

(1984) 12 MAD CK 0045
In the Madras High Court

U.P. Nataraja Pillai and Another

APPELLANT

Vs

Madurai Municipal Corporation and Another

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Citation : (1986) 1 MLJ 122

Hon'ble Judges : S. Ratnavel, J

Bench : Division Bench

Judgement

S. Ratnavel, J.—These two writ petitions, W.P. Nos. 2830 and 2831 of 1982, are filed by one U.P. Nataraja Pillai and one V.S. Kandan respectively, who were in the service of the Madurai Municipality, which is now upgraded as a Corporation, under Article 226 of the Constitution of India, seeking the issue of a writ of mandamus directing the respondents, viz., Madurai Municipal Corporation and the State of Tamil Nadu, to grant and implement the Liberalised Pension Scheme of 374 per cent pension on the petitioners' last pay drawn and also grant them all the subsequent benefits conferred under various Government Orders) to all Government servants and Madurai" Corporation Employees, together with dearness allowance and family pension scheme with retrospective effect from 14.1.1970 as is applicable to all other retired Government servants and employees of local bodies.

2. In both the writ petitions, the points raised are identical, except with regard to the individual service record of each of writ petitioners. Nataraja Pillai (Writ Petitioner in W.P. No. 2830 of 1982) entered the Municipal service as a section Writer on 5.4.1932 and retired on 7.11.1966 as Town Planning Officer, Grade III. V.S. Kandan (Writ Petitioner in W.P. No. 2831 of 1982) entered the Madurai Municipal Service as an Overseer in April, 1937, and retired on 8.7.1964 as Senior Supervisor.

3. Ordinarily, the Municipal Employees were not covered by any pension scheme, though certain categories of employees like the teachers employed in the Municipal Service were covered by a pension scheme from 1.4.1955 onwards. It

is to be noted that, on representations, the Government, finding that the teachers, who had already retired prior to 1.4.1955, should not be discriminated against, extended the benefits even to those who retired prior to 1.4.1955, by CO.Ms. No. 1505, Education, dated 24.9.1968. The said G.O. was issued in respect of teachers from aided schools as well as teachers from the schools maintained by local bodies.

4. Subsequently, the Government introduced the Pension Rules, by G.O.Ms. No. 23, Local Administration, dated 5.1.1972, specifically stating that all the benefits given to the Government pensioners would apply to the Municipal employees also.

5. The Government, by G.O.Ms. No. 1770, Rural Development and Local Administration, dated 24.8.1972, permitted all the Municipal Councils and Township Committees constituted prior to 14.1.1970, to sanction with effect from 14.1.1970 an ad hoc pension of Rs. 25/- or 25% of the pay last drawn, whichever is higher, to each of the Municipal employees, who retired prior to 14.1.1970, other than teachers, from out of their funds, by framing regulations u/s 74(d) of the Tamil Nadu District Municipalities Act, 1920.

6. Again, on representations, the Government, by G.O.Ms. No. 275, Rural Development and Local Administration, dated 13.2.1973, introduced (1) Liberalised Pension Scheme applicable to Government servants in accordance with Madras Pension Code with effect from 14.1.1970 to all the employees of superior and inferior service of Madurai Corporation, who were borne on regular establishment carrying specific scales of pay and who retired on or after 14.1.1970; and (2) an ad hoc pension of Rs. 25/- or 25 per cent of the pay last drawn, whichever is higher, with effect from 14.1.1970 to Madurai Corporation employees, who retired prior to 14.1.1970 other than teachers from out of Corporation funds by framing regulations.

7. Many retired employees of the Municipality made representations to the Government that they should be given pension on par with the Government servants. The Government increased the minimum pension payable to all categories of retired employees including the Municipal employees who retired from service prior 14.1.1970, to Rs. 50/- by G.O.Ms. No. 609, Rural Development and Local Administration dated 1.4.1975, and subsequently, the same was enhanced to Rs. 100/- by G.O.Ms. No. 759, R.D.L.A. dated 25.4.1980, with effect from 16.4.1980, and later on, it was enhanced to Rs. 125/-.

