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Court : Karnataka

Decided On : Nov-01-1962

Reported in : AIR1963Mys247; (1963)1MysLJ1

Judge : N. Sreenivasa Rau, C.J. and ; A. Narayana Pai, J.

Acts : [Constitution of India](#) - Articles 14 and 109; Revised Pension Rules - Rule 2; Mysore State Pension Rules

Appeal No. : Writ Petn. No. 1213 of 1961

Appellant : K. Srirangachar

Respondent : The State of Mysore and anr.

Advocate for Def. : B. Venkataswamy, High Court Govt. Pleader

Advocate for Pet/Ap. : M.K. Sreenivasa Iyengar, Adv.

Judgement :

Narayana Pai, J.

1. The petitioner, who retired on 5th June 1952 on pension from the service of the erstwhile State of Mysore as Inspector of Police, prays in this Writ Petition for the issue of an appropriate Writ directing the respondents, viz., the State Government and the Accountant General in Mysore, to pay him dearness allowance in respect

of his pension in terms of the orders of the State Government dated 25th January 1957, 6th August 1958 and 27th February 1961 annexed to the petition as Exs. B, C and D respectively, declaring as violative of Article 14 of the Constitution a certain interpretation placed on these orders by the Accountant General, which was incorporated in. September 1958 as a new Rule No. 147-A in the Mysore Treasury Code as a result of which, he complains, he has been deprived of the dearness allowance justly due to him under the said Government Orders.

2. Under the Rules in force at the time the petitioner retired from service governing pension, he became entitled to the payment of a monthly pension of Rs. 110-31/- nP. In accordance with the provisions of the said Pension Rules, the petitioner was permitted to commute Rs. 25/- out of the said pension by receiving a lump sum payment of Rs. 3024-14/- nP. being the commuted value of Rs. 25/- out of his pension. The commutation so sanctioned was given effect to from 1st October 1952 whereafter the cash payment received by the petitioner every month on account of pension was Rs. 85-31/- nP.

3. In October 1952, the Rajpramukh of Mysore in exercise of the powers under Article 309 of the [Constitution of India](#) amended the Service Rules relating to pension. The new Rules were called the Revised Pension Rules. Under the Revised Rules, Government servants retiring from service either on superannuation or in certain other specified circumstances were given the benefit of a lump sum payment called the Death-cum-Retirement Gratuity in addition to a monthly payment by way of pension. Under these Revised Rules, it was provided that the provisions of the Service Regulations in respect of commutation of pension were not to be applicable to Government servants governed by the Revised Rules. It appears that sometime in 1958 a further amendment was made to the Revised Rules restoring the old option of commuting a certain portion of the pension with the sanction of the Government.

4. The pensioners of the erstwhile State of Mysore were being paid dearness allowance in respect of pension only up to a limit of Rs. 40/- per month. When the Government appointed a Committee for the revision of pay scale in 1956, one of the questions considered was whether a portion of the dearness allowance paid to

Government servants should be merged with the pay for purposes of calculating pension. The Committee was not in favour of any such merger. The Government, accepting the view of the Committee and also taking into account that the pensioners of the old State of Mysore were being allowed dearness allowance in respect of pension only upto Rs. 40/-, directed under the first of the orders referred to above, viz., Order No. FI (B) 14034-14133-BUD 119-56-3 dated 25-1-1957 that dearness allowance at the rates specified therein be sanctioned with effect from 1-1-1957 to pensioners drawing pension up to Rs. 100/- per month. The rates of dearness allowance mentioned therein are Rs. 4/- per month when the monthly pension is Rs. 20/- or less, Rs. 5/- per month when the monthly pension is more than Rs. 20/- but not more than Rs. 40/-, and Rs. 6/- where the monthly pension is more than Rs. 40/- but not more than Rs. 100/-. It was also provided that pensioners drawing pension in excess of Rs. 100/- but not in excess of Rs. 106/- would be allowed to draw such rate of dearness allowance that the total of pension and dearness allowance does not exceed Rs. 106/-. By the second Order No. FD 324 BUD 58 dated 6-8-1958 dearness allowance was raised to a uniform rate of Rs. 6/- per month applicable to all pensioners drawing pension up to Rs. 100/- per month, subject to the condition mentioned above in regard to pensioners drawing a monthly pension in excess of Rs. 100/- but not in excess of Rs. 106/- per mensem. By the third Order No. FD 17 SRP (I) 61 dated 27-2-1961 the uniform rate was enhanced to Rs. 10/- per month with a similar marginal adjustment in the case of pensioners drawing pension between Rs. 100/- and Rs. 110/- per month.

