

## **State Of A.P. & Anr vs A.P. Pensioners Association & Ors on 11 November, 2005**

**Equivalent citations: AIR 2006 SUPREME COURT 407, 2005 (13) SCC 161, 2005 AIR SCW 6045, 2006 LAB. I. C. 137, 2006 (2) SERVLJ 10 SC, (2006) 2 SERVLJ 10, (2006) 39 ALLINDCAS 611 (SC), 2005 (9) SCALE 323, (2005) 10 JT 115 (SC), 2006 (1) SRJ 386, 2005 (10) JT 115, (2006) 108 FACLR 230, (2006) 2 LAB LN 67, (2005) 8 SCJ 804, (2006) 1 SERVLR 57, (2005) 8 SUPREME 420, (2005) 9 SCALE 323, (2006) 1 ESC 25**

**Author: S.B. Sinha**

**Bench: B.P. Singh, S.B. Sinha**

CASE NO.:

Appeal (civil) 6704-6780 of 2005

PETITIONER:

State of A.P. & Anr.

RESPONDENT:

A.P. Pensioners Association & Ors.

DATE OF JUDGMENT: 11/11/2005

BENCH:

B.P. Singh & S.B. Sinha

JUDGMENT:

**J U D G M E N T** [Arising out of S.L.P. (Civil) No.5394-5470 of 2004] S.B. SINHA, J :

Leave granted.

These appeals are directed against a judgment and order dated 10.09.2003 passed by the High Court of Judicature of Andhra Pradesh whereby and whereunder the common judgment and order of the A.P. Administrative Tribunal dated 14.6.2002 rejecting the original applications filed by the Respondents herein was set aside.

The Respondent Association is an association of the pensioners. The interveners, Shri K. Nagabhushanam & Ors., Shri A. Sudhakar & Ors. and K.Appana & Ors., are also the retired employees of the State of Andhra Pradesh.

The fact of the matter is as under:-

The State of A.P. constituted a Pay Revision Commission (for short "PRC") for the purpose of considering the question of revision of scale of pay of the employees working with it as also merger of D.A., etc. On or about 21.7.1999, PRC recommended revised scale of pay notionally from 1.7.1998 with financial benefits from 1.4.1999. The Chief Minister of the State held a meeting with the representatives of the employees on 24.7.1999 wherein it was agreed:

"The cash benefit of the Revised Pay Scales will be allowed with the salary for the month of July, 1999 payable in August, 1999. The arrears of emoluments arising from the Revised Pay Scales for then months of April, May and June, 1999 will be credited to the General Provident Fund Accounts of the employees."

The State of Andhra Pradesh thereafter issued a Government Order dated 11.8.1999 being No. GO (P) No. 114 in terms whereof inter alia the mode and manner for implementing the recommendations of the PRC on pension and other terminal benefits were specified. The said government order is in two parts. The first part containing paragraphs 1 to 23 consists of the background facts and the decision of the State to implement the recommendations of the PRC. Clauses 9 and 16, which are relevant for the purpose of this case, read as under:

"9. Persons who retired between 1-7-1998 and 31- 3-1999 shall also be eligible for the Revised Pay Scales, 1999. The notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders, shall in such cases count towards pensionary benefits."

"16. Separate orders are also being issued in regard to the recommendations of the Pay Revision Commission on Pension and other terminal benefits."

The second part of the said government order contains the draft notification containing the rules made in terms of the proviso to Article 309 of the Constitution of India called "The A.P. Revised Scales of Pay Rules, 1999". The said rules in terms of Rule 1(2) would be deemed to have come into force with effect from 1st July, 1998. They were to be applied to all government employees whether temporary, regular or permanent appointed before 1st July, 1998. Rule 3 of the Rules provides for the revised pay scales, sub-rule (1) whereof reads as under:

"(1) Except as otherwise provided in sub-rule-2, the existing scales of pay specified in column (2) of Schedule -1 shall be revised as specified in the corresponding entry in column (4) of the said Schedule."

Sub-rule (2) of the said Rule contains an exception to sub-rule (1) which reads as under:-

"(2) Where, in the case of any post on an existing scale of pay specified in column (2) of Schedule I, a revised scale of pay other than the revised scale of pay specified in the corresponding entry in column (4) of that Schedule is specified in column (4) of Schedule II, the revised scale of pay so specified in column (4) of Schedule II shall apply."

