

Prabhat Chandra Vs Rani Durgawati Vishwavidyalaya and Another

Court: Madhya Pradesh High Court

Date of Decision: Oct. 10, 1996

Acts Referred: Constitution of India, 1950 " Article 14, 16
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 " Section 1(3), 32(2), 34, 36, 38

Citation: (1997) 2 JLJ 242

Hon'ble Judges: A.K. Mathur, C.J; S.K. Kulshrestha, J

Bench: Division Bench

Advocate: V.K. Tankha, for the Appellant; Ravindra Shrivastava and K.P. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Mathur, C.J.

Both the aforesaid writ petitions involve common question of law; therefore, they are disposed of by this common order.

2. The common question of law arising in both the petitions are that whether the cut off date as 1.4.1987 provided in the Act of the various

Universities of the State Government for entitling the teachers serving in the University, pension and other benefits is arbitrary or not.

3. The Petitioner-Dr. Prabhat Chandra (in M.P. No. 2425/90), was professor of Sociology (Retd.) in the Rani Durgawati Vishwavidyalaya,

Jabalpur. The Petitioner-Prof. R.K. Shrivastava (in M.P. No. 868/91) (Retd.), was Professor in the Dr. Hari Singh Gour Vishwa Vidyalaya,

Sagar. The Petitioners No. 2 and 3 (in MP. No. 868/91) were Ex-Superintendent and Ex-Professor of Criminology of Dr. Hari Singh Gour

Vishwa Vidyalaya, Sagar. All these persons were retired from their respective Universities and have taken of their retiral benefits. The pensionary

benefit was introduced in all the Universities of State of M.P. w.e.f. 1.4.1987 and these persons retired prior to that date; therefore, they have filed

aforesaid petitions challenging the fixation of cut off date for entitlement of pension to the teachers serving in various Universities of the State of

M.P., on or before 1.4.1987, being arbitrary and the same may be struck down.

4. Prof. R.K. Shrivastava retired from the Dr. Hari Singh Gour Vishwavidyalaya, Sagar, after 6.3.1982 and the Statute 26 of the Sagar University,

which was in existence in this University, at that time, only provided the benefit of CPC An affidavit of one Dr. Mulchand, Asstt. Registrar of Sagar

University, has been filed that as per the Statute 26, the Petitioners have been paid full amount of their Contributory Provident Fund (C.P.F.) and

nothing remains to be paid to them towards their retiral benefits. It is submitted that there was no provision for payment of gratuity to the retiring

teachers and employees of the University. It is submitted that Statute 34 which has been introduced and made affective from 1.4.1987, was

adopted by the Sagar University. By this, now the teachers serving in the University will be entitled to pension and other benefits which are

admissible to the Government servant of the State of Madhya Pradesh. This was finalised after the meeting of the Vice-Chancellors of the

Universities on 8.9.1988 and it says that:

The Government of Madhya Pradesh in Higher Education Department, Bhopal, vide letter No. -----dated , have been pleased to direct that the

pension, gratuity, family pension and commutation of pension benefits admissible to the Government servants of Madhya Pradesh under the

Madhya Pradesh Civil Services (Pension) Rules, 1976 and the M.P. Civil Pension (Commutation) Rules, 1976 as amended from time to time may

be made applicable to the regular, approved and full time employees, officers and teachers of the University with effect from 1.4.1987.

This financial grant was received from the State Government and correspondingly, this kind of amendment was introduced in all the Universities of

the State of M.P. Statute 34 provides for pension and other benefits to all the teachers of the Sagar University and similarly, corresponding

amendment was also introduced in the Rani Durgawati Vishwa Vidyalaya, Jabalpur, as Statue No. 26-A. Both the Statutes are almost in the same

line and they have been introduced by both the said Universities in accordance with the provisions of the Madhya Pradesh Vishwa Vidyalaya

Adhiniyam, 1973. There is no quarrel in procedure for introduction of these statutes, but the quarrel is only with regard to cut off date as 1.4.1987.

Therefore, all the arguments from both the sides to this effect were only that the fixation of cut off date is arbitrary. Therefore, it is not necessary to

reproduce all the provisions which have been introduced in both the Universities.

