

K.Krishnakumar Vs. Union of India

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Court : Kerala

Decided On : Feb-04-2013

Judge : Hon'Ble the Chief Justice Mrs. Manjula Chellur

Appellant : K.Krishnakumar

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT:- THE HON'BLE
THE CHIEF JUSTICE MRS.MANJULA CHELLUR & THE HONOURABLE
MR.JUSTICE K.VINOD CHANDRAN MONDAY, THE 4TH DAY OF FEBRUARY
2013 15TH MAGHA 193 W.A.No.127 of 2013 -----

AGAINST THE JUDGMENT IN W.P.(C).34008/2005-W, DATED 13 07-2012

----- APPELLANTS/ PETITIONERS:-

----- 1. K.KRISHNAKUMAR, AGED 6 YEARS,
S/O. LATE MANIKKATH SIVARAM MENON, NOW RESIDING AT FLAT NO.1-B,
SKYLINE TEMPLETON, MANIKATH ROAD, RAVIPURAM, KOCHI

016.

2. K.L.AUGISTINE, AGED 6 YEARS, S/O. K.A. LONAN, 36/2360-A, KATAKKARA
ROAD, KALOOR, KOCHI - 17.

3. A.VIJAYAN, AGED 6 YEARS, S/O. K.S. ACHUTHAN, ANUBHAVAN,
ERAMALLUR P.O., CHERTHALAI, ALEPPY DISTRICT.

4. A.R.BALACHANDRAN (DIED) 5. M.KRISHNAN NAIR, AGED 6 YEARS, S/O. P.MADHAVA PANICKER, REVATHY, GANDHI SQUARE, PUNITHURA, COCHIN - 38.

6. N.JANARDHANA VADHYAR, AGED 6 YEARS, S/O. A NARASIMHA VADHYAR, K.P.XII/258, PANCHAJANYAM, THIRUMALA BHAGOM P.O., THURAVOOR, ALEPPY - 18.

7. ALEX ITTYCHERiyAH, AGED 7 YEARS, S/O. LATE K.M.ITTY CHERIAH, 6/0 KATTUNILAYAM, ST. BENEDICT ROAD, ERNAKULAM, COCHIN -18.

8. V.MOHANKUMAR, AGED 6 YEARS, S/O. T.V.MENON, 39/2115, PRATHEEKSHA, VARIYAM ROAD, ERNAKULAM, COCHIN - 16.

9. SURENDARAN (DIED) W.A.No.127 of 2013 - 2 - 10. A.G.SEBASTIAN, AGED 6 YEARS, S/O. A.T. GEORGE, SAFALLYA, GODOWN ROAD, EDAPPALLY TOLL, k OCHI - 24.

11. ALEX DANIEL, AGED 6 YEARS, S/O. C. DANIEL, X/1421, SOUTH THAMARA PARAMBU, KOCHI

001.

12. S.GOPALAKRISHNAN, AGED 7 YEARS, S/O. V. SREEDHARA MENON, KARTHIKA, DEVANKULANGARA, EDAPPALLY, KOCHI -24.

13. D.GEORGE JACOB, AGED 7 YEARS, S/O. K.M. DOMENIC, KARIPPAPARAMBIL HOUSE, MANKUZHY ROAD, EDAPPALLY TOLL, KOCHI - COCHIN - 24.

14. P.RANGANAYAKI, AGED 7 YEARS, D/O. S.PADMANABHA IYYANGAR, 40/193, THOTTEKKATTU ROAD, ERNAKULAM, KOCHI - 11.

15. K.SETHULAKSHMI, AGED 7 YEARS, D/O.LATE M. BALAKRISHNA MENON, KUTTYKKATTU HOUSE, CHITTUR ROAD, ERNAKULAM, KOCHI

011.

16. LILLY GEORGE MAMPILLY, AGED 7 YEARS, D/O. GEORGE MAMPILLY, HOUSE NO.III/893-B, K.K. ROAD, SANKALPAM, CHEMBUMUKKU, OPP. NEW HOPE DARSHAN FLATS, KAKKANADU, KOCHI - 682021.

