

Before Hon'ble A. L. Bahri & N. K. Kapoor, J.

GIAN CHAND WALIA,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

C.W.P. 5259 of 1993

17th January, 1994

Constitution of India, 1950—Art. 14, 226/227—Haryana Municipal Employees Pension & General Provident Fund Rules, 1993—Rl. 2(1)—Prescribing cut off date for implementation of pension scheme with effect from the date the amendment in Haryana Municipal Amendment Act 1992 was made—So as to allow Municipal Committees to provide for funds for pensions & make expenditure—Not violative of Art. 14.

Held, that thus fixing a date in April 1992 which was in consonance with the amendment aforesaid is not at all arbitrary or imaginary date introduced. It was open to the state to fix any date for allowing pensionary benefits to the employees of the Municipal Committees. Before the cut-off date such of the employees of the Municipal Committees having retired got the benefit of Contributory Fund Scheme. Such of the employees who were in service immediately before April, 1992 were given the option to continue to be governed by the Contributory Fund Scheme or to be governed by the pension scheme.

(Para 9)

R. P. Singh Ahluwalia, Advocate, for the Petitioner.

Arun Nehra, Addl.A.G. Haryana, Sanjeev Sharma, Advocate for the Respondent.

JUDGMENT

A. L. Bahri, J.

(1) *Vide* this order a bunch of writ petitions (C.W.P. Nos. 5259, 5343, 5344, 5345, 5346, 6091, 6092, 6093, 6094, 6095, 6096, 6097, 6098, 6099, 6100, 9829, 13060 and 15218 of 1993) are being disposed of. Main judgment is prepared in C.W.P. No. 5259 of 1993.

(2) After re-organisation of the States Municipal Committees in Haryana continued to be governed by the provisions of Punjab

Municipal Act as applicable to Haryana. The employees of such Municipal Committee were not State employees. Their transfers from one Municipal Committee to another was not contemplated. They were employees of different Municipal Committees as such. Haryana Municipal Committee Act, 1973 (hereinafter called 'the Act') was made applicable in the State of Haryana with the result that the employees of Municipal Committees were provincialised. Since then those employees were raising demand for enforcement of pension scheme. It may be observed that employees of the Municipal Committees earlier used to be governed by Contributory Provident Fund Schemes. Ultimately State of Haryana accepted the demand of the employees of the Municipal Committees in this respect. Haryana Municipal Amendment Act, 1992 (Haryana Act No. 14 of 1992) (for short called 'the Act' of 1992) was passed which received assent of the Governor of Haryana on April 8, 1992. The notification of this Act was published in Haryana Government Gazette (Extra.) on April 16, 1992. Amendments were made in Sections 38 and 57 of the Haryana Municipal Act authorising the Municipal Committee in the State of Haryana for providing funds for pension as well. In exercise of the powers conferred by Clause (m) of sub-section (1) of Section 257 read with Sections 38 and 39 of the Haryana Municipal Act, the Haryana Government issued notification dated March 5, 1993 (Annexure P.1) framing Rules called as the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 (hereinafter called 'the Rules'). Such Rules came into force with effect from April 16, 1992. Rule 2 of the Rules, provide :—

Rule : "2(1) These rules shall apply to the employees of the Municipalities who :—

(i) were/are appointed on or after the 16th day of April 1992, on whole time regular basis; and

(ii) were working immediately before the 16th day of April, 1992 and opt for these rules."

(3) The petitioners in all the writ petitions retired from service of different Municipal Committees prior to April 16, 1992 and thus they were not entitled to the benefit of these Pension Rules. They have approached this Court in this set of writ petitions claiming that the State Government arbitrarily fixed April 16, 1992 as the date for enforcement of the Pension Rules which resulted in creating discrimination between the retirees. The petitioners who had earlier retired were willing to surrender the Contributory Provident Fund

already drawn by them and there are some of the petitioners who have not withdrawn the same. They claim benefit of the Pension Rules aforesaid. They made representation also in this respect which did not bear fruit.

(4) On notice of motion having been issued the respondents have contested the writ petition by filing written statement, *inter alia*, asserting that cut-off date April 16, 1992 for the implementation of the Pension Schem was fixed because it was with effect from that date that the amendment in the Haryana Municipal Act, 1973 was made allowing the Municipal Committees to provide funds for pension and allowing them to make expenditure on that account. They also relied upon the decision of the Supreme Court in support thereof **Civil Appeal No. 3472 of 1973 (*State of West Bengal v. Rattan Behari Dev and others*)** decided on August 6, 1993. We have heard learned counsel for the parties at great length and we are of the view that no case is made out in favour of the petitioners.