Rule 4 in no uncertain terms states that no government employee shall be entitled to any monetary benefit for any period prior to 1.4.1999.

Rule 5 lays down the principles for exercise of option in terms whereof a government employee should opt for the new scale of pay either from 1st July, 1998 or from the date on which he earns the next increment in the existing scale of pay but not beyond 30th June, 1999. He could also opt for remaining in the existing scale. Sub-rules (6) and (7) specifically lay down the modes of exercising option as regards an employee who retired on or after 1st July, 1998. Such option could also be exercised by the legal representative of a government employee who died while in service on or after the said date. Sub-rule (1) of Rule 9 contains a non-obstante clause saying that no rules made under the proviso to Article 309 of the Constitution of India shall, insofar as it is inconsistent with any of the provisions of these rules, have any effect.

The State also issued said GO(P) No. 156 on 16.9.1999 wherein it was categorically stated that the revised consolidated pension shall come into force with effect from 1.7.1998 with monetary benefits payable from 1.4.1999. Paragraph 5 of the said GO reads as under:

"5. The employee retired between 01-07-1998 and 1-4-1999 are eligible to revision of their pay in the Revised Pay Scales, 1999 notionally as per the orders issued in G.O. 7th read above. As such, the pensions of these employees may be revised notionally as per the revised pay in Revised Pay Scales, 1999 and monetary benefit should be allowed from 01-04-1999. No difference on Retirement Gratuity and Commutation shall be allowed in the pension notionally fixed as above."

Yet again, another notification was issued on 16.9.1999 being GOM No. 157 in terms whereof maximum limit of retirement gratuity under Rule 46 of the A.P. Revised Pension Rules, 1980 was raised from 1,75,000/- to Rs. 2,50,000/-, paragraph 3 whereof reads as under:-

"These orders will come into force from 1-4-1999 and shall apply to all Government Servants who retire or whose death taken place on or after that date. The arrears due to issue to these orders to the employees retired after 1-4-1999 shall be paid as per para 4.4 of the Government order fifth read above."

GOM No. 158 was issued on 16.9.1999 enhancing the limit of commutation of pension under A.P. Civil Pensions (Commutation) Rules, 1944 to 40% of the pension sanctioned to the pensioners with effect from 1.4.1999. Such enhancement is applicable only in relation to the persons who retired or died on or after 1.4.1999. On or about 23.12.1999, GOM No. 206 was issued in terms whereof paragraph 9 of the First Part of the GO(P) No. 114 dated 11.8.1999 was clarified to the following effect:

"Persons who retired between 1-7-1998 and 31-3- 1999 shall also be eligible for the Revised Pay Scales, 1999. The notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders shall, in such cases count towards pension notionally and the monetary benefit of the revised pension shall be allowed with effect from 1-4-

1999."

A large number of original applications were filed before the State Administrative Tribunal by the employees who had retired between the period 1.7.1998 and 1.4.1999 praying for payment of pensionary benefits including commutation, pension, gratuity and encashment of leave in terms of paragraph 9 of GO No. 114.

In terms of its common judgment and order dated 14.6.2002, the Tribunal opined that the applicants were not entitled to gratuity and encashment of earned leave based on their notional pay fixed in the revised scale of pay. They were also not held to be entitled to enhanced gratuity and enhanced percentage of commutation in terms of GOMs NOs. 157 and 158 but were only eligible for commutation of portion of revised pension in terms of Rules 3(d) and (e) of A.P. Civil Pension Commutation Rules, 1944.

Both the State of Andhra Pradesh as also the Original Applicants preferred writ petitions before the High Court being aggrieved by and dissatisfied therewith. By reason of the impugned judgment dated 10.9.2003 the High Court dismissed the writ petition filed by the State whereas the writ petitions filed by the employees were allowed. Aggrieved the State is before us.

Mr. P.P. Rao and Mr. H.S. Guru Raja Rao, learned senior counsel appearing on behalf of the State of Andhra Pradesh, submitted that the reasonings of the High Court that the Government acted contrary to the agreement with the unions, and that paragraph 9 of GO No. 114 conferred a legal right on the employees, cannot be sustained.

