
(2007) 12 GAU CK 0010
In the Gauhati High Court

Vungkhonem

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Burmah Oil Company (Acquisition of Shares of Oil India Limited and of the Undertaking in India of Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited) Act, 1981 — Section 11
Constitution of India, 1950 — Article 14, 31

Citation : (2009) 1 GLR 214 : (2008) 1 GLT 14

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Ms. G. Puspa, learned Counsel appearing for the petitioner, Mr. A. Madhu Chandra, learned Govt Advocate for the respondent Nos 1 and 2 and Mr. N. Ibotombi, learned Standing Counsel for the respondent No. 3.

2. The facts in nutshell of the petitioner's case is that, petitioner's son Late G. liankhomang entered service as Forester Grade II vide Conservator of Forests, Govt, of Manipur Order No. 2/5/78/Forest dated 12.8.76 and he continued to serve for about 11 years and expired on 8.1.87. The Chief Conservator of Forest, Govt of Manipur had issued the order for terminating the service of the petitioner's son vide order No. 2/5/86/ Forest dated 21.1.87.

3. During the life time of the petitioner's son Late G. Liankhomang, he had never married to any girl and as such he died unmarried on 8.1.87. During the life time of the petitioner's son, he looked after the welfare of his mother and his younger brother's and sister. His monthly pay and allowances were the only source of income in the family. The petitioner was solely depending on the monthly pay and allowances of the petitioner's son and after the expiry of her son she has been living in hand to mouth in a deplorable condition with a meagre source of income by engaging herself in labour work. Her total income comprising from all

sources in only about Rs. 1,500/- (Rupees one thousand five hundred) only per month. The petitioner applied for receiving family pension benefit to the concerned authority after the death of her son and the then Divisional Forest Officer, South Division, Churachandpur had forwarded the required pension papers and documents to the Accountant General, Govt of Manipur on 19.2.1997. Prior to 1998 the dependent parents and widowed/divorced daughter were not entitled to receive the Family Pension under any of the Family Pension Schemes. As a liberalized measure for the purpose of granting family pension, the Govt of India had issued an Office memorandum vide No. 45/86/97-P & P. W. (A) dated 27.10.97 wherein the parents of the deceased of the Govt employee are included in the definition of "Family" with the certain conditions that (1) the parents were wholly depended on the Govt servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child (2) And that the parents income criteria has to be not more than Rs. 2,500/- per month.

4. Manipur Civil Services (Pension) Rules, 1977 had been amended by the Manipur Government from time to time adapting the up to date amendments of the Central Civil Services (Pension) Rules, 1972 and other Government of India's decision/clarifications. Following the introduction of the Manipur Service (Revised Pay) Rules, 1999, the govt of Manipur was pleased to modify/review the rules regulating the Pension, and the Family Pension under the Manipur Service (Pension) Rules, 1977. Vide office memorandum No. 9/86/99-PIC (A) dated 21.4.99 issued by the Joint Secretary (PIC), Govt of Manipur whereby the parents are included in the definition of the word "Family" and as such the admissibility of Family Pension to parents are also extended to the employee of the Govt, of Manipur. However, by Para No. 2.1 of the said office memorandum the revised provisions is made applicable only to those Government servants who retire/die-in-harness on or after 1.1.96. Therefore, the parents of the Govt employees who retire/die-in-harness on/or after 1.1.96 would be entitled to get family pension. Only because of the said cut off date i.e. 1.1.96 for extension of family pension to the parents of the retired/deceased Govt. employee, the petitioner had been denied the benefit of family pension. Being aggrieved, the petitioner filed the present writ petition.

5. The respondents also filed affidavit in opposition stating that because of the said cutoff date 1.1.96 regarding the applicability of family pension to the parents of the deceased Govt employee of the Govt of Manipur, the petitioner would not be entitled to get family pension as her son Late G. Liankhomang died in harness on 8.1.87.

6. The questions such as (1) What is a Pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post on a certain date had been discussed by the Constitution Bench of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), The Constitution

Bench of the Apex Court had discussed the right to pension of the Govt, employee in *Deokinandan Prasad Vs. The State of Bihar and Others*, of AIR in *Deokinandan Prasad (supra)* is quoted hereunder:

30. We are not inclined to accept the contention of the learned Counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognize the right of persons like the petitioner to receive pensions under the circumstances mentioned therein.

