Audit Officer, Local Funds, Mahabubnagar and another Vs Ahmed Hussain and another

Writ Petition No. 22095 of 2000

Court: Andhra Pradesh High Court

Date of Decision: March 20, 2001

Acts Referred:
Constitution of India, 1950 â€" Article 14, 16#States Reorganisation Act, 1956 â€" Section 119

Citation: (2001) 3 ALD 156 : (2001) 3 ALT 272

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: Government Pleader, for Service-I, for the Appellant; M/s. Kusuri Satyanarayana and P. Raghavendra Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.B. Sinha, CJ

1. This writ petition is directed against order dated 13-6-2000 passed by the A.P. Administrative Tribunal in OA No.5582 of 1999, whereby and

whereunder the Original Application filed by the 1st respondent herein was allowed with the following directions:

Thus, the impugned order issued by the 2nd respondent in Lr.No.A2/Fen/2424/ 98-99, dated 13-1-1999 is set aside. The respondents are

directed to sanction and pay to the applicant his pensionary benefits and gratuity taking into consideration service rendered by him from 14-8-

1963 to 3-1-1973 as DRR Driver and accordingly the respondents are directed to revise his pension and gratuity and pay all the pensionary

benefits to which he is entitled on such revision. This exercise shall be completed within a period of three months from the date of receipt of a copy

of this order. The OA is disposed of accordingly with the aforesaid directions.

2. The basic fact of the matter is not in dispute.

The 1st respondent herein worked as DRR driver for the period from 14-8-1963 to 3-1-1973 in workcharged establishment under the control of

the 2nd respondent. He was thereafter appointed as Jeep Driver on 4-1-1973 and retired on 28-2-1991.

3. The question which arises for consideration is as to whether the period during which the 1st respondent worked in a workcharged establishment

could be reckoned for calculation of his pensionary benefits.

4. By letter dated 13-1-1999, the Audit Officer, Local Funds, Mahabubnagar, petitioner No.l herein, addressed to the Chief Executive Officer,

Zilla Parishad, Mahabubnagar intimated that the 1st respondent was not entitled to the pensionary benefits stating that:

the service rendered by Sri Ahmed Hussain, Rtd. Jeep Driver on consolidated pay during the period from 14-8-1963 to 3-1-1973 cannot be

considered for purpose of pensionary benefits as he was not in workcharged establishment as on 27-3-1979, as per the Memo of Director of

Local Fund Audit, A.P., Hyderabad.

5. The matter relating to grant to pensionary benefits allowable to employees who worked in workcharged establishments is governed by

Government Memo No.185/ Ser.V/79-3, dated 22-4-1980 of the Irrigation and Power Department which is to the following effect:

(a) All workcharged employees who have put in a total service often years as on 29-3-1979 from the dates of their first appointment exclusing the

breaks in service will be made eligible for benefits like leave, pension, etc., on par with Government employees as ordered in G.O. Ms. No.212,

Finance and Planning Department, dated 29-3-1979.

(b) All the workcharged employees who have completed five years of service as on 29-3-1979 from the dates of their first appointment excluding

the breaks in service will be made eligible for benefits extended to provincialised work charged establishment under G.O. Ms. No.407, PWD,

dated 29-3-1972.

6. The learned Tribunal by the order impugned herein held that if the cut off date is strictly construed, the same would amount to arbitrariness apart

from discriminatory and violative of Articles 14 and 16 of the Constitution of India. The learned Tribunal however had not assigned any reason in

support of the said conclusion.

The learned Tribunal, however, has arrived at a finding of fact that while he worked in workcharged establishment from 14-8-1963 to 3-1-1973

he did not complete the required period often years.

7. The statement of defence on behalf of the 1st respondent herein which founds favour with the learned Tribunal was that even persons who had

completed five years of service were made eligible for the benefit extended to provincialised workcharged establishment under G.O. Ms. No.407,

PWD dated 29-3-1972.

8. We may note that the Directorate of Local Fund Audit by memo dated 30-12-1998 while returning the SR and provisional pension papers of

the 1st respondent intimated the Audit Officer, Local Funds, Mahabubnagar that the service rendered by the 1st respondent on consolidated pay

during the period from 14-8-1963 to 3-1-1973 cannot be considered for purpose of pensionary benefits as he was not in workcharged

establishment as on 27-3-1979.

