

Decision Number: 8643

Decision Date: 2068/04/26 (2011-08-11)

Final Decision: सर्वोच्च अदालत, विशेष इजलास (Supreme Court, Special Bench)

Pre-Decisions: N/A

Petitioner: नेपाल राष्ट्रिय निवृत्त कर्मचारी संघ (Nepal National Retired Employees Association)
(अञ्जनीकुमार थापा (Anjani Kumar Thapa))

Respondent: प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय (Office of the Prime Minister and Council of Ministers) (समेत (et al.))

Key Words: tax, pension, fundamental rights, social security, income tax act

Key Points:

1. Nepal National Retired Employees Association challenged the 1% tax on pension income.
2. The association argued the tax violated fundamental rights and social security principles.
3. The Supreme Court upheld the legality of the tax.
4. The court stated taxation is a policy matter and the judiciary should not interfere.

Facts of the Case

The case concerns the imposition of a 1% tax on the pension income of retired government employees. The petitioner, Nepal National Retired Employees Association, filed a writ petition challenging the legality of the tax, arguing that it violated their fundamental rights and was inconsistent with the principles of social security. The petitioner argued that the tax on pension income was illegal and unjust, as pension is a form of social security provided by the state to its retired employees for their livelihood in old age.

Petitioner's Contention

The petitioners contended that the imposition of a 1% tax on their pension income, as per the Finance Act, 2066 B.S., was a violation of their fundamental rights guaranteed under the Interim Constitution of Nepal, 2063 B.S. They argued that pension is a form of social security and taxing it is against the principles of social justice and the welfare state. They also claimed that the tax was imposed without considering the economic hardship faced by retired employees in their old age.

Respondent's Contention

The government argued that the 1% tax on pension income was imposed as per the Income Tax Act, 2058 B.S., as amended by the Finance Act, 2066 B.S. They stated that the tax was applicable to all individuals with taxable income, including retired employees receiving pension. The government also argued that the tax was necessary for generating revenue for the state and that it did not discriminate against retired employees, as it was equally applicable to all income earners.

Legal Issues

1. Whether the imposition of a 1% tax on the pension income of retired government employees, as per the Finance Act, 2066 B.S., was a violation of their fundamental rights guaranteed under the Interim Constitution of Nepal, 2063 B.S.
2. Whether the tax on pension income was inconsistent with the principles of social security and social justice.
3. Whether the government had the legal authority to impose a tax on pension income under the existing laws.

Judgment

The Supreme Court dismissed the writ petition, upholding the legality of the 1% tax on pension income. The Court held that the tax was imposed as per the existing laws and that it did not violate the fundamental rights of retired employees. The Court also stated that the

issue of taxation is a policy matter and that the judiciary should not interfere with the fiscal policies of the government. The court reasoned that the constitution allows the government to impose taxes and that the tax was applied equally to both working and retired employees.

Significance

The decision clarifies the legal position on the taxation of pension income in Nepal and upholds the authority of the government to impose taxes as per the existing laws. The case also highlights the importance of balancing the need for revenue generation with the principles of social security and social justice.

Source:

NKP, 2068, Nepal National Retired Employees Association v. Office of Prime Minister and Council of Ministers (Decision No. 8643, Decided on 2068/04/26 B.S.);
https://nkp.gov.np/full_detail/8643
Nepal's Interim Constitution, 2063 B.S.
Finance Act, 2066 B.S.
Income Tax Act, 2058 B.S.

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