

S. Parthasarathi Vs. the General Manager (Admn. and Hrd)

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Court : Karnataka

Decided On : Oct-20-2011

Judge : A.N. Venugopala Gowda

Appeal No. : Writ Petition No. 20512 of 2009 (S-R)

Appellant : S. Parthasarathi

Respondent : The General Manager (Admn. and Hrd)

Advocate for Pet/Ap. : For the Petitioner: Manjula N. Kulkarni, Advocate. For the Respondent: Harikrishna S. Holla, Advocate.

Judgement :

(Prayer: This writ petition is filed under Article 226 of the Constitution of India, praying to call for the entire records from the respondent pertaining to Annexure -A and direct the respondent to extend the revised pensionary benefits by adding 71% of the Dearness Allowance with effect from 1.4.2003 by duly considering the representation dated 3.12.2008 submitted by the petitioner, the true copy of which is produced and marked as Annexure -B.)

1. The petitioner joined service as II Division Clerk in the then Karnataka Electricity Board on 14.02.1968. He was promoted as Assistant and reported as such to duty on 22.11.1975. He was further promoted to the post of Senior Assistant and reported to duty as such on 01.10.1993. Upon the bifurcation of the Karnataka Electricity Board and establishment of ESCOMs, the petitioner having opted to

remain in MESCOM, while working as Senior Assistant in the Divisional Office of MESCOM at Mandya, having completed 35 years, 3 months and 17 days of service, opted for voluntary retirement from service on domestic grounds, which was accepted and was relieved from service on 31.05.2003. The terminal benefits payable was settled by the respondent.

2. Respondent in modification of an order No.KPTCL/B16/3002/2007-08(I) dated 31.08.2007, accorded approval for the calculation of pension, family pension, commutation of pension and DCRG in respect of employees who retire or die while in service on or after 01.04.2006 and decided to calculate the pensionary benefits by taking into account 71% of dearness allowance as on 01.07.2005. Alleging discrimination in the grant of pensionary benefits, petitioner submitted a representation dated 3.12.2008, as at Annexure-B and requested to extend the revision of pensionary benefits, by predating the date with effect from 01.04.2003. Since the respondent did not consider the representation of the petitioner, as at Annexure-B, this writ petition has been filed, to direct the respondent to extend the revised pensionary benefits by adding 71% dearness allowance with effect from 01.04.2003 and pay the arrears.

3. For the respondent, statement of objections has been filed contending that petitioner having retired from service of the respondent on 31.05.2003, the order dated 25.04.2008, as at Annexure-A, according approval for calculation of pension, family pension, commutation of pension and DCRG in respect of employees who retire from service or die while in service on or after 01.04.2006 by adding 71% dearness allowance is not applicable to the petitioner and he is not entitled to the relief claimed in the writ petition.

4. Smt. Manjula N. Kulkarni, learned advocate appearing for the petitioner contended that, all retirees / dead person form a homeogenous class and any differentiation or distinction between retirees / dead persons prior to 01.04.2006 and those who retire / die on or after 01.04.2006 had no rational basis and was not intended to serve any purpose.

5. Sri Harikrishna S. Holla, learned advocate appearing for the respondent, on the other hand contended that, pursuant to a policy decision, the order as at

Annexure-A, revising the pensionary benefits was issued and that the respondent is entitled to fix the cut off date based on the report dated 31.10.2007 of a Committee constituted to redress the grievance of the pensioners, Learned counsel submitted that, petitioner having voluntarily retired from service on 31.05.2003, cannot claim parity in respect of the employees who retire from service or die while on or after 01.04.2006.

6. The only question which is relevant and needs consideration is, whether the decision of the respondent to restrict the revision of pensionary benefits to employees who retire from service or die while in service on or after 01.04.2006 is arbitrary?

