

Madhya Pradesh High Court

Pensioners Federation Thru. Shri ... vs Finance Department on 22 January, 2016

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WA No.353/2015

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: Hon'ble Shri P.K. Jaiswal

Hon'ble Shri Jarat Kumar Jain, JJ.

Writ Appeal No.353/2015

Pensioners' Federation, Madhya Pradesh

through its President

Shri Ambika Prasad Pandey s/o Late Kalicharan Pandey

&

Late Jagdish Prasad Bindal through Legal Representative

Shri Umesh Chandra Bindal

Versus

The Government of Madhya Pradesh & others

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Shri Shekhar Bhargava, learned Senior Counsel with Shri Amit Singh, learned counsel for the appellants.

Shri Pushyamitra Bhargava, learned Deputy Advocate General for respondent No.1 / State.

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ORDER

(Passed on this 22nd day of January, 2016) Per P.K. Jaiswal, J.

Aggrieved by the inaction of the respondents in considering the case of the appellants, who are Pre-1986 Retired Employees and are claiming parity with the pensioners / retirees, who have been given the benefit of pension recommended by the 5th Pay Commission, filed a writ petition under Article 226 / 227 of the Constitution of India for granting following relief: -

"(i) Issue a writ, direction or order in the nature of mandamus or other appropriate writ directing the respondents not to discriminate against the petitioners and to properly fix the pension / family pension of the Pre-1986 employees by linking the same to the post held by them at the time of their retirement as recommended by the Vth Pay Commission and accepted by the State Government itself.

(ii) Issue a writ, direction or order in the nature of WA No.353/2015 mandamus or other appropriate writ directing the State respondents to calculate and pay the arrears of pension / family pension payable as aforesaid to the petitioners.

(iii) Award the costs of the petition and

(iv) Grant such other relief or reliefs as may be deemed just in the circumstances of the case."

2. Learned Writ Court relying on the Single Bench decision of this Court at Principal Seat Jabalpur in the case of Smt. Kamla Jain v. State of Madhya Pradesh & others in Writ Petition No.5802/2011

decided on 08.02.2012, disposed of the writ petition with the following directions: -

- "(1) The petitioners shall move a representation within a period of 15 days from the date of this order before the Competent Authority along with a copy of the order passed in Kamla Jain (supra) and SPS Vains (Retd.) (supra) which shall be considered by the respondent Competent Authority in accordance with the provisions of law;
- (2) The respondent Competent Authority is directed to consider the case of the pensioners for revision of their pay revision at the rate of 50% of the minimum revised pay on the post last held by the petitioners at time of retirement;
- (3) The entire exercise be completed within a period of six months from the date of this order and the petitioners are granted arrears of pension etc. along with interest of 9% per annum as directed by the Court in the case of Kamla Jain (supra);
- (4) However, if the respondent / Competent Authority finds that the petitioners are not eligible for the benefits as per ratio laid down in the case of Kamla Jain (supra) they should pass an order in writing given valid and cogent reasons for the same and hand over a copy of the same to the petitioners immediately. Thereafter the petitioners shall be free to file fresh petition, if they are still aggrieved by the said order. The arrears of pension shall carry an interest of 9% per annum from the date of application till the realization."

3. Shri Shekhar Bhargava, learned Senior Counsel for WA No.353/2015 the appellants has submitted that the judgment in Smt. Kamla Jain v. State of Madhya Pradesh & others (supra) has attained finality on 24.01.2013, when the Division Bench at Principal Seat upheld the order passed by the learned Single Judge in the case of State of Madhya Pradesh & others v. Smt. Kamla Jain & another in Writ Appeal No.1488/2012 and thereafter Special Leave Petition filed by the State of Madhya Pradesh was also dismissed by the Apex Court. Thereupon, the State Government also complied with the above judicial orders by its order dated 14.08.2013 by conferring the benefit thereof to the petitioner therein namely Smt. Kamla Jain.

4. In reply, Shri Pushyamitra Bhargava, learned Deputy Advocate General for the State of Madhya Pradesh very specifically admitted that the law on the subject has been settled in the case of State of Madhya Pradesh & others v. Smt. Kamla Jain (supra) by the Division Bench of this court and SLP No.13437/2013 was also dismissed by the Apex Court and the ratio laid down in the case of Smt. Kamla Jain v. State of Madhya Pradesh & others in Writ Petition No.5802/2011 has become final. He further submitted that the benefit of 5th Pay Commission was not in existence at the time of retirement of the petitioners and their pension was regulated under the Pension Rules prior to 01.01.1996. Besides, according to circular dated 28.08.1998, there was a consolidation of pension, keeping in mid the recommendation of 5th Pay Commission and hence, they could not claim any further benefit, and prayed for dismissal of the writ appeal.

