* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: September 2, 2022***
Pronounced on: September 15, 2022

\+ W.P.(C) 2180/2021 & CM APPL.6350/2021

BHIM SEN BANSAL ..... Petitioner

Through: Mr. Rohan Garg, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Mr. Digvijay Prasad and Mr. Vidit Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

<u>J U D G M E N T</u>

<u>SAURABH BANERJEE, J.</u>

1. ***There is an age-old dispute brewing inter-se the already retired public servants (one set) with those similarly situated public servants who have retired after them (another set) to be treated at par.*** The present petition is involving one such dispute where we are to adjudge if the two sets are similar when it is relating to *pension*. Though *pension* is a reward for the past service rendered by the public servant, it is dependent upon the last drawn pay and the total term of service rendered and the determining factor for calculating *pension* is the date of retirement and the prevalent

rules on such date. Having said so, it is trite law that though *pension* is not a fundamental right but a retired employee cannot be deprived of his right to *pension* save and except by authority of any law. Keeping the aforesaid in mind we proceed as hereinbelow.

2. As per the facts of the present petition before us, after joining as L.D.C. in SSB on 14.04.1964 petitioner was promoted as U.D.C. on 01.08.1968. Thereafter, upon merger of all the ministerial posts of the then SSB, ARC, SFF and CIOA into a common cadre with inter-changeable transfers, the Directorate General of Security-Secretariat Service (hereinafter referred *"**DGS**"*) was constituted on 04.11.1975.

3. As per petitioner, despite promotion as Assistant on 01.12.1975 as he was wrongly reverted to the post of UDC on 23.02.1978, he filed W.P.(C) 4681/1980 titled ***Bhim Sen Bansal vs Union of India & Ors***. before the Hon'ble Supreme Court wherein vide order dated 13.10.1987 his request for voluntary retirement was accepted and he was held entitled to retiral benefits on the footing that he was promoted to the post of Assistant since February, 1975 but he was not held entitled to any other benefit including back wages for the period after 1975 till voluntary retirement became effective. In terms thereof, DGS retired the petitioner under VRS as Assistant w.e.f. 18.01.1988(AN).

4. It was after a gap of almost *18 years* post his retirement, the 6th Central Pay Commission (hereinafter referred to as "***CPC***") with revised pay scale of Assistants in the grade pay of Rs. 4,600/- in DGS was introduced w.e.f. 01.01.2006. This prompted petitioner to make representations before various authorities, lastly following it up with a legal notice dated

08.02.2019, which though was not replied to by the DGS, but was replied to by the Directorate General of SSB.

5. The petitioner then filed a petition in C.A.T. seeking appropriate pensionary reliefs as payable to Assistants of DGS, however, had withdrawn it and filed the instant writ petition, inter-alia, seeking the following reliefs:

> "*i. Direct the Respondents to order payment of pension with grade pay of Rs.4600/- as paid to other assistants of Directorate General of Security Secretariat Service, Cabinet Secretariat;*
>
> *ii. Direct Respondents to pay all arrears of pension to the petitioner;*
>
> *iii. Any other suitable orders in favour of petitioner may be passed including order of interest on delayed pension and compensation for mentally torture, in view of illegal actions of Respondents*"

6. The case of the petitioner in a nutshell is that he retired from DGS and thus is entitled to pension in the same grade pay as other Assistants who have been paid grade pay of Rs. 4,600/- after 6th CPC, more so as his cadre always remained same. In effect, amongst various contentions raised by the petitioner, learned counsel has primarily thrusted upon the contention that even though the petitioner took VRS on 18.01.1988(AN) when the 6th CPC had neither been introduced nor implemented, he is entitled to parity with those Assistants who were working as on the date of introduction of the 6th CPC, i.e. 01.01.2006 and/or who retired after that. In support of his submissions, learned counsel for petitioner has placed reliance upon ***Union of India vs SPS Vains (Retd.) & Ors.*** (2008) 9 SCC 125, ***Darshan Singh & Ors. vs. State of Punjab & Ors.*** (2021) 3 SCC 119 and ***Dr. G. Sadsasivan***

Nair vs. Cochin University of Science and Technology represented by its Registrar & Ors. AIR 2022 SC 73 to contend that the acts of the respondents are arbitrary which offend the provisions of Article 14 of The Constitution of India and that the respondents cannot apply rules differently in relation to similarly situated persons.