9. In G.O. Ms. No.407, Public Works Department, dated 27-3-1972, it was directed:

2. Government after careful consideration of the representation of the Unions of workcharged establishment and the proposals submitted by the

Chief Engineers pass the following orders:

(i) The services of the workcharged establishment in all categories and branches of Public Works Department including PWD (Project Wing) who

put in (10) years of service employed in the maintenance works, be provincialised and the benefits mentioned in para (3) below be allowed to

them;

(ii) In respect of workcharged establishment employed in the construction of projects, those who completed (10) years of service, are entitled the

same facilities as allowed to the provincialised workcharged establishment mentioned in item (i) above without categorising them as provincialised

workcharged establishment.

3. The following benefits are allowed to the workcharged establishment consequent on their provincialisation ordered in para 2 above.

(i) Leave concessions under the Revised Industrial Employment Leave Rules, 1936, viz., leave on full pay at the rate of one month for every

complete period of (11) months upto 90 days at anytime (rounding of fractions of a day not permissible vide para 2 of G.O. Ms. No.677,

Education, dated 2-9-1944);

(ii)(a) Leave for one year in all on medical certificate recognised under any rule of order of Government;

(b) Leave on half pay upto (3) months and a further extension of leave on half pay not exceeding (3) months on the production of a fresh medical

certificate granted by the Medical Officer-in-charge of the district in which the employee is residing;

(iii) Leave on half-pay limited to two years at any one time for each disability and five years in the whole service in case of injury giving rise to claim

for compensation;

(iv) Joining time and TA according to the Rules governing Government Servants similar grades;

(v) The pay in excess of the maximum will be treated as a personal pay for those provincialised workmen;

(vi) The workmen are entitled to the payment of subsistence allowance at the rates admissible under the Fundamental Rules during the suspension

period;

(vii) Such other benefits as may be sanctioned by Government from time to time.

5. The facilities envisaged in para 2 of mis order shall not be available to the workcharged establishment governed by the Factories Act and

Labour Laws, unless they are more beneficial than those allowed to them under the Factory Act and other Labour Laws.

10. It is no doubt true that the matter relating to grant of pensionary benefits is a beneficial provision. But, such beneficial provision, however,

cannot be stretched too far so as to confer more benefit than what was intended to by the legislation. In Regional Director, Employees'' State

Insurance Corporation, Trichur Vs. Ramanuja Match Industries, , the Supreme Court held:

Counsel for the appellant emphasized on the feature that the statute is a beneficial one and the Court should not interpret a provision occurring

therein in such a way that the benefit would be withheld from employees. We do not doubt that beneficial legislations should have liberal

construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for

the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those are not covered

by the scheme.....

11. The learned Tribunal appears to have committed an error in so far as it took into consideration G.O. Ms. No.407, dated 27-3-1972 in aid of

its finding.

By reason of the said G.O. Ms. No.407 only certain benefits were conferred upon the category of employees specified therein. Pension was not

one such benefit. Provincialisation of service subject to the conditions laid down therein by itself would not mean that person has become eligible

for obtaining pension. The matter relating to grant of pensionary benefits governed by the Pension Rules. Unless it is held arbitrary and

discriminatory, the said rules must be given effect to.

12. A cut-off date fixed for terminal benefits in a statute by itself cannot be held to be arbitrary. By reason of the aforementioned Government

Memo dated 29-3-1979, a cut off date has been fixed as indicated hereinbefore. The 1st respondent herein did not question the vires of the

aforementioned Memo of the year 1980. Had vires of such Memo been challenged, it would have been possible for the petitioner herein to show

as to how the cut-off date had been arrived at.

13. In Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, , the Supreme Court held that the choice of a date as a

basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimical.

