

Union of India (Uoi) Vs. George

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SooperKanoon Citation : sooperkanoon.com/728049

Court : Kerala

Decided On : Aug-05-2003

Reported in : 2003(3)KLT387

Judge : Jawahar Lal Gupta, C.J. and; A.K. Basheer, J.

Acts : Central Civil Services (Pension) Rules, 1972 - Rule 70; Central Civil Services (Extraordinary Pension) Rules; Central Civil Services (Pension) Regulation, 1972 - Regulation 5, 5(1) and 5(2)

Appeal No. : W.P.(C) Nos. 18705 of 2003

Appellant : Union of India (Uoi)

Respondent : George

Advocate for Def. : C.S. Gopalakrishnan Nair, Adv.

Advocate for Pet/Ap. : P. Vijayakumar, Adv.

Disposition : Writ petition dismissed

Judgement :

Jawahar Lal Gupta, C.J.

1. Were the respondents who were in service till December 31, 1995, entitled to the payment of retiral benefits at the rates as prevalent on that day or at the rates

as revised with effect from January 1, 1996? The Tribunal has upheld the claim of respondent Nos. 1 and 2. It has taken the view that the two officials had become pensioners on January 1, 1996 and were, thus, entitled to the benefit of revision. The Union of India etc. challenge the order. Has the Tribunal erred? First, the facts may be noticed.

2. The two respondents were working in the Telecom Department on the posts of Senior Section Supervisor and Section Supervisor respectively. They had continued in service till December 31, 1995. They were paid pension with effect from January 1, 1996.

3. The Fifth Pay Commission recommended the revision of pension and other retiral benefits. In pursuance to these recommendations, the Government of India issued two separate orders on October 27, 1997. The orders regulated the grant of pension etc. to the Central Government employees who were governed by the provisions of the Central Civil Services (Pension) Rules, 1972. The method of fixation of emoluments, pension, gratuity etc. was laid down.

4. The two respondents were not given the benefit of the revision of pension etc. on the ground that they had retired on December 31, 1995. The orders provided the benefit only to those who had retired on January 1, 1996. Consequently, they approached the Central Administrative Tribunal claiming that their pension and other retiral benefits were to be calculated in accordance with the two circulars issued by the Government on October 27, 1997. Copies of these circulars were produced as Annexures A1 and A2 respectively.

5. The Department contested the claim. It was pleaded that the benefit was only admissible to the persons who had retired on or after January 1, 1996. The two respondents had actually retired on December 31, 1995. Thus, the Department claimed that they were not entitled to the benefit.

6. The matter was examined by the Tribunal. It found that the officers had continued in service till December 31, 1995. They had become pensioners on January 1, 1996. Thus, they were entitled to the benefit of the revision of pension etc. Consequently, their petition was allowed. A copy of the order passed by the

Tribunal is at Ext.P3. Aggrieved by this order, the Department has filed the present Writ Petition.

7. Mr. Vijaya Kumar, learned counsel for the petitioners has contended that the last working day of an employee is the date of his retirement. The two respondents had worked in the Department till December 31, 1995. Thus, they had retired on that day. Consequently, the benefit of revised rates of pension etc. as granted to persons retiring on or after January 1, 1996 is not admissible in their case. On the other hand, Mr. Nair, learned counsel for respondent Nos. 1 and 2 has contended that the two employees had actually served the Department till the midnight of December 31, 1995. They were paid their full salary for that day. They had become pensioners only on January 1, 1996. Thus, the date on which they become entitled to pension is the date of their actual retirement. On this basis, the counsel submits that the benefit of the two circulars issued by the Government vide letters dated October 27, 1997 has been rightly granted to them by the Tribunal.

8. In view of the contentions as raised by the learned counsel, the short question that arises for consideration is: Does a person retire on the last working day or the day after?

9. The term 'retirement' has not been defined in the rules. However, according to Black's Law Dictionary (7th edition) 'retirement' means:

'Voluntary termination of one's own employment or career, especially upon reaching a certain age'

In the case of civil servants, the normal age of retirement is 55 years or 58 years. In the case of the Central Government employees, at the relevant time, the age of superannuation was fixed at 58 years. The rules also postulate that a person would continue in the service till the last date of the month in which he attains the age of superannuation. Resultantly, the two respondents had continued in service till December 31, 1995. Admittedly, their dates of birth were prior to that date. In other words, the two respondents were in service till the midnight intervening December 31, 1995 and January 1, 1996. As a result of their being in service, they

were paid full salary for December 31, 1995. It is only with effect from January 1, 1996 that they had become entitled to the grant of pension. Should they still be paid pension at a rate lower than that which was made effective by the Government with effect from January 1, 1996?

10. The circular dated October 27, 1997, a copy of which has been produced as Annexure A2 at page 20 of the paper book, provides in paragraph 2.1 that the order shall apply 'to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Central Civil Services (Pension) Rules, 1972....' Thus, the intent is clear. The orders were retrospective in operation and govern the cases of persons who were drawing pension on January 1, 1996.

In paragraph 3.1 the 'existing pensioner' and the 'existing pension' were defined as under:

(a) 'Existing Pensioner' or 'Existing Family Pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995.

(b) 'Existing Pension' means the basic pension inclusive of commuted pension, if any, due on 31.12.1995. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding Rules applicable to Railway employees and Members of all India Services.'

In paragraphs 3.1 and 3.2 of the circular it was provided as under:

'3.1. The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.1996. Separate orders will be issued in respect of employees who retired/died before 1.1.1996.

'3.2. Where pension/family pension/DCRG/commutation of pension has already been sanctioned in cases occurring on or after 1.1.1996, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioners in view of the Rule 70 of the CCS

(Pension) Rule, 1972.'

11. A perusal of the above shows that the revised circulars applied to persons 'who were drawing pension/family pension on 1.1.1996.' The 'existing pensioner' was defined to mean a person who had become entitled to draw pension on December 31, 1995. These two provisions clearly indicate that the persons who had continued in service on December 31, 1995 and were to draw pension with effect from January 1, 1996 were entitled to the benefits as applicable under the two circulars. It is undoubtedly true that in Para 3.1 it was provided that 'the revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.1996.' It only implied that the right to pension should have accrued on January 1, 1996. This position becomes clear from Para 3.2 wherein it was specifically said, 'Where pension/ family pension/ DCRG/ commutation of pension has already been sanctioned in cases occurring on or after 1.1.1996, the same shall be revised in terms of these orders.'

12. Mr. Vijaya Kumar has referred to Regulation 5 of the 1972 Regulations to contend that the last working day is the date of retirement. Regulations 5(1) and 5(2) provide as under:

'Regulation of claims to pension or family pension:

(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.'

A perusal of the above provision also shows that the claim to pension is regulated by the provisions in force at the time of retirement. Under Clause (2), the day on which a Government servant retires or is retired or is discharged or is allowed to resign from service shall be treated as his last working day. The provision does not answer the issue arising in the present case. It does not mean that pension is

payable on the last working day.

13. What is the position in the present case? Respondents 1 and 2 had admittedly drawn full salary for the month of December 1995. They were paid full wages for the last day of the month viz., December 31, 1995. In fact, as well as in law, they were in the service of the Department till the midnight of December 31, 1995. It is only when the clock ticks 12 midnight that the relationship of employer and employee ceases and the status of a pensioner commences. Thus, from January 1, 1996, the two respondents had become pensioners. The date on which the right to claim pension accrues is deemed to be the last working day of the employee. On this basis, the benefit of the circular dated October 27, 1997 was clearly available to the two respondents.

14. Mr. Vijaya Kumar has placed reliance on the decision of their Lordships of the Supreme Court in *S. Banerjee v. Union of India* (AIR 1990 SC 285). This was a case where the officer was working in the Supreme Court. He was entitled to continue in service till March 31, 1987, He had sought premature retirement. His request was accepted. He was allowed to retire from the forenoon of January 1, 1986. Having allowed him to retire, the benefit of the revised rate of pension as admissible with effect from January 1, 1986 was sought to be denied. The claim of the officer was accepted by their Lordships.

15. Mr. Vijaya Kumar contends that the claim was accepted for the sole reason that the officer had been retired from January 1, 1986. As against this, the two respondents had retired on December 31, 1995.

16. We are unable to accept this contention. The two officials .had actually continued in service till the midnight of December 31, 1995. It is only from January 1, 1996 that they had ceased to be in service and acquired the status of pensioners. Resultantly their claim to pension had to be determined at the rate prevalent on the date. This is precisely what the Tribunal has given them. The case is in no way different from that of Banerjee. In both cases, the pay had been paid till December 31.

17. Mr. Nair, learned counsel for the respondents has referred to the decision of a Division Bench of the Andhra Pradesh High Court in W.P. Nos. 1219 and 1409 of 1998 decided on December 13, 2001. He has also referred to the Division Bench judgment of this Court in O.P. No. 32459/2001 decided on January 4, 2002. He contends that the observations in these two cases show that the view was taken by the Tribunal in this case is correct.

18. The observations in these two cases certainly lend support to the contention of the counsel. In O.P. No. 32459/2001, the Bench was dealing with an order regarding the grant of commuted value of pension. The Tribunal's order granting the benefit of revision, passed in similar circumstances, was affirmed. However, in view of the fact that we are upholding the order of the Tribunal, a detailed examination of these two decisions is not necessary.

19. No other point has been raised.

In view of the above we are unable to find any merit in this Writ Petition. It is consequently dismissed. The parties are however, left to bear their own costs.