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DR. R.N. RAJANNA

v.

STATE OF KARNATAKA AND ANR.

NOVEMBER 7, 2003

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Service Law :

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Karnataka Civil Services Rules—Rules 285 and 296—Pension—Fixation of—For employee taking voluntary retirement while on deputation—Claim for fixation at the rate of 50% of the emoluments relying on Government Orders and for taking into account deputation allowance for fixation of quantum of pension—Claim denied by Department, Tribunal and High Court—On appeal, held: Not entitled to benefit of the Government Orders as the same were

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issued in respect of particular cases and not for all pensioners as a policy decision—As per Rules Deputation Allowance not to be taken into account for computing quantum of pension.

E

Appellant, who was initially appointed with State Government, took voluntary retirement while on deputation with a Public Sector Undertaking. His pension was fixed. He approached departmental authorities seeking re-fixation of his pension at the rate of 50% of the emoluments drawn at the time of retirement relying on 3 Government Orders. He contended that for purposes of fixation of the quantum of pension even deputation allowance should be taken into account. The

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representations to the Departmental authorities, application and review petition to the State Administrative Tribunal and writ petition before High Court were dismissed on the ground that the appellant was not covered by the Government Orders as the same were not made to govern the claims of all petitioners as policy decision but was made only in respect of particular cases. High Court also opined that as per Rule 296 of Karnataka

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Civil Services Rules, the emoluments for determining quantum of pension does not include pay and allowances drawn from a source other than the consolidated fund of the State. Hence the present appeal.

HELD : 1. A careful perusal of the three government orders would

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belie the claim of the appellant and the view taken by the authorities below and the High Court that the appellant cannot take umbrage under those orders and that the Government Orders were not made to govern the claims of all pensioners as a policy decision but those who were concerned in the case filed before the Tribunal who were granted relief by the Tribunal in particular cases only and that too subject to the orders that may be ultimately passed by this Court on the appeal said to have been filed against those orders, seem to be quite in accordance with law and does not call for interference. Though, the word 'retirement' may take within its fold all or any kind of retirement when the same is used in the context of 'superannuation' or retirement by way of superannuation, in service parlance the well settled meaning it already acquired and even in the normal course to be assigned is that it has relevance and relates to discharge from a post on account of the age fixed for such retirement, uniformly for all or particular class or category of service holders. The plea to the contrary cannot be justified and all the more so in the present case, in the context of the specific language as well as the purpose of the orders made by the Government. [385-C-F]

2. Rule 285 read with Rule 296 of the Karnataka Civil Services Rules does not lend support to the claim for taking into account deputation allowance in computing the quantum of pension of the appellant. No exception could be taken to this view taken by the High Court as well.

[385-G; 386-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8665 of 2003.

From the Judgment and Order dated 17.6.2002 of the Karnataka High Court in W.P.No. 26400 of 1998.

D.P. Chaturvedi for S.N. Bhat for the Appellant.

Sanjay R. Hegde for the Respondents.

The Judgment of the Court was delivered by

D. RAJU, J. Leave granted. The above appeal has been filed challenging the order of a Division Bench of the Karnataka High Court dated 17.6.2002 in Writ Petition No. 26400 of 1998 (S-KAT), rejecting the grievance sought to be made against the orders of the Karnataka Administrative Tribunal at Bangalore dated 19.12.1997 and 27.3.1998 in the matter of re-fixation of the appellant's pension, which the appellant unsuccessfully attempted to have

A before the Departmental Authorities and the Tribunal below.

The appellant claims to have joined services of the State Government on 17.12.1953 in the Animal Husbandry Department and his services were said to have been lent to Agricultural Dairy Finance Corporation during 1971-1977 and thereafter during 3.8.1978 to 8.4.1981 to the Karnataka Dairy Development Corporation (a Public Sector Undertaking of the Karnataka State in the field of Dairy Industry) for being appointed as Officer on special duty on foreign service basis. Even while on such deputation the appellant took voluntary retirement on 8.4.1981 at the age of 54 years, 10 months and 21 days after rendering a qualifying service of 27 years, 3 months and 21 days, when he was holding the post of Deputy Director, Animal Husbandry on deputation, with his basic pay Rs. 1600/- per month, which subsequently came to be revised as Rs. 1825/- per month. Thereupon the pension of the appellant was said to have been fixed initially at Rs. 670 per month and subsequently by order dated 20.11.91 at Rs. 755 per month.

