

State of Rajasthan Vs. Retired Contributory Provident Fund Holders Association

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Court : Rajasthan

Decided On : Mar-11-1987

Reported in : 1987(1)WLN476

Judge : Miss Kanta Bhatnagar and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Civil Special Appeal No. 36 of 1986

Appellant : State of Rajasthan

Respondent : Retired Contributory Provident Fund Holders Association

Advocate for Def. : Mr. MR. Calla

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. This appeal under Section 18 of the Rajasthan High Court Ordinance, 1959 is directed against the order dated September 3, 1985 passed by the learned single Judge of this Court in a writ petition under Article 226 of the Constitution of India filed by the respondent, the Retired Contributory Provident Fund Holders' Association (for short 'the Association' here in after) Jodhpur, against the State of

Rajasthan, in grievance to the denial of pension benefits to the Members of the Association.

2. The facts material for the disposal of this appeal are that, the Members of the Association were employees of the erstwhile Princely State of Jodhpur and were the Members of the Contributory Provident Fund Scheme (for short 'the C.P.F. Scheme' here in after) which was prevalent in the former State of Jodhpur. After the formation of Rajasthan, those employees became the employees of the Government of Rajasthan and were governed by the Rajasthan Service Rules, 1951 (for short 'the Rules' here in after) The Scheme of C.P.F. was that the employees were to give their own subscription and an amount equal there to was contributed by the Government. Those employees were asked to give option for pension. Some of them opted for pension while others did not. Those who opted for pension were placed in an advantageous position than the rest. The pay scales of the Rajasthan employees were revised in the years 1961, 1966, 1969, 1971, 1976 and 1983. The increase in the pay scales naturally brought an increase in the pension to be paid to the retired employees. However, no such corresponding benefit was available to those who had opted for containing in the C.P.F. Scheme. In order to revise the pay scales and redress the grievances of the employees under the pressure of rising prices, the State of Rajasthan constituted a Pay Commission headed by Hon'ble Mr. Justice B.P. Beri, Former Chief Justice of Rajasthan, by a notification dated May 31, 1979. The Commission filed its report on February 17, 1983 and the recommendations were made effective from September 1, 1981. Point No. 7 of that report relates to the recommendation for ex-gratia payment to those who had retired as Members of the C.P.F. Scheme. The C.P.F. Holders made a representation to the Chief Minister for an opportunity of exercising fresh option for pension. Memorandum/Circulars Exhibits 5 to 8 had been issued by the Government of Rajasthan by which it was made open to the Government Servants who were Members of the C.P.F Scheme and had retired after the date mentioned there in or were in service on a particular date, to opt for pension. The case of the Members of the respondents Association was not governed by those Circulars & therefore, they could not have opted for pension. The benefit given to some and denial of the same to others was taken to be a hostile discrimination by the Members of the Association and taking it to be

violative of Articles 14 and 16 of the Constitution of India the Association invoked the extra ordinary jurisdiction of this Court by filing the writ petition in this Court. The learned single Judge placed reliance on the principles enunciated by Hon'ble the Supreme Court in the case of D.S. Nakara v. Union of India : (1983)ILLJ104SC and followed in the case of Bidhubhushan Malik v. Union of India (2) which was confirmed by Hon'ble the Supreme Court in a Special Leave Petition in the case of Union of India v. Bidhubhushan Malik : [1984]3SCR550 .

3. According to the learned single Judge, all Government Servants who were the CPF Holders constituted one class governed by the Rules and on the basis of the date of retirement the classification amongst the retired C.P.F. Holders could not be made because it does not pass the test of permissible classification. Discussing in detail the unconstitutional and invalid portions of the memorandum/circulars Exs. 5 to 8 where by opportunities to opt for pension were given to the persons who had retired on or after a particular date or were in service on the dates mentioned there in, his Lordships concluded that the unconstitutional part in each of the memos shall be omitted. Resultantly, the writ petition was allowed and words 'on or after 1-9-1968' in Ex. 5, 'after 1-9-1976' in Ex. 6, 'on or after 31-1-1977' in Ex 7 and 'after 1-9-1981' in Ex. 8 were held to be unconstitutional and struck down.

