The State Of Punjab vs Justice .S. Dewan(Retired Chief ... on 25 April, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2388, 1997 (4) SCC 569, 1997 AIR SCW 2298, 1997 LAB. I. C. 2333, (1997) 3 SCR 1027 (SC), 1997 (3) SCALE 708, 1997 (3) SCR 1027, 1997 (1) UJ (SC) 710, (1997) 5 JT 26 (SC), (1997) 2 SCT 745, (1997) 4 SUPREME 329, (1997) 2 LABLJ 357, (1997) 2 SERVLR 647, (1997) 3 SCALE 708, (1997) 4 LAB LN 549, 1997 SCC (L&S) 1153

Bench: K. Ramaswamy, G.T. Nanavati, K.Venkataswami

PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
JUSTICE .S. DEWAN(RETIRED CHIEF JUSTICE) & ORS.

DATE OF JUDGMENT: 25/04/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI, K.VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

JU D G ME N T NANAVATI, J.

The respondent who retired as thechief justice of the High Court of Punjab and Haryana on 31.12.89 was enrolled as an advocate on27.1.59, appointed as Districtand Sessions Judge on 20.11.68 and then as a judge and the Chief Justice of Punjab and HaryanaHigh Court on 14.12.77 and 4.10.89 respectively. On his retirement he elected for computation of hispensionunder Part III of the 1st Schedule to the High Court Judges (Conditions of Service) Act, 1954. According to the provisions containedin partIII, pension of thejudge has to be determined in accordance with the rules of his service. The ruleswhich applied to him are the punjab Superior Judicial Service Rules, 1963. His

pension was, therefore, fixed in accordance with the said rules. On 20.2.90, Rule 16 of the saidRules was amended by the Government of Punjab and it was provided thatin caseof a direct recruitto thePunjab SuperiorJudicial Service the actual period of practice at the bar not exceeding 10 years shall be addedto his service qualifying for superannuation pensionand other retirement benefits. In view ofthis amendment the respondent claimed that being a direct recruit to thePunjab Superior Judicial Service he was entitled to addition of actual period of practice at the bar not exceeding 10 years to his qualifying service and, therefore, his pension and other retirement benefitshave to be refixed. TheHigh Court, in its turn, wrote to the Accountant General on 5.6.90 for refixation of his pension and other retirement benefitsafter giving him benefit of the amendment . The AccountantGeneral, it appears, was not inclined to agree with this claim and, therefore, referred the matter to the State Government for correct interpretation of the rule. On25.2.91the State Government decided thatthe notification dated 22.2.90 hasonly prospective effect and, therefore, benefit of the amended Rule 16 cannotbe given to the respondent. He, therefore, filed a writ petitionin the High Court interalia praying that the Union of Indiaand theState Government be directed to givebenefitof the amended Rule 16 to him and to compute his pension afresh inaccordance with the said provision. The stand taken by the Unionof India was that it was not really concerned with the subject-matter of thepetition and that it pertained to the State of Punjab. The State contended thatthe amended rule applies to those only who retiredafter 22.2.90.

The learned singleJudge followingthe judgment ofthis Court in D.S. Nakara and others Vs. Union of India 1983 (1) SCC 305 held that allretired judgesirrespective of the date of retirement constituteone class and the benefits available under the amended rule cannot be confined to the judges who retired after the amendment.He, therefore, found the action of the state of Punjab asillegal, allowed the petition and directed the State of Punjab to refix pension of therespondent in accordance with the amended rulewith effect from 22.2.90 and to paythe arrears with interest at the rate of 18 per centper annum. The State ofPunjab filed a letters patent appeal. The Division Bench of theHigh Court dismissed it with a clarification that the prayer being restricted only to pension and not to other retirement benefits, the order passed by the learned Single Judge should be readas confined to grant of pension only. The State has, therefore, filed this appeal.

The only controversy in this appeal is whether theHigh Court was right in directing refixation of pension of the respondent in accordance with amended Rule 16. The respondent, having retired asa judge of a High Court and having electedto receive pension payable under part III of the First Schedule to the Act his below:-

> "16. Death-cum-retirement benefits:-In respect of death-cum- retirementbenefits the members of the service shallbe governed by the punjab CivilServices Rules, Volume IIas amended from time to time.
>
> Provided thatin the case of a direct recruit to this service, the actual period of practice at Bar not exceeding tenyears,shall be added to his service qualifying for superannuation Pension and other retirementbenefits."

