

THE STATE OF WEST BENGAL
v.
MR. MONOTOSH ROY AND ANR,

DECEMBER 9, 1998

[S. SAGHIR AHMAD AND M. SRINIVASAN, JJ.]

Service law:

The All India Services (Death-cum-Retirement Benefits) Rules, 1958—Pension—Chief Metropolitan Magistrate—Retired prior to 1986—Pension fixed as per rules—Subsequent amendment of rules by a notification dated May 22, 1987—Pension of persons retiring after 1.1.86 revised—Office Memorandum dated 16.4.87—Pension of persons retiring prior to 1.1.86 rationalised—Writ petition for extension of the benefits of amendment to persons retired prior to 1.1.86—Dismissed by Single Judge—Division Bench of the High Court holding that he was entitled to revised pension as granted to persons retiring after 1.1.86.—On appeal, held, he does not come within the purview of the amended rules—Hence not entitled to revision of pension at par with post 1.1.86 pensioners.

The first respondent retired as Chief Metropolitan Magistrate in February 1981. His pension was fixed in accordance with All India Service Rules. The All India Services (Death-cum-Retirement Benefits) Rules, 1958 were amended by a notification dated May 22, 1987 whereby the pension of persons retiring after 1.1.86 was to be calculated at 50% of the basic pay in the restructured supertime scale with a ceiling. In case of persons who retired prior to 1.1.86, the Govt. rationalised the pension structure by an office Memorandum dated 16.4.87. In view of the said memorandum the first respondent's pension was refixed. However, the first respondent filed a writ petition in the High Court praying that the benefits which were conferred on persons who retired after 1.1.86 should be made available to the persons who retired prior to that date. The said writ petition was dismissed by Single Judge. On appeal, the Division Bench of the High Court held that the first respondent's pension be refixed by including in the basic pay dearness allowance and other allowances which were allowed to post 1.1.86 pensioners. Aggrieved, the State has filed the present appeal.

Allowing the appeal, this Court

A HELD: 1. The first respondent is not entitled for refixing his pension at par with the persons who retired after 1.1.86. The Division Bench of the High Court erred in granting the relief to the first respondent. [441-G-H]

B 2.1 The first respondent does not come within the purview of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, as amended by the notification dated 22nd May 1987. The word " emoluments" has been defined thereby to mean the pay that a member of the service was receiving before his retirement or death, as the case may be. The proviso to the definition clause is to the effect that in the case of a member of the service retiring from service within ten months of the date of coming over to the revised scales of pay, the emoluments in respect of any period prior to coming over to the revised scales of pay shall include the pay other than special pay in the pre-revised scale, dearness allowance, additional dearness allowance and *ad hoc* dearness allowance appropriate to pay upto cost of Price Index 608 actually drawn during the relevant period and interim relief appropriate to pay actually drawn during the relevant period. The expression **C " Revised scales of pay" has been defined to mean the scales of pay introduced with effect from 1st day of January, 1986. Thus the definition clauses themselves exclude the first respondent who retired from service in February, 1981 long before the revision of scales of pay came into force.**

[439-E-H; 440-A]

E 2.2. Rule 18 provides for the amount of gratuity and pension, in the case of a member of the service who retires from service in accordance with the rules. The note at the end of the rule reads that a member of the service before 1st day of January, 1986 shall be granted such additional relief in pension, as may be sanctioned by the Central Government. Hence the **F provisions of Rule 18 fixing the amount of gratuity or pension will not apply to the first respondent. [440-A-B]**

State of U.P. v. Jogendra Singh and Anr., [1998] 1 SCC 449 and *V. Kasturi v. Managing Director State Bank of India Bombay and Anr.*, JT [1998] 7 SC 147, relied on.

G *D.S. Nakara v. Union of India*, [1983] 1 SCC 305, held inapplicable.

All India Reserve Bank Retired Officers Association and Ors. v. Union of India and Anr., [1992] Supp. 1 SCC 664; *Union of India v. P.N. Menon and Ors.*, [1994] 4 SCC 68 and *State of Rajasthan v. Amrit Lal Gandhi and **H Ors.***, JT [1997] 1 SC 421, referred to.

3. The Division Bench of the High Court has usurped the functions of the Central Government and thus travelled beyond its jurisdiction. The Division Bench of the High Court has recognised the position that the writ petitioner cannot claim benefit of higher pay-scale having retired from service long before the introduction of such pay scales. [440-G; 440-E] **A**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5406 of 1997. **B**

From the Judgment and Order dated 10.6.96. of the Calcutta High Court in O.A.T.F.M.A.T. No. 2408 of 1992

Tapas Ray and S.K. Nandy for the Appellant. **C**

Ashok Srivastava, A.D. Sikri and Abhay Prakash Sahay for the Respondents.