7. The respondent by taking into consideration a settlement dated 25.09.2006 entered into between the Management of KPTCL and the employees' Union regarding the revision of pay-scales of workmen and other allied matters, the Government servants who have retired from service or died while in service prior to 01.07.2005 and the corporate orders dated 31.08.2007 revising the pensionary benefits of employees who ceased to be in service on account of retirement or death while in service prior to 01.04.2003, having constituted a Committee to redress the grievance of the pensioners, keeping in view the report dated 31.10.2007 submitted by the Committee, passed an order bearing No. KPTCL/B-16/3002/07-08(1) dated 25.04.2008, modifying the earlier order dated 31.08.2007 and accorded approval for the calculation of pension, family pension, commutation of pension and DCRG in respect of the employees who retire from service or die while in service on or after 01.04.2006, 71% dearness allowance as on 01.07.2005 sanctioned on 09.11.2005 admissible on the basic pay drawn as on the date of retirement / death was also included. The petitioner having retired from service on 31.05.2003, the said order has no application.

8. In Union of India Vs. P.N. Menon, reported in 1994 SCC (L and S) 860, while implementing the recommendation of III Pay Commission with regard to dearness pay linked to average index level 272, which was to be accounted as emoluments for pension and gratuity under the CCS (Pension) Rules, 1972, the Central Government fixed a certain cut off date and directed that only Officers retiring on

or after the specified date were entitled to the benefit of dearness pay being accounted for the purpose of retirement benefits. When the same was challenged as arbitrary and violative of Article 14 of the Constitution, it was held as follows:

“14.... Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations.”

9. In the case of State of Punjab and Another Vs. J.I. Gupta and Others, reported in 2000 SCC (L and S) 437, it has been held that, for grant of additional benefits which had financial implications, prescription of specific cut off date for conferment of additional benefits, could not be construed as arbitrary.

10. In the case of State of Punjab vs. Boota Singh, reported in 2000 SCC (L and S) 435, Apex Court has held that, the benefit conferred by a notification can be claimed by those who retire after the date specified in the notification and those who retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for conferment of additional benefits cannot be considered arbitrary.

11. In the case or State of Bihar vs. Bihar Pensioners Samaj, reported in 2006 SCC (L and S) 913, the Apex Court has held as follows:

“17. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer *res integra*. It has been held in *catena* of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefore are not arbitrary and are based on some rational consideration.”

12. In the case of *Government of Andhra Pradesh and Others vs. N. Subbarayudu and Others*, reported in 2008 (14) SCC 702, the respondents were lecturers in a private aided College and the age of Superannuation was 60 years. By an amendment of the Education Act in 1993, the age of superannuation of the respondents was brought down to 58 years and were entitled to pension with effect from 01.11.1992. Respondents questioned the said action and the High Court held that the cut off date i.e., 01.11.1992 fixed by the Government was arbitrary and discriminatory. The Government of Andhra Pradesh having questioned the said order before the Apex Court, after noticing the ratio of law in *catena* of decisions with regard to the fixation of cut off date by the executive authority, it has been held as follows:

“7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in the connection. It was further held that:

8..... even if no reason has been given in the counter-affidavit of the Government or the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

13. In view of the settled position of law by catena of decisions of the Apex Court that considerations for a particular cut off date can be financial, administrative or other considerations and the Court must exercise judicial restraint and must leave it to the executive authorities to fix the cut off date and the Court must maintain judicial restraint in matters relating to legislative or executive domain, in my opinion, the grievance of the petitioner that the fixation of cut off date by the respondent for extension of revision of pensionary benefits is arbitrary and illegal is untenable. The respondent by taking into consideration the report dated 31.10.2007 submitted by the Committee constituted to redress the grievance of the pensioners, has fixed the cut off date as 01.04.2006. Hence, the action of the respondent is not blatantly discriminatory or arbitrary, for interfering with the action of the respondent in fixing the cut off date for grant of 71% dearness allowance to the employees who retire from service or die while in service on or after 01.04.2006.

In the result, the petition being devoid of merit, rule is discharged and the writ petition is dismissed.

No order as to costs.

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