

Supreme Court of India

State Of U.P vs U.P. University Persioners Assn on 28 February, 1994

Equivalent citations: 1994 AIR 2311, 1994 SCC (2) 729

Author: H B.L.

Bench: Hansaria B.L. (J)

PETITIONER:

STATE OF U.P.

Vs.

RESPONDENT:

U.P. UNIVERSITY PERSIONERS ASSN.

DATE OF JUDGMENT 28/02/1994

BENCH:

HANSARIA B.L. (J)

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HANSARIA B.L. (J)

RAMASWAMY, K.

CITATION:

1994 AIR 2311

1994 SCC (2) 729

JT 1994 (2) 569

1994 SCALE (1) 744

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- Leave granted.

2. The State of Uttar Pradesh formulated a new scheme of pension and provident fund for the employees of Aided Degree Colleges of the State. This was made effective by Government Order (G.O.) dated August 24, 1980. This G.O. came to be issued on the demand of the teachers of various aided educational institutions including Degree Colleges for better terminal benefits like pension and death-cum- retirement gratuity. One of the points urged in support of the claim was' that similarly situated teachers in Government Colleges were better off in this regard and there was no reason to treat the other teachers differently. It was urged that the two categories of teachers being similarly situated the difference was discriminatory as well. It however deserves notice at the threshold itself that the retirement age of aided colleges teachers was (and is) 60 years, whereas in Government Colleges the retirement age is 58 years which is at par with the retirement age of other Government servants.

3. The G.O. made available two packages leaving it to the teachers concerned to opt for one of these. One option was to retire at the age of 60 years in which case pension as available to Government Colleges teachers would be available; so also general provident fund. They would not however get gratuity. Those who would opt to retire at 58 years would get death-cum-retirement gratuity also along with aforesaid two benefits; so too family pension.

4. It seems that most of the members of the U.P. University Colleges Pensioners' Association, respondent here, for short the Association, opted for first package. They have however felt aggrieved at the denial of gratuity; so also with computation of pension by taking the last pay drawn on completion of 58 years even though they continued (and continue) in service till completion of 60 years. The Association challenged the aforesaid G.O. on these counts before the High Court of Allahabad. Some grievance was also made at the denial of commutation of pension which facility was made available by G.O. dated December 19, 1988 making it effective from August 14, 1988. The Association desired making available of this facility even to the retirees prior to August 14, 1988.

5. The High Court has directed the State to give the benefit of pension on the last emoluments drawn at the age of 60 years and also to make available the benefit of gratuity. Another direction given is to give benefit of commutation to the teachers who had retired prior to August 14, 1988. Feeling aggrieved, the State has approached this Court under Article 136 of the Constitution.

6. Shri Yogeshwar Prasad, learned senior standing counsel for the State, contends that by no token the teachers of aided colleges could have been placed in better situation than the teachers of Government Colleges; but this is effect of the judgment of the High Court inasmuch as the aided colleges teachers would, even while retiring at the age of 60 years, get pension on the basis of the last pay drawn, so also gratuity whereas the Government College teachers would retire at the completion of 58 years of age and their pension would be calculated accordingly. Another submission made in this regard is that members of the Association having opted for the first package it does not lie in their mouth to resile from the terms of the package. Learned counsel rightly submits that one cannot blow hot and cold at the same time; or approbate and reprobate simultaneously. There being two packages, a third package could not have been formulated by the High Court giving best of the terms of the two packages. It is finally contended that insofar as denial of gratuity is concerned no grievance can be made by the Association inasmuch as aided colleges teachers whose age of retirement is 60 years cannot be said to be similarly situated to Government teachers who retire at the age of 58 years. The denial cannot be said to be discriminatory according to the learned counsel. As to the grant of benefit of commutation to the pre-

August 14, 1988 retirees, the submission is that this facility having been brought into existence with effect from August 14, 1988, those had retired before that could not have been given the benefit, as commutation of pension can be made only before one retires.

7. Shri Jain appearing for the respondent-Association contends that the members of the Association having been allowed to continue till the age of 60 years, the determination of pension on the basis of the last pay drawn on completion of 58 years is incongruous and irrational. It has also been urged that though the first package qua the aided colleges teachers required computation of pension on the

basis of salary drawn at the age of 58 years, teachers of aided higher secondary school, even though they also retire at the age of 60 years, have been permitted to get their pension computed on the basis of the salary last drawn. This is discriminatory urges Shri Jain. As to the denial of gratuity to the first optees, the learned counsel submits that gratuity being a part of pension, as held by a Bench of this Court in *Jarnail Singh v. Secretary, Ministry of Home Affairs* the same could not have been denied while making available liberalised pension.

8. Insofar as his submission relating to the basis of computation of pension, we would observe that in principle we do not find any objection in computing the pension on the basis of last pay drawn at the age of 58 years. This is for the reason that demand of the Association being basically grounded on the better pensionary benefit available to Government teachers, the State was amply justified, while considering the question of liberalising the pension qua the aided teachers, to peg the computation of pension with reference to the pay at the age of 58 years, which is the retirement age of Government teachers. This apart, as to how much of liberalisation should have been conceded is a matter of policy and if the Government decided to go as far as visualised by the G.O. of April 28, 1980, it is not open to any court to interfere with the same, as the policy contained in the G.O. cannot be said to be either unreasonable or against public interest, which are the only two grounds available to a court to interfere with a policy matter while reviewing the same judicially.

