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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; J., B.V. NAGARATHNA; J.

CIVIL APPEAL NO. 5114 OF 2022; August 24, 2022

The State of Tripura & Ors. *versus* Smt. Anjana Bhattacharjee & Ors.

Tripura State Civil Services (Revised Pension) Rules, 2009; Rule 3(3) - A conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009, which was based on their financial crunch/financial constraint - The cut -off date has been fixed as 01.01.2009 on a very valid ground i.e., financial constraint - High Court manifestly erred in striking down the Rule 3(3).

For Appellant(s) Mr. Shuvodeep Roy, AOR Mr. Arnav Singh Deo, Adv.

For Respondent(s) Mr. Ravinder Agarwal, AOR

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.10.2017 passed by the High Court of Tripura at Agartala in Writ Petition (C) No. 494 of 2012, by which, the High Court has struck down Rule 3(3) of the Tripura State Civil Services (Revised Pension) Rules, 2009 (hereinafter referred to as the Pension Rules, 2009) and consequently has directed to pay the original writ petitioner the arrears of pension for the period from 01.03.2007 to 31.12.2008, the State of Tripura has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under: -

2.1 That the State of Tripura has enacted/framed the Tripura State Civil Services (Revised Pension) Rules, 2009, issued by the Governor under Article 309 of the Constitution of India. Rule 3(3) of the Pension Rules, 2009 which was under challenge before the High Court, which has been struck down by the High Court by the impugned judgment and order, is as under: -

“3(3) The revised rate of pension within the above limits of minimum and maximum pension shall be computed notionally from 1st January 2006 or, as the case may be, from the date of superannuation/retirement whichever is later. But financial benefit according to this computation will be admissible from 1st January 2009 or from the date of superannuation/retirement whichever is later”

2.2 On the request made by the Government of India to consider adoption and implementation of Revised Pay Structure in UGC System for Teachers in Colleges w.e.f. 01.01.2006 following revision of pay scales of Central Government employees as per 6th Central Pay Commission's recommendations, the State of Tripura issued a notification dated 02.02.2010 and introduced revised pay structure with 2 Band Pay Rs. 15600-39100 and 37400-67000 respectively with appropriate academic Grade Pay and it was specified that arrears would be payable subject to receipt of financial assistance

of 80% from Central Government and that all other allowances to be admissible from 01.01.2009. The State's notification also provided that the pension would be admissible as per Pension Rules for State as amended from time-to-time and the upper ceiling of pension was raised from Rs. 25200 to 38500. The State amended Rule 3(2) of the Pension Rules, 2009 in the year 2010 and the maximum limit of pension was fixed at Rs. 38500.

2.3 That vide letter/communication dated 23.12.2010, the Finance Department clarified that as per Rule 3(3) of the Pension Rules, 2009, pension will be computed notionally and will take effect from date of retirement of a college teacher who retired after 01.01.2006 but financial benefit to be admissible only from 01.01.2009 or date of retirement, whichever is later.

2.4 That respondent No. 1 herein – original writ petitioner retired as Reader-cum-Vice Principal on 28.02.2007 upon attaining age of superannuation. Her pension was computed at Rs. 9,150/- based on her last basic pay of Rs. 18,300/-. That thereafter on revision of pay, her pension came to be revised to Rs. 26,850/- on the basis of revised basic pay of Rs. 53,700/-. However, the revised pay/pension was made admissible and actually paid from 01.01.2009 and from the date of her retirement till 01.01.2009 it was computed notionally. Therefore, the original writ petitioner preferred a writ petition before the High Court initially praying for (i) arrears of salary for the period from 01.01.2006 to 28.02.2007; (ii) arrears of pension for the period from 01.03.2007 to 31.12.2008 on the basis of revised pay scale. At this stage, it is required to be noted that initially there was no challenge made to the validity of Rule 3(3) of the Pension Rules, 2009. However, subsequently, the writ petition came to be amended and prayer for arrears of salary was deleted and the prayer for quashing of Rule 3(3) of the Pension Rules, 2009 was made.

2.5 It was the case on behalf of the original writ petitioner that there is no reasonable excuse to deny the actual benefit of pension for the period from 01.01.2006 to 31.12.2008 inasmuch as 80% of the financial requirement for implementation was to be borne by the Central Government whereas the State Government was to bear merely 20% of the entire requirement for making payment of the arrears of pension for the said period. It was submitted on behalf of the original writ petitioner that such a policy decision being arbitrary and violative of Article 14 of the Constitution of India should be struck down. It was submitted that there must be a reasonable nexus to the object which the policy seeks to achieve.

2.6 That the writ petition was vehemently opposed by the State. A counter affidavit was filed opposing the writ petition in which it was specifically submitted on behalf of the State that due to the financial burden on the State, which the State was not in a position to bear the additional burden of revised pension, a policy decision has been taken to grant the benefit of revised pension notionally from 01.01.2006 to 31.12.2008 and to grant the actual benefit of the revised pension from 01.01.2009 only. It was vehemently submitted on behalf of the State before the High Court that being a policy decision, the same may not be interfered with in a writ petition under Article 226 of the Constitution of India. It was submitted that it is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or

equitable disposition for the purpose of varying, modifying, or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law.

