

The State Of Himachal Pradesh vs K.P. Nayar on 15 February, 2022

Bench: Sanjay Kishan Kaul, M.M. Sundresh

ITEM NO.9

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No.572/2021

(Arising out of impugned final judgment and order dated 01-09-2020 in CWPOA No.7945/2019 passed by the High Court Of Himachal Pradesh at Shimla)

THE STATE OF HIMACHAL PRADESH & ANR.

Petitioners

VERSUS

K.P. NAYAR

Respondent

(IA No. 46240/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 15-02-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s)

Mr. Vikas Mahajan, Sr.Adv./AAG State of H.P.
Mr. Vinod Sharma, AOR
Mr. Joydip Roy, Adv.
Mr. Anil Kumar, Adv.
Mr. Vidit Anand, Adv.
Mr. Arun Singh, Adv.
Mr. Amarnath Singh, Adv.
Mr. Surinder Singh Manak, Adv.

For Respondent(s)

Ms. Radhika Gautam, AOR

UPON hearing the counsel the Court made the following
O R D E R

The respondent retired on 20.4.1983 from the Himachal Pradesh Government Services. The Sixth Central Pay Commission recommendation made in March, 2008 sought to dispense with the linkage

of full pension with 33 years of qualifying service, an aspect which was applicable to the respondent. It is opined that the employees should render the minimum pensionable service of 20 years and pension should be paid at the 50% of the average emoluments received during the past 10 months or pay last on whichever is more beneficial to the retiring employee. The Pay Commission, however, simultaneously recommended that the said recommendations will take effect prospectively for all government employees other than Personnel Below Officer Rank (PBOR) in defence forces.

The appellant-State of Himachal Pradesh followed the same by issuing necessary Office Memorandum dated 14.10.2009 making it applicable from 01.1.2006 as was the case with the Central Government. On 28.3.2016, State Government issued a notification providing that Central Civil Services Rules as mentioned in notification would remain applicable to Himachal Pradesh Government employees as the same exists on the date of issuance of the said notification with all State amendments but with a proviso that henceforth any amendment in such rules by the Government of India shall be applicable to Himachal Pradesh government employees only on its adoption and circulation by the State Government. On 06.4.2016, the Government of India issued a notification revising the consolidation pension of pre-2006 pensioners to be not lower than 50% even if they had qualified services of less than 33 years at the time of the retirement. In view of the notification dated 28.3.2016, a notification dated 06.4.2016 did not become ipso facto applicable to the State Government. The State Government issued an addendum dated 12.5.2016 making certain additions in the notification dated 28.3.2016.

The respondent assailed the aforesaid decision and in substance claiming that the cut-off date of retirement i.e. 01.01.2006 was irrational, arbitrary and should be struck down. This found favour with the High Court vide the impugned judgment dated 01.9.2020.

Learned counsel for the appellant seeks to contend that it is for the State Government to fix the pension of a retired employee and the cut-off date of 01.01.2006 is sought to be justified on the ground that even the Pay Commission recommendation was to apply prospectively. It is their submission that the law prohibits discrimination between pensioners forming a single class and governed by the same rules but that was not the factual situation in the present case. The notification dated 06.4.2016 would not be applicable to the State of Himachal Pradesh. It was not a denial of any upward revision of existing pension scheme but the pension of the respondent has been revised in terms of O.M. dated 14.10.2009 and the respondent has been granted proportionate pension because he was not eligible for full pension as per rules enforced on the date of retirement. The full pension norms can thus not be applied retrospective.

On the other than the learned counsel for the respondent seeks to contend that starting from the seminal judgment in D.S. Nakara & Others vs Union Of India reported as (1983) 1 SCC 305 various judgments have interpreted the ambit and effect of the same. He seeks to bring to our notice a recent judgment of two Judge Bench of this Court titled All Manipur Pensioners Association Vs. State of Manipur & Ors., (2020) 14 SCC 625. The judgment after analyzing some of the earlier judgments seeks to lay down the ratio in paragraph 8, 8.1 and 8.2 as under:-

“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post- 1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

8.1 In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cutoff date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre 1996 or post 1996. As observed hereinabove, all the pensioners belong to one class.

Therefore, by such a classification/cutoff date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the

State to provide a cutoff date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.” We, with all respect, have some reservations on the large canvas which the aforesaid paragraphs seek to place on the principal of pension seeking to make any distinction between categories based on a cut-off date as violative to Article 14 of the Constitution of India, more so in view of certain earlier judicial pronouncements. Judicial discipline would require and thus this matter should be examined by a bench larger than the one we are constituted at present because this judgment emanates from a two Judges Bench.

We are thus of the view that the matter is required to be placed before a three Judge Bench. The matter be placed before Hon’ble the Chief Justice of India for appropriate orders.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER