

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.7.2016 &
PRONOUNCED ON: 25.7.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.62 of 2016

1. Government of Tamil Nadu
rep. by Secretary to Government
P & AR Department
Fort St. George, Chennai 600 009.
2. The Chief Educational Officer
Tirunelveli.
3. The Director of Pensions
Chennai 600 006. .. Appellants

Vs.

1. N.Subramanian
2. The Principal Accountant General (A&E)
Tamil Nadu
Chennai 600 018. .. Respondents

Appeal under Clause 15 of Letters Patent against the order dated 22.12.2014 made in W.P.No.11739 of 2007(T) on the file of this Court.

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of (1) O.Mu.N.2626/84/2003 dated 23.4.2003 of the 2nd respondent (2) O.Mu.No.00894/2002/E1 dated 14.1.2003 of the 3rd respondent and (3) G.O.Ms.No.1108 P & A.R. Department dated 18.12.1997 of the 1st respondent and quash para 6 of G.O.Ms.No.1108 P & A.R. Department dated 18.12.1987 in so far as it relates to prospective effect of the benefits conferred by the said order and also issue consequential directions to the respondents to grant the benefits of the Government orders No.1108, P&AR Department dated 18.12.1987 for the applicant with all consequential benefits and

interest on belated payment and revise his pensionary benefits accordingly.

For Appellants : Mr.T.N.Rajagopalan
Special Government Pleader
For Respondent - 1 : Mr.N.Subramanian
Party-in-Person
For Respondent-2 : Mr.V.Vijayashankar

J U D G M E N T

HULUVADI G.RAMESH, J

This appeal arises out of an order passed by a learned Judge in a writ petition filed by the first respondent.

2. Heard Mr.T.N.Rajagopalan, learned Special Government Pleader appearing for the appellants, Mr.N.Subramanian, Party-in-Person and Mr.V.Vijay Shankar, learned counsel for the second respondent.

3. The first respondent joined the service as B.T. Assistant in the year 1953 and was later promoted as Head Master in the year 1966. On 10.7.1983, he retired from service voluntarily. His qualifying service was 30 years and 14 days for the purpose of pension. His pension was revised under G.O.Ms.No.449, Finance (Pension) Department, dated 12.10.1999 and payment of arrears thereof was made in October/November 2002. After coming to know about G.O.Ms.No.1108, P&AR Department, dated 18.12.1997, wherein it is stated that the Government servants shall be given weightage not exceeding five years, if the total qualifying service does not exceed 33 years, he made a representation to the third appellant on 29.11.2002 seeking to refix his pension. The third appellant, by proceedings dated 14.01.2003, stating that there is no provision in rules to refix pension by giving weightage to the persons retired voluntarily, directed the first respondent to approach the Head of the Department. Accordingly, the first respondent made a representation to the second appellant on 13.02.2003 and the same was rejected by the proceedings of the second appellant dated 23.4.2003 on the ground that there is no provision to revise the pension by giving weightage to the persons who retired voluntarily prior to 1987. Hence, the first respondent filed an application before the Administrative Tribunal in O.A.No.2767 of 2003, challenging the orders of the second and third appellants and the same was transferred to this Court, on abolition of the Tribunal, and renumbered as W.P.No.11739 of 2007.

4. The learned single Judge, by order dated 22.12.2014, holding that the benefits of G.O.Ms.No.1108 dated 18.12.1997 can be extended to the persons who retired prior to the date of the issue of the said G.O., of course, with effect from the date of the said G.O., directed the appellants to send appropriate proposal for revising pension and other terminal benefits of the first respondent, to the second respondent herein within a period of eight weeks. Aggrieved by the said order, the appellants are before this Court.

5. Mr.T.N.Rajagopalan, learned Special Government Pleader appearing for the appellants contended that G.O.Ms.No.1108 dated 18.12.1997 is issued only with respect to the employees who were in service on the date of issue of the said G.O. and therefore, the same cannot be applied to the persons who retired earlier to the issuance of G.O. In other words, the G.O. issued was to take effect only from the date of issuance, namely 18.12.1997, and cannot be given retrospective effect.