The Judgment of the Court was delivered by **D**

SRINIVASAN, J. The first respondent in this appeal was a member of the West Bengal Higher Judicial Service and retired as Chief Metropolitan Magistrate, Calcutta in February, 1981. At that time, he was drawing pay in the super time scale of Rs. 2500-2750 plus admissible allowances. His pension was fixed in accordance with the rules at the maximum rate of Rs. 1225 per month. His retirement gratuity was settled at Rs. 30000. **E**

2. According to Rule 91 of the West Bengal Service (Death-cum-Retirement) Benefit Rules, 1971, the rules applicable to members of All India Services shall apply mutatis mutandis to members of West Bengal Higher Judicial Service. There is no dispute that the first respondents's pension was fixed in accordance therewith. **F**

3. The Indian Administrative Service (Pay) Rules, 1954 were amended on the basis of the recommendation of the Fourth Central Pay Commission as per Government Order dated 13th March, 1987. Thereby the previous single super time selection grade applicable to the central government officers in the ranks of Joint Secretaries at Rs. 2500-2750 was restructured into three categories: **G**

A. Rs. 5900-200-6700,

B. Rs. 7300-100-7600, **H**

A C. Rs. 8000 (fixed) w.e.f. 1.1.1986.

B Consequential amendment was made in All India Services (Death-cum-Retirement Benefits) Rules, 1958 by a notification dated May 22, 1987 whereby the pension of persons retiring after 1.1.86 was to be calculated at 50% of the basic pay in the restructured supertime scale with a ceiling on pension at Rs. 4500 per month for all categories of pensioners. The benefit of the said amendment was available only to persons retiring after 1.1.86. In so far as persons who retired prior to 1.1.86 are concerned, the Government of India rationalised the pension structure by Office Memorandum No. 2/1/87-PIC-1 dated 16.4.87 to implement the Government decision on the recommendation of the Fourth Central Pay Commission. The above memorandum classified the retiree before 1.1.86 into A, B and C categories in *pari materia* with the Tables I, II and III of the Fourth Central Pay Commission report and provided dearness reliefs for them at the rate of 95%, 80% and 70% of their existing pensions respectively. In accordance with the said memorandum the first respondent's pension was refixed at Rs. 2355 per month.

D 4. However, the first respondent filed a writ petition in the High Court of Calcutta under Article 226 of the Constitution of India praying for issue of a mandamus to the Union of India and the State Government to withdraw the aforesaid notification dated 16.4.87, settle and pay the pension to the petitioner at the rate of the Rs. 3800 per month at par with the serving officers of his rank in the Indian Administrative Service after deducting the amount drawn already and to pay all the arrears thereof forthwith and for a declaration that the said notification dated 16.4.87 was illegal, arbitrary, unfair and unconstitutional and as such liable to be struck down and quashed. In addition to the above prayers, the petitioner made several other prayers but it is not necessary for us to refer to them here. Suffice it to point out that the basis of the claim of the petitioner is that the benefits which were conferred on persons who retired after 1.1.1986 should be made available to persons who retired prior to that date.

G 5. The writ petition was dismissed by a Single Judge of the High Court who held that the principle laid down by this Court in *D.S. Nakara's case* [1983] 1 SCC 305 would not apply and the reliance placed by the writ petitioner on the said ruling was mis-conceived. The Court pointed out that the difference between the pension payable to persons who retired after 1.1.86 and the pension payable to the persons who retired prior to that date was on account of restructuring the scales of pay and the writ petitioner having retired long

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prior to the said date when the old scale of pay was prevailing was not entitled to claim the benefit. As against the judgment of the Single Judge, an appeal was filed which was disposed of by a Division Bench. The Bench opined that for the purpose of determining the pensionary benefit to the writ petitioner, the basic pay should also include the dearness relief or interim relief which was granted to such persons in the same manner as it was made applicable in respect of persons who retired after 1.1.86. The Bench also held that the perquisites which were allowed to 'post - 1.1.86' pensioners should also be added to the basic pay of the writ petitioner and thereafter 50% of that amount should be given by way of pension to him w.e.f. 1.1.86. The Respondents therein were directed to refix the pension of the writ petitioner in terms of the said order.

6. Aggrieved by the said judgment and order, the State of West Bengal has preferred this appeal.

7. The contention of the appellant is that the impugned judgment of the Division Bench of the High Court is vitiated by a misunderstanding of the rule in "Nakara" and the overlooking of the relevant rules applicable to the writ petitioner. Before advertng to the rule in Nakara, we would like to point out that the petitioner does not come within the purview of the relevant rules, as amended by the Notification dated 22nd May, 1987.

