

CASE NO.:
Appeal (civil) 4150 of 2003

PETITIONER:
State of Bihar & Ors.

RESPONDENT:
Bihar Pensioners Samaj

DATE OF JUDGMENT: 27/04/2006

BENCH:
B. N. Srikrishna & Lokeshwar Singh Panta

JUDGMENT:

J U D G M E N T

SRIKRISHNA, J.

The appellants impugn the judgment of the Division Bench of the High Court of Judicature at Patna which struck down an Act of the State Legislature styled as "The Bihar State Government Employees Revision of Pension, Family Pension and Death-cum-Retirement Gratuity (Validation and Enforcement) Act, 2001 (hereinafter referred to as the "Validation Act") on the ground that it was enacted to frustrate, sidetrack and avoid an earlier decision of the High Court.

A notification, Resolution No. P.C.I. -Id/S7-1853-F dated 19.4.1990, was issued by the State Government relating to provisions regulating Pension and Death cum Retirement gratuity pursuant to the recommendations of a Special Committee known as "Fitment-cum-Pay Revision Committee". The notification declared that, after considering the recommendations of the aforesaid Committee, the State Government, after due deliberations, had decided to revise the provisions regulating Pension, Family Pension and Death-cum-Retirement Gratuity of the State Government employees "to the effect and extent indicated in the subsequent paragraphs." That certain benefits were made available under the said notification is common ground. However, the effective date of the notification was fixed as 1.1.1986, although the notification declared that, the financial benefits of revision of pension would be admissible only with effect from 1.3.1989 and no arrears would be paid for the period 1.1.1986 to 28.2.1989. Paragraph 1 of the said notification is relevant and reads as under:

"1. (i) Date of effect: The revised provisions as per these, orders shall apply to Government servants, who retire/die in harness on or after (sic) after the 1st January 1986. The revision of pension with effect from 1st January 1986 shall be merely notional as the financial benefit of revision of pension will be admissible only with effect from 1st March 1989, to it, no arrears accruing from revision of pension during the period from 1st January, 1986 to the 28th February 1989 shall be paid to the pensioners.

(ii) Where pension has been provisionally sanctioned in cases occurring on or after 1st January 1986, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned under the pre-revised orders, the same shall be revised in terms of these orders, provided such revision is to the advantage of the pensioner (sic)."

Apart from pension, the notification also revised Death-cum-Retirement Gratuity but again no revision of Death-cum-Retirement Gratuity was made in respect of Government servants who retired/died in harness on or after 1.1.1986 and up to 28.2.1989. Certain revision was made in dearness allowance, but the same was admissible only with effect from 1.7.1989. An option was given to those who had retired or would be retiring between 1.1.1986 and 30.6.1989 to have their pension and retirement gratuity calculated under the rules in force immediately before coming into effect of the concerned notification.

Another notification, Resolution No. P.C.I. 0-16/87-1854-F dated 19.4.1990, was issued for rationalisation of pensionary principles and structure of pre-1.1.1986 Pensioners/Family Pensioners. This notification also had identical terms with regard to the date of effect, although the revised pensionary provisions applicable to pre-1.1.1986 Pensioners/Family Pensioners were to come into effect with effect from 1.1.1986 notionally, the financial benefits were directed to accrue only from 1.3.1989.

The respondent, an Association representing the pensioners in the State of Bihar, challenged the aforesaid two notifications before the High Court by a writ petition C.W.J.C. No. 2467/91. The High Court disposed of this writ petition by a judgment dated 21.8.1996. This writ petition was allowed, by which the two notifications in question were quashed and the State Government was directed to reconsider the matter "in accordance with law and in the light of the observations made above." Interestingly, the High Court made the following observations in the judgment (vide para 4): "It is no doubt open to the state Government to revise/rationalise (sic) its pension scheme either on the same pattern as followed by the Government of India or to form its own scheme and to also fix a cut off date. In fact, in the present case, it could as well, have fixed 1.3.1989 or date of issue of the impugned (sic) resolution i.e. 19.4.90 as the cut off date. The question for consideration nevertheless whether having decided to revise/rationalise (sic) the pension scheme with effect from 1.1.86 on the Central pattern, the state Government had any justification to deny the consequential monetary benefits thereof and make the same effective only from 1.3.1989."