4. Feeling dissatisfied by the decision of the learned single Judge, the State of Rajasthan has assailed the same in this special appeal.

5. Mr. J.P. Joshi, learned Additional Advocate strenuously contended that all the C.P.F. Holders were given opportunity to opt for pension after the merger of the Princely State in the State of Rajasthan. That, having failed to avail the opportunity so given, the Members of the Association are estopped from making such a claim subsequently and that too after the lapse of approximately about two decades of their retirements from service.

6. It has been stressed by Mr. Joshi that when ever there was any liberlisation in the Pension Rules or service conditions, the CPF Holders were given option. That, fixing a particular date in the various memorandums, orders and circulars for making available the opportunity of option to me C.P.F. Members had an object

behind it and cannot be said to be discriminatory or hostile to the interest of those who did not fall in the category mentioned in those orders and circulars. The reason according to Mr. Joshi for inserting the various dates in Exs. 5 to 8. which according to the learned single Judge are unconstitutional, was that the cases of the Members of the respondent-Association had been settled long back and they had availed the benefit of provident fund allowed and having done so, there was no justification for their further demanding the benefit available to others who either retired subsequently or were in service on the dates these orders were issued and as such formed a different category.

7. Mr. MR. Calla, learned Counsel for the respondent-Association vehemently argued that the classification made between the persons similarly situated was not permissible and the learned single Judge has rightly held it to be violative of Articles 14 and 16 of the Constitution of India. That, there was a recurring cause of action to the respondent-Association. That, when the Beri Commission, upon considering the hard hit state in which the C.P.F. Holders were placed, recommended ex-gratia payment to those who had retired as Members of the C.P.F. Scheme, the C.P.F. Holders approached the Government and being unsuccessful there, sought relief from the Court by filing the writ petition. That, there was no uniform policy. Those who retired after them in or after the year mentioned in Exs. 5 to 8 or were in service on the dates mentioned there in had two. three or four opportunities for option, where as the Members of the respondent-Association filing the writ petition had only one opportunity in the year 1954 which they did not avail because at that time there was not much difference between the benefits under the C.P.F. and Pension Schemes. It was on account of subsequent revision Of the pay scales and liberlisation of pension that there was remarkable difference between the benefits under the C.P.F. and Pension Schemes.

8. Mr. Calla, emphasised that if the change of circumstances necessitated allowing an opportunity for option for pension scheme it should have been allowed to all those who fell in that category and not only to those who had retired on or before the dates mentioned in the circulars and orders or were in service on the dales mentioned there in.

9. There is no dispute on the point that after the formation of Rajasthan, the Members under the C.P.F. Scheme were given option and some of them at that time opted for pension while others continued in the CPF. Scheme, subsequently because of the change of circumstances, such as rise in prices, the Government of Rajasthan realised the difficulties of its employees and revised the Pay Scales in the years 1961, 1966, 1971, 1976, and 1983. While doing so the Ranawat Commission report of 1971 made applicable from 1-9-1968 and the Beri Commission Report of 1983, made effective from 1-9-1981, were kept in view. In consonance with the revised Pay Scales, there was also liberalisation in the Pension Rules and as stated earlier option was given to the C.P.F. Holders who retired on or before the dates mentioned in Eks. 5 to 8 or were in service on the dates mentioned there in. The C.P.F. Holders who have ventilated their grievances in the writ petition did not fall in that category and are placed in a pitiable situation because of the rise in prices and their having no or inadequate means of livelihood.

10. The persons who had faithfully served the Government in the hey days of their life were left forlorn and burdened with financial crisis without there being economic security. True it is that they had received the C.P.F. amount on their retirement but that, as Mr. Calla submitted, could not naturally be sufficient to maintain themselves for such a long period. However, simply because of that they may not be held entitled to pension if they are not entitled to it otherwise.