9. There is, however, force in the submission of Shri Jain that there exists no rational basis for treating teachers of aided higher secondary school and teachers of aided colleges differently for the purpose of computation of pension, inasmuch as teachers of aided school also retire at the age of 60. On this point being urged by Shri Jain when the case was taken up for hearing on January 21, 1994, we wanted the State counsel to apprise us whether the submission is correct and to file necessary rules holding the field.

10. Pursuant to the order of January 21, 1994 an additional affidavit verified on February 4, 1994 was filed. We have perused this affidavit which, however, does not contain extract of any rule. What has instead been brought on record is a document bearing letter No. 5310/fifteen-8- 304(2)/1974, dated March 31, 1978. This document shows that teachers of 1 (1993) 1 SCC 47: 1993 SCC (L&S) 1 19: (1993) 23 ATC 642 aided higher secondary school get pension as given to the same rank and class of Government school teachers and the calculation is as per the procedure" applicable to Government employees. This document has an annexure which speaks about the rate of pension. Shri Yogeshwar Prasad has drawn our attention to this annexure as per which after 32 years of service, the pension amount becomes stagnant.

11. The affidavit is silent on the question whether the pension payable to teachers of aided higher secondary school is being calculated on the basis of last pay drawn at the age of 60 years. So, we asked Shri Yogeshwar Prasad to state the correct factual position. Learned counsel stated that the correct position is that pension is being calculated as per the last pay drawn at the age of 60 years. He, however, brought to our notice the statement in the additional affidavit that these teachers are not entitled to payment of gratuity. He, therefore, urged that members of the Association cannot get benefit of both gratuity and computation of pension on the basis of last pay drawn at the age of 60 years.

12. We do find force in the aforesaid contention of Shri Yogeshwar Prasad. We have also noted that though the Government teachers get gratuity they retire at the completion of 58 years of age. Confronted with this situation, Shri Jain submitted that if we would not be inclined to grant benefit of both gratuity and calculations of pension on the basis of the last pay drawn on attaining the age of 60 years, the Association would rather forego gratuity and would opt for pension to be calculated as in the case of teachers of higher secondary schools.

13. Before we express our views on the aforesaid matter, we would deal with the submission of Shri Jain that gratuity has to be taken as a part of pension, to support which contention our attention has been invited to this Court's judgment in Jarnail Singh case'. Perusal of that judgment shows that gratuity was taken to be a part of pension because of the definition of "pension" as given in clause

(o) of sub-rule (i) of Rule 3 of Central Civil Services (Pension) Rules, 1972. It is because of this definition that the case of D. V. Kapoor v. Union of India² in which it had been held that gratuity was not a part of pension, was not followed, as the Bench which decided that case had not been referred to the aforesaid definition of pension. Similar observation was made in Jarnail Singh case' regarding F.R. Jesuratnam v. Union of India³ wherein also gratuity was not regarded as part of pension without noting the abovenoted definition.

14. To buttress his aforesaid submission, Shri Jain also refers to clause (17) of Article 366 of the Constitution which has defined pension to include gratuity. Merely because what has been stated in clause (17) it cannot be held that gratuity has to be taken always and for all purposes as part of pension, because this definition apparently has enlarged the meaning of the word "pension" by stating that this would include gratuity. It is well known ² (1990) 4 SCC 314: 1990 SCC (L&S) 696: (1990) 14 ATC 906 3 1990 Supp SCC 640: 1990 SCC (L&S) 370: (1991) 16 ATC 540 that legislature very often wants to give enlarged meaning to a particular word and this is done by stating that the defined word would include some named related subjects also.

15. We, therefore, state that either because of what was stated in Jamail Singh case' or the way "pension" has been defined in the Constitution, it cannot be held that pension and gratuity are conceptually same, as stated in paragraph 9 of Jarnail Singh case' to which our attention is invited by Shri Jain. According to us, this Court took the view in question in Jarnail Singh because of the definition of the word "pension" in the concerned rule; otherwise, what was held in D. V. Kapoor² and F.R. Jesuratnam³ cases seem to be correct legal position.

16. Before concluding, we may deal with the grievance of the State regarding that part of High Court's judgment by which commutation benefit was made available to those teachers who had retired prior to August 14, 1988. In this context, Shri Yogeshwar Prasad has rightly submitted that the benefit of commutation having been made available for the first time by G.O. of December 19, 1988, making it effective from August 14, 1988, the direction to give this benefit to those who had retired before August 14, 1988 was erroneous and unreasonable also. This is for the simple reason that commutation of pension can be resorted to before one retires and not afterwards.

17. Keeping in view all the above, we dispose of the appeal by stating that pension of aided college teachers who had opted for the first package of G.O. dated August 24, 1980 would be determined on the basis of the last pay drawn by them as on their retirement at the age of 60 years and the calculation would abide what has been stated in the annexure to the aforesaid Government letter dated March 31, 1978; but that part of the High Court's order by which the State was directed to make available benefit of gratuity also to these optees stands annulled. This would put the teachers at hand at a footing which is equal to that of aided secondary school teachers. That part of the High Court's order by which benefit of commutation was ordered to those teachers who had retired before August 14, 1988 is also set aside.

18. On the facts and circumstances of the case, we make no order as to costs.