



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 20.03.2024*

+

W.P.(C) 6002/2016

ALL INDIA S-30 PENSIONERS ASSOCIATION AND ORS

..... Petitioner

Through: Mr. A.K.Behera, Sr. Adv. with Mr.
Amarendra P. Singh, Adv.

versus

UNION OF INDIA AND ORS

..... Respondent

Through:

+

W.P.(C) 8080/2016

UNION OF INDIA & ORS

..... Petitioner

Through: Mr. T.P.Singh, Central Govt. Senior
Panel Counsel.

versus

ALL INDIA S-30 PENSIONERS ASSOCIATION & ORS

..... Respondent

Through: Mr. A.K.Behera, Sr. Adv. with Mr.
Amarendra P. Singh, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE GIRISH KATHPALIA****REKHA PALLI, J (ORAL)**

1. These two writ petitions filed under Articles 226 and 227 of the Constitution of India seek to assail the order dated 20.11.2014 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A.



No. 937/2010 as also the review order dated 24.09.2015 in R.A. No. 10/2015. The petitioners in WP(C)6002/2016, the All India S-30 Pensioners Association and Ors. (hereinafter referred to as the Association) assail the impugned orders insofar as the reliefs granted by the learned Tribunal to them have been restricted from the date of filing of the O.A., which they claim must be granted from the due date i.e. 01.01.2006. On the other hand, the petitioners in W.P.(C)8080/2016, the Union of India, seek setting aside of both the impugned orders in their entirety. For the sake of convenience, the parties will hereafter be referred to as per their position in W.P.(C) 8080/2016.

2. At the outset, the brief factual matrix emerging from the record may be noted.
3. The respondent is an Association of pensioners, who had superannuated from service prior to 01.01.2006 and were at that stage placed in the S-30 pay-scale. For the sake of convenience they will hereinafter be referred to Pre-2006 pensioners. After the recommendations of the 6th Central Pay Commission were received and accepted, the respondents issued an O.M dated 30.08.2008 revising the pay of those employees who were in the S-30 pay-scale. This was followed by an O.M. dated 01.09.2008 revising the pension of the Pre-2006 pensioners w.e.f. 01.01.2006 based on the formula mentioned in the said O.M. On 02.09.2008, the petitioners came up with yet another O.M., this time fixing the pension of those employees, who had superannuated on or after 01.01.2006, hereinafter referred to as Post-2006 retirees.



4. Since as a result of these three O.Ms, a disparity had arisen qua the pension payable to the Pre-2006 retirees and the Post-2006 retirees, representations were made to the petitioners by the Association, and various other affected persons, seeking parity in the matter of pension. It was pointed out in these representations that on account of this disparity, some of the Pre-2006 pensioners, who were in the S-30 pay-scale at the time of their superannuation were drawing lesser pension than those Post -2006 pensioners, who were in the lower pay-scale of S-29 or even S-28. Upon their representations being rejected vide a communication dated 18.11.2009, the Association approached the learned Tribunal.
5. Vide the impugned order dated 20.11.2014, the Full Bench of the learned Tribunal has allowed the O.A. filed by the Association with directions to the petitioner to revise the pension of the members of respondent/association who had superannuated before 01.01.2006 in the pay scale of S-30 by revising their pay corresponding to the revised pay at which they had retired instead of considering the minimum of the said pay scale. As a consequence of these directions, the Pre-2006 retirees in the pay scale of S-30 would be entitled to the same pension as being drawn by the Post-2006 retirees in the same pay scale w.e.f the date of filing of the O.A.
6. Vide the second impugned order dated 24.09.2015, which has been passed in the review application filed by the respondent, the learned Tribunal has clarified that the revised pension directed to be paid to the Pre-2006 retirees would not be less than the pension being drawn by the Post-2006 retirees. It is in these circumstances that both sides



have approached this Court by way of the present writ petitions.

