

(2000) 07 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20123 of 1994 and Batch

A. Narsing Rao and others

APPELLANT

Vs

State of Andhra Pradesh and another

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2000) 5 ALD 551 : (2000) 5 ALT 537

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : M/s. Y. Suryanarayana, D.V. Sitharama Murthy, V. Jagayya Sarma, K. Ramakantha Reddi, SC for Osmania University, J.S. Harinath, for SC for Andhra University and Government Pleader for Higher Education, for the Appellant;

Judgement

1. All the writ petitions can be disposed of by a common judgment.
2. The matter relates to the applicability of Liberalised Pension Rules, 1992 for the University Teachers.
3. The petitioners are the retired Readers and Professors of Osmania University. All of (hem joined in service after 1-4-1953. They retired from service after attaining the age of 60 years on various dates between 1986 and 1990. The petitioners were governed by A.P. Liberalised Pension Rules, 1961, and they were in receipt of pension as fixed under the said rules namely they were entitled for the pension calculated 33/80 on average emoluments of 10 months ending with the month of retirement subject to maximum of Rs.1,000/-. Thus a ceiling in pension was fixed. The enhancement of pension to the teachers of the Universities under the control of Education Department was under consideration of the Government and the Government decided to permit the Universities to provide more liberalised pension and pensionary benefits. Accordingly, it issued G.O. Ms. No.241 Education (UE.2) Department, dated 30-6-1992 permitting all (he Universities under the control of Education Department to frame Rules for providing more liberalised provision for fixing the pensionary benefits as

indicated in the said G.O. The G.O. required the Universities to frame the Rules in two parts namely Part-A and Part-B giving option. Accordingly, Universities framed the draft Rules and the Government in G.O. Ms. No.276 dated 2-12-1993 approved the Pension Rules to the teaching staff of the Universities. The Government also issued G.O. Ms. No.277, dated 2-12-1993 stipulating that the Rules shall not be applicable to those who retired on or before 31-3-1992. However, it was proposed to give them the benefit of the Rules to such pensioners family, pensioners insofar as revision of pension and family pensions are concerned. Thus, the petitioners who were retired before 1-4-1992 were sought to be eliminated from the applicability of the G.O. and they were sought to be given the benefit of revision of pension and family pension only. It is stated that the teachers in Osmania University, who entered service prior to 1-4-1953 and who retired thereafter filed WP No.4044 of 1988 seeking application of 1980 Pension Rules with effect from 1-1-1978. The writ petition was allowed on 24-4-1988 and writ appeal filed by the State Government was also dismissed on 10-3-1989. Thus, the teachers of the Osmania University who were appointed prior to 1-4-1953 were getting the pension calculated on the basis of 60 years with ratio of 33/66. It is also stated that the teachers recruited along with the petitioners after 1-4-1953 and who retired after 1-4-1992 got the benefit of the new Rules. Thus, teachers, who retired prior to 1-4-1992 were denied the benefit. It is stated that the denial of the benefit of Liberalised Pension Rules, 1992 to the teachers, who were retired prior to 1-4-1992 is highly arbitrary and discriminatory and violative of the Articles 14 and 16 of Constitution of India. It is also stated (hat cut off date as 1-4-1992 has no rational and there is no reasonable nexus to the object sought to be achieved. All the teachers, who retired prior to or after 1-9-1992 or who entered the service prior to 1-4-1953 were given the benefit of Liberalised Pension Rules, 1961 and all such teachers formed a homogeneous group and there cannot be further split in the homogeneous group. The classification was not founded on the intelligible differentia and that there is no rational nexus to the objects sought to be achieved. The petitioners heavily relied on the decision of the Supreme Court reported in D.S. Nakara and Others Vs. Union of India (UOI), , V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, and the judgment of this Court reported in The A.P. Non-Govt. Retired Teachers Association and Others Vs. The State of A.P. and Another, and the decision of the learned single Judge of this Court in a Batch of writ petitions in WP No.5834 of 1981 and Batch, dated 2-4-1987.