D While matters stood thus, the appellant sought to take coverage under the orders of the State Government dated 14.12.1983, 20.3.1986 and 19.1.1994 to assert a claim for pension at the rate of 50% of the emoluments drawn at the time of retirement on the basis that having been retired prior to 1.12.1985 was entitled to have his pension re-fixed with particular reference to 60 completed six monthly periods in terms of the last of the three government orders made on 19.1.1994. The representations made therefore on 15.6.94 to the 2nd respondent as well as on 18.3.1996 to the first respondent did not meet with success and came to be rejected in March 1996 and 5.9.1996, respectively. Not satisfied, the appellant went before the Tribunal and his Application No. 4628/97 as well as the subsequent Review Application No.53 of 1998 came to be also rejected on 19.12.1997 and 27.3.1998 respectively. **F** The High Court also repelled the challenge made in Writ Petition No. 26400 of 1998 and hence, the present appeal.

On behalf of the appellant, while reiterating the grievance espoused before the authorities and the High Court it was contended that the appellant was entitled to the benefit of the Government order dated 19.1.1994 under which he claims to be eligible for availing of the benefits of the earlier government orders dated 14.12.1983 and 20.3.1986. It was also contended that the benefit of liberalized pension formula in respect of government servants who retired voluntarily prior to 1.12.1985 before attaining the age of 55 **H** years, if denied to persons like appellant it would amount to transgression of

the law declared by this Court in the decision reported in *D.S. Nakara and Ors. v. Union of India*, [1983] 1 SCC 305. The further contention urged was that for purposes of fixation of the quantum of pension, the pay drawn by the appellant at the time of his retirement, inclusive of foreign service allowance as well and not merely his basic pay. *Per contra*, on behalf of the respondents, drawing inspiration from the orders of the authorities, the Tribunal and the High Court, it was urged that the reasons assigned for rejecting the claim of the appellant are well merited and do not suffer from any infirmity whatsoever to call for interference in this appeal.

The submissions on either side have been carefully considered in the light of the relevant government orders, rules and decisions of Court, but they do not deserve countenance in this appeal for according any relief in favour of the appellant, as prayed for. A careful perusal of the three government orders would belie the claim of the appellant and the view taken by the authorities below and the High Court that the appellant cannot take umbrage under those orders and that the orders dated 19.1.1994 was not made to govern the claims of all pensioners as a policy decision but those who were concerned in the case filed before the Tribunal who were granted relief by the Tribunal in Application No. 509 of 1987 and Application No. 1803 of 1990, only and that too subject to the orders that may be ultimately passed by this Court on the appeal said to have been filed against those orders, seem to be quite in accordance with law and does not call for interference. Though, the word 'retirement' may take within its fold all or any kinds of retirement when the same is used in the context of 'superannuation' or retirement by way of superannuation, in service parlance the well settled meaning it already acquired and even in the normal course to be assigned is that it has relevance and relates to discharge from a post on account of the age fixed for such retirement, uniformly for all or particular class or category of service holders. The plea to the contrary cannot be justified and all the more so in this case. In the context of the specific language as well as the purpose of the orders made by the government on 19.1.1994.

Equally bereft of merit is the claim for taking into account, the deputation allowance also in computing the quantum of pension of the appellant. As rightly held by the High Court, Rule 285 read with Rule 296 of the Karnataka Civil Services Rules does not lend support to such a claim. As pointed out by the High Court Rule 296, while enumerating the items of payments which could normally be taken to constitute the 'emoluments' for determining the quantum of pension the rule specifically mandates—"includes the following,

A but does not include Pay and Allowances drawn from a source other than the Consolidated Fund of the State”—and consequently, no exception could be taken to this view taken by the High Court as well.

Consequently, the appeal fails and shall stand dismissed, but with no order as to costs.

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K.K.T.

Appeal dismissed.