A.F.R.

Neutral Citation No. - 2024:AHC-LKO:54450

Court No. - 18

Case :- WRIT - A No. - 21482 of 2016

Petitioner :- Smt. Chandrakanti Devi
Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Basic Edu.Lko. And Ors.
Counsel for Petitioner :- Suresh Chandra Srivastava,Sharad Pathak,Suyash Dwivedi
Counsel for Respondent :- C.S.C.,J.B.S. Rathour,Shailendra Singh Rajawat

Hon'ble Manish Mathur,J.

1. Heard Mr. Sharad Pathak, learned counsel for petitioner, Mr. Pradeep Kumar Pandey, learned State Counsel for opposite parties no. 1 & 2, Mr. Ran Vijay Singh, learned counsel for opposite party no. 3 and Mr. S.S. Rajawat, learned counsel for opposite parties no. 4 & 5.

2. Petition has been filed challenging order dated 11.05.2016 whereby family pension granted earlier to petitioner vide order dated 03.09.2007 was withdrawn. It is submitted that petitioner's husband late Sudhakar Pandey was employed as Assistant Teacher in Primary School concerned on 16.12.1973 and passed away while in service on 10.01.1977 having rendered service of just about three years.

3. Since petitioner was not granted benefit of family pension, she filed Writ Petition No. 6068 (S/S) of 2004 which was disposed of vide order dated 07.12.2007 directing the concerned authority to consider and decide petitioner's claim for grant of family pension. It is in pursuance thereof that family pension was granted to petitioner vide order dated 03.09.2007. It is submitted that in the meantime one Smt. Phoolmati Devi who was similarly situated as petitioner filed Writ Petition No. 5993 (S/S) of 2015 claiming family pension. The said petition was disposed of vide order dated 12.10.2015 however, indicating the submission of learned counsel for parties that family pension has been granted to other persons as well though they were not covered by the Family Pension Scheme vide Government order dated 17.12.1965. The Director Basic Education was therefore directed to hold an inquiry into the matter and pass appropriate orders and take necessary action where the pension payment orders had been wrongly issued and payments had been made.

4. It is in pursuance of the aforesaid directions that the impugned order has been passed withdrawing family pension to a number of such dependents who had been granted family pension in pursuance of Government order dated 17.12.1965.

5. Learned counsel for petitioner has submitted that earlier a triple benefit scheme was notified by the State Government on 17.12.1965 and as per Clause 24 thereof, it was provided that family pension would be granted for a period of 10 years to the family of an employee who dies either while in service or after retirement upon completion of not less than 20 years of qualifying service. It is submitted that subsequently the State Government issued another Government order dated 31.03.1982 whereby a new scheme for family pension was introduced. The said scheme came into effect from 01.10.1981 in which substantive change made was in paragraph 3 (ka) whereby it was provided that in case of such employees who passed away while in service after rendering even only one year of continuous service, the dependents thereof would be entitled for family pension.

6. It is further submitted that by means of subsequent order dated 06.06.1984, issued by the State Government, the aforesaid notification was made applicable even in those cases where the employee had passed away prior to 01.10.1981.

7. It is therefore submitted that once Government order dated 31.03.1982 has been made retrospective in operation even upon those employees who passed away prior to 01.10.1981, it is the notification dated 31.03.1982 which would be applicable upon petitioner and since her case would be covered by paragraph 3 (ka), petitioner is entitled for grant of family pension.

8. It is further submitted that the impugned order has been passed in the light of judgment rendered in the Case of **Chandrawati Devi (Smt.) versus State of U.P. and another** reported in **(2010) 3 UPLBEC 2520** whereby grant of such pensionary benefits was rejected.

9. It is submitted that even in the case of **Smt. Phoolmati Devi** (supra), directions have been issued on the basis of the aforesaid judgment in the case of **Chandrawati Devi (Smt.)** (supra) but the aspect that aforesaid judgment of **Chandrawati Devi (Smt.)** (supra) had been overruled by Division Bench of this Court in the case of **State of U.P. and others versus Smt. Shyam Kali and another** reported in **2011 SCC OnLine All 50** has been completely lost sight of.

10. It is submitted that the scheme being beneficial in nature,

widest amplitude is required to be given to the provisions thereof.