(5) Learned counsel for the petitioners relying upon the decision of the Supreme Court in *D. S. Nakara and others v. Union of India* (1), and have argued that April 16, 1992, date fixed in the Pension Rules has no nexus in the matter of grant of pension. Since the Rules came into force in 1992, all the retirees prior thereto would stand at equal footing. When the State decided to give benefit to the retirees who had retired on or after April 16, 1992, there was no reason to deny the benefit of the Pension Rules to such of the persons who had retired before that. Supreme Court in *D. S. Nakara's case* (supra) has observed as under :—

“With the expenditure horizons of socio-economic justice, the Socialists Republic and Welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupees consequent inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion : ‘being in service and retiring subsequent to the specified date’ for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class the classification being not based on any

(1) (1983) 2 S.C.R. 165.

discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exs. P.1 and P.2 violates Article 14 and is unconstitutional and is struckdown. Both the memoranda shall be enforced and implemented as read down as under :

(6) In other words, Ex. P.1, the words :

"that in respect of the government servants who were in service of March 31, 1979 and retiring from service on or after that date' and in Ex. P.2, the words : 'the new rates of pension are defective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date : are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible."

The contention of learned counsel for the petitioners cannot be accepted. The decision in *D. S. Nakara's* case was explained in subsequent decisions of the Supreme Court on the subject to which reference may be made. In *Krishena Kumar v. Union of India and Others* (2), the Supreme Court was dealing with the case of granting pension to the railway employees who were earlier governed by Provident Fund Scheme. A cut-off date was fixed to switch over to the pension scheme and the contention was raised that the same was bad being violative of Article 14. After making reference to *Nakara's* case (supra) in para 30, it was observed as under :—

"Thus the Court treated the pension retirees only as a

homogeneous class. The P.F. retirees were not in mind. The Court also clearly observed that while so reading down it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notifications with respect to the specified date. All the pensioners governed by the 1972 Rules were treated as a class because payment of pension was a continuing obligation on the part of the State till the death of each the pensioners and, unlike the case of Contributory Provident Fund, there was no question of a fund in liberalising pension."

In para 32 of the judgment, it was further observed as under :—

"In *Nakara* it was never held that both the pension retirees and the P.F. retirees formed a homogenous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights *qua* the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter."

(7) Thereafter the matter was again considered by the Supreme Court in *All India Reserve Bank Retired Officers Association and others v. Union of India and another* (3). The earlier decision in *D. S. Nakara and Krishena Kumar* were referred to. While introducing the pension scheme formulated on October 31, 1980 to give effect from January 1, 1986, was held to be valid. Article 14 of the Constitution was not infringed by fixing the cut-off date. The following observations may be noticed :—

"The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to

pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduced an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in *Nakara's* case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme ; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two grounds by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new Scheme, in respect where of the retired employees have no vested right, the employer cannot restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc."

(8) Same principle was laid down recently by the Supreme Court in *Rattan Behari Dev's* case, referred to above. In 1982 it was decided to re-introduce the pension scheme to replace contributory fund scheme. the cut-off date April, 1977 when the demand of the employees was received. It was held that the cut-off date was not a arbitrarily fixed. Reference was made to *D. S. Nakara* and *Krishena Kumar* cases, referred to above.

(9) Applying the principle laid down in the decisions of the Supreme Court referred to above, to the facts of the present case, there is no scope for holding that the cut-off date had been arbitrarily

fixed by the State. It was on April 16, 1992 that the Haryana Municipal Amendment Act, 1992, though received assent of the Government on April 8, 1992, was published in the Haryana Gazette. *Vide* amendments introduced in Sections 38 and 57 of the Haryana Municipal Act, 1973 provisions was made for pension funds and expenditure thereon. Thus fixing a date in April, 1992 which was in consonance with the amendment aforesaid is not at all arbitrary or imaginary date introduced. It was open to the State to fix any date for allowing pensionary benefits to the employees of the Municipal Committees. Before the cut-off date such of the employees of the Municipal Committees having retired got the benefit of Contributory Fund Scheme. Such of the employees who were in service immediately before April, 1992 were given the option to continue to be governed by the Contributory Fund Scheme or to be governed by the Pension Scheme. It was in this context that while amending Sections 38 and 57 of the Municipal Act the words 'Provident Fund' was not deleted. It was contemplated that some of the employees may opt to be governed by the Provident Fund Scheme. Only word 'Pension' was introduced as it was in principle decided by the Legislature while amending Haryana Municipal Act that the employees would be given benefit of pension, that such provisions was made in framing the pension Rules, which do not violate Article 14 of the Constitution.

Finding no merit in the writ petitions, the same are dismissed.
No costs.

J.S.T.

Before Hon'ble Harmohinder Kaur Sandhu, J.

JAGBIR SINGH,—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

Crml. Misc. No. 306-M of 1993.

February 11, 1994.

Code of Criminal Procedure (II of 1974)—S. 482—Quashing—Petitioner charged for offences under section 302/34 and 201 IPC—During examination-in-chief permission given to public prosecutor to produce evidence of confession made by petitioner during an enquiry conducted by S.D.M.—Order challenged—Held that any confession other than in accordance with 164 Cr.P.C. is inadmissible in evidence.