

CHAUDHARY KESAVA RAO AND ORS. ETC.

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v.

STATE OF ANDHRA PRADESH

AUGUST 24, 1990

[N.M. KASLIWAL AND K. RAMASWAMY, JJ.]

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Civil Services: Andhra Pradesh Revised Pension Rules, 1980: Parts I and II—Division of government servants—Based on dates of retirement—Whether discriminatory.

The Andhra Pradesh State Government appointed a Pay Revision Commissioner in 1977, for revision of pay-scales in respect of its employees. The Commissioner was also directed to review the then existing retirement benefits and to make suitable recommendations regarding extension of retirement benefits. He submitted his report and recommended that the revised scales be made effective from 1.4.78. He also recommended that the retirement age should be increased from 55 years to 58 years.

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Accepting the report, the State Government implemented the recommendations regarding pay-scales effective from 1.4.78. The recommendation regarding increase in retirement age was implemented with effect from 29.10.1979.

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The State Government promulgated the Revised Pension Rules, 1980, which made a distinction between Government servants who were in service as on 29th October, 1979 (Part-I) and those Government servants who retired/died in between 1.4.78 and 28.10.79. (Part-II).

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By these Writ Petitions, the petitioners challenged the Revised Pension Rules, 1980 on the ground that the said Rules created two different categories of pensioners with different rates of pension which was completely arbitrary and in violation of this Court's decision in *D.S. Nakara & Ors. v. Union of India*, [1983] 2 SCR 165.

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The Respondent State contended that the increase in the age of superannuation could not be implemented retrospectively as it would have led to a lot of difficulties, but to compensate those who retired after April 1, 1978 and before October 29, 1979 the Government gave them certain benefits. It was further contended that since the date of superannuation was enhanced to 58 years on 29.10.1979 it was neces-

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A sary to draw a line between those who retired earlier to that date and those who retired subsequent to 29.10.1979, which was not arbitrary and the rules guarantee 50% of pension to both categories irrespective of the date of retirement.

Dismissing the writ petitions,

B HELD: 1. The claim of the petitioners is based on a complete misconception of the Rules. A perusal of the Rules clearly goes to show that Part-I of the Rules was no doubt made applicable to all Government servants who would retire on or after 29.10.1979 while Part-II was made applicable to such Government servants who were holding pensionable posts on 31st March, 1978 and who retired between 1st April, 1978 and 28th October, 1979 and this distinction was necessary in view of the fact that the age of superannuation for retirement was increased from 55 years to 58 years w.e.f. 29th October, 1979. [9G-H; 10A]

C 2. All the benefits have been granted to the pensioners like the petitioners who had retired between 1.4.1978 and 29.10.1979 in the amount of pension, retirement gratuity and family pension as granted to the Government servants falling under Part-I. So far as the amount of pension is concerned, the formula of completed six monthly periods of qualifying service was worked out as 30/60 of average emoluments which was equal to 50% of the pay. On account of the fact that the Government servants falling in Part-I are retiring at the superannuation age of 58 years the above formula was calculated as 33/66 which was also 50% of the average emoluments. Similarly in the case of retirement gratuity and family pension no distinction has been made in the case of the two categories of pensioners. This clearly goes to show that neither there is any discrimination nor any disadvantage to the pensioners falling in the category of petitioners and the formula working out the amount of pension is based on a rational principle and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or the same are in any manner violative of Article 14 of the Constitution. [10A-D]

G *D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165;* distinguished.

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 888-892 of 1987, 757 of 1988 and 316 of 1989.

H (Under Article 32 of the Constitution of India).

H.S. Gururaja Rao, Mrs. C. Markandeya and S. Markandeya for the Petitioners. A

Krishnamurthy Iyer, P. Parthasarthy and T.V.S.N. Chari for the Respondent.

The Judgment of the Court was delivered by

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KASLIWAL, J. The above mentioned bunch of writ petitions under Article 32 of the Constitution of India have been filed by the retired Government servants of the Government of Andhra Pradesh having retired in between 1st April, 1978 and 28th October, 1979. The case of the petitioners is that in pursuance to persistent demands made by the State Government Employees to revise their pay scales the Andhra Pradesh Government by Government Order dated November 3, 1977 appointed Shri A. Krishnaswamy, I.A.S. (Retd.) as the Pay Revision Commissioner. By another Government Order dated January 28, 1978 the Pay Revision Commissioner was also directed to review the existing retirement benefits *inter alia* to all employees of the State Government and to examine the question of extension of retirement benefits and make suitable recommendations in that regard. The Pay Revision Commissioner submitted a report comprised of five volumes. The Commission recommended that the date from which the revised scales of pay would be given effect to should be April 1, 1978. In Paragraphs 9.42 to 9.45 of its report the Pay Revision Commissioner specifically recommended that the age of retirement should be increased from 55 years to 58 years. It has been alleged that so far as the recommendations of the Commission in regard to the increased pay scales are concerned, the same were accepted and implemented by the State Government w.e.f. April 1, 1978. But so far as the recommendation in regard to increase in the age of superannuation from 55 years to 58 years, the same was implemented only w.e.f. October 29, 1979 through G.O.M.S. No. 283 Finance and Planning.