11. Learned counsel appearing on behalf of opposite parties have refuted submissions advanced by learned counsel for petitioner with the submission that since petitioner's husband passed away in January, 1977, the case of petitioner would be covered by Clause 24 of Government order dated 17.12.1965. It is submitted that although Government order dated 31.03.1982 has been made retrospective in nature by means of order dated 16.06.1984 but the condition indicated therein is that even for respective application of Government order dated 31.03.1982, the employee or his dependents should otherwise have been eligible for such grant of family pension. It is therefore submitted that since it is Government order dated 17.12.1965 which would be applicable upon petitioner and petitioner not being covered under paragraph 24 thereof, the retrospective application of Government order dated 31.03.1982 would not benefit the petitioner.

12. It is also submitted that neither in Government order dated 31.03.1982 nor even in the order dated 16.06.1984 has the earlier Government order dated 17.12.1965 been rescinded or superseded and would therefore continue to govern such cases where death of the employee has occasioned prior to 01.10.1981.

13. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the factual aspects as indicated hereinabove are admitted.

14. The only question requiring adjudication in this petition would therefore be whether by operation of order dated 16.06.1984, would petitioner be entitled for grant of family pension in terms of Government order dated 31.03.1982 or Government order dated 17.12.1965?

15. With regard to aforesaid question, it is quite evident that had the order dated 16.06.1984 not been issued by the State Government, Government order dated 31.03.1982 would not have been retrospective and would necessarily have applied only to those employees who passed away after 01.10.1981 and in such a situation, petitioner would necessarily have been governed by Government order dated 17.12.1965.

16. However, a perusal of order dated 16.06.1984 clearly indicates that in view of confusion arising with regard to retrospective applicability of Government Order dated

31.08.1982, the State Government has taken a conscious decision for implementation of Government Order dated 31.03.1982 to those employees who passed away even prior to 01.10.1981. It is the construction of the wordings 'यदि अध्यापक के आश्रित को अन्यथा पारिवारिक पेंशन देय हो' as indicated in Government Order dated 16.06.1984, which is creating a hurdle in grant of Family Pension to petitioner.

17. It is the stated case of opposite parties that aforesaid wordings can be construed only to mean that persons such as petitioner would be entitled to grant of Family Pension only in case they were otherwise eligible for such benefit and since it is only Government Order dated 17.12.1965 which is applicable upon petitioner, the otherwise eligibility of petitioner has to be seen only in terms of Government Order dated 17.12.1965 and since petitioner was ineligible for grant of Family Pension in terms of aforesaid Government Order, retrospective applicability of the subsequent Government Order dated 31.03.1982 would be inconsequential.

18. Upon consideration of the wordings of Government Order dated 16.06.1984, it is quite evident that retrospective applicability of Government Order dated 31.03.1982 has been made subject to employee or his dependents being otherwise eligible for grant of such benefits.

19. It is quite evident that Government Order dated 31.03.1982 has not rescinded the earlier Government Order dated 17.12.1965. Nonetheless, it is also evident from a perusal of Government Orders dated 31.03.1982 and 16.06.1984 that the State Government was conveyed a quandary regarding applicability of Family Pension Scheme to persons who were not coming within purview of the same in view of extant Government Orders and service conditions.

20. Government Order dated 16.06.1984 has clearly adverted to such a quandary whereafter it indicates that State Government has taken a conscious decision for retrospective applicability of Government Order dated 31.03.1982. It is noticeable that Government Order dated 31.03.1982 has been made retrospective in its entirety and not with regard to any particular portion thereof.

21. The provisions of Clause 24 of Government Order dated 17.12.1965 relied upon by opposite parties are as follows:-

"24. (1) A family pension not exceeding the amount specified in sub-rule (2) below may be granted for a period of 10 years to the family of an employee who dies either while still in service or after retirement, after completion of not less than twenty year of qualifying service:

Provided that the period of payment of family pension shall in no case extend beyond a period of five years from the date on which the deceased employee would have attained the age of superannuation.

Note. (In case where the qualifying service is less than the prescribed minimum the deficiency should not be condoned"

22. It is relevant that Government Order dated 31.03.1982 in paragraph 3 thereof, has done away with the minimum prescribed service period of 20 years and has in fact indicated that dependents of deceased employees would be entitled for grant of Family Pension where the employee has rendered at least one year's continuous service.

