

STATE OF RAJASTHAN AND ANR.

v.

AMRIT LAL GANDHI AND ORS.

JANUARY 10, 1997

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Service Law :

Jodhpur University Pension Regulations, 1990—Pension—Cut-off date—Pension scheme—Committee appointed by University Grants Commission in 1986 made recommendations for introducing Pension scheme but Syndicate and Senate of University forwarded the recommendations but no date was specified for that purpose—State Government approved introduction of pension scheme w.e.f. 1.1.1990—Subsequently, cabinet of University gave its approval, pension rules framed and teachers in service on or after 1.1.1990 given option to be covered by said pension scheme—Held : In such circumstances, fixation of cut-off date as 1.1.1990 and not 1.1.1986, not arbitrary or without any reason—Jodhpur University General Provident Fund Regulations, 1990.

Constitution of India, 1950 : Article 136.

Parties—Revised Pension Scheme—Introduced by University after approval by State Government—High Court held the scheme applicable w.e.f. 1.1.1986—Only State Government and not University filed appeal against High Courts' decision—Supreme Court held pension scheme applicable w.e.f. 1.1.1990—Held : High Court's judgment still not given effect to—University chose not to file since State had filed one—In the circumstances, non-filing of appeal by University could not be interpreted as the university's acceptance of the correctness of the High Court's decision.

The respondents were teachers of University and Colleges and were originally governed by contributory provident fund rules and there was no pension scheme, which was applicable, to them. A Committee constituted by the University Grants Commission in 1986 recommended for extending pension-cum-gratuity scheme for the respondents. Pursuant to the said recommendations, resolutions were passed by the Syndicate and Senate of the University for the introduction of pensionary scheme in the University

but no date was specified for that purpose. Under that scheme the respondents could opt either for contributory provident fund or for pension in lieu of provident fund. As the proposed scheme had financial implications, the University had to seek approval of the Government. The State Government had decided to introduce the pension scheme in the Universities of the State w.e.f. 1.1.1990. Pursuant thereto the cabinet of the University approved the resolutions of the Syndicate and the Senate. Thereafter, Pension Regulations 1990 and General Provident Fund Regulations 1990 were framed and options were invited from all persons who were in the service of the University on or after 1.1.1990 to give their options for being governed by either of the Regulations.

The respondents filed a writ petition before the High Court claiming revised pension scheme w.e.f. 1.1.1986 instead of 1.1.1990. The High Court allowed the writ petition. Being aggrieved the appellant-State preferred the present appeal. But the University did not file any appeal.

On behalf of the appellants it was contended that the State Government having decided, as a matter of policy, that the revised pension scheme was to be applicable w.e.f. 1.1.1990 the said decision could not be challenged; and that as the State had filed an appeal, the University chose not to file one of its own.

On behalf of the respondents it was contended that since the University did not file an appeal it must be regarded that the University had accepted the correctness of the decision of the High Court and, therefore, the revised pension scheme should be made applicable w.e.f. 1.1.1986.

Allowing the appeal, this Court

HELD : 1.1. There is no justification for the High Court having substituted the date of 1.1.1986 in lieu of 1.1.1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the State Government was required. The Syndicate and Senate of the Universities, when they had forwarded their recommendations in 1986 did not mention a specific date with effect from which the pension scheme was to be made applicable. Their recommendations were subject to approval. The approval was granted by the Government, after the State Legislature had passed University Pension Rules and General Provident Fund Rules. The Government had stated in its affidavit before the High

Court that the justification of the cut-off date of 1.1.1990 was "wholly economic". It cannot be said that the paying capacity is not a relevant or valid consideration while fixing the cut-off date. The University could, in 1991, validly frame Pension Regulations to be made applicable prospectively. It, however, chose to give them limited retrospectivity so as to cover a larger number of employees by taking into account the financial impact of giving retrospective operation to the Pension Regulations. It was decided that employees retiring on or after 1.1.1990 would be able to exercise the option of getting either pension or provident fund. Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. Therefore, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. [127-F, 128-B-D]

State of West Bengal & Ors. v. Ratan Behari Dey & Ors., [1993] 4 SCC 62 and *Union of India v. P.N. Menon & Ors.*, [1994] 4 SCC 68, relied on.

D.R. Nim v. Union of India, AIR (1967) SC 1301, cited.

1.2. It is true that the University has not filed any appeal but the State has challenged the correctness of the decision of the High Court. Since the High Court's judgment had still not been given effect to and the University chose not to file an appeal only because the State had filed an appeal, non-filing of an appeal by the University could not be interpreted as the University's acceptance of the correctness of the High Court's decision. [128-G, 129-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9710-17 of 1995 Etc.

