

Karnataka High Court Group Captain L.G.I. Subramanian ... vs The Union Of India (Uoi), ... on 28 October, 2006 Author: A Byrareddy Bench: A Byrareddy ORDER Anand Byrareddy, J. Page 0188

1. The petitioner was commissioned in the Indian Air Force on 31.12.1958. After 25 years of service in various assignments, he was promoted as Group Captain. He was selected for deputation from the Air Force to Hindustan Aeronautics Limited for two years. After completion of the period of deputation he was offered permanent absorption - which he accepted with effect from 21.5.1986. The petitioner's premature retirement on permanent absorption was communicated by an order dated 27.5.1986. It is contended that the Government of India, Ministry of Defence by letter dated 19.12.1986 stated that for the purpose of pensionary benefits, the petitioner would be governed by the provisions of the Departments letter dated 17.3.1986. The said letter indicated that premature retirement would not entail forfeiture of service for the purpose of retirement terminal benefits. The letter also did offer an option to receive a lumpsum amount in lieu of monthly pro-rata pension. The petitioner had accordingly exercised pensionary option and was sanctioned the same by a letter dated 15.4.1987 indicating a monthly pension of Rs. 1440 and authorising payment of a capitalised sum of Rs. 2,23,776/-. The petitioner was also sanctioned a Retirement Gratuity of Rs. 50,000/-. However, pursuant to recommendations of the Fourth Central Pay Commissioner regarding pensionary benefits and as decided by the Ministry of Defence - a corrigendum dated 18.12.1987 was issued amending the monthly pension to Rs. 2069/- and an additional capitalised sum of Rs. 97,747/- and an additional Retirement Gratuity of Rs. 27,688/ 2. It is the petitioner's contention that on recommendations of the Fifth Pay Commission regarding pensionary benefits, that with effect from 1.1.1996 pension of all armed forces pensioners, irrespective of the date of their retirement, shall not be less than 50% of the minimum pay in the revised scale of pay of the rank held by the pensioner, introduced from 1.1.1996. This was implemented along with restoration of 43% of compounded pension after 15 years by orders dated 28.5.2002 and 28.7.2002, respectively. However, the pension sanctioning authority had reckoned the actual service of 27.5 years alone without adding the weightage of 7 years in computing the revised pension payable to the petitioner. In the result the revised pension was pegged at Rs. 7255/- instead of Rs. 8550/-. Page 0189

3. The petitioner contends that (a) weightage is an entitlement earned by virtue of past service of an officer, once he completes 20 years of service. This cannot be deprived except in accordance with the Pension Regulations. (b) Denying weightage on account of absorption into a public sector undertaking while allowing it in respect of other officers in the same stream who take premature retirement for personal reasons, is arbitrary and violative of Article 14 of the Constitution. (c) So is the case of an officer who retires pre-maturely and later joins the services of a private sector undertaking, being allowed weightage. (d) The counsel for the petitioner would assert that the clear declaration by the respondents that his premature retirement would not entail forfeiture of service for the purpose of retirement benefit was unilaterally modified by promulgating that the petitioner would be denied of 17% of the pension earned by him. Nor was the petitioner given the option

of going back to the parent cadre, since all connections with the Government were severed on his release for appointment in an enterprise. 4. Regulation 3 and Regulation 16 of the Pension Regulations for the Air Force 1961 reads thus: 3. The full rate of pension or gratuity provided for in these Regulations shall not be granted unless the service rendered has been satisfactory. If the service has not been satisfactory, the competent authority may make such reduction in the amount of pension or gratuity as it thinks proper. Regulation 16 reads thus: Officers cashiered, dismissed, removed or called upon to Retire. 16. (a) When an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he would otherwise qualified, has he retired on the same date. (b) When an officer who has to his credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign, or in the event of his refusing to do so is retired from or gazetted out of the service, he may at the discretion of the President be granted a pension at a rate not exceeding that for which he would have otherwise qualified, had he retired in the normal manner. 5. It is contended that Regulation 3 enables reduction of amount of pension or gratuity - if service is not satisfactory. And under Regulation 16 the discretion is given to the President to reduce or forfeit pension of an officer who has to his credit a minimum period of qualifying service only in the event of his being cashiered, dismissed or removed from service. It is contended that the above regulations and Regulations 22, 25, 26 and 36 came up for consideration before the Supreme Court of India in the case of Page 0190 Union of India v. Lt. Col. P.S. Bhargava and the court held on a reading of the Regulations it is to be held that once an officer who has to his credit the minimum period of qualifying service he earns a right to get pension and as the regulations stand that right can be taken away only if an order is passed under Regulation 3 or 16. The voluntary resignation of officers, who have to their credit the minimum period of qualifying service are not covered by the said Regulations and cannot be deprived of the terminal benefits. 6. The counsel for the petitioner would emphasize that since the petitioner has to his credit the minimum qualifying service the petitioner is entitled to the benefit of 7 years weightage in respect of pension and weightage of 5 years in respect of gratuity, which is otherwise given to officers who have prematurely retired from service for personal reasons. Hence Note (1) under Para 5(a) and (b) of Annexure-E to the writ petition which seeks to treat the petitioner as belonging to a class different from those with minimum qualifying service and who retired for personal reasons, is clearly discriminatory and violative of Article 14 of the Constitution of India. In this regard the counsel also places reliance on the case of Lt. Col B.R. Malhotra v. Union of India , wherein the petitioner, an Army Officer was permanently absorbed into the service of BEL, a public sector undertaking - he did not voluntarily retire from Army Service but was allowed to get absorbed in BEL on terms and conditions laid down by the respondent. He was denied disability pension which accrued to him on suffering an injury while in Army Service. The court held that pension