8. Meanwhile, there were representations to the Government for grant of Dearness Allowance to all the pensioners. On the recommendation of the Second Tamil Nadu Pay Commission, the Government sanctioned Dearness Allowance to regular pensioners and others, as per G.O.Ms. No. 1473, Finance (Pension) dated 22.11.1973. But the first respondent has not paid any Dearness Allowance to the petitioners and other pensioners who retired prior to. 14.1.1970. Subsequently, by G.O.Ms. No. 282, Finance, dated 22.3.1975, the Government ordered that all the existing pensioners should be allowed to draw the existing Dearness

Allowance in addition to the additional Dearness Allowance of Rs. 6/- per mensem in accordance with the recommendations of the Dearness Allowance Committee. Though the Government communicated G.O.Ms. No. 282, Finance, dated 22.3.1975, to all Municipalities and Corporations of Madurai and Madras, for necessary action, the first respondent, it is stated by the petitioners, has not so far paid Dearness Allowance to them. It is to be noted here that by G.O.Ms. No. 1822 dated 30.10.1975, the Government had ordered that employees who retired prior to 14.1.1970 would not be eligible for the increased Dearness Allowance as "ordered in G.O.Ms. No. 282, Finance, dated 22.3.1975. Subsequently, the Government sanctioned increase in the Dearness Allowance to the petitioners from Rs. 5/- to Rs. 15/- per mensem as per G.O.Ms. No. 50, Finance (Pension), dated 14.1.1977. This was made applicable to all Government pensioners and also teacher pensioners of aided and local bodies and other pensioners of local bodies who had retired prior to 1.1.1977. In spite of the above Government orders, the first respondent did not implement the said orders sanctioning Dearness Allowance to the petitioners and other pensioners of the Madurai Corporation, who retired prior to 14.1.1970. The Deputy Secretary to Government, Rural Development and Local Administration, by letter D.O.Lr. No. 15178/M.II/77-2 dated 24.3.1977 invited the attention of the first respondent to G.O.Ms. No. 50, Finance (Pension) Department dated 14.1.1977 sanctioning additional Dearness Allowance to Government pensioners with effect from 1.1.1977, and stated that the increased rate of Dearness Allowance would also apply to the teaching and non-teaching staff working under Local Bodies, and that the said order should be deemed to be sufficient for the purpose of sanctioning increased Dearness Allowance to the pensioners who served under the Corporation of Madras and Madurai, Municipal Councils/Township Committees as well, at the increased Government rates to pensioners. Thereafter, a clarification was sought for by the first respondent, and the Government by Memorandum No. 64560/M.II/77-1 dated 28.5.1977 stated that no authorisation was necessary in respect of pensioners of Local Bodies as G.O.Ms. No. 50, Finance (Pension) dated 14.1.1977 was specified in regard to its applicability to Retired Municipal employees also. Thereafter, the Government has been increasing the Dearness Allowance from time to time to all Municipal pensioners.

9. The Tamil Nadu Pensioners' Association and certain other individual pensioners made representations to the Government that the Dearness Allowance sanctioned as per G.O.Ms. No. 50, Finance, dated 14.1.1977 and G.O.Ms. No. 629, Finance, dated 25.9.1977 should be extended to the Municipal ad hoc pensioners who retired from service prior to 14.1.1970. Having regard to the view expressed by the Examiner of Local Fund Accounts, the Government considered that the Dearness Allowance could be allowed only to the pensioners who are governed by normal pension rules and it would not be appropriate to allow it to the ad hoc pensioners who stand on a different footing. Though the Government considered that the ad hoc pensioners are not eligible for Dearness Allowance, taking into consideration the plight of ad hoc pensioners who retired

before 14.1.1970, it sanctioned the increase of the existing pension to the Municipal ad hoc pensioners by Rs. 10/- per mensem with effect from 1.1.1977, and directed that such of the Municipalities which have already paid the Dearness Allowance of Rs. 10/- to the ad hoc pensioners should get the excess payment adjusted against the increased rate of pension sanctioned by G.O.Ms. No. 1314, Rural Development and Local Administration, dated 22.8.1979. Even though the Government has been increasing the Dearness Allowance periodically, the petitioners and the other pensioners of the Municipal Service, who retired prior to 14.1.1970, have not been paid the Dearness Allowance. However, though the Government had earlier declined the grant of Dearness Allowance to the ad hoc pensioners, by G.O.Ms. No. 911, R.D. and L.A. dated 19.6.1982, the Government sanctioned the grant of Dearness Allowance to the ad hoc pensioners, with effect from 1.4.1982. It may be mentioned at this stage that the aforesaid Dearness Allowance which was directed to be granted to the ad hoc pensioners was increased from time to time as and when the Dearness Allowance to the other Municipal pensioners were raised. The effect of such orders passed in G.O.Ms. No. 1298, dated 22.4.1982, G.O.Ms. No. 70 dated 17.1.1983, G.O.Ms. No. 792 dated 1.6.1983 and G.O.Ms. No. 1676 dated 12.11.1983 is that the ad hoc pensioners were granted the enhancement of the Dearness Allowance on par with the other Municipal pensioners, with effect from the dates mentioned in the said G.Os.