5. Shri J.P. Sanghi, learned Counsel for the Petitioners, has strenuously urged before us that the fixation of cut off date 1.4.1987 should be struck

down, and all the teachers who had retired prior to 1.4.1987 may be given the benefit of this scheme. This has been resisted by the Universities

and by the State and it has been pointed out by the State in the affidavit filed by Account Officer and Officer Incharge of the case that non-teaching

staff of the Vishwa Vidyalaya Employees" Union approached the then Education Minister of the Government of Madhya Pradesh with the demand

of Introduction of pension and gratuity in the Universities on which an agreement was arrived at and the State Government agreed to introduce the

same scheme with effect from the financial year 1987 considering the financial implications. The State Government agreed by order dated

29.2.1985 (Annexure R 1) and issued order dated 6.12.1989 (Annexure R/2). The order of the State Government dated 6.12.1989 reads as

under:

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scheme and it can be easily served.

Therefore, their Lordships served this part of the circular that it will be applicable to those who retired from service on or before 31.3.1979. This

judgment came up for consideration before Hon"ble Supreme Court in various subsequent decisions which we will refer hereinafter.

7. Shri J.P. Sanghi, learned Counsel for the Petitioners has invited our attention to the decisions of the Hon"ble Supreme Court as well as various

High Courts pertaining to the teachers and employees of the Universities. The learned Counsel first invited our attention to the decision of

Allahabad High Court Bench at Lucknow, given in Lucknow University Retired Teacher's Association v. State of U.P. and Ors. decided 1992 in

W.P. No. 10107/89. In that case, the question was regarding the fixation of cut off date for the purpose of extending the benefit of pension. The

benefit of pension was not made admissible to those teachers of the Uttar Pradesh Universities who had retired prior to 1.1.1984. The grievance

was that this benefit had been made applicable to the teachers of the Degree Colleges and the teachers of the Universities were treated differently

by fixing the artificial date 1.1.1984 as a cut off date and this was found to be arbitrary and discriminatory. The Government circular dated

24.12.1983 (Annexure 7) was struck down and the Court directed the Respondent/State to give benefit of pension scheme to all retired teachers

of the Universities irrespective of date of their retirement as is available to the Teachers of the Degree Colleges. It is alleged that SLP against the

said order was preferred before the Hon. Supreme Court and it was dismissed in limine, vide order dated 26.4.1993 in SLP No. 3847-49/93.

8. The learned Counsel for the Petitioners also invited our attention to the decision of Gujarat High Court given in Special Civil Application No.

4449/88 decided on 21.8.1990, wherein the Petitioner-Association of retired Professors attached to the Universities and various affiliated colleges

in the State of Gujarat, filed a writ petition challenging the legality and validity of the Government order dated 15.10.1984, by which certain

retirement benefits were sought to be granted only to those Professors and the members of the Association who retired after April, 1982, and not

to those who had retired prior to the said date. Their Lordships of Gujarat High Court struck down the artificial dated 1.4.1982 as cut off date as

it was not based on an intelligible different is nor had nexus with the object sought to be achieved.

9. Our attention was also invited to the decision of Bombay High Court, Bench at Nagpur, given in Retired Employees of Non-Government

Colleges Association Nagpur and Ors. v. State of Maharashtra and Ors. decided on 24.3.1987, in W.P. No. 2632 of 1985, and there also, the

Retired Employees of Non-Government College Association prayed for issuance of a writ of mandamus that the date prescribed by the

Government in Government Resolution dated 21.7.1983 extending the pension-cum-gratuity scheme to the teaching and non-teaching staff of the

non-agricultural Universities and affiliated non-Government Colleges to the persons who retire or retired on or after 1.10.1982, be declared as

violative of Article 14 of the Constitution. Their Lordships struck down and observed that prescription of cut off date viz 1.1.1982 being irrational

was wholly violative of Articles 14 of the Constitution.

