

A STATE OF WEST BENGAL ETC. ETC.

v.

RATAN BEHARI DEY AND ORS.

AUGUST 6, 1993

B [S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

Corporation of Calcutta Employees (Death-cum-Retirement) Benefit Regulations, 1982:

C Chapter I, Regulation 1—Pension scheme introduced with effect from April 1, 1977—Fixation of cut-off date—Whether arbitrary and unreasonable—Scheme automatically made applicable to the employees retiring after publication of Regulations—Option given to employees who had retired on or after the cut-off date, but prior to date of publication of Regulation—Exclusion of employees who had retired prior to the cut-off date—Whether
D discriminatory.

E Constitution of India, 1950: Articles 14 and 16—Introduction of Pension Scheme for employees—Fixation of cut-off date—Whether arbitrary and unreasonable—Classification of employees with reference to cut-off date—Exclusion of those who had retired prior to the cut-off date—While giving option to those who had retired on or after the cut-off date but prior to publication of Regulations introducing the Pension Scheme—Whether discriminatory.

F Respondents 1 to 43 in the appeals retired from the service of the Calcutta Municipal Corporation in the year 1967 or thereafter but prior to April 1, 1977. On retirement, each of them was paid the provident fund and other terminal benefits payable to them in accordance with rules then in force. No pension was provided for by the rules or regulations then in force. Subsequently, on the basis of the recommendations of the Pay Commission which had been appointed by the State Government in March 1978, the Corporation of Calcutta Employees (Death-cum-Retirement)
G Benefit Regulations, 1982, were framed and published in the year 1982. The Regulations, which were given effect to from April 1, 1977, also provided for a Pension Scheme. The Regulations were automatically made applicable to those who had retired after publication of the Regulations. However, an option was given to those who had retired on or after April
H 1, 1977, but prior to the date of publication of the Regulations to come

under the Scheme.

The respondents approached the High Court for issuance of a writ of *mandamus* applying the said Regulations to all those employees who retired even prior to April 1, 1977. Relying on the decision of this Court in *D.S. Nakara & Ors. v. Union of India*, [1983] 2 S.C.R. 165, the High Court granted the prayer, holding that all the retired employees of the Corporation constituted one single class and classifying them into two categories with reference to April 1, 1977 was neither reasonable nor was it in any manner related to the object of the Regulations.

In the appeals, before this Court, the correctness of the decision of the High Court was challenged by the State and the Corporation. It was submitted that the respondents, who had retired prior to April 1, 1977 and had drawn out the terminal benefits permissible to them, constituted a different class from those who retired after April 1, 1977 and were governed by Regulations; the appointment of the Pay Commission to examine the claim of the employee was ordered in the financial year 1977-78 and though the Commission submitted its report later and it was accepted after some time, the Government was justified in fixing the first day of the financial year 1977-78, as the date from which the said Regulations were to be given effect to.

On behalf of respondents it was submitted that the Regulations were not merely prospective; they were given retrospective effect on and from April 1, 1977; the employees, who retired on or after April 1, 1977 but prior to the date of publication of the Regulations were situated similarly to the respondents and all of them were governed by the Provident Fund Scheme, but the Regulations created a distinction among them with reference to an artificial date viz., April 1, 1977; and brought about discrimination between the similarly placed employees; and that a similar option, as had been given to the employees retiring on or after April 1, 1977 but before the date of publication of the Regulations, ought to have been given to all those employees who retired prior to April 1, 1977.

Allowing the appeals, this Court

HELD: 1.1. It is open to the State or 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

- A 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 to 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. [519-H; 520-A-B]

D.S.Nakara & Ors. v. Union of India, [1983] 2 S.C.R. 165; distinguished.

- C *Krishena Kumar v. Union of India & Ors.*, [1990] 4 S.C.C. 207; referred to.

- D 1.2. The power of the State to specify a date with effect from which the Regulations framed, or amended, as the case may be, should come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. [520-H; 521-A]

- E 1.3. It cannot be said that prescribing April 1, 1997 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. The State Government appointed a Commission to examine the demand of the employees and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give effect to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government. It cannot be said that the Government acted unreasonably in specifying the said date. [519-G; 520-E-F]

- G 1.4. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, in such cases the State cannot pick a date out of its hat. It has to prescribe the date in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, H question of discrimination does not arise. [521-C-D]

Sushma Sharma v. State of Rajasthan, [1985] 3 S.C.R. 243, referred to. A

1.5. No absolute proposition can be stated that while effecting any change, in the conditions of service relating to retiral benefits, no date from which such change will come into force can be specified. [521-F-G] B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3472-73 of 1991.