5. In the case of Smt. Kamla Jain, she retired WA No.353/2015 somewhere in the year 1987 and at the time of filing of the writ petition in the year 2011 she was above 87 years' of age. Paragraphs No.2 to 8 of the order dated 08.02.2012 passed in Writ Petition No.5802/2011 reads, as under: -

"2. The petitioner is already 87 years of age and this is the third round of litigation for claiming the said benefits. Records indicate that petitioner was working in the department of Higher Education under the Govt. of M.P. at Bhopal and on 30th September when she was retired on attaining the age of superannuation, she was holding the post of Principal in Government Girls College, Ranjhi, Jabalpur. After her retirement pension and other benefits were granted to her. It is her case that subsequently she went out of India and was staying with her son and when she came back, she was informed that the State Government has issued various circulars revising pay scale and pension payable to various employees, who had retired prior to 01-01-1996. By placing reliance on two circulars dated 16-05-2007 and 15-01-2008, filed in this writ petition as Annexures P-4 and P-5, the petitioner initially approached this court in W.P. No.1117/09(S) claiming benefit of revision of per pension in accordance to these circulars. It was the case of the petitioner that the State Government has revised the pay scale of various employees after the Pay Commission recommendation was implemented and with regard to Principals like the petitioner their pay has been revised w.e.f. 01-01-1990 and it is ordered that as on 01-01-1996 the basic pay of persons like the petitioner would be treated as Rs.12,840/- and pension would be paid to them treating it to be so. Even though the revision of pay was ordered w.e.f. 1-1-1996 but actual revision of pension on such revision of pay was only granted from 1-4-2007, claiming revision of pension and arrears, the petitioner approached this court and claimed arrears from 1-1-96.

Initially the said writ petition was heard and disposed of by this court on 05-03-2009 directing the respondents to consider and decide the claim of the petitioner in the light of the circulars dated 16-05-2007 and 15-01-2008 Annexures P-4 and P-5 respectively. When the claim was not considered properly and was not decided in accordance to the assertion made by the petitioner, contempt application was filed but subsequently another writ petition bearing W.P. No.1239/2010(S) was filed WA No.353/2015 before this court. In the said case, various grounds were raised by the petitioner claiming arrears of pension w.e.f. 1-1-1996 and one of the main ground canvassed was that for persons retiring prior to 1-1-1996, no arrears of pension is granted and revised pension treating them to be retired by getting basic salary of Rs.12,480/- is granted only from 01-04-2007. On the contrary, persons who have retired on 1-1-1996 or thereafter would be getting different quantum of pension as their pension is calculated on the revision of pay effected from 1-1-1996, accordingly in W.P. No.1239/2010(S) it was the case of the petitioner that in fixing cut off date as 01-04-07 for the purpose of granting arrears of pension to person retiring prior to 1-1-1996 two difference class of pensioners are created between 1-1-1996 upto 01-04- 2007 i.e. persons who retired after 1-1-96 they will get pension on the basis of the unrevised pay scale w.e.f. 1-1- 96 upto 1-4-2007 whereas persons who have retired on 1- 1-1996 will get pension on the basis of revised pay scale, inter alia contending that this is discriminatory, this ground was canvassed in the earlier W.P.

No.1239/2010(S). This court considered all these aspect and in paras 7 and 8 dealt with the matter and after taking note of the principles laid down by the Supreme Court in the case of Union of India and another Vs. SPS Vains (Retd) and others, (2008) 9 SCC 125 and another judgment in the case of Subrata Sen and others Vs. Union of India and others (2001) 8 SCC 71, came to the conclusion that the State Government for choosing the cut off date 1-4-2007 for the employees who have retired prior to 1-1-96 have not given any justification except for defending their action on the basis of financial consideration and other financial resources. It was held by a Bench of this court in para-10 of the aforesaid judgment rendered in W.P. No.1239/2010(S) that discrimination between the employees cannot be done on the basis of financial consideration, accordingly in paras 11 and 12 the following observations were made by this court and finally the matter was decided in para 13 in the following manner :

"11. This is to be seen that in the present case, the financial resources would not come in defence to the State Government. When the State Government itself has chosen to revise the rate of pension on the basis of the pay which was revised w.e.f. 1-1-1996 in relation to each category of the employees i.e. who retired prior to and after 1-1-1996.

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12. In the present case, other than financial resources no other justification appears from the return and the additional return or from the reply to the application for amendment that as to on what basis the cut off date i.e. 1-4-2007 is chosen by the State Government for the purposes of revising the benefit of pension to all the categories of employees who retired prior or after 1-1-1996. Thus, the question relates only in relation to grant of actual benefits as the monetary benefit is given from 1-1-1996 to the persons who retired on or after 1-1-1996 and no monetary benefit prior to 1-04-2007 is given to class of pensioners who retired before 1-1-1996. In view of the law laid down by the Apex Court in Subrata Sen (supra) and SPX Vains (Retd.) (supra), some justification should have been given by the State Government for conferring the actual benefit to the petitioner from 1-04-2007.