17. M.K.RAJAMBAL, AGED 7 YEARS S/O. LATE M. KRISHNAN IYER, KUMARAMANGALAM TEMPLE ROAD, MADATHIPARAMBIL MADOM, SOUTH PART, THIRIPUNITHURA.

18. K.M.LEKSHMY DEVI, AGED 6 YEARS, D/O. LATE K.P. MADHAVA MENON, DEVIKRISHNA KALAPORAKAL, NADAMA, THIRIPUNITHURA, ERNAKULAM

301.

19. O.RAGHUNATH, AGED 7 YEARS, S/O. LATE DAMODHARAN NAIR, SREEPADAM, SNVP SCHOOL ROAD, KOTTAPURAM, TRIPUNITHURA, KOCHI.

20. V.RADHAKRISHNA MENON, AGED 7 YEARS, S/O. LATE N. VELAYUDHAN NAIR, CHEMBADY ROAD, ELAMAKKARA P.O., KOCHI - 26.

21. T.A.GEORGE, AGED 6 YEARS, S/O. T.V.AUGUSTHY, THOTTUMKAL, 36/291, KATHRUKADAVU, PULLEPPADY CBI JUNCTION, KALOOR P.O., KOCHI - 17.

22. SAMUEL M.MATHUNNI, AGED 6 YEARS, S/O. LATE M.K. MATHUNNY, MEENATHETHIL HOUSE, P.O. VETTICODE, KATTANAM, ALLEPPEY

503.

23. MARY KURIAN. K., AGED 6 YEARS, W/O. LATE MATHEW KURIEN, MEENATHETHIL HOUSE, P.O. VETTICODE, KATTANAM, ALLEPPEY

503. W.A.No.127 of 2013 - 3 - 24. A.S.VASUMATHI, AGED 6 YEARS, W/O. P.K. VASUDEVAN NAIR, HOUSE, NO.XVIII/159, SYRIAN CHURCH STREET, PALLURUTHY, KOCHI - 6.

25. M.T.VELU, AGED 7 YEARS, S/O. M.T. KITTU, XVI/900, INDIRA ROAD, THOPPUMPADY, KOCHI - 5.

26. K.S.HARIHARAN, AGED 6 YEARS, S/O. K.S. SUNDARA RAMAN, II-D, KAIRALI APARTMENTS, CAYAM ROAD, TRIPUNITHURA

301.

27. L.LALITHA BHAI, AGED 7 YEARS, W/O. M.K. NANO, KALATHIPARAMBIL HOUSE, VALAM, SOUTH CHITTUR P.O., KOCHI - 27.

28. T.N.VIJAYAKUMAR, AGED 6 YEARS, S/O. T.N. PILLAI, SAGITTARIUS, ASAN LANE, BHAGATH SINGH ROAD, PETTAH P.O., THIRUVANANTHAPURAM. BY ADVS.SRI.P.B.SURESH KUMAR (SENIOR ADVOCATE) SRI.U.BALAGANGADHARAN. RESPONDENTS/ RESPONDENTS:-

----- 1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE & INDUSTRY, DEPARTMENT OF COMMERCE, UDYOGABHAVAN, NEW DELHI

001.

2. THE ADDITIONAL SECRETARY-CUM-CHAIRMAN, EXPORT INSPECTION COUNCIL OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY, DEPARTMENT OF COMMERCE, UDYOGABHAVAN, NEW DELHI

001.

3. THE DIRECTOR (INSPECTION AND QUALITY CONTROL), EXPORT INSPECTION COUNCIL OF INDIA, 3RD FLOOR, ND YMCA, CULTURAL CENTRE, NEW DELHI

001.

4. THE JOINT DIRECTOR-IN CHARGE, EXPORT INSPECTION AGENCY, COCHIN, 27/1767-A, SHIPPIYARD QUARTERS ROAD, PANAMPILLY NAGAR SOUTH, KOCHI

036. R1 TO R4 BY ASST.SOLICITOR GENERAL OF INDIA SRI.P.PARAMESWARAN NAIR. THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-02-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- Manjula Chellur, C.J.

& K.Vinod Chandran, J.

----- W.A.No.127 of 2013 -----
Dated this, the 4th day of February, 2013 JUDGMENT K.Vinod Chandran,J.

