

PETITIONER:
SMT. POONAMAL ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 30/04/1985

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA RANGNATH

CITATION:
1985 AIR 1196 1985 SCR (3)1042
1985 SCC (3) 345 1985 SCALE (1)938
CITATOR INFO :
F 1989 SC2088 (7,12)
RF 1991 SC1182 (20)

ACT:
Civil Service:
Family Pension-Contributories to scheme entitled to family pension- Scheme liberalised-Pre-condition of contribution done away with-Benefit not extended to non-contributories-Whether violates Art. 14 of the Constitution.

HEADNOTE:
Since January 1, 1964, there were in force two parallel family pension schemes in operation, namely, (a) a pre-liberalisation scheme which continued to be in force for those who retired prior to 1.1.1964 or those who did not contribute out of the death-cum-retirement gratuity, roughly styled as non-contributory scheme. The other was the contributory scheme. Both these schemes are incorporated in Rule 51 and 55 respectively of the Civil Services Pension Rules 1972. On September 22, 1977 the Government of India done away with the pre-condition of contribution of two months emoluments out of death-cum-retirement gratuity. But, the widows of the Government servants who had not agreed to make the contribution in accordance with the 1964 scheme were denied the benefit of pension scheme and this disability continued even after the changes introduced in 1977 when the scheme ceased to be contributory. Such widows moved Supreme Court and Bombay High Court in writ petitions. The High Court rejected the writ petition.

Disposing of the petitions and the appeal to this Court,

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HELD: 1. Since the family pension scheme has become non-contributory effective from September 22, 1977, any attempt at denying its benefit to widows and dependents of Government servants who had not taken advantage of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Art. 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension scheme without the obligation of making

contribution, those widows who were denied the benefits of the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an invidious classification among those who would be entitled to similar treatment. [1046 B-D]

1043

2. Where the Government servant rendered service, to compensate which a family pension scheme is devised the widow and the dependent minors would equally be entitled to family pension. It is a matter of right. If fact the Court looks upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara's case, [1983] 2 S.C.R. 165. [1045; G-H 1046 A]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petitions Nos. 5870-93/81,

Under Article 32 of the constitution of India

WITH

Civil Appeal NO. 2226/85

From the Judgment and Order dated 14. 2. 1984 of the Bombay High Court in Writ Petition No. 4215 of 1983

Yogeshwar Prasad, H. Salve, P. H. Parckh, Mrs., Rani Chhabra, Ms. Data Krishnamurthy, Ms. A. Subhashini, A. S. Pundir, J.S. Bali, S. Balakrishnan, Pramod Sarup and R. S. Sodhi, for the petitioners.

V. B. Joshi for the Appellant.

The following Judgment of the Court was delivered by DESAI, J. Promise of socio-economic justice depicted in rosy language in Arts. 38, 39 and 41 is being translated into a real action-oriented programme by the stand taken by the Union of India and the Ministry of Finance in this group of petitions and application for special leave which deserves approbation and commendation. Amongst the neglected sections of the society women form a bulk. In that bigger class widows are possibly the worst sufferers both socially and economically. To them, a helping hand is extended, for providing succour sorely needed, by the two statements made in the Court by Mr. B. Dutta, learned counsel appearing for the Union of India and the Ministry of Finance. Throughout the course of hearing, Mr. B. Dutta adopted a positive, constructive and helpful attitude and he is equally entitled to our appreciation.

As a sequel to the decision of the Constitution Bench of this Court in D.S. Nakara and Ors v. Union of India (1) a number of petitions came to be filed by persons claiming to be entitled to the socially beneficent approach of the Court. One such group comprised

(1) [1983] 2 SCR 165

1044

widows of erstwhile Government servants who are not in receipt of family pension.

Family pension came to be conceptualised in the year 1950. When a Government servant die in harness or soon after retirement, in the traditional Indian family on the death of the only earning member, the widow or the minor children were not only rendered orphans but faced more often

destitution and starvation. Traditionally speaking the widow was hardly in a position to obtain gainful employment. She suffered the most in as much as she was deprived of the companionship of the husband and also became economically orphaned. As a measure of socioeconomic justice family pension scheme was devised to help the widows tie over the crisis and till the minor children attain majority to extend them some succour. This appeared to be the underlying motivation in devising the family pension scheme. It was liberalised from time to time. The liberalisation was however subject to the condition that the Government Servant had in his life time agreed that he shall make a contribution of an amount equal to two months' emoluments or Rs. 5,000 whichever is less out of the death-cum-retirement gratuity. Those Government servants who did not accept this condition were denied the benefit of family pension scheme.

Focussing on the liberalisation that was introduced in 1964 it transpires that the widow and the minor children of those Government servants who died prior to 1964 were not eligible for the benefit of liberalised scheme. The other class which was left out of the liberalisation scheme was those Government servants who specifically opted out of the family pension scheme, 1964. The resultant situation was that since January 1, 1964 there were in force two parallel schemes in operation namely a) a pre-liberalisation scheme which continued to be in force those who retired prior to 1.1.1964 or those who did not contribute out of the death-cum-retirement gratuity, roughly styled as non-contributory scheme. The other was the contributory scheme. Both these schemes are incorporated in Rule 54 and 55 respectively of the Civil Services Pension Rules 1972.

