

CASE NO.:
Appeal (civil) 5367-5368 of 2005

PETITIONER:
The Principal Secretary to Government Finance & Planning Department

RESPONDENT:
A.P. Pensioners Samaj & Ors

DATE OF JUDGMENT: 31/01/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

These appeals have been filed against the impugned judgment dated 23.12.2003 of the Andhra Pradesh High Court in Writ Petition Nos. 16719 and 18490 of 2003.

The respondents in this appeal had filed O.As before the Andhra Pradesh Administrative Tribunal seeking a direction to the State Government to extend the benefits of G.O.Ms. No.87, Finance & Planning (FW.Pen.1) Department, dated 25.5.1998 to all the pensioners irrespective of their date of retirement and also to compensate the loss sustained by the applicants. It was contended therein that the pension was calculated on the basis of ten months average pay and the petitioners have been getting the said pension ever since the date of their retirement. However, the Government issued G.O.Ms. No.87 dated 25.5.1998 revising the fixation of pension on the basis of the last drawn pay treating it as emoluments for the purpose of pension. Hence, it was contended that their pensions had to be re-fixed in terms of G.O.Ms. No.87 dated 25.5.1998 and the same should be released from the date of their respective retirements. The Tribunal by its order held that though the pensioners are entitled for re-fixation of their pension in terms of G.O. Ms.No.87 dated 25.5.1998 they were not eligible for any arrears that accrued prior to 25.5.1998. The said order was challenged by the State Government in the Writ Petitions.

The State Government contended that the revised fixation of pension on the basis of last drawn pay was applicable to those pensioners who retired on or after 25.5.1998 and it cannot be made applicable to the persons who retired prior to that date and that the Government has power to fix a cut off date, which cannot be interfered with by the Court. Learned counsel for the State Government referred to several decisions of this Court in support of his contention.

The High Court dismissed the writ petition of the State Government and held that the pensioners who were already drawing the pensions cannot be denied the revision of pension on the basis of the revised formula. Thus, the High Court upheld the order of the Tribunal, including the direction that the pensioners cannot claim any arrears from a date anterior date to the G.O. 25.5.1998. Aggrieved, this appeal has been filed.

We have heard the learned counsel for the parties and perused the various decisions cited before us.

A Constitution Bench of this Court in D.S. Nakara vs. Union of

India 1983(1) SCC 305 has held that the employees who retired before coming into operation of a pension scheme were also entitled to the benefit of the said pension scheme.

However in V. Kasturi vs. Managing Director, State Bank of India, Bombay and Anr 1998(8) SCC 30, the aforesaid decision was distinguished, and it was held (vide paragraphs 22 and 23) that if an employee was already getting some pension at the time of his retirement then he would become eligible to get enhanced pension, if such enhancement in the pension is made by an amendment to the pension scheme subsequent to his retirement. However, if the retired employee was not getting any pension at all when he retired, he would not be entitled to any pension if a pension scheme is introduced subsequent to his retirement.

Some subsequent decisions of this Court seem to have struck a different note wherein it appears to have been held that even if a retired employee was getting some pension at the time of his retirement, he will not get the benefit of any enhancement in the pension subsequent to his retirement vide T.N. Electricity Board vs. R. Veerasamy and Ors. 1999(3) SCC 414, State of West Bengal and Anr. vs. West Bengal Govt. Pensioners' Associations and Ors. 2002(2) SCC 179.

In view of apparent conflict in these decisions, we are of the opinion that the matter requires consideration by a larger Bench of this Court. Another point which requires consideration by a larger Bench is whether any formal amendment to the A.P. Revised Pension Rule, 1980 was necessary, consequent to issue of the orders issued in G.O.Ms. No.87, Finance, dated 25.5.1998, if the retired employees wanted to get the benefit of the latter.

Let the papers of this case be filed before the Chief Justice for the constitution of the larger Bench.