6. The learned Special Government Pleader further contended that the first respondent having opted for voluntary retirement under a similar scheme announced through G.O.Ms.No.1327, Personnel and Administrative Reforms (F.R.I) Department, dated 27.11.1978, which stipulates that person who seeks voluntary retirement under the said scheme, on attaining the age of 50 years and completing 20 years of qualifying service, will not be given weightage, cannot now contend that he should be given the benefit of G.O.Ms.No.1108 dated 18.12.1987 by giving him weightage of 3 years. In support of his contention, he relied upon the decisions of the Supreme Court in Col.B.J.Akkara (Retd.) v. Government of India [(2006) 11 SCC 709] and Government of Andhra Pradesh v. N.Subbarayudu [(2008) 14 SCC 702].

7. The first respondent, who appeared as party-in-person, contended that since he retired voluntarily under the scheme in G.O.Ms.No.1327, Personnel and Administrative Reforms (FR I) Department, dated 27.11.1978, he cannot be deprived of the benefits granted under G.O.Ms.No.1108, P&AR (FR III) Department, dated 18.12.1987 only on the ground he retired prior to the issuance of G.O. and that there should not be any discrimination in granting the benefit of weightage of service to the persons who retired prior to the issuance of the said G.O. He also contended that the said G.O. has to be quashed insofar as it relates to the effective date on the ground that it is violative of Article 14 of the Constitution of India.

8. On the contrary, learned counsel for the second respondent contended that in G.O.Ms.No.1108, P&AR (FR III) Department, dated 18.12.1987, it has been specifically stated

that the G.O. will take effect from the date of issue, namely 18.12.1987 and therefore, the benefits granted in the said G.O. cannot be extended to the first respondent and accordingly, the first respondent is not entitled to any benefit granted under the said G.O. In other words, it is the contention of the learned counsel for the second respondent that the G.O. cannot be given retrospective effect.

9. The learned counsel for the second respondent further contended that pursuant to the order impugned in this writ appeal, several representations were made by the persons who retired voluntarily prior to 18.12.1987 seeking the benefit of G.O.Ms.No.1108 dated 18.12.1987 and therefore, if weightage granted under G.O.Ms.No.1108 dated 18.12.1987 is extended to the first respondent, it would put an unfair financial burden on the State.

10. The only issue that arises for consideration in this appeal is whether the first respondent, who had retired prior to the date of issue of the G.O.Ms.No.1108 dated 18.12.1987 and had put in 30 years and 14 days of qualifying service, would be entitled to claim weightage of three years, on a par with persons who retired voluntarily on and from 18.12.1987, when the G.O. explicitly states that it comes into force only from the date of issuance of G.O.

11. Before proceeding to consider the facts of the case, it would be apt to refer to G.O.Ms.No.1327, Personnel and Administrative Reforms (F.R.I) Department, dated 27.11.1978, the relevant portion of which reads as follows:

"(4) The scheme of weightage will not be applicable to persons who retire under the present scheme of voluntary retirement i.e., on completion of 50 years of age or 25 years of qualifying service."

12. In the Rules appended to the above G.O., a weightage formula has been introduced for easy understanding in Clause (iii) and illustrations have also been provided thereunder. Illustration (d), which is germane to the issue on hand, reads as under :

"A Government servant seeking voluntary retirement under this scheme on

(a) ...

(b) ...

(c) ...

(d) attaining the age of 50 years and completing a qualifying service of 20 years will have no weightage."

13. A plain reading of the above extracts would make it crystal clear that a Government servant, who seeks voluntary retirement under the Scheme in G.O.Ms.No.1327, Personnel and Administrative Reforms (F.R.I) Department, dated 27.11.1978, on attaining the age of 50 years or completing 25 years of qualifying service, is not entitled to the benefit of weightage.

14. Coming back to the facts of the instant case, it is not in dispute that the first respondent had entered into service in the year 1953 and voluntarily retired from service on 10.7.1983. As per the declaration of the first respondent in the affidavit filed before the Administrative Tribunal, he had attained the age of 54 years at the time of his retirement. It is no doubt that the first respondent had put in 30 years and 14 days of qualified service. Therefore, as per the Scheme in G.O.Ms.No.1327, Personnel and Administrative Reforms (F.R.I) Department, dated 27.11.1978, under which the first respondent retired voluntarily, the first respondent is not entitled to weightage, since he had attained the age of 50 years and also completed 25 years of service.

