

Government Of Andhra Pradesh & Ors vs N. Subbarayudu & Ors on 26 March, 2008

Equivalent citations: 2008 AIR SCW 2317, 2008 (14) SCC 702, 2008 LAB. I. C. 2594, AIR 2008 SC (SUPP) 1721, (2008) 117 FACLR 369, (2008) 4 SERVLR 136, (2008) 5 ALLMR 13 (SC), (2008) 2 KER LT 681, (2008) 3 LAB LN 685, (2008) 4 SCALE 117, (2008) 2 SCT 425, (2008) 66 ALLINDCAS 206 (SC)

Bench: H.K. Sema, Markandey Katju

CASE NO. :

Appeal (civil) 3939-3941 of 2002

PETITIONER:

GOVERNMENT OF ANDHRA PRADESH & ORS.

RESPONDENT:

N. SUBBARAYUDU & ORS

DATE OF JUDGMENT: 26/03/2008

BENCH:

H.K. SEMA & MARKANDEY KATJU

JUDGMENT:

JUDGMENT O R D E R REPORTABLE CIVIL APPEAL NO. 3939-3941 OF 2002 WITH These appeals have been preferred by the State against the judgment and order of the Division Bench of the High Court. By the impugned order, the High Court directed that the respondents be paid the pensionary benefits from the respective date of their retirement under the provisions of Pension Rules 1980.

We have heard the parties at length.

Briefly stated the facts are as follows.

The respondents were Lecturers in private aided college. The age of superannuation of the respondents was 60 years. By an amendment of the Education Code in 1993, the age of superannuation of the respondents has been brought down to2.

- 2 -

58 years. In the said amendment it was also provided that the respondents shall be entitled to pension with effect from 1st November 1992.

Aggrieved thereby, the respondents preferred writ petition before the High Court. The Division Bench of the High Court, after hearing the parties, was of the view that the cut off date 1/11/1992 fixed by the Government was arbitrary and discriminatory.

In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab & Ors. Vs. Amar Nath Goyal & Ors.*, (2005) 6 SCC 754).

No doubt in *D.S. Nakara & Ors. vs. Union of India* 1983(1) SCC 305 this Court had struck down the cut off date in3.

- 3 -

connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara's Case* (supra), as observed in para 29 of the decision of this Court in *State of Punjab & Ors. vs. Amar Nath Goyal & Ors.* (supra).

There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide *State of Bihar vs. Ramjee Prasad* 1990(3) SCC 368, *Union of Indian & Anr. vs. Sudhir Kumar Jaiswal* 1994(4) SCC 212 (vide para

5), *Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors.* 2004 (2) SCC 764.

- 4 -

(vide para 31), *University Grants Commission vs. Sadhana Chaudhary & Ors.* 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

As has been held by this Court in Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr. 2008(3) 3 JT 221 and in Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi 2008(2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain.

For the reasons afore-stated, the impugned order of the High Court is set aside. The appeals are allowed.