2.7 By the impugned judgment and order, the High Court has not accepted the plea of financial crunch raised by the State and consequently the High Court has struck down Rule 3(3) of the Pension Rules, 2009 being arbitrary and violative of Article 14 of the Constitution of India. Thereafter, the High Court has directed the State to pay the original writ petitioner the arrears of pension (revised pension) from the date of her retirement to 31.12.2008. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, by which the High Court has struck down Rule 3(3) of the Pension Rules, 2009 being arbitrary and violative of Article 14 of the Constitution of India, the State of Tripura has preferred the present appeal.

3. Shri Shuvodeep Roy, learned counsel appearing on behalf of the State has vehemently submitted that due to the financial crunch and considering the fact that there will be heavy financial burden upon the State to pay the actual revision pension from 01.01.2006, which may affect the development of a small State like State of Tripura, a policy decision was taken by the State to grant the benefit of revision of pay scale from 01.01.2009 only and the benefit of revision of pay to be made only notionally from 01.01.2006 to 31.12.2008, which the Hon'ble High Court ought not to have interfered with in exercise of powers under Article 226 of the Constitution of India.

3.1 It is submitted that unless it is found that such a policy decision is arbitrary and/or violative of Constitution, statute or any other provision of law, the High Court is precluded from interfering with the policy decision in exercise of powers of judicial review under Article 226 of the Constitution of India.

3.2 It is further submitted by counsel appearing on behalf of the State that a detailed affidavit was filed on behalf of the State pointing out the financial constraint and/or the financial burden on the State if the arrears of revision of pension is paid from 01.01.2006. However, the High Court has, without any further discussion and without giving any cogent reasons observed that the rationale of financial crunch on the State exchequer has not satisfied the Court at all.

3.3 It is further submitted that the financial burden on the State can be a valid ground to fix a cut-off date for the purpose of payment of revision of pension. Heavy reliance is placed on the decisions of this Court in the cases of **State of Punjab and Ors. Vs. Amar Nath Goyal and Ors.; (2005) 6 SCC 754** and **State of Bihar and Ors. Vs. Bihar Pensioners Samaj; (2006) 5 SCC 65** in this regard.

4. Though served none has appeared on behalf of respondent No. 1, may be because pursuant to the earlier interim order passed by this Court, she has been paid the entire arrears of pension from the date of her retirement. It is required to be noted that the impugned judgment and order passed by the High Court has been stayed by this Court.

5. We have heard learned counsel appearing on behalf of the State at length. We have gone through and considered the impugned judgment and order passed by the High Court. Before the High Court, Rule 3(3) of the Pension Rules, 2009 was under

challenge, which is reproduced hereinabove. Rule 3(3) of the Pension Rules, 2009 has been struck down by the High Court by holding that the same is arbitrary and violative of Article 14 of the Constitution of India. Before the High Court, it was the specific case on behalf of the State that because of heavy financial burden and there being financial constraints, the State is not in a position to bear the heavy burden of additional revised pension and therefore, the State formulated a policy decision to the effect that the revised pension shall be paid from 01.01.2006 to 31.12.2008 notionally and actual revision of pension shall be disbursed from 01.01.2009 only. A detailed affidavit was filed on behalf of the State justifying the above policy decision providing/granting the revision of pay from 01.01.2009 only and to grant the benefit of revised pension notionally from 01.01.2006 or from the date of retirement till 31.12.2008. Before the High Court on affidavit, it was stated, which is also reproduced by the High Court in the impugned judgment and order, as under:-

“However, vide Rule 3 (3) *ibid* Financial benefit was made admissible from 1st January, 2009 or from the date of superannuation/retirement which ever was later. For all other cases, the pension was computed notionally as per revised rates of scale of pay. Since the petitioner retired on 28-02-2007 so her revised pension upto 31- 12-2008 was computed notionally. The claim of the petitioner is to allow her arrears of pension as per revised rates for the period from 01-03-2007 to 31-12- 2008. It is a fact that Financial condition of the State has been passing through turbulent time since the recommendations of the Twelfth Finance Commission. State Government has to depend on Central Government funding for meeting up its Plan and Non-Plan expenditure. The funding by the Central Government is based on the recommendations of the Finance Commission. Finance Commission under estimated State’s projections of Non-plan revenue expenditure which included salaries, pension and interest payment (Non-Flexible and Committed Expenditure). For example, the State Government presented a realistic picture of Rs. 3944.79 crores towards meeting up expenditure towards pension as per revised pay scales. Contrary to it, the Finance Commission assessed a cumulative expenditure of Rs. 2779.09 crores which was Rs. 1165.70 less than the actual assessment by the State Government. 12th Finance Commission calculated pension at Rs. 342.01 crores during the year 2008-09 and Rs. 413.83 crores during the year 2009-10. This is an increase of approximately 9% over 2007-08 and 21% over 2008-09. However, as per actual implication, the expenditure during 2008-09 and 2009-10 has been Rs. 356.43 crores and Rs. 559.89 crores respectively which is 14% and 57% higher than that of previous years. Thus, due to under assessment of the state’s Financial position by the Finance Commission, there has been a shortfall in funding on Non-Plan revenue expenditure. It was now required to make payment of pension without compromising with the State’s Finances on development front. As such Financial benefit towards payment of pension was considered from 01-01-2009. All other cases of retirement falling within 01-01-2006 to 31-12-2008 were allowed pension fixed notionally. Further, payment of arrears of pension will have a huge impact on the State Finances as there are large numbers of retirees during that period. Considering, the constrained financial position of the State, it is not possible to consider further payment of arrears of pension to the similarly situated persons as it would give rise to huge financial burden on the State Exchequer which will disturb the financial equilibrium of the State.”

