

Manotosh Roy and anr. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : May-26-1992

Reported in : (1993)2CALLT205(HC)

Judge : Kalyanmoy Ganguli, J.

Acts : [Constitution of India](#) - Articles 14, 226 and 311; ;West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 - Rule 91

Appeal No. : C.O. No. 9993(W) of 1988

Appellant : Manotosh Roy and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : D.P. Kundu and ;Amal Ch. Basu Choudhury, Advs.;Rashmohan Bhattacharjee, Adv.

Advocate for Pet/Ap. : Saktinath Mukherjee and ;P.K. Samanta, Advs.

Disposition : Petition rejected

Judgement :

Kalyanmoy Ganguli, J.

1. In the instant application under Article 226 of the [Constitution of India](#), the petitioner, inter alia, prays for a writ in the nature mandamus commanding the

respondents Nos. 1 to 5 to rescind, recall and/ or withdraw the Central Government order passed by the Additional Secretary as per notification No. 2/1/87-P1C-1 dated April 16, 1987 of the Ministry of Personnel, Public Grievances and Pensioners, Department of Pension and Pensioners' Welfare, New Delhi, as ultra vires the [Constitution of India](#) ; the petitioner also prays for a writ in the nature of mandamus commanding the respondents Nos. 1 to 5 to settle and pay the pension to the petitioner (a) Rs. 3800/- per month from January 1, 1986 (being 50% of Rs. 7600/-) by notionally raising his basic pay from Rs. 2750/- to Rs. 7600/- per month as from the date in the new super time scale of Rs. 7300-100-7600 at par with the serving officers of his rank in the Indian Administrative Service less already drawn and to pay all arrears thereof.

2. The petitioner also prays for a number of declarations, for example, declaration that the order dated April 16, 1987 which is annexure 'E' to the petition is illegal, arbitrary, unfair and unconstitutional and as such is liable to be struck down' and quashed, declaration that the petitioner is entitled to the privilege of pecuniary benefits attended with the merger of dearness allowances and clearness pay and other allowances and financial reliefs to the basic pay as have been made available to post 1986 pensioners, declaration that the petitioner is entitled to all privileges and financial benefits available under the Indian Administrative Service (Pay) Second Amendment Rule 1987 and the corresponding amendments to All India Services (Death-cum-Retirement Benefit) Rules 1958 for refixation of pension and other retiring benefits such as revised gratuity, commuted value of revised pension, dearness relief and leave encashment, declaration that the classification of the existing pensioners of the two categories, being pre 1986 pensioners and post 1986 pensioners and other sub-categories for giving additional pecuniary reliefs against inflationary price rise is illegal, arbitrary and ultra vires, declaration that the existing pre-1986 pensioners including the petitioners are entitled to equal financial benefits and privileges as have been made available to the post 1986 pensioners and so on and so forth.

3. First of all it must be noted that the petitioner belongs to the West Bengal Higher Judicial Service and challenges the provisions of some Central Law. First of all whether an employee of the State of West Bengal can challenge the law made for

the purpose of the employees of the Union of India is to be seen. Secondly, whether being a member of the State cadre, the petitioner can challenge a law or laws applicable to the Central Government employees. Thirdly, it is to be seen whether the jurisdiction of this court to enter into the question of the legality and validity of the Central laws is totally ousted under the provisions of the Central Administrative Tribunals Act, 1985.

4. It must be noted that the High Court has lost all jurisdictions in respect of the matters relating to service conditions of employees of the Central Government and on the face of it this court is not competent to pronounce on the legality or otherwise of any law made by the Union of India in respect of its own employees. It must also be noted that the petitioner being an employee of the State Government has no locus standi to approach the Central Administrative Tribunal for the redressal of his grievances.

5. It must be noted also that in terms of Rule 91 of the West Bengal Services (Death-cum-Retirement Benefit) Rules 1971 all the laws applicable to the members of Indian Administrative Service have been extended to the members of the West Bengal Higher Judicial Service.

6. In the circumstances, all that this court can do is to entertain the application of the petitioner to the limited extent of the applicability of the Central laws to the employees of the State Government and whatever decisions may be made by this court will have necessarily to be limited to the law as applicable only to the members of the West Bengal Higher Judicial Service and the judgment will have no manner of impact so far as the members of the Indian Administrative Service are concerned.

