

STATE OF PUNJAB
v.
JUSTICE S.S. DEWAN (RETIRED CHIEF JUSTICE)
AND ORS.

APRIL 25, 1997

[K. RAMASWAMY, G.T. NANAVATI AND
K. VENKATASWAMI, JJ.]

Service Law :

Punjab Superior Judicial Service Rules 1963, Rule 16 (as amended)—Judge retiring from Punjab High Court—Fixation of pension—Introduction of beneficiary provision—Applicability of—Held, not available to those already retired since it is a retiral benefit to make judicial services more attractive so that those who are already in service may not leave it and new entrants may be tempted to join it.

Retiral benefits—Introduction of a beneficiary provision—Criteria for determination—Held, intention of the statute to be seen—If it is a liberalisation of an existing scheme, all pensioners to be treated equally and if it is an introduction of new retiral benefits, its benefits will not be available to those who had already retired prior to its introduction.

The respondent Chief Justice of a High Court, retired w.e.f. 5.10.1989. He elected to receive his pension benefits in accordance with part III of Schedule I to the High Court Judges (Conditions of Service) Act, 1954 read with the Punjab Superior Judicial Service Rules, 1963. His pension was accordingly determined by taking into account the qualifying service rendered by him as a member of the Punjab Superior Judicial Service and as a Judge of the High Court. However, on 20.2.1990 Rule 16 of Punjab Superior Judicial Service Rules, 1963 was amended and a proviso was also added to it, under which period of practice up to 10 years was to be treated as part of qualifying service. This enlargement of the period of qualifying service would lead to an increase in the quantum of pension.

The respondent claimed that being a direct recruit to the Punjab Superior Judicial Service he was entitled to addition of actual period of

A practice at the Bar not exceeding 10 years to his qualifying service and therefore, his pension and other retirement benefit have to be refixed. But the State Government decided that the notification dated 22.2.1990 has only prospective effect and therefore benefit of the amendment of R. 16 cannot be given to the respondent.

B The respondent filed a writ petition praying that Union of India and the State Government be directed to compute his pension afresh in accordance with the said provision. The Single Judge relying on *D.S. Nakara and Others v. Union of India*, [1983] 1 SCC 305 held that all retired judge irrespective of the date of retirement constitute one class and the benefit available under the amended rule cannot be confined to the judges who retired after the amendment and as such allowed the petition. The State filed a letters patent appeal, which was dismissed by the Division Bench with a clarification that the prayer being restricted only to pension not to other retirement benefit. Hence, this appeal.

D Allowing the appeal, this Court

HELD : 1.1. If the amendment has been made by way of upward revision of existing pension scheme, ratio of *D.S. Nakara* case would apply. If it is held to be a new retiral benefit of a new scheme then it cannot be extended to those who retired earlier. [1032-E-F]

F 1.2. Conceptually, pension is a reward for past service. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of the pension. *D.S. Nakara* case involved the change of formula for determining average emoluments and it was treated as liberalisation of upward revision of the existing pension scheme. On the basis of same reasoning it can be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make, it more beneficial in term of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service, then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. Here what has been done by amending Rule 16, the purpose seems to make the service more attractive for those who are already in service so that they may not leave it and

for new entrants so that they may be tempted to joint it. Though Rule 16 does not specifically state that amended rule will apply only to those who retired after 22.1.1990, the intention behind it clearly appears to be to extend the new benefit only to those who retired after that date. So, the principle of *D.S. Nakara* case will have no application to this type of case. Hence, the benefit of the amendment would be available to only those direct recruits who retired after it has come into force. [1012-F-H; 1013-A-B]

Union of India v. P.N. Menon, [1994] 4 SCC 68, relied on.

D.S. Nakara and Ors. v. Union of India, [1983] 1 SCC 305, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 506 of 1992.

From the Judgment and Order dated 28.10.91 of the Punjab & Haryana High Court in L.P.A. No. 1295 of 1991

Manoj Swaup, (N/P) for the Appellant.

K.C. Dua for the Respondents.

The Judgment of the Court was delivered by

NANAVATI. J, The respondent who retired as the Chief Justice of the High Court of Punjab and Haryana on 31.12.89 was enrolled as an advocate on 27.1.59, appointed as District and Sessions Judge on 20.11.68 and then as a Judge and the Chief Justice of Punjab and Haryana High Court on 14.12.77 and 4.10.89 respectively. On his retirement he elected for computation of his pension under Part III of the Ist Schedule to the High Court Judges (Conditions of Service) Act, 1954. According to the provisions contained in Part III, pension of the Judge has to be determined in accordance with the rules of his service. The rules which applied to him are the Punjab Superior Judicial Service Rules, 1963. His pension was, therefore, fixed in accordance with the said rules. On 20.2.90, Rule 16 of the said Rules was amended by the Government of Punjab and it was provided that in case of a direct recruit to the Punjab Superior Judicial Service the actual period of practice at the bar not exceeding 10 years shall be added to his service qualifying for superannuation pension and other retirement benefits. In view of this amendment the respondent claimed that

- A being a direct recruit to the Punjab Superior Judicial Service he was entitled to addition of actual period of practice at the bar not exceeding 10 years to his qualifying service and, therefore, his pension and other retirement benefits have to be refixed. The High Court, in its turn, wrote to the Accountant General on 5.6.90 for refixation of his pension and other retirement benefits after giving him benefit of the amendment. The Accountant General, it appears, was not inclined to agree with this claim and, therefore, referred the matter to the State Government for correct interpretation of the rule. On 25.2.91 the State Government decided that the notification dated 22.2.90 has only prospective effect and, therefore, benefit of the amended Rule 16 cannot be given to the respondent. He, therefore,
- B filed a writ petition in the High Court *inter alia* praying that the Union of India and the State Government be directed to give benefit of the amended Rule 16 to him and to compute his pension afresh in accordance with the said provision. The stand taken by the Union of India was that it was not really concerned with the subject-matter of the petition and that it pertained to the State of Punjab. The State contended that the amended rule applies to those only who retired after 22.2.90.
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The learned Single Judge following the judgment following the judgment of this Court in *D.S. Nakara and Others v. Union of India*, [1983] 1 SCC 305 held that all retired judges irrespective of the date of retirement constitute one class and the benefits available under the amended rule cannot be confined to the judges who retired after the amendment. He, therefore, found the action of the State of Punjab as illegal, allowed the petition and directed the State of Punjab to refix pension of the Respondent in accordance with the amended rule with effect from 22.2.90 and to pay the arrears with interest at the rate of 18 per cent per annum. The State of Punjab filed a letters patent appeal. The Division Bench of the High Court dismissed it with a clarification that the prayer being restricted only to pension and not to other retirement benefits, the order passed by the learned Single Judge should be read as confined to grant of pension only. The State has, therefore, filed this appeal.

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The only controversy in this appeal is whether the High Court was right in directing refixation of pension of the respondent in accordance with amended Rule 16. The respondent, having retired as a Judge of a High Court and having elected to receive pension payable under Part III of the First Schedule to the Act his entitlement was as provided in paragraph 2

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of that Schedule, which reads as under :

"2. The pension payable to such a Judge shall be -

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b)

It is not in dispute that he being a member of the Punjab Superior Judicial Service the Punjab Superior Judicial Service Rules, 1963 applied to him. Rule 16 of the said Rules at the time of his retirement provided as under :

"16. Death-cum-Retirement Benefits : In respect of death-cum-retirement benefits the members of the service shall be governed by the all India Service (Death-cum-Retirement Benefits) Rules, 1958, as amended from time to time."

Rule 8 of the All India Services Rules, *inter alia*, provides that qualifying service of a member of the Service for purposes of those Rules begins from the date of his substantive appointment to the Service. It is also not in dispute that pension of the respondent was calculated and paid accordingly. On February 22, 1990 Rule 16 was amended and since then it is as quoted below :

"16. *Death-cum-retirement benefits* : In respect of death-cum-retirement benefits the members of the service shall be governed by the Punjab Civil Services Rules, Volume II as amended from time to time.

Provided that in the case of a direct recruit to this service, the actual period of practice at Bar not exceeding ten years, shall be added to his service qualifying for superannuation pension and other retirement benefits."

The change brought about by the amendment is that whereas in respect of death-cum-retirement benefits members of the Punjab Superior Judicial Service were earlier governed by the All India Service (death-cum-

- A retirement benefits) Rules, now they are governed by the Punjab Civil Service Rules, Moreover, now in the case of a direct recruit to the Punjab Superior Judicial Service the actual period of practice at the Bar not exceeding 10 years has to be added to his service for the purpose of determining the qualifying service. Formerly, that is, prior to 22.2.1990, qualifying service of a member of the Punjab Superior Judicial Service was the length of service rendered by him as a member of the Punjab Superior Judicial Service and also as a Judge of the High Court, if he was elevated to that position before retirement. Even in case of a direct recruit to that Service his standing at the Bar was irrelevant but now that period has to be added for determining the qualifying service. Obviously, this enlargement for the period of qualifying service would lead to an increase in the quantum of pension. This has been regarded by the High Court and as contended by the respondent, liberalisation of the pension scheme. For that reason, it further held that benefit of a rule liberalising pension cannot be restricted to persons retiring subsequently that is after the date of such liberalisation otherwise it would amount to vicious discrimination violative of Article 14 of the Constitution. The High Court has also held that there is nothing in the language of the Rule to suggest that the benefit conferred by it is confined to the persons retiring after February 22, 1990.

- E Therefore, what we have to consider is : What is the nature of the change made by the amendment? Is it by way of upward revision of the existing pension scheme? Then obviously the ratio of the decision in *D.S. Nakara's* case would apply. If it is held to be a new retiral benefit or a new scheme then the benefit of it cannot be extended to those who retired earlier.

- F Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In *D.S. Nakara's* case (supra) the change in the formula of determining average emoluments by reducing 36 months' service to 10 months' Service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of

quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be to go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be tempted to join it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22.2.90, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in *D.S. Nakara's* case (supra) that if pensioners form a class computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. Therefore, on both the grounds the High Court was in error in applying the ratio of the decision in *D.S. Nakara's* case (supra) to this case. As rightly contended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force.

The following observations made by this court in *Union of India v. P.N. Menon*, [1994] 4 SCC 68 also to some extent support the view that we are taking :

"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

A 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."

B We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and dismiss the writ petition filed by the respondents. In view of the facts and circumstances of the case there shall be no order as to costs.

B.K.S.

Appeal allowed.