7. In support of its challenge to the impugned order, learned counsel for the petitioner submits that the impugned order is wholly perverse and is liable to be set aside as the learned Tribunal has over-stepped its jurisdiction in issuing directions regarding the manner in which the pension has to be computed. He submits that the learned Tribunal has erred in relying on the decisions of the Apex Court in *D.S.Nakara & Ors. v. Union of India [(1983) 1 SCC 305]* and *Union of India vs. SPS Vains, (2008) 9 SCC 125* and has failed to appreciate the ratio of the decision in *B.J.Akkara & Ors. v. Govt. of India & Ors[(2006) 11 SCC 709]*, wherein the Apex Court had held that it was permissible to make a distinction in respect of pension qua two categories of pensioners. He, therefore, prays that the impugned orders be set aside.
8. On the other hand, Mr. A.K.Behra, learned senior counsel for the Association/respondent supports the impugned order to the extent it directs revision of the pension of the Pre-2006 retirees. He submits that the learned Tribunal has rightly relied on the decision in *D.S.Nakara & Ors(supra)* and *SPS Vains(supra)*, wherein the Apex Court was dealing with exactly the same issue as arising in the present petitions. In fact, the 7th CPC has itself ensured that there is no discrimination between the pension of Pre-2016 and Post-2016 retirees. Furthermore, the Apex Court, in its recent decision in *All Manipur Pensioners Association By Its Secretary vs. State of Manipur And Others (2020) 14 SCC 625*, has also opined that such a classification between two classes of pensioners had no reasonable



nexus with the objective sought to be achieved while revising the pension. He, therefore, prays that the challenge of the petitioner to the impugned order be rejected.

9. He further submits that in the facts of the present case, when the respondents were throughout agitating their rights and a decision regarding their claim was taken by the petitioner only on 18.11.2009, there was no reason to restrict the grant of revised pension to them only w.e.f. the date of filing of the O.A. i.e from 19.03.2010. The learned Tribunal has failed to appreciate that the O.M. fixing the revised pension was issued only in September 2008, whereafter the members of the respondent/association had made representations, which came to be rejected only on 18.11.2009. He, therefore, contends that this was a fit case where the benefit of revised pension in terms of the impugned order ought to have been granted to all the Pre-2006 pensioners from the date of their entitlement i.e., 01.01.2006.

10. In order to appreciate the rival submissions of the parties, we may begin by noting the following extracts of the impugned order as contained in paras 43 to 47.

“43. The question, therefore, revolves around the issue whether SPS Vains judgment and D.S. Nakara's judgment (supra) will apply in the present case. In Nakara's judgment, the question that was raised is contained in para 2 of the judgment, which reads as follows:

"2. Do entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 (1972 Rules' for short) form a class as a whole'? Is the date of



retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio- economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet."

and the Hon'ble Supreme Court answered the questions as follows:

"(1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical raison d'etre for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Article 309 and 148 (5) of the Constitution.

XXXX

XXXX

XXXX

In the case Article 14 is wholly violated as the pension rules being statutory in nature, the rules, since the specified date, accord and treatment to equals in the matter of pension. It would have a effect on those who retired just before that date. This which into two classes is artificial and arbitrary,



is not based on any rational and whatever principle, if there be any. has not only no nexus to the objects sought to be achieved by liberalizing the pension rules, but is counter-productive and runs counter to the whole gamut of the pension scheme. Further, there is not a single acceptable or persuasive reason for this division. Therefore, the classification does not stand the test of Article 14.

XXXX

XXXX

XXXX

Date of retirement cannot form a valid criterion for classification, for if that be the criterion those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose.

XXXX

XXXX

XXXX

The basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination Article 14 strikes at arbitrariness because any action that is arbitrary must necessarily involve negation of equality. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

44. In the Vains judgment also, the ratio of the judgment can be seen from the issue raised by the Hon'ble Supreme Court in para 4 of its judgment and the ratio it lays down in para 27. Para 4 and para 27 of the judgment are quoted below:

"4. The larger issue involved is whether there could be a disparity in of pension to officers of the same rank, who had retired prior to the of the revised pay scales, with those who



retired thereafter.

XXXX

XXXX

XXXX

27. In our view, it would be to allow such a situation to since the same also offends the of Article 14 of the Constitution."

It would be clear from the above that the stand of the respondents that the judgment in SPS Vains case (supra) will not apply in the case of civil pensioners, cannot be a valid argument because the ratio laid down is that there cannot be a disparity in payment of pension to officers of the same rank, who had retired prior to the introduction of the revised pay scales, with those, who retired thereafter. The case of Brigadier and Major General in the Army is only an example. Thus, even if the facts of the case are different, the ratio would apply.