10. Our attention was also invited to the decision of Gwalior Bench in the case of Anwari Begum v. Employees Provident Fund Commissioner

1996 2 MPJR 14 and in that case, the circular issued by the M.P.E.B. giving the cut off date was held to be invalid as it violated Article 14 & 16

of the Constitution because there was no reasonable classification to deny family pension to persons prior to 6.12.1971. Therefore, the cut off date

mentioned in the circular was struck down. But that is not the case here, as mentioned above. However, the recent decision of Supreme Court has

laid down the ratio to the contrary. This case also does not help the Petitioner, in any manner.

19 (A). Shri Ravindra Shrivastava and Shri K.P. Mishra, both, learned Counsel for the Respondent/University, submitted that the fixation of cut off

date in the present case is justified as all the financial assistance to all the Universities in the State of Madhya Pradesh is made available by the

Government. Section 34 of the M.P. Vishwavidyalaya Adhiniyam, 1973, reads as under:

Section 34. Co-ordination Committee:

(1) There shall be a Co-ordination Committee consisting of the following persons, namely:

- (i) Kuladhipati;
- (ii) The Kulpatris of the Universities specified in the Second Schedule;
- (iii) Chairman of the Madhya Pradesh Uchcha Shiksha Anudan Ayog;
- (iv) Secretary to Government of Madhya Pradesh, Law Department;
- (v) Secretary to Government to Madhya Pradesh Finance Department;
- (vi) Secretary to Government of M.P.;
- (vii) Secretary to Government of Madhya Pradesh, Education Department.

(2) The Kuladhipati shall be the President of the Co-ordination Committee and the Secretary to Government of Madhya Pradesh; Education

Department, shall be its Secretary.

(3) On coming into force of this Act, notwithstanding the provisions of Section 36 and Section 38 the first statutes and ordinances shall be drawn

up by the Co-ordination Committee. The first Statutes and Ordinances shall come into force from such date as the Kuladhipati may by an order

specify;

Provided that the power conferred on the Co-ordination Committee to draw up the first statutes and Ordinances shall be exercised within a period

of one year from the date appointed under Sub-section (3) of Section 1.

(4) The Co-ordination Committee shall exercise the following powers and discharge the following functions:

(i) to undertake from time to time examination of the Statutes and Ordinances in force in the various Universities and suggest modifications;

(ii) to approve or reject the Statutes and Ordinances submitted by the Executive Council of the University;

(iii) to recommend to the Universities and the Madhya Pradesh Uchcha Shiksha Anudan Ayog on its own motion or on the request of any

University a Teacher Exchange Programme, Organisation of refresher courses or any other academic programmes;

(iv) to promote-co-operation in academic programmes among the universities;

(v) to consider matters of common interest to all or some of the Universities.

(vi) to frame bye-laws for the conduct of its business.

(5) The Co-ordination Committee shall meet at Bhopal or such other place and at such intervals as the Kuladhipati may determine.

According to Section 32(2)(a) of the M.P. Vishwa Vidyalaya Adhiniyam, 1973, the contribution of grant has to be made by the Central or State

Government or any body corporate; therefore, the University fund is normally constituted by the grant given by the Central or State Government

and in the present case, when the matter was agitated before the State Government that the pensionary benefits should also be made available to

the employees and the teachers of the Universities, the Government, on receiving those representations, decided to extend all the pensionary

benefits which are made available to the employees of the State Government, to the employees and teachers of the Universities. This was a major

decision of the Government because payment of pension involves a huge financial assistance and without the assistance of the Government, this

could not have been possible. When this was agreed to by the Government and they agreed to give them the financial assistance from the financial

year 1987, the cut off date was accordingly fixed as 1.4.1987 though necessary formalities for amending the Statutes and how the scheme was to

be introduced were decided after the meeting of the Vice-Chancellors of all the Universities and it was finalised after the meeting of the Vice-

Chancellors on 8.9.1988. Since the State Government agreed to give financial assistance from 1987; therefore, it was made effective from

1.4.1987. This is how the cut off date was fixed.

11. The question of cut off date has been vexed question and especially in the administrative law after the decision of D.S. Nakara's case (supra).

