Supreme Court of India
Hari Ram Gupta (D) Thr. L.R. ... vs The State Of Uttar Pradesh on 22 July, 1998
Author: Pattanaik
Bench: Sujata V. Manohar, G.B. Pattanaik

PETITIONER:
HARI RAM GUPTA (D) THR. L.R. KASTURI DEVI

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 22/07/1998

BENCH:
SUJATA V. MANOHAR, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATTANAIK, J.

Leave granted.

This appeal by grant of special leave is directed against the judgment dated 13th of November, 1995 of the Allahabad High Court in Civil Miscellaneous Petition No. 557 of 1987. Hari Ram Gupta husband of the present appellant, had filed the writ petition seeking a mandamus from the court to the appropriate authorities to give him the benefits of the Uttar Pradesh Palika (Centralised) Service Retirement benefit Rules, 1981 (hereinafter referred to as 'the Rules'). But said Hari Ram Gupta had retired from service on superannuation in the year 1980. He, however, claimed that he would be entitled to pension under the Rules as the Rules are intended to apply retrospectively and at any rate following the principle of the Judgement of this Court in D.S. Nakara and other vs. Union of India, (1983) 1 SCC 305, the court should grant him the relief. The High Court by the impugned judgment came to hold that the Rules have no retrospective operation, and therefore, the applicant was not entitled to claim pension under the Rules. Soon after the judgment of the Allahabad High Court, the husband of the appellant having died, the widow filed the special leave application out of which this appeal arises. The sole question for consideration is whether the Rules can be said to have any retrospective application and are applicable to those employees belonging to the Palika (Centralised)

Service, who retired from service prior to the coming into force of the Rules. It is not disputed that before the Rules came into operation there was no rules providing pension for the employees of the centralised services.

The learned counsel for the appellant strenuously contended that a conjoint reading of sub-rules (2) and (3) of Rule 3 would make it crystal clear that the Rule is applicable even to those employees who have retired from service on the date the Rules came into operation, provided they exercise their option in accordance with the Rules within the stipulated period of 90 days from the enforcement of the Rules and they deposit the amount finally withdrawn from Palika's contribution and bonus deposited in his Provident Fund Account into the pension fund established under Part VI of the Rules. According to the learned counsel unless such an interpretation is given, the provision of sub-rule (3) would become otiose inasmuch as an officer is entitled to finally withdraw the amount from the Provident Fund on super annuation and not while he continues to be in service. The learned counsel further contended that under identical circumstances an employee of a school under New Delhi Municipal Committee had approached this Court in the case of Shakuntala Mehrishi, New Delhi vs. New Delhi Municipal Committee and others, (1991) 3 SCC 521 and this Court had granted the retiral benefits to the employee. The aforesaid decision, contends the learned counsel for the appellant, should apply with full force to the case in hand. The learned counsel further urged that the Rules in question providing for pension, if is held to apply to only those employees who retired subsequent to the coming into force of the Rules and not to those to have already retired, then it would be violative of the law laid down by this Court in the case of D.S. Nakara (supra) inasmuch as pension paid is not a bounty nor an ex-gratia payment for past services rendered and is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

Learned counsel for the respondent, on the other hand contended that there is no ambiguity in the Rules and nowhere the Rules indicate that it would apply retrospectively on certain conditions being fulfilled. He further contended that under the provisions of the Regulation for payment of Provident Fund made by Nagar Palika, Jhansi an employee is entitled to finally withdraw after rendering 25 years of service or when such employee has less than 8 years of service to attain the age of superannuation, and therefore, it is not correct that final withdrawal is permissible only on the date of superannuation. In that view of the matter the expression 'final withdrawal' in sub-rule (3) of Rule 3 of the Rules cannot be interpreted to mean that the Rules have a retrospective operation. The learned counsel also urged that the rules determining the service conditions of an employee under the service jurisprudence is usually prospective in nature unless there is anything in the Rules which indicate the legislative intent of making the rule retrospective or the rule is expressly made retrospective. Since neither of these conditions are satisfied in the case in hand, the rules must be held to be prospective, and therefore, would not govern the case of those who retired prior to the coming into force of the Rules. on the question of applicability of the decision of this Court in Shakuntala Mehrishi case, the learned counsel contended that the ratio laid down in that case has no application and the said decision is no guidance for deciding the question as to whether the Rules in the present case has any retrospective operation. On the question of the applicability of the ratio in D.S. Nakara's case, the learned counsel for the respondent urged that the appellant has not

challenged validity of the Rules and on the other hand seek relief on the basis of the said Rule, therefore, the Rule cannot be struck down. He further contended that the decision of this Court in D.S. Nakara has been watered down by this Court in several subsequent cases and it is the settled position now that the employees retiring on a particular date would be governed by the benefits of the rules then existing and cannot complain of if at a subsequent stage certain other rules confer some additional benefits. Thus, judged the principles enunciated by this Court in nakara have no application to the case in hand.

In view of the rival submission, the first question that arises for consideration is whether the Rules can be said to have any retrospective operation?