The appellants, who were the petitioners before the learned Single Judge, are retired employees of Export Inspection Agency, Cochin, the 4th respondent. The conditions of service of the Central Government employees are mutatis mutandis applicable to the employees of the 4th respondent and to that end the Rules promulgated by the Central Government are also applicable to them. Though initially Contributory Pension Scheme was followed in the 4th respondent, in 1986, option was sought to switch over to General Provident Fund Rules, 1981 and CCS (Pension) Rules, 1972, as amended from time to time. The appellants in their writ petition only contend that many of them opted for CCS (Pension) Rules. The option only with respect to the 1st appellant was produced as Exhibit P2. The same may not be very relevant for the consideration of the above appeal, but we refer to it only to point out the very sticky premise on which the writ petition has been filed. W.A.No.127/2013 - 2 - 2. The dispute revolves around the interpretation of the terms of a Voluntary Retirement Scheme introduced for the employees of Export Inspection Council/Export Inspection Agencies, as per Exhibit P3 communication. The Scheme offered the following benefits: (i) Half a month's gratuity for every completed year. (ii) Exgratia of one and half months' emoluments (Pay+DA) for every completed year. (iii) Notice pay of one of three months pay in lieu of notice. (iv) Encashment of leave in the credit. (v) Full Matching CPF contribution in respect of employees, who have not opted for pension scheme. (vi) Full Commutation of pension (vii) Travel expenses.

3. The appellants admittedly opted for the Voluntary Retirement Scheme and was granted the same. The appellants availed of the full benefit offered by the Scheme and retired voluntarily with their eyes open. There were disputes in the

computation, inter alia with respect to weightage of 5 years that was granted by CCS (Pension) Rules when an employee retires voluntarily. The official W.A.No.127/2013 - 3 - respondents refusing to grant the same, some of the appellants herein along with others were before this Court and a learned Single Judge declared the eligibility for weightage. The dispute with respect to interest and pensionary benefits were also urged, but not considered. Hence a review was filed for the reason that, though the claim of interest on belated payment of large amounts towards commuted value of pension for five years as also the claim for relief on pension was raised in the writ petition, the same was not considered in the judgment.

4. By Exhibit P7, the learned Single Judge proceeded to consider the review on merits and granted 8% interest for the period specified in the order. The claim with respect to relief on pension was rejected. In our opinion, then the question of restoration of commuted value of pension did not at all arise. However, the learned Single Judge found that if at all, the restoration of the commuted value of pension would be an issue which arises after 15 years and, hence, reserved liberty to the petitioners to take up the same then. It is to be specifically noticed that Exhibit P7 categorically stated that such liberty will be available only "if they are entitled, as per the rules then in force, for restoration of pension on expiry of 15 years or W.A.No.127/2013 - 4 - any other modified period" (sic). This order was upheld in Exhibit P8 judgment, in appeal, filed by the appellants herein. There is absolutely no modification of rules pointed out by the appellants to entitle those who had retired under the Voluntary Retirement Scheme after availing full benefit of commutation of pension; to get restored the commuted value of pension after 15 years or any period for that matter.

5. The learned Senior Counsel would contend before us that the appellants are all in the twilight of their lives and the amounts received as per the Voluntary Retirement Scheme having been hardly sufficient to sustain them, their claim ought to be considered by the Government. We are unable to countenance the said argument. We specifically notice the benefits available under the Scheme as also the fact that there was absolutely no compulsion on the appellants to apply under the said Scheme and proceed on voluntary retirement. They applied with

their eyes open and full commutation of pension was a benefit offered to them and they were quite aware of the fact that they were entitled to pension under the CCS (Pension) Rules; if they continued in employment upto their age of superannuation. All the appellants, however, chose to go on voluntary retirement. Having W.A.No.127/2013 - 5 - availed of the benefit of the Scheme at that point of time, they cannot be allowed to turn around at this stage and contend insufficiency of the benefits granted at the earlier period and further claim restoration of the pension commuted.

