

Welfare Association Of Absorbed ... vs Union Of India And Another on 15 December, 1995

Equivalent citations: AIR1996SC1201, 1996LABLC1042, 1995(7)SCALE295, (1996)2SCC187, [1995]SUPP6SCR748, 1996(1)UJ220(SC), AIR 1996 SUPREME COURT 1201, 1996 (2) SCC 187, 1996 AIR SCW 1212, 1996 LAB. I. C. 1042, (1996) 1 SERVLR 618, (1996) 1 SCJ 475, (1996) 33 ATC 188, 1996 UJ(SC) 1 220, 1996 SCC (L&S) 444

Bench: Kuldip Singh, K. Venkataswami

ORDER

K. Venataswami, J.

1. These two writ petitions are filed under Article 32 of the Constitution of India. At the time of argument learned Counsel appearing in these writ petitions confined their relief to the restoration of one-third portion of the fully commuted pension as per the decision of this Court in Common Cause, Registered Society and Ors. v. Union of India , and consequently to quash para 4 of O.M. 3412/86. P & PW issued by government of India Department of Pension and Pensioner's Welfare dated 5.3.1987.

2. Brief facts leading to filing of these two writ petitions are as follows:

The members of the petitioner's welfare association in W.P. (C) No. 11855/85 and the individual petitioners in W.P. (C) No. 567/85 were Central Govt. Servants. Government of India some years ago decided to start public undertakings/enterprises in the core sector of industries. To start with the Government of India, sent some of their officers to the public undertakings, on deputation. As it was felt that services of the officers having sufficient experience and skill were necessary for the public enterprises, the Government devised measures to induct those willing officers to continue in the public enterprises. Such officers were allowed to be absorbed in those public underakings/enterprises. The Government offered to deem their retirement as retirement in 'public interest'. Consequent to their deemed retirement, such absorbed/retired Government servants were offered retiral benefits. These persons were also offered the usual facility of commuting one-third of their original pension under Civil Pensions (Commutation) Rules and were also offered additional facility of commuting the balance two-thirds pension also i.e. to commute the full Pension. This facility therefore creates three categories of these persons (1) the persons who have not commuted their pension and therefore draw full monthly pension from the

Government; (2) the persons who have commuted one-third of the pension and therefore will draw a sliced monthly pension, reduced to the extent of commuted amount, (3) the persons who have commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil. The persons falling in the first category continue to derive all the benefits of being Government Pensioner and get all the Interim Relief, liberalisation and/or whatever reliefs are given by the Government to the petitioners. But the persons in the second category are denied these benefits to the extent of "one-third commutation". The third category are the worst hit and are totally denied of all these benefits.

3. The above-mentioned second category of the retired Government servants namely, those who got one-third pension commuted moved this Court for restoration of thier one-third pension by filing a writ petition under Article 32 of the Constitution of India, (Vide "Common Cause" v. Union of India . The contention put forward in support of thier claim for restoration of the one-third pension was that the lump sum amount paid gets adjusted by about 10 or 12 years and therefore, the Government must be directed to restore the commuted portion of one-third pension. It was also contended that lately there has been a substantial improvement in the life expectancy of the people in India and therefore, there was no justification for denying the restoration of the commuted one-third portion of pension which gets adjusted after a period of 10 or 12 years. When that matter came up before this Court, a suggestion was made to the Government to give a new look to the matter. The respondent Government accepting that suggestion came forward with a new formula and after perusing the same this Court in Common Cause v. Union of India held as follows:

As the position now stands, when a pensioner commutes any part of his pension upto the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.

The petitioner have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and,therefore there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus two advantages are certainly forthcoming out of commutation - (i) availability of a lump sum amount and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.

The age of superannuation used to be 55 untill it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that of the expiry of fifteen years from the period of retirement such restoration would take place.

The respondent-Government has agreed that this benefit should be extended with effect from 1.4.86. The writ application were filed in 1983. The matter was placed on board for hearing in February, 1984. The Union Government took some time for responding to the suggestion of the Court and that is how the disposal was initially delayed. Thereafter, the hearing of the matter has again been delayed on account of pressing business in the Court. In these circumstances, we think it just and equitable that the benefit agreed to be extended in respect of the commuted portion of the pension should be effective from 1.4.85 so far as the civilian employees are concerned.

4. The same was made applicable to the defence personnel as well in the same judgment.

5. The respondent while giving effect to the above judgment denied the same benefit to the petitioners by inserting para 4 in the impugned O.M. dated 5.3.1987 which reads as follows:

Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government pensioners.

6. The petitioners in these petitions prayed that the same relief be given to them. As a matter of fact, in this case as well the respondent was directed to consider the case of the petitioners in the light of the judgment in 'Common Cause' case. Unfortunately, the Government did not come forward with favourable reply. Hence this decision on merits.

