

Allahabad High Court

Jado Ram Gupta Son Of Sri Sunder Lal vs State Of U.P. Through Director ... on 19 September, 2005

Author: T Agarwala

Bench: T Agarwala

JUDGMENT Tarun Agarwala, J.

1. The petitioner started his services as an Assistant Teacher in a primary School, District Board, Muzaffar Nagar on 3.9.1954 and continued till 23.7.1957. Thereafter the petitioner was appointed as an Assistant Teacher in Primary School, Municipal Board, Muzaffar Nagar w.e.f. 24.7.1957 and continued till 29.7.1969. The petitioner thereafter was given an appointment as an Assistant Teacher in C.T. Grade in Jain Inter College Muzaffar Nagar w.e.f. 30.7.1969 and continued in service till 30.6.1990 when he retired as an Assistant Teacher in L.T. Grade.

2. The petitioner's services was pensionable. The Deputy Director of Education, respondent no.2, issued an order granting pension to the petitioner w.e.f. 1.9.1994. The petitioner is aggrieved by this pension order. According to the petitioner, the pension has been calculated taking the length of service from 30.7.1969 to 30.6.1990, i.e. 20 years 11 months which the petitioner performed at Jain Inter College, Muzaffar Nagar. The respondent no.2, did not take into consideration the length of service performed by the petitioner between the period 1954 to 1969 in two primary schools. The petitioner, accordingly, made a representation praying that his pension be re-fixed taking into consideration the total length of service i.e. 35 years 9 months and 24 days. When no action was taken by the respondents, the petitioner approached this Court by filing Writ Petition No.50465 of 1999 which was disposed off with a direction to the District Inspector of Schools to decide the representation of the petitioner. The District Inspector of Schools by its order dated 30.5.2001 rejected the representation of the petitioner on the ground that in view of the G.O. dated 18.10.1997, previous service in different institution is only applicable to those persons who retired after 18.10.1997 and that the petitioner would not be entitled to any relief since he had retired earlier on 30.6.1990. The Deputy Director of Education by its order dated 5.7.2002 also passed an order on similar lines. Consequently, the petitioner has filed the present petition praying for the quashing of the order dated 30.5.2001 passed by the District Inspector of Schools and the order dated 5.7.2002 passed by the Deputy Director of Education. The petitioner further prayed that the G.O. dated 18.10.1997 be quashed and that a mandamus be issued to the respondents to re-fix the pension and pay the pension including its arrears to the petitioner after calculating the entire length of service which the petitioner had rendered, i.e. 35 years 9 months and 24 days.

3. Heard Sri Rahul Jain, the learned counsel for the petitioner and Sri Jai Krishna Twari and Sri Suresh Singh, the learned Standing Counsel for the respondents.

4. The short question involved in the present writ petition is whether the services rendered by the petitioner for the period 1954 to 1969 should be taken into consideration while computing the pensionary benefit. In this regard, the learned counsel has placed a circular dated 4.12.1978 issued by the Additional Director of Education which states that the period of service rendered in a nongovernment educational institution would be taken into consideration while calculating the pensionary benefit. Similar view was also expressed by the State Government vide its G.O. dated

5.1.1996.

5. In *Shital Prasad Tripathi v. State of U.P. and Ors.*, 1990 A.W.C. 1453, this Court held that service rendered in a private school was to be added to the length of the service and that the calculation of pension was to include the period of service rendered in a private institution.

6. The learned Standing Counsel submitted that the aforesaid circular dated 4.12.1978 and G.O. dated 5.1.1996 as well as the judgment cited are not applicable as it relates to the teachers of a nongovernment educational institution. In my opinion, the aforesaid Government Order's and the judgments of this Court applies with equal force to the case of the petitioner. In fact, the petitioner stands on a stronger footing. In the aforesaid judgments, the Court held that the length of service rendered in a private institution would be included in the total length of service, while calculating the pensionary benefits where a teacher retires from the government service. In the present case, the petitioner was working in a primary school run by the Municipal Board which is controlled and funded by the State Government.

7. Consequently, I am of the opinion, that the length of service rendered by the petitioner in the primary school between the period 1954 to 1969 is liable to be included while calculating the pensionary benefit. The decision of the District Inspector of Schools and Deputy Director of Education is patently erroneous. From a perusal of the G.O. dated 18.10.1997, it is clear that it has been made applicable to teachers rendering their service in Basic Shikha Parishad. This G.O. is not applicable to the institutions maintained and managed by the Municipal Board. Therefore, reliance on the G.O. by the authorities was patently erroneous.

8. Even otherwise, assuming that the said G.O. was applicable, in my opinion, Clause (5) of the G.O. specifying the cut off date is wholly arbitrary. Clause (5) of the G.O. dated 18.10.1997 stipulates that the benefit granted under this G.O. would be applicable on those teachers who retire after the date of this G.O., i.e. after 18.10.1997.

9. In *D.S. Nakara and Ors. V. Union of India*, , the Supreme Court granted pensionary benefits even to those employees who had retired before the revision of the pension scheme observing that the pensioners form a class as a whole and cannot be micro classified in an arbitrary and in a unreasonable manner. The Supreme Court held that the specified date dividing the pensioners between those who retired prior to the specified date and those who retired subsequent to that date was arbitrary as well as discriminatory. The classification was not based on any rational principle and therefore, the classification could not stand the test of Article 14 of the Constitution of India.

The Supreme Court held -

"Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

and again held-

"The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified, date the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension."

and further held-

"...The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensions and those who retired subsequent to that date."

10. The contention of the respondents that the benefit given under the G.O. Dated 18.10.1997 would be applicable to those teachers who would retire after 18.10.1997 is not only misconceived but is devoid of any merit. In my view, the specified date as fixed in clause(5) of the G.O. is arbitrary. Classifying the pensioners in two groups is not based on any rational principle. To illustrate, two persons having worked in primary schools earlier, one retires a day prior to the cut off date and the second person retires one day after the cut off date. The person who retires before the cut off date would not be given the benefit of the length of service rendered in the Primary Schools and the said period would not to be taken into consideration for the purpose of calculating the pensionary benefits. On the other hand, the period would be included in the service of that person who retires one day after the cut off date. In my opinion, this artificial division is wholly unreasonable and has no rational nexus to the object that is sought to be achieved and in my opinion, is violative of Article 14 of the Constitution of India.

11. In *State of Punjab v. Justice S.D. Dewan (Retired Chief Justice) and Ors.*, , the Supreme Court held-

"Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining the last average emoluments drawn has an impact on the quantum of pension."

12. Pension is not a bounty but a right, the payment of which, does not depend upon the discretion of the Government but is governed by a set of rules . Pension has to be determined on the basis of the length of service. The impugned G.O. is not bringing in a new scheme or introducing a new retiral benefit but is extending the period which, even otherwise, was implicit and was included in the pension scheme. Thus, the G.O. was only clarificatory. However, Clause (5) of the G.O. is arbitrary and in my opinion cannot stand the test of Article 14 of the Constitution of India.

13. The learned Standing Counsel placed reliance on the decision of the Supreme Court in the case of Tamil Nadu Electricity Board v. Veerasamy and Ors., , State of Punjab v. Justice S.D.Dewan (Retired Chief Justice) and Ors., and Hari Chand and Ors. v. Faridabad Complex Administration and Ors., , wherein the cut off date was held to be valid and reasonable. In my opinion, the decisions are distinguishable, inasmuch as, it was not a case of revision of the quantum of pension or the liberalisation of the existing pension scheme but was a case where a new retiral benefit was being introduced.

14. In view of the aforesaid, the writ petition succeeds and is allowed. The impugned order dated 30.5.2001 passed by the District Inspector of Schools and the order dated 5.7.2002, passed by the Deputy Director of Education are quashed. Clause (5) of the G.O. Dated 18.10.1997 being violative of Article 14 of the Constitution of India is also quashed . A mandamus is issued to the respondents to refix the pension of the petitioner, on the basis of the length of service, as 35 years 9 months and 24 days and pay the arrears within three months from the date of the production of a certified copy of the order before the authority concerned. In the circumstances of the case, no interest is payable to the petitioner.