BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.(MD)No.1026 of 2012
&
M.P.(MD)No.2 of 2012

The Indian Southern Region Postal
Pensioners Welfare Association,
11, Mannar Thirumalai Street,
Balaji Nagar, Thirupparankundram,
Madurai - 625 005.
Rep. by its Secretary,
Mr.S.Muthusamy ... Appellant/ Petitioner

-vs-

1.Union of India,
Through the Secretary to Government of India,
Department of Pension and Pensioners Welfare,
Ministry of Personnel,
Public Grievances and Pension,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

2.Secretary to the Government of India,
Department of Expenditure,
Ministry of Finance,
North Block,
Central Secretariat, New Delhi - 110 001.
... Respondents/Respondents

[Cause title accepted vide order dated 22.11.2012, made in M.P.(MD) No.1 of 2012 in W.A.(MD)SR.No.44278 of 2012]

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 14.08.2012, passed in W.P.(MD)No.7555 of 2012.

Prayer in WP(MD). 7555/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the first Respondent in Resolution No.38/37/08-P&PW(A), dated 29-08-2008 and Memorandums F.No.38/37/08-P&PW(A), dated 01-09-2008, F.No.38/37/08-

P&PW(A), dated 02-09-2008, F.No.38/37/08-P&PW(A).pt.1, dated 03-10-2008, F.No.38/37/08-P&PW(A).pt.1, dated 14-10-2008 and F.No.38/37/08-P&PW(A), dated 11-02-2009 and quash the same in so far as S.No.12 in Resolution No. 38/37/08-P&PW(A), dated 29-08-2008, in so far as para 4.1, 4.2, 5.1, 5.2 and para 8 in F.No.38/37/08-P&PW (A), dated 01-09-2008, in so far as para 5.5 & 8.1 in F.No.38/37/08-P&PW(A), dated 02-09-2008, in so far as 4.2 in F.No.38/37/08-P&PW (A).pt.1, dated 03-10-2008, in sofar as Annexure I, II and III in No.38/37/08-P&PW(A). pt.1 dated 14.10.2008 and F.No.38/37/08-P&PW(A) dated 11.02.2009 as illegal and consequently direct the respondents to raise the minimum pension and family pension from the amount of Rs.3,500/- per month to 5,000/- per month and fix the liberalised pension and family pension schemes to pre-2006 retirees on par with post-2006 retirees within a time frame that may be stipulated by this Court.

For Appellant	:	Mr.R.R.Kannan
For Respondents	:	Mrs.L.Victoria Gowri Assistant Solicitor General of India

JUDGMENT

S.VAIDYANATHAN, J.
and
G.JAYACHANDRAN, J.

The present writ appeal has been preferred by the Association challenging the order dated 14.08.2012, made in W.P.(MD)No.7555 of 2012.

2.According to the appellant Association, they have locus to file the present appeal and that by fixing the cut-off date as 01.01.2006, the respondents adopted two different yardsticks for extension of pensionary benefits to the retired employees concerned. The appellant relying upon the decision of the Hon'ble Apex Court in **Kallakurichi Taluk Retired Official Association, Tamil Nadu, etc., vs. State of Tamil Nadu** [Civil Appeal Nos.8848-8849 of 2012, decided on 17.01.2013], submitted that the writ petition is maintainable by an Association. He would further contend that even though subsequent Office Memorandum has been issued to rectify the anomaly, the employees, who have retired before 01.01.2006, are not treated on par with those who retired on or after 01.01.2006, to get pensionary benefits. Hence, the order of the learned Single Judge needs to be interfered with.

3.The first respondent has filed counter affidavit stating that after filing of the Writ Petition, the grievance of the appellant has been sorted out and Grade Pay and other benefits have been extended to the employees concerned. In the counter affidavit, it has been elaborately stated how pre-2006 and post-2006 retirees were settled with pensionary benefits under two different schemes and the dismissal of the S.L.Ps. filed in the earlier round of litigations. The Hon'ble Apex Court in **D.S.Nakara and others Vs. Union of India [1983 (1) SCC 305]**, has upheld the fixation of cut-off date and that the said judgment is a benchmark to decide as to whether the appellant is entitled to the relief sought for or not.

4.The relevant portion of the said counter affidavit reads as follows:-

> *''6.It is humbly submitted that subsequently vide order dated 20.11.2014, passed by the learned Central Administrative Tribunal in O.A.No.937 of 2010 entitled as ''All India S-30 Pensioners Association and Ors. Versus Union of India and Ors.'' and O.A.No.2101 of 2010 entitled as ''Central Govt. Pensioners Association and Ors. Versus Union of India and Anr. [hereinafter referred to as ''Order dated 20.11.2014''], the learned Central Administrative Tribunal, Principal Bench, held that:-*
>
> > *'' .... We direct the respondents to consider the revised pay of the applicants corresponding to the pay at which, the concerned pensioner had in fact retired, instead of considering the minimum of the said pay scale, thereby determining pension/family pension to pre-2006 retirees ....''*
>
> *7.It is humbly submitted that Union of India has filed W.P.(C)No.8080 / 2016 and W.P.(C) No.10655 / 2017 against the orders of Hon'ble CAT, Principal Bench, on the following grounds:-*
>
> > *Hon'ble Supreme Court in Union of India (UOI) vs. S.R.Dhingra and others [2008 (1) SCC (LS) 926 observed that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated as though they retired with the same rank, they are not of the same class or homogeneous group. Hence, Article 14 has no application. The Court noted that in D.S.Nakara's case, the Apex Court observed that the pensioners who retire with the same rank need not be given identical pension, where their average 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.*
>
> *Hon'ble Supreme Court in its order dated 10.10.2006 in Transfer Case (Civil) No.72 of 2004 in*

Col B.J. Akkara Vs. Government of India and ors. inter alia observed as under:-

> *''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.''*

Fixation of a cut-off date for the purpose of extending retiral benefits is perfectly permissible and legitimate for the Government. Pre-2006 and post-01.01.2006 retirees cannot be extended the same pensionary benefits as the Government of India have on the recommendations of the 6th C.P.C., issued two different schemes for pre-2006 and post-2006 retirees. It is, therefore, not correct to compare a retiree in December 2005 with a retiree in January, 2006, both of whom are governed by a separate scheme of pensionary benefits.