In Rao Somashekara and Others Vs. State of Karnataka and Another, , the Apex Court dealing with the question from which date the revised pay

scales given to original Karnataka Primary School Teachers on a par with the scales of Secondary School Teachers of former Hyderabad State

allotted to Karnataka State, should be given effect to, held:

We are of the view that the State Government had before it the report of the Commission and on that basis it took a decision that the disparities

should stand eliminated prospectively from 1-1-1970 and not retrospectively from 1-1-1957. The question as to whether the date from which the

scales ought to have been equated should be 1-1-1970 or an anterior or a later date was a matter which had to be arrived at by taking all factors

into account. It will be difficult for this Court to decide as to from what date the continuance of the existing scales should be treated as

discriminatory or the continuance would loose its temporary character arising out of Section 119 of the States Re-organisation Act. It may be that

the State of Karnataka felt that the grievance of the non-allotted Primary School Teachers whose salaries were lesser than the salaries of non-

allotted Secondary School Teachers was a matter of graver concern requiring redressal even as late as 1979 or 1986. Merely because the

grievances of non-allotted primary teachers were remedied even after considerable lapse of time, we cannot say that grievances of Secondary

School Teachers-even if it was late - should have also been redressed for the period 1-1-1957 to 31-12-1969. Above all, the financial burden

involved was also a matter of relevant consideration. We are not therefore inclined to hold that the cut-off date of 1-1-1970 fixed after the report

of Justice Tukol Commission, in regard to Secondary School Teachers, is arbitrary or violative of Article 14.

14. In West Bengal Headmasters'' Association v. State of West Bengal 1995 LIC 1919, one of us, Satyabrata Sinha, CJ, speaking for a Division

Bench of the Calcutta High Court observed:

134. D.S. Nakara''s case (supra) upon which strong reliance has been placed by the learned Counsel for the petitioners has no application in the

instant case. The said decision has been distinguished by the Supreme Court and other High Courts in various decisions including th1991 (2)CLJ

188e case of Ratan Bihari De (1) 1993 CLT 8 : (1993 Lab IC 2199) and West Bengal Head Masters'' Association .

136. In the Indian Ex-Services League and others Vs. Union of India, , the Apex Court, held that the decision in Nakara''s case has to be read as

one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees. The Supreme Court in that case

dismissed the claim of the petitioners of ""one-rank-one pension"" for all retirees.

137. In Action Committee, South Eastern Railway Pensioners'' v. Union of India, reported in 1991 Suppl (2) SCC 544, the Supreme Court

followed its earlier decision in Krishena Kumar and Others Vs. Union of India and others, , wherein Nakara''s case was distinguished in the

following germs:

The argument of Mr. Shanti Bhushan is that the State''s obligation towards pension retirees is the same as that towards PF retirees. That may be

morally so. But that was not the ratio decidendi of Nakara''s case. Legislation has not said so. To say so legally would amount to legislation by

enlarging the circumference of the obligation and covering a moral obligation.

138. In State of Uttar Pradesh Vs. Uttar Pradesh University Colleges Pensioners'' Association, , the Apex Court distinguished Nakara''s case

(supra).

139. In Mafatlal Group Staff Association and others Vs. Regional Commissioner, Provident Fund and others, , the Supreme Court distinguished

Nakara''s case (supra) saying:

Be that as it may, we find no substance in the said attack. Here is a scheme newly being introduced. Those who come after the introduction of the

scheme to become members of the Provident Fund are free to become members of the Pension fund or not. This is not an uncommon feature.

Both of them represent two distinct categories. The reliance on the decision of this Court in D.S. Nakara and Others Vs. Union of India (UOI), is

misplaced.

That was a case where a class of retired employees was sought to be deprived of the benefit of liberalised Pension Rules on the only ground that

they had retired prior to a particular date. Here, in the case, no one is being deprived of thebenefit of the new scheme. All that the option means is

that if any employee who is already a member of the Provident Fund Scheme that, having regard to the number of years of service put in by him

and/or for other reasons, it is not beneficial for him to join the Family Pension Scheme, he can stay out. While judging the validity of such schemes

one should not pick out an individual instance - not representing the generality of the situation - and make it the basis. One has to take an overall

view, i.e., whether it is beneficial to the class concerned as a whole or not:

