Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1797 OF 2014

Arjun Krishna Golatkar and ors. .. Petitioners
Vs.
State of Maharashtra and ors. .. Respondents

Mr.R.V. Govilkar, for the Petitioners.
Mr.P.M. Palshikar, AGP for State – Respondents No.1 & 2.
Mrs.Neeta Masurkar a/w Mr.P. S. Gujar, for Respondent No.3

CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.

RESERVED ON : 05th DECEMBER, 2017
PRONOUNCED ON : 13th DECEMBER, 2017

ORDER (PER : M.S.KARNIK, J.)

1. The petitioners by this Petition filed under Article 226 of the Constitution of India challenge the order passed by the Maharashtra Administrative Tribunal (hereinafter referred to as 'Tribunal' for short) passed in TA No. 2/2011 whereby the Tribunal rejected the TA filed by the petitioners. In TA No. 2/2011, the petitioners challenged the order dated 05/05/2009

passed by the State Government whereby the State Government has fixed revised pension pursuant to 6th Pay Commission recommendations of persons who retired prior to 01/01/2006. By another resolution dated 22/06/2009, a decision regarding revision of pension/ family pension of post 01/01/2006 retirees was taken and they have been granted 50% pension of the salaries or average emoluments whereas the pensioners who have retired prior to 01/01/2006, the pension has been increased by 40%. In the submission of the learned Counsel for the petitioners this is without any basis, justification and is a clear case of hostile and arbitrary discrimination. Learned Counsel for the petitioners heavily relied on the decision of the Apex Court in the case of **D.S.Nakara and ors. Vs.Union of India (1983) 1 Supreme Court Cases 130.**

2. Learned Counsel for the petitioners pointed out that the petitioners have retired from the post of Joint Secretaries Class I prior to 01/01/2006 while working in the various departments of Mantralaya of the State Government. Around 20

to 25 posts of Joint Secretaries throughout Mantralaya department were filled in by promotion of Deputy Secretary upon completion of 3 years of service based on seniority-cum-merit. The petitioners were governed by the Maharashtra Civil Services Pension Rules, 1982 ('Pension Rules' for short) issued under Article 309 of the Constitution of India and they have received 50% pension based on prevailing pension formula under Pension Rules i.e. "50% full pension of pensionable pay i.e. last 10 months average pay coupled with not less than 33 years of qualified service." The petitioners were getting basic pension of Rs.7150/- and consolidated pension of Rs.12977/- including 50% DP and 21% DA on 31/12/2015 i.e. before inception of 6th Central Pay Commission.

3. Learned Counsel for the petitioners pointed out that prior to 1978, the State Government used to appoint its own pay commissions. In the year 1978-79, the State Government took a policy decision that it would not appoint any State Pay Commission and recommendations of the Central Pay

Commission would be adopted. The recommendations of the 4th Central Pay Commission in respect of revision of pension were implemented by Central Government with effect from 01/01/1986 by Office Memorandum dated 14/04/1987. The Government of India applied 4th Central Pay Commission (CPC for short) recommendations for rationalization of pension structure to all the pensioners who retired after 01/01/1986 as well as those who retired before 01/01/1986 by order dated 16/04/1987.

4. The Government of Maharashtra also adopted the Government of India's decision on the recommendations of 4th CPC and rationalization of pension structure for pre 01/01/1986 retirees. This was done by way of G.R. dated 19/08/1987. 5th CPC report was submitted in 1996 and was adopted by Government of India with effect from 01/01/1996. The State Government also adopted the revised pay scales as recommended and issued orders on 10/12/1998. The State Government adopted the recommendations regarding revision of

pension/family pension/ retirement gratuity and commutation of pension with effect from 01/01/1996 vide G.R. dated 27/10/1997. The State Government accepted the recommendations of the 5th Pay Commission as regards rationalization of pension and applied it to all employees who had retired prior to 1986 as well as prior to 1996 vide GR dated 27/10/1997, 10/02/1998 and 07/12/1998. The recommendations of the 5th CPC regarding revision of enhanced family pension in case of pre 1996 retirees were accepted by the Government of India. The State Government did not extend it to its employees the benefits of the revised pension to the persons who have retired prior to 01/01/1996. This Court in WP/2432/1999 and 1747/1999 granted to pre 01/01/1996 retirees benefit of consolidation of pension as granted to the retirees post 01/01/1996 retirees.

5. In the submission of learned Counsel for petitioners, 6th CPC recommendations were accepted by Government of India with effect from 01/01/2006. The benefits

of the recommendations regarding revision of pension were made available to those who retired prior to 01/01/2006. The retirees post 01/01/2006 were treated at par with those who retired before 01/01/2006.