From the Judgment and Order dated 30.8.94 of the Rajasthan High Court in D.B.W.P. Nos. 115/93, 2324/94, 2347, 2621, 3696, 4702/93, 1949, 2126 of 1994.

Tapas Ray, Anil B. Divan, Aruneshwar Gupta, Sushil Kumar Jain, K.S. Bhati, B.N. Singhvi, Surya Kant, (Indra Makwana) Adv. (NP), B.D. Sharma, Rajesh, Raj Kr. Gupta, H.P. Sharma for the appearing parties.

The Judgment of the Court was delivered by

KIRPAL, J. Leave granted. The common question of law which arises in these appeals by special leave relates to the date with effect from

which the revised pension is to be paid to the teachers of the Jai Narayan Vyas University and Mohan Lal Sukhadia University who had retired between 1.1.1986 and 1.1.1990.

Though the facts in these appeals are similar, for the purpose of this judgment, we need only refer to the facts in Civil Appeal Nos. 9710-9717 of 1995 and S.L.P.(C) No. 19231 of 1996 which arise from the judgment dated 30.8.1994 of the Division Bench of the High Court in D.B. Civil Writ Petition No. 115/1993 which considered the rival contentions of the parties on merit. The said judgment has been followed by the High Court while allowing the writ petition from which Civil Appeal No. 9718 of 1995 arises.

In 1962, Jodhpur University Act, 1962 was promulgated. For the teaching staff of the University contributory provident fund rules were framed and there was no pension scheme which was applicable to them.

It appears that the University Grant Commission in 1983 constituted a committee known as Mehrotra Committee to examine the structure of emoluments and also the conditions of service of the University and College teachers.

The Mehrotra Committee submitted its report in 1986, containing various recommendations. One of the recommendations related to extending pension-cum-gratuity scheme to the teachers of Universities and colleges.

Pursuant to the said recommendations, resolutions were passed in 1986 by the Syndicate of University of Jodhpur (now known as Jai Narayan Vyas University) and approved by the University Senate for the introduction of pensionary scheme in the University. According to this scheme, option was to be given to the university employees to opt either for contributory provident fund or for pension in lieu of the provident fund. Draft rules providing for payment of pension were also approved.

As the proposed scheme had financial implications, the University had to seek the approval of the Government. The Education Department of the Rajasthan Government, vide its letter dated 16.4.1991, informed the Vice-chancellors of the Rajasthan University, Jaipur, Jodhpur University, Jodhpur, M.L. Sukhadia University, Udaipur, Ajmer University, Ajmer and Kota Open University, Kota that the State Government had decided to

introduce the pension scheme in the Universities of the State w.e.f. 1.1.1990. It is pursuant thereto that the cabinet of the Jodhpur University on 24.4.1991 approved the resolutions of the Syndicate and the Senate providing for the introduction of the pension scheme. Thereafter Pension Regulations 1990 and General Provident Fund Regulations 1990 were framed and on 3.8.1991 options were invited from all persons who were in the service of the University of Jodhpur on or after 1.1.1990 to give their options whether they wanted to be covered by the Provident Fund Regulations or desired to be covered by the Pension Regulations of 1990.

Thereafter, several writ petitions were filed in the High Court of Rajasthan. Two writ petitions were filed by the erstwhile teachers of the Rajasthan University who had retired prior to 1.1.1986 while eight writ petitions were filed by those who had retired between 1.1.1986. and 1.1.1990.

The Single Judge of the High Court allowed all the aforesaid writ petitions and directed that the revised pension scheme should be made applicable to all the petitioners including those who had retired prior to 1.1.1986. Appeals were then filed before the Division Bench which, vide judgment dated 30.8.1994, held that the revised pension scheme should be made applicable to only those employees who had retired between 1.1.1986. and 1.1.1990.

As already noticed above, the aforesaid judgment of the Division Bench was followed in D.B. Civil Writ Petition No. 3489 of 1993 filed by the retired university teachers of the Mohan Lal Sukhadia University, Udaipur from which Civil Appeal No. 9718 of 1995 arises.

On behalf of the appellants, main arguments were addressed by Shri Tapas Ray, Sr. learned counsel in C.A. 9718 of 1995. He referred to the observations of the High Court to the effect that the Mehrotra Committee had made its recommendations in 1986 and the Syndicate and Senate of the University had approved of the grant of pension to those employees who had retired after 1.1.1986, and there was no reason as to why the Pension Regulations should have been made applicable with effect from 1.1.1990. It was contended by Shri Ray that the High Court overlooked the fact that the Pension Regulations which were framed and were made applicable w.e.f. 1.1.1990 in view of the decision of the State of Rajasthan contained in its letter dated 16.4.1991. He further submitted that the date,

as to when pension scheme was to be made applicable, was a policy matter. The Government having decided, as a matter of policy, that all the Universities in Rajasthan were to introduce the pension w.e.f. 1.1.1990, the said decision could not, it was submitted, be challenged.

