

CASE NO.:
Appeal (civil) 5346 of 1997

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
DR. VIJAYAPURAPU SUBBAYAMMA

DATE OF JUDGMENT: 22/09/2000

BENCH:
V.N.Khare & S.N.Phukan

JUDGMENT:

KHARE, J.
L...I...T.....T.....T.....T.....T.....T.....T...J

The respondent herein, was appointed as a Lady Medical Officer in the Family Welfare Centre, Vishakhapatnam under the control of Commanding-in-Chief, Eastern Naval Command, Vishakhapatnam on 22.9.1968. Subsequently, she was made quasi-permanent with effect from 31.3.1972 by an order dated 15.10.1974. On 13.11.1980, the respondent retired from service on attaining the age of superannuation. On retirement, the respondent was given the terminal and other benefits under Central Civil Services (Temporary) Services Rules, 1965. The respondent was also given insurance money along with other benefits, as admissible to her. At the time when the respondent retired she had not completed the requisite qualified service of twenty years for entitlement of pension. She was informed that as she had not put in required number of length of service, she is not entitled any pension. Subsequently, the Fourth Pay Commission made recommendation that for entitlement of pro rata pension, the length of service be reduced from twenty years to ten years. The said recommendation was accepted by the Government of India and came into force with effect from 1.1.1986. The respondent, after the Pay Commission Report came into force, made a representation that since the length of service for entitlement to pension has been reduced from twenty years to ten years as per recommendations of Fourth Pay Commission and as she had put in only twelve years, two months and nine days' length of service, she is entitled to pro rata pension with effect from 1.1.1986. The representation of the respondent was considered and it was found that when the respondent retired, the requirement for entitlement for pension was that the retiree must have put in twenty years of service and since she retired prior to 1.1.1986, she was not entitled to pension. Under such circumstances, the respondent in the year 1996 filed an O.A. before the Central Administrative Tribunal, Hyderabad (hereinafter referred to as the "Tribunal") for direction to the appellants herein, to grant pro rata pension in view of the recommendations of the Fourth Pay Commission with effect from 1.1.1986.

The Tribunal relying a decision of this Court in *M.C.Dhingra vs. Union of India*, 1996 (7) SCC 564 held that even though the respondent retired much prior to 1.1.1986, the payment of pro rata pension cannot be denied to her with effect from 1.1.1986. According to the Tribunal, such a denial would be arbitrary and violation of Article 14 of the Constitution. The Tribunal further relying upon another decision in *T. S. Thiruverngadam vs. Secretary to Government of India & ors.* 1993 2 SCC 174, held that any benefit conferred by the Government is not prospective, but will have a retrospective effect and such benefit will be available to even those who have retired prior to 1.1.1986 and in that view of the matter the Tribunal allowed the O.A. filed by the respondent with a direction to the appellants herein to grant pro rata pension with effect from one year prior to filing of the O.A. It is against the aforesaid judgment of the Tribunal the appellants are in appeal before us.

Learned counsel for the appellant urged that in the year 1980 when the respondent retired from service she was not eligible for grant of liberalized pension in view of the fact that she had not put in 20 years of service. The grant of pro rata pension on completing ten years of qualified service for pension was introduced for the first time by the recommendation of the Fourth Pay Commission with effect from 1.1.1986 and, therefore, the said recommendation cannot be made applicable with retrospective effect. Learned counsel pointed out that the present case stands covered by the decision of this Court in the case of *V.Kasturi vs. Managing Director, State Bank of India, Bombay* and another (1998) 8 SCC 30. Learned counsel also pointed out that decisions relied upon by the Tribunal in allowing the O.A. filed by the respondent were distinguished in *V.Kasturi's* case (supra). Learned counsel also referred to decisions of this Court in *Commander Head Quarter, Calcutta & ors. vs. Capt. Biplabendra Chanda* (1997) 1 SCC 208, *Union of India and ors. vs. Lieut (Mrs.) E.Iacats* (1997) 7 SCC 334 and *T.N.Electricity Board vs. R.Veerasamy and ors.* (1999) 3 SCC 414 in support of his argument.