The appellants challenged the judgment of the High Court by their Special Leave Petition (Civil) No. 209/97 before this Court and this Court was pleased to summarily dismiss the Special Leave Petition on 20.1.1997.

Another similar writ petition being C.W.J.C. No. 2080/96, which was pending in the Ranchi Bench of the High Court, was dismissed by a learned Single Judge on 10.7.1997. The said judgment was impugned in a Letters Patent Appeal before the Division Bench. During its pendency, the respondent initiated contempt proceedings. The contempt proceedings were closed by a direction of the High Court that non-implementation of the order was due to a bona fide misunderstanding and the State Government was granted three weeks time for implementation of the judgment. The State Government moved a Special Leave Petition (Civil) No. 1672/99 before this Court, which was disposed of on 8.3.1999 with a direction that the contempt proceedings would be stayed for a period of three months and the Letters Patent Appeal would be disposed of by the High Court within two months.

By a judgment dated 21.6.1999 the Division Bench of the Patna High Court allowed the Letters Patent Appeal and set aside the judgment of the learned Single Judge holding: "As the paragraph 1(i) of Resolution No. 1853 dated 19.4.1990 and paragraph No. 2.1 of Resolution No. 1854 dated 19.4.1990 have already been quashed, the question of quashing them again does not arise. The State Government is directed to pay the pension to the pensioners in accordance with the resolutions ignoring paragraphs 1(i) and 2.1 thereof." The judgment of the Division Bench was challenged before

this Court in Special Leave Petition (Civil) No. 9821/99, which was allowed to be withdrawn and dismissed accordingly.

On 15.12.2000 the Governor of Bihar was pleased to issue an Ordinance styled as "The Bihar State Government Employees Revision of Pension, Family Pension and Death-cum-Retirement Gratuity (Validation and Enforcement) Ordinance, 2000". The said ordinance was subsequently replaced by the Bihar Act 3 of 2001. After referring to the litigative history, the Validation Act purports to validate the revision of pension and gratuity in accordance with the two Resolution Nos. P.C.I.-Id/S7-1853-F and P.C.I. 0-16/87-1854-F of 19.4.1990 giving effect to the effective dates in Paragraphs 1 and 2.1, respectively, of the two resolutions. The respondent-Bihar Pensioners Samaj impugned the Validation Act before the High Court by its writ petition C.W.J.C. No. 11696/2001. The said writ petition was "an exercise on how to destroy the Judgment of Courts established under the Constitution". Hence, this appeal.

Learned counsel for the appellants relied on the judgment of a Constitution Bench of this Court in State of Orissa and Ors. v. Bhupendra Kumar Bose and Ors. AIR 1962 SC 945 which observed (vide paragraph 17):

"It is true that the judgment delivered by the High Court under Art. 226 must be respected but that is not to say that the Legislature is incompetent to deal with problems raised by the said judgment if the said problems and their proposed solutions are otherwise within their legislative competence. It would, we think, be erroneous to equate the judgment of the High Court under Art. 226 with Art. 226 itself and confer upon it all the attributes of the said constitutional provision."

And further, learned counsel for the appellants urged that an Act of the State legislature can be struck down by the courts in exercise of their powers of judicial review only on the following grounds:

- (a) That the State legislature was incompetent to enact the legislation;
- (b) That it was violative of any provisions contained in Part III of the Constitution;
- (c) That it was violative of any other provisions of the Constitution; or
- (d) That it was an infringement of the basic features of the Constitution.

Barring these available grounds, there is no other ground on which an Act of a State legislature can be struck down and declared to be ineffective, submits the learned counsel.