4. The learned Government Pleader and the learned Standing Counsel for the Osmania University and Andhra University submit that the writ petitions itself are not maintainable. The petitioners have already exercised option in the Revised Pension Rules, 1992 and they have already received the arrears of pension. Therefore, it is not open for them to challenge the rules as discriminatory. The ratio laid down by the Supreme Court in D.S. Nakara 's case (supra) is not applicable to the facts of the present case. With regard to the Osmania

University, it is stated in the counter that for the teachers appointed prior to 1-4-1953 there was no pension scheme in the University upto 30-9-1971. All the teachers were governed by the Contributory Provident Fund and they were not entitled for any pension. Thereafter, in the place of Contributory Provident Fund, the pension scheme was introduced and the provisions of A.P. Liberalised Pension Rules, 1961 and Family Pension Rules, 1964 was made applicable to such teachers. According to the A.P. Liberalised Pension Rules, 1961 pension was calculated @ $33/80 \times$ average gross of 10 months emoluments subject to maximum of Rs.1,000/-. Subsequently, the Revision of pay scales took place and they were implemented in 1988. Thereafter, Government introduced Pension Rules for those who are in service on 1-4-1992 and under Model Pension Rules, 1992. The petitioners whose pension had a ceiling of Rs.1,000/- has been removed by virtue of the 1992 Revised Rules and thus they got relief of revision of pension. The principles laid down in D.S. Nakara's case (supra) is not applicable and it is always open for the State Government to fix the different dates for implementation of the different schemes for conferring the benefit on the employees.

5. The learned Government Pleader submits that the decision in D.S. Nakara's case (supra) has been considered by the Supreme Court in catena of decisions and the Supreme Court has clearly distinguished the proposition in subsequent decisions and thus he relies on the decisions of the Supreme Court reported in State of Rajasthan and another etc. Vs. Amrit Lal Gandhi and others etc., , State of Haryana and others Vs. Rai Chand Jain and others, etc. etc., , Rabindranath Mukhopadhyay and Another Vs. Coal India Ltd. and Another, , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , State of W.B. Vs. Monotosh Roy and Another, , and Tamil Nadu Electricity Board v. R. Veerck\wmy, 1999 (3) Supreme 289.

6. The issue that arises for consideration is whether the petitioners are entitled for the benefit of Liberalised Pension Scheme, 1992 on par with those who retired after 1-4-1992?

7. It is not disputed that the petitioners are getting pension as fixed under the Pension Rules, 1961, with a ceiling of Rs. 1,000/- per month. The Government has been considering the question of introducing more liberalised pension to the teaching staff in the Universities. Accordingly, a decision was taken to permit the Universities to provide more Liberalised provision for the fixation of the pensionary benefits. Thereafter, the Government issued G.O. Ms. No.241, dated: 30-6-1992, wherein it had permitted all the Universities under the control of the Education Department including Jawaharlal Nehru Technological University to introduce fresh Pension Rules to provide for more liberalised provisions for the fixation of pensionary benefits as indicated in the said G.O. The direction given to the Universities are contained in para 3 and the relevant portion of the said G.O. is extracted below:

"3. The Rules to be so framed by each University shall be in two parts viz., Part

"A" and Part "B". The rules shall further provide that the teaching staff of the Universities, shall within the prescribed period, opt for one of the following:

(i) to be governed by Part "A" of the new Rules which shall provide for qualifying service only up to 58 years of age; as described in para (4) below; or

(ii) to opt for Part "B" of the new Rules, which shall take into account service up to the age of 60 years, but where the pension fixation will be done with the existing formula of 33/80 of the average emoluments, with no maximum limit of Rs.1,000/- per month.

4. Part "A" of the proposed Rules shall contain the following provisions:

(1) Pension would be calculated on the basis of qualifying service up to the month in which the teacher completes 58 years of service. Similarly, average emoluments would also be calculated on the emoluments drawn during the relevant period ending with the said month.

(2) Service over and above 58 years, in any case shall not count as qualifying service and it shall be treated as "Just Service", not qualifying in any manner for pensionary benefits.