5. The first of the Government Orders, as already stated, was made on 25-1-1957. The Accountant-General in Mysore by his letter No. PB. 1-9-7-3/488 dated 25-2-1957 issued instructions to all Government Treasuries in the State to the effect that in the case of a pensioner who had commuted a portion of his pension, the original amount of pension inclusive of commuted pension should be taken into account for determining the admissibility and the rate of dearness allowance under the said Order of the Government. It was this interpretation that was subsequently incorporated in the Treasury Code by an amendment issued on 12th September 1958.

6. The case of the petitioner is firstly that the interpretation so placed by the Accountant-General on the said Government Order is opposed to the plain language of the Order and secondly, that such an interpretation, if accepted, would lead to discrimination in contravention of Article 14 of the Constitution.

7. Now the words used in the Government Order on which the petitioner places reliance are 'pensioners drawing pensions up to Rs. 100/-.' According to the petitioner, the use of the word 'drawing' makes it perfectly clear that what the Government had in mind was the actual cash payment drawn or received by a Government servant as pension every month and therefore it is not permissible to take into account the commuted portion of the pension for determining the admissibility and rate of dearness allowance sanctioned by the Orders of the Government referred to above. We find it difficult to accept this contention of the petitioner for the simple reason that in seeking to place emphasis on the word 'draw' he totally ignores or leaves out of account the fact that what is described as being drawn in the Government Order is pension and not what is received or drawn in cash every month. Unless therefore the petitioner could make out that the lump sum payment received by him as the commuted value of a portion of the pension to which he was entitled is not pension at all, it is impossible to hold that the term 'pension' used in the Government Order must be read as excluding the portion of the pension represented by the said commuted value. It is indisputable that the actual pension to which the petitioner became entitled upon retirement was Rs. 110/31 nP. It cannot also be disputed that the lump sum payment of Rs. 3024-14/- nP. which he received was the commuted value of Rs. 25/- out of the said pension of Rs. 110-31/- nP. per month. 'Commutation' actually means interchange of two things or the buying off of one obligation by another obligation. Hence 'the commutation for a lump sum of a portion of a pension' mentioned in Regulation 450 of the Mysore Service Regulations under which the petitioner commuted a portion of his pension as stated above must be read to mean the buying off by the Government of its obligation to pay Rs. 25/- per month to the petitioner by undertaking and discharging an obligation to pay to the petitioner a lump sum of Rs. 3024-14/-nP. The first table annexed to Appendix L of the said Regulations containing rules as to commutation of pensions also expresses commutation value as a number of years purchase. It is in fact in the nature of a

present value of a periodical payment expected to last an estimated number of years for which the Government purchases the obligation of having to make the said periodical payment for the said estimated number of years. There can be no doubt therefore that the receipt by the petitioner of the sum of Rs. 3024-14/- nP. paid by the Government has the same effect as payment of Rs. 25/- per month from the point of view of the Government and the drawing of Rs. 25/- per month from the point of view of the petitioner.

8. We are therefore of the opinion that the interpretation placed by the Accountant-General on the Order of the Government dated 25th January 1957 is correct and not open to challenge by the petitioner.

9. In this view, the introduction of new Rule 147-A in the Mysore Treasury Code must be held to be merely declaratory of the position as it existed at all relevant times and not as an amendment altering the position.