7. To appreciate the claim of the petitioners, it is necessary to set out two relevant rules in the CCS. Pension) Rules 1972. Rule 37 and 37A read as follows:

Rule 37 : Pension on absorption in or under a corporation, company or body:

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to Sub-rule (3) he shall be eligible to receive retirement benefits which he may be elected, or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Central Government applicable to him.

Explanation : Date of absorption shall be:

(i) in a case a Government employee joins a Corporation or a company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

(ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of Sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Government/Union Territory Administration or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rate retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

Explanation : Body means autonomous body or statutory body.

Rule 37-A : Payment of lump sum amount to person on absorption in or under a Corporation, company or body.

(1) Where a Government servant referred to in Rule 37 elects the alternative of receiving the (retirement gratuity) and a lump sum amount in lieu of pension he shall in addition to the (retirement gratuity) be granted:

(a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules, and

(b) terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the Government servant surrenders his right of drawing two-thirds of his pension.

9. From the above extracts, it will be seen that a clear-cut distinction is made in Rule 37-A itself between one-third portion of pension to be commuted without any condition attached and two-third portion of pension to be received as terminal benefits with condition attached with it. It follows that so far as commutation of one-third of the pension is concerned, the petitioners herein as well as

petitioners in 'Common Cause' case stand on similar footing with no difference. So far as the balance of two-third pension is concerned, the petitioners herein have received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension. This was not the case with the petitioners in 'Common Cause' case. That being the position the denial of benefit given to 'Common Cause' petitioners to the present petitioners violates Articles 14 & 16 of the Constitution. The reasoning for restoring one-third commuted pension in the case of 'Common Cause' petitioners equally applies to the restoration of one-third commuted pension in the case of these petitioners as well.

10. No doubt the Government while declining to consider the case of petitioners favourably took into account a decision of this Court in Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India, , holding that the petitioners in 'Common Cause' case stand on a different footing than that of the petitioners in the present case. In that judgment Rule 37-A was not brought to the notice of the Court. Another reason given by the Government was that the petitioners on commuting their pension in full cease to be Central Government pensioners. This is too broad a contention to be accepted as no statute or rule is quoted in support of this contention. This stand taken by the Government does not appear to be correct in view of their own counter-affidavit filed in this case. In para 8 at page 14 of the counter-affidavit it has been stated as follows:

It would be seen from (b) above that the two-third terminal benefits received by the absorbers is nothing but pension. Thus, the absorbees who have opted for lump sum payment have not only commuted one-third of their pension but also the remaining portion of two-third pension which is termed as "terminal benefits". The absorbees have in fact commuted the entire pension and not one-third of pension.

11. It would be seen from (b) above, two-third terminal benefits received by the absorbees is nothing but pension. Further as per the condition imposed in the absorption order, the family pension when not provided in the public undertakings in which the retired Government servants were absorbed, the payment of family pension is continued by the Government. The relevant condition reads as follows:

(ii) As regards entitlement to family pension, the condition imposed reads -

On his permanent absorption in the Company his family will be eligible for family pension subject to the provisions of Rule 54 of CCS (Pension) Rules, 1972 and any other orders issued by the Government of India from time to time provided that he is not covered by any other family pension scheme applicable to the Company Staff.

This was also the condition incorporated in respect of persons who had opted for one-third commutation.

12. This also indicates that the stand of the Government is not correct. Therefore, the denial of restoration of one-third commuted pension is not justified.

13. If after the expiry of 15 years, the pensioners who have opted for one-third commutation, becomes entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in 'Common Cause' case, there is no good reason for not applying the same to the petitioners who have commuted their one-third portion of the pension under rule 37-A of the Pension Rules 1972 without any commitment for this portion of commutation. Presumably the respondent realising the fallacy have withdrawn the scheme of permitting commutation of full pension by O.M. No. 4/42/91- P&PW(D) dated 31.3.1995. Para 3 of the Office Memorandum reads as follows:

3. The proposal to review the existing terms and conditions of absorption had been under consideration of the Govt. for quite sometime past. The President is now pleased to...(sic) that the existing terms and conditions of absorption shall stand partially modified to the extent indicated below:

(a) The existing facility of receiving capitalisation value equivalent to 100% commutation of pension on absorption shall stand withdrawn;

(b) The existing facility to draw pro-rata monthly pension from the date of absorption (with option to commute 1/3rd pension wherever admissible shall continue to exist.

14. This means this issue will not arise in future.

15. For the foregoing reason, we hold that the petitioners are entitled to the benefits as given by this Court in 'Common Cause' case so far as it related to restoration of one-third of the commuted pension. Consequently, the impugned para 4 of Office Memorandum dated 5.3.1987 is quashed. The writ petitions are accordingly allowed to the extent indicated above. No costs.