13. In view of the aforesaid, I am inclined to direct the State Government to reconsider the matter and to pass an appropriate order in the light of the observations made in the preceding paragraph of this judgment in relation to the pensioners who retired prior to 1-1-1996 for conferring the actual monetary benefits from 1-4-2007 as the pay scale as on 1-1-1996 has been taken to be the basis for the purposes of calculating the amount of pension and the necessary order after consideration of the matter shall be passed within three months from the date the petitioner furnishes the certified copy of this order to the respondents. The petition accordingly stands allowed to the extent indicate above."

Claim of the petitioner having been rejected again by the impugned order, therefore, the petitioner is again before this court.

3. Shri Ashok Jain, Attorney holder for the petitioner took me through the findings and the principles laid down by the Supreme Court in the case of SPS Vains (Retd.) (supra) , the finding recorded in the case of the petitioner in the earlier order as indicated hereinabove in paras 11 and 12 and argued that action on financial consideration without giving any justification for fixing the cut off date is again taken, which is unsustainable. Shri Jain submits that except for pleadings financial implication, no reasonable justification for fixing cut off date is forthcoming from the respondents and therefore, it is stated that the order be quashed and directions be issued to the respondents to pay arrears to the petitioner also w.e.f. 1-1-1996.

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4. Shri Rajesh Tiwari, learned Govt. Advocate, for the State took me through the reply filed and argued that the petitioner is in correctly interpreting the circulars in question Annexures P-4 and P-5 as the revision of pension is granted only from 1-4-2007 as per policy of the State Government which is based on the financial consideration. It is stated that no further indulgence into the matter is called for, accordingly Shri Rajesh Tiwari, learned Govt. Advocate, prays for rejection of the claim made by the petitioner.

5. I have heard the learned counsel for the parties at length and perused the record. From the facts that have come on record, it is clear that the petitioner had retired prior to 1-1-1996 and after the pay commission recommendation was implemented, the pay scale of all the employees working in the State of M.P. were revised w.e.f. 1-1-1996. For the purpose of payment of pension on such revision and with regard to manner in which the pension is to be calculated and paid the circulars in questions Annexures P-4 and P-5 were issued on 16-05-2007 and 15-01-2008 respectively. What was done in these circulars are that in the case of a Principal like the petitioner it was ordered that the basic pay of these Principals as on 1-1-1996 shall be fixed at Rs. 12,840/-, and therefore, their pension fixed for the purpose of granting this pension actual in nature on such re-fixation of the basic pay at Rs.12,840/- the benefit would be granted from 01-04-2007. However, for persons who retired on 1-1-1996 or thereafter, it was ordered that they will be paid pension treating their basic pay to be Rs.12,840/-, accordingly when this policy is implemented, the pensioners who are receiving the pension between 01-01-1996 to 01-04-2007, would fall in two categories, even though the basic of all these pensioners on 1-1-1996 would be Rs.12,840/- but the persons like the petitioner who have retired prior 1-1-1996 their pension from 1-1-96 upto 1-04-2007 would be calculated by treating their basic pay to be something which is less then Rs.12,840/- i.e. the pension of these pensioners are included not on the basis of their basic pay fixed as on 1-1-96 but on the basis of basic unrevised pay drawn by them. However, the persons who retired from 1-1-1996 they will be getting pension treating them to have retired on the basic pay of Rs.12,840/-. It is, therefore, a case where for similarly situated employees treating the said basic pay of Rs.12,840/- as on 1-1-96 a different yard stick is being adopted . Be that as it may WA No.353/2015 similar query with regard to fixation of pay for persons retiring after 1-1-1996 and similar question is already considered in the case of SPS Vains (Retd.) (supra) and in paras 26 and 27 disparity created and different differentia has been discussed and the law is laid down in the following manner.

16. The case of the respondents however, was that in view of the Constitution Bench decision of this Court in *D.S. Nakara and others vs. Union of India* (1983) 1 SCC 305, the fixation of a cut-off date as a result of which equals were treated as unequals, was wholly arbitrary and had been rightly interfered with by the High Court. One of the questions posed in the aforesaid decision was whether a class of pensioners could be divided for the purpose of entitlement and payment of pension into those who retired by a certain date and those who retired thereafter. The question was answered by the Constitution Bench holding that such division being both arbitrary and unprincipled the classification did not stand the test of Article 14.

24. On behalf of the appellant, Union of India, it has been sought to be contended that since the pay scale of those officers who had retired prior to 1.1.96 had already been fixed at the time of their retirement, the question of re-fixation of their pay scales on account of the revision could not be accepted as they would only be entitled to the benefits of higher pension on account of such revision.