was not a bounty or award but deferred wage or pension earned by him and hence the Regulation denying such pension was discriminatory. In *D.S. Nakara v. Union of India* it is held (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. And that pensioners form a class as a whole and cannot be micro classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension. And further held that whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of the classification, by striking down words of limitation, the resultant effect may be enlarging the class. In such a situation, the court can strike down the words of limitation in an enactment. And that is what is called “reading down” the measure. Page 0191 In *U. Raghavendra Acharya v. State of Karnataka* 2006 AIR SCW 2676 the Supreme Court has held while interpreting Rule 296 of the Karnataka Civil Service Rules (1958) in considering whether an employee could be deprived of pensionary benefit by way of executive instructions in fixing a cut-off date for extending such benefit. The court held that there was a vested or accrued right in favour of the employee when the State took a conscious decision to extend the benefit of the UGC scales of pay with effect from 1.1.1996. There was no reason why pensionary benefits could not be extended to them from the said date. As pension is deferred salary, akin to a right to property. Hence fixing pensionary benefits with effect from 1.4.1998 would result in reduction of pension with retrospective effect from 1.1.1996 to 31.3.1998 - as this was an accrued right in the employees to draw pension to the extent of 50% of the emoluments, computed in terms of the rules with effect from 1.1.1996, which vested in the employees in terms of the Government notification read with Rule 296 of the Rules. The counsel for petitioner hence prays that the petition be allowed. 7. Per contra the counsel for the respondent would argue that the entire service rendered by the petitioner i.e. 27 years and six months is taken into account and the conditions and rules as existing at the time of pre-mature retirement of the petitioner has been applied. Accordingly in terms of the Government of India letter dated 22.8.1975 his pension was calculated without any weightage. The pension of the petitioner cannot be compared with other officers who retire in the normal course and are not immediately absorbed in a public sector undertaking. On the other hand the petitioner has the dual benefit of drawing pay form the PSU as well as pro-rata pension. It is a fact that with pursuant to letter dated 30.10.1987, impugned in the petition, weightage of additional years of qualifying service is not admissible to PSU absorbees. It also contended that weightage is not earned but granted as a measure to compensate for early exit of defence service officers on pre-mature retirement. There is no discrimination

in this regard in so far as the petitioner is concerned for reasons stated above. 8. B.R. Malhotra's case is sought to be distinguished on the ground that the officer therein had suffered a gun wound in both his knees while in army service and was accordingly held entitled to disability pension even after having been absorbed by a PSU. 9. On these rival contentions the bare denial of the petition averments apart the respondents have not satisfactorily met the contentions of the petitioner. The specific contention of the petitioner as regards officers who seek retirement for personal reasons and obtain employment in the private sector, on more lucrative terms. Whereas the petitioner did not have the prospect of any pension for over seven years of service with HAL, to the knowledge of the respondents when he was absorbed. 10. The case law cited by the petitioner is sought to be distinguished in a laconic fashion. It is therefore to be held that the petition deserves to succeed. 11. Accordingly the writ petition is allowed. The note (1) under para 5 (a) and (b) of the Government of India letter No. 1(5)/87/D (Pension/Service) dated Page 0192 30th October, 1987 at Annexure-E to the petition, issued by the first respondent is quashed. 12. The respondents are directed to add 7 years weightage in computing the pension payable to the petitioner. And further to recalculate the petitioner's Death Cum Retirement Gratuity by including a weightage of five years. 13. The respondents shall consequently pay all arrears due to the petitioner, in terms as above, from the date of his retirement from service.