(3) Those who retire with not less than 10 years of qualifying service shall be eligible for service pension.

(4)(i) Service pension may be 33/66th of the average emoluments without any monetary limit on pension, for those who have completed 33 years of qualifying service before attaining the age of 58 years.

(ii) Average emoluments shall be determined with reference to the emoluments drawn by University teacher during the ten months of his service, ending with the month in which he attained the age of 58 years. The emoluments shall include only basic pay and shall not include any type of special pay or personal pay.

(iii) Where the qualifying service is less than 33 years and more than 10 years, pension admissible would be proportionately less.

(5) The proposed rules under Part "B" shall be as detailed under item (ii) of Para.3.

(6) The benefit of the above rules shall be given not only to all the teachers presently in service with the said Universities, but shall also be extended to pensioners living as on 1-4-1992.

(7) The proposed Rules shall come into effect from 1-4-1992.

(8) The said Universities are requested to prepare draft Rules on the above basis and issue the same according to statutory provisions, after obtaining the concurrence of the Education and Finance Departments in the Secretariat.

(9) In order to help in the refixation of pensions of existing pensioners, the Universities are also requested to take action to prepare and issue Ready Reckoners, with the prior concurrence of Education and Finance Departments.

(10) This order issues with the concurrence of Finance and Planning (FW.Pen.I) Department vide their U.O. No.D-92/ 6-066/95/A2/Pen.I/92, dated 19-6-1992."

From para 6 of the said G.O., it is clear that the benefit of the Rules shall also be given not only to all the teachers who are presently in-service in the said Universities, but it is also extended to the pensioners living as on 1-4-1992. Thus, the benefit was also conferred on the teachers, who were retired and living as on 1-4-1992. The Rules so framed were directed to be made effective from 1-4-1992. The Universities were directed to send the draft Rules on the basis of the guidelines issued in G.O. Ms. No.241 for concurrence of the Government. After the draft Rules were submitted by the Universities, the Government issued G.O. Ms. No.276 dated 2-12-1993 approving the Pension Rules to the teaching staff of the Universities giving effective from 1-4-1992 and the Universities referred to above were requested to implement the Pension Rules as stipulated in the said G.O. to the teaching staff in all the Universities. But, however, the Government issued G.O. Ms. No.277, dated 2-12-1993 stating that the Model Pension Rules for teachers approved by the Government would be applicable to the University teachers who were in service as on 1-4-1992, who entered service on or after 1-4-1992 and who retired on or after 1-4-1992. Thus, the Rules are not made applicable to those who retired on or before 31-3-1992, but in lieu of the applicability, the benefit of revision of pension was allowed to be obtained. The said G.O. is extracted for proper appreciation of the case.

"2. These rules are not applicable to those who retired on or before 31-3-1992. However, it is proposed to give the benefit of such rules to such pensioners/ Family Pensioners insofar as revision of pension and family pension are concerned.

3.1 Government hereby permit the Universities to issue orders in respect of pensioners who retired on or before 31-3-1992 and who are also surviving as on 1-4-1992 insofar as revision of Pension and family pension are concerned. A copy of the model order now approved is at Annexure-I. The pension shall be revised under this order with effect from 1-4-1992.

3.2 These orders shall be applicable only to those who are governed by the A.P. Liberalised Pension Rules, 1961. These orders shall not apply to retired employees who are governed by any other pension rules or who are covered by contributory provident fund schemes and are not getting pension.

3.3 Financial Assistance/Family Pension sanctioned under any other rules or any other executive order will not fall within the purview of this order.

4.1 Retirement Gratuity in respect of the Pensioners who have retired on or before 31-3-1992 shall not be revised under this Order.

4.2 The Pensioners shall not be entitled to commute any portion of the difference

in pension now admissible with effect from 1-4-1992.

5.1 The pension rules provide for an option to be exercised for Part "A" or Part "B" of the rules. The pensioners who are eligible under this Order shall similarly have an option to choose revision of pension/family pension as per the provisions of Part "A" or Part "B" of the said pension Rules issued by the University.