From the Judgment and Order dated 18.4.1988 of the Calcutta High Court in F.M.A.T. No. 2347 of 1987. C

D.N. Mukherjee and Dilip Sinha for the Appellants in C.A. No. 3472 of 1991.

S.B. Sanyal, S.K. Jain and Sudhanshu Atreya for the Appellants in C.A. No. 3473 of 1991. D

P.P. Rao, Raj Kumar Gupta and P.C. Kapur for the Respondents.

The following Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. These two appeals are preferred by the State of West Bengal and the Calcutta Municipal Corporation respectively against the judgment of the Division Bench of the Calcutta High Court dismissing the appeal preferred by the Calcutta Municipal Corporation (F.M.A.T. No. 2347 of 1987) against the judgment of the learned Single Judge allowing the writ petition. The writ petition was filed by the respondents for issuance of writ of *mandamus* commanding the State of West Bengal and the Municipal Corporation to extend the benefit of pension under the Corporation of Calcutta Employees (Death-cum-retirement) Benefit Regulations, 1982 to them by declaring the date, April 1, 1977, specified in Regulation-I of the Chapter-I of said Regulations as non-est and void. A *mandamus* was granted as prayed for, which was affirmed on appeal by the Division Bench. E F G

Respondents 1 to 43 in both the appeals (writ petitioners) were the employees of the Calcutta Municipal Corporation. They retired from the Corporation service in the year 1967 or thereafter but prior to April 1, 1977. On retirement, each of the writ petitioners were paid the provident H

A fund in accordance with rules then in force. Since no pension was provided for by the rules or regulations then in force they evidently did not claim and were not granted any pension. Whatever terminal benefits were payable to them were paid.

B On the basis of the demand of the Corporation employees for payment of pension, the Government of West Bengal appointed in March 1978, a Pay Commission to examine the said claim and to make their recommendation. The Commission consisted of three members. It submitted its report on September 27, 1979. The three members submitted three different reports, differing with each other in certain particulars. The C said reports were examined by the Government and accepted with certain modifications on April 27, 1981. On the basis of the said acceptance, the aforesaid regulations were framed and published in the year 1982. The Regulations were given effect to from April 1, 1977. The Regulations provided *inter alia* that every employee who retired on or after April 1, 1977 can exercise the option in the prescribed proforma within the time D specified to come under the Pension Scheme. So far as persons retiring after the publication of the said Regulations were concerned, they were automatically governed by the said Regulations (Pension Scheme); there was no question of an option in their case. The Regulations were accordingly given effect to.

E The writ petitioners (respondents 1 to 43 in these appeals) approached the High Court of Calcutta in the year 1985 for issuance of writ of *mandamus* applying the said Regulations to all those employees who retired even prior to April 1, 1977. The prayer was granted as prayed for. The High Court has mainly relied upon the decision of this Court in D.S. F *Nakara & Ors. v. Union of India*, [1983] 2 S.C.R. 165. The High Court was of the opinion that all the retired employees of the Corporation constituted one single class and classifying them into two categories with reference to April 1, 1977 is neither reasonable nor is it in any manner related to the object of the Regulations. The correctness of the said view is challenged G in these appeals.

The learned counsel for the appellant, S/Shri S.B. Sanyal and D.N. Mukherjee relied strongly upon the later decision of this Court in *Krishna Kumar v. Union of India & Ors.*, [1990] 4 S.C.C. 207, a decision of the Constitution Bench. It is submitted that the specification of April 1, H 1977 as the date from which the Pension Scheme provided by 1982 Regula-

tion was to come into force was neither arbitrary nor discriminatory. The writ petitioners who had retired prior to April 1, 1977 and had drawn out the terminal benefits permissible to them, constituted a different class from those who retired after April 1, 1977 and were governed by Regulations. Counsel submitted that the High Court was not right in holding that the Government and Corporation have not satisfactorily explained the reasons for specifying April 1, 1977 as the date from which the Regulations were given effect to. They submitted that the representation of the employees for grant of pension was reiterated in the year 1977 and the appointment of Pay Commission to examine their claim was also ordered in the financial year 1977-78. Though the Commission submitted its report later and it was accepted after some time, the Government was justified in fixing the first day of the financial year 1977-78 as the date from which the said Regulations were to be given effect to.