6. The State of Maharashtra had appointed Hakeem Committee to consider recommendations of the 6th Pay Commission. Accordingly, G.R. dated 23/12/2008 came to be issued appointing the State Pay Revision Committee under the Chairmanship of Shri P.H.Hakeem, Retired Secretary Government of India, to recommend the pay scale as well as revision in pension/ family pension as per the recommendations of the 6th Pay Commission. The recommendations submitted by the Committee were accepted with some modifications vide G.R. dated 27/02/2009. The said G.R. dated 27/02/2009 deals with the recommendations regarding revision in pension. Based on the said recommendations, the State Finance Department issued orders of revision in pension by G.Rs dated 05/05/2009 and 22/06/2009. It is the stand of respondents that though the

Central Government employees on retirement gets an amount of Rs. 10 lacs by way of maximum death-cum-retirement gratuity, however, as per Hakeem Committee's recommendations, the employee on death-cum-retirement gratuity was to get an amount of Rs. 5 lacs, which was later on increased as per the State Cabinet decision to Rs. 7 lacs with effect from 01/01/2006.

7. The Hakeem Committee conducted its proceedings and heard various parties including 351 Union/Employees Association throughout the State of Maharashtra and accordingly, submitted its report on 20/12/2008 and made the following recommendation as regards the pensioners.

> "i) 40% increase in basic pension for those who retired before 01/01/2006.
>
> ii) Maximum limit for death-cum-retirement gratuity of Rs. 5 lacs.
>
> iii) Revised rate of commutation (which was made effective from 27/02/2009 i.e. from the acceptance of the Hakim Committee's report by the Government.
>
> iv) Removed condition of 33 years qualifying service for full pension and recommended that once a Government Servant has rendered minimum qualifying service of 20 years, pension shall be paid at 50% of the basic pay and the

same was accepted by the State Government with effect from 27/02/2009. The provisions of qualifying service is deleted from 27/02/2009.

v) Enhanced Family pension payable to the family of the Government Servant who dies while in service from the date of the death of the Government Servant for a period of 10 years. Chapter IV (page 89 to 94 of the said report deals with the pensioners who have retired prior to 01/01/2006 and who retired after 01/01/2006. Based on the said recommendations, State Government has decided the dates of 27/02/2009 for 20 years qualifying service for pension and calculation of pension at 50% of average emolument and not to implement from 01/01/2006. Revised pension of the employees who retired between 01/01/2006 to 26/02/2009 is fixed as per the earlier Rules of 33 years of qualifying service. The relevant extracts of the report of Hakim Committee is annexed as Exhibit -G to the Petition on pg.134-143."

8. Learned Counsel for the petitioners relied upon the decision of the Apex Court in the case of **D.S.Nakara** *(supra)* and was at pains to point out the discrimination between the employees who have retired prior to 01/01/2006 and those who have retired after 01/01/2006. In his submission, recommendation of the Hakeem Committee is without any basis in as much as the employees retiring prior to 01/01/2006 and those retiring after 01/01/2006 form One class employees and therefore there can be no discrimination as they are similar situate. The respondents denied the petitioners the same

benefits as granted to the employees who retired after 01/01/2006 without any reasonable justification. In the submission of the learned Counsel for the petitioners, decision of the Government is arbitrary and violative of the Article 14 of the Constitution of India.

9. Learned AGP appearing for the respondents on the other hand pointed out revision of pension in 6th Pay Commission is based on the recommendations of the State Pay Revision Committee. In the submission of the learned AGP, the employees who were in service on the date of acceptance of 6th Pay Commission and not retired on this date, forms a separate class. It is pointed out that as consequence of acceptance of revised 6th Pay Commission, the benefits accruing to the employees serving on the date of acceptance of revised 6th Pay Commission were not extended to the employees who retired prior to the acceptance of the 6th Pay Commission. It is in this situation that formula given in Finance Department's G.R. dated 22/06/2009 for determination of pension for the employees in

service on 01/01/2006 was not made applicable to the employees retired prior to 01/01/2006. The reason is for application of the said formula, service on 01/01/2006 is a must. On the other hand, for the employees who retired prior to 01/01/2006, 40% increase on the basic pension on the lines of recommendations of 6th Pay Commission is granted. Learned AGP contends that the principle laid down in **D.S.Nakara** *(supra)* can have application between similar set of employees but the decision will not be applicable where new benefit is being confirmed to another set of employees with effect from a particular date.

10. We have gone through the judgment and order of the Tribunal. Learned AGP appearing on behalf of the State Government has relied upon the following decisions :-

(a) Sudhir Kumar Consul Vs. Allahabad Bank, (2011) 3 SCC 486

(b) Union of India Vs. K.G. Radhakrishana Panickar, (1998) 5 SCC 111

(c) T.N. Electricity Board Vs. R. Veerasamy and Others, (1993) 3 SCC 414.