5.2 The option is for getting both pension and family pension fixed according to the provisions of one part and it would be possible for the pension to be revised according to the provisions of the other part of the pension rules and the family pension to be fixed in respect of the same pension shall be according to the option given to that part of the pension Rules.

6.1 If provisions of Part "B" are invoked, the pension would be the same as earlier calculated with reference to the Andhra Pradesh Liberalised Pension Rules, 1961, but the Pension Rules will get the benefit of the removal of the maximum limit on the pension with effect from 1-4-1992.

6.2 The family pension would be the same as earlier calculated with reference to the Andhra Pradesh Liberalised Pension Rules, 1961, A.P.G.S.(FP) Rules, 1964 as the case may be, but the family pensioners will get the benefit of the removal of the maximum limits on the family pension with effect from 1-4-1992.

7. While calculating the revised pension/family pension, the various award hoc increases or rates or Dearness Relief sanctioned from time to time, between the date of retirement and 31-3-1992 should be taken into account for the purpose of payment of difference w.e.f. 1-4-1992.

8. This order issues with the concurrence of Finance and Planning (Fin.Pension.I) Department, vide their U.O. No.228/ A2/Pen.I/93, dated 30-11-1993. Consequent on the approval of the Universities issued Orders bringing the Pension Rules 1992 with effect from 1-4-1992 on the same lines as mentioned in G.O. Ms. No.277."

8. The grievance of the petitioners is that the petitioners were treated as a separate category, even though they fall within the category of pensioners. Discriminating pensioners who retired prior to 1-4-1992 and after 1-4-1992 has no nexus to the object sought to be achieved. In G.O. Ms. No.241, it was categorically stated in Para 6 that they shall apply to in-service teachers and also the pensioners living as on 1-4-1992. Thus the G.O. itself covered the teachers as homogeneous clause. But, however, in G.O. Ms. No.277 dated 2-12-1993, the Government clarified that the Rules are applicable only to those who retired on or after 31-3-1992 while directing the Universities to frame the Pension Rules in G.O. Ms. No.241 it is categorically stated that it shall have two parts namely Part-A and Part-B. The said options were given to the teaching staff to opt for one of the either Part-A or Part-B. If teaching staff opts for Part-A of the new Rules, the qualifying service will be reckoned only upto the 58 years of age and service

pension will be fixed on the basis of 33/66 of the average emoluments without any monetary limit on pension provided they have completed 33 years of qualifying service before attaining the age of 58 years failing which they will get proportionate pension. However, in respect of the option Part-B, in the new Rules the service upto the age of 60 years shall be taken into account and the pension will be fixed with the existing formula of 33/80 of average emoluments with no maximum limit of Rs. 1,000/- per month. Thus two options are given under the Rules. If one opts Part-A, his pension is reckoned on the basis of the qualifying service upto the age of 58 years with a pension formula of 33/66 multiplied by years of service. But, however, if one opt for Part-B, the pension is calculated on the basis of 33/80 without ceiling of pension. Further, the retirement gratuity in respect of the pensioners, who retired on or before 31-3-1992 are not eligible for revision nor are they entitled for commutation of any difference in pension. Thus, it is seen that the benefit of new Pension Rules as far as the petitioners are concerned, is only confined to removal of ceiling and net other benefits such as revised gratuity and commutation, while those who retired after 1-4-1992, the said benefits are made available. Even though option is provided under Part-A and Part-B, the petitioners in effect have no option to exercise as (hey retired at the age of 60 years and they are neither entitled for differential gratuity or commutation consequent on the revision of pension except the removing the ceiling.

