

CASE NO.:
Appeal (civil) 1389 of 2006

PETITIONER:
U.P. Raghavendra Acharya and Ors.

RESPONDENT:
State of Karnataka and Ors.

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T

WITH
[CIVIL APPEAL NOS.1390-1395 OF 2006 & 1865 OF 2006]

S.B. SINHA, J.

These appeals involving identical questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

The appellants in these appeals are retired teachers of the University and Private Aided Colleges (to whom UGC scales of pay were applicable). They have retired during the period 1.1.1996 to 31.3.1998. So far as the teachers of the University or Privates Aided Colleges are concerned, indisputably, they were being paid the same salary as was being paid to the teachers of the Government colleges. The appellants in Civil Appeal No.1391/2006, have retired from the Karnataka Regional Engineering College, Surathkal, Karnataka, which was established by the Government of India at the request of the Government of Karnataka. It is a centrally aided institution as envisaged under Entry 64 of List 1 of the Seventh Schedule to the Constitution of India. So far as the said institution is concerned, its expenditure used to be borne by the Government of India and the State of Karnataka. It, however, has been notified by the Government of India as a Deemed University with effect from 26.6.2002.

It is not in dispute that the revised scales of pay as recommended by the Pay Revision Committee became applicable to the appellants with effect from 1.1.1986. It is also not in dispute that the UGC scales of pay were applicable to them. The Government of Karnataka, by a letter dated 17.12.1993 directed that the matter relating to the fixation of pension on the basis of UGC pay scales would be governed by Rule 296 of the Karnataka Civil Services Rules (hereinafter referred to as 'the Rules'), providing for computation of emoluments for the purpose of pension and gratuity of a Government servant. In the said letter it was stated:

"The term 'emoluments' has been defined and redefined from time to time whenever pension has been revised by Executive orders. The terms Emoluments for purpose of pensionary benefits as defined in G.O. Dated 17.8.87 benefits includes among other things the last pay drawn. It is therefore, clarified that the pay drawn by the teachers of degree colleges in respect of whom UGC scales have been extended by G.O. No.ED 88 UNI 88 dtd. 30.3.90 w.e.f. 1.1.86 and who have opted to UGC scales of pay, the last pay drawn by them in the UGC scales of pay among other things may be treated as emoluments for purpose of pensionary benefits under G.O. Dtd. FD 20 SRS 87 (I) dtd. 17.8.87."

In continuation of the said letter dated 17.12.1993, the Government of Karnataka by letter 12.10.1994, clarified that the pay drawn by the teachers of degree colleges in respect of whom UGC scales of pay had been extended by G.O. No.ED 28 UNI 88 dtd. 30.3.90, may be treated as emoluments for the purpose of settling pensionary benefits under G.O. No.FD 20 SRS 87(F) dated 17.8.87. It was further stated:

"It is further clarified that the clarification issued already on 17.12.93 equally applies in respect of teachers of aided degree colleges also to whom the benefit of UGC scales of pay as contemplated in G.O. ED 88 UNI 88 dated 30.3.90 have been extended. Action may be taken accordingly."

By a notification bearing G.O. No.ED No.442 dated 12.5.88, the Government of Karnataka extended the revision of pensionary benefits contemplated by the aforesaid order dated 17.8.87, to the teachers of the aided educational institutions, whose pension was to be paid out of the consolidated fund of the State. It stands admitted that whereas 80% of the additional amount required for discharging the said liability was to be borne by the Central Government, 10% thereof was to be borne by the institution concerned and the rest 10% amount was to be raised by way of additional generation of revenue, as would appear from the letter of the Ministry of Human Resource Development, Department of Education, Government of India dated 17.8.98.

It is furthermore not in dispute that the Central Government pursuant to or in furtherance of the recommendations made by the Central Pay Commission, revised the scales of pay of its employees with effect from 1.1.1996. The revision of such pay scales was also accepted by the University Grants Commission. Grant of revision of such pay scales was also recommended for the posts held by the appellants herein. On or about 22.7.1999, the Government of India by a letter addressed to the Education Secretaries of all the States and Union Territories, stated in a categorical stand that the revision of pension structure for retired teachers shall be as is applicable to the employees working in Central Universities. It was stated:

"Since the Central Govt. has already revised the pension structure of its employees and the same has been extended to the teachers in Central Universities, it is requested that appropriate orders in this regard may kindly be issued at an early date for the teachers in State Universities and Colleges.