23. Relevant portion of the order is as follows:-

"(क) परिवार पेंशन सेवा में रहते हुये या सेवानिवृत्त के बाद मृत्यु होने पर उस दशा में अनुमन्य होगी जब सेवा निवृत्ति के बाद मृत्यु होने की दशा में शिक्षक मृत्यु के समय कोई प्रतिकर अशक्तता सेवा निवृत्ति या अधिवर्ष पेंशन पा रहा हो या पा रहा होता और सेवाकाल में मृत्यु हो जाने की दशा में यदि उसने कम से कम एक वर्ष की लगातार सेवा जिसमें भत्ता रहित छुट्टी की अवधि, ड्यूटी के रूप में न माना गया निलम्बन तथा *20* वर्ष की आयु से पहले की गयी अवधि सम्मिलित नहीं है पूरी कर ली हो।*"*

24. Paragraph 4 of aforesaid Government Order dated 31.03.1982 reads as follows:-

"(4) सेवारत रहते हुये मृत्यु हो जाने की दशा में यदि मृतक ने कम से कम सात वर्ष की

अधिक सेवा प्रदान की हो तो मृत्यु की तिथि के बाद की तिथि से प्रारम्भिक सात वर्ष या उस तिथि तक उसे जीवित रहने की दशा में *65* वर्ष की आयु प्राप्त कर ली होती, जो भी पहले समाप्त हो, पारिवारिक पेंशन मूल वेतन की आधी अथवा इस योजना के अधीन अन्यथा देय धनराशि का दुगुना, जो भी कम हो के बराबर होगी।"

25. Upon a conjoint reading of paragraph 3 (ka) and paragraph 4 thereof, it is evident that while eligibility for grant of Family Pension has been made available to such employees who have rendered at least one year's continuous service, paragraph 4 pertains to the methods and procedure regarding calculation for grant of such benefits.

26. Thus, it is quite evident that a material change was effected by State Government by notification of Government Order dated 31.03.1982 by bringing down the eligibility of service from twenty years to one year.

27. So far as the case of petitioner is concerned, since petitioner's husband passed away in January, 1977, evidently petitioner's case was required to be seen in light of Government Order dated 17.12.1965 but it is only due to subsequent Government Order dated 16.06.1984 when Government Order dated 31.03.1982 has been made retrospective in application that her case may be required to be seen in that context.

28. It is settled law that where a provision has been enacted or notified which is in the nature of a beneficial provision, widest amplitude is required to be given to such provision for it to achieve the object for which it was notified. Giving a narrow meaning to a beneficial provision even where two results are possible, would naturally defeat the very object for which such a beneficial provision has been enacted.

29. Regarding such a proposition, Hon'ble the Supreme Court in the case of **K.H. Nazar versus Mathew K. Jacob and others** reported in **(2020) 14 SCC 126** has held as follows:-

"11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.

12. In the words of O. Chinnappa Reddy, J., the principles of statutory construction of beneficial legislation are as follows: (Workmen case SCC p. 76, para 4)

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as 'social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds. In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, we had occasion to say: (Surendra Kumar Verma case, SCC p. 447, para 6)

'6. ... Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statues must, of necessity, receive a board interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.' "

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction. It was observed in Shivram A. Shiroor v. Radhabai Shantram Kowshik that the exclusionary

provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council, Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly."

30. The aspect of interpretation of a particular provision as to whether it is to be given a restrictive or a wider meaning has also been considered by Hon'ble the Supreme Court in the case of **X. versus Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another** reported in **(2023) 9 SCC 433**. Relevant paragraphs of the judgment are as under :-

"31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise. Ordinarily, the language used by the legislature is indicative of legislative intent. In Kanai Lal Sur v. Paramnidhi Sadhukhan, Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself". But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illumined by the goal, though guided by the word". Aharon Barak opines that in certain circumstances this may indicate giving "an unusual and exceptional meaning" to the language and words used.

34. In Principles of Statutory Interpretation by Justice G.P. Singh, it is stated that a statute must be read in its context when attempting to interpret its purpose. Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. The treatise explains that:

"For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of "intention". Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell has stated: "The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible." These external aids are also brought in by widening the concept of "context" "

as including not only other enacting provisions of the same statute, but its Preamble, the existing state of the law, other statutes in pari materia, and the mischief which the statute was intended to remedy". In the words of Chinnappa Reddy, J.:"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

35. The rule of purposive interpretation was first articulated in Heydon case in the following terms: (ER p. 638)

"...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth.

And, 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

7. A catena of decisions emanating from this Court, including Kerala Fishermen's Welfare Fund Board v. Fancy Food, Bharat Singh v. New Delhi Tuberculosis Centre, Bombay Anand Bhavan Restaurant v. ESI Corpn., Union of India v. Prabhakaran Vijaya Kumar, settle the proposition that progressive and beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views of a legal provision."