(d) Union of India Vs. P.N. Menon and others, (1994) 4 SCC 68

(e) Hari Chand and others Vs. Faridabad Complex Administration and others, (2005) 4 SCC 592

(f) The Union of India Vs. All India Services Pensioners Association and another, AIR 1988 SC 501.

(g) K.L. Rathee Vs. Union of India & Ors., Laws-(SC)-1997-7-146

(h) State of Punjab and others Vs. Amart Nath Goyal and others, (2005 6 SCC 754.

(i) D.S. Nakara and others Vs. Union of India, AIR 1983 SC 130

(j) Transport and Dock Workers Union and others Vs. Mumbai Port Trust and another, (2011)2 SCC 575

11. The Tribunal while analyzing the submissions has observed that it would be evident from the terms of reference of the Committee that the Committee is not mandated to follow or accept the recommendations of the 6th Pay Commission or decision of the Government of India in this regard. The Tribunal has observed that no policy decision has been taken by the State Government to accept the recommendations of the Pay Commission in toto. The State Government has taken only a

policy decision not to appoint a separate pay commission every 10 years as is observed by the Central Government. The Tribunal has considered the aspect that even the Central Government has not accepted the recommendations of the 6th Pay Commission Mutatis Mutandis. The Tribunal has quoted the recommendations of the Committee and observed that keeping the 6th Pay Commission recommendations in view, and as mandated in its terms of reference, the Committee has given its recommendations. Paragraph 4.3 of the report contains the observations regarding pensionary benefits to post 01/01/2006 retirees. We find that upon analyzing these recommendations, the Tribunal has in paragraphs 18 to 27 given reasons for dismissal of the Original Application. We may reproduce paragraphs 25 & 26 of the Tribunal's order which reads thus :-

> "25. As regards the contention of arbitrary classification between pre 01/01/2006 retirees and post 01/01/2006 retirees in an otherwise homogenous class of pensioners, we are inclined to accept the respondent's statement that pre 01/01/2006 retirees form a separate class because they have not worked in that pay scale and those who have worked in that scale i.e. post 01/01/2006 retirees form a separate class. This is a reasonable classification and the contention that by making such a distinction, Article 14 etc. are violated is not acceptable. The judgment of the Hon'ble Supreme Court in D.S.Nakara (Para 3 supra) was in the year 1982 and its applicability

has been examined by the respondents in consultation with the Law Ministry. It has been argued that the classification made now is in pursuance of recommendations of 6th Pay Commission whereby new benefits are conferred on to a set of employees with effect from a particular date and therefore it cannot be held to violative of the constitutional provisions.

26. The contentions of the applicants that in the matter of the recommendations of the 5th Pay Commission, the Hon'ble High Court in Writ Petition No. 2432 of 1999 and 1747 of 1999, ordered that pre 01/01/2006 and post 01/01/2006 retirees should be treated alike are not borne out by facts. The Hon'ble High Court only issued directions to pay the State Government employees including to pensioners arrears in 3 installments instead of five. The contentions that the number of PB4 retirees are limited and the financial implications for giving them the benefit of the proviso are negligible, are not based on specific statistics but are based on generalizations and conjectures, like the number of employees would be only around 200-300 etc. In any case, there appears to be no valid ground to force a decision on the 'proviso' on the State Government in view of the fact that the reasonable classification made by the State Government is based on logical and rational considerations, as explained in Para 14 and elsewhere. We do not feel that it is necessary to invoke a general principle i.e. the proviso to enhance the pensionary benefits of only PB4 employees, especially in view of the fact that it is not necessary to do so elsewhere, in general.

12. In this light of the matter, it is apparent that the Hakeem Committee recommended removal of the condition of 33 years qualifying service for full pension and further recommended that once a government servant has rendered

minimum qualifying service of 20 years, pension shall be paid at 50% of the basic pay and the same was accepted by the State Government with effect from 27/02/2009. The provisions of minimum qualifying service of 33 years is deleted on 27/02/2009. We therefore find substance in the contention of the respondents that the employees who were in service on the date of acceptance of 6^{th} Pay Commission and not retired on that date, form a separate class. We also do not find any unreasonableness or arbitrariness in the formula given in the Finance Department's G.R. dated 22/06/2009 for determination of pension to the employees in service on 01/01/2006. The said formula cannot be made applicable to the employees who retired prior to 01/01/2006 because for application of the said formula, service on 01/01/2006 is a must. In our opinion, therefore, fixing of the cut off date for granting benefits was well within the powers of the State Government and we do not find that the said classification is in any manner arbitrary or based on some irrational criteria.

13. In this light of the matter, as the order passed by the Tribunal is well reasoned, we are not inclined to interfere with the order of the Tribunal in the exercise of our jurisdiction under Article 226 of the Constitution of India. We do not find any merit in this Petition. The same is accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.) **(ACTING CHIEF JUSTICE)**