Learned counsel relied on Bakhtawar Trust and Ors v. M.D. Narayan and Ors. (2003) 5 SCC 298 wherein it is observed (vide paragraph 14) as under:

"The validity of any statute may be assailed on the ground that it is ultra vires the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity

or the basis that had led to those decisions."

We queried of Mr. Ranjit Kumar, learned senior counsel appearing for the respondent, as to what was the ground on which the notifications were struck down and the Validation Act was challenged. Learned counsel contended that the notifications were bad for inconsistency with Article 14 of the Constitution. He submitted that the notifications introduced invidious distinction between persons who had retired between 1.1.1986 and 28.2.1989 and those who retired on and from 1.3.1989. While in the case of the former class of employees, the arrears arising out of the implementation of the notification from 1.1.1986 was denied, although the notification itself was made effective from 1.1.1986. This, in the submission of the learned counsel, amounts to an infringement of Article 14 and, therefore, the High Court had rightly quashed the offending notifications.

In our view, the contention is unsound. In any event, we need not pursue this contention any further, as the Division Bench of the High Court had itself taken the view that it was perfectly open to the State Government to fix 1.3.1989 as the effective date of the notifications and, in any event, the two earlier judgments of the Division Benches had merely directed the State Government to consider the issue in the light of the judgments. What is more relevant to us today is that, after considering the effect of the two judgments, the State Legislature passed the "Validation Act" in which the validating Sections 4 and 5 read as under:

"4. Validation of Revision of Pension/Gratuity. \026 Notwithstanding any judgment, decree or order of any Court, Tribunal or Authority the Government Resolutions No. 1853 (F) and 1854 (F) both dated 19th April, 1990 would be deemed to have been enforced from 1st March, 1989 and the benefits of pension/family pension and gratuity given to the Government employees under the said two Resolutions would be deemed to have been due to the employees w.e.f. 1st March, 1989 only and the said date would be deemed always to have been the cut-off date for the said two Resolutions.

5. Overriding effect of the Act.- Notwithstanding anything to the contrary contained in any judgment decree or order passed by any Court, Tribunal or Authority and in any other law for the time, being in force the provisions of this Act shall prevail and have effect."

It is the validity of this Act which was impugned before the High Court, resulting in the impugned judgment. Once again, relying on the judgment in Bakhtawar Trust (supra), the learned counsel for the appellants contended that, a validating Act may even make ineffective the judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of the invalidity or the basis that had led to those decisions. It is always open to the Legislature to alter the law retrospectively as long as the very premise on which the earlier judgment declared a certain action as invalid is removed. The situation would be one of a fundamental change in the circumstances and such a validating Act was not open to challenge on the ground that it amounted to usurpation of judicial powers.

We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two concerned notifications was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are

based on some rational consideration.

A supplementary affidavit filed on behalf of the State Government by Mukesh Nandan Prasad dated 9.9.2002 brings out in paragraph 8 that the total amount of financial burden, which would arise as a result of making effective the payments from 1.1.1986 would be about 2,038.34 crores. In other words, the State Government declined to pay the arrears from 1.1.1986 on the ground of financial consideration, which, undoubtedly, is a very material consideration for any administration. In State of Punjab and Ors. v. Amar Nath Goyal and Ors. (2005) 6 SCC 754 this Court had occasion to consider the very same issue. After referring to a number of other authorities, it was held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. Thus, refusal to make payments of arrears from 1.1.1986 to 28.2.1989 on the ground of financial burden cannot be held to be an arbitrary ground or irrational consideration. Hence, the argument based on Article 14 of the Constitution must fail.

We see no other contention justifying the striking down of the Validation Act passed by the competent Legislature. At any rate, none has been pointed out to us. Thus, the only argument in favour of the striking down having been found unacceptable, we are of the view that the impugned judgment of the High Court is erroneous and needs to be interfered with.

In the result, we allow the appeal and set aside the impugned judgment of the High Court and declare the constitutionality of the Validation Act. No order as to costs.