7. It is now well settled that in a social welfare state, pension is a socio-economic justice measure providing relief when advancing age gradually but inevitably impairs capacity to stand on one's own feet. If the pension is paid for past satisfactory service rendered, and to avoid destitution in old age as well as social welfare or socioeconomic justice measure, differential treatment for those retiring prior to certain date and those retiring subsequently, the choice of date being wholly arbitrary, would be according to differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, would be violative of Article 14. The Constitution Bench of the Apex Court as early as 1971 in *Deokinandan Prasad Vs. The State of Bihar and Others*, held that pension is not a bounty payable on the sweet will and pleasure of the government and that on the other hand, right to pension is a valuable right vesting in a government servant. The Apex Court in Para 23 of AIR in *Deokinandan Prasad (supra)* held that "this Court in the *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, had to consider the question whether (a) "Cash grant" is "property" within the meaning of that expression in Article 19(1)(f) and Article 31 of the Constitution of India. This Court held that it was property observing "it is obvious that a right to a sum of money is property". The Apex Court in *Poonamal and Others Vs. Union of India and Others*, by following the ratio laid down in *D.S. Nakara and Others Vs. Union of India (UOI)*, held that denial of equality to the pensioner on the basis of a particular date is violative of Article 14. Para 7 of *Smt. Poonamal (supra)* is quoted hereunder:

7. It is necessary to examine the concept of pension. As already held by this Court in numerous judgment that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. *Deokinandan Prasad Vs. The State of Bihar and Others*, *State of Punjab and Another Vs. Iqbal Singh*, and *D.S. Nakara and Others Vs. Union of India (UOI)*, Where the Govt., servant rendered service to compensate which a family pension scheme is devised the

widow and the dependant minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfillment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara's judgment. At the hearing of this group of matters we pointed out that since the family pension scheme has become non-contributory effective from Sept. 22.1977 any attempt at denying it is the case of the petitioner benefit to widows and dependents of Govt, servants who had not taken advantage of the 1964 liberalization scheme by making or agreeing to make necessary contribution would be denial of equality to person similarly situated and hence violative of Article 14. If widows and dependents of deceased Govt, servants since after Sept. 22.1977 would be entitled to benefits of family pension scheme without the obligation of making contribution, those widows who were denied the benefits on the ground that the govt, servants not agreed to make the contribution could not be differently treated because that would be introducing an invidious classifications among those who would be entitled to similar treatment. When this glaring dissimilar treatment emerged in the course of hearing in the Court, Mr. B. Dutta, learned Counsel appearing for the Union of India requested for short adjournment to take further instructions.

8. If the pension is paid for past satisfactory service rendered, and to avoid destitution in old age as well as social welfare or socioeconomic justice measure, differential treatment for those retiring prior to certain date and those retiring subsequently, the choice of date being wholly arbitrary, would be according to differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, would be violative of Article 14. The Apex Court in D.S. Nakara and Ors. (supra), further, held that the reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are: (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. A political society which has a goal of setting up of a welfare state, would introduce and has in fact introduced as a welfare measure wherein the retiral benefits is grounded on considerations of state obligation to it is the case of the petitioner citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development. Further, the Apex Court (Constitution Bench) in D.S. Nakara and Ors. (supra) held that classification in revised pension formula between pensioners on the basis of date of retirement as specified in the memorandum is arbitrary and violative of Article 14. Para-49 of AIR in D.S. Nakara and Ors. (supra) is quoted hereunder:

49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is perspective. All pensioners whenever they retired would be covered by the liberalized pension scheme, because the scheme is a scheme for payment of pensioner to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under it is the case of the petitioner umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectively. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Daval Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The State will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be served without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily served.

9. From the ration laid down by the Apex Court in *D.S. Nakara and Ors. v. Union of India* (supra) it is clear that the division which classified pensioners into two classes on the basis of a cut-off date or at that chosen for extension of all the benefits of pension to the retired/expired Govt employee is artificial and arbitrary. This Court had discussed the cutoff date of 1.1.99 for extension of the family pension to the parents of the deceased Govt employee or retired Govt employee who died on or after 1.1.99 under a Family Pension Scheme of the Government of Tripura in *Satya Ranjan Paul and Anr. v. State of Tripura and Ors.* (2000) 2 GLT 170 and held that the benefit of family pension shall also be extended to the parents of the deceased employee who died prior to 1.1.99 with effect from 1.1.99. Paras 6 and 7 of the judgment in *Satya Ranjan Paul and Anr* read as follows:

Para 6. The question before this Court is as to whether the benefit of the scheme could be given to the parents of the employees of the State Government for the period before 1.1.99. The answer is obviously "no". Because the State Govt, while issuing the memorandum made it specific that the memorandum shall come into force with effect from 1.1.99. But the said memorandum nowhere indicates that the parents of any employee who died prior to 1.1.99 will not be entitled to family pension with effect from the date when the scheme has been

brought into force, i.e. on or before 1.1.99.