This controversy is being ragging in a service and subsequent decision of the Lordships of the Hon. Supreme Court after D.S. Nakara "s case,

much water has flown under bridge. Much of the D.S. Nakara"s case ratio has been read down by their Lordships in various decisions which we

shall now advert as referred by the learned Counsel for the parties. D.S. Nakara"s case came up for further consideration by their Lordships in the

case of Krishena Kumar and Others Vs. Union of India and others, . The Constitutional Bench, in that case, considered the D.S. Nakara"s case.

In that case (Krishna Kumar"s case) an option was given to the Railway Employees covered by Provident Fund Scheme to switch over to the

pension scheme with affect from a specified cut-off date and it was not found to be violative of Article 14 of the Constitution. It was observed by

their Lordships:

It was never required to be decided in D.S. Nakara and Others Vs. Union of India (UOI), that all the retirees formed a class and no further

classification was permissible. In case of pension retirees who are alive the Government has a continuing obligation and if one is affected by

dearness the others may also be similarly affected. In case of P.F. retirees each one"s rights having finally crystallized on the date of retirement and

receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. In each of the

names of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once

exercised would be final. Options were exercisable vice versa. The specified date has been fixed in relation to the reason for giving the option and

only the employees who retired after the specified date and before and after the date of notification were made eligible. This was substantiated by

what has been stated by the successive pay commissions. The corresponding concomitant benefits were also granted to the provident fund holders.

There was, therefore, no discrimination and the question of striking down or reading down cause giving option would not arise.

Therefore, after considering the D.S. Nakara"s case subsequent constitutional Bench in almost in identical situation held that it is not necessary to

give a benefit of the provident fund scheme to all the employees once they have retired, and their Lordships observed that in D.S. Nakara"s case

(supra), all the retirees formed a class and no further classification was permissible. In the present situation, like one, we have with us on identical

case to that of Krishna Kumar"s case (supra) and there also, the cut off date was given for the provident fund employees to opt for pension and

their Lordships found that they formed a different class and the cut off date mentioned cannot be said to be arbitrary or bad. It was observed by

their Lordships in para 33:

In Nakara"s case (supra) it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further

classification among them would be violative of Article 14.

Therefore, the aforesaid decision clearly clinches the issues.

12. The learned Counsel for the Respondents submitted that the cut off date cannot always be dubbed as arbitrary. It is submitted that some date

has to be fixed and only safeguard is that it should not be whimsical or it should not be like taking a hat off. There should be some rationals for

fixation of the cut off date. In this connection, our attention was also invited to the decision of Hon. Supreme Court given in Union of India (UOI)

and Another Vs. Parameswaran Match Works and Others, . That was a case of Central Excise and in that connection, it was observed by their

Lordships that "there can be no doubt that any date chosen for the purpose would, to a certain extent, be arbitrary. That is inevitable." This was

followed by their Lordships of Hon. Supreme Court in the case of Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, . This

was a case of Rajasthan Universities Teachers" & Officers and in that case, the question was of the screening of certain temporary teachers. In that

connection, it was observed:

All temporary lecturers who were appointed as such on or before 25.6.1975 and were continuing as such at the commencement of the ordinance

shall be considered by the University for screening for absorption, the expression ""were continuing"" is significant. This is in consequence of the

object of the Act to ensure continuity of experience and service as one of the factors for regularising the appointment of the temporary Lecturers.

The argument for fixation of cut off date 25.6.1975 was found to be valid after considering the decision of D.S. Nakara "s case (supra).

13. State of West Bengal and Others Vs. Ratan Behari Dey and Others, , this was a case from Calcutta Corporation employees and in that the

grant of pension was a part of the service condition and cut off date was fixed even retrospectively. The benefit was given to the employees from

1st April, 1977, requiring exercise of option. It was held that the cut off date being the first day of financial year in which pay Commission was

appointed and this was the date fixed for payment of the pension and in that connection, their Lordships held that the date was reasonable and not

arbitrary. Therefore, a reference was made to D.S. Nakara case and Krishna Kumar"s case. After distinguishing the decision of D.S. Nakara"s

case, their Lordships held that the fixation of date in that case for grant of pension w.e.f. 1.4.1977 being a cut off date was reasonable as the date

had been fixed with reference to the date of a financial year in which the Pay Commission was appointed and this was found to be reasonable and

not arbitrary.