140. In Union of India Vs. P.N. Menon and others, , the Supreme Court was concerned with a Government Memorandum dated 25th May, 1979

treating a portion of the dearness allowance, as pay for the purpose of retirement benefits in respect of Government servants who retired on or

after the 30th September, 1977. The writ petitioners who retired from service before 30th September, 1977, contended that the said benefits

should have been extended to all retired Government servants, irrespective of their date of superannuation. The Supreme Court upon considering

its earlier decision observed:--

According to us, for the reason disclosed on behalf of the appellant-Union of India for fixing 30th September, 1999 as the cut-off date, which

date was fixed when the price index level was 272, cannot he held to be arbitrary. The decision to merge a part of the dearness allowance with

pay, when the price index level was at 272, appears to have been taken on basis of the recommendation of the Third Pay Commission. As such it

cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in

respect of revision of scales of pay, a cut-off date of some rational or reasonable basis, has to be fixed for extending the benefits. This can be

illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the

same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay,

having superannuated before that date. An employee, who has retired on 31st December of the year in question will pay the scales only by a day,

which may affect his pension benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who

were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a

particular date for extending a particular benefit or scheme, has been fixed, on objective and rational consideration.

141. Yet recently in Union of India v. Rama Murthy, reported in 1995 (2) (JT) SC 539, the Supreme Court held:-

The benefit of the OM is to facilitate calculation of 10 months average pay for the purpose of pension. Earlier only 1/10th of the 10 months

average pay was computed for pension. Under the impugned order in para 3 (iii) of the OM dated May 25, 1979, the computation would be

5/10th i.e., half of the dearness pay for the purpose of computation of pension. In other words, the OM is more beneficial for the pensioner rather

than earlier computation. Whether the notification is justified and valid in law, was considered by a Bench of this Court in State of Rajasthan Vs.

Sevanivatra Karamchari Hitkari Samiti, , wherein it was held that the ratio in Nakara''s case has no bearing in this matter and the introduction of the

rule is not arbitrary or capricious. It is permissible to introduce different retrial benefit schemes for Government servants as indicated in the

decisions held by this Court in Krishena Kumar and Others Vs. Union of India and others, , Indian Ex-Services League and others Vs. Union of

India, and State of Rajasthan Vs. Rajasthan Pensioner Samaj, .

In Punjab National Bank Vs. K.C. Chopra and another, , the Apex Court held that a claim contrary to the service regulations cannot be granted.

In Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, , the Supreme, Court held:

The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cutoff date for grant of pensionary

benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study teach was first appointed and pursuant to its report certain

benefits were given after considering the report of the study group would show that the cutoff date had a logical nexus with the decision to grant

these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates

of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a

given date cannot be considered as arbitrary or unreasonable.

15. In Commander Headquarter, Cal v. Capt. Biplabendra Chanda 1997 WBLR (SC) 49, the Apex Court held:

4. We are of the opinion that the ratio of D.S. Nakara has no application here. D.S, Nakara prohibits discrimination between pensioners forming

a single class and governed by the same Rules. It was held in that case that the date specified in the liberalized pension Rules as the cut-off date

was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefore as per the Rules

in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the

Rules that came into force with effect from January 1, 1986 were new Rules or merely revised or liberalised Rules) which came into force with

effect from January 1, 1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of

these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the

respondent"s contention would have very curious consequences; even a person who had retired long earlier would equally became eligible for

pension on the basis of the 1986 Rules. This cannot be.

16. Recently in State of W.B. Vs. Monotosh Roy and Another, , the Apex Court considered the matter and observed:

In All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , a Bench of this Court distinguished the

judgment in D.S. Nakara and Others Vs. Union of India (UOI), 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 negatived 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 Vs. P.N. Menon and others, . In State of Rajasthan v. Amrit Lal

Gandhi ((1997) 212 SCC 342) the ruling in P.N. Menon case 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.

17. In the light of the decisions referred to above, it cannot be said that the cut-off date fixed by the Government in the matter of grant of

pensionary benefits to personnel working in the workcharged establishment is unreasonable or arbitrary.

18. Further, no order could have been passed even on the ground of sympathy as has been done by the learned Tribunal. Sympathy alone would

not entitle the petitioner for grant of relief (See Ashoke Saha v. State of West Bengal 2 (1999) CLT 1.

19. For the reasons aforementioned and in the light of the pronouncements of the Apex Court, the impugned order cannot be sustained and the

same is set aside accordingly. The writ petition is accordingly allowed. No costs.