
(2009) 01 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) No. 5060 of 2003

Union of India (UOI)

APPELLANT

Vs

Sh. A. Chowdhury

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Pension Rules — Rule 3(O), 5(1), 5(2), 83(10)

Citation : (2009) 01 DEL CK 0132

Hon'ble Judges : Manmohan Singh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Shikha Singh and Anurag Kumar, for the Appellant; R. Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The respondent herein who was working in the Ministry of Statistics & Programme Implementation, National Sample Survey Organization, Government of India, retired from his service, on attaining the age of superannuation, on 31st March 1995 (afternoon). Implementing the recommendations of Fifth Central Pay Commission, the Government of India increased benefits of death- cum-retiral gratuity, which was enforced from 1st April, 1995. The issue involves in this writ petition is as to whether the respondent would be entitled to those enhanced benefits, which came into effect on the following day after his retirement. Answer to this depends on the fixation of the date of retirement, namely, whether is to be treated as on 1st April, 1995 or 31st March, 1995. The learned Tribunal has answered this question in favour of the respondent holding him to be entitled to the benefits of revised DCRG. Challenging this judgment, present writ petition is preferred by the Union of India.

2. Prior to 01.04.1995, gratuity was being paid in terms of OM dated 19.10.1993 as per which only 20% of dearness allowance was to be declared as dearness pay for retirement purpose like gratuity, etc. The respondent was paid the

retirement gratuity benefits accordingly.

3. Vide OM No. 7/1/95-P & PW(F) dated 14.07.1995, however, which came into effect from 1st April, 1995, DA is linked to All-India Consumer Index of 12/01/1966 and that is to be treated as dearness pay for reckoning retirement of gratuity/death gratuity. Obviously, the respondent wants benefit in terms of revised OM dated 14.07.1995.

4. The learned Tribunal has allowed the OA filed by the respondent herein following its Full Bench judgment rendered in OA No. 459/1997 dated 15.10.1999. The said Full Bench had decided the issue in the following manner:

According to Rule 83 (10) of the Pension Rules, Pension becomes payable from the date on which Government servant ceases to be born on the establishment (emphasis given). A Government servant continues to be born on the establishment till midnight of the date of superannuation. The decision of the superannuation Bench of this Tribunal in T. Krishna Murthy's case (supra) cannot be brushed aside out by the learned Counsel for the respondents retirement may be by voluntary or on superannuation. The principles for payment of pension will not vary on the basis of these distinctions. According to us, "afternoon of 31st of March" or "forenoon of 1st of April" means one and the same thing and on this basis also we see no reason to hold that the said case is not applicable to the present cases. In short, we are of the view that in the present cases the effective date of retirement would be 1.4.1995 and not 31.3.1995.

The decision of the Supreme Court in Union of India v. P.S. Menon and Ors. Civil Appeal No. 417 of 1987 and several other cases relied on by the learned Counsel for the respondents in support of his contention need no attention, because they are not exactly or remotely on the point under consideration. The OM dated 14.7.1995 is not challenged in these cases and, therefore, the argument tried to be made with reference to cut off date or financial implications in these cases, is misplaced. For the foregoing reasons, our answer to the question before this Full Bench is as follows:

A Government servant completing the age of superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have affectively retired from service with effect from 1.4.1995.

5. In sum & substance, the respondent is treated as being in service till 01.04.1995 and, therefore, extended the benefit of OM dated 14.07.1995. It is on the premise that retirement in the afternoon of 31st March or forenoon of 1st April would mean one under same thing.

6. We may point out that the aforesaid decision of Full Bench judgment in Venkataram Rajgopalan (supra) came up for consideration before the Karnataka High Court in Writ Petition No. 1886 of 2003 entitled Union of India and Ors. v. Shri Y.N.R. Rao.

Vide judgment dated 8th December, 2003, the Karnataka High Court set aside

this judgment and allowed the writ petition of the Union of India and Ors. The relevant portion of the judgment reads as under:

But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9-3-1937, would have retired on 8-3-1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 which was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to Clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government is 1-4-1937, he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1-4-1937 shall retire on 31-3-1995, it would be illogical to say a person born on 9-3-1937 shall retire on 31-3-1995 would retire with effect from 1-4-1995. That would be the effect, if the decision of the Full Bench of the CAT, Mumbai, is to be accepted. Therefore, a government servant retiring on the afternoon of 31-3-1995 retires on 31-3-1995 and not from 1-4-1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law.

Rule 5(2) of Pension Rules provides that the day on which a government servant retires from service shall be treated as his last working day. Rule 3 (0) defines "pension. as including gratuity except where the term "pension. is used in contra-distinction to gratuity. Rule 5(1) provides that any claim for pension (or gratuity) shall be regulated by the provisions of CCS Pension Rules in force at the time when a government servant retires from service. A combined reading of these clauses makes it clear that the date of retirement is the last date of the month in which the Government Servant retires and the Retirement Gratuity is to be calculated as per Rules in force on that date. As the respondent retired on 31-3-1995, his entitlement to gratuity will be governed by the Pension Rules as on 31-3-1995. As per Rule 50 as it stood on 31-3-1995, the maximum amount payable as retirement gratuity of Rs. 1,00,000/- to the respondent.

7. We are in the agreement with the aforesaid view of the Division Bench of the Karnataka High Court. We fail to understand as to how the aforesaid Full Bench judgment of the Tribunal was relied upon by the CAT in the impugned judgment when the Karnataka High Court had in no uncertain terms held that the said Full Bench does not lay down good law and overruled the same. May be the judgment of the Karnataka High Court was not brought to the notice of the Tribunal.

8. In view of the aforesaid categorical pronouncement of the Karnataka High

Court and the reasons given therein as extracted above with which we are in the agreement, we allow this writ petition and set aside the judgment of the Tribunal. The parties, however, are left to bear their respective costs.