The AIFUCTO delegations further highlighted the problems faced by teachers in getting recognition of past service for pensionary benefits and condonation of break in service while moving from one State to another. It is requested that the guidelines issued by UGC in this regard may be followed and the State Govts. may have reciprocal arrangements amongst themselves to obviate the problems faced by the teachers."

The Government of Karnataka issued appropriate notification extending the UGC pay scales as revised from 1.1.1996, inter alia to the teachers of Government and Aided Colleges, stating:

"5. Government is pleased to revise the pay scales of teachers, librarians and physical education directors in Government and aided colleges under the control of the Department of Collegiate Education as detailed below.

6. Coverage:

This scheme applies to Lecturers, Lecturers (Senior Scale), Lecturers (Selection Grade), Librarians, Librarians (Senior Scale), Librarians (Selection Grade), Director of Physical Education, Directors of Physical Education (Senior Scale) and Directors of Physical Education (Selection Grade), Principals Grade-I and Principals Grade-II.

7. Date of effect:

The revised UGC pay scales will be retrospectively effective from 1st January, 1996, and other benefits prospectively from the date of this order."

The said revised scales of pay were to be inclusive of basic pay, dearness allowance, interim relief and fixed dearness allowance admissible as on 1.1.1996. However, on 22.7.2000, a notification was issued by the Government of Karnataka, extending the UGC pay scales from 1.1.1996, to the teachers, librarians, etc. of the Government/Aided Colleges stating:

"Revised UGC pay scales have been extended to the Teachers, Librarians and Physical Education Directors in the Government/Aided Colleges of the Collegiate Education Department in GO read at (1) above. Subsequently, various clarifications have been issued by the Government of India and UGC on the implementation of the pre-revised scale will become entitled to one increment in the revised scale with effect from 1.1.1996 and the lecturers drawing pay at 14th and 15th stage of the pre-revised scale will become entitled to two increments in the revised scale on 1.1.1996. As the lecturers drawing pay from 10th to 15th stage will get the benefit of bunching, they will become entitled to the next increment in the revised scale on completion of 12 months from the date of stepping up of their pay viz. 12 months from 1.1.1996."

However, paragraph 27A was inserted thereto in respect of revision of pensionary benefits, which is to the following effect:

"27-A: Revision of pensionary benefits:

(i) UGC scales as revised from 1.1.96 have been linked to the index level of 1510 points inasmuch as the revised pay scale structured includes the DA admissible as on 1.1.96 to the extent of 138% of basic pay. As on 1.1.96 the pensionary benefits under the State Government had not been revised. The revised pay scales of the State Government employees came into force from 1.4.98 by merging the DA as on 1.1.96. The pensionary benefits were also simultaneously revised w.e.f. 1.4.98. Therefore, the revised pay drawn in the UGC pay scales for the period from 1.1.96 upto 31.3.98 shall not be taken as emoluments for the purpose of pensionary benefits. Accordingly,

(a) In respect of teachers drawing UGC pay scales who have retired during the period from 1.1.96 to 31.3.98 they shall be eligible for the benefit of the fixation of pay and arrears under the revised UGC scales of pay only. There shall not be any change in their pensionary benefits with reference to the revised UGC pay and the retirement benefits already sanctioned in the pre-revised UGC pay scales will not

undergo any modifications. However, they shall be entitled to the benefit of fixation of revised pension/family pension as contemplated in GO No.FD(Spl.) 2 PET 99 dated 15.2.99 only w.e.f. 1st April, 1998. Para 6 of GO No.FD (Spl.) 2 PET 99 dated 15.2.99 stand modified to this extent.

(b) In respect of teachers drawing UGC pay scales and who have issued on or after 1.4.98, the pay drawn in the revised UGC pay scales shall be counted for the purpose of pensionary benefits and the orders revising the pensionary benefits vide GO No.FD (Spl.) 1 PET 99 dated 15.2.99 shall be made applicable."