11. The point for determination would be as to whether the Government is obliged to allow option to them now as it has allowed to Others as is evident from Eks. 5 to 8.

12. C.P.F. Holders are a class in themselves, The important question would be as to whether the classification made by the Government in providing a number of opportunities to some of them to opt for pension in view of the revision of the Pay Scales and liberalisation of the Pension Rules and denying that opportunity to some of them, simply because they had retired some time prior to those who had been given the benefit under Eks. 5 to 8, is a permissible classification. If the answer is in affirmative then what so ever be the position in which the Members of

the respondent-Association might have been placed they cannot as of right claim a further opportunity for opting for pension. However, if the answer is in negative then they are entitled to the opportunity for option despite a long lapse of time after their retirement.

13. All the C.P.F. Holders were governed by one scheme and when they became employees of the Government of Rajasthan by virtue of the merger of the Princely State in which they were employed they constituted one category. It was only the age factor which differentiated one from the other. The result therefore, was that some of them retired early and were given only one option after their becoming employees of the Government of Rajasthan, while others, who had retired at a later date, had a number of opportunities to opt for pension. Thus there cannot be any dispute on the point that all the C.P.F. Holders formed a class in themselves and were similarly situated.

14. In order to arrive at a conclusion on the point, it would be profitable to refer to certain decisions where in the question of classification amongst persons similarly situated has been discussed and the question of the violation of Articles 14 and 16 of the Constitution has been taken into consideration.

15. In the case of Pursottam Lal v. Union of India : (1973)ILLJ407SC implementation of the revised pay scales in a particular category of servants from a date later than that recommended by the Pay Commission and thus non-implementation of its report only in respect of those persons was taken to amount to violation of Articles 14 and 16 of the Constitution.

16. The question of discrimination between a class of pensioners by fixing a particular date and thereby giving benefit to a few and denying the same to others was considered to be violative of the principles of Article 14 of the Constitution in a number of cases.

17. The learned single Judge has placed reliance mainly on the case of D.S. Nakara v. Union of India : (1983)ILLJ104SC . The point for consideration before their Lordships of the Supreme Court in that case was very much similar to the point coming for consideration in the case on hand.

18. In D.S. Nakara's case (I.) right, of an employee to pension under the relevant rules had been discussed and following observations have been made:

From the discussion three things emerge: (i) that, pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that, the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

19. In the following passage occurring in the decision, their Lordships dealt with the question of necessity of regular payment to a retired employee.

Then comes the old age in the life of every one, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfillment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered upto society what they were fully equipped with their mental and physical powers. In the fall of life the State shall ensure to the citizens, a reasonable decent standard of life medical aid freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power Legislative, Executive and Judiciary to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfillment of goal every State action taken must be directed, and

must be so interpreted, as to take the society one step towards the goal.

20. Their Lordships further observed that the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation, which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

21. With regard to the persons similarly situated, their Lordships did not consider classification proper and held as under:

Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement. Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.

22. The principles enunciated in D.S. Nakara's case (1) were followed in the case of Bidhubhushan Malik v. Union of India AIR 1983 All 209. The question of the classification of Judges on the basis of the date of retirement for conferment of liberalised pensionary benefit was for consideration before the Court and it was held as under:.. that the eligibility for liberalised pension of having retired on or after 1st day of October 1974, in the High Court Judges (Conditions of Service) Act, 1974 (as amended) violates Article 14 and is unconstitutional.

The decision of the case was as under:

The High Court Judges (Conditions of Service) Act, 1954, (as amended) shall be read-down as under in para 10 of the First Schedule, the words 'and who has retired on or after October 1, 1974' are unconstitutional and are struck down. Omitting the unconstitutional part it is declared that the Judges (including the Chief

Justices) of the High Court are entitled to pension as computed under the High Court Judges (Conditions of Service) Act, 1954(as amended) irrespective of the date of retirement. The date October 1, 1974 continued to be relevant as being one from which the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976 irrespective of the date of retirement and hence there is no question of payment of arrears of pension for the period preceding October 1, 1974....

