

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16994 of 2012

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Surajdeo Prasad Roy, Son of Late Ram Lakhan Pd Rai, Resident of Mohalla-
Makhdumpur, Digha Ghat Patna, Police Station- Digha, District- Patna.

.... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner, Regional Officer, Employees Provident Fund Organisation R. Block No. 6, Patna.
2. The Personal Zonal Manager Bata India, Bata Gunj Digha, Patna, Police Station- Digha, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad II, Advocate

For the Respondent/s : Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 01-12-2016

The challenge in the present writ application is to the notification dated 15th of June, 2007 whereby, Paragraph 12 of Employees Pension Scheme, 1995 was substituted with retrospective effect i.e. 16.11.1995.

2. As per the petitioner, the amendment in the notification has discriminatory effect inasmuch as certain persons who have got benefit prior to substitution of the scheme stand on a



different footing than the persons who have not been granted benefits under the unamended scheme but now being dealt with by the amended scheme.

3. Section 6A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "1952 Act") provides for framing of pension scheme by the Central Government by publication of a notification in the official Gazette. In terms of said provision, Employees' Pension Scheme, 1995 was notified on 16th of November, 1995. Paragraph 12 of such scheme has different parameters for calculation of pension including family pension but such provision was amended on 15th of June, 2007 with retrospective effective. Section 7 of the 1952 Act empowers the Central Government to amend or vary either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance Scheme, as the case may be. Section 7 (1) of the 1952 Act reads as under:-

“7. Modification of Scheme – (1) The Central Government may, by notification in the Official Gazette add to, amend or vary either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance Scheme, as the case may be.”

4. Therefore, the Central Government in terms of Section 7(1) of the 1952 Act has power to amend the scheme with retrospective effect. Therefore, retrospectivity given to the Scheme is within the power conferred on the Central Government and is not



illegal. Therefore, substitution of Paragraph 12 cannot be disputed on the said ground.

5. The un-amended Paragraph 12 of the Scheme provides benefit of pension and family pension whereas, the amended scheme, as amended on 15th of July, 2007 provides for only pension. Since such scheme has the legislative sanction, therefore, the same cannot be challenged on the ground that certain persons have been granted benefit under the un-amended scheme. Since the petitioners were not granted benefit under the un-amended scheme, they would be entitled to the benefit of pension only in terms of the amended scheme.

6. Learned counsel for the petitioner has also pointed out that there is an order passed by this Court in C.W.J.C. No. 15781 of 2005 (Md. Baidullah Ansari V. The Union of India & Ors.) on 28th of August, 2006, the benefit of which has not been given to the petitioner.

7. Learned counsel for the respondents pointed out that in fact claim of the petitioner for pension has been considered in the light of the judgment of this Court in C.W.J.C. No. 15781 of 2005 and in accordance with the un-amended provisions of law. Therefore, the interest of the petitioner is not jeopardized in any manner.

8. We find that challenge to the amendment of the



scheme is not on any legally permissible ground. In the absence of challenge on any legally permissible ground, we do not find that any benefit can be granted to the petitioner in the present writ application.

9. The writ application is, thus, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

