

ITEM NO.8

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s) .3700/2012

(From the judgement and order dated 26/09/2011 in WP No.5284/2011
of The HIGH COURT OF BOMBAY AT AURANGABAD)

ASSN.OF COL.& UNIV.SUPERANNUATED TEACHER

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With office report)

Date: 30/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Petitioner(s) Mr. Amol Nirmalkumar Suryawanshi, Adv.

For Respondent(s) Ms. Asha Gopalan Nair, Adv.

Mr. Navin Prakash, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)

ITEM NO.8

COURT NO.3

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S U P R E M E C O U R T O F I N D I A
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850963

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Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Certified to be true copy

Daxerf

Assistant Registrar (Judl.)

05-02-13

Supreme Court of India

Respondent(s)

(With office report)

Date: 30/01/2013 This Petition was called on for hearing today.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.908 OF 2013

(Arising out of SLP(C)No.3700 OF 2012)

Association of College & University
Superannuated Teachers

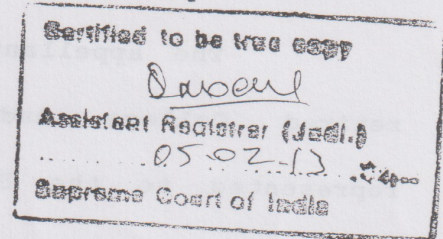
.....Appellant

versus

Union of India and others

.....Respondents

O R D E R



Leave granted.

Whether decision of the Government of Maharashtra to pay the enhanced retirement/death gratuity to the employees including the teachers of aided Educational Institutions, Non-Agricultural Universities, affiliated Non-Government Colleges and Agricultural Universities with effect from 1.9.2009 is discriminatory and violative of Articles 14 and 16 of the Constitution is the question which arises for consideration in this appeal filed against order dated 26.9.2011 passed by the Division Bench of the Bombay High Court vide which the writ petition filed by the appellant for issue of a mandamus to the respondents to give effect to Government Resolution dated 21.08.2009 with effect from 1.1.2006 and pay difference in the amount of gratuity calculated as per the ceiling of Rs.7 lacs was dismissed.

On the recommendations of the Sixth Pay Commission, the State Government decided to raise the ceiling of the retirement

gratuity and death gratuity from Rs.3.5 lacs to Rs.5 lacs with effect from 01.01.2006. This was reflected in Government Resolution dated 05.05.2009. After three and half months, Government Resolution dated 21.8.2009 was issued and ceiling of retirement gratuity and death gratuity was further raised from Rs.5 lacs to Rs.7 lacs but the same was made effective from 1.9.2009.

The appellant, which has been espousing the cause of retired College and University Teachers of Maharashtra, represented to the State Government for change of the date specified in Government Resolution dated 21.8.2009 from 1.9.2009 to 1.1.2006 but failed to elicit any response from the latter. Thereupon, the appellant filed writ petition, which, as mentioned above, was dismissed by the High Court.

The Division Bench of the High Court distinguished the judgments of this Court in D.S. Nakara v. Union of India (1983) 1 SCC 305, U.P. Raghavendra Acharya v. State of Karnataka (2006) 9 SCC 630, Union of India v. SPS Vains (Retd.) AIR 2008 SC (Supp) 598 and Atmaram G. Mohite v. State of Maharashtra 2004 (2) Mh.L.J. 729 by observing that those cases related to discrimination in grant of pension and not of raising the ceiling of gratuity. The Division Bench further observed that the Government's decision to raise the ceiling of gratuity had no nexus with the recommendations of the Pay Commission and it was within the domain of the State Government to specify the particular date for determining the eligibility of the employees

to get enhanced gratuity.

We have heard learned counsel for the parties. Government Resolutions dated 5.5.2009 and 21.8.2009, which have bearing on the appellant's plea read as under:

"GOVERNMENT OF MAHARASHTRA

Finance Department

Government Resolution No.PEN-1009/31/SER-4

Mantralaya Mumbai-400032, dated 5th May 2009

Read:- 1)

Government Resolution, Finance,
Department No.PEN 1005/115/Ser-4.

2)

Government Resolution, Finance,
Department No.Vepur
1209/C.R.20/Ser-9. Dated 27th
February 2009

RESOLUTION

As per the recommendation of sixth pay commission, Government is decided to raise the ceiling on the maximum amount of Retirement Gratuity and Death Gratuity from Rs.3.50 lakhs to Rs.5 Lakhs with effect from 1st January 2006.

2. Government is also pleased to direct that above decision should, mutatis mutandis, apply to those employees of recognized and aided Educational Institutions, Non-Agricultural Universities and affiliated Non-Government Colleges and Agricultural Universities to whom the pension scheme (Maharashtra Civil Services (Pension) Rules, 1982) is made applicable.

3. In exercise of the powers conferred by the proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities act, 1961 (Man. V of 1962) and of all the other powers enabling it in that behalf, Government is further pleased to decide that the above decision apply to the pensioners of Zilla Parishads.

4. This Government Resolution is available on the web site of Government of Maharashtra i.e. "www.maharashtra.gov.in" and its computer code number is 20090506122612001.