15. As regards the claim of the first respondent with respect to weightage in terms of G.O.Ms.No.1108, P&AR Department (FR III) dated 18.12.1987, it is necessary to refer to the said G.O. The said G.O. was issued directing that a Government servant retiring voluntarily shall be given a weightage not exceeding five years, subject to the condition that total qualifying service does not in any case exceed 33 years. It is specifically stated in the G.O. that the order shall take effect from the date of issue, namely 18.12.1987.

16. According to the first respondent, his pension was revised pursuant to G.O.Ms.No.449, Finance (Pension) Department, dated 12.10.1999 and payment of arrears thereof was made in October/November 2002. Contending that only thereafter he came to know about G.O.Ms.No.1108 dated 18.12.1987 giving weightage to the persons who retire voluntarily to the maximum of five years, but not exceeding the qualifying service of 33 years, the first respondent made representation to the third appellant seeking the benefit of G.O.Ms.No.1108 dated 18.12.1997 and the same was rejected directing him to approach the Head of the Department and his further representation to the second appellant was also rejected stating that the G.O. cannot be given retrospective effect.

17. The learned single Judge, relying upon the decisions in D.S.Nakara v. Union of India [AIR 1983 SC 130] and V.Kasturi v. Managing Director, State Bank of India, Bombay [AIR 1999 SC 81], held that G.O.Ms.No.1108 dated 18.12.1987 is also applicable to the persons like the first respondent and directed the second respondent to forward appropriate proposals revising pension and other terminal benefits of the first respondent.

18. Admittedly, G.O.Ms.No.1108, P&AR Department (FR III) dated 18.12.1987 extends the benefit of weightage to the qualifying length of service. But, the said scheme has been given only prospective effect, but not retrospective effect. That apart, in paragraph 6 of the scheme, it has been specifically stated that the said order shall be effective from the date of issue of necessary amendment to Fundamental Rules and Pension Rules. Thus, it is beyond any doubt that the scheme announced in G.O.Ms.No.1108 dated 18.12.1987 will not get attracted to the cases of persons, who have retired on voluntary basis, any time prior thereto.

19. In this context, we shall refer to the decision relied upon by the learned Special Government Pleader in Col.B.J.Akkara (Retd.) v. Government of India [(2006) 11 SCC 70], wherein the Supreme Court has held in para 26 of the judgment, which reads as follows:

"20. The principles relating to pension relevant to the issue are well settled. They are:

(a) In regard to pensioners forming a class, computation of pension cannot be by different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(b) But all retirees retiring with a particular rank do not form a single class for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the

same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where their average reckonable emoluments at the time of their retirement were different, in view of the difference in pay, or in view of different pay scales being in force.

(c) When two sets of employees of the same rank retire at different points of time, it is not discrimination if:

(i) when one set retired, there was no pension scheme and when the other set retired, a pension scheme was in force;

(ii) when one set retired, a voluntary retirement scheme was in force and when the other set retired, such a scheme was not in force; or

(iii) when one set retired, a PF scheme was applicable and when the other set retired, a pension scheme was in force.

One set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the "same class" or "homogeneous group". The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment. (emphasis supplied)

(Vide D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145], Krishena Kumar v. Union of India [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846], Indian Ex-Services League v. Union of India [(1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488], V. Kasturi v. Managing Director, State Bank of India [(1998) 8 SCC 30 : 1999 SCC (L&S) 78] and Union of India v. Dr. Vijayapurapu Subbayamma [(2000) 7 SCC 662 : 2000 SCC (L&S) 1012] .)"

20. In another decision relied upon by the learned Special Government Pleader in Government of Andhra Pradesh v. N.Subbarayudu [(2008) 14 SCC 702], the Supreme Court held that

"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 this connection."

21. In a catena of decisions of this Court, it is held that it is the discretion of the executive authority to fix a cut off date keeping in mind the economic conditions, financial constraints and many other administrative and other attending circumstances. It is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority, unless such order appears to be on the face of it blatantly discriminatory and arbitrary. Therefore, we are of the considered view that this Court should not interfere with the policy decision of the Government, as we see no arbitrariness in G.O.Ms.No.1108 dated 18.12.1987.