5.1 However, without giving any cogent reasons, the High Court has observed that the foundation i.e., the financial crunch has not satisfied the Court at all. Only reasoning or actual findings are in paragraph 12 which reads as under:-

“[12] We have thoroughly scrutinized the foundation as projected by the state-respondents by the passage from the additional counter affidavit, as reproduced above. We find from the condition laid

down in the notification dated 02.02.2010 that out of the total financial requirement the Central Government shall bear 80% till 31.03.2010. The period mentioned in the Rule 3(3) of the said rules falls within the said coverage period and as such, what the State Government has projected that for the financial crunch they had been compelled to bring the said amendment in the said pension rules is wholly unacceptable and in contrast to Article 14 of the Constitution of India. The foundation i.e. the financial crunch has not satisfied us at all. Hence, we are of the view that the said Rule 3(3) of the Pension Rules being absolutely arbitrary is liable to be struck down. Accordingly, we strike down the Rule 3(3) of the Tripura State Civil Services (Revised Pension) Rules, 2009. The respondents No. 2, 3 & 4 are directed to pay the arrear pension for the period from 01.03.2007 to 31.12.2008 to the petitioner within a period of 3(three) months from today, else the said amount shall carry interest @6% per annum from 01.04.2010.”

5.2 When specific statistics were provided before the High Court justifying its policy decision and the financial crunch/financial constraint was pleaded, there was no reason for the High Court to doubt the same. As such the findings recorded by the High Court in the impugned judgment and order is contrary to the averments made in affidavit filed on behalf of the State Government. From the affidavit filed before the High Court reproduced hereinabove, we are satisfied that a conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009, which was based on their financial crunch/financial constraint.

5.3 Whether the financial crunch/financial constraint due to additional financial burden can be a valid ground to fix a cut-off date for the purpose of granting the actual benefit of revision of pension/pay has been dealt with and/or considered by this Court in the case of **Amar Nath Goyal** (supra). In the aforesaid decision, it is observed and held by this Court that financial constraint can be a valid ground for fixation of cut-off date for grant of benefit of increased quantum of death-cum-retirement gratuity. In paragraphs 26, 32 and 33 of the said judgment, it is observed and held as under: -

“26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

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32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In *State of Rajasthan v. Amrit Lal Gandhi* [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782] this Court went so far as to note that:

“Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-1986 for 1-1-1990.” [Ibid., at AIR p. 784, para 17 : SCC p. 348, para 17 (emphasis supplied).]

33. More recently, in *Veerasamy* [(1999) 3 SCC 414 : 1999 SCC (L&S) 717] this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis [*Supra* fn 2 SCC at p. 421 (para 15).] . In that case, the

pension scheme applied differently to persons who had retired from service before 1-7-1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.”

5.4 In the aforesaid decision this Court after considering the earlier decisions of this Court in the cases of **State of Punjab Vs. Boota Singh; (2000) 3 SCC 733** and **State of Punjab Vs. J.L. Gupta; (2000) 3 SCC 736**, it is specifically observed and held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.

5.5 In the subsequent decision in **Bihar Pensioners Samaj** (supra), the decision in the case of **Amar Nath Goyal** (supra) is followed and it is observed and held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. It is further observed and held by this Court in the aforesaid decision that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.

6. While applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that in the instant case before us, the cut-off date has been fixed as 01.01.2009 on a very valid ground i.e., financial constraint. Therefore, the High Court manifestly erred in striking down the Rule 3(3) of the Pension Rules, 2009 being arbitrary and violative of Article 14 of the Constitution.

7. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court striking down Rule 3(3) of the Tripura State Civil Services (Revised Pension) Rules, 2009 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. However, it is observed that as respondent No. 1 has already been paid the arrears from the date of her retirement pursuant to the interim order passed by this Court, the same shall not be recovered from her. However, striking down of Rule 3(3) of the Tripura State Civil Services (Revised Pension) Rules, 2009 by the impugned judgment and order is hereby quashed and set aside. The present appeal is accordingly allowed. In the facts and circumstances of the case there shall be no order as to costs.

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