The Union of India in its onward march for ushering in socioeconomic justice in the form of social security further took a bold and imaginative step on September 22, 1977 by which the pre condition of two months' emolument out of death-cum-retirement gratuity was done away with. Recognising the need for such a

1045

beneficial change, the memorandum introducing the 1977 liberalisation recorded the decision of the Union of India as under:

"The staff side has suggested in the National Council of the JCN that this family pension is a social security measure and the employee should not be called upon to contribute towards the scheme. The matter has been examined in the light of the recommendations of the National Council and the President is pleased to decide that no deduction should be made from the death-cum-retirement gratuity as a contribution towards the family pension."

Accordingly since September 22, 1977 the contributory scheme ceased to exist. A very analogous situation arose. The widows of the Government Servants who had not agreed to make the contribution in accordance with the 1964 scheme were denied the benefit of pension scheme and this disability continued even after the changes introduced in 1977 when the scheme ceased to be contributory. Such widows moved this Court in writ petitions. Widows similarly situated had also filed Writ Petition No. 3749/84 in the High Court of Judicature at Bombay. A Division Bench of the High Court rejected the writ petition for reasons, which, in our opinion, are wholly untenable but that is beside the point. We accordingly granted leave to the petitioners whose petition were dismissed by the Bombay High Court. Rule nisi was issued in writ petitions filed in this Court.

It is not necessary to examine the concept of pension. As already held by this Court in numerous judgments that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. Deoki Nandan Prasad v. State of Bihar and Ors.(1) State of Punjab & Anr. v. Iqbal Singh(2) and D.S. Vakara & Ors. v. Union of India. Where the Government Servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise in as much as it partakes the character of public assistance in cases of unemployment,

(1) [1971] Supp. SCR 634

(2) [1976] 3 SCR 360

1046

old-age, disablement or similar other cases of underserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara's judgment. At the hearing of group of matters we pointed out that since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of Government servants who had not taken of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Art. 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension without the obligation of making contribution, those widows who were denied the benefits on the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an invidious classification: among those who would be entitled to similar treatment. When this glaring dissimilar treatment emerged in the course of hearing in the Court, Mr. B. Dutta learned counsel appearing for the Union of India requested for a short adjournment to take further instructions.

On the next hearing Mr. B. Dutta made a statement on behalf of Union of India, the relevant portion of which may be extracted:

"Government have examined the matter. As the Family Pension Scheme, 1964 was made non-contributory from 22.9.1977, Government would agree to extend the benefit of the Family Pension Scheme 1946 to all the living widows. Payment to such widows may be made from 22.9.1977 or the date of death of the pensioner, whichever is later, till the date of death of the widow. The benefit will also be available in cases where the death of the pensioner occurs hereafter. Administrative procedures are being evolved to facilitate identification of widows of Government pensioners and to lay down the guidelines for the determination of family pensions. The benefit of family pension mentioned above will not apply to the widows of Government servants who would not have been covered by the scheme even if the scheme had been given retrospective effect."

1047

While examining the statement it transpired that certain clarifications were necessary. 'Common Cause' a Society

which is a petitioner in one petition pointed out certain aspects of the statement which needed clarification. The Court directed the the 'Common Cause' society to send a letter to the Ministry of Finance indicating the points on which clarifications were required by Y them. The issues raised by the Society may be summed up as under:

- "(i) whether the orders will apply to the widow/minor son/ unmarried daughter as defined in the relevant provisions of family pension scheme;
- (ii) whether the scheme of pension as prescribed with effect from 1.1.1973 will be made uniformly applicable to all the eligible persons in the family pension scheme; and
- (iii) whether the benefits of family pension scheme will be made available to all pensioners irrespective of the fact whether they had or had not contributed two months' emoluments in terms of the original family pension scheme, which contribution was subsequently deleted with effect from 22 9. 1977."

Today when the matter was taken up for final hearing another statement was submitted by Mr B. Dutta on behalf of the of India. The Government of India submitted its clarifications on the afore-mentioned three points which reads as under:

- "(i) Governments are prepared to grant to the dependents i.e. minor sons, etc of the pensioners governed unclear pre- 1964 scheme the same pensioners benefits as are admissible to the dependents under current pension rules.
- (ii) It is clarified that Government are agreeable to apply the increased pension rates introduced from 1.1 1973 to all the eligible persons, including dependents. This will, however, be subject to the condition that the total amount admissible (excluding dearness relief) under the liberalised provision now being agreed to, will not be more than what is admissible to a person covered

1048
under the Rules.

- (iii) Government have already agreed to the grant of ar rears of family pension with effect from 22.9.77-the date on which contribution of two months' emoluments by pensioners was dispensed with. Persons who are now to be granted the benefits of family pension will not be required to contribute two months emoluments. Similarly, no demand for refund of contribution already made by pensioners- will be entertained,'

The clarifications offered are clear, unambiguous and wholly satisfactory. Learned counsel appearing for the petitioners stated that nothing more is required to be done and requested us to incorporate the clarifications submitted to the Court. Accordingly these petitions and appeals are disposed of in terms as herein above indicated. We order accordingly.

The appeal against the decision of the Division Bench of the Bombay High Court is also allowed in the same terms. This is a happy ending to this extremely humane problem.

M.L.A.

Appeal allowed

1049