

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
G. VASUDEVAN PILLAY

DATE OF JUDGMENT 08/12/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1995 SCC (2) 32 JT 1995 (1) 417
1995 SCALE (1) 9

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- This conglomeration of appeals (some of which arise because of leave already granted and some came into existence because of leave being granted) require us to decide three questions:

- (1) Whether the decision of the Union of India not to allow Dearness Relief (DR) on pension to the ex-servicemen on their re-employment in a civil post is in accordance with law or not;
- (2) Whether denial of DR on family pension on employment of dependants like widows of the ex-servicemen is justified or not; and
- (3) Reduction of pay equivalent to enhanced pension of those exservicemen who were holding civil posts on 1-1-1986, following their re-employment, is permissible or not.

We would examine these questions seriatim.

Disallowing of DR on pension on re-employment

2. To answer the above question involved in some of the appeals, the background leading to the aforesaid decision may be briefly noted. To start with there was no provision for payment of DR to the pensioners. Various representations were made to the Third Pay Commission seeking some recommendations in this regard for protecting the pension of the government employees from erosion on account of possible increases in the cost of living in future. The Commission considered this matter and also the question regarding the manner in which some relief could be provided to the future pensioners. After having noted the various suggestions which the Commission received in reply to its questionnaire, it recommended that all future pensioners, irrespective of the amount of pension drawn by them, should be given relief @ 5% of their pension subject to a minimum of Rs 5 per mensem and maximum of Rs 25. The

Commission further recommended that the relief should be given as and when there is a 16-point rise in the 12

35

monthly average of the All-India Working Class Consumer Price Index. This recommendation of the Commission was accepted by the Central Government vide its Office Memorandum of even number dated 6-4-1974, making the relief available to those employees belonging to Classes 11, III and IV, who retired from service prior to 1-1-1973, as well as those who retired afterwards.

3.A decision was, however, taken subsequently not to pay DR to reemployed pensioners. This was made applicable to those ex-servicemen who had come to be re-employed in civil posts. Various writ petitions and original applications were filed in different legal forums in the country, which came to be decided either by upholding the validity of the decision or by taking a contrary view. The parties who lost have preferred these appeals.

4.The learned Additional Solicitor General appearing for the Union of India submits that the decision merits our acceptance because of what has been stated in clause (ii) of Rule 55-A of Central Civil Services (Pension) Rules, 1972, as amended in 1991. We are, however, of the view that the decision cannot be so supported for the reason that the aforesaid rules have application to the persons who were members of Central Civil Services. The ex-servicemen having apparently not been members of such Services, what has been provided in Rule 55-A(ii) cannot be invoked to deny DR on pension/family pension to the ex-servicemen on their re-employment.

5.Had the aforesaid been the only provision pressed into service to deny DR to the ex-servicemen, we would have had no difficulty in striking down the decision inasmuch as the ex-servicemen having been allowed pension and DR on it in accordance with the conditions of service governing defence personnel, the provision contained in the aforesaid rule governing service condition of altogether different class of servicemen could not have impinged on their right to get DR on the pension. Learned Additional Solicitor General, however, advances an alternative submission and the same is that there are even army instructions which, read with office memoranda of Ministry of Finance, will show that Dearness Relief on pension cannot be paid even to ex-servicemen on their re-employment. As this point could not be brought home to us well when the cases were heard, as relevant army instructions had not been brought on record, we, while reserving the judgment after close of hearing allowed filing of written submissions, which were done subsequently along with which large number of documents were filed to establish the point urged in the Court.

6.A perusal of the documents shows that the Office Memorandum dated 1-8-1975 of the Ministry of Finance, Department of Expenditure, which stated that a re-employed Central Government pensioner is not eligible to draw any relief during the period of re-employment, was made applicable by the Ministry of Defence vide letter of even number dated 28-10-1975 to Armed Forces pensioners also. These documents are pages 17 and 18 of the written submission, in which it has also been stated that with formation of the Department of Pension and Pensioners' Welfare under Ministry of

36

Personnel, Public Grievances and Pension, all orders issued by the Ministry of Finance were made applicable to Armed Forces pensioners as well. A reference has then been made

to Office Memorandum dated 22-4-1987 on the subject of grant of Dearness Relief to pensioners on the recommendations of the Fourth Central Pay Commission, sub-para (v) of Annexure 1 to which states that Dearness Relief will be suspended when the Central Government pensioner is re-employed in the department/office of the Central Government.