7. This court embarks upon the enquiry raised in the petition only for the limited purpose of examining the Central laws to the extent of their applicabilities to the members of the Higher Judicial Service of this State. Even if a particular provision, is to be struck down the said provision will still be deemed to exist in the law books so far as those apply to the members of the Indian Administrative Service but that the law made will stand modified in terms of this judgment to the members of the West Bengal Higher Judicial Service.

8. The petitioner No. 1 was a confirmed member of the West Bengal Higher Judicial Service and retired from such service under the Government of West Bengal while holding the post of Chief Metropolitan Magistrate, Calcutta on superannuation with effect from the forenoon of 1st February, 1981. At the time of superannuation the petitioner was drawing pay in the supertime scale of Rs. 2500-125/2-2750 with effect from April 1, 1976 along with dearness allowance of Rs. 450/- besides other admissible allowances in the said scale. At the material time the said scale was admissible to seniormost members of the Indian Administrative Service.

9. While the petitioner No. 1 was in service as a member of the West Bengal Higher Judicial Service he drew his pay and other emoluments inclusive of dearness allowance as a member of Indian Administrative Service (Pay) Rules, 1954 and on his retirement the petitioner has been drawing his pension in accordance with All India Services (Death-cum-Retirement Benefit) Rules 1958 as amended from time to time and as made applicable to the members of the West Bengal Higher Judicial Service as per Rule 91 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

10. It is relevant to state that all amendments to the Indian Administrative Service (Pay) Rules 1954 and All India Services (Death-cum-Retirement Benefit) Rules 1958 and the amendment effected therein from time to time have always been made and are still made applicable to the members of the West Bengal Higher Judicial Service and retirees from the said service.

11. On the relevant date of the superannuation of the petitioner No. 1 drawing the maximum basic pay of Rs. 2750/-, he became eligible to draw the maximum pension at Rs. 1225/- per month in the slab system and the petitioner's basic pension was settled at Rs. 1225/- per month and the retiring gratuity at the ceiling of Rs. 30,000/- by the Government of West Bengal on basis of the slab system of pension then in force. It is one of the grievances that in determining the pension at the maximum rate in the above scale no part of the petitioner's dearness allowance of Rs. 450/- per month was treated as dearness pay.

12. Under the new liberalised pension formula effective from March 31, 1979 the ceiling on pension and retirement gratuity was fixed at Rs. 1550/-per month and Rs. 30,000/- respectively and it has been already stated that the slab system of calculating the pension was made applicable to the retirees from the West Bengal Higher Judicial Service. With effect from January 1, 1986 the Indian Administrative Service (Pay) Rules 1954 and the All India Services (Death-cum-Retirement Benefit) Rules 1958 underwent substantial changes by virtue of Second Amendment Rules, 1987 on the basis of recommendation of the Fourth Central Pay Commission as per Government order dated March 13, 1987. Under the said Second Amendment Rules 1987 the previous single supertime selection grade applicable to the Central Government officers in the rank of Joint Secretary at Rs. 2550-125/2-2750 were restructure by splitting the same into three categories, namely,

(A) supertime scale of Rs. 5900-200-6700

(B) the supertime scale of Rs. 7300-100-7600 and

(C) the scale at Rs. 8000/- (fixed)

with effect from January 1, 1986. The All India Services (Death-cum-Retirement Benefit) Rules 1958 has also undergone consequential amendment by Central Government amending notification dated May 22, 1987 whereby the pension of retirees after January 1, 1986 would be calculated at 50% of the basic pay in the restructured supertime scale in which dearness pay and allowances have already merged with effect from January 1, 1986 with a ceiling on pension at Rs. 4500/- for all categories of pensioners. According to such amendment the employees of the rank of Joint Secretaries comparable to that of the petitioner have become entitled to a basic pension @ Rs. 3350/- or Rs. 3800/- or Rs. 4000/- per month as the case may be. Copies of the Gazette of India Extraordinary dated March 13, 1987 containing the Indian Administrative Service (Pay) Second Amendment Rules 1987 and Central Government order No. 25011/12/87-AIS II dated May 22, 1987 have been annexed to the petition marked with the letters 'C and 'C-I' respectively. The State Government by its order No. 27088-J dated October 26, 1987, a copy of which is annexed to the petition marked with the letter 'D', have made the above

provisions applicable to the members of the West Bengal Higher Judicial Service.