7. In response, respondents vide their counter affidavit submitted that the petitioner was selected for deputation to NSG w.e.f. 19.01.1985 and stood voluntarily retired under VRS as Assistant w.e.f. 18.01.1988(AN) and was paid all pensionary benefits by NSG in the pay scale of Rs. 1640-60-2600-EB-75-2900 and upon implementation of 6th CPC w.e.f 01.01.2006, pension of the petitioner was rightly revised vide PAO NSG letter No. PAO/NSG/MHA/Pen-Rev/Pre-2006/2012-13/2464-67 dated 05.11.2012 in the pay scale of Rs. 9300-34800 + grade pay of Rs. 4,200/-. The respondents further contended that in response to the legal notice of the petitioner, the Directorate General of SSB vide reply dated 11.11.2019 specifically apprised the petitioner that he was not eligible for grade pay of Rs. 4,600/- as the Ministry of Finance had not agreed to the same because there was no specific recommendation of 6th CPC in that regard. The respondents lastly contended that prior to 2001, SSB was functioning under DGS under the administrative control of Cabinet Secretariat and though the petitioner was on deputation to NSG w.e.f. 19.01.1985 to 18.01.1988 and he retired from NSG, SSB was his parent cadre.

8. Relying upon the Ministry of Finance OM No. 1/1/2008-IC dated 16.11.2009, the respondents contended that SSB is no longer a security organisation but a Border Guarding Force and the petitioner, holding the post of an Assistant in a CAPF does not belong to such a Secretariat/ HQ

service where grade pay of Rs. 4,600/- is admissible in view of what was stated therein as under:

> "*4. … … … …As far as Central Secretariat is concerned, in order to continue to maintain parity between Field and Secretariat Offices, introduction of a level in the hierarchy of Central Secretariat having grade pay of Rs. 4200 in the pay band PB-2 between the grades of Upper Division Clerks and Assistants is necessary.*"

9. Further, relying upon the report of the "Departmental Anomaly Committee" MHA UO. No. 27012/96/2010/PF-V dated 20/25.04.2011, the respondents contended that such claim of Assistant of CAPF/ SSB for grade pay of Rs. 4,600/- was also not agreed even subsequent to the 6th CPC in view of what was stated therein as under:

> "*(ii) Proposal:- Revision of Pay Scale of the post of Assistants consequent on recommendation of 6th CPC.*
>
> *Decision of MoF:- The GP of Rs. 4600/- has been recommended for the post of Assistant of CSS/CSSS. Vide Department of Expenditure's OM dated 16.11.2009, the Assistant/Stenographers of CSS/CSSS have been placed in the GP of Rs. 4600/- w.e.f. 01.01.2006.*"

10. The petitioner reiterated his case in rejoinder and also contended that the respondents have discriminated the petitioner with another Assistant, DGS namely Mr. B.B. Mudgil, who has been granted the grade pay of Rs. 4,600/-. In rebuttal, the respondents contended that the case of the petitioner is not similar to that of said Mr. B.B. Mudgil as the latter superannuated on 30.06.2006, i.e. he was in service when the 6th CPC was introduced w.e.f. 01.01.2006, while the petitioner had admittedly taken VRS way back on 18.01.1988(AN) and also contended that the pension of said Mr. B.B.

Mudgil was revised in accordance with OM No. 38/37/08-P&PW(A) dated 28.01.2013 issued by the Ministry of Personnel, PG & Pensions, Govt. of India whereby the pension was fixed of the pre-1996, pre-2006 and post-2006 pensioners.