10. According to the writ petitioners," they and other non-teaching pensioners of Municipalities who retired prior to 14.1.1970 have not been granted the usual pension applicable to other pensioners, viz., 37 1/2 per cent of the last pay and the respondents would not be justified in discriminating the petitioners and other pensioners who were employees of the Municipality and who retired prior to 14.1.1970. Further, the petitioners would state that the payment of Dearness Allowance only to the pensioners who retired after 14.1.1970 and the denial of the benefit of Dearness Allowance Scheme to the Municipal employees who retired prior to 14.1.1970 contravene the principles of natural justice and are opposed to the principles laid down under Articles 14, 16 and 39 of the Constitution of India. According to the petitioners, they and other employees who retired prior to 14.1.1970 are also entitled to pension at 37 1/2% of the last pay drawn under the Liberalised Pension Scheme, Dearness Allowance and Family Pension as enjoyed by the other retired Employees of the Government and Local Bodies. They would further state that inspite of the various representations, the respondents have not implemented the pension scheme in respect of the petitioners. Hence, these writ petitions.

11. In the counter affidaVit filed by the respondents, it is submitted that the Government, on a sympathetic consideration of the claims made by the ad hoc pensioners, allowed Dearness Allowance to be paid to ad hoc pensioners as is applicable to regular pensioners. In pursuance of this, persons like the petitioners are getting pension on the basis of the ad hoc pension rules and also the Dearness Allowance as applicable to the regular pensioners. According to the

respondents, the petitioner had no right to claim that they should be paid on the same basis as those who are governed by 1970 Rules. With regard to the family pension, it is stated that according to the present rules, the family of the ad hoc pensioners are not at all eligible for such pension, that the ad hoc pension for the employees who retired from service prior to 14.1.1970 was sanctioned only as a special case by the Government, and they form a distinct class since there was no pension rules at that time, that the persons who retired after 14.1.1970 FORM A DISTINCT CLASS, AS ONLY FROM THAT DATE THE PENSION RULES CAME INTO BEING, that there is no" difference in the pension and D.A. that is being paid to the petitioners in view of the subsequent Government Orders and that the claim of the petitioners for higher rate of pension with effect from 14.1.1970 is misconceived and liable to be rejected.

12. Mr. P. Jayaraman, the learned Counsel appearing on behalf of the writ petitioners, would persuasively submit that if pension is paid for past satisfactory service rendered, and. to avoid destitution in old age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary, would be according differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, would be violative of Article 14. He would also submit that the classification based on the fortuitous circumstance of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle or on an acceptable or persuasive reason, would be equally violative of Article 14. According to him, in view of the action of the respondents in not granting the petitioners pension equal to the other pensioners, there is violation of Article 16 of the Constitution, equality of opportunity for all citizens relating to employment. Continuing his arguments, Mr. Jayaraman would urge that the non-payment of Pension, Dearness Allowance and Family Pension to those persons including the petitioners, who retired prior to 14.1.1970, would be clearly violative of Articles 38 and 39 of the Constitution of India. In support of this contention, he places much reliance on the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), .

13. The learned Advocate-General appearing on behalf of the respondents has attempted to distinguish the principles laid down in the decision in D.S. Nakara and Others Vs. Union of India (UOI), , on the ground that there is a distinction between the facts of the case in that decision and the facts of the case on hand, in that, he would state that the petitioners herein are only ad hoc pensioners. Be that as it may, now let us recapitulate the principle laid down in the decision cited by Mr. Jayaraman rendered by the Constitution Bench of the Supreme Court, and see whether the principle laid down in the decision cited could be applied to the present case.