Drawing our attention to the minutes of the meeting held between the Chief Minister of the State of Andhra Pradesh, it was submitted that from a perusal of clause (4) thereof it would be evident that the same relate to the persons who would be continuing in service even after 1.4.1999 and, not in regard to the persons who had retired and drawn their retiral benefits prior thereto. As regard the second reasoning of the High Court Mr. Rao would contend that paragraph 9 of the said GO which is not a part of the statutory rule has been completely misconstrued inasmuch as the same merely provides background facts. Drawing our attention to paragraph 16 of the said GO, it was contended that as separate orders were to be issued in regard to the recommendations of the PRC on pension and other terminal benefits, the provisions of the said notification only could be taken into consideration for the purpose of determining the legal right of the employees. Terminal benefits, Mr. Rao submitted, does not include gratuity.

Drawing our attention to the second part of the said GO No. 114, Mr. Rao urged that perusal of Rule 4 thereof would make the position absolutely clear that no monetary benefit prior to 1.4.1999 accrued or was to be paid. It was further submitted that the government in exercise of its power conferred upon it under the proviso to Article 309 of the Constitution of India can unilaterally alter the terms and conditions of service. The High Court, it was submitted, failed to notice the grave financial implication in the matter.

Mr. Uday Umesh Lalit, learned senior counsel appearing on behalf of the Respondents, on the other hand, supported the judgment of the High Court contending that it is not a case where 1.4.1999 was fixed as a cut-off date for the purpose of grant of terminal benefits in terms of the rules. The rules, it was urged, read as a whole would clearly point out that the same had come into force with effect from 1.7.1998 wherefor a legal fiction has been created and in that view of the matter, although the monetary benefit was to be paid with effect from 1.4.1999, the entitlement to the scale of pay for all purposes including that of computation of the amount of gratuity as also commutation of pension, etc. cannot be denied. Other GOMs Nos. 156, 157, 158 and 206 issued after GO No. 114, having not been issued under the proviso to Article 309 of the Constitution of India, whereas GO NO. 114 having been so issued, the same could not whittle down the effect of a statutory rule. In any event, the said GOMs have been declared ultra vires by the Tribunal which finding has not been set aside by the High Court.

As the rules contemplate increase in pay with effect from 1.7.1998, the same should be applied for all intent and purport and must be given effect to in its true letter and spirit. If the benefit of the higher pay scale as also other benefits contemplated thereby are to be computed with effect from 1.7.1998, only because the actual payment in terms of money is deferred, the same would not take away the right that had accrued thereover, having regard to the fact that the pay is a condition of service.

Before adverting to the rival contentions of the parties, we may notice the findings of the Tribunal and the High Court respectively.

Findings of the Tribunal are as under:

- (a) Paragraph Nos. 1 to 23 of GO No. 114 dated 11.8.1999 do not have any statutory force.
- (b) Rule 4 of the Statutory Rule does not confer any legal right upon the employees who retired between 1.7.1998 and 1.4.1999 to any monetary benefit, and in that view of the matter on their superannuation, they having not drawn their pay in the revised pay scales, were not entitled therefor in terms thereof.
- (c) As regards paragraph 9 of GO No. 114, the Tribunal opined that the same being an executive order, the original applicants did not become entitled to get the amount of gratuity fixed on notional pay contrary to statutory rules.
- (d) Paragraph 5 of GO No. 156 is not violative of Articles 14 and 16 of the Constitution of India.
- (e) It was noted that the legality or validity of Rule 4 of GO No. 114 fixing the cut-off date of 1.4.1999 was not questioned. Such cut-

off date in any view of the matter is valid having been fixed upon taking into consideration the financial implications therefor having regard to the fact that the financial year commenced from

1.4.1999.

(f) Gratuity cannot be a part of pension as conceptually they are different.

The High Court, on the other hand, set aside the aforementioned findings holding that

(i) the Government acted contrary to the agreement arrived at by and between itself and with the unions; and

(ii) paragraph 9 of the GO No. 114 had conferred a right on the employees which could not be taken away by issuing another GO. The High Court, however, did not advert to the other contentions raised on behalf of the State.

