BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.17501 of 2020

Kalavathy ... Petitioner

Vs.

The Bar Council of Tamil Nadu and Pondicherry
High Court Campus,
Chennai,
represented by its Secretary. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent's Tamil Nadu Advocate Welfare Fund Trustee Committee Resolution No.304 of 2019, dated 03.10.2019 and quash the same as illegal and directing the respondents to pay the proportionate welfare fund on the basis of number of years proportionate welfare fund on the basis of the number of years practised by the husband of the petitioner after retirement from service.

For Petitioner : Mr.S.Muthukrishnan
For Respondent : Mr.Niranjan S.Kumar

ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioner, wife of one Parimanam, Advocate, has filed this writ petition, challenging the Resolution No.304 of 2019, dated 03.10.2019, of the Tamil Nadu Advocate Welfare Fund Trustee Committee of the Bar Council of Tamil Nadu and Pondicherry, Chennai.

2.By the impugned Resolution dated 03.10.2019, the Secretary, Tamil Nadu Advocate Welfare Fund Trustee Committee of the Bar Council of Tamil Nadu and Pondicherry, rejected the claim of the petitioner for the death benefit of her husband R.Parimanam, Advocate, Chennai, stating that he is not eligible for the benefit as per Proviso to Explanation II(5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act.

3.The case of the petitioner is that her husband was enrolled as an Advocate in the Tamil Nadu Bar Council in the year 1996 and he was appointed as Assistant Public Prosecutor in the year 1969 and subsequently, he joined in the Government Services. After retiring from the Government Services, on attaining the age of superannuation on 30.10.2000, he resumed his practice as an Advocate in the District Munsif cum Judicial Magistrate Court at Musiri. Her husband also became a Member in the Tamil Nadu Advocate Welfare Fund in the year 2002 in Membership No.13359 and he nominated the petitioner and their son Saravanan as Nominees for his Welfare Fund Benefits.

4.While so, the petitioner's husband died on 24.06.2019. Therefore, the petitioner has made an application on 22.07.2019, for sanctioning the welfare benefits payable to her, on account of her husband's death. The Secretary, Tamil Nadu Advocate Welfare Fund Trustee Committee of the Bar Council of Tamil Nadu and Pondicherry, rejected the claim of the petitioner, by the impugned Resolution No.304 of 2019, dated 03.10.2019. Aggrieved over the rejection of her request for the Welfare Fund Benefits, the petitioner has approached this Court.

5.Mr.Niranjan S.Kumar, learned Counsel appearing for the respondent submitted that the petitioner's husband, a retired Government servant cum Pensioner, is not entitled to get the Welfare Benefit Funds, as per Proviso to Explanation II(5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act and this issue has already been dealt with by the Hon'ble Supreme Court in ***S.Seshachalam and Others Vs. Chairman, BAR Council of Tamil and Others***, in ***[(2014) 16 SCC 72]*** that the pensioners are not entitled for such benefits, since it would amount to getting double benefits and therefore, prayed for dismissing of this writ petition.

6.Heard Mr.Muthukrishnan, learned Counsel appearing for the petitioner and Mr.Niranjan S.Kumar, lenared Counsel appearing for the respondent.

7.It is seen that the claim of the petitioner was rejected, as per Proviso to Explanation II(5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act, which reads as follows:

> *"5. Where a member of the fund dies, his nominee or legal heir, as the case may be, shall be paid an amount of seven lakhs rupees [G.O.(2D).No.22, dated 30.01.2018]*
>
> *Provided that if such member who, before his death, was in respect of pension, gratuity or other terminal benefits from any State Government or the Central Government or other authority or employer, his*

nominee or legal heir, as the case may be, shall not be entitled for the payment of the amount of seven lakhs rupees under this sub-section."