14. Union of India Vs. P.N. Menon and others, the retired Government servant filed a petition before the High Court challenging the Office

Memorandum dated 25.5.1979, treating part of dearness allowance as pay for purposes of retiral benefits in respect of the government servant

who retired on or after 30.9.1977. Therefore, it was contended that the Government servant who retired from service before 30.9.1977, the said

benefit should also be extended to such persons also irrespective of the date of their retirement. The contention was negated by their Lordships.

Their Lordships observed that the Government memorandum is not discriminatory nor arbitrary. Their Lordships also referred to the decisions of

D.S. Nakara's case and Krishna Kumar's case. Again, similar question came up for consideration before Hon. Supreme Court in the case of

Union of India and Another Vs. Sudhir Kumar Jaiswal, . It was in connection with the recruitment and for eligibility of the candidate, the cut off

date was fixed for determining the age. Their Lordships held that the cut off date mentioned in the Rules cannot be said to be arbitrary.

15. State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti, , a provision of Rule 268-H of the Rajasthan Service Rules, 1951, came up for

consideration and in that, the cut off date was provided as 29.2.1964 and in that connection, their Lordships observed:

It does not appear that the cut off date mentioned in Rule 268-H was only on ipse dixit of the State Government and introduced in an arbitrary and

capricious manner taking out of hat without any basis whatsoever. The Government had taken into consideration the need for a liberalised pension

scheme for those government servants who were in service on 29.2.1964 and who would be retiring thereafter and the new liberalised pension

scheme under Chapter XXIII-A was introduced w.e.f. March, 1964. It is permissible to introduce different retiral benefit schemes for government

servants on the basis of the date of retirement. Rule 268-H cannot, therefore, be held violative of Article 14 of the Constitution.

In that case, their Lordships have considered all the earlier decisions of the Supreme Court and found that the cut off date was well justified.

16. In Union of India (UOI) and Another Vs. M. Bhaskar and Others, , the question arose for payment of higher scale to Apprentices and in that

connection, a distinction was made for giving financial benefit. There also, the distinction was justified.

17. From a survey of all these cases of the Hon. Supreme Court, the recent trend is that if the cut off date could be reasonably justified then there

is no justification to strike it down, simply because some cut off date has been given. When the decision regarding financial involvement is taken,

certain date is bound to be specified and such fixation of date cannot necessarily be always said to be illegal or bad. In the present case, as already

mentioned above, the decision was taken by the Government to give the pensionary benefits to the teachers and employees of the Universities in

1987, therefore, it was made applicable from 1.4.1987 i.e. financial year, though orders were subsequently issued. Therefore, the cut off date is

not whimsical in the present case. So far as the cases which are cited by the learned Counsel for the Petitioners, i.e. Allahabad, Gujarat and

Bombay and Gwalior bench they are distinguishable on their peculiar facts. The peculiar distinguishing feature has already been thought. The recent

decision of the Hon. Supreme Court is that if there is justification for fixation of cut off date and it is not whimsical, then the fixation of cut off date

should not be struck down. In the present case, we have found that the fixation of cut off date was justified, therefore we do not find any illegality

in cut off date from 1.4.1987.

18. Before parting with this case, our attention was invited to the decision given in N.L. Abhyankar Vs. Union of India and Others, and N.C.

Desai and Ors. v. Union of India AIR 1958 All 283. Both the decisions pertain to the High Court Judges' service conditions. Certain benefits

were given to the retiring Judges and their Lordships directed to extend the same benefits to the Petitioner Judge of Bombay High Court, who

retired from the Court on 30.1.1969. In that case, the question of cut off date did not come up for consideration. Their Lordships followed the

decision of Allahabad High Court - N.C. Desai (supra) and in N.C. Desai's case (supra), their Lordships have read down the provisions and

extended the benefit of death-cum-retirement benefit to other judges also who retired prior to 1.10.1974. Therefore, these cases also do not help

the Petitioners.

19. Upshot of the above discussions, we do not find any merit in both the aforesaid petitions and the cases are dismissed. The amount of security,

if any, shall be refunded to the Petitioners.