6. The learned Senior Counsel would, however, take us through Exhibit P11 to contend that the appellants who had retired from the 4th respondent stand on the same footing as other pensioners who were given benefit under Exhibit P11. The primary fallacy in the said contention is that Exhibit P11 is an Office Memorandum conferring certain benefits on "pensioners who are eligible for promotion". The appellants are not pensioners, though they superannuated from the 4th respondent. They are persons who had proceeded on voluntary retirement under the terms of a scheme, which they chose to apply for, voluntarily. The contention that the Government grants restoration of 40% of pension after 15 years and the denial of the same to the appellants who were granted 100% commutation is discriminatory; cannot at all be countenanced. The discrimination attempted to be projected is merely illusory. At the risk of repetition, we say that the appellants are all who applied to be retired, voluntarily, as per the terms of the scheme. The mistake in W.A.No.127/2013 - 6 - judgment of having chosen under such a scheme cannot be the reason to find discrimination. The appellants who superannuated and those who accepted full commuted value of pension to retire voluntarily stand as a separate, distinct class.

7. Further, the entire claim is on the basis of the order, Exhibit P7, in the earlier round of litigation. We noticed that the liberty was only reserved with reference to any change in the rules. Such change in rules should relate to the persons who are retired under a Voluntary Retirement Scheme. No such rule being in force, we are of the opinion that the present attempt of the appellants cannot be entertained. Mere change in rules, which the Government does ordinarily, cannot by itself clothe the appellants with any entitlement as is referred to in Exhibit P7. Such

modification should relate to the persons who retired under the Scheme.

8. The learned Senior Counsel would place reliance on the decision in Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India, (1996) 2 SCC 187.to buttress his contention. Therein, the Central Government servants absorbed in public undertakings/enterprises and deemed to have retired from government service from the date of such W.A.No.127/2013 - 7 - absorption after commuting the entire pension, were held to be entitled to restoration of one-third of the fully commuted pension after the expiry of 15 years. Similar would be the case of the appellants, is the contention of the learned Senior Counsel.

9. On going through the facts of the decision cited supra, we find that the pensioners there were originally Government servants and with the advent of the public undertakings/enterprises, the Government of India sent some of their officers to the public undertakings on deputation. Such officers having continued for some period in such enterprises and having acquired an amount of experience, their services were found to be indispensable in the said undertakings. Hence, the Government devised measures to induct those willing officers to continue in the public undertakings and they were allowed to be absorbed in those public undertakings/enterprises. Government also deemed their retirement as in "public interest" and they were also granted retiral benefits. Those persons were also offered the usual facility of commuting one-third of their original pension under Civil Pensions (Commutation) Rules and were also offered additional facility of commuting the balance two-thirds pension. This exercise created three categories of persons, being W.A.No.127/2013 - 8 - (i) those who did not commute any amount of pension and drew full monthly pension; (ii) those who commuted one-third pension and drew pension reduced to the extent of the commuted amount; and (iii) the persons who commuted the full pension and drew no pension. It was in these circumstances that the last category was held to be entitled to pay restoration of one-third commutation as per the Civil Pension (Commutation) Rules after 15 years. We are of the opinion that the facts are clearly distinguishable. In the decision cited, there is an amount of compulsion in the retirement, which is totally absent in the instant case. The operation of the Scheme devised by the

Government in the decision cited led to and resulted in the creation of three categories of retirees who were similarly situated, being Government employees absorbed in public sector undertakings/ enterprises and retired in "public interest". Out of the three similarly situated category of employees, one category was alone denied the restoration of commuted pension. Hence they were also directed to be granted pension after 15 years, but what was restored was only pension applicable to the one-third commuted amount. Further all of them were permitted to retire in "public interest". There is absolutely no public interest involved in this case and the retirement was one W.A.No.127/2013 - 9 - voluntarily exercised by the appellants herein. As noticed above, the appellants cannot point to the pensioners who remained in service and retired after attaining the age of superannuation and say that the appellants are discriminated in so far as those who retired on superannuation alone are entitled to pension. We are of the opinion that they are not similarly placed. In the circumstances stated above, we are of the definite opinion that the Writ Appeal is without merit and we dismiss the same, upholding the judgment of the learned Single Judge, however, without any order as to costs. Sd/- Manjula Chellur, Chief Justice Sd/- K.Vinod Chandran, vku/ Judge (true copy)

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