

A

UNION OF INDIA AND ORS.

v.

A.J. FABIAN

DECEMBER 9, 1996

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C *Service Law—Pension—Railway employee—Superannuation—Switching over from provident fund scheme to pension scheme—Option given to employee six times not availed by him—After a very long time request made by employee to permit him to opt pension scheme—Rejection of request—Petition filed by employee allowed by Tribunal—Appeal preferred by Union of India—Held employee was not entitled to benefit of pension scheme—Order of Tribunal set aside.*

D *Krishena Kumar & Ors. Etc. v. Union of India & Ors., [1990] 3 SCR 352, relied on.*

D.S. Nakara & Ors. v. Union of India, [1983] 1 SCC 305 and V.K. Ramamurthy v. Union of India & Anr., [1996] Suppl. 4 SCR 583, referred to.

E *P. Lakshmana Rao v. Union of India, SLP (C) No. 17730/95 decided by Supreme Court on 2.4.1996, distinguished.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 16861 of 1996.

F From the Judgment and Order dated 29.9.95 of the Central Administrative Tribunal, Ernakulam in Kerala in O.A. No. 686 of 1995.

N.N. Goswami, A.D.N. Rao and Arvind Kr. Sharma for the Appellants.

G Mrs. K. Sarada Devi for the Respondent.

The following Order of the Court was delivered :

Delay condoned. Leave granted.

H This appeal by special leave arises from the order of Central Ad-

ministrative Tribunal, Ernakulam Bench passed in O.A. No. 686/95 on September 29, 1995. A

The respondent was a railway employee. He retired from service, on attaining superannuation, on April, 21, 1972 as Chief Inspector of Communications. Consequent on the switching over from the Provident Fund Scheme to the Pension Scheme, options had been given to the employees. In fact option for six times was given to the respondent, but he did not avail of the same. However, an application had been made on December 19, 1993 requesting the appellants to permit him to opt to the Pension Scheme which was rejected by the Government by order dated January 19, 1994. Thereafter, the respondent filed O.A. in the Tribunal which, in the impugned order has allowed the petition relying upon the judgment of the CAT, Bombay Bench in O.A. against which SLP No. 5973/88 was filed and the same was dismissed by this Court *in limine*. The controversy is no longer *res integra*. A Constitution Bench of this Court in *Krishena Kumar & Ors. Etc. v. Union of India & Ors.*, [1990] 3 SCR 352 had held that since the retirees with Provident Fund Scheme and those with pension scheme do not have the same pay-scales, there is no discrimination in matter of extending the benefit of pension scheme since they did not exercise the option within given time. The pension scheme having been formulated and options having been given to the retired employees after failure to avail of the remedy, they are not entitled to come back for the benefit of pension. It was held that it is not violative of Article 14 of the Constitution. This Court had distinguished the decision of the Constitution Bench decision in *D.S. Nakara & Ors. v. Union of India*, [1983] 1 SCC 305 and accordingly allowed the appeal and held that they are not entitled to those benefits. The same question was again considered by this Court in *V.K. Ramamurthy v. Union of India & Anr.*, [1996] Suppl. 4 SCR 583. Therein this Court surveyed the entire case law and held thus :

"In view of the aforesaid series of decisions of this Court explaining and distinguishing *Nakara's* case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time. The decision of *Ghansham Das* case on which the learned counsel for the petitioner placed reliance, the Tribunal relied upon *Nakara's* case and granted the relief

A without considering that Nakara's decision has been distinguished
in that Constitution Bench case of *Krishena Kumar* and other cases
referred to supra. Therefore, dismissal of the Special Leave Peti-
tion against the said judgment of the Tribunal cannot be held to
be law laid down by this Court, in view of what has been stated in
B *Krishena Kumar's* case. The other decision of this Court, in the
case of R. Subramanian (Writ Petition (Civil) No. 881 of 1993) the
Court merely relied upon the dismissal of Special Leave Petition
against the judgment of Tribunal in *Ghansham Das* case and
disposed of the matter and, therefore, the same also cannot be
held to be a decision on any question of law."

C Accordingly the Writ Petition was dismissed.

It is contended by Smt. Sarada Devi, learned counsel for the respon-
dent, that in *Krishena Kumar's* case this Court had upheld the decision of
D the Bombay Bench which was followed by Ernakulam Bench and that
therefore, the view taken by the Tribunal is correct in law. We fail to
appreciate the contention. This Court having laid down the law distin-
guished that judgment only on facts, but that is not to say that the view
expressed by the Bombay Bench was approved by this Court in *Krishena
Kumar's* case. Therefore, it does not form any basis to be followed. On the
E other hand, *Krishena Kumar's* ratio binds the Tribunal as law under Article
141 and should be followed.

It is then contended that since the respondent died and the legal
representatives of the retiree would be entitled to the benefits, it would not
be a case warranting interference. In support thereof, she relies upon an
F order passed by this Court in C.A. @ SLP (C) No. 17730/95 titled *P.
Lakshmana Rao v. Union of India*, on April, 2, 1996. In that case on the
basis of the concession made by the counsel for the Union, that order came
to be passed. Under those circumstances, we do not think that it is case
entitling the respondent to the same benefit.

G The appeal is accordingly allowed. The order of the Tribunal stands
set aside, but in the circumstances, without costs.

T.N.A.

Appeal allowed.

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