9. The learned Counsel for the petitioners submit that discrimination is writ at a large. There cannot be two retirement ages, one for the purpose of retirement from service and another for the purpose of calculation of pension. Therefore, the pension has to be calculated on the basis of 33/66. Even in respect of the teachers who retired at the age of 60 years confining the benefit of pension at 33/66 to the persons, who retired at 58 years is wholly discriminatory and unjust, I am not persuaded to accept this contention. Option is left to the teachers either to opt for Part-A or Part-B. If the teachers, who are the pensioners, are not inclined to opt for Part-B, it is open for them to opt for Part-A. This option is available to all the persons and whichever is beneficial he is entitled to opt. But, the question in the instant case is that no option in effect is given to the pensioners, who retired prior to 1-4-1992. In effect they were necessarily asked to opt for Part-B. Thus, the benefits as are available to Part-A optees were denied to the petitioners by virtue of their having been retired at 60 years of age. The more years of age results in less pension and thus is arbitrary and offends Article 14 of Constitution of India.

10. It is not in dispute that all the petitioners had opted for re-fixation of pension in Part-B. It is manifest from the form, which is extracted below;

"Form for exercising option under the New Pension Rules of 1992 for those who retired prior to 1-4-1992.

In accordance with the provisions of the G.O. Son of/ Wife of..... holder of P.P.O. No. Opt for re-fixation of my pension in the light of the Part B of the

Pension Rules of University Teachers, 1992 as per actual calculation with reference to service and other records, in full and final settlement of the amount of Pension, I am entitled per mensem.

I undertake to refund the amount of overpayment if any, made to me on this account, which may come to Notice at a later date.

Postal Address

Signature of the Pensioner

Name (in Block Letters)

P.P.O. No.

Name of the Accounts Officer"

Where as in case of other the form is different which is in the following term:

"Form for exercising option under University Order No.

I holding the post of..... in the office of..... do hereby want revision as per order and want revision of pension/Family Pension as per the provisions Part

The option hereby exercised is final and will not be modified.

Date:.....

Station:

Signature

Name:

Designation

Office in which employed"

From the above it is clear that there was other alternative to the petitioners except to opt for Part-B. But, in respect of the other persons, to whom the Rules were made applicable option was given either to opt for Part-A or Part-B. Thus, it has to be seen that there is no real option available to the petitioners who retired prior to 1-4-1992 at the age of 60 years.

11. In D.S. Nakar's case (supra), the Constitution Bench in the aforesaid case, speaking through D.A. Desai, J., had to consider the question of a cut-off date found in the pension scheme which was uniformly applicable to all the Central Government employees who had formed one class at the time of retirement and who were entitled to pension. The question was whether the amount of pension which was computed for them in the light of the available formula could have been further enhanced on the basis of a subsequent more beneficial formula and whether it could be denied only on the ground that they had retired prior to the

date on which such enhanced computation of pension was made available to the pensioners. In the light of the aforesaid fact situation, it was observed that all employees governed by the pension scheme and had become eligible to earn pension at the time of their retirement formed one class. It was held that such a cut-off date for granting additional benefits to only some of the pensioners in the same class of employees could not be countenanced on the touchstone of Article 14 of the Constitution of India. While considering the scope of Article 14 of Constitution of India with reference to various decisions reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, ,* and *In Re: The Special Courts Bill, 1978, ,* the Supreme Court observed as follows:

"15. Thus the fundamental principle is that Article 14 forbids class Legislation but permits reasonable classification for the purpose of Legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

Delving on the meaning of pension, the Supreme Court observed at Para 31 as follows:

"From the discussion three things emerge (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

The contention in that case was that the scheme was wholly applicable to the petitioners. But the benefit was made to those who retired from service after a certain dates and denied to those who retired prior to the specified date and thus it was submitted that the scheme must be uniformly introduced for all the pensioners for the purpose of computation of the pension irrespective of the date of retirement, subject to only condition that he was governed by 1972 Rules. The Supreme Court thus held that if the choice of the date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and the tendency of dividing the otherwise homogeneous class, the Supreme Court read down the

provision so as to make eligible the persons who retired prior to the specified date.

12. In A.P. Non-Government Retired Teachers Association's case (supra), the Division Bench held that the classification of teachers into two categories on the basis of the date of extension of operation of the A.P. Liberalised Pension Rules, 1961 to teachers working in non-Government schools and depriving those who retired after 1-4-1961 to prior to 1-4-1973 from the benefit of those who was held to be violative of the Article 14 of the Constitution of India. It was held that the discrimination between the teachers those who retired on or after 1-4-1962 and prior to 1-4-1973 and those who retired after 1-4-1963 for (he purpose of payment of pension was held unjustified. The Division Bench following the decision in Nakara's case (supra), held as follows:

"20. The Central Government liberalised the formula for computation of pension and made it applicable only to the Government servants who retired on or after 1st April, 1979 depriving the rest, the benefit of the liberalised formula. The Supreme Court struck down the classification of the Government employees into two categories on the basis of an arbitrary date fixed by the Central Government holding that such classification was arbitrary and unreasonable. In our view, the principle enunciated by the Supreme Court in Nakara's case applies to the facts in the instant case. The mere fact that the Rules issued in G.O. Ms. No.3372, dated October 31, 1961 are non-statutory in character, does not in any way militate against the applicability of the principle on the basis of which the cut-off date fixed in Nakara's case was held to be invalid. By extending the operation of the A.P. Liberalised Pension Rules, 1961 the teachers working in the non-Government schools, virtually it amounted to liberalisation of the formula for computation of pension. In such circumstances, it is not open to the State Government to classify the teachers into two categories on the basis of the date of extension of operation of Andhra Pradesh Liberalised Pension Rules, 1961 to the teachers working in the non-Government schools and deprive those who retired after 1st April, 1961 but prior to 1st April, 1973 from the benefit of the liberalised Pension Rules. When the State Government had chosen to treat the teachers who had retired on or after 1st April, 1961 as a homogeneous class for payment of pension and implemented the pension scheme for about twelve years on that basis, it cannot be permitted to classify such teachers into two categories on the ground that the operation of the Andhra Pradesh Liberalised Pension Rules, 1961 which are statutory in nature had for the first time been extended to the teachers employed in the non-Government schools, only with effect from 1st April, 1973. Such classification is, in our view, irrational and discriminatory, thereby violating Article 14 of the Constitution".

13. In V. Kasturi's case (supra) the Supreme Court has considered various judgments on this aspect and held thus:

"If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension

scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension. He would be entitled to get the benefit of the amended pension provision from the date of such Order as he would be a _ member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(Reliance was placed on the decisions reported in D.S. Nakara and Others Vs. Union of India (UOI), ; R.L. Marwaha Vs. Union of India (UOI) and Others, ; T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, ; M.C. Dhingra Vs. Union of India and Others, .

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, and subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and by them the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme, the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep.

(Reliance was placed on the decisions reported in Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, ; Government of Tamil Nadu and another Vs. K. Jayaraman, ; Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, ; Indian Ex-Services League and others Vs. Union of India, ; Krishena Kumar and Others Vs. Union of India and others, ; All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, ; State of Punjab v. Justice S.S. Dewan (1997) 4 SCC :1997 SCC (L&S) 1153)

The appellant, in order to earn pension under Rule 22(1) clause (c) as amended in 1986 has to satisfy the following (win conditions:

- (i) at the time when the amended clause (c) applied, i.e., from 22-9-1986, he should be a member of the pension fund;
- (ii) he should have by then completed 20 years of pensionable service, and should have put forward his requisition in writing for availing the benefit of the said provision.

Unless both these conditions are satisfied amended Rule 22(1)(c) cannot apply in his case. He was not a member of the fund on 21-9-1986. He had ceased to be a member of the fund on his retirement in 1984. As laid down in the definition of

the term "member" the employee concerned should be in service of the Bank and he should have been admitted to the membership of the fund. Consequently, the first condition for applicability of amended Rule 22(l)(c) did not apply to the facts of the present case. Consequently, the question of compliance of the second condition that he should have completed 20 years of pensionable service would pale into insignificance.