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It has also been alleged by the petitioners that the State Government issued G.O. (P) No. 88 Finance and Planning dated March 26, 1980 whereby the Revised Pension Rules, 1980 were promulgated. The above rules divided the Government servants for the purpose of pension into two parts, Part-I applying to all Government servants who were in service on 29th October, 1979 and Part-II applying to such of the Government servants who retired/died in between 1st April, 1978 and 28th October, 1979 (both dates inclusive). The contention of the petitioners is that by the above Rules two categories of pensioners

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- A were created with different rates of pension which is completely arbitrary and in violation of the law declared by this Hon'ble Court in *D.S. Nakara & Others v. Union of India*, [1983] 2 SCR 165. The petitioners have, therefore, prayed that pension rules Part-II which has been made applicable to Government servants having retired between 1st April, 1978 and 28th October, 1979 be quashed and it may be directed that they would also be governed by Part-I of the Rules which is applicable to those Government servants who were in service on 29th October, 1979.

- C The counter affidavit has been filed on behalf of the State of Andhra Pradesh. In the counter affidavit it has been stated that Pay Revision Commissioner was appointed to review the structure of different scales of Pay, dearness allowance and other compensatory allowance of all categories of employees of the State Government, Local Bodies and Aided Institutions as well as work charge establishments. An additional term of reference was added for reviewing the existing retirement benefit of all categories. After carefully considering all the relevant factors the Government implemented the recommendations relating to revision of scales of pay w.e.f. 1st April, 1978. As regards the age of superannuation, the Government of Andhra Pradesh increased the age of superannuation to 58 years w.e.f. October 29, 1979. This increase in the age of superannuation could not be implemented retrospectively as it would have led to a lot of difficulties, but E to compensate those who retired after April 1, 1978 and before October 29, 1979 the Government gave them benefits as under:

- F (1) The pension formula was increased from 33/80 to 30/60 for all those who retired between 1.4.1978 and 28.10.1979. This increase was specifically given as they would not have otherwise been entitled to the revised pension formula of 33/66 which had been applied only to such Government servants who retired after 29.10.1979.
- G (2) Formula for calculation of gratuity was increased to 1/3rd of emoluments for each completed six months period of qualifying service subject to a maximum of 20 months emoluments and limited to Rs.30,000. Earlier the formula was 1/4th of pay for every six months service subject to a maximum of 16½ times and emoluments limited to Rs.30,000.
- H (3) The Family pension was increased to 30% of the last drawn pay without any maximum limit. Earlier the rates of Family

pension were different for different ranges of pay and the minimum was Rs.60 and maximum Rs.250.

It was further submitted in the counter affidavit that the distinction between the pensioners in Part-I and II is based on the date of retirement and is clearly connected with the age of superannuation which was raised from 55 years to 58 years. It is not correct to say that the Government had arbitrarily divided the pensioners into two groups. As the date of superannuation was enhanced to 58 years on 29.10.1979 it was necessary to draw a line between those who retired earlier to that date and those who retired subsequent to 29.10.1979. It was pointed out that the pension formula would be 30/60 for those who retired between 1.4.1978 and 28.10.1979 and their pension worked out on the basis of 30/60 of the average emoluments and in respect of those who retired on or after 29.10.1979, it would be worked out as 33/66. Thus both the rules guarantee 50% of pension irrespective of date of retirement.

It was also pointed out in the counter affidavit that a writ petition (civil) No. 12605/85 was filed by the Andhra Pradesh State Government *Retired Officers Association and Others v. The State of Andhra Pradesh and Others* on identical grounds and the same was dismissed by this Hon'ble Court by an order dated 2.3.1987. In the above case it was held that "In view of the averments contained in paragraph 2(d) and 3 of the counter-affidavit, it is quite clear that the State Government was fully alive to improve the pensionary benefit of those who had already retired prior to October 29, 1979 and accordingly enhanced the rates of pension. We are satisfied that there is a discernible basis for differential rates of pension and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or that they offend Article 14 of the Constitution. The Writ Petition is accordingly dismissed".

We have heard the arguments advanced by Learned Counsel for both the parties and have thoroughly perused the records and the Andhra Pradesh Revised Pension Rules, 1980. We are fully convinced that the claim of the petitioners is based on a complete misconception of the Rules. A perusal of the Rules clearly goes to show that Part-I of the Rules was no doubt made applicable to all Government servants who would retire on or after 29.10.1979 while Part-II was made applicable to such Government servants who were holding pensionable posts on 31st March, 1978 and who retired between 1st April, 1978 and 28th October, 1979 and this distinction was necessary in view of the fact

- A** that the age of superannuation for retirement was increased from 55 years to 58 years w.e.f. 29th October, 1979. However, all the benefits have been granted to the pensioners like the petitioners who had retired between 1.4.1978 and 29.10.1979 in the amount of pension, retirement gratuity and family pension as granted to the Government servants falling under Part I. So far as the amount of pension is concerned, the formula of completed six monthly periods of qualifying service was worked out as 30/60 of average emoluments which was equal to 50% of the pay. On account of the fact that the Government servants falling in Part-I and retiring at the superannuation age of 58 years the above formula was calculated at 33/66 which was also 50% of the average emoluments. Similarly in the case of retirement gratuity and family pension no distinction has been made in the case of the two categories of pensioners. This clearly goes to show that neither there is any discrimination nor any disadvantage to the pensioners falling in the category of petitioners and the formula working out the amount of pension is based on a rational principle and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or the same are in any manner violative of Art. 14 of the Constitution.

E In view of the circumstances mentioned above the case of *D.S. Nakara & Ors. v. Union of India*, (supra) is not at all applicable in the facts and circumstances of this case and renders no assistance to the petitioners.

In the result we find no force in these writ petitions and the same are dismissed with no order as to costs.

G.N.

Petitions dismissed.