Mr. Ray drew out attention to the decisions of this Court in *State of West Bengal and Others v. Ratan Behari Dey and Others*, [1993] 4 SCC 62 and *Union of India v. P.N. Menon and Others*, [1994] 4 SCC 68 and contended that the High Court fell in error in not following the ratio of the aforesaid decisions in which it was clearly held that a particular cut-off date could be fixed while granting pensionary benefits.

In *Ratan Behari* case (supra), the Calcutta Corporation had in force a provident fund scheme. A demand was raised in 1977 for the introduction of a pension scheme. A three member committee was constituted and pursuant to its recommendations, which were accepted by the Government with some modifications. Pension Regulations were framed in 1982. Effect was given to these Regulations on and from 1.4.1977. The fixing of the date of 1.4.1977 was challenged by some of the members of the Calcutta Municipal Corporation who had retired prior to 1.4.1977. The Calcutta High Court allowed the writ petitions by holding that the date of 1.4.1977, with effect from when the Pension Regulations were to come into effect, was non est and void. While allowing the appeals, and dismissing the writ petitions, this Court examined the reasons why the date 1.4.1977 has been fixed and then observed as follows :

"Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf."

In *P.N. Menon* case (supra) the question again arose with regard to fixing of cut-off date for payment of gratuity and pension. In that case the

cut-off date which was fixed, was 30.9.1977. While allowing the appeals and repelling the challenge to the fixation of the said date, it was observed at pages 73-74 as under :

"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. It shall not amount to "picking out a date from the hat, as was said by this Court in the case of *D.R. Nim v. Union of India* in connection with fixation of seniority. 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."

It again reiterated at page 75 that "not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational of reasonable basis, has to be fixed for extending the benefits".

Applying the ratio of the aforesaid decisions to the present case, we find no justification for the High Court having substituted that date of 1.1.1986 in lieu of 1.1.1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the Rajasthan Government was required. In the letter of 16.4.1991, written to the Vice-chancellors of different universities of Rajasthan, it was stated as follows :

As per the direction in regard to the aforesaid subject, the State Government has decided to introduce pension Scheme in the Universities of the State w.e.f. 1.1.1990. In this regard the State Legislature has passed University Pension Rules and General Provident Fund Rules Therefore, by enclosing a copy of University Pension Regulations and General Provident Fund Regulations with this letter, it is requested that by obtaining approval of the competent body or syndicate of the University, these Regulations be implemented in the University together and necessary information

regarding implementation be intimated."

The Syndicate and Senate of the Universities, when they had forwarded their recommendations in 1986, did not mention a specific date with effect from which the pension scheme was to be made applicable. Their recommendations were subject to approval. The approval was granted by the Government, after the State Legislature had passed University Pension Rules and General Provident Fund Rules. The Government had stated in its affidavit before the High Court that the justification of the cut-off date of 1.1.1990 was "wholly economic". It cannot be said that the paying capacity is not a relevant or valid consideration while fixing the cut-off date. The University could, in 1991, validly frame Pension Regulations to be made applicable prospectively. It, however, chose to give them limited retrospectivity as to cover a larger number of employees by taking into account the financial impact of giving retrospective operation to the pension Regulations. It was decided that employees retired on or after 1.1.1990 would be able to exercise the option of getting either pension or provident fund. Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990.

Mr. Anil B. Diwan, Sr. Advocate appearing in Civil Appeal Nos. 9710-9717 of 1995 for respondent No. 1, contended that the University had asked for extension of time to implement the judgment and must be regarded as having accepted the decision specially when the University had not come in appeal and, therefore, whatever be the decision of this Court on the question of law, the benefit of the judgment should be given to his clients who had retired between 1.1.1986 to 1.1.1990.

It is true that the University has not filed any appeal but the State of Rajasthan has challenged the correctness of the decision of the High Court and it was represented at the bar, on behalf of the appellant, that only the options had been invited and the judgment had not been given effect to and no pension has been given to those employees who has retired between 1.1.1986 to 1.1.1990. Counsel for the University stated that as the State of Rajasthan had filed an appeal, therefore the University chose not to file one of its own. We, therefore, do not see any reason as to why this decision

should not be applicable to all the employees who had retired prior to 1.1.1990 as it cannot be held that the University had accepted the correctness of the High Court's decision.

From the aforesaid discussion, it follows that the policy decision of the Universities, making the pension Regulations applicable w.e.f. 1.1.1990 has not been shown to be arbitrary or invalid. There appeals are, accordingly, allowed and the judgments of the High Court are set aside and the writ petitions filed by the respondents are dismissed. There shall be no order as to costs.

Appeals allowed.