A similar amendment was made in respect of the Regional Engineering Colleges by inserting para 31A.

The mode of payment of arrears in the revised scales of pay in terms of the notification was to be made as under:

"10. Mode of payment of arrears:

(a) The arrears of pay and allowances during the period from 1.1.1996 to 31.5.1999 shall be invested in the NSC VIII issue in multiples of Rs.100 to the extent of 80% of the amount, the balance amount being paid in cash."

(b) In case of employees who cease to be in service due to death, retirement or resignation the arrears shall be fully payable in cash."

A further notification was issued on 8.8.2000, extending the AICTE pay scales from 1.1.1996 to the teachers, librarians, etc. of the Government Aided Colleges and Engineering Colleges, which was to the same effect.

Writ petitions were filed before the Karnataka High Court questioning the said notifications dated 22.7.2000 and 8.8.2000. The said writ petitions were allowed holding that the impugned notifications were illegal. The learned Single Judge in his judgment opined that in view of the notification dated 22.7.1999, issued by the State of Karnataka, the revised scales of pay became applicable in respect of those teachers who had retired during the period from 1.1.1996 to 31.3.1998 and they could not have been deprived of the said benefit. It was held that the impugned notifications were arbitrary as these resulted in discrimination between the teachers working in the Government Colleges and the teachers working in the Non-Government Colleges which would mean treating the equals unequally. It was further opined that, in any event, the teachers of the Government Aided Colleges as also the teachers of the Regional Engineering Colleges formed a class by themselves and no discrimination could have been made between the employees who retired prior to 31.3.1998 and those retiring subsequent thereto.

The appeals preferred by the State of Karnataka against the said judgment were allowed by the Division Bench of the Karnataka High Court, holding as under:

"It is not disputed that method of calculation of pension, 50% of last pay drawn is same to all and there is no change in the method of calculation. However, for the purpose of revised pension, cut off date is fixed as 1.4.1998. As stated, the pensionary benefits were uniformly revised in respect of all classes of teachers with effect from 1.4.1998 and in view of this, the cut off date fixed on 1.4.1998 by inserting clauses 27-A & 31-A by orders dated 29.7.2000, 7.8.2000 and 8.8.2000 in

Government Order dated 15.11.1999 cannot be said to be bad. Therefore, the order of learned Single Judge quashing the orders dated 29.7.2000, 7.8.2000 and 8.8.2000 in setting aside the grant of pension from 1.4.1998 on the ground of discrimination vis-a-vis the Government employees, is not correct. Policy decision has been taken in fixing cut off date having regard to expenditure involved, financial implications and other relevant considerations. It cannot be said to be arbitrary or irrelevant in fixing the cut off date which is applicable uniformly to all categories of pensioners including Government servants which is in consonance with Articles 14 and 16 of the Constitution and the impugned orders of the Government do not violate Articles 14 and 16 of the Constitution of India. Therefore, the order of the learned Single Judge is liable to be set aside and accordingly set aside."

The review petitions filed thereagainst were dismissed.

Mr. S.B. Sanyal, learned senior counsel appearing on behalf of the appellants raised a short question in support of these appeals. Learned counsel would submit that having regard to the fact that the appellants were given the benefit of the revised scales of pay w.e.f. 1.1.1996, and, thus, having acquired a vested right in relation thereto, the quantum of their pensionary benefits must be computed on the basis of 50% of the last pay drawn and in that view of the matter although they had been given the benefit of the revised pay scales from 1.1.1996, the pensionary benefits could not have been directed to be given from 1.4.1998.