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26. The said decision of the Central Government does not address the problem of a disparity having created within the same class so that two officers both retiring as Major Generals, one prior to 1.1.1996 and the other after 1.1.1996, would get two different amounts of pension. While the officers who retired prior to 1.1.1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the Fundamental Rules, the other set of Major Generals who retired after 1.1.1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1.1.1996.

28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in the case of *D.S. Nakara WA No.353/2015* (supra) where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

29. The Constitution Bench (in *D. S. Nakara*) has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the

Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.

30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara's case (supra). The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the Fundamental Rules in a manner where the other officers belonging to the WA No.353/2015 same cadre would be receiving a higher pension.

(Emphasis supplied)

6. After taking note of the aforesaid principles of law in the case of the petitioner in the earlier writ petition in W.P. No.1239/2010 (S) as already indicated herein above in paras 11 and 12, this court has clearly held that financial resources cannot be a justification for discriminating between similarly situated officers and cannot be a justification for fixing the cut off date as 01-04-2007 for the purpose of revising the benefit of pension to all categories for employees. In the return filed and the impugned order Annexure P-13, no justification or the reasonable nexus for fixing the cut off date 1-04-2007 is forthcoming from the State Government. On the contrary both in the order passed vide Annexure P-13 so also in the return filed, it is only stated that in the matter of granting arrears to pensioners the State Government is competent enough to fix cut off date taking note of the financial resources of the State Government. In para-3 of the return it is only stated that taking note of the financial implication involved the cut off date has been fixed, no other justification or nexus for fixing the said cut off date is forthcoming from the State Government. As the ground of financial implication and resources is already found to be unsustainable by this court in the earlier order passed in the case of the present petitioner as indicated herein above this justification cannot be accepted. That apart even in the case of SPS Vains (Retd.) (supra) the Supreme Court has held that merely on the financial consideration the classification or of similarly situated pensioners is not permissible and if it creates a class, it is violative of Article 14 of the Constitution of India. In the case of SPS Vains (Retd.) (supra) also revision of pay took place w.e.f. 01-01-1996 on the pay so revised, revision of pension was ordered in a different manner as is done in the present case. The Union of India came out with a plea that as certain persons have already retired prior to 1-1-1996, the question of re-fixation of their pay does not arise. This argument of Union of India was rejected by the Supreme Court in the said case. In the present case also similar factual situation exists. Not only that, in the present case as on 01-01-1996 the revision of basic pay of persons who have retired prior to 1.1.1996 is already undertaken and their basic pay as on 1-1-1996 is fixed at Rs.12,840/-, after such a revision. That being so, the respondents cannot come out now with any justification once the WA No.353/2015 question is answered by the Supreme Court in para-24 in the judgment rendered in the case of SPS Vains (Retd.) (supra).

7. Keeping in view the settled principles of law in this regard as is evident from the judgment rendered by the Supreme Court and ground particularly the fact with regard to inter se dispute between the petitioner and the State Government already crystallized and decided by this court on 26-11-2010 in W.P. No.1239/2010(S), the impugned order cannot be sustained.

8. In view of the above, this petition is allowed. Orders impugned Annexure P-13 dated 07-05-2011 is quashed and the respondents are directed to grant arrears of pension to the petitioner w.e.f. 1-1-1996 upto 1-4-07 as claimed by the petitioner along with interest at the rate of 6% per annum within a period of 3 months from the date of receipt of the certified copy of this order. The interest shall be payable with effect from the date the revision of pension as contained in circulars dated 16-05-2007 and 15-01-2008 was actually implemented by the State Government after issuance of these circulars and not from any earlier date."

6. Writ Appeal No.1488/2012 filed by the State of Madhya Pradesh against the aforesaid order has been dismissed by the Division Bench of this Court at Principal Seat Jabalpur on 24.01.2013.

7. Considering the ratio laid down by the judgment in the case of Smt. Kamla Jain v. State of MP & others (supra), we direct the respondent / State to grant arrears of pension to the members of appellants' association with effect from 01.01.1996 up to 01.04.2007 along with interest at the rate of 9% per annum within a period of three months from the date of receipt of certified copy of this order, as directed by the Court in the case of Smt. Kamla Jain v. State of MP & others (supra). The interest shall be payable with effect from the date of revision of pension, as contained in circular dated 16.05.2007 and 15.01.2008, was actually implemented by the WA No.353/2015 State Government after issuance of these circulars and not from any earlier date. The entire exercise be completed within a period of three months from the date of this order.

8. With the aforesaid modification, Writ Appeal No.353/2015 is allowed in part to the extent, as indicated herein above, without any order as to costs.

(P.K. Jaiswal)  
Judge

(Jarat Kumar Jain)  
Judge

Pithawe RC