GOVERNMENT OF MAHARASHTRA

Finance Department

Government Resolution No.PEN-1009/69/SER-4

Mantralaya Mumbai-400032, dated 21st August, 2009.

Read:- 1)

Government Resolution, Finance,
Department No.PEN 1005/115/Ser-4.

2)

Government Resolution, Finance,
Department No.PEN-1009/31 /SER-4,
dated 5th May, 2009

RESOLUTION

Government has decided to raise the ceiling on the maximum amount of Retirement Gratuity and Death Gratuity from Rs.5.00 lakhs to Rs.7.00 Lakhs with effect from 1st September, 2009.

2. Government is also pleased to direct that above decision should, mutatis mutandis, apply to those employees of recognized and aided Educational Institutions, Non-Agricultural Universities and affiliated Non-Government, Colleges and Agricultural Universities to whom the pension scheme (Maharashtra Civil Services (Pension) Rules, 1982) is made applicable.

3. In exercise of the powers conferred by the proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities act, 1961 (Mah. V of 1962) and of all the other powers enabling it in that behalf, Government is further pleased to decide that the above decision apply to the pensioners of Zilla Parishads.

4. This Government Resolution is available on the web site of Government of Maharashtra i.e. "www.maharashtra.gov.in" and its computer code number is 20090506122612001."

The reason why 1.1.2006 was fixed in G.R. dated

5.5.2009 for grant of enhanced gratuity to the employees was that the recommendations of the Sixth Pay Commission had been made effective from that date. However, the respondents did not offer any tangible explanation before the High Court for fixing 01.09.2009 as the cut-off date for grant of benefit of further enhancement in gratuity from Rs.5 lacs to Rs.7 lacs. The Division Bench of the High Court did notice that two different cut-off dates had been specified in the Government Resolutions but did not make any effort to ascertain the rationale or intelligible differentia for the decision of the State Government not to grant further enhancement in gratuity w.e.f. 1.1.2006 and negated the appellant's claim on the hypothesis that the Government has the power to fix the particular date for grant of gratuity.

In our view, in the absence of any rationale for fixing 01.09.2009 as the cut-off date for grant of enhanced gratuity to the employees, the decision of the Government is liable to be declared as discriminatory and violative of Articles 14 and 16 of the Constitution and the High Court committed an error by refusing relief to the appellant by distinguishing the judgments of this Court without any real distinction. Like pension, gratuity is one of the retiral benefits payable to an employee. Therefore, the ratio of the judgments of this Court in which it was held that the cut off date fixed by the State/public employer for grant of higher pension is discriminatory has direct bearing on the appellant's claim. In *R.L. Marwaha v. Union of India*, (1987) 4 SCC 31, this Court considered whether the services

rendered by the appellant in Indian Council of Agricultural Research should be added to the service under the Central Government for the purpose of grant of pensionary benefits. He filed writ petition under Article 32 of the Constitution questioning the date specified in office memorandum dated 29.8.1984 for counting of the service in the autonomous bodies. After considering the rival contentions, this Court held:

"There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the Government Order if para 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the Government Order. There is no justification for denying the benefit of the Government Order to those who had retired prior to the date on which the Government Order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the Government Order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the government/autonomous bodies into two classes merely on the basis of the date of retirement as unconstitutional as it bears no nexus to the object to be achieved by the order.

We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed

only after August 29, 1984 that is the date of issue of the Government Order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government Order. By doing so the Government Order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the Government Order but with effect from August 29, 1984."

In *T.S.Thiruvengadam v. Secretary to Government of India* (1993) 2 SCC 174, this Court considered the question whether the service of the appellant under the Central Government should be added to his service in the public undertaking in which he was subsequently absorbed for the purpose of grant of pensionary benefits. After noticing the object of Memorandum dated June 16, 1967 issued by the Government, this Court observed:

"We do not, also, find substance in the contention that the revised benefits being new it could only be prospective in operation and cannot be extended to employees who were absorbed earlier. It is no doubt correct that the memorandum dated June 16, 1967 is prospective which only means that the benefits therein can be claimed only after June 16, 1967. The memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purposes of giving pro rata pension. Whoever has rendered pensionable service prior to coming into force of the memorandum would be entitled to claim the benefits under the said memorandum. Restricting the benefits only to those who were absorbed in public undertakings after June 16, 1967 would be arbitrary and hit by Articles 14 and 16 of the Constitution."

Likewise, in *M.C.Dhingra v. Union of India* (1996) 7 SCC 564, the cut off date fixed for grant of pensionary benefits to the employees was held to be discriminatory and unconstitutional.

In *V. Kasturi v. Managing Director, SBI, Bombay* (1998) 8 SCC 30, this Court examined various facets of discrimination in the matter of grant of higher pensionary benefits to the employees, referred to large number of precedents and carved out two categories of employees, one of which was held entitled to higher retiral benefits and the other was held not entitled to such benefit. The proposition laid down in that case is extracted below:

"From the aforesaid resume of relevant decisions of this Court spread over the years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting

additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

Category II

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter v. Capt. Biplabendra Chanda and Govt. of T.N. v. K. Jayaraman and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit."