8. In exercise of the powers conferred by sub-section(1) of the Section 3 of the All India Services Act, 1951 the Central Government issued a Notification on 22nd May, 1987 amending the All India Services (Death-cum-Retirement) benefits Rules, 1958. The word "emoluments" has been defined thereby to mean the pay that a member of the service was receiving before his retirement or death, as the case may be. The proviso to the definition clause is to the effect that in the case of a member of the service retiring from service within ten months of the date of coming over to the revised scales of pay, the emoluments in respect of any period prior to coming over to the revised scales of pay shall include the pay other than special pay in the pre-revised scale, dearness allowance, additional dearness allowance and *ad hoc* dearness allowance appropriate to pay upto Cost of Price Index 608 actually drawn during the relevant period and interim relief appropriate to pay actually drawn during the relevant period. The expression "Revised scales of pay" has been defined to mean the scales of pay introduced with effect from 1st day

A of January, 1986. Thus, the definition clauses themselves exclude the petitioner who retired from service in February, 1981 long before the revision of scales of pay came into force. Rule 18 provides for the amount of gratuity and pension, in the case of a member of the service who retires from service in accordance with the rules. The note at the end of the rule reads that a member
 B of the service, before 1st day of Januray, 1986 shall be granted such additional relief in pension, as may be sanctioned by the Central Government. Hence, the provisions of Rule 18 fixing the amount of gratuity or pension will not apply to the writ petitioner.

C 9. In the Writ Petition there is no challenge whatever to the provisions of the rules, as amended by the Notification dated 22nd may, 1987; nor has the writ petitioner chosen to challenge the Notification as such. On the other hand the prayers in the Writ Petition are directed only against the Memorandum dated 16th April, 1987, as stated already. Consequently, the first respondent is not entitled to any relief whatever in the Writ Petition and it deserves to
 D be dismissed. This aspect of the matter has been completely ignored by the Division Bench of the High Court. This appeal has to be allowed on that short ground.

E 10. We have already referred to the fact that the new provisions for payment of pension introduced by the amendment of 1987 were only consequential to the restructuring of the pay-scales of the members of the service. The Division Bench of the High Court has recognised the position that the writ petitioner cannot claim benefit of higher pay-scale having retired from service long before the introduction of such pay-scales. The Division
 F Bench also pointed it out that the petitioner cannot claim a pension higher than the pay drawn by him. The Division Bench observed :

G “We agree with the view of the learned Trail Judge that the petitioner cannot claim a pension higher than the pay drawn by him; but at the same time, the value of rupee 20 years ago and the value of a rupee now cannot be treated to be the same by any logic. The appellant is not entitled to get the benefit of the higher pay scale, but the appellant is entitled to get the benefit of calculation of pension by merging the dearness allowance and other allowances along with the basic pay which has been introduced subsequently.”

H It is quite obvious that the Division Bench has usurped the functions

of the Central Government and thus travelled beyond its jurisdiction. A

11. Much reliance is placed on the decision in *D. S. Nakara v. Union of India*, [1983] 1 SCC 305. That was a case in which the Central Government liberalised the formula for computation of pension but made it applicable to Government servants who were in service on March 31, 1979 and retired from service on or after the specified date. This Court struck down the said classification and held that the liberalised formula was applicable to all the pensioners whether they retired before or after the specified date. That principle cannot apply in the present case where the pension benefits have been fixed on the basis of the revised pay structure to those members who are in service on 1.1.1986. B C

12. In *all India Reserve Bank Retired Officers Association and Ors. v. Union of India & Anr.*, [1992] Supp 1 SCC 664 a Bench of this Court distinguished the judgment in *Nakara* and pointed out that it is for the Government to fix a cut-off date, in the case of introducing a new pension scheme. The Court negated the claim of the persons who had retired prior to the cut-off date and had collected their retrial benefits from the employer. A similar view was taken in *Union of India v. P.N. Menon and Ors.*, [1994] 4 SCC 68. In *State of Rajasthan v. Amrit Lal Gandhi & Ors.*, JT (1997) 1 SC 421 the ruling in P.N. Menon's case (supra) was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits. D E

13. In *State of U.P. v. Jogendra Singh & Anr.*, [1998] 1 SCC 449 a Division Bench of this Court held that liberalised provisions introduced after employee's retirement with regard to retiral benefits cannot be availed of by such employee. In that case the employee retired voluntarily on 12.4.1976. Later on the statutory rules were amended by Notification dated 18.11.1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalised provision which came into existence after his retirement. A similar ruling was rendered in *V. Kasturi v. Managing Director, State Bank of India Bombay & Anr.*, JT (1998) 7 SC 47. F G

14. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the Writ Petition. The Division H

A Bench of the High Court was, therefore, in error in granting a part of the prayer of the first respondent. Hence, this appeal is allowed. The judgment of the Division Bench is set aside and the Judgment of the Single Judge of the Calcutta High Court dated 10.7.1992 dismissing the Writ Petition filed by the first respondent herein is restored. There will be no order as to costs.

B S.V.K.

Appeal allowed.