23. The Union of India feeling dissatisfied with the decision of the Allahabad High Court, approached the Supreme Court. Their Lordships of the Supreme Court while deciding the Special Leave Petition Union of India v. Bindhubhushan Malik : [1984]3SCR550 agreed with the conclusion arrived at by the learned Judges of the Allahabad High Court.

24. Similar point came for consideration before the Supreme Court in case of N.L. Abhyankar and Ors. v. Union of India 1984(2) SLJ 66 and their Lordships in view of the Supreme Court decision in D.S. Nakara's case : (1983)ILLJ104SC and reasons mentioned in Allahabad High Court in Bindubhushan Malik's case AIR 1983 All 209 held that the Judges of the High Courts and Supreme Court will be entitled to the pensionary benefit as per Amended Act of 1976 irrespective of the dates of their retirement.

25. The question of classification amongst persons similarly placed came for consideration in the case of Sengara Singh and Ors. v. The State of Punjab and Ors. AIR 1984 SC 1499. The State of Punjab initiated disciplinary action and dismissed about 1100 members of the Police Force on the ground that they had participated in an agitation which was impermissible under the rules governing the discipline in the Police Force of the State of Punjab. A number of criminal prosecutions were filed against the participants in the agitation. Some of them filed writ petitions but they were dismissed. After that about 1000 former members of the police force were reinstated and criminal cases pending against some of them were withdrawn. Those who were weeded out by the Committee constituted for the purpose filed writ petitions in the High Court. The writ petitions were dismissed. Their Lordships of the Supreme Court quashed the order of High Court dismissing

the writ petitions in the ground that logically the petitioners must receive the same benefit which those reinstated received, in the absence of any distinguishing feature in their cases.

26. The above referred decisions settled the point that classification amongst the persons similarly situated is not permissible by law and therefore violates the principles of fundamental rights enumerated in Articles 14 and 16 of the Constitution.

27. Mr. Joshi did not dispute this position but submitted that it is not in all cases where fixing a date in a Circular may be unconstitutional or violative of Articles 14 and 16 of the Constitution of India. To substantiate his submission, Mr. Joshi referred to the decision in the case of Dr. (Mrs.) Sushma Sharma etc. etc. v. State of Rajasthan and Ors. 1985(2) SLR 382. In that case there were irregular appointments in the Rajasthan University as lecturers for a long time. The lecturers had been appointed temporarily and continued from year to year but there were no rules for their absorption into permanent cadre. The services of the lecturers were terminated from time to time before vacation and they were re-appointed so as to deprive them of the continuity of service which would have entitled them to permanent absorption or regularisation of their services. The Rajasthan Universities' Teachers and Officers (Special Conditions of Service) Act, 1974 provided elaborate procedure for recruitment of Teachers and Officers in the Universities, but no selections had been made on the basis of that Act and all appointments were made on temporary basis. In order to provide absorption of temporary lecturers of long standing, working in the Universities of Rajasthan, the Ordinance of 1978 was promulgated and by virtue of that only those who had been appointed before 25th June, 1975 and continued to be in service on the date of the coming into operation of the Ordinance i.e. 12th June, 1978 were eligible for absorption. It was fixing date 25th June, 1975 that had caused grievance to the lecturers who could not get benefit from the circular. June 25, 1975 was the date on which the last emergency was promulgated in the country. The case put up by the learned Advocate General before the Court was that the date was selected at the instance of the Rajasthan University and the Vice Chancellor. The Standing Counsel of the University had not suggested the date nor had he any justification

