

STATE OF U.P.

v.

U.P. UNIVERSITY COLLEGES PENSIONERS' ASSOCIATION

FEBRUARY 28, 1994

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law : Pension—Teachers of aided Degree Colleges in State of U.P.—Retiring at age of 60—Held, teachers concerned would be entitled to pension on the basis of last pay drawn by them on attaining age of 60 years—Benefit of gratuity would not be available to them.

Commutation of Pension—Held can be resorted to before one retires and not afterwards.

Constitution of India—Articles 366(17)—"Pension"—Held pension and gratuity cannot be said to be conceptually same.

The appellant-State, by Government Order (G.O.) dated 24.8.1980, formulated a new scheme of pension and provident fund for teachers of aided Degree Colleges. Option was given to the teachers either to retire at the age of 60 years with facility of pension, short of gratuity, at the last pay drawn on completion of 58 years and general provident fund, or to retire at 58 years of age with the facility of death-cum-retirement gratuity as also family pension, besides the two benefits available under the first package. Most of the teachers opted for the first package. When they were denied gratuity and their pension was computed by taking the last pay drawn on completion of 58 years even though they continued in service till completion of 60 years, the respondent-Association filed a writ petition before the High Court challenging the G.O. as being discriminatory on the ground that the similarly situated teachers in Government colleges were better off in this regard and there was no reason to treat them differently. Benefits of gratuity and pension on the last emoluments drawn on completion of 60 years were claimed. In respect of the teachers who retired prior to 14.8.1988, benefit of commutation of pension w.e.f. 14.8.1988 was also claimed on the basis of G.O. dated 19.12.1988. The High Court allowed the writ petition.

In appeal to this Court, it was contended on behalf of the appellant-

A State that teachers of aided colleges, whose retirement age was 60 years, could not be placed in a better situation than those in Government Colleges as they retire at the age of 58 and get pensionary benefits accordingly; there being a difference in the retirement age of the two categories of the teachers, they could not be said to be similarly situated; the teachers concerned, having opted for the first package available under the G.O., could not resile from its terms; and benefit of commutation of pension to teachers who retired prior to 14.8.1988 could not be granted as the same could be made available only before one's retirement.

C On behalf of the respondent-Association, it was contended that for the purpose of computation of pension the teachers of aided Degree Colleges should not be treated differently than those of aided Higher Secondary Schools who also retire at the age of 60 and in whose case pension is calculated on the basis of last pay drawn at the age of 60 years.

D Disposing of the appeal, this Court

E HELD : 1.1. In principle there cannot be any objection in computing the pension on the basis of last pay drawn at the age of 58 years. Demand of the Association being basically grounded on the better pensionary benefit available to Government teachers, the State was amply justified, while considering the question of liberalising the pension qua the aided teachers, to peg the computation of pension with reference to the pay at the age of 58 years, which is the retirement age of Government teachers. This apart, as to how much of liberalisation should have been conceded is a matter of policy and if the Government decided to go as far as visualised by the G.O. of 24.8.1980, it is not open to any court to interfere with the same, as the policy contained in the G.O. cannot be said to be either unreasonable or against public interest, which are the only two grounds available to a court to interfere with a policy matter while reviewing the same judicially. [176-A-C]

G 1.2. But there is no rational basis to treat teachers of aided higher secondary schools and teachers of aided colleges differently as the former also retire at the age of 60 years. So, when the pension payable to them is being calculated on the basis of last pay drawn by them at the age of 60 years, the same would be done for the teachers of aided colleges. [176-D]

H 2. The benefit of commutation of pension having been made available

for the first time by G.O. dated 19.12.1988 making it effective from 14.8.1988, the direction given by the High Court to give this benefit to those who had retired before 14.8.1988 was erroneous and unreasonable also, as commutation of pension can be resorted to before one retires and not after he has retired. [178-D-E]

3.1. That part of High Court's order which directed the State to make available benefits of gratuity also to the optees and ordering benefit of commutation of pension to the teachers retired before 14.8.1988 is set aside. [178-G]

3.2. It cannot be said that pension and gratuity are conceptually same. Merely because of what has been stated in clause (17) of Article 366 of the Constitution it cannot be said that gratuity has to be taken always and for all purposes as part of pension, as this definition has apparently enlarged the meaning of the word "pension" by stating that this would include gratuity. The Legislature very often wants to give enlarged meaning to a particular word and this is done by stating that the defined word would include some named related subjects also. [177-H, 178-A]

D.V. Kapoor v. Union of India, [1990] 4 S.C.C. 314 and *F.R. Jaisuratham v. Union of India*, [1990] Supp. S.C.C. 604, relied on.

Jamail Singh v. Secretary, Ministry of Home Affairs, [1993] 1 S.C.C. 47, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1451 of 1994.

From the Judgment and Order dated 7.9.92 of the Allahabad High Court in W.P. No. 1252 of 1990.

D.V. Sehgal and R.B. Misra for the Appellant.

R.K. Jain, R.K. Khanna, Ms. Abha, R. Sharma and R.P. Singh for the Respondent.

The Judgment of the Court was delivered by

HANSARIA, J. Leave granted.

2. The State of Uttar Pradesh formulated a new scheme of pension

A and provident fund for the employee of Aided Degree Colleges of the State
Service. This was made effective by Government Order (G.O.) dated
24.8.80. This G.O. came to be issued on the demand of the teachers of
various aided educational institutions including Degree Colleges for better
terminal benefits like pension and death-cum-retirement gratuity. One of
the points urged in support of the claim was that similarly situated teachers
B in Government Colleges were better off in this regard and there was no
reason to treat the other teachers differently. It was urged that the two
categories of teachers being similarly situated the difference was dis-
criminatory as well. It however deserves notice at the threshold itself that
the retirement age of aided colleges teachers was (and is) 60 years, whereas
C in Government colleges the retirement age is 58 years which is at par with
the retirement age of other Government servants.

3. The G.O. made available two packages leaving it to the teachers
concerned to opt for one of these. One option was to retire at the age of
60 years in which case pension as available to Government colleges
D teachers would be available; so also general provident fund. They would
not however get gratuity. Those who would opt to retire at 58 years would
get death-cum-retirement gratuity also alongwith aforesaid two benefits; so
too family pension.

4. It seems that most of the members of the U.P. University Colleges
E Pensioners Association, respondent here, for short the Association, opted
for first package. They have however felt aggrieved at the denial of gratuity;
so also with computation of pension by taking the last pay drawn on
completion of 58 years even though they continued (and continue) in
service till completion of 60 years. The Association challenged the
F aforesaid G.O. on these counts before the High Court of Aliahabad. Some
grievance was also made at the denial of commutation of pension which
facility was made available by G.O. dated 19.12.88 making it effective from
14.8.88. The Association desired making available of this facility even to
the retirees prior to 14.8.88.

5. The High Court has directed the State to give the benefit of
G pension in the last emoluments drawn at the age of 60 years and also to
make available the benefit of gratuity. Another direction given is to give
benefit of commutation to the teachers who had retired prior to 14.8.88.
Feeling aggrieved, the State has approached this Court under Article 136
H of the Constitution.

6. Shri Yogeshwar Prasad, learned senior standing counsel for the State, contends that by no token the teachers of aided colleges could have been placed in better situation than the teachers of Government colleges; but this is effect of the judgment of the High Court inasmuch as the aided colleges teachers would, even while retiring at the age of 60 years, get pension on the basis of the last pay drawn, so also gratuity whereas the Government college teachers would retire at the completion of 58 years of age and their pension would be calculated accordingly. Another submission made in this regard is that members of the Association having opted for the first package it does not lie in their mouth to resile from the terms of the package. Learned counsel rightly submits that one cannot blow hot and cold at the same time; or approbate and reprobate simultaneously. There being two packages, a third package could not have been formulated by the High Court giving best of the terms of the two packages. It is finally contended that insofar as denial of gratuity is concerned no grievance can be made by the Association inasmuch as aided colleges teachers whose age of retirement is 60 years cannot be said to be similarly situated to Government teachers who retire at the age of 58 years. The denial cannot be said to be discriminatory according to the learned counsel. As to the grant of benefit of commutation to the pre-14.8.88 retirees, the submission is that this facility having been brought into existence with effect from 14.8.88, those had retired before that could not have been given the benefit, as commutation of pension can be made only before one retires.

7. Shri Jain appearing for the respondent-Association contends that the members of the Association having been allowed to continue till the age of 60 years, the determination of pension on the basis of the last pay drawn on completion of 58 years is incongruous and irrational. It has also been urged that though the first package *qua* the aided colleges teachers required computation of pension on the basis of salary drawn at the age of 58 years, teachers of aided higher secondary school, even though they also retire at the age of 60 years, have been permitted to get their pension computed on the basis of the salary last drawn. This is discriminatory urges Shri Jain. As to the denial of gratuity to the first optees, the learned counsel submits that gratuity being a part of pension, as held by a bench of this Court in *Jamail Singh v. Secretary, Ministry of Home Affairs*, [1993] 1 SCC 47, the same could not have been denied while making available liberalised pension.

A 8. Insofar as his submission relating to the basis of computation of
pension, we would observe that in principle we do not find any objection
in computing the pension on the basis of last pay drawn at the age of 58
years. This is for the reason that demand of the Association being basically
grounded on the better pensionary benefit available to Government
B teachers, the State was amply justified, while considering the question of
liberalising the pension *qua* the aided teachers, to peg the computation of
pension with reference to the pay at the age of 58 years, which is the
retirement age of Government teachers. This apart, as to how much of
liberalisation should have been conceded is a matter of policy and if the
Government decided to go as far as visualised by the G.O. of 28.4.80, it is
C not open to any court to interfere with the same, as the policy contained
in the G.O. cannot be said to be either unreasonable or against public
interest, which are the only two grounds available to a court to interfere
with a policy matter while reviewing the same judicially.