13. It is stated by the petitioners that the Government of India rationalised the pension structure of pre 1st January, 1986 pensioners like the petitioners by an office memorandum dated April 16, 1987 a copy of which has been annexed to the petition marked with the letter 'E' to implement the Government decision on the recommendation of the Fourth Central Pay Commission within the framework of the previous Central Government notification dated March 3, 1986. The office memorandum dated April 16, 1987 classified the retirees before 1st January, 1986 into A, B and C categories in peri materia with the tables I, II and III of the Fourth Central Pay Commission report and provides dearness, reliefs for such retirees at the rates of 95%, 80% and 70% of their existing pensions respectively. One of the grievances of the petitioners is that while in case of post 1st January, 1986 retirees the pension has been calculated uniformly at 50% of their basic pay in the restructured supertime scale of pay. The same benefit has been denied to the pre 1st January, 1986 retirees.

14. In accordance with the said notification dated April 16, 1987 the pension of the petitioner No. 1 has been refixed at Rs. 2355/- per month in terms of category B of the said notification. The petitioner nurtures the grievance on this count and contends that the said refixed pension is not acceptable to him as such refixation, according to the petitioners, is unreasonable and unconstitutional being arbitrary.

15. The main grievance of the petitioners seem to be that although the petitioner No. 1 retired in 1981 and although the memorandum dated April 16, 1987 has taken care of revising the pension receivable by the pre 1st January, 1986 retirees by giving dearness relief of 80% yet the said memorandum did not take into account the salaries which were increased in respect of the persons occupying the rank of the petitioner No. 1 after his retirement and before the restructuring of pay and pensions were made with effect from 1st January, 1986, the dearness allowance and dearness pay were merged with the salaries and incumbents who were in office on 1st January, 1986 but in case of the petitioners such dearness allowance and dearness pay were not merged with the salary and as such the petitioners have been discriminated against.

16. The reasoning appears to be queer. The petitioner retired on 1st February, 1981 when the pay structure of incumbents of the petitioner's rank was entirely different. As it is the salaries of all persons have been increased because of various reasons, one of them being spiralling of prices. It is because of the higher cost of living that dearness allowance to the pension are being given and increased from time to time to the class of pensioners to which the petitioners belong but it would be absurd to assert that salaries of persons who retired long ago before such restructuring should be notionally raised to the level of the serving incumbents on 1st January, 1986 and then to calculate the pension on flat rate basis of 50% of salary. If this reasoning is extended then the pay of all persons who retired long ago should be given this notional increase of their basic pay and brought to the level of the pay of the serving incumbents on the 1st January, 1986. Supposing a person retired 20-25 years ago and retired on attaining a particular scale of pay on retirement, after 25 years certainly if his pay itself is to be notionally raised to the level of the pay as on 1st January, 1986, it will result in an absurd conclusion. True it is that although the retirees who retired long before 1st January, 1986 and those who retired on or after that date would face the same market price conditions yet on that ground alone it cannot be said that persons who were born later, served later and retired later should always be equated with the persons who were born earlier, served earlier and retired earlier. This is the way of the world, this is not merely a fortuitous circumstances. By accident of history people are born earlier or later and invariably people who are born later enjoy privileges which are not enjoyed by people who were not fortunate enough to be born later.

17. This is absurd to think that in respect of the petitioner No. 1 who retired on February 1, 1981, all the dearness allowances, additional dearness allowances and ad hoc interim reliefs are to be added to and merged with the petitioner's pay on the date of retirement and then the pay would be fixed in the restructured scale and then the pension should be calculated at 50% of such pay. This disparity is inevitable and that is why by the order impugned additional amounts are added to the pension of pre 1st January, 1986 retirees by way of dearness allowance and pension to offset the rising prices. It must be noted that the Government is aware of the economic difficulties of people to overcome rising prices and that is why

amounts are added to the basic pension from time to time to combat such economic battles. There has to be such a cut off date at some stage and this fact cannot be denied. The question is whether in spite of such cut off date the persons like the petitioners are totally lost sight of. In my opinion the Government did not lose sight of the pre 1st January, 1986 retirees at all who provided for them in a different way than the post 1st January, 1986 retirees. There is another aspect to it, a pension being a deferred pay can never exceed the pay itself. If a person gets a pay for rendering services he cannot claim a higher amount for not serving. The petitioner has referred to the case of D. S. Nakara v. Union of India and Ors., reported in : (1983)ILLJ104SC and wants to contend that the said case held that all Central Government pensioners governed by the pension rules were entitled to pension with effect from April 1, 1979 as computed under the liberalised pension formula irrespective of the date of the retirement and that the benefit and certain improvement in pensioners benefit should be made available to pensioners that had retired prior to the date from which date improvement became effective.