10. The alleged contravention of Article 14 of the Constitution is said to arise out of the fact that the aforesaid interpretation by the Accountant-General will result in the Government Orders sanctioning dearness allowance to pensioners operating in one manner in respect of pensioners governed by the old Rules and in quite a different manner in respect of pensioners governed by the Revised Pension Rules. In the case of the latter, the pension that is taken into account for determining both the admissibility and the rate of dearness allowance is only the cash pension received by the pensioners month by month exclusive of the amount of Death-cum-Retirement Gratuity. According to the view pressed on behalf of the petitioner, the Death-cum-Retirement Gratuity under the Revised Rules in actual event occupies the same position as the maximum permissible commutation of pension under the old Rules, with this difference viz., that commutation was optional under the Old Rules whereas under the Revised Rules it is made compulsory and is made available in the shape of Death-cum-Retirement Gratuity. The rate of pension under the Revised Rules, according to this argument, is also about the same as the net pension which a person similarly situated would get under the old Rules after availing himself of the maximum permissible commutation. It is also pointed out on behalf of the petitioner that, according to

one of the definitions contained in Rule 2 of the Revised Pension Rules, the term 'pension', except when used in contradistinction to Death-cum-Retirement Gratuity, includes such gratuity.

11. That there is a difference in respect of the availability of the benefit under the Government Orders regarding dearness allowance to pensioners depending upon whether such pensioners are governed by the old Rules or by the Revised Rules is obvious and is not sought to be controverted on behalf of the State. But, the mere fact that there is or there arises such a difference does not necessarily mean that it constitutes discrimination in contravention of Article 14 of the Constitution. The very fact that one class of pensioners is governed by one set of rules and another class by another set of rules at the time a scheme for payment of dearness allowance to pensioners is constituted and given effect to would, in our opinion, furnish a basis for reasonable classification in the matter of applying the scheme of I dearness allowance. Indeed, the two classes of I pensioners cannot be said to be similarly situated. Actually in this case, the class of pensioners selected for conferring the benefit of dearness allowance is of pensioners drawing a monthly pension not exceeding a specified figure. The fact that a pensioner gets a pension exceeding the specified figure either because his total emoluments relevant for calculation of pension were high enough to bring him a pension in excess of a specified figure or as a result of the operation of the rules governing pension applicable to him, does not, in our opinion, furnish the ground for any complaint by him of discrimination in contravention of Article, 14 of the Constitution.

12. Neither the definition in Rule 2 of the Revised Pension Rules relied upon by the petitioner nor the apparent similarity pointed out by him between the case of pensioners governed by the old Rules taking advantage of commutation to the maximum permissible limit and of pensioners governed by the Revised pension Rules drawing the Death-cum-Retirement Gratuity is of any assistance in support of the argument of the alleged contravention of Article 14 of the Constitution.

13. The definition obviously has value only in the setting of the Rules and is relevant for certain purposes of the Rules but cannot be taken as suggesting that

pension and gratuity are the same for all purposes. The definition itself indicates that there is a distinction between the two in their essential nature which it is not the object of the definition to totally wipe off or ignore. Pension, Gratuity and Provident Fund, as is well known, are three different and distinct types of retirement benefits although the basis for calculating all of them is furnished by the salary or emoluments drawn by a Government servant.

14. The apparent similarity or correspondence, which the petitioner has attempted to establish between the Death-cum-Retirement Gratuity under the Revised Pension Rules and the highest permissible commutation under the old Rules, is hardly any ground for holding that in the eye of law commutated pension ceases to be pension and acquires the nature of gratuity. It certainly cannot be disputed and is not disputed that under the Revised Pension Rules a Government servant is intended to be given and actually gets in certain respects larger advantages in the matter of retirement benefits.

15. We are therefore unable to find any legal basis in support of the prayers made in the Writ Petition.

16. It is, however, argued on behalf of the petitioner that because the pensioners governed by the Revised Pension Rules do get larger benefits than those governed by the old Pension Rules, the Government could have and in fairness should have made an attempt to achieve some measure of parity between the two classes of pensioners at least in the matter of dearness allowance which they have been pleased to grant under the orders referred to above. It is pointed out that there is really no practical difficulty as the Government seem to plead in the way of achieving such parity, -- as for example, by raising to a suitable figure above Rs. 100/- the amount of monthly pension eligible for drawing dearness allowance in the case of pensioners governed by the old Rules. That, however, is a matter of policy with the Government, and cannot be made the basis for the issue of any Writ or direction under Article 226 of the Constitution. All that we can say is that the suggestion made on behalf of the petitioner by his learned counsel is worthy of consideration.

17. The Writ Petition is dismissed but with out costs.