8.This Proviso to Section 16 Explanation 25 of the Tamil Nadu Advocates Welfare Fund Act, 1987, denying the payment of welfare fund to the pensioners, was challenged before the Hon'ble Supreme Court in ***S.Seshachalam and Others Vs. Chairman, BAR Council of Tamil and Others***, reported in ***(2014) 16 SCC 72***, wherein it has been held as follows:

18. As per the scheme of the Welfare Fund Act, every advocate who has enrolled with the State Bar Council as per the Advocates Act 1961 would not automatically become a member of the Advocates' Welfare Fund and it is only those advocates who applied to the Trustee Committee, can become member of the Advocates' Welfare Fund. As per Section 15 of the Welfare Fund Act, only those who applied on payment of membership of Rs.200/- towards application shall be admitted as a member of the Fund. It is thus not in dispute, not only the advocates who have enrolled with the Bar Council immediately after completion of their law degree, but also those who enrolled as advocates after their retirement from other employment may become the members of the Advocates' Welfare Fund.It is only those advocates who have become the members of the Advocates' Welfare Fund, are eligible for the benefits under the Welfare Fund Act which may be the payment of schedule amount on cessation of practice in terms of Section 16 (1) and payment of lump sum amount as per theimpugned proviso. As per Section 16 (1) of the Act, every advocate who has been a member of the Fund for a period of not less than five years, on his cessation of practice, be paid an amount at the rate specified in the schedule. The proviso to sub-section (1) of Section 16 enables the Trustee Committee to pay an amount to a member of the Fund who ceases to practice within a period of five years from the date of his admission as a member. Thus, the persons who enrolled as advocates after their retirement even though they are denied the benefit of lump sum payment under the impugned proviso, on cessation of their practice, they shall be entitled to the Welfare Fund at the rate specified in the schedule. The differentiation of the retired employee-advocates who have set up practice as advocates after demitting their office, who are in receipt of pension or other terminal benefits and the advocates who set up practice straight from the law college, in our considered view, appears to be rational and reasonable.

The said classification, in our view, has a nexus with the object sought to be achieved.

19. Statement of Objects and Reasons of the Tamil Nadu Welfare Fund Act clearly states that the Welfare Fund is intended to provide welfare to the advocates and to provide them retirement benefits. The Objects and Reasons of Tamil Nadu Advocates' Welfare fund Act reads as under:-

STATEMENT OF OBJECTS AND REASONS Tamil Nadu Advocates Welfare Fund Act, 1987 (Tamil Nadu Act 49 of 1987) "The constitution of a Welfare Fund for the payment of retirement benefits to the advocates in the State of Tamil Nadu and for conferring on them the benefits connected therewith or incidental thereto has been engaging the attention of this Government for quite some time. The Government have decided to constitute a Fund called the Tamil Nadu Advocates Welfare Fund in the State to provide for payment of retirement benefits to the advocates in the State and for conferring on them the benefits connected therewith or incidental thereto." (Underlining added)

20. The main point falling for consideration is whether there is nexus between the object of the Act and denial of benefits of lump sum welfare fund to retired employees enrolled as advocates after their retirement under explanation II (5) of Section 16 of the Act. As noticed earlier, on cessation of practice, the members of the Welfare Fund are entitled to the benefits as available in the schedule to the Welfare Fund Act based on the years of service and what is denied is just a lump sum amount. It is an established principle that mere hardship caused to a group should not be a ground to strike down a law.

21. Article 14 of the Constitution of India states that "The State shall not deny to any person equality before the law of the equal protection of the laws within the territory of India". Article 14 forbids class-legislation but it does not forbid reasonable classification. The classification however must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring *particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.*

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions:- Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

23. In Special Courts Bill, 1978 (1979) 1 SCC 380, this Court referred to large number of decisions involving interpretation of Article 14 of the Constitution of India and summarized the principles. In the case of National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sansthan, (2011) 3 SCC 238, Justice Singhvi has elaborated the concept of ' Right to Equality' by referring to chain of judgments delivered by this Court and established principles viz. Union of India & Anr. vs. Parameswaran Match Works & Ors., (1975) 1 SCC 305, Dr. Sushma Sharma & Ors. vs. State of Rajasthan & Ors., (1985) Supp. SCC 45, University Grants Commission vs. Sadhana Chaudhary & Ors., (1996) 10 SCC 536, Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors., (2004) 2 SCC 76 and State of Punjab & Ors. vs. Amar Nath Goyal & Ors., (2005) 6 SCC 754 etc.

24. Recently, in the case of Dr. Subramanian Swamy vs. Director, CBI & Anr., (2014) 8 SCC 682, this Court considered the process of classification and what should be regarded as a class for purposes of legislation held in paras (58) and (70) as under:-

"58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14."