45. Therefore, in our view, the ratio laid down in the judgment of the Hon'ble Supreme Court in SPS Vains (supra) that there can be no disparity in payment of pension to officers of the same rank, who had retired prior to the introduction of the revised pay scales, with those, who retired thereafter will hold good in the present case. In fact, SPS Vains judgment (supra) relies on D.S. Nakara's case (supra) in which the Hon'ble Supreme Court has held that fixation of cut off date which runs counter to the whole gamut of Pension Scheme and equal treatment guaranteed in Article 14 is wholly arbitrary. In fact, even if for the sake of argument, we accept the proposition of the respondents that SPS Vains case (supra) is not applicable here, the present OAs are fully covered by the judgment in Nakara's case (supra) The Nakara case was regarding revision of pensionary benefits and of pensioners into two groups by drawing cut-off line and granting revised pensionary benefits to employees retired on or after the cut-off date. The criteria made applicable was "being in service and retiring subsequent to specified date". The Hon'ble Supreme Court held that application of such a criteria is violative of Article 14 of the Constitution of India as it is



arbitrary and discriminatory in nature. The Court held that those who retired before and after the said cut-off date, formed one class of pensioner and the classification into two groups was not founded on any intelligible differentia. The Nakara case arose under similar circumstances when in 1979, the formula for computation of pension was liberalized but made applicable to government servants who were in service on March 31, 1979 and retired from service on or after that specified period. Consequently, the pensioners who retired prior to the specified date, earned lesser pension though they might have been holding the same post. The situation is identical in the present case. Therefore, this case is covered on all fours by the Nakara judgment. We also agree with the learned counsel for the applicants that the judgments cited by the respondents relate to different facts and the issue of disparity in pension of the officers of the same rank was not an issue before the Hon'ble Supreme Court/ Tribunal in those cases.

Further, none of the judgments cited by the respondents have negated the ratio laid in SPS Vains (supra) or D.S. Nakara (supra) and, therefore, are not relevant here.

46. Though neither side has raised this issue during the course of arguments, it may be felt that a Pension Scheme falls in the realm of policy making by the government and thus the Tribunal should refrain from interference unless the decision is palpably unreasonable or not in accordance with the law. In the present case, we are of the opinion that the classification of the pensioners into two classes, whereby one class would draw pension not only less than those who retired from the same post after the cut-off date but also lesser pension than those who retired post cut-off date from the posts which are 2-3 grades below that of the applicants is absolutely unreasonable. Moreover, as mentioned earlier, the Nakara judgment was passed in exactly a similar background of facts and the Court held that this kind of classification is illegal.

47. We are of the considered view that the OM dated 18.11.2009 is illegal, being contrary to the law laid down by the Hon'ble



Supreme Court in SPS Vains (supra) and D.S.Nakara (supra) and is, therefore, quashed and set aside. 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. This will automatically take care of the apprehensions of the applicants that their pension could be fixed below the pension fixed of post-2006 retirees who had worked in the flower pay scales viz. S-24-8-29 pay scales. We, however, reject the claim of the applicants to confer the minimum notional pay scale starting at Rs.75500/- to the applicants as this is a matter which should be best left to expert bodies like Pay Commissions and the Tribunal would not like to enter into this arena. In any case, seeking parity based on just the 'minimum' of the scales being same is no a convincing argument and would lead to opening up a Pandora's Box. The respondents are directed to re-fix pension/ family pension of the applicants with effect from 1.01.2006 according to the above direction. The arrears, however, would be payable only from the date of filing of the respective QAs. The respondents shall complete the above exercise and pay the arrears, within three months from the date of receipt of a certified copy of this order, failing which they are liable to pay interest on arrears at G.P.F. rates w.e.f. the date of this order. With these directions, the OAs are disposed of."

