

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 796 OF 2002

Shri Bal Kudtarkar

.. Petitioner

Vs.

The Director General

All India Radio and ors

.. Respondents

Mr.Sanjay Kulkarni, for the Petitioner.

Mr.Mohamedali M. Chunawala a/w Mr.G.Hariharan i/b
Mr.A.A.Ansari, for Respondents.

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

DATE : 19th JANUARY, 2018

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

1. By this Petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 10/12/2001 passed by the Central Administrative Tribunal, Mumbai (for short "Tribunal") dismissing the petitioner's OA No. 474 of 2000.

The case of the petitioner in brief is as under.

2. The petitioner joined the All India Radio as a drama artist in 1940 and continued in service till his superannuation on

30/06/1979 when he retired as a drama producer (Marathi). It is the petitioner's case that when he was serving, the staff artists of All India Radio were not treated as government servants and were not entitled to the pension but to contributory provident fund which the petitioner received when he retired. By communication dated 26/11/1991 addressed by the Ministry of Information and Broadcasting, Government of India to the Director General, All India Radio, New Delhi, it was informed that staff artists of All India Radio were entitled to pensionary benefits subject to the terms and conditions set out in the letter. The benefit of pension was extended with retrospective effect for those staff artists who had retired on or after 06/03/1982.

3. On 07/03/2000, the petitioner learnt that he could claim pension although he had retired earlier and therefore, made a representation on 07/03/2000 for grant of pensionary benefits in accordance with the communication dated 26/11/1991. On 31/03/2000 the Administrative Officer – respondent No.4 informed the petitioner that the said pension

scheme was not applicable to him as he had retired before 06/03/1982. The petitioner therefore, filed OA before the Tribunal. The Tribunal was pleased to dismiss the OA.

4. Learned Counsel for the petitioner submitted that all retirees form one class and in the light of law laid down by the Apex Court in the case of **D.S.Nakara and ors. Vs. Union of India reported in (1983) 1 SCC 305** the petitioner cannot be deprived of the benefit of the pension scheme. In the submission of the learned Counsel for the petitioner fixing the cut off date as 06/03/1982 is arbitrary and without any rational basis. In the submission of the learned Counsel for the petitioner granting benefit of the pension scheme with effect from 06/03/1982 to the employees who have retired on or after 06/03/1982 and depriving those like the petitioner who have retired prior to this date is arbitrary and violative of Article 14 of the Constitution of India. Learned Counsel for the petitioner invited our attention to the decision of the Apex Court in the case of **D.S.Nakara (supra)** to contend that if the choice of date

is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, fixing of the cutoff date of 06/03/1982 thereby denying the benefit of the pension scheme to the petitioner is completely arbitrary and irrational.

5. Learned Counsel also relied upon the decision of this Court in the case of **Retired Employees of Non-Government College Association, Nagpur Vs. State of Maharashtra and ors. reported in 1987 Maharashtra Law Journal 326** to contend that the fixing of cut off date as 06/03/1982 is wholly arbitrary as there is no single acceptable and persuasive reason for this division.

6. Learned Counsel also relied upon the decision of the Apex Court in the case of **Union of India Vs. M.A.Chowdhary (1987) 4 SCC 112** to contend that the petitioner being holder of the civil post within the meaning of Article 311 (1) of the Constitution of India, therefore the petitioner being a

government servant is entitled to pensionary benefit as per the pension scheme.

7. Learned Counsel for the respondent on the other hand invited our attention to the order passed by the Tribunal. In his submission, at the relevant time when petitioner retired from the service, he was governed by the contributory provident fund scheme and was not entitled to pension. The petitioner has received benefits under contributory provident fund scheme on his retirement and thus he is governed by the terms and conditions which existed between the petitioner and the respondent at the time of his retirement. There was no pension scheme in existence when the petitioner retired. New pension scheme has been made effective to those employees who have retired on or after 06/03/1982. In the submission of the learned Counsel for the respondents, the employees who retired on or after 06/03/1982 form a separate class and those like the petitioner who already stood retired cannot claim that they belong to one homogeneous class. In the submission of the

learned Counsel for the respondents the petitioner is not entitled for the benefit of the pension scheme.