14. The facts of the case before the Supreme Court were that the petitioners 1 and 8 therein were retired pensioners of the Central Government, the first

petitioner being a civil servant and the second being a member of the service personnel of the Armed Forces. The third petitioner was a Society registered under the Societies Registration Act, 1860, formed to ventilate the legitimate public problems and consistent with its objective, it is espousing the cause of the pensioners all over the country. What was challenged in that case was the Office Memorandum No. F-19(3)-IV-79 issued by the Government of India, Ministry of Finance, on 25.5.1979 whereby the formula for computation of pension was liberalised, but made applicable to Government servants who were in service on March 31, 1979, and retired from service on or after that date. This formula introduced a slab system for computation of pension, and this liberalised pension formula was applicable to employees governed by the 1972 Rules retiring on or after the specified date, viz., March 31, 1979. Coming to the case of the second petitioner therein, the pension for the service personnel which will include Army, Navy and Air Force staff was governed by the relevant regulations. By the Memorandum of the Ministry of Defence dated 28.9.1979, the liberalised pension formula introduced for the Government servants governed by the 1972 Rules was extended to the Armed Forces personnel subject to limitations set out in the memorandum with a condition that the new rules of pension would be effective from April 1, 1979, and might be applicable to all service officers who become/ became non-effective on or after that date. In that case, it was primarily contended that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners, and that the classification based on fortuitous circumstances of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle, would be equally violative of Articles 14 and 16 of the Constitution of India. Their Lordships of the Supreme Court, while dealing with the submission with regard to violation of Article 14 of the Constitution, after making reference to the various leading decisions of the Supreme Court, viz.. *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, ; *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *In Re: The Special Courts Bill, 1978*, , *In Re: The Special Courts Bill, 1978*, *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *AIR India Vs. Nergesh Meerza and Others*, held as follows:

Thus, the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left, out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

In the said ruling the dictum laid down in *E.P. Royappa Vs. State of Tamil Nadu and Another*, that if an act affects any matter relating to public employment, it is violative of Article 16 is reiterated.

15. Coming to Articles 38 and 39 of the Constitution of India, it is pointed out in

paragraph 32 of the judgment as follows:

Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting as effective as it may a social order in which justice "social, economic and political shall inform all institutions of the national life. In particular, the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this court in *Randhir Singh Vs. Union of India (UOI) and Others*, .

Expanding the principle laid down in *Randhir Singh Vs. Union of India (UOI) and Others*, the Constitution Bench has observed as follows:

Proceeding further, this court observed that where all the relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 51 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.

After having made the above observation, the Supreme Court held (1) that pension is neither a bounty nor a matter of grace, depending upon the sweet will of the employer; (2) that the pension is not *ex gratia* payment but it is a payment for the past service rendered; and (3) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer of an assurance that in their old age they would not be left in lurch.

16. The Supreme Court further held in paragraph 42 of the judgment as follows:

If it appears to be indisputable, as it does to us, that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects

sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retired later.

A "48 hours" difference in matter of retirement could have a reasonable effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article. 14.

17. When the facts of the present case are examined in the light of the principles enunciated in the above decision of the Supreme Court, I have no hesitation in coming to the conclusion that the classification of the pensioners in the service of the respondents based on the fortuitous circumstance of retirement before or subsequent to 14.1.1970, the fixing of which is not shown to be related to any rational principle, would be violative of Articles 14 and 16 of the Constitution of India, and hence the petitioners would be entitled to the pension along with Dearness Allowance and Family Pension, as in the case" of those who retired after 14.1.1970. The submission of the learned Advocate-General that the above decision of the Supreme Court is distinguishable on facts on the ground that the parties in that decision were all covered by one set of rules, viz., 1972 Rules, whereas in the present case, there are two classes of pensioners, viz., those who retired earlier to 14.1.1970 who are characterised and termed as ad hoc pensioners, and those who retired after 14.1.1970, who are eligible for 1970 Rules, is not acceptable in view of the principles laid down in the decision referred to above. I would like to make it clear that these two petitioners would be entitled to the pension along with Dearness Allowance and Family Pension with effect from 14.1.1970, with all the subsequent benefits conferred on the pensioners who retired after 14.1.1970.

18. Before parting with this judgment, I would like to observe that though all the pensioners, who retired before 14.1.1970, except these two petitioners, are not before me, I hope that the authorities concerned will take note of this judgment and extend the benefits given to the petitioners to all the other pensioners also, who retired before 14.1.1970 and who may be only a few in number as submitted by the learned Counsel for the petitioners so that they may not be driven to the necessity of filing separate writ petitions in their old age.

19. Both these writ petitions are allowed. There will be no order as to costs.