In a catena of judgments, various Courts, including the Apex Court, have held that it is the prerogative of the executive authorities to fix cut-off dates and to determine issues of pay and pension fixation. The executive takes these decisions based on a variety of considerations including financial, administrative and other constraints. The Courts do not generally interfere in this regard unless the principles adopted are patently arbitrary or mala fide. This is not the case in the present instance.

The Apex Court in the case of Govt. of Andhra Pradesh and other V.N.Subbarayudu and others, 2008 (14) SCC 702 has held that even if no reason is forthcoming for fixation of particular date it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result.

The Pay Commissions are expert bodies and their *recommendations from an overall package. It, therefore, cannot be anybody's contention that recommendations which are manifestly to the advantage of pensioners shall be wholeheartedly accepted while those which may not yield the same degree of relative benefits are liable to be challenged and struck down in Court of Law.*

Grant of benefit of pay and pension is a matter of policy and the Government is entitled to take into account various factors including financial implications and availability of resources to decide what benefit or how much benefit should be granted and from which particular time. Such a policy is not open to judicial review unless the same is arbitrary and against the public policy with the object to be achieved.

Financial constraints and implications are always vital and important factor in interpretation of economic / fiscal policies of Government as paying capacity of employer cannot be ignored in granting and denying monetary benefits to employees including ex-employees.

8.It is humbly submitted that in its order dated 16.09.2016, Hon'ble High Court of Delhi stayed the operation of the orders of Hon'ble CAT in OA.No.937/2010 and 2101/2010. Thus, insofar as the pensioners of Central Government is concerned, the matter regarding parity in pension between the past and new pensioners is sub-judice in the High Court of Delhi. The next date of hearing in the case is 12.04.2021.

9.It is humbly submitted that in implementation of the decision taken by the Government on the recommendations of the 7th Central Pay Commission, orders have been issued vide Department of Pension & Pensioners' Welfare OM.No.38/37/2016 - P & PW(A), dated 12.05.2017 for revision of pension of pre-2016 pensioners/family pensioners. It has been provided in this OM that the pension/revised pension w.e.f. 01.01.2016 in respect of all Central Civil Pensioners/family pensioners who retired/died prior to 01.01.2016 may be revised by notionally fixing their pay in the pay matrix recommended by the 7th C.P.C. in the level corresponding to the pay in the pay-scale / pay band and grade pay at which they retired / died. This will be done by notional pay fixation under each intervening Pay Commission based on the formula for revision of pay. Thus the relief *sought by the petitioners for revision of pension of pre-2006 pensioners at par with those who retired after 01.01.2006 has already become available w.e.f. 01.01.2016.*

10. It is humbly submitted that,

(i) the relief sought by the petitioner for increase in the minimum pension / family pension w.e.f. 01.01.2006 from Rs.3,500/- to Rs.5,000/- may not be granted in view of the reasons given in Para 1 -4 above.

(ii) the relief sought by the petitioners for revision of pension of pre-2006 pensioners at par with those who retired after 01.01.2006 has already become available w.e.f. 01.01.2016. The matter regarding parity in pension w.e.f. 01.01.2006 may not be granted in view of the reasons brought out in Para 5-8 above.''

5.Now, the anomaly has been rectified to the maximum extent after the orders of the Hon'ble Apex Court, wherein, the issue has already been settled and attained finality. Therefore, this Court is not inclined to grant the relief as sought for by the appellant. The Hon'ble Apex Court has held that it is the prerogative of the executive authorities to fix cut-off dates and to determine issues of pay and pension fixation depending on variety of considerations including financial, administrative and other constraints. The Courts do not generally interfere in this regard unless the principle adopted are patently arbitrary or *mala fide*. Thus, we do not find any error apparent in the order of the learned Single Judge, as such, we are not inclined to interfere with the same. However, the issue regarding the maintainability of the writ petition by an Association is left open and it can be agitated before the appropriate forum. Hence, we find that there is no reason to grant the relief sought for by the appellant and the Writ Appeal is dismissed. If individual person has got any grievance, it is open to him to redress the same in accordance with law by making representation to the authorities concerned. In view of the subsequent Office Memorandums, which have been issued to remove the anomalies, it is always open to the aggrieved persons to work out their remedy before the appropriate forum. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary to Government of India,
Union of India,
Department of Pension and Pensioners Welfare,
Ministry of Personnel,
Public Grievances and Pension,
Lok Nayak Bhawan,
Khan Market,
New Delhi – 110 003.

2.The Secretary to the Government of India,
Department of Expenditure,
Ministry of Finance,
North Block,
Central Secretariat,
New Delhi – 110 001.

+1 CC to M/s.R.R. KANNAN, Advocate (SR-35479[F] dated 23/11/2021)

W.A.(MD)No.1026 of 2012
22.11.2021

RD(14.12.2021) 7P 4C