It has not been disputed before us that GO No. 114 is in two parts. Paragraphs 1 to 23 only state the factual backdrop leading to issuance of the notifications. It is also not in dispute that the statutory rule embedded in GO No. 114 does not speak of gratuity. It has further not been disputed before us that the minutes of meeting dated 24.7.1999, held by the Chief Minister of the State with the representatives of the employees, do not contain any agreement as opined by the High Court.

GO No. 114 being in two parts, the first part which is in the nature of preamble or statement of background facts cannot be treated to be a part of the rules framed and notified in terms of proviso to Article 309 of the Constitution of India. Paragraph 16 of the GO, as has been noticed hereinbefore, in no uncertain terms states that separate orders were being issued in regard to recommendations of PRC on pension and other terminal benefits. Only because clauses 9 and 16 of the said GO speak of pensionary benefits and/ or other terminal benefits, the same, in our opinion, would not mean that they embraced within their fold all benefits which under different provisions of a statute or even different statutes could come within the preview thereof.

For the aforementioned purpose, the provisions of the notification are to be read as a whole. The intention of the State in issuing the aforementioned notification although may have to be gathered in the backdrop of the facts stated in the preamble portion thereof, indisputably the legal right of the Respondents, if any, must be found out from the notification portion itself. The notification read as a whole does not suggest that the State of Andhra Pradesh thereby intended to pay before 1.4.1999 retirement gratuity reckoned on the basis of the revised scale of pay as recommended by the PRC.

Mr. Lalit may be right in his submissions that the revised scale of pay notionally was fixed from 1.7.1998, but, concededly, cash benefit therefor was payable from 1.4.1999. Pension and gratuity connote two different things. In given situations, they may be payable under different statutes. Admittedly, the matter relating to payment of pension and gratuity is governed by the A.P. Revised Pension Rules, 1980. Rule 31 of the said rules defines "emoluments" to mean 'pay' as defined in Rule 9(21)(a)(i) of the Fundamental Rules, which a Government servant had been receiving immediately before his retirement or on the date of his death. Rule 46 provides for retirement gratuity, clause (1)(a)(A) whereof reads as under:

"46. Retirement Gratuity : - (1)(a) A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 45, shall on his retirement, be granted as retirement gratuity, -

(A) In case he draws pay in the Revised Scales of Pay, 1993, a sum equal to

(i) 1/4th of emoluments for each completed six monthly period of service, subject to a maximum of fifteen times the emoluments or rupees sixty five thousand, whichever is less; or

(ii) 3/16th of emoluments for each completed six monthly period of service, subject to a maximum of 12.375 times the emoluments or Rupees one lakh, whichever is less;

in accordance with the choice exercised by him in his behalf;"

Computation of retirement gratuity payable to a Government servant is, therefore, required to be done on the basis of the formula laid down therein. A bare perusal of the aforementioned rule clearly shows that for the purpose of computation either 1/4th of the emolument for each completed six monthly period of service, or 3/16th of emoluments for each completed six monthly period of service, is to be taken into consideration. Such emoluments necessarily were payable either immediately before the date of retirement or the date of death. On 1.4.1999, in view of the clear expressions contained in the aforementioned GO No. 114, those employees who retired between the period 1.7.1998 and 1.4.1999 would have received the actual benefit calculated in terms of the said rule. The submission of Mr. Lalit to the effect that they became entitled to enhanced pay and, therefore, to enhanced gratuity from 1.7.1998 is not wholly correct. They became entitled thereto but only notionally for the purpose of calculation of such recurring liability of the State which became payable with effect from 1.4.1999. The High Court has heavily relied upon the purported legal fiction created in the said rule to the effect that the same would come into force with effect from 1.7.1998. The legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom.

In Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Ors. [(1978) 3 SCR 761], whereupon Mr. Lalit placed strong reliance, the court was concerned with the share of the deceased in the coparcenary property in terms of Section 6 of the Hindu Succession Act, 1956. In terms of the said provision a legal fiction was created for the purpose of reckoning the share of the deceased which would have been allotted to him if a partition of the property had taken place immediately before his death. Plaintiff therein had 1/6th interest in the share. Applying the principles laid down in the explanation appended to Section 6 of the Hindu Succession Act, it was held that the plaintiff was also entitled to 1/6th share from 1/4th share of the coparcenary property, i.e., to say 1/24th. As on the date of partition, the plaintiff was

to have an independent  $\frac{1}{4}$ th share, the Court held that the plaintiff's share would be  $\frac{1}{4}$ th +  $\frac{1}{24}$ th in the property.