11. From a perusal of the aforesaid extract of the impugned judgment, it clearly emerges that the respondent had besides relying on the decisions in ***D.S. Nakara(supra)*** and ***SPS Vains(supra)*** urged that parity was always maintained between the Pre-1986 and Post-1986 pensioners as also the Pre-1996 and Post-1996 pensioners qua their pension. We find that the learned Tribunal has allowed the O.A. by relying on these decisions, wherein the Apex Court was dealing with an identical situation like the present case, which pertained to similar



anomalies qua recommendations made by the earlier pay commissions. We have also perused the decision in *All Manipur Pensioners Association By Its Secretary (Supra)* relied upon by the respondents and find that the same also deals with exactly the same issue as arising in the present petitions. In this decision, the Apex Court, by relying on the decision in *D.S.Nakara(supra)* has categorically held that the State cannot arbitrarily fix different cut off dates for extension of benefits especially pensionary benefits qua similarly placed persons. The Apex Court also opined that it is only when a new benefit is granted or a new Scheme is sought to be introduced that it may be possible for the State to provide a cut off date taking into consideration its financial resources, but such a classification is not permissible in matters of pensionary benefits and that too, when both classes of pensioners were already getting the benefits of pension. Consequently, the Court set aside the decision of the Government prescribing different revised pensions for Pre 1996 retirees and Post 1996 retirees. It may, therefore, be apposite to refer to para 8 and 9 of the said decision, which read as under:-

“8. Primary contention is that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners. The expression “pensioner” is generally understood in contradistinction to the one in service. Government servants in service, in other words, those who have not retired, are entitled to salary and other allowances. Those who retire and are designated as “pensioners” are entitled to receive pension under the relevant rules. Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression



“pensioners”.

9. Is this class of pensioners further divisible for the purpose of “entitlement” and “payment” of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual government servant happens to fall. In other words, all government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Article 14?”

12. In the light of the aforesaid recent authoritative pronouncement of the Apex Court in ***All Manipur Pensioners Association By Its Secretary (Supra)***, we find absolutely no infirmity in the directions issued by the Tribunal to revise the pensions of the Pre-2006 pensioners in the S-30 pay scale. We, therefore, have no hesitation in concurring with the learned Tribunal that no discrimination in the matter of revised pension *vis-a-vis* Pre-2006 retirees and Post-2006 retirees was permissible.
13. Once the Apex Court has held that such a classification in the matter of pensionary benefits was not permissible, we see absolutely no



reason to interfere with the impugned order insofar as the challenge of the Union of India is concerned. We have also considered the decision in ***B.J.Akkara(supra)*** relied upon by the petitioner and find that in the said case, the Apex Court was dealing with the question of payment of non-practicing allowance, which cannot be treated as being akin to pension. Furthermore, from a perusal of para 18(c) thereof, we are of the considered view that in the present case when there is no distinction between the Pre-2006 retirees and Post-2006 retirees except for their date of superannuation, both categories of retirees were entitled to receive the same revised pension. The said decision, therefore, does not forward the case of the petitioner in any manner. We, therefore, find no merit in the challenge by the petitioner in W.P.(C)8080/2016, which is dismissed.

14. Now coming to the grievance of the respondent Association, who is the petitioner in W.P.(C) 6002/2016. As noted hereinabove, Mr. Behera, learned senior counsel for the respondent, has urged that when the revised pension, though payable w.e.f 01.01.2006, was fixed by the Union of India in September, 2008 itself, whereafter a representation was promptly made by the Association but came to be rejected on 18.11.2009. We are of the view that this was not a case where the Tribunal ought to have restricted the grant of benefit of the revised pension to the Pre-2006 pensioners from the date of filing of the O.A. No doubt in appropriate cases, where the Tribunal finds that the appellant had approached the Tribunal belatedly in matters of revised pay or pension, it can restrict the arrears from the date of filing of the O.A.. In the present case, when the O.Ms laying down



the revised pension in itself were issued in September, 2008 and the grievance of the respondent Association was rejected only on 18.11.2009, the O.As filed in January, 2010 by no stretch of imagination be said to be belated. We are, therefore, of the considered opinion that W.P (C) 6002/2016 deserves to be allowed by modifying the impugned order insofar it restricts the grant of benefit of revised pension to the members of the respondent from the date of filing of the O.A.. The impugned orders are, accordingly, modified by directing that the relief granted under the orders dated 20.11.2014 and 24.09.2015 would be granted to the members of the respondent w.e.f. the date of revision of pension i.e. 01.01.2006.

15. For the aforesaid reasons the writ petitions are disposed of by allowing W.P.(C) 6002/2016 and dismissing W.P.(C) 8080/2016. Arrears in terms of this order will be paid within eight weeks.

(REKHA PALLI)
JUDGE

(GIRISH KATHPALIA)
JUDGE

MARCH 20, 2024
al