Para. 7. In view of the facts and circumstances of the case and in my considered opinion, there cannot be any bar in extending the benefit of the aforesaid scheme to the parents of the deceased employee who died prior to 1.1.99 with effect from 1.1.99. This is a piece of welfare legislation and aims to achieve the objective of giving the financial protection to the helpless parents of a deceased employee of the State Government whose income is below certain level. This intention is discernible from the memorandum and it does not run contrary to what is stated above. While the State Government may not accord sanction for payment of family pension for the period prior to 1.1.99, there appears to be no bar in granting such relief with effect from the date when the memorandum was brought into force i.e. on 1.1.99.

10. The Apex Court had considered the validity or otherwise of the cut-off date applicability of the revised pension to the retired Govt employee under a notification dated 10.3.95 of the Govt, of India providing for revision of pension formula in respect of IOC (AOD) Officers covered by AOD Staff Pension Scheme in Subrata Sen and Others Vs. Union of India and Others, and held

Pension for the officers retiring from December 1994, onwards may be computed on the basis of 40% of the average of the last 10 months' salary including average dearness allowance by the officer over the last 10 months of his service. If and when pay revision takes place retrospectively, the amount of pension may be adjusted accordingly. No dearness allowance will be paid on pension.

and directed the respondents to give pensionary benefits to the petitioner on the basis of notification dated 10.3.95 by deleting the words "retiring from December 1994, onwards" from the said notification.

11. The Apex Court also followed the ratio laid down by the Constitution Bench of the Apex Court in Subrata Sen and Others Vs. Union of India and Others, and held that there should not be cut-off date for applicability of the revision Pension Scheme to the pensioners. Paras 14, 15, 16, 17 and 20 of the SCC in Subrata Sen and Ors. (supra) reads as follows:

Para 14. In our view the aforesaid para does not in any way support the contention of the respondents. On the contrary, on parity of reasoning, we would also reiterate that let us be clear about this misconception. Firstly, the pension scheme including the liberalized scheme available to the employees is non contributory in character. Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in Nakara case pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. May be that in

the present case, the trust for pension fund is created for income tax purposes or for smooth payment of pension, but that would not affect the liability of the employer to pay monthly pension calculated as per the Rules on retirement from service and this retirement benefit is not based on availability of Pension Fund. There is no question of pensioners dividing the Pension Fund or affecting the pro rata share on addition of new members to the Scheme. As per Rule 1 quoted above, an employee would become a member of the Fund as soon as he enters into a specified category of service of the Company. Under Rule 8, trustees may withhold or discontinue a pension or annuity or any part thereof payable to a member or his dependents, and that pension amount is non-assignable. Further, the payment of pension was the liability of the employer as per the Rules and that liability is required to be discharged by the Union of India in lieu of its taking over the Company. The rights of the employees (Including retired) are protected u/s 11 of the Burmah Oil Company (Acquisition of Shares of Oil India Limited and of the Undertakings in India of Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited Act, 1981.

Para 15. In support of his contention that the petitioners are not entitled to get benefit of revised scheme, learned Senior Counsel for the Respondent No. 2 further relied upon the decision of this Court in *Sasadhar Chakravarty v. Union of India* wherein the court considered the Indian Oxygen Ltd. Staff Pension Fund and the Pension Scheme there under. It was the contention of the petitioners that improvements made in the existing Pension Scheme after retirement of employees should also be made available to such retired employees who are the existing petitioners of the Fund. Negating the said contention, the Court held thus: (SCC p. 7 para 9).

This contention is based on a misunderstanding of the nature of the annuity which is purchased in respect of each employee as and when he retires. The right of an employee to receive the annuity and the quantum of this annuity gets determined at the time when the annuity is purchased. Any subsequent improvements in a given pension fund scheme would not be available to those persons whose rights are already crystallized under the annuity scheme by which they are governed because the amounts withdrawn from the pension fund to purchase an annuity. Any subsequent improvement in the pension fund will benefit only those whose moneys form a part of the pension fund.

Para 16. In para 11, the court further observed : (SCC pp 7-8)

11. In these circumstances the ratio of *D.S. Nakara v. Union of India* cannot be applied to extend the benefit of improvement in the pension schemes of such funds to the existing pensioners. By the very nature of this scheme, such benefits are available only to members in service. In the present case, the Pension Fund is created out of contributions made by the employer in respect of its employees who are in service in the manner provided under the Income Tax Act and "the Rules. The contribution is in the form of a fixed percentage of salary of each of the employees. There is, therefore, no provision for an employer

making any additional payment in respect of its past employees who are the existing pensioners. In Nakara case the increase in pension could be made from the general revenue of the Central Government. No such reserve of funds is available to the trustees of an approved superannuation fund.