Mr. Sanjay R. Hegde, learned counsel appearing for the State of Karnataka, on the other hand, submitted that Rule 296 of the Rules was not applicable to the case of the appellants herein as they were not Government servants. It was contended that the action on the part of the State cannot be said to be suffering from any infirmity whatsoever inasmuch as so far as the employees of the State of Karnataka are concerned the benefit of the revised scales of pay was given effect on and from 1.4.1998. According to the learned counsel, although the State of Karnataka had given the benefits of the revised scales of pay in terms of the recommendations of the UGC, with retrospective effect from 1.1.1996, it was not obligatory on its part to extend the retiral benefits thereof to the appellants also from the said date. Our attention in this behalf has been drawn to the notification dated 24.12.1998 issued by the UGC which reads as under:

"17.0 Superannuation benefits:

17.1.0 The benefit in service to a maximum of 3 years should be provided for the teachers who have acquired Ph.D. Degree at the time of entry so that, almost all teachers get full retirement benefits, which are available after 33 years of service subject to overall age of superannuation;

17.2.0 Other conditions with respect of superannuation benefits may be given as per the Central/State Government Rules."

In view of the rival contentions of the parties as noticed hereinbefore, the question which arises for consideration before this Court is as to whether the appellants having been given the benefit of the revised pay scales w.e.f. 1.1.1996, could have been deprived of the retiral benefits calculated with effect therefrom.

The fact that the appellants herein were treated to be at par with the holders of similar posts in Government Colleges is neither denied nor disputed. The appellants indisputably are governed by the UGC scales of pay. They are entitled to the pensionary benefits also. They had been given the benefits of the revision of scales of pay by 10th Pay Revision Committee w.e.f. 1.1.1986. The pensionary benefits payable to them on attaining the age of superannuation or death were also stated to be at par with the employees of the State Government. The State of Karnataka, as noticed hereinbefore, for all intent and purport, has treated the teachers of the Government Aided Colleges and the Regional Engineering Colleges on the one hand and the teachers of the colleges run by the State itself on the other hand at par. Even the financial rules were made applicable to them in terms of the notifications, applying the rule of incorporation by reference. Although Rule 296 of the Rules per se may not be applicable so far as the appellants are concerned, it now stands admitted that the provisions thereof have been applied to the case of the appellants also for the purpose of computation of pensionary benefits. Therefore there cannot be any doubt whatsoever that the term "Emoluments" as contained in Rule 296 of the Rules would also apply to the case of the appellants. Rule 296 of the Rules reads as under:

"296. In respect of retirement or death while in service of Government Servants on or after first day of July, 1993, the term "Emoluments" for the purpose of this Chapter means, the Basic pay drawn by the Government servant in the scale of pay applicable to the post on the date of retirement or death and includes the following, but does not include pay and allowance drawn from a source other than the Consolidated Fund of the State, -

.....
Note:- (a) Basic pay means the pay drawn in the time scale of pay applicable to the post immediately before retirement or death."

Note (a) appended to the Rule 296, states that basic pay would mean the pay drawn in the time scale of pay applicable to the post immediately before the retirement or death. Other rules being Rule 296B, 296C, 296D, etc. specifying different dates of retirement or death used similar terminology. Rule 297 provides that the term "average emoluments" means the average calculated upon the last three years of service.

It is one thing to say that the State can fix a cut off date unless and until the same is held to be arbitrary or discriminatory in nature, the same would be given effect for carrying out the purpose for which it was fixed.. In this case, the cut-off date for all intent and purport had been fixed as 1.1.1996. It is, thus, not a case where cut-off date was fixed as 1.4.1998 as the State merely intended to confer only same benefits. It is, thus, also not a case like Transmission Corporation, A.P. Ltd. vs. P. Ramachandra Rao & Anr. [2006 (4) SCALE 362], where a section of the employees were excluded from being given the benefit of revised pension as they had retired prior to the cut-off date.

The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1.1.1996,

thus could not have been denied to the appellants.

The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1.4.1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1.1.1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1.1.1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the concerned employees despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1.1.1996. By reason of such notification as the appellants had been derived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions.

The contention of the State that the matter relating to the grant of pensionary benefits vis-a-vis the revision in the scales of pay stands on different footing, thus, must be rejected.

Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is co-related and has a nexus with the salary payable to the employees as on the date of retirement.

