

SH. S.V. BHIMA BHATTA AND ANR. ETC.

v.

STATE OF KARNATAKA AND ORS.

JANUARY 18, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Pension—Fluctuation in the age of superannuation—Service beyond the normal period of superannuation—Entitlement to pension—Taking into account the residue period—Question left open as no notice was issued on the matter—State not entitled to recover pension already paid calculated on the basis of the actual date of superannuation thereby including the residue period—State free to fix the pension according to rules.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2836-37 of 1996 Etc.

From the Judgment and Order dated 19.7.93 of the Karnataka Administrative Tribunal in Bangalore in A. No. 1412 of 1991.

S.R. Bhat for the Appellants.

K.R. Nagraja for the Respondents.

The following Order of the Court was delivered :

SLP (C) No. 20571/93 taken on Board.

We have heard the learned counsel on both sides.

Leave granted.

Shri S.R. Bhat, learned counsel for the appellants, contended that during the period of fluctuation of superannuation of the Government servants between 55 and 58 years and continuation upto 60 years, the Government ultimately had enhanced superannuation to 58 years with liberty in public interest to appoint for further period upto 60 years the persons who continued in service beyond the normal period of superannuation are also entitled to the pension on the basis of scale of pay drawn

by them on the date of their superannuation, i.e., 60 years and the pension should be computed accordingly including the period of 3 years during which they had continued in service. On the other hand, Shri Nagaraja, learned counsel for the State, contended that the right of the Government to superannuate the employee in exercise of the statutory power was upheld by this Court. The payment of pension requires to be decided on the date on which the employee is required to retire and the residue period would be treated as fortuitous. We need not decide this question in view of the fact that this Court, while issuing notice, has expressly limited to the question as to right of the State to recover the pension already paid to them. Shri Nagaraja has fairly stated that the State has no objection and the State would not recover the pension already paid to them; the notice is limited only to that extent. We hold that the State is not entitled to recover the pension already paid to them computing the pension as if the respondents retired at the age of 60 years. The larger question is left open since that is not the matter on which the notice was issued. Consequently, the State is free to fix the pension according to rules.

The appeals are accordingly disposed of. No costs.

Appeals disposed of.