The case at hand indeed poses a different problem. Although like Gurupad Khandappa Magdum (supra) a notional revision of pay was to be considered as if the same took effect from 1.7.1998, but the rule went further and stated that actual monetary benefit thereof shall be given with effect from 1.4.1999. The rule, therefore, not only creates a legal fiction but also provides the limitations in operation thereof. If the effect of the legal fiction is extended in the manner suggested by Mr. Lalit, clause (4) of the rule will become otiose. In other words, all the consequences ordinarily flowing from a rule would be given effect to if the rule otherwise does not limit the operation thereof. If the rule itself provides a limitation on its operation, the consequences flowing from the legal fiction have to be understood in the light of the limitations prescribed. Thus, it is not possible to construe the legal fiction as simply as suggested by Mr. Lalit.

Furthermore, in construing the rule, this Court cannot lose sight of the fact that the same did not provide for payment of gratuity.

In State Government Pensioners' Association and Others Vs. State of Andhra Pradesh [(1986) 3 SCC 501], this Court accepted that when the revised scheme became operative from 1st April, 1978, non-payment of gratuity under the Revised Pension Rules, 1980 was not payable to those pensioners who retired prior thereto stating that at the time of retirement they were governed by the then existing rules and their gratuity was calculated on that basis. The Court rejected the contention that the same was ultra vires Article 14 of the Constitution of India.

In Union of India Vs. All India Services Pensioners' Association and Another [(1988) 2 SCC 580], the law is stated in the following terms:

"8. From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement "

In State of U.P. Vs. U.P. University Colleges Pensioners' Association (1994) 2 SCC 729], this Court held that gratuity, in absence of any express provision in a statute, cannot be treated to be a part of pension.

In State of Punjab and Others Vs. Boota Singh and Another [(2000) 3 SCC 733], it was stated:

"7. On merits we find that the retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders/ notifications. Therefore, persons who retired after the coming into force of these notifications and



order are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons, who retired were governed by two different sets of rules. They cannot, therefore, be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary."

In *State of Punjab and Others Vs. Amar Nath Goyal and Others* [(2005) 6 SCC 754], upon consideration of a large number of decisions, this Court opined that the decision of a State to limit the benefits only to employees who retire or died on or after a particular date upon calculating the financial implications thereof was neither irrational nor arbitrary. It was observed:

"28 It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."

Mr. Lalit placed strong reliance on *D.S. Nakara and Others Vs. Union of India* [(1983) 1 SCC 305] for the proposition that the financial implication for implementation of the recommendations of PRC has not much relevance. Therein, the Constitution Bench came to the conclusion that the increased liability upon the said judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme.

The decisions of this Court which have been noticed in *Amar Nath Goyal* (supra) categorically point out that financial implication is one of the relevant considerations for the State to deny certain benefits to a class of employees who retire on or before a particular date.

It is, therefore, beyond any shadow of doubt that the financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations made by the PRC. The PRC also said that while revision of pay shall take effect from 1.7.1998, the monetary benefit would be payable only from 1.4.1999. If monetary benefit was payable only from 1.4.1999, all rights to get the benefits computed on the basis of the revised scale of pay would only be for the purpose of payment of pay with effect from 1.4.1999 or payment of the recurring amount of pension with effect from that date.

Clause (4) does not make any exception so far as payment of actual monetary benefit is concerned for the purpose of payment of gratuity or otherwise. Had that been so, the rule would have stated expressly. On the other hand, GO No. 157 dated 16.9.1999 fixed the maximum limit of gratuity under rule 46 of the A.P. Revised Pension Rules with effect from 1.4.1999 only.

We, therefore, are of the opinion that the intention of the State was not to grant any benefit towards payment of gratuity even in relation to those employees who had retired in between 1.7.1998 and

31.3.1999.

For the reasons aforementioned, the judgment and order of the High Court cannot be sustained. We, however, agree with the Tribunal that the employees are eligible for computation of portion of revised pension in terms of Rule 3 of A.P. Civil Pensions (Commutation) Rules, 1944. The appeal is allowed. The impugned judgment of the High Court is set aside and as of the Tribunal is restored. No costs.