8. We have heard learned Counsel for the parties. The issue involved in this Petition can be answered by referring to the decision of the Apex Court in the case of **T.N. Electricity Board Vs. R.Veerasingam and ors, (1999) 3 Supreme Court Cases 414**. We may make a useful reference to paragraphs 8 to 11 of the decision in **T.N. Electricity Board** (*supra*) which reads as under:

“8. As noticed earlier, the law is very well settled on the issue on hand. In the latest judgment dated 9.10.1998 of this Court in *V. Kasturi v. Managing Director, State Bank of India. Bombay & Anr.*, [1998] 8 SCC 30 after noticing all the judgments of this Court up to that date on this issue, it was held as follows: (SCC pp.51-52, para 23)

“23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a

scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter v. Cap. Bipinbendra Chanda and Govt. of T.N. v. K. Jayaraman to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit,"

9. This Court in *Union of India v. Lieut (Mrs.) E. Jacats*, [1997] 1 SCC 334, to which one of us (Sujata V. Manohar J.) was a party, had considered a case similar to the one on hand and held as follows: (SCC p.338, para 5)

"5. The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensionary benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable".

10. In *Hari Ram Gupta v. State of U.P.*, [1998] 6 SCC 328, this Court held as follows : (SCC pp.334-35, para 9)

"9. The only other question that survives for our consideration is whether the ratio in *Nakara* case will assist the appellant in getting the relief sought for. In *D.S. Nakara v. Union of India* the question for

consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision granting some benefits to one group denying the others. In the aforesaid case, the provisions for pension were applicable to all retirees and, therefore, pensioners form a class as a whole. But when the Liberalised Pension Scheme was introduced, the said Scheme was made applicable to a group of pensioners and not to all and, therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, in unprincipled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution Bench judgment of *Krishena Kumar v. Union of India* where in the decision of *Nakara* was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand, the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees must also equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement whereafter no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of pension retirees, the obligation continues till the death of the employee. This Court categorically held that *Nakara* cannot be an authority for the decision in *Krishena Kumar v. Union of India*. In *PN. Menon* a similar question came up for consideration and distinguishing *Nakara* and following *Krishena Kumar* and other similar cases, the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such, any revised scheme in respect of post-retirement benefits, if implemented

with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. When the army personnel claimed the same pension irrespective of their date of retirement, this Court in the Constitution Bench case of the Indian Ex-services League v. Union of India considered the grievance of ex-servicemen who had laid the claim on the basis of Nakara but ultimately negated the same and followed Krishena Kumar. In All India Reserve Bank Retired Officers' Assn. V. Union of India, when the validity of the introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1.1.1986 have not been given the benefit of the said Scheme, it was held by this Court that there is no arbitrariness in the same."

(Emphasis supplied)"

11. On 17-11-1998, a three-Judge Bench in All India PNB Retired Officer's Assn. v. Union of India while negating an identical claim, held as follow:

"This writ petition is squarely covered by the judgment of this Court in All India Reserve Bank Retired Officer's Assn. v. Union of India. That judgment has rightly noted the distinction that Nakara case drew between a continuing scheme and a new scheme."

9. In this view of the matter, we find that the petitioner while in service of the respondents was not governed by the pension scheme but governed by the contributory provident fund scheme. As per rules in force on the date of the retirement, the petitioner received all retiral benefits. The respondents fixed

06/03/1982 as a date for introducing the pension scheme. In the light of the law laid down by the Apex Court, we are of the view that the employees like the petitioner who had retired before 06/03/1982 and those who were in employment on the said date or retired thereafter cannot be treated alike as they do not belong to one class. The employees who had retired after receiving all the benefits available under the contributory provident fund scheme ceased to be employees of the respondents with effect from the date of their retirement. They form a separate class.

10. In the light of the foregoing discussion and applying the ruling of the Apex Court above noted, we are of the opinion that the respondents have not acted illegally or contrary to law introducing pension scheme to be made applicable to the employees who had retired on or after 06/03/1982. The petitioner who had retired before 06/03/1982 cannot compel the respondents to extend the benefit of newly introduced pension scheme to him.

11. We do not therefore find any infirmity with the view taken by the Tribunal. There is thus no merit in this Petition. Petition is accordingly dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)