

Md. Ali Imam vs The State Of Bihar Thr. Its Chief ... on 4 February, 2020

Equivalent citations: AIRONLINE 2020 SC 428

Author: Sanjay Kishan Kaul

Bench: K.M. Joseph, Sanjay Kishan Kaul

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.990-992/2020
[@ SLP [C] NOS.18577-18579/2018]

MD. ALI IMAM & ORS.ETC.ETC.

Appel

VERSUS

THE STATE OF BIHAR
THR. ITS CHIEF SECRETARY & ORS.

Respo

WITH

CIVIL APPEAL NO.993/2020
[@ SLP(C) No.20783/2018 (XVI)]

CIVIL APPEAL NO.994/2020
[@ SLP(C) No.26881/2018 (XVI)]

J U D G M E N T

SANJAY KISHAN KAUL, J.

Leave granted.

2. The appellants before us are the retired teaching and non- teaching employees of the deficit grant minority colleges of the State of Bihar who are aggrieved by what is alleged to be unreasonable and arbitrary discrimination between such of them who retired before 31.08.2010, as against those who retired after that date, for the grant of benefit of the amendment made to the Triple Benefit Scheme.

3. We may, at the inception, first note that the appellants before us have impleaded not only the State of Bihar but also the concerned Universities being respondent Nos.3 to 8 since they are affiliated to these Universities. The universities are also distinct from an aided institution in as much as when, in their planned expenditure there is some amount of deficit, the Government makes up the deficit as a matter of assistance to education. It is in this background that the controversy has to be analyzed by us.

4. The story starts from 05.11.1980 when resolution No.1500 was passed by the Government of Bihar introducing the General Provident Fund-cum-pension-cum-gratuity benefit (Triple Benefit Scheme) which came into effect as on 01.04.1978. The Chancellor vide memo dated 18.11.1980 approved the statute for grant of benefit of Triple Benefit Scheme. The Amendment to the statute was made on 25.11.1982.

5. It was in the year 1998 that a representation was made requesting for the benefit of the Scheme to be extended to employees in such deficit colleges. This resulted in some communications and enquiry and it was only on 18.01.2011 that a resolution was passed extending the Triple Benefit Scheme to the deficit colleges. The relevant clauses of this which have been assailed in the present proceedings are as under:

“(i) xxx xxx

(ii) This amendment statute will not be applicable to such teaching and non-teaching staffs who retired before the amendment of statute.

(ii) xxx xxx

(iii) xxx xxx

(iv) xxx xxx

(v) xxx xxx

(vi) This scheme will be applicable from the date of amendment in statute.”

6. We may note at this stage itself that the extension of the Scheme to the employees was in the nature of a benefit being extended to the employees, and did not form part of their original terms and conditions of employment. The Amendment came into being on 15.01.2014 but provided for a cut-off date of 31.08.2010. The rationale of this is stated to be that the Cabinet took the decision on that date, and thus, the Amendment was not made applicable from the date it was carried out but from a retrospective date, giving benefits for that period on the premise of the Cabinet decision, to those who were in service on that date. We may also note another aspect that all these resolutions and decisions have a financial implication and thus, some leeway has to be provided to the Government in deciding as to the extent to which they can make funds available and that too for such a beneficial aspect, keeping in mind these are not constituent unit colleges.

7. The endeavour of the appellant was not successful before the Division Bench of the Patna High Court which dismissed the writ petition filed by them vide impugned order dated 8.11.2017.

8. We have heard learned counsel for the parties at some length and the plea on behalf of the appellants is based on a discriminative practice and the cut-off dates being so provided, which according to the submissions of learned counsel for the appellant(s) are in violation of the principles of law laid down by this Court in *D.S. Nakara & Ors. v. Union of India*¹.

9. On the other hand, learned counsel for the respondents have pointed out that much water flowed after that judgment and, inter alia, invited our attention to the judgment in *State of West Bengal & Ors. v. Ratan Behari Dey & Ors.*² (referred to in the impugned judgment itself) opining that it is open to the State or the Corporation to change the conditions of service unilaterally, and terminal benefits as well as pensionary benefits constitute conditions of service. Thus, the power to revise salaries and/or pay scales, as also terminal benefits/pensioners' benefit can be made as a concomitant of that power so long as the date is specified in a reasonable manner.

10. If we see the rationale of the impugned judgment as set out para 29 onwards, we may notice that the same is predicated on the absence of arbitrariness in the applicability of the cut-off date of the amendment in the Triple Benefit Scheme statute as well as the rationality behind it based on the date of the Cabinet decision granting Triple Benefit Scheme to such deficit grant colleges. We cannot find any fault with the reasoning in the impugned order.

11. We must notice that firstly there was really no obligation for exercise of powers of the Government or University in the absence of the institutions being not constituent colleges, but only affiliated colleges. In order to support education, a decision was taken to provide deficit financing. There was again no requirement that the Triple Benefit Scheme ought to be extended to the 1 (1983) 1 SCC 305 2 (1993) 4 SCC 62 employees of these colleges and was not so initially extended. A second step was taken in this direction by extending the scheme. The third step was the Amendment of the Scheme. It can hardly be said that by taking these beneficial steps, the State Government is not liable to take into consideration the financial implications of the same, and that the benefits should be extended across the board. The amendments could have, in fact, been implemented prospectively, but were given part-retrospective effect based on the rationale of the date of the Cabinet decision.

12. Apart from this, there may be other considerations in the mind of the Executive authority while fixing a particular date i.e. economic conditions, financial constraints, administrative and other circumstances, and if no reason is forthcoming from the executive for fixation of a particular date, it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result. In such cases it has been opined that there must be exercise of judicial restraint and such matters ought to be left to the Executive authorities, to fix the cut-off date, and the Government thus, must be left with some leeway and free play at the joints in this connection. Even if no particular reasons are given for the cut-off date by the Government, the choice of cut-off date cannot be held to be arbitrary (unless it is shown to be totally capricious or whimsical)- *Government of Andhra Pradesh & Ors. v. N. Subbarayudu & Ors.*³.

3 (2008) 14 SCC 702

13. We are thus of the view that the impugned judgment deserves our imprimatur and these appeals are dismissed, leaving the parties to bear their own costs.

.....J. [SANJAY KISHAN KAUL]J. [K.M. JOSEPH] NEW DELHI;

FEBRUARY 04, 2020.

ITEM NO.4

COURT NO.12

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)
18579/2018

No(s). 18577-

(Arising out of impugned final judgment and order dated 08-11-2017 in CWJC No. 17286/2011, CWJC No. 12376/2014 and CWJC No. 8414/2017 passed by the High Court Of Judicature At Patna) MD. ALI IMAM & ORS. Petitioner(s) VERSUS THE STATE OF BIHAR THR. ITS CHIEF SECRETARY & ORS. Respondent(s) WITH SLP(C) No. 20783/2018 (XVI) IA No. 98802/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 98804/2018 - EXEMPTION FROM FILING O.T.) SLP(C) No. 26881/2018 (XVI) (IA No.135146/2018-CONDONATION OF DELAY IN FILING and IA No.135151/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.135150/2018-EXEMPTION FROM FILING O.T.) Date : 04-02-2020 These petitions were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M. JOSEPH For Petitioner(s) Mr. S.B. Upadhyay, Sr. Adv.

Mr. Neeraj Shekhar, AOR Mr. Sumit Kumar, Adv.

Mr. Rana Prashant, Adv.

Mr. Heyshiv Parasher, Adv.

For Respondent(s) Mr. Saket Singh, Adv.

Mrs. Niranjana Singh, AOR Mr. Rohit K. Singh, AOR UPON hearing the counsel the Court made the following O R D E R Delay condoned in SLP [C] No.26881/2018. Leave granted.

The appeals are dismissed in terms of the signed order. Pending applications stand disposed of.

(ASHA SUNDRIYAL)

AR cum PS

[signed order is placed on the file]

(ANITA RANI AHUJA)

COURT MASTER