We have examined the Rules carefully and there is no express provision in the Rules giving it retrospective operation. The question then arises as to whether from any of the provisions contained in the Rules is it possible to infer that the Rules have been given retrospective operation. The argument of the learned counsel appearing for the appellant in this context is based upon the language used in sub-rule (2) and sub-rule (3) of Rule 3. For better appreciation of the point in issue sub-rules (1), (2) and (3) of Rule 3 are quoted hereinbelow in extenso:-

> 3. Application of the rules.- (1) These rules shall apply compulsorily to all those officers who were appointed on or after July 9, 1966 under clause (1) of Rule 21 of the Uttar Pradesh Palika (Centralised) Services Rules, 1966 and would become permanent on any post in the Centralised Services. (2) The officers who were finally absorbed on any post in Centralised Services under clause (2) of Rule 6 of the Uttar Pradesh Palika (Centralised) Services Rules, 1966 will have an option to elect whether they would be governed by the existing Pension/Provident Fund Rules of the Palika as hitherto or would like to governed by those rules. This option shall be exercised within ninety days from the enforcement of these rules and the option once exercised shall be final.
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> (3) If an officer opting these rules has finally withdrawn the amounts of Palika's contribution and bonus deposited in his Provident Fund Account, the same shall have to be deposited by him into the pension fund established under Part VI of these Rules along with interest at the rates fixed from time to time by the Reserve Bank of India."

Sub-rule (1) of Rule 3 clearly indicates that Rule should apply to those officers who were appointed on or after July 1966 under clause 1 of Rule 21 of the Centralised Services Rules of 1966 and would become permanent in the Centralised services. This sub-rule obviously has no application. The earned counsel appearing for the appellant, however, urged that if sub-rules (2) and (3) of Rule 3 are read together it unequivocally indicates that the Rules do apply to those persons who have already retired. In as much as sub-rule (3) gives an option to officers to exercise option to be governed by the Rules and if they have finally withdrawn the amounts of Palika's contribution and bonus deposited in Provident Fund Account the same will have to deposited into the pension fund. It is contended by the learned counsel that an employee can finally withdraw the amount from the Provident Fund only on his superannuation and not at any earlier point of time while he continues

to be in service and, therefore, this sub-rule clearly indicates that the Rules apply to those who have already superannuated on the date the Rule came into force. But on examining the provisions contained in Pension and General Provident Fund Regulations or Rules which governed the case of employees of Palika, more particularly the provisions of Clause 5 - C(1) we find that final withdrawals under the Regulation is permitted in the case of Municipal servants who have either rendered 25 years service or have less than 8 years to attain the age of superannuation. The purpose for which such final withdrawal is permissible is enumerated in other sub-clauses of said Clause 5 - C. In this view of the matter the argument of the earned counsel appearing for the appellant that final withdrawal is permissible only on the date of superannuation cannot be sustained and the expression 'final withdrawal' as envisaged under sub-rule (3) of Rule 3 would mean those final withdrawals made by an employee while continuing in service for the purposes mentioned in sub-clause (2) of Clause 5-C. Consequently, the argument that a combined reading of sub-clause (3) and sub- clause (2) of Rule 3 indicates that the Rules have retrospective application is devoid of any force and the same accordingly stands rejected.

The next question that arises for consideration is whether the judgment of this Court in Shakuntala Mehrishi vs. New Delhi Municipal Committee and other (1990) 3 SCC 521, any way helps the appellant in getting the relief sought for? In the aforesaid case the teacher of a re- cognised aided school opted for pension and gratuity within stipulated period in prescribed proforma as desired by statutory notification. But notwithstanding his superannuation he did not receive the benefits as the modalities about contribution towards pension fund and approval of Government of India had not been obtained. This Court held that payments to the employee cannot be deferred on such grounds over which the employee has not control and accordingly directed that the necessary payments be made. we fail to understand how the aforesaid decision is in any way applicable to the case in hand for deciding the question as to whether the Rules providing for pension would retrospectively apply to the case of an employee who had already retired before the Rules came into operation. In our considered opinion the aforesaid decision of this Court does not help the appellant in any manner.

The only other question that survives for our consideration is whether the ratio in Nakara's case will assist the appellant in getting the relief sought for? In D.S. Nakara and others vs. Union of India (1983) 1 SCC, 305 the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision granting some benefits to one group denying the others? In the aforesaid case the provisions for pension was applicable to all retirees and, therefore, pensioners form a class as a whole. But when Liberalised Pension Scheme was introduced the said Scheme was made applicable to a group of pensioners and not to all and therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criteria. it is to be noted that the aforesaid judgment was considered by this Court In the subsequent Constitution Bench judgment of Krishna Kumar vs. Union of India (1991) 4 SCC, 207 wherein the decision of Nakara (supra) was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class on the other hand the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension and, therefore, it would not be reasonable to argue what is applicable to the pension retirees must also equally be applicable to Provident Fund retirees must also equally be applicable to Provident Fund

retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement where after no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of Pension retirees the obligation continues till the death of the employee. This Court categorically held that Nakara (supra) cannot be an authority for the decision in Krishna Kumar (supra). In Union of India vs. B.P.N. Menon (1994) 4 SCC 68 a similar question came up for consideration and distinguishing Nakara and following Krishna Kumar and other similar cases the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. When the Army personnel claimed the same pension irrespective of their date of retirement this Court in the Constitution Bench case of the Indian ex-services League vs. Union of India, (1991)2 SCC 104, the Court considered the grievance of ex-servicemen who had laid the claim on the basis of nakara (supra) but ultimately negatived the same and followed Krishna Kumar (supra). In All India Reserve Bank Retired Officers Association vs. Union of India, (1192) Suppl 1 SCC 664, when the validity of the introduction of Pensions scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that Bank employees who retired prior to 1.1.1986 have not been given the benefit of the said scheme it was held by this Court that there is no arbitrariness in the same.

This being the position the appellant having superannuated prior to the Rule coming into force cannot claim the right to pension under the Rules with the help of the decision of this Court in Nakara (supra) and further in view of our conclusion that the Rules do not have any retrospective operation the relief sought for by the appellant to get pension under the Rules cannot be granted.

In the premises, as aforesaid, the appeal fails and is dismissed. But in the circumstances there will no order as to costs.