**(1999) 03 AP CK 0053**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 10389 of 1994

V.S. Narayana APPELLANT

Vs

Brooke Bond India Limited, Bangalore RESPONDENT

**Date of Decision :** 17-03-1999

**Acts Referred:**
Constitution of India, 1950 — Article 14, 16, 21, 226

**Citation :** (1999) 3 ALD 47 : (1999) 2 ALT 528

**Hon'ble Judges :** S.V. Maruthi, J

**Bench :** Single Bench

**Advocate :** Mr. M.S.K. Sastry, for the Appellant; Mr. K. Srinivasa Murthy, for the Respondent

## Judgement

1. This Writ petition is filed for issuance of a writ of mandamus, declaring the action of the respondent in depriving the benefits of the amended pensionary scheme to the employees who retired from service prior to the year 1986, and confining the said benefits only to the employees retired after 1986, as viotative of Articles 14, 16 and 21 of the Constitution of India.

2. The petitioner was employed by the respondent-Brooke Bond India Limited and he retired from service on 1-4-1985. The Company introduced Pension Scheme in 1979. The petitioner opted for the said scheme on his retirement and his pension was accordingly fixed at Rs.277.50 ps. per month. The Pension Scheme thus introduced in 1979 was revised in 1982 and 1986 and in 1990 revising the pensionary benefits admissible to various employees. However, the revised pensionary benefits were not extended to the petitioner on the ground that he retired from service prior to the revision of the pension scheme in the year 1990. Aggrieved by the same, the present writ petition is filed.

3. In the counter-affidavit, the respondent contended that the petitioner is a ''workman'', and there was a settlement between the company and the workmen, under which the petitioner was allowed to opt for pension. He is governed by the said settlement. He cannot claim for the pension at the revised

 

rates as the settlement is binding on him. If at all he is aggrieved by the action of the respondent, his remedy is before the Labour Court and not by way of a writ petition under Articles 226 of the Constitution. The respondent had also taken an objection that the writ petition is not maintainable against a Company.

4. It is also stated that the pension scheme was introduced in the Company for the first time by an agreement on 27-2-1979 between the respondent-Company and the employees. As per the settlement, the benefits under the settlement were available to all permanent employees on the rolls of the respondent-Company as on 1-1-1978 and to all future employees of the Company. As per the settlement dated 20th March 1983, the pension agreed to be paid to the employees was 1.2% of the final basic salary for each completed year of service and the benefits were made applicable to all the workmen represented by the All India Brooke Bond Employees'' Federation, effective from 1-1-1982. As per the settlement dated 23-7-1986, pension agreed to be paid to the employees was 2% of the final basic salary for each completed year of service and the benefits were applicable to all the workmen on the rolls of the respondent Company effective from 1-1-1986. As per the settlement dated 1 1-12-1990, the pension agreed to be paid to the employees was 3% of the final basic salary for each completed year of service and the benefits were applicable to all the workmen on the rolls who retired from 1-1-1990 to 31-12-1993. As per the settlement dated 27-7-1994, the pension agreed to be paid to the employees was 8% of the final basic salary for each completed year of service subject to a maximum of 37 years. The benefits of this settlement were applicable only to those workmen who were on the rolls of the respondent Company as on 1-1-1994 and to nobody-else.

5. Counsel for the respondent submits that in view of the above position, the writ petition is liable to be dismissed.

6. From the facts narrated above, it is clear that in 1979, the Pension Scheme was introduced and in 1983 as per the settlement, 1.2% of the final basic salary for each completed year of service was paid as pension to the employees of the Company. The same was revised to 2% in 1986, to 3% in 1990 and 8% of the final basic salary in the year 1994.

7. The contention of the respondent is that in view of the settlement, the petitioner has to approach the Industrial Tribunal and the writ petition is not maintainable, and that on account of retirement of the petitioner prior to the Amended Pension Scheme, petitioner is not eligible for pension under the amended scheme.

8. At this stage, it is relevant to note the following observations of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , "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. All pensioners, whenever they retired, would be covered by the liberalised

 

pension scheme, because the scheme is a scheme for payment of pension to the pensioners governed by the 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme...."

9. In V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , the Supreme Court held that "if a person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get more pension as per the new formula of computation of pension. He would be entitled to get the benefit of the amended pension provisions from the date of such order as he would be a member of the very-same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available, to the same class of pensioners, cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred."

10. From the above, it is clear that when once a Pension Scheme is introduced and all the employees are made eligible for pension under the said scheme, the revision of the pension scheme is applicable to the employees who are governed by the pension scheme, irrespective of the date on which they have retired. Depriving the pensioners of pension under the revised pension scheme on the ground that they have retired prior to the revision of pension scheme would amount to discriminating pensioners on the basis of a particular cutoff date, which is not relevant and has no relation to the object sought to be achieved by the Pension Scheme. Such a classification of pensioners depending upon the cut-off date is arbitrary and violative of Article 14 of the Constitution of India, as it is a classification without any reason. Therefore, when once there is a violation of Article 14 of the Constitution, the petitioner, even if he is a workman, cannot be driven to the Labour Court under the Industrial Disputes Act, as the Labour Court has no power to examine the constitutional validity of the action of the respondents.

11. Further, the Supreme Court, in U.P. State Cooperative Land Development Bank Limited v. Chandra Bhan Dubey, , observed that "when any citizen or person is wronged, the High Court will step into protect him, be that wrong be done by the State, an instrumentality of the State, Company or a Cooperative Society or association or body of individuals, whether incorporated or not or even an individual. Right that is infringed may be under Part III of the Constitution or any other right, which the law validly made might confer upon him."

12. In view of the above, deprivation of revised pensionary benefits to the petitioner is arbitrary and violative of Article 14 of the Constitution of India. The petitioner is, therefore, entitled to the pension as per the Pension Scheme revised from time to time.

13. For the above reasons, the writ petition is allowed with costs. Advocate''s fee

 

Rs.500/-

 