18. The said case was concerned solely with the question of pension and the liberalisation of the formula for giving such pension and in that context the Hon'ble Supreme Court held that so far as such liberalisation of pension scheme, was concerned, it should be made available to all persons irrespective of the dates of their superannuation as otherwise it would become arbitrary and violative of Article 14. Here the case is entirely different. Here the salary on which the pension depends primarily, of pre 1st January, 1986 and post 1st January, 1986 are totally different not only by fixing higher scales of pay but by merging different kinds of allowances to the basic pay which was not the case in respect of the pre 1st January, 1986 retirees. The pre 1st January, 1986 and the post 1st January, 1986 retirees do not form a common class and as such the question of arbitrariness or the question of treating the equals unequally does not arise. The said two types of retirees form two distinct and separate classes of retirees and as such the difference in the quantum of pension can be attributed to reasonable classification.

19. So in my opinion the claim of the petitioners to get pension at equal rate with the post 1st January, 1986 retirees is not founded on any basis. If the claim of the petitioner No. 1 is to be admitted then the pension payable to the petitioner for not

rendering any service in present time would exceed his pay itself when he was serving the judiciary and that is an absurd proposition as already stated hereinbefore.

20. Nakara's case (supra) was concerned with fixation of the amounts of pension of all retirees simpliciter and was not concerned with any restructuring of salaries, notional fixation of salary and thereafter calculation of pension on the basis of such notional fixation of salary. In the instant case if the same percentage of pension, which is 50% of the basic salary, is given to the petitioners, they will be much worse off and that is why in respect of such pre 1st January, 1986 retirees, dearness allowance to the existing rates of pension has been added to give relief to such pensioners. The question of notional refixation of salary and calculation of pension thereon does not arise at all. The same also does not come within the ratio of Nakara's case (supra). In fact, Nakara's (supra) case itself made a distinction between liberalisation of an existing scheme and the introduction of a wholly new scheme. It is stated that when an existing scheme is revised or liberalised, all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation but when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. The cut off date, in the facts and circumstances of the instant case is not at all arbitrary because it is the date with effect from which the salary of serving incumbents were restructured and increased after merger of certain allowances. Pension has a correlation to salary and if salary itself is increased factually, the pension is bound to increase. Notional restructuring of the salary of the non-serving incumbents does not stand to any reason. In this connection it may be stated that improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in employment on the date of the revision. If upward revision cannot be made prospectively because of Article 14, then it can never be made at all. This also applies to notional restructuring of pay.

21. In fact, in paragraph 61 of Nakara's case (supra) itself their Lordships of the Hon'ble Supreme Court observed as under :-

'The date of retirement of each employee remains as it is. The average emoluments have to be worked out keeping in view the emoluments drawn by him before retirement but in accordance with the principles of the liberalised pension scheme....'

22. D. S. Nakara's case (supra) was considered in the case of All India Reserve Bank Retired Officers' Association and Ors. v. Union of India and Ors. reported in 1992 AIR (SCW) 460. Paragraph 10 of the said case states as follows :-

'10. Nakara's judgment : (1983)ILLJ104SC has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara's case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme ; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a

new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees having regard to the fact situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer came to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this court in Nakara's case : (1983)ILLJ104SC drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this court in Krishena's case : (1991)ILLJ191SC (supra).'

24. Paragraphs 12 and 13 of the said decision read as follows :-

'12. Lastly, the justification for fixing the cut off date as 1st January, 1986 is that the newly introduced pension scheme is modelled on the lines of a similar scheme applicable to Central Government employees. The proposal to have a similar to the one applicable to Central Government employees in lieu of the existing CPF scheme was mooted by the in-service Bank employees some time in 1986 and on the Central Government according sanction, it was brought into effect from 1st November, 1990. That is why it was made applicable to those who retired in the meantime on or after 1st January 1986. The underlying reason is to operate the scheme on the pattern of the scheme governing Central Government employees and to extend the benefit to those Bank employees who had demanded the same.'