11. We have heard learned counsel for both parties and carefully perused the documents on record before us.

12. The facts of this case reveal that the petitioner took VRS on 18.01.1988(AN) when the 6th CPC had neither been introduced nor implemented and thus was not prevalent. Admittedly the 6th CPC with revised pay scale of Assistants having grade pay of Rs. 4,600/- in DGS was introduced subsequently w.e.f. 01.01.2006. The 6th CPC ushered in dawn of a new day. The 6th CPC introduced a new retiral benefit w.e.f. 01.01.2006 with a prospective effect and not a retrospective effect and is not an extension of any pre-existing rule, CPC or like. The 6th CPC is reasonable and rational and within the parameters of Article 14 of The Constitution of India and not arbitrary. The clear intention behind the implementation of the 6th CPC is to confer/ extend the benefits of pension to all the then serving public servants as on 01.01.2006 and future public servants and not to any of those public servants who already stood retired prior thereto.

13. It is very difficult to implement a scheme such as the 6th CPC without applying a cut-off date lest it would be extremely impractical and unfeasible. Further, such schemes like the 6th CPC cannot be made applicable across board without drawing any line(s). In our view, another interesting and vital factor to be taken into consideration while introducing and implementing such schemes like the 6th CPC, is the cost index and burden on the public exchequer, so as to save imposition of heavy financial burden. If this is not

followed then the same will tantamount to opening a floodgate where it will be a free for all. Benefits of such schemes cannot be extended to those who were there and were/are pre-existing prior to the introduction or implementation of such schemes. Having said that, schemes like 6th CPC are always in the limelight as they are prone to some error. What has to be examined on one hand is the larger beneficial interest of those governed by such schemes and on the other hand whether such schemes are likely to harm/ deprive the public servants who had already retired before the introduction or implementation of such schemes.

14. In the present case, the benefits under 6th CPC were non-existent at the time when the petitioner took VRS. As such, the Assistants like petitioner on one hand and the Assistants who retired after 01.01.2006 on the other hand are differently placed as their date of retirement has a different connotation altogether. The benefit of 6th CPC is not extendable to the petitioner as it was not in vogue at the time of his taking VRS and so he is not entitled to pension in the grade pay of Rs. 4,600/-. The implementation of the 6th CPC has not in any manner taken away any benefit as was available to the petitioner or the Assistants similarly situated. By virtue of the 6th CPC, there is a clear distinction carved out inter-se the public servants who were in service till 01.01.2006 and those public servants who were in service w.e.f 01.01.2006. It is thus clear that the petitioner is not entitled to pension in the grade pay of Rs. 4,600/-. Further, upon implementation of 6th CPC w.e.f 01.01.2006, pension of the petitioner was rightly revised vide PAO NSG letter No. PAO/NSG/MHA/Pen-Rev/Pre-2006/2012-13/2464-67 dated 05.11.2012 in the pay scale of Rs. 9300-34800 + grade pay of Rs. 4,200/-. In support thereof, we rely upon ***State***

Government Pensioners' Association & Ors. vs. State of Andhra Pradesh (1986) 3 SCC 501 wherein it is held as under:

> "2. *The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this court in Nakara case. There is no illegality or unconstitutionality (from the platform of Article 14 of the constitution of India) involved in providing for prospective operation form the specified date. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation – not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on January 26, 1950 and before the date of issuance of the notification on March 26, 1980. The court will have to rewrite the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spend, and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of article 14,*

> *perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis of the salary drawn by him on the date retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even).*"

15. At this point, we also wish to rely upon ***D.G. of Police, Chennai vs. K. Kunhambu & Anr.*** (2000) 10 SCC 62 wherein under similar circumstances it is held as under:

> "*4. From the facts enumerated hereinabove, it is clear that on the date when the respondent left the police service in 1949, he was only entitled to gratuity. This gratuity was received by him and no representation was made till 1992 laying claim for pension. The rules which allowed pension to be given on a person rendering 10 years of service were made applicable to the serving police personnel of the Malabar Special Police with effect from 1965. The claim of pension is under the Madras Liberalised Pension rules which themselves came into existence in 1960. Neither in 1960 nor in 1965 was the respondent in service. The right with regard to retirement benefits came into existence on 2-96-1949 and the respondent was paid whatever was due to him on that date. We fail to understand as to how the Rules of 1960 could be made applicable to the respondent who had left the police force as far back as 1949. Reliance on the decision of this court in Nakara case is completely misplaced.*"