The change brought aboutby the amendment isthat whereasin respect of death-cum-retirement benefits members of the Punjab Superior Judicil Service were earlier governed by theAll India Service (death-cum-retirement benefits) Rules, now they are governed by the Punjab Civil Service Rules, Moreover, now in the case of a direct recruit to the added to hes service for thepurposeof determining the qualifying service. Formerly, that is, prior to 22.2.1990, qualifying service ofa member of the Punjab Superior judicial Service and also as a judge of the High Court, if he waselevated to that position before retirement. Even in case ofa direct recruit to that Service his standing at the Bar was irrelvant butnow that period has tobe added for determining the qualifyingservice. Obviously,this enlargement ofthe Period of qualifying service wouldlead to an Increasein thequantum of pension. This hasbeen regarded by the High Court and as contended by the respondent, liberalisation of the pension scheme. Forthat reason,it further held that benefit of a ruleliberalising pension cannot berestricted to persons retiring subsequently that is after the date of such liberalisation otherwise itwould amountto vicious discrimination violative of Article 14 of theconstitution. The High Court has also held that there is nothing in the language of the Rule tosuggestthat the benefit conferred by it is confined to the persons retiringafter February 22,1990.

Therefore,what we have to consider is: What is the nature of the change made by the amendment? Isit by way of upwardrevision of the existing pension scheme?Then obviously the ratio of the decision in D.S. Nakara'scase would apply. If it is held to be a newretiralbenefitor a new scheme then the benefit of it cannot beextended to those who retired earlier.

Conceptually, pension is a rewardfor past service. It is determined on the basis of length ofserviceand last pay drawn. Length of service is determinative of eligibility and the quantum ofpension. The formula adopted for determining last average emoluments drawnhas an impact on the quantum of Pension. InD.S. Nakara's case (supra) the change in the formulaof determiningaverage emoluments byreducing 36 months'serviceto 10 months' service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme,On thebasis of the same reasoning it may besaid that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pensioncan also be regarded as liberalisation or upward revision of the existing pension scheme. If,however, the change is not confinedto the period of service but extends or relates to a period anterior to the joining of service then it would assume adifferent character. Then it is not liberalisation of the existing scheme but introductionof a new retiral benefit. What has been done by amending Rule 16 is to make the periodof practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be togo for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already inserviceso thatthey may not leave it and for new entrants so that they may be tempted to join it. ThoughRule 16does not specifically state that the amendedrule will apply only to those who retired after 22.2.90, the intentionbehindit clearly appears to be to extend the newbenefitto those only who retired afterthat date. For these reasons the principle laid down inD.S. Nakara's case (supra)that if pensioners form a class computation oftheir pension cannot beby different formula affording unequal treatment merely onthe ground thatsome retired earlier and some retired later, will have no application toa caseof thistype. Therefore, on both the

groundsthe High Court was in error in applyingthe ratio of the decision in D.S. Nakara's case (supra) to this case. As rightlycontended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force.

The following observations made by this court in Union of India Vs. P.N. Menon 1994(4) SCC 68 also to some extent supportthe view that we are taking:

> "Wheneverthe Government or an authority,which can be held to be aStatewithinthe meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated fromservice, due to many constraints, it is not always possible to extendthe same benefitsto one and all, irrespective ofthe dates of superannuation. Assuch any revised scheme in respect of post- retirementbenefits, if implemented with a cut-off date, which can be held to be reasonable andrational inthe light of Article 14 of the Constitution, need not be held to beinvalid. It shall not amount to "picking out a date from the hat", aswas said by this Court in the case of D.R. Nim V. Unionof India in connection with fixation of Seniority. Whenever arevision takes place, a cut-off date becomes imperativebecause the benefit has tobe allowed within the financial resources available with the Government."

We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and dismiss the writ petition filed by the respondents.In viewof the facts and circumstances of the case there shall be no order as to costs.