for the fixing of that date. The documents summoned revealed that the date was fixed precisely on account of the suggestion of the Vice Chancellor of the Rajasthan University. Their Lordships noted the history of the Ordinance and the purpose behind it. The initial proposal was to cover the cases of temporary lecturers appointed on or before June, 1973, but on representations by certain lecturers, to whom benefit could not be extended as they were appointed on or before June 25, 1975, the Ordinance was made applicable to those who had continued from a date prior to 1975 upto June, 1978. To include the employees of a certain tenure of service for the purpose of absorption was the object to be achieved and thus fixing a date had a rational nexus with the object. For the regularisation of the appointment of the teachers, experience was taken to be necessary. It was held that the period of experience would be how much and the date of experience should begin from what time are within the legislative wisdom, and there was nothing in the case to indicate that the starting point i.e. to be in service on or before June 25, 1975 was an arbitrary choice. Coincidentally that date also happened to be the date on which last emergency was introduced in the country. However, their Lordships did not find any basis to hold that the date was so fixed in order to differentiate between pre-emergency and the post-emergency appointees for consideration for absorption.

28. The case of the CPF Holders-respondent does not fall in the category of the cases where there may be basis for fixing the dates, as has been done in Exs. 5 to 8 and thereby making an unreasonable classification amongst the persons similarly situated. Here there was neither the question of experience nor the conditions of service that might have differentiated the cases of the Members of the respondent-Association from those who had been given options a number of times by the Circulars Exs. 5 to 8,

29. Similarly the case of State Government Pensioners' Association and Ors. v. State of Andhra Pradesh : [1986]3SCR383 relied on by Mr. Joshi is of no help to the appellant. What was denied in that case to the persons retiring before a particular date was the benefit of enhanced gratuity. The provisions for payment of gratuity on stopped up basis prospectively from a specified date of retirement was not considered to be unconstitutional for the reasons that even if that part of the

notification which provided for enforcement with effect from the specified date was struck down, it would have operated prospectively with effect from the date of issuance of the notification, since it did not retrospectively apply to all those who had already retired before the said date and received gratuity on the then prevailing basis. It was also observed that in order to make provisions retrospective, the notification should have an express provision to that effect.

30. In the present case there is no question of retrospective or prospective operation of a provision. Rather the point is about discrimination in giving the chance to opt for pension. It is this principle enunciated in D.S. Sahara's case and subsequently followed in a number of cases, some of which we have already referred to, which would govern the case before us.

31. Mr. Joshi next argued that even if there was any right to the Members of the respondent-Association to opt for pension it has been waived by them by not availing the opportunity given to them for option after the formation of the State of Rajasthan. That, once having expressed a desire to continue in the CPF Scheme, the members of the respondent-Association are estopped from raising a demand of option being given to them now.

32. The argument has no force. To strengthen our view we would refer to the principle enunciated in the case of *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.* : AIR 1986 SC180 where in the following principle was propounded:

There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental right. There can also be no waiver of fundamental rights.

Applying this principle to the facts and circumstances of the case before the Court, their Lordships observed that, merely because an undertaking was given before the High Court in writ proceedings on behalf of the hut and pavement dwellers that they did not claim any fundamental right to put up huts on pavements or public roads and since they had given an undertaking to the High Court that they will not obstruct the demolition of the huts after certain date, they could not be estopped from contending before the Supreme Court that the huts constructed by them on the pavements cannot be demolished because of their right to earn livelihood which is comprehended within the fundamental right to life guaranteed by Article 21 of the Constitution.

33. Applying the principle propounded in the above referred case, to the present case it can safely be said that merely because the aggrieved Members of the respondent Association had not opted pension at a particular time in view of the then prevailing circumstances, they cannot be estopped from claiming the right to opt for pension subsequently in the changed circumstances when the others, similarly situated, have been placed in an advantageous position by virtue of Exhibits 5 and 7. The fixing of dates in those Circulars has no rationale with the object to be achieved.

34. We are therefore, in perfect agreement with the finding arrived at by the learned single Judge and find no ground to interfere with it.

35. The special appeal has no merits and is dismissed. Costs are made easy.