Moreover, the second requirement for the applicability of Rule 22(l)(c) as amended is that after having completed 20 years of pensionable service, the member concerned of the fund irrespective of age, i.e., even being less than 50 years of age, can invoke the benefit of the said provision of making a request in writing for getting proportionate pension. Even if such request is made, it is in the hands of the Executive Committee of the Central Board of the Bank to accept such a request or not as seen from Rule 15. Any officer who leaves the service without such sanction would forfeit all the claims under the fund for pension. Therefore, those employees like the appellant who had ceased to be members prior to the said date and who might have completed 20 years of service in the past will not be able to invoke amended Rule 22(1)(c) at any time after their earlier retirement."

14. The Supreme Court refused to apply the principle laid down in Nakara's case (supra) on the ground that employee ceased to be the member of the scheme and that he did not fulfil the conditions laid down in the amended Rule. But, the instant case that situation would not arise. The observations made by the Supreme Court after referring to Nakara's case (supra) fully supports the case on hand.

15. The question of law which arose in Ainritlal Gandhi s case (supra) related to the dale with effect from which date the revised pension to be paid to the teachers of the Jai Narayan Vyas University and Mohan Lal Sukhadia University, who had retired between 1-1-1986 and 1-1-1990.

16. The Teachers in the University were governed by the Contributory Provident Fund Rules. On the recommendations of the University Grants Commission, the University Syndicate and Senate passed resolution for introduction of pension scheme. The proposal was approved by the Government of Rajasthan giving effect to from 1-1-1990 to the pension scheme. The pension scheme was challenged on the ground that fixing cut of date as 1-1-1990 was illegal and the date should be fixed as 1-1-1986 when the University Grants Commission sent the recommendation and they were accepted by the Syndicate. The High Court allowed the writ petition. The Supreme Court reversing the decision of Rajasthan High Court held :

"There is no justification for the High Court having substituted the date of 1-1-1986 in lien of 1-1-1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the Rajasthan Government was required. The Syndicate and Senate of the University, when they had

forwarded their recommendations in 1986, did not mention a specific date with effect from which the pension scheme was to be made applicable. Their recommendations were subject to approval which was granted by the Government, after the State Legislature had passed the University Pension Rules and General Provident Fund Rules. The Government had stated in its affidavit before the High Court that the justification of the cut-off date of 1-1-1990 was "wholly economic". It cannot be said that the paying capacity is not a relevant or valid consideration while fixing the cut-off date. The University could, in 1991, validly frame Pension Regulations to be made applicable prospectively. It, however, chose to give them limited retrospectively so as to cover a larger number of employees by taking into account the financial impact of giving retrospective operation to the Pension Regulations. It was decided that employee retiring on or after 1-1-1990 would be able to exercise the option of getting either pension or provident fund. Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. Therefore, it cannot be said that the said cut-off date was fixed arbitrarily or without any reason."

This case also does not help the respondents. The pension scheme was introduced for the first time and the Government approved the same with effect from 1-1-1991 keeping in view various aspects including financial aspects. In the case on hand the Government itself directed the applicability of the Liberalised Pension Rules, 1992 by the time the teachers were already covered by 1961 pension Rules.

17. In R.C. Jain's case (supra), the Supreme Court held that it is for the Government to decide as a part of the Executive policy the date from which the arrears have to be granted to the employees. The matter being an executive in character cannot be considered as arbitrary violating of the Article 14 of the Constitution, of India. But, this decision has no bearing on the present case.

18. In Rabindranath Mukhopadhyay's case (supra), the Supreme Court held that the policy decision taken by the management giving effect from 1-1-1997 at the beginning of the calendar year and it was made uniformly applicable to all the employees belonging to Executive class and thus it was held that there is no arbitrariness. As already stated the policy cannot be interfered with unless it is arbitrary or unconstitutional. Hence, this case does not help the respondents.