31. From examination of law enunciated in paragraph 35 of the judgment therefore the aspect required to be examined is the law prior to notification of the Government orders at the defect which was sought to be rectified. In the present case, the law prior to notification of the Government Order dated 16.06.1984 clearly excluded the families of all such persons from family pension, who had passed away prior to rendering 20 years of service. The defect therein clearly was with regard to grant of such beneficial provision to families of those persons who passed away prior to rendering such stipulated 20 years of service. The said aspect is clearly indicated in the Government Order and it is this defect which has been sought to be removed in order to protect the livelihood of families who sole bread earner has passed away suddenly even prior to rendering the

stipulated years of service.

32. Upon applicability of aforesaid judgments in present facts and circumstances of the case, it is quite evident that in case Government Order dated 16.06.1984 is considered to have a retrospective applicability of Government Order dated 31.03.1982 only in cases where the employee or his dependents are eligible in terms of Government Order dated 17.12.1965, would give a very restrictive meaning to such a clause and would defeat the very purpose for which Government Order dated 16.06.1984 had been issued since it would exclude from its purview all such persons who have passed away in service without rendering 20 years of service.

33. It is axiomatic that death of a person is a fortuitous circumstance and is not in any individual's hands. There may be cases as in the present case where benefit of a beneficial provision such as Family Pension could not be availed of due to sudden death of the sole bread earner prior to rendering 20 years of service. It is in such circumstances where the sole bread earner has passed away that the provision of Family Pension has been notified so as the dependents of such sole bread earner are not deprived of their livelihood.

34. It is the object and purpose of grant of such a beneficial provision which is required to be considered in the light so as to give maximum benefit of the same.

35. The aspect of retrospectivity of the Government Orders dated 31.03.1982 and 16.06.1984 can be examined in the light of judgment rendered by Hon'ble Supreme Court in the case of **Vijay versus State of Maharastra and others** reported in **(2006) 6 SCC 289** wherein the following had been held:-

"12. The appellant was elected in terms of the provisions of a statute. The right to be elected was created by a statute and, thus, can be taken away by a statute. It is now well settled that when a literal reading of the provision giving retrospective effect does not produce absurdity or anomaly, the same would not be construed to be only prospective. The negation is not a rigid rule and varies with the intention and purport of

the legislature, but to apply it in such a case is a doctrine of fairness. When a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature. The appellant does not and cannot question the competence of the legislature in this behalf."

36. In view of aforesaid, in the considered opinion of this Court, Government Order dated 16.06.1984 cannot be made restrictive once it has itself applied Government Order dated 31.03.1982 retrospectively in its entirety.

37. It is also quite evident that judgment rendered in the case of **Chandrawati Devi (Smt.)** (supra) has thereafter been overruled in **Smt. Shyam Kali** (supra) and was an aspect which was not brought to the notice of coordinate Bench of this Court in the case of **Smt. Phoolmati Devi** (supra), which was the genesis of entire exercise resulting in passing of the impugned order.

38. A perusal of impugned order also does not indicate any consideration of aforesaid aspects particularly the retrospective application of Government Order dated 31.03.1982 by means of subsequent Government Order dated 16.06.2084. The impugned order also does not indicate any show cause notice having been given to petitioner prior to passing of such an order withdrawing a right which had already vested in petitioner.

39. The aspect of adhering to principles of natural justice prior to passing of an order having adverse civil consequences or taking away a right vested has been dealt with by Hon'ble Supreme Court in the case of **D.K. Yadav versus J.M.A. Industries Ltd.** reported in **(1993) 3 SCC 259**. Relevant paragraphs of the judgment are as under :-

"7. The principal question is whether the impugned action is violative of principles of natural justice. In A.K. Kraipak v. Union of India a Constitution Bench of this Court held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of

natural justice by necessary implication from specific provisions in the Act like Sections 25-F; 25-FF; 25-FFF etc. The need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service is completed, the need to dispense with the services may arise. In that situation, on compliance with the provisions of Section 25-F resort could be had to retrench the employees in conformity therewith. Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside."

40. For aforesaid consideration and discussions, impugned order dated 11.05.2016 is hereby quashed by issuance of a writ in the nature of Certiorari. A further writ in the nature of

Mandamus is issued commanding the opposite parties to ensure payment of Family Pension to petitioner as provided vide order dated 03.09.2007 and in continuation thereof. Actual payment thereof and regular payment thereafter shall be ensured within a period of eight weeks from the date a certified copy of this order is served upon opposite party no.2.

41. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 7.8.2024
Satish