Para 17. In our view, the ratio of the aforesaid judgment is not applicable in the present case. In the said case, Indian Oxyzen Ltd. had set up a "non-contributory superannuation fund" known as the Indian Oxyzen Ltd. Executive Staff Pension Fund. As per the Rules, an employee was entitled to receive an annuity under a policy purchased by the trustee of the Fund from Life Insurance Corporation of India. The petitioners in that case contended that the scheme of such non-contributory approved superannuation fund should be modified so as to provide for disbursement of pension by the Fund themselves or in the alternative by a statutory body to be newly constituted under a newly constituted under a new scheme. Further, the Fund was constituted for the purpose of providing an annuity to the beneficiaries and the trustees were required to accumulate the contribution in respect of each beneficiary and purchase an annuity from Life Insurance Corporation of India at the time of retirement or death of each employee or on his becoming incapacitated prior to retirement as per Rule 89(2) of the Income Tax Rules, 1962. Therefore, when an employee retired, all accumulated contribution in respect of the employee concerned made by the employer to the Pension Fund of the trust was crystallized for the benefit of the employee. In that set of circumstances, the Court observed that the right of the employee to receive the annuity and quantum of his annuity get crystallized at the time of purchase of annuity under the then existing scheme of Life Insurance Corporation of India. The Court also observed that the contention was based on misunderstanding of the nature of the annuity which is purchased in the interest of each employee as and when he retires. The position in the present case is altogether different. Right to get pension is obviously different from getting annuity on the basis of accumulated contribution. The Rules for grant of pension provide that an employee mentioned in a specified category shall automatically be a member of the pension fund and is entitled to get pension on the date of his retirement. Amount of pension is to be determined as per the Rules. That Rule is modified and the petitioners seek relief on the basis of the amended Rule on the ground that there cannot be any discrimination between the employees who retired prior to or after a particular date, as held in Nakra Case which is followed by this Court in various decisions including V. Kasturi. Further, there is no question of the petitioners (retired employees) dividing the Pension Fund and/or payment of pension to be made only from the Pension Fund. The liability to pay pension arises because of provision made in the Rules. In this view of the matter, the decision in Sasadhar Chakravarty would have no bearing.

Para 20. In view of the aforesaid legal position., this petition is required to be partly allowed and the respondents are directed to give pensionary benefits to the petitioners on the basis of notification dated 10.3.1995 by deleting the words "retiring from December, 1994 onwards" from the said notification. The

writ petition stands deposed of accordingly. There shall be no order as to costs.

12. The ratio laid down in D.S. Nakara case (supra) also followed in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, and State Bank of India Vs. L. Kannaiah and Others, Para 6 of the SOC in State Bank of India (supra) read as follows:

Para-6. Para 5 of the circular stipulated that the age limit (viz. not being over 35 years) for admission to Pension Fund shall continue. Thus the pensioned ex-service personnel were admitted to pensionary benefits with effect from 1.1.1965 subject to the restriction of the age limit of 35 years (which was later on enhanced to 38 years) on that date. As the date of confirmation of the respondents was much earlier to 1.1.1965, the crucial date for admission to the Pension Fund would be 1.1.1965. On that date, the confirmed employee of the Bank should not have exceeded 35 years of age. That is the combined effect of staff Circular No. 18 dated 8.4.1974 read with the Pension Fund Rules referred to supra. The reasons for prescribing the maximum age limit of 35 or 38, as the case may be, for the purpose of induction into Pension Fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rational or discernible basis for fixing the cut-off date as 1.1.1965, notwithstanding their earlier confirmation in bank service. True, a new benefit has been conferred on the ex servicemen and therefore, a cut-off date could be fixed for extending this new benefit, without offending the ratio of the decision in D.S. Nakara v. Union of India but there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefit to ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view.

13. For the reasons discussed above, this Court is of the considered view that the benefit of family pension to the parents of the Govt., employees who retire/die-in-harness on or after 1.1.96 shall also be extended to the petitioner with effect from 1.1.99, inasmuch as, the cut-off date of 1.1.1999 for enjoyment of the family pension for the parents of the Govt. employees who died-retired mentioned in the said Office memorandum dated 21.4.99 is artificial, arbitrary and illegal and not sustainable in the eye of law. Accordingly, the respondents are directed to extend the benefit of family pension to the petitioner from 1.1.99 i.e. the date of family pension is made admissible to the parents of the govt, employee under the said office memorandum dated 21.4.1999 within 3(three)

months from the date of receipt of this order. With the above observation"s and directions, this writ petition is allowed and disposed of.