D 9. There is, however, force in the submission of Shri Jain that there
exists no rational basis for treating teachers of aided higher secondary
school and teachers of aided colleges differently for the purpose of com-
putation of pension, inasmuch as teachers of aided school also retire at the
age of 60. On this point being urged by Shri Jain when the case was taken
up for hearing on 21.1.94, we wanted the State counsel to apprise us
E whether the submission is correct and to file necessary rules holding the
field.

F 10. Pursuant to the order of 21.1.94 an additional affidavit verified
on 4.2.94 was filed. We have perused this affidavit which, however, does
not contain extract of any rule. What has instead been brought on record
is a document bearing letter No. 5310/fifteen-8-304(2)/1974 dated 31.3.78.
This document shows that teachers of aided higher secondary school get
pension as given to the same rank and class of Government school teachers
and the calculation is as per the "procedure" applicable to Government
employees. This document has an annexure which speaks about the rate of
G pension. Shri Yogeshwar Prasad has drawn our attention to this annexure
as per which after 32 years of service, the pension amount becomes
stagnant.

H 11. The affidavit is silent on the question whether the pension payable
to teachers of aided higher secondary school is being calculated on the

basis of last pay drawn at the age of 60 years. So, we asked Shri Yogeshwar Prasad to state the correct factual position. Learned counsel stated that the correct position is that pension is being calculated as per the last pay drawn at the age of 60 years. He, however, brought to our notice the statement in the additional affidavit that these teachers are not entitled to payment of gratuity. He, therefore, urged that members of the Association cannot get benefit of both gratuity and computation of pension on the basis of last pay drawn at the age of 60 years.

12. We do find force in the aforesaid contention of Shri Yogeshwar Prasad. We have also noted that though the Government teachers get gratuity they retire at the completion of 58 years of age. Confronted with this situation, Shri Jain submitted that if we would not be inclined to grant benefit of both gratuity and calculations of pension on the basis of the last pay drawn on attaining the age of 60 years, the Association would rather forego gratuity and would opt for pension to be calculated as in the case of teachers of higher secondary schools.

13. Before we express our views on the aforesaid matter, we would deal with the submission of Shri Jain that gratuity has to be taken as a part of pension, to support which contention our attention has been invited to this court's judgment in *Jamail Singh's* case. Perusal of that judgment shows that gratuity was taken to be a part of pension because of the definition of "pension" as given in clause (o) of sub-rule (i) of rule 3 of Central Civil Services (Pension) Rules, 1972. It is because of this definition that the case of *D.V. Kapoor v. Union of India*, [1990] 4 SCC 314, in which it had been held that gratuity was not a part of pension, was not followed, as the bench which decided that case had not been referred to the aforesaid definition of pension. Similar observation was made in *Jamail Singh's* case regarding *F.R. Jaisuratnam v. Union of India*, [1990] (Supp.) SCC 604 wherein also gratuity was not regarded as part of pension without noting the abovenoted definition.

14. To buttress his aforesaid submission, Shri Jain also refers to clause (17) of Article 366 of the Constitution which has defined pension to include gratuity. Merely because what has been stated in clause (17) it cannot be held that gratuity has to be taken always and for all purposes as part of pension, because this definition apparently has enlarged the meaning of the word "pension" by stating that this would include gratuity. It is

A well known that legislature very often wants to give enlarged meaning to a particular word and this is done by stating that the defined word would include some named related subjects also.

B 15. We, therefore, state that either because of what was stated in *Jamail Singh's* case or the way "pension" has been defined in the Constitution, it cannot be held that pension and gratuity are conceptually same, as stated in paragraph 9 of *Jamail Singh's* case to which our attention is invited by Shri Jain. According to us, this Court took the view in question in *Jairnail Singh* because of the definition of the word "pension" in the concerned rule; otherwise, what was held in *D.V. Kapoor* and *F.R. Jaisuratnam* cases seem to be correct legal position.

D 16. Before concluding, we may deal with the grievance of the State regarding that part of High Court's judgment by which commutation benefit was made available to those teachers who had retired prior to 14.8.88. In this context, Shri Yogeshwar Prasad has rightly submitted that the benefit of commutation having been made available for the first time by G.O. of 19.12.88 making it effective from 14.8.88, the direction to give this benefit to those who had retired before 14.8.88 was erroneous and unreasonable also. This is for the simple reason that commutation of pension can be resorted to before one retires and not afterwards.

E 17. Keeping in view all the above, we dispose of the appeal by stating that pension of aided college teachers who had opted for the first package of G.O. dated 24.8.80 would be determined on the basis of last pay drawn by them as on their retirement at the age of 60 years and the calculation would abide what has been stated in the annexure to the aforesaid Government letter dated 31.3.78; but that part of the High Court's order by which the State was directed to make available benefit of gratuity also to these optees stand annulled. This would put the teachers at hand at a footing which is equal to that of aided secondary school teachers. That part of the High Court's order by which benefit of commutation was ordered to those teachers who had retired before 14.8.88 is also set aside.

18. On the facts and circumstances of the case, we make no order as to costs.

R.P.

Appeal disposed of.