In the case of *V.Kasturi* (supra), the appellant joined the State Bank of India as an Officer. After completing twenty years, but without completing twenty five years of pensionable service, he resigned on 31.7.1984 which was treated as voluntary retirement and, therefore, he was not given any pension as he had not put in twenty five years of service. With effect from 20.9.1986, rule 22 (1)(c) was substituted by a new rule 21(1)(c) which provided pension to an employee retiring on completion of twenty years of service. The appellant in the said case, therefore, contended that he was entitled to pension under new rule and the denial of pension to him was violative of Article 14 of the Constitution. This Court held as under:

" However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, and subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and by then the erstwhile non- pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the

authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such a new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep."

This Court in *Commander Head Quarter, Calcutta and ors. vs. Capt. Biplabendra Chanda* (1997) 1 SCC 208, held as under:

"The new and revised Rules which came into force with effect from 1.1.1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences; even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be."

This Court in *Union of India and ors. vs. Lieut (Mrs. E.Iacats* (1997) 7 SCC 334 held as under:

"The terms and conditions of service were known to the respondent at the time she joined the service. She at that time had signed an agreement to abide by the rules and regulations governing Military Nursing Service (Local) from time to time. She cannot claim the benefit of a liberalized pensionary scheme which came into operation from a date subsequent to the date of her retirement.."

The conspectus of legal position that emerges from the aforesaid decisions are these:

a) Where an employee under the terms and conditions of service or under the relevant rules relating to pension is not eligible to earn pension on his or her retirement, any amendment to the rules covering a new class of pensioner would not confer pensionary benefits to the employee who has retired prior to coming into force of such amendment of Rules..

b) However, the position would be different if such an amendment in the relevant pension rules is with retrospective effect as to cover a new class of employee including those employees who, at the relevant time, were not entitled to earn pension under the then existing rules or conditions of service.

c) Where an employee at the time of retirement is entitled to pension under the relevant rules, any subsequent amendment to the relevant rules enhancing pension or conferring additional benefit would be also applicable to him..

Applying the aforesaid principles what we find in the present case is that the respondent retired on 13.11.1980 and under the then relevant rules, an employee who has put in less than twenty years of qualifying service was not eligible to earn pension. At that point of time the

respondent had put in only twelve years of qualifying service and, therefore, was not entitled to earn the pension on her retirement. The recommendations of the Fourth Pay Commission were enforced with effect from 1.1.1986 whereby the requirement of qualifying service to earn pension was reduced to ten years from twenty years. By the said recommendations a new class of pensioner was created. But the said recommendations of the Pay Commission were not enforced with effect from 13.11.1980 - the date when the respondent retired but with effect from 1.1.1986. Thus, the recommendations of the Fourth Pay Commission not being with retrospective effect, the respondent was not entitled to receive pension under the said recommendations which came into effect from 1.1.1986.

Learned counsel for the respondent strongly relied upon the decision of T.S.Thiruvengadam vs Secretary to Government of India & ors (supra) and M.C.Dhingra vs. Union of India (supra) for the contention that once qualifying service to earn pension was reduced from twenty years to ten years the respondent became eligible to receive liberalised pension. In the case of Thruvengadam (supra), the concerned employee who has already having pensionary benefits in the service of the Central Government, was subsequently appointed in a Public Sector Undertaking. After the concerned employee was absorbed in Public Sector Undertaking the Government issued a memorandum conferring pensionary benefits to the employees of Public Sector Undertaking. The question arose whether the pensionary benefits were also available to those who had already been absorbed in the service of Public Sector Undertaking prior to coming into force of the memorandum. This Court, in view of the facts and circumstances of that case held as under:

"The object of bringing into existence the revised terms and conditions in the memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum, would be defeating the very object and purpose of the revised memorandum and contrary to fair pay and justice."

In M.C. Dhingra vs. Union of India, the concerned employee who was in the State service joined the service of Central Government. The question arose as to whether the past service rendered in the State service by the employee could be taken into consideration for computing the quantum of pension payable to him. It was held that since the concerned employee was already a pensioner and, therefore, any additional benefit for computation of pension on the basis of subsequent circular was available to him. The decisions in the cases of T.S. Thiruvengadam and M.C.Dhingra are distinguishable and are not applicable to the facts of this case. The decisions in M.C. Dhingra's case as well as in T.S. Thiruvengadam's case were also considered in V. Kasturi's case and were distinguished. We accordingly hold that the respondent was not eligible to earn liberalised pension in pursuance of recommendations of Fourth Pay Commission.

For the aforesaid reasons, the appeal deserves to

succeed. Consequently, the judgment of the tribunal under appeal is set aside and the appeal is allowed. There shall be no order as to costs.

JUDIS