7. The aforesaid shows that dehors what has been laid down in clause (ii) of Rule 55-A of the aforesaid Pension Rules, there are materials on records to show that any person, including ex-servicemen, would not be entitled to Dearness Relief on pension on his re-employment to any department/office of the Central Government.

8. It has, however, been strenuously contended by learned counsel appearing for the re-employed ex-servicemen that pension being a right (and not a bounty) available to a retired employee as held in *Nakara*¹ and DR being a part of pension, right to receive the same could not have been infringed merely because the incumbent sought re-employment to take care of the hardship which he might have otherwise faced after retirement. To sustain the submission, strength is sought to be derived from the decision of the Kerala High Court in *Narayanan v. Union of India*² in which a view has been taken that the DR became an integral part of pension, because of which it could not have been discontinued on re-employment. As against this, the view of the Delhi High Court in Civil Writ No. 1699 of 1992 (disposed of on 23-2-1993) is that the DR is different from pension. For the disposal of the present cases it is not necessary to express any opinion on this aspect of the matter inasmuch as, according to us, even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the reemployed pensioners it would be permissible in law to deny DR on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed.

9. We, therefore, hold that the ex-servicemen were rightly debarred from Dearness Relief on their pensions after they got themselves re-employed to any civil post under the Government of India.

Denial of DR on family pension

10. In some of the cases, we are concerned with the denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen. This decision has to be sustained in view of what has been

1 D.S. *Nakara v. Union of India*, (1983) 1 SCC 305: 1983 SCC (L&S) 145: AIR 1983 SC 130

2 1994 (1) KLT 897

37

stated above regarding denial of DR on pension on re-employment inasmuch as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependants on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done. Reduction of enhanced pension from pay of those ex-servicemen who were holding civil posts on 1-1-1986 following their re-employment

11.The aforesaid reduction, which is the subject-matter of some appeals, is the fall out of Office Memorandum dated 11-9-1987 according to which the pay of the ex-servicemen who were in employment in a civil post as on 1-1-1986 following their re-employment, is required to be reduced by an amount equivalent to the enhanced pension made available pursuant to the report of the Fourth Pay Commission.

12.The ground of attack is that the aforesaid decision violates Articles 14 and 16 of the Constitution inasmuch as there is no rational basis for classifying the employees for the aforesaid purpose on the basis of their being in employment on 1-1-1986. This submission has been advanced because the reduction of the aforesaid nature has not been made in respect of those who have been in employment since 1-1-1986. The additional affidavit filed on behalf of Respondent 1 in SLP (C) No. 17456 of 1991 on 25-8-1994 contains some names of those who were re-employed after 1-1-1986 and are being paid both the revised pay and revised pension. This factual position has been admitted in the aforesaid written submissions filed on behalf of the Union of India inasmuch as it has been stated in page 9 that the pensioners who are re-employed after 1-1-1986 enjoy the benefit of revised pay and also revised pension with effect from 1-1-1986.

13.Reliance has been placed in support of aforesaid submission on a two-Judge Bench decision of this Court, to which one of us (Kuldip Singh, J.) was a party. That decision was in the case of TS. Thiruvengadam v. Secy. to Govt. of India³. The facts of that case are, however, different inasmuch as there the Memorandum dated 16-6-1967 stating that revised pensionary benefits would be made available only to those Central Government servants who have been absorbed in public sector undertakings after that date was not found to be constitutional because the very object of bringing to the existence the revised terms and conditions by the memorandum was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public sector undertakings. It was, therefore, held that restricting the applicability of the revised memorandum only to those who are absorbed after coming into force of the same would not only defeat the very object and purpose of the memorandum but would be contrary to fair play and justice also.

14.Despite the aforesaid decision being of no aid in the present cases, we find no logic and basis for classifying the re-employed persons on the

3 (1993) 2 SCC 174

38

basis of their being in employment on 1-1-1986. Indeed, no justification has been canvassed before us. The decision which held the field before the impugned memorandum in not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced pension was not confined to those who were in employment on 1-1-1986. The impugned decision is, therefore, arbitrary and is hit by Articles 14 and 16 of the Constitution. We, therefore, declare the same as void.

15.Our conclusions on the three questions noted in the opening paragraph are that denial of Dearness Relief on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependants got employment is legal and just. The decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 1-1-1986 following their re-employment is, however,

unconstitutional.

16. The appeals are disposed of accordingly. IA Nos. 16, 30-46 in appeals arising out of SLP (C) Nos. 1585-95 of 1994 stand disposed of. No order as to costs.

JUDIS