16. In view thereof, the case of ***SPS Vains (supra)*** cannot come to the aid of the petitioner as in that case there was a distinction inter-se two posts and it was held arbitrary to allow such a situation to continue, whereas, in the

present case, in view of the above, there is no such situation. Further, the case of ***Darshan Singh (supra)*** also cannot come to the aid of the petitioner as the same pertained to benefit of a particular scheme to those who were already eligible employees whereas in the present case the employees, i.e. public servants who already stood retired before 01.01.2006 cannot take benefit of the 6th CPC as they are not eligible employees. Similarly, the case of ***Dr. G. Sadsasivan Nair (supra)*** also cannot come to the aid of the petitioner as the same was pertaining to rules differently applied to persons who were similarly situated, whereas, in the present case there are two distinct sets of public servants, one set of Assistants like the petitioner who already stood retired as on 01.01.2006 and another set of Assistants who were working and retired after 01.01.2006.

17. The petitioner is further not entitled to pension in the said grade pay of Rs. 4,600/- in view of the contentions raised and reliance placed upon various documents (*supra*) by the respondents before us, wherein, it has repeatedly been held that Assistants like the petitioner, who were not in service as on 01.01.2006 were/are not entitled to pension in the grade pay of Rs. 4,600/-. As per the contentions raised by the respondents, the petitioner does not have any case for grant of pension in the grade pay of Rs. 4,600/-. In view of the aforesaid, we find that there is neither any anomaly nor any similarity inter-se the petitioner on one hand and Mr. B.B. Mudgil on the other hand as the date of their respective retirement from service is totally different. Similarly, this is not a case where a separate class is sought to be created or where any distinction inter-se the similarly situated Assistants is being made by the respondents.

18. In our view, the applicable rule in matters of determination of pension is that which existed at the time of retirement of the personnel. Further, as similarly situated public servants working on the similar rank and holding the similar post join and retire on diverse dates, it would be axiomatic to hold that all such public servants can be entitled to either claim or get similar benefits including pension as extended to each other just because they are similarly placed. They cannot claim the right to equality under Article 14 of The Constitution of India. In the end, it all depends upon what were the then prevalent rules, regulations and Statute. In support of the same, reliance is placed upon ***Union of India vs. S.R. Dhingra*** (2008) 2 SCC 229 wherein under similar circumstances it has been held as under:

> "*23. We are of the opinion that the clarification of the Railway Board issued dated 29.12.1999 clarifying that the running allowance which was already taken into account for pension and other benefits at the time of retirement is not to be added to the pay of pre-1986 retirees revised on notional basis as on 1.1.1986 is valid. It appears that due to a clerical error the notional benefits of the respondents w.e.f. 1.1.1986 was wrongly fixed and such retired employees are getting excess pension. It is well-settled that a mistake does not confer any right to any party, and can be corrected.*
>
> … … … …
>
> *25. It is well settled 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. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. 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 homogenous class of pensioners into two groups and subjecting them to different treatment (vide ***Col B.J. Akkara (Retd) vs. Govt of India,*** (2006) 11 SCC 709, ***D.S. Nakara vs. Union of India*** (1983) 1 SCC 305, ***Krishna Kumar vs. Union of India*** (1990) 4 SCC 207, ***Indian Ex-Services League vs. Union of India*** (1991) 2 SCC 104, ***V. Kasturi vs. Managing Director, State Bank of India***(1998) 8 SCC 30 *and* ***Union of India vs. Dr. Vijayapurapu Subbayamma*** (2000) 7 SCC 662)."

19. It is thus clear that the petitioner is entitled to pension as per the grade pay of Rs. 4,200/- from the DGS, his parent department on the date of his taking VRS, i.e. 18.01.1988(AN) and not the grade pay of Rs. 4,600/- after the introduction of the 6^{th} CPC w.e.f. 01.01.2006.

20. Accordingly, the petitioner is also not entitled to any of the reliefs sought by virtue of the present petition. Thus, we hereby dismiss the present writ petition along with all the application(s), if any, therewith.

(SAURABH BANERJEE)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 15, 2022/rr