19. In Ram Lubhaya Bagga's case (supra), the Government employees of Punjab State, as per policy promulgated in 1991, were entitled to the reimbursement of medical expenses charged by certain designed hospitals like, Escorts, Apollo etc. As per new policy introduced in 1995, the employee could take the treatment from any hospital but reimbursement was restricted to the level of expenditure as per the rate fixed by the Director of Health and Family Welfare for similar treatment package or actual expenses wherever is less. The Supreme Court held:

"The right of the State to change its policy from time to time, under the changing

circumstances is neither challenged nor could it be.

It is not normally within the domain of any Court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

This case has no application to the facts of the case on hand. The statutory benefits were liberalised under 1992 Rules. The benefits under a policy of the Government stand on different footing than the statutory benefits. The Supreme Court found that the change in the policy was not arbitrary.

20. The learned Government Pleader heavily relied on the decision reported in *Monotosh Roy's* case (supra). The Supreme Court observed that in matters of revising the pensionary benefits and even in respect of revision of scales of pay cut of date on some reasonable basis has to be fixed for extending the benefits. The new provision was introduced by the Amendment 1987 was only to restructure the pay scales of the members of service. Therefore, the respondents cannot claim the benefit of higher pay scales having retired from service long before the introduction of such pay scales. The Supreme Court observed that:

"In matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits. The new provisions for payment of pension introduced by the amendment of 1987 were only consequential to the restructuring of the pay scales of the members of the Service. Therefore, the respondent cannot claim benefit of higher pay scale having retired from service long before the introduction of such pay scales. He cannot claim a pension higher than the pay drawn by him. The Supreme Court's decision in *D.S. Nakara* case cannot apply in the present case where the pension benefits have been fixed on the basis of the revised pay structure to those members who are in service on 1-1-1986."

Thus, it can be seen that consequent on restructured pay scales the pension was revised. The pay scales were not applicable to those who were in service on 1-1-1986. As the petitioners therein were not entitled for revised pay scales since they retired from service by that date, the revised pension was also not applicable to them. In this case, the pension was further liberalised not on account of revision of scales. Therefore, the case has no applicability.

21. In *R. Veeraswamy's* case (supra), the Supreme Court observed that:

"We are of the view that the retired employees (respondents), who had retired from service before 1-7-1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class. In the light of the foregoing discussion and applying the rulings of this Court above noted, we answer the issue set out at the outset by holding that the appellant-Board has not acted illegally or contrary to law in introducing the pension scheme prospectively from 1-7-1986 and that the employees (respondents) retired before 1-7-1986 cannot compel the appellant-Board to extend the benefit of the newly introduced pension scheme with retrospective effect."

22. The Supreme Court was considering the applicability of pension scheme with effect from 1-7-1986. It found that the workmen covered by the Contributory Provident Fund had received all the benefits on the date of retirement and they ceased to be the employees of the Board. Therefore, it was held that they cannot claim the pensionary benefits.

23. The survey of aforesaid decisions, it is clear that when body of persons formed a homogenous class for the purpose of availment of certain benefits, they cannot be subjected to sub-classification when better benefits are conferred on a later date. However, if the scheme is introduced from time to time, it is always open for the State to stipulation cut off date, which is essential. If the persons did not have the eligibility for the benefits as on the date of new scheme, they would not be eligible to claim the benefit of new scheme. It is further held that if the pensioner did not possess the criteria for benefits as on the coming into force of the new scheme, he will not be eligible for the benefits. If the change is on account of change in the policy of the Government, it is not normally amenable for interference under Article 226 of the Constitution of India, unless the policy is arbitrary and unconstitutional. The decision in *Nakara's case* (supra) was explained in number of subsequent cases.

24. In the instant case, all the teaching staff of the Universities covered by the O.O. issued by the Government were having the benefit of 1961 Pension Scheme and Family Pension Scheme. The scheme was sought to be further liberalised by the Government and it had accordingly issued notification to frame the Rules basing on the guidelines issued in G.O. Ms. No.241. It was specifically stated in the said G.O. that the rules shall also apply to the pensioners retired as on 1-4-1992 and alive. But in the subsequent notification it had stated that the Rules will not apply to the pensioners retired prior to 1-4-1992 but they will be given the benefit of the rules to the extent of revