Bombay High Court
Dattatraya Laxman Koranne And ... vs The Maharashtra State Khadi And ... on 28 October, 1993
Equivalent citations: 1994 (2) BomCR 616, (1994) 96 BOMLR 437
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Bench: S Manohar, M Chaudhari
JUDGMENT Sujata Manohar, J.

1. The 17 petitioners who have filed this petition were employees of the Maharashtra State Khadi and Village Industries Board constituted under the Bombay Khadi and Village Industries Act, 1960. They have retired from the services of the Maharashtra State Khadi and Village Industries Board (hereinafter referred to as the Board) prior to 24-2-1982 on superannuation. As per their service conditions, then in force, the petitioners were entitled to the benefit of a Contributory Provident Fund Scheme, Gratuity and other benefits on the date of their retirement. Accordingly, on their retirement, the petitioners were paid their Provident Fund and other retirement benefits then available to them.

2. By Resolution of the Board passed at the meeting of the Board held on 24-2-1982, the Board decided to introduce a Pension Scheme including a Family Pension Scheme for the benefit of all its employees. Under section 30 of the Bombay Khadi and Village Industries Act, 1960 any regulations relating to the service conditions of the employees are required to be made by the Board with the previous sanction of the State Government. Accordingly, the Resolution passed on 24-2-1982 was sent to the State Government for its sanction. The State Government sanctioned the Pension Scheme including Service Gratuity, Death tho-cum-service Gratuity and Family Pension with effect from 1-4-1985. As per the Government Resolution, employees and officers were given an option whether they wanted the Pension Scheme or the existing Contributory Provident Fund Scheme. Such option had to be exercised within a specified period and the option once exercised was final.

3. Thereafter a writ petition was filed in this Court being Writ Petition No. 1058 of 1987 by those employees who had retired after 24-2-1982 i.e. the date of the Board Resolution but before 1-4-1985, the date from which the Scheme was sanctioned by the State Government. The petitioners contended that the date 1-4-1985 fixed for giving the benefit of the Scheme was arbitrary and that since they were in service on the date when the Board Resolution was passed and they retired after the passing of the Board Resolution although before the sanctioned date they should also be given the benefit of the Pension Scheme.

4. By Judgment and order dated 4-7-1988 given by one of us (Mrs. Manohar, J.), the petition was allowed and it was held that the benefit of the Pension Scheme should be extended to all employees who retired after 24-2-1982. Accordingly, the Government of Maharashtra by its Resolution dated 28-10-1988 gave effect to the above judgment and gave the benefit of the Pension Scheme to those employees who had retired from service of the Board after 24-4-1982 and up to 31st of March, 1985 also. Necessary financial provisions were also made by the said Resolution of 28-10-1988.

5. Thereafter the present petition is filed on 30-3-1989 by the employees of the Board who had retired prior to 24-4-1982. They contend that the cut off date of 24-4-1982 is also arbitrary and that

even those employees who have retired prior to 24-2-1982 should be given the benefit of the Pension Scheme and all other benefits which have been granted along with it. According to the petitioners, the date of 24-2-1982 is arbitrary. They contend that they form a part of the same class as employees who have retired after 24-2-1982 and hence Article 14 of the Constitution is violated in not giving them the same benefits as those given to employees who retired after 24-2-1982. The petitioners strongly rely upon the decision of the Supreme Court in the case of D.S. Nakara v. Union of India, and subsequent decisions of various High Courts which follow the judgment in the case of D.S. Nakara.

6. In order to decide whether the principles laid down in the case of D.S. Nakara and others can be extended to the petitioners, it is necessary first to examine the ratio laid down in that case. The Supreme Court in that case was required to consider whether a liberalised Pension Scheme which was framed by the Government of India and made applicable to Government servants who were in service on March 31, 1979 and who retired from service on or after that date should also be available to the pensioners who had retired prior to 31-3-1979. There was an earlier Pension Scheme under which the persons who had retired prior to 31-3-1979 were getting pension. The question was of extending the benefit of pension computed on a more liberal basis to them. In this context, the Supreme Court observed that the petitioners- whether they had retired prior to 31-3-1979 or thereafter formed one class and there could not be any discrimination between them. In this context, the Supreme Court said in paragraph 11 that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that differentia must have rational relation to the objects sought to be achieved by the statute in question. It held (paragraph 42) that the pensioners for the purpose of pension benefits form a class. Therefore, for the purpose of upward revision of pension a homogenous class cannot be divided by arbitrarily fixing an eligibility criterion which is unrelated to the purpose of revision. All pensioners require the benefit of upper revision since they all face the same economic situation. Those who retired earlier cannot be put in a worse position than those who retire later on the basis of an arbitrary cut off date. There was no rational principle of dividing the pensioners in this manner with a view to giving something more to some of the persons who were otherwise equally placed.

7. In the present case, however, no Penison Scheme was available for the employees of the Board before the Board passed its Resolution of 24-2-1982. Therefore, those employees who had retired before the Pension Scheme was introduced for the first time received under the then existing Scheme, Provident Fund and other benefits which were then available. Thereafter, the Board was under no obligation to these employees who had retired and the relationship between the Board and the employee came to an end once the Contributory Provident Fund and all other retirement benefits were paid. After the introduction of the Pension Scheme by the Board's Resolution of 24-2-1988, the Board become obliged to give pensionary benefits under the new Scheme to its employees after their retirement. For this purpose the Board was required to maintain proper records relating to its retired employees and thus the relationship for the purpose of pensionary benefits between the Board and its employees now came to be continued till the death of the

employee and even thereafter since Family Pension Scheme was also there.

8. In such a situation, the Supreme Court itself in its later judgments has held that there can be a reasonable classification between employees who on retirement became entitled to Provident Fund and other benefits and employees who on retirement became entitled to pensionary benefits. The Supreme Court has said that if a Pension Scheme is introduced from a later date, classification can be made between employees who retired prior to that date and employees who retired from a date subsequent to the date of introduction of the Pension Scheme. There would not be anything arbitrary about such a classification. This is not a situation where an artifical line with reference to a given date is drawn between employees who are similarly situated. The date is with reference to the date of introduction of a wholly new Scheme of Pension. Prospective application of such a scheme cannot be considered as arbitrary or unreasonable.

9. In the case of (All India Reserve Bank Retired Officers Association v. Union of India and another), reported in 1992(3) S.I.R. page 35, the Supreme Court dealt with a similar situation where the Central Board of the Reserve Bank of India with the prior approval of the Central Government, framed Regulations known as the Reserve Bank of India Pension Regulations, 1990. These Regulations brought into force with effect from 1-11-1990 a Pension Scheme in substitution of the existing Contributory Provident Fund Scheme. The newly introduced Pension Scheme was made applicable to all employees entering Bank service on or after 1-11-1990. For such employees no Contributory Provident Fund Scheme was available. In respect of employees who were in actual service at the date of introduction of the Scheme, they were given an option to opt out of the Pension Scheme and continue to be governed by the Contributory Provident Fund Scheme. The Scheme also gave an option to the employees who had retired on or after 1-11-1986 but before 1-11-1990, to be governed by the new Scheme on certain conditions relating to refund and so on. The date 1-1-1986 was adopted for certain reasons which the Court found acceptable in the judgment. The Supreme Court held that when the employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision-making process. For example, one such consideration may be the financial implications of the Scheme and its capacity to absorb the financial burden. The Supreme Court distinguished Nakara's case on the ground that that case dealt with continuance of an existing scheme in its liberalised form as against the case before the Supreme Court where there was introduction of a wholly new scheme. It said, "But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burdens that it will throw, the capacity of the employer to bear the same, the feasibility of extending the Scheme to all retirees regardless of the date of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not stop altogether. The Supreme Court negatived the contention that Article 14 was violated in such circumstances.

10. The Supreme Court in the above case had relied upon an earlier judgment of the Supreme Court in the case of Krishen Kumar v. Union of India, . In the case of Krishen Kumar also, railway employees who were covered by Provident Fund Scheme were given an option to switch over to the Pension Scheme with effect from a specified date. The Court said that this did not violate Article 14 of the Constitution. Explaining the decision in Nakara's case, the Supreme Court said in Krishen Kumar's case that it was never held in Nakara's case that all retirees form a class and no further classification is permissible. In the case of pension retireees who are alive, the Government has a continuing obligation and if one is affected by dearness, the other may also be similarly affected. In the case of Provident Fund retirees, each one's rights having finally crystallised on the date of retirement and receipt of Provident Fund benefits, and there being no continuing obligation thereafter, they could not be treated on a par with the pensioners. The Supreme Court was required to consider various dates on which the option had been given and found that the dates had a nexus to the objects sought to the achieved. It held, therefore, that there was no discrimination. The Supreme Court has examined at length its decision in Nakara's case and has come to the conclusion that in that case the Supreme Court had merely treated all pension retirees as a homogenous class. The question of Provident Fund retirees was not before it. It observed at paragraph 30, "In Nakara, , it was never held that both the pension retirees and the P.F. retirees formed a homogenous class and that any further classification among them would be violative of Article 14 of the Constitution. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Supreme Court explained the difference between the Provident Fund retirees and pension retirees which we have already referred to earlier while dealing with the case of All India Reserve Bank Retired Officers. The latter case has reiterated the distinction between two classes of retirees drawn by the Supreme Court in Krishen Kumar's case which we have already set out earlier. In Krishen Kumar's case, the Supreme Court dealt with the argument of the petitioners before it that the option given to the Provident Fund employees to switch over to the pension scheme with effect from a specified cut off date is bad as violative of Article 14 of the Constitution for the same reasons for which in Nakara, the notification was read down. The Supreme Court (in paragraph 31) has said that this argument is fallacious in view of the fact that while in the case of pension retirees who are alive, the Government has a continuing obligation and if one is effected by dearness, the others may also be similarly effected; in the case of P.F. retirees each one's rights having finally crystallised on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter, they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was effected or benefited by prices and interest rise was not kept any truck of by the Railways".

11. The same reason will apply to the present case also. The cut off date in the present case is with reference to the date when the Board decided to extend the benefit of a Pension Scheme to its employees for the first time. We do not see any obligation on the Board to give these new benefits to employees who have already retired under a Provident Fund Scheme. In fact, the Board in the present case has pointed out to us that it has not maintained the records of those employees who retired on a Provident Fund and they are not in a position to show how many of such employees are now alive.

12. In the case of Action Committee South Eastern Railway Pensioners and others v. The Union of India and others, reported in 1991(1) S.L.R. Page 771, the Supreme Court considered a case where the Railway Board extended the benefit of merger of entire dearness allowance as dearness pay for the purpose of extending pensionary benefit to Railway servants who were in service as on 31st March, 1985. Employees who retired before 31st March, 1985 were not given such benefits. The Supreme Court said that the petitioners who retired prior to 31-3-1985 form a different class from those who were continuing in service on or after 31-3-1985 and the principle in Nakara's case cannot be applied to them.

13. The petitioners have submitted that the ratio of the judgment of a Single Judge (one of us Mrs. Manohar, J.) in Writ Petition No. 1058 of 1987 dated 4th July, 1988 as also the ratio of the judgment of another Single Judge of this Court (Kurdukar, J.) dated 2nd September, 1986 in Writ Petition No. 1034 of 86 would apply to the present case also. Both these judgments, however, dealt with the limited question whether the pensionary benefits should be extended to those employees who retired on and after the date when the Board passed the resolution giving the benefits in question but before the date when the Government gave sanction to this Resolution. Both the judgments have considered the date of the Board Resolution conferring benefits as the correct date for extention of the benefits in question. This ratio has no application to the present case.

14. The petitioners have also relied upon a judgment of the Punjab and Haryana High Court in Writ Petition No. 9585 of 87 where the employees of Khadi and Village Industries Commission who had retired prior to the date of the resolution granting pension were also given the benefit of the pensionary scheme. This judgment of a Single Judge of the Punjab and Haryana High Court was upheld in appeal before the Division Bench of the same High Court and a Special Leave Petition from it was dismissed by the Supreme Court. The judgment undoubtedly is widely worded. The original judgment is of the Single Judge is dated 11-4-1989 (Civil Writ Petition No. 9586/87 Bhim Sen Vedalankar v. Khadi and Village Industries Commission. A.L. Bahri, J., judgment dated 11-4-1989. The judgment in appeal being L.P.A. No. 1352/1989 (J.V. Gupta, Acting C.J. & M.S. Liberhan, J., dated 23-3-1990) is delivered in March, 1990. Naturally, neither of these judgments made any reference to the judgment of the Supreme Court in Krishen Kumar's case which was delivered on 13-7-1990. Hence the points discussed by the Supreme Court in Krishen Kumar's case are not reflected in these judgment's of the Punjab and Haryana High Court. The judgments have proceeded entirely on Nakara's case as also on the judgment of this High Court in Writ Petition No. 1034 of 1986. Undoubtedly, at the time when the S.L.P. was dismissed by the Supreme Court, the judgment in Krishen Kumar's case was available. Nevertheless in the absence of any speaking order, it is not possible to hold that the ratio of Krishen Kumar's case was either overruled or distinguished by the Supreme Court. Secondly, the Supreme Court in its subsequent judgment of All India Reserve Bank Retired Officers Association, (supra) has reaffirmed the ratio of Krishen Kumar's case. These judgments, therefore, must be considered as good law. We have not referred to the judgments of some of the other High Courts which have also been relied upon by the petitioners, because these are based on the application of the ratio of Nakara's case.

15. In view of the ratio laid down by the Supreme Court in the subsequent cases of Krishen Kumar (supra) as also All India Reserve Bank Retired Officers Association, (supra) which directly apply to

the present case, the principles laid down in Nakara's case are not applicable to the present petitioners. The respondents have explained that the date of 24-2-1982 from which the pensionary benefits are introduced is not arbitrary. The date has a rational nexus to the object of introducing a new retirement benefit which is made available to all employees who retire after 24-2-1982. Hence, this date cannot be considered as arbitrary. In fact, strictly speaking, this cannot be labelled as a cut off date at all. Those retiring after the introduction of the Pension Scheme form a class which is distinct from those retiring under a Provident Fund Scheme. The introduction of such a new pensionary benefit does not have to be necessarily retrospective. There is nothing in Article 14 which requires that all new benefits must be introduced retrospectively. In view of the above ratio of the Supreme Court in Krishen Kumar's case as reaffirmed in All India Reserve Bank Retired Officers Association case, the petitioners are not entitled to any relief. Petition is, therefore, dismissed and the Rule is discharged. In the circumstances, there will be no orders as to costs. The Government may, however, consider whether such benefits should be given to the petitioners and others similarly situated, after considering the number of persons including their families who would receive such benefits and the financial outlay involved, bearing in mind the social objective of granting better benefits to retired employees.