'13. For the above reasons we do not find any substitute in the allegation that the cut off date had been arbitrarily fixed by the Bank Authorities or the Central Government while giving its approval or that it is devoid of rational consideration and is wholly whimsical. In fixing the cut-off date the respondents had not acted mala fide with a view to deprive those who had retired on or before 31st December, 1985 of the benefit of the pension scheme but for reasons stated above, it was not practicable to extend the benefit to such retirees. The rationale for fixing the cut off date as 1st January, 1986 was the same as in the case of Central Government employees based on the recommendation of the Fourth Central Pay Commission.'

25. The case of M. L. Janin v. Union of India and Ors. reported in Judgment Today 1988(3) SC 499 cited by the petitioners have no manner of application in this case as the facts of the two cases are distinguishable.

26. For the reasons stated hereinbefore the first contention raised by the petitioners have no merit and is rejected.

27. The next point raised by the petitioners is that the ceiling of gratuity should also be raised in respect of the pre 1st January, 1986 retirees at par with the post 1st January, 1986 retirees to bring the ceiling to Rs. 1,00,000/- instead of Rs. 30,000/-.

28. On this contention it may be remembered that the basis of computation of gratuity remains the same but only the ceiling has been raised. This is also not permissible.

29. This aspect of the matter has already been decided by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 14178-80 of 1985 (State Government Pensioners' Association and Ors. v. State of Andhra Pradesh and Ors.) and two other cases. The Hon'ble Supreme Court negated the claim of the petitioners in all the three cases. As such the second point raised by the petitioners also fails and is rejected.

30. The third and last claim raised by the petitioners is that for commutation of Additional Pension becoming due as a result of the revision of pension. In this context it may be remembered that the rules regulating commutation of pension in respect of All India Service Officers are contained in All India Services (Commutation of Pension) Regulations, 1959 hereinafter referred to as 1959 Regulations, These regulations do not contain any provision for commutation of additional pension allowed to the pensioners as a result of revision of pension. The corresponding rules for civilian Central Government employees contained in the Central Civil Services (Commutation of Pensioner) Rules, 1981 however, contain provision for commutation of additional amount of pension consequent on revision of pension Rule 10 of the aforesaid 1981 Rules provides for 'Retrospective revision of final pension' and when in a particular case such commutation becomes revisable, it will be done automatically and for the payment of the difference the applicant shall not be required to apply afresh.

31. In the instant case pension has not been enhanced retrospectively and as such the question of commutation of additional pension does not arise. In this connection the observation of the Hon'ble Supreme Court made in Nakards case (supra) may be reiterated. 'The date of retirement of each employee remains as it is. The average emoluments have to be worked out keeping in view the employments drawn by him before retirement.....'

32. It may also be stated in this connection that as a rule commutation is or was, at least, before the issuance of the office memorandum No. 34/2/ 86-P & PW dated March 5, 1987 of the Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners Welfare), a copy of which has been annexed to the affidavit-in-opposition of the respondent No. 2 marked with the letter 'C, treated as one time settlement and was not restorable. In pursuance of the judgment of the Hon'ble Supreme Court in 1986, orders were issued that the commuted portion of pension shall stand restored after 15 years. As regards recommendation of the Fourth Central Pay Commission referred to by the Writ petitioners, these are contained in paragraph 8.9 of the Report Part II and these are by way of suggestions and not recommendation and such suggestions were not accepted by the Government.

33. Before parting with the case an observation in Nakara's (supra) case will not be totally out of place here. Those who were in employment before that (the upward revision of pay) lived, spent and served on the basis of the then prevailing cost of living structure and pay scale structure cannot invoke Article 14 in order to claim higher scale brought into force subsequently.

34. For the reasons stated above, the third point raised by the petitioners also fails and is rejected.

35. As all the points raised by the petitioners fail and are rejected, the entire petition falls and is rejected.

36. Before I conclude I am duty bound to record that the petitioner has been drafted with superlative skill and dexterity but a judge being a creature of law has to uphold the law and although I dislike going down to posterity as an anti-hero to the limping drama of social reforms, yet I have a duty to perform and satisfy my judicial conscience irrespective of its impact on a given case.