These appeals involve the question of revision of pay and consequent revision in pension and not the grant of pension for the first time. Only the modality of computing the quantum of pension was required to be determined in terms of the notification issued by the State of Karnataka. For the said purpose, Rule 296 of the Rules was made applicable. Once this rule became applicable, indisputably the computation of pensionary benefits was required to be carried out in terms thereof. The Pension Rules envisage that pension should be calculated only on the basis of the emoluments last drawn. No order, therefore, could be issued which would be contrary to or inconsistent therewith. Such emoluments were to be reckoned only in terms of the statutory rules. If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1.1.1996, to the appellants allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date.

In fact the status of the appellants that they were at par with teachers of the Government colleges was not disputed. A Division Bench of the Karnataka High Court in V.P. Babar & Ors. vs. State of Karnataka (W.P. Nos.32163-32208/1998) has clearly held so. It has not been disputed that the said judgment has become final as the State of Karnataka did not prefer any appeal thereagainst.

The impugned orders furthermore is opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules, w.e.f. 1.1.1996, vested to the appellants in terms of Government notification read with Rule 296 of the Rules.

As the amount calculated on the basis of the revised scales of pay on and from 1.1.1996 to 31.3.1998 have not been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension

calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India.

In *Chairman, Railway Board and Ors. vs. C.R. Rangadhamaiah and Ors.* [1997 (6) SCC 623], a Constitution Bench of this Court opined:

"Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement."

The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect.

In *Subrata Sen and Ors. vs. Union of India and Ors.* [2001 (8) SCC 71], a Division Bench of this Court applying the principles laid down in *D.S. Nakara vs. Union of India* [1983 (1) SCC 305], observed:

"In our view the aforesaid para does not in any way support the contention of the respondents. On the contrary, on parity of reasoning, we would also reiterate that let us be clear about this misconception. Firstly, the Pension Scheme including the liberalised scheme available to the employees is non-contributory in character. Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in *Nakara case* (1983 (1) SCC 305), 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 services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. Maybe that in the present case, the trust for Pension Fund is created for income tax purposes or for smooth payment of pension, but that would not affect the liability of the employer to pay monthly pension calculated as per the Rules on retirement from service and this retirement benefit is not based on availability of Pension Fund. There is no question of pensioners dividing the Pension Fund or affecting the pro rata share on addition of new members to the Scheme. As per Rule 1 quoted above, an employee would become a member of the Fund as soon as he enters into a specified category of service of the Company. Under Rule 8, trustees may withhold or discontinue a pension or annuity or any part thereof payable to a member or his dependants, and that pension amount is non-assignable. Further, the payment of pension was the liability of the employer as per the Rules and that liability is required to be discharged by the Union of India in lieu of its taking over of the Company. The rights of the employees (including retired) are protected under Section 11 of the *Burmah Oil Company*

[Acquisition of Shares of Oil India Limited and of the Undertakings in India of Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited] Act, 1981."

Yet again, in State of West Bengal and Anr. vs. W.B. Govt. Pensioners' Associations and Ors. [2002 (2) SCC 179], this Court stated the law in the following terms:

"Because the scales of pay had been revised from 1.1.1986, the recomputation of pension for such employees as had been granted the revised scales of necessity was limited to the same cut-off date. All that the impugned Memorandum No.4056-F dated 25.4.1990 did was to recompute the benefits in favour of post-1.1.1986 retirees according to the existing formula as provided by Memorandum No.7530-F and No.7531-F, both dated 6.7.1988. The same formula continues to be applied to the pre-1986 pensioners is only on account of the revision of pay scales and not on account of failure of the State Government to equitably apply the liberalised Pension Scheme formula. The quantum of the emoluments formed no part of the formula for grant of pension during 1986 to 1995."

[Also see K.L. Rathee vs. Union of India & Ors., 1997 (6) SCC 7, and Indian Ex-Services League & Ors. vs. Union of India, 1991 (2) SCC 104]

It is also trite that persons similarly situated cannot be discriminated against. [See K.T. Veerappa & Ors. vs. State of Karnataka & Ors., 2006 (4) SCALE 293].

For the reasons stated above, the impugned judgment cannot be sustained and is accordingly set aside. The appeals are allowed with costs. Counsel fee is assessed at Rs.5,000/- in each appeal.