25. In the light of the well-settled principles of interpretation of Article 14, it is to be seen whether there is intelligible differentia between the classification of advocates who had set up practice straight after enrolment and other advocates who start their practice after demitting the office and are in *receipt of pension and other benefits and whether the differentia has a nexus with the object of the Act.*

26. The profession of law is a noble calling. The legal fraternity toils day and night to be successful in the profession. Although it is true that slowly working one's way up is the norm in any profession, including law, but initially young advocates have to remain in the queue for a prolonged period of time and struggle through greater hardships. Despite being extremely talented, a number of young lawyers hardly get proper opportunity or exposure in their profession. New entrants to the profession in the initial stages of the profession suffer with the meagre stipend which young lawyers may receive during their initial years, coupled with the absence of a legislation concerning this, they struggle to manage their food, lodging, transportation and other needs. Despite their valiant efforts, they are unable to march ahead in their profession. It is only after years of hard work and slogging that some of the fortunate lawyers are able to make a name for themselves and achieve success in the profession. For the majority of the legal fraternity, everyday is a challenge. Despite the difficult times, the lawyer who sets up practice straight after enrolment, struggles to settle down himself in the profession. Some of the lawyers remain struggling throughout their lives yet choose to remain in the profession. It is something like "riding a bicycle uphill with the wind against one".

27. Contrariwise, the retired employees like the appellants who are law graduates did not withstand the difficult times in the profession. They opted for some other lucrative job during their prime time of their life and lived a secured life. Others found some job and positioned themselves in a comfortable place of employment, chose to join evening college or attended part time classes and obtained law degree and having retired with comfortable retiral benefits, further securing their future, they enrol themselves as an advocate to practice. The retired employees have the substantial retiral benefits, gratuity apart from receiving pension. The availability of lump sum retiral benefits with pension makes a retired employee better placed than their counter part lawyers who struggle through difficult times.

28. The various welfare fund schemes are in actuality intended for the benefit of those who are in the greatest need of them. The lawyers, straight after *their enrolment, who join the legal profession with high hopes and expectations and dedicate their whole lives to the professions are the real deservers. Lawyers who enrol themselves after their retirement from government services and continue to receive pension and other terminal benefits, who basically join this field in search of greener pastures in the evening of their lives cannot and should not be equated with those who have devoted their whole lives to the profession. For these retired persons, some amount of financial stability is ensured in view of the pension and terminal benefits and making them eligible for lump sum welfare fund under the Act would actually amount to double benefits. Therefore, in our considered view, the classification of lawyers into these two categories is a reasonable classification having a nexus with the object of the Act.*

29. Furthermore, it is also to be noted that in view of their being placed differently than the class of lawyers who chose this profession as the sole means of their livelihood, it can reasonably be discerned that the retired persons form a separate class. As noticed earlier, the object of the Act is to provide for the constitution of a Welfare Fund for the benefit of advocates on cessation of practice.

As per Section 3 (2) (d) any grant made by the Government to the welfare fund is one of the source of the Advocates' Welfare Fund. The retired employees are already in receipt of pension from the Government or other employer and to make them get another retiral benefit from the Advocates' Welfare Fund would amount to double benefit and they are rightly excluded from the benefit of the lump sum amount of welfare fund."

9.In the above cited judgment the Hon'ble Supreme Court held that the retired employees are already in receipt of pension from the Government or other employer and to make them get another retiral benefit from the Advocates' Welfare Fund would make to double benefit and they are rightly excluded from the benefit of the lump sum amount of the welfare fund. Further, Proviso to Explanation II (5) of Section 16 of the Tamil Nadu Advocates Welfare Fund Act also specifically states that the Member, who was in receipt of pension from any State or Central Government, his nominee or legal heir shall not be entitled for the benefit of welfare fund. In this case also the petitioner's husband though was practising as an Advocate, he joined the Government Services and got retired. Therefore, in view of the above said proviso and in view of the principles laid down by the Hon'ble Supreme Court in the above cited judgment, the petitioner is not entitled for such benefits of welfare fund and there is no reason to interfere with the impugned resolution No.304 of 2019, dated 03.10.2019.

10.In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Secretary,
The Bar Council of Tamil Nadu and Pondicherry
Madras High Court Campus,
Chennai.

W.P(MD)No.17501 of 2020
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