22. Insofar as the reliance placed by the first respondent on the decisions in D.S.Nakara v. Union of India [AIR 1983 SC 130] and V.Kasturi v. Managing Director, State Bank of India, Bombay [AIR 1999 SC 81], which were followed by the learned single Judge, it is to be noted that the facts of the said decisions are entirely different from the facts of the case on hand. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

23. Therefore, in our opinion, the learned single Judge has erred in placing reliance upon the decisions in D.S.Nakara v. Union of India [AIR 1983 SC 130] and V.Kasturi v. Managing Director, State Bank of India, Bombay [AIR 1999 SC 81], when the facts of the said decisions are entirely different from the instant case and thus, we hold that those decisions are not applicable to the case on hand.

24. One more aspect that was left unnoticed by the learned single Judge is delay. The first respondent has filed original application, which was later transferred and renumbered as writ petition on abolition of the Tribunal, in the year 2003 and there was a delay of 16 years in filing the application.

25. It is trite law that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens, but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. It has to be noted that delay comes in the way of equity. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

26. The learned single Judge ought to have dismissed the writ petition on the ground of delay and laches, inasmuch as the application was filed after a lapse of 16 years of the date of the issue of G.O.Ms.No.1108 dated 18.12.1997.

27. In fine, we hold that the learned single Judge has erred in extending the benefit of G.O.Ms.No.1108 dated 18.12.1987 to the first respondent, without setting aside the said G.O. and without taking note of the fact that the first respondent suddenly woke from his slumber and staked a claim after 16 years. For the foregoing reasons, the order of the learned single Judge has to be set aside.

In the result, the writ appeal is allowed and the order of the learned single Judge is set aside. There shall be no order as to costs. Consequently, CMP No.669 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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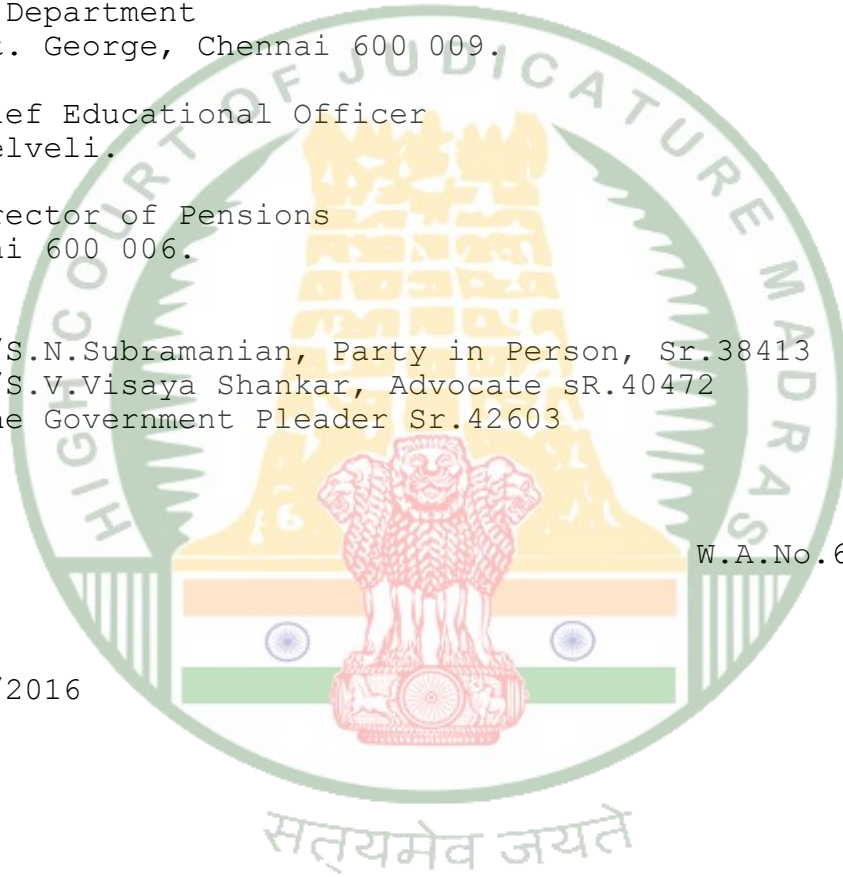
To

1. The Principal Accountant General (A&E)
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+1cc to the Government Pleader Sr.42603

W.A.No.62 of 2016.

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