The appellant's case falls in Category I identified in the judgment of V. Kasturi's case because the retiring/retired teachers of Colleges and Universities were already getting gratuity and they were granted the benefit of higher gratuity in terms of Government Resolution dated 5.5.2009. Thus, there is no

justification, legal or otherwise, to deny them benefit of higher gratuity with effect from 01.01.2006.

In the result, the appeal is allowed and the impugned order is set aside. The cut-off date, i.e. 01.09.2009 specified in G.R.dated 21.08.2009 is declared unconstitutional and it is held that the employees governed by Government Resolution dated 5.5.2009 are entitled to the benefit of enhanced gratuity, i.e. Rs.7 lacs.

As a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, State Government shall pay to the members of the appellant and other similarly situated employees difference of the gratuity already paid and enhanced gratuity payable in terms of G.R. dated 21.08.2009. The parties are left to bear their own costs.

.....*st*.....J.
(G.S.SINGHVI)

.....*sh*.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
JANUARY 30, 2013.

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Daxerul
Assistant Registrar (Judl.)

05-02-13
Supreme Court of India

Respondent(s)

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For Respondent(s) Ms. Asha Gopalan Nair, Adv.

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CIVIL APPEAL No.908 OF 2013
(Arising out of SLP(C)No.3700 OF 2012)

Association of College & University
Superannuated Teachers

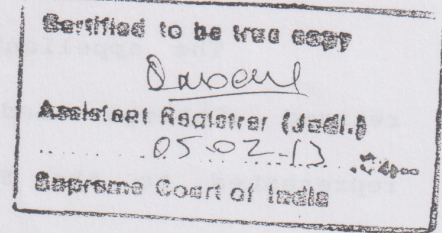
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On the recommendations of the Sixth Pay Commission, the State Government decided to raise the ceiling of the retirement

gratuity and death gratuity from Rs.3.5 lacs to Rs.5 lacs with effect from 01.01.2006. This was reflected in Government Resolution dated 05.05.2009. After three and half months, Government Resolution dated 21.8.2009 was issued and ceiling of retirement gratuity and death gratuity was further raised from Rs.5 lacs to Rs.7 lacs but the same was made effective from 1.9.2009.

The appellant, which has been espousing the cause of retired College and University Teachers of Maharashtra, represented to the State Government for change of the date specified in Government Resolution dated 21.8.2009 from 1.9.2009 to 1.1.2006 but failed to elicit any response from the latter. Thereupon, the appellant filed writ petition, which, as mentioned above, was dismissed by the High Court.

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RESOLUTION

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2. Government is also pleased to direct that above decision should, mutatis mutandis, apply to those employees of recognized and aided Educational Institutions, Non-Agricultural Universities and affiliated Non-Government Colleges and Agricultural Universities to whom the pension scheme (Maharashtra Civil Services (Pension) Rules, 1982) is made applicable.

3. In exercise of the powers conferred by the proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities act, 1961 (Man. V of 1962) and of all the other powers enabling it in that behalf, Government is further pleased to decide that the above decision apply to the pensioners of Zilla Parishads.

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In our view, in the absence of any rationale for fixing 01.09.2009 as the cut-off date for grant of enhanced gratuity to the employees, the decision of the Government is liable to be declared as discriminatory and violative of Articles 14 and 16 of the Constitution and the High Court committed an error by refusing relief to the appellant by distinguishing the judgments of this Court without any real distinction. Like pension, gratuity is one of the retiral benefits payable to an employee. Therefore, the ratio of the judgments of this Court in which it was held that the cut off date fixed by the State/public employer for grant of higher pension is discriminatory has direct bearing on the appellant's claim. In *R.L. Marwaha v. Union of India*, (1987) 4 SCC 31, this Court considered whether the services

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After considering the rival contentions, this Court held:

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If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting

additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

Category II

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter v. Capt. Biplabendra Chanda and Govt. of T.N. v. K. Jayaraman and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit."

The appellant's case falls in Category I identified in the judgment of V. Kasturi's case because the retiring/retired teachers of Colleges and Universities were already getting gratuity and they were granted the benefit of higher gratuity in terms of Government Resolution dated 5.5.2009. Thus, there is no

justification, legal or otherwise, to deny them benefit of higher gratuity with effect from 01.01.2006.

In the result, the appeal is allowed and the impugned order is set aside. The cut-off date, i.e. 01.09.2009 specified in G.R.dated 21.08.2009 is declared unconstitutional and it is held that the employees governed by Government Resolution dated 5.5.2009 are entitled to the benefit of enhanced gratuity, i.e. Rs.7 lacs.

As a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, State Government shall pay to the members of the appellant and other similarly situated employees difference of the gratuity already paid and enhanced gratuity payable in terms of G.R. dated 21.08.2009. The parties are left to bear their own costs.

.....*st*.....J.
(G.S.SINGHVI)

.....*sh*.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
JANUARY 30, 2013.