Sri P.P. Rao, learned counsel appearing for the respondents 1 to 43 not only relied upon the principle of *Nakara* but also tried to distinguish the decision in *Krishena Kumar*. He submitted that the Regulations were not merely prospective; they were given retrospective effect on and from April 1, 1977. The employees who retired on or after April 1, 1977 but prior to the date of publication of the Regulations were situated similarly to the writ petitioners. All of them were governed by the Provident Fund Scheme. But the Regulations created a distinction among them with reference to an artificial date viz. April 1, 1977. Those who retired earlier to the said date were made ineligible for the benefit of the Pension Scheme while those who retired on or after the said date were made eligible. A similar option, as has been given to the employees retiring on or after April 1, 1977 but before the date of publication of the Regulations, ought to have been given to all those employees who retired prior to April 1, 1977 but were alive on the said date. Since this was not done, the appellants must be held to have discriminated against the employees retiring prior to April 1, 1977.

In our opinion, the principle of *Nakara* has no application to the facts of this case. The precise principle enunciated in *Nakara* has been duly explained in *Krishena Kumar* by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally.

- A 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. It appears that in the Calcutta Corporation, a pension scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced. Under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive years in the 1977.....may be because in that year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State Government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars.
- B The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give effect to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government - a fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in specifying the said date. It may also be that, that was the year in which the Left Front came into power in that State, but that does not detract from the validity of the aforesaid reasons assigned by the State in its counter-affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High court that the reasons assigned by the State Government are neither relevant nor acceptable.

- H In this context, it may be remembered that the power of the State to

specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory. Since we have found that the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint or discrimination must fail.

Now coming to the argument of Sri P.P. Rao that the Regulations bring about an unreasonable classification between similarly placed employees is concerned, we must say that we are not impressed by it. It is not submitted that the Corporation had no power to give retrospective effect to the Regulations. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, as repeatedly held by this Court, in such cases the State cannot, as the expression goes, pick a date out of its hat. It has to prescribe the date in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, question of discrimination does not arise. Reference in this behalf may also be had to the decision of this Court in *Sushma Sharma v. State of Rajasthan*, [1985] 3 S.C.R. 243, a decision of the Division Bench comprising E.S.Venkataramiah and Sabyasachi Mukharji, JJ.

As rightly pointed in *Krishena Kumar*, *Nakara* was a case where an artificial date was specified classifying the retirees, governed by the same Rules and similarly situated, into two different classes, depriving one such class of the benefit of liberalised Pension Rules. It was found in that case that the specification of the date (from which the liberalised Rules were to come into force) was arbitrary. Whereas in this case, the employees reitiring prior to April 1, 1977 and those retiring thereafter were governed by different sets of Rules. The argument to the contrary may mean that the Government can never change the conditions of service relating to retiral benefits with effect from a particular date. No such absolute proposition can be stated that while effecting any such change, no date from which such change will come into force can be specified. As stated above, a date can be prescribed but such date should not be drawn in such a manner as to bring about discrimination between persons situated similarly i.e., in a manner violative of Article 14. This aspect has been elaborately dealt with and explained in *Krishena Kumar* and we do not think it necessary to repeat the same.

- A For the above reasons, the appeals are allowed, the judgment and orders of the learned Single Judge as well as the Division Bench of the Calcutta High Court under appeal are set aside. It is, however, directed that if any of the writ petitioners have been given the benefit of the 1982 Regulations in pursuance of the decision of the learned Single Judge or of the Division Bench, as the case may be, of the Calcutta High Court, they shall not be called upon to refund the same. In other words, while no recovery should be made from them, they shall also be not entitled to claim any amount either on account of pensionary benefits or Provident Fund Scheme benefits.
- B

- C There shall be no order as to costs.

N.P.V.

Appeals allowed.