pensions, New Delhi, Chief of Army Staff, Commandant, Bombay Engineering Group, Pune and Officer in Charge, C.D.A. (Pension), Allahabad have preferred this appeal against the order dated 4th March 1996 passed by the learned Single Judge by which Respondents 3 to 5 have been directed to disburse to the Petitioner his pensionary benefits reckoning 15 years, 9 months and two days as the qualifying service in the Indian Army.

2. The Petitioner in the Original Petition has prayed for the issuance of a writ of mandamus directing the Respondents to disburse the pension and other pensionary benefit which have been withheld after his discharge from the Indian Army. His case is that he served in the Indian Army for 15 years and 272 days and was discharged from service on 15th December 1974. He was enrolled in the Army on 19th March 1959. He was decorated with a number of medals for his outstanding performance in the Army. Although he was discharged on the ground that his services were no longer required, yet neither pension nor any pensionary benefits were given after his discharge, inspite of the fact that he was entitled to

get the same. He made several representations to the Respondents, but no action was taken. Denial of pension to him being against the existing Army Rule, the action of the Respondents is illegal.

3. Respondents 1 to 5 have filed a counter-affidavit wherein it is stated that the Petitioner was enrolled in the Army on 19th March 1959 as a Sapper Boy. Since his date of birth is 23rd March 1944, he had not completed the age of 17 to be eligible to be enrolled in the man service. He was remustered to recruit on 23rd March 1961 with the terms of engagement as 7 years colour service and 8 years reserve service or till the attainment of 43 years of age, whichever is earlier. He was awarded punishment of imprisonment on various grounds for six times during his service tenure. He was discharged from service before completion of 15 years of colour/reserve service, under Army Rule 13(3) and item III(V) of the table annexed as his further retention was considered undesirable. He is not eligible for any pensionary benefits as his service is less than 15 years. Under Rule 122(a)(II) of Pension Regulations Part-I, period of service rendered before reaching the age of 17 years is treated as non-qualifying service for pension and gratuity. In addition, period due to absence without leave/overstaying leave is also not to be counted for pension. The Petitioner's non-qualifying service is for a period of 2 years 72 days out of 15 years 272 days. Hence his claim for grant of pensionary benefits is not admissible under the existing rules.

4. Learned Single Judge held that the expression "qualifying service" must receive a liberal interpretation so as to include service rendered before the Petitioner attained 17 years of age. He further opined that the stipulation contained in Rule 122(a)(II) of the Pension Regulations Part I that service rendered before reaching the age of 17 years will be treated as non-qualifying service for pension and gratuity is arbitrary and violative of the legal and constitutional right of the Petitioner. Taking note of the humanism which is one of the fundamental duties enshrined in Part IV A of the Constitution and which binds the State-employer also, this Court must adopt a liberal and progressive approach in interpreting the rule providing for grant of pensionary benefits. In the place of age 17 one must read the age of the Petitioner at the time of initial appointment even though it be a little less than 17. Such an interpretation of reading down will avoid the need of invalidating the rule. When two interpretations are possible, one that upholds the provision has to be preferred. With the above observations, the learned Single Judge allowed the petition and directed Respondents 3 to 5 to disburse to the Petitioner his pensionary benefits.

5. Learned Counsel for the Appellants herein contended that it was nobody's case nor is there any material on record to hold that the said regulation is ultra vires the Constitution or that it is invalid for its gross unreasonableness. The provisions in Part IV(A) of the Constitution of India has no bearing on the question at issue. The provision being unambiguous, it does not admit of any alternative interpretation. The learned Counsel for the Respondent herein has contended that the regulation in question being one enacted prior to 15th August

1947 is not applicable to this case. Since the Respondent served in the Indian Army for more than 15 years continuously as Sapper Boy and Adult Soldier, there is no reason to deny the pensionary benefits to him.

6. The point that arises for consideration is whether the regulation is binding on the Petitioner. Rule 122(a)(II) of the Pension Regulation Part I stipulates that the service rendered before reaching the age of 17 years will be treated as non-qualifying service for pension and gratuity. There is no dispute that the Petitioner was enrolled as a regular army personnel only after completion of 17 years of age. His date of birth is also not disputed. It is also not disputed that he was enrolled as a Sapper Boy on 19th March 1959, and worked in that post till 23rd March 1961.

7. The burden of showing that the regulation is one of arbitrary nature is upon the Petitioner who impeaches its validity on that ground. The allegation must be specific, clear and unambiguous *Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.*, , *Cochin Devaswom Board, Trichur v. Vamana Setti and Ors.* A .I.R. 1976 S.C. 1980.

Clause 10 of Article 336 of the Constitution lays down that "existing law" means any Law, Ordinance, Order, Bye-law, Rule or Regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a Law, Ordinance, Order, Byelaw, Rule or Regulation. Clause 1 of Article 372 indicates that all the laws in force in the territory of India immediately, before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. Article 13 indicates that all such existing laws in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void from the date of the commencement of the Constitution. Thus it is for the Petitioner-Respondent herein to show that the regulation in question is inconsistent with any of the provisions of the Constitution and that under it the unequals are treated alike, or that there is hostile discrimination in the application of the regulation between him and other persons who are similarly situated or circumstanced. Merely because the regulation has caused hardship to him, it cannot be said that he was discriminated against.

8. Part IV(A) of the Constitution of India containing Article 51A enumerates the fundamental duties of the citizens of India. There is nothing in this part to show that the State has also an obligation to discharge the fundamental duties as enumerated therein. It is true that Clause (h) of Article 51A of Part IV(A) lays down that it shall be duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform. But, no law or regulation made by the State can be declared as unconstitutional or arbitrary if it is contrary to the aforesaid provision. The validity or otherwise of a regulation cannot be decided with reference to the provision in Part (IV)A of the Constitution.

9. Not a single instance has been given to show that the unequals have been treated equally under the said regulation. No case has been made out that the classification of persons aged below 17 and those who are above 17 years is either irrational or unreasonable. It is trite law that there can be a valid classification of persons on the basis of age such as minors and majors. The contention that the regulation has no force in India after 1947 is not correct inasmuch as it continued to be the existing law being not inconsistent with any of the provisions of the Constitution. Thus the regulation is binding on the Petitioner-Respondent herein. For the purpose of pensionary benefits, he did not complete 15 years of service as a regular soldier of the Indian Army and as such he was not eligible to get such benefits.

It is also found from his representations that he did not move the authorities until 1992, that is for about 18 years from the date of his discharge from service to grant such benefits. There is no document to show that he had made any representation to the authorities earlier according to the rules. His belated attempt to acquire any benefits contrary to the rules cannot be entertained. In this view of the matter, we are unable to agree with the findings of the learned Singles Judge.

10. For the reasons stated above, we allow the appeal and set aside the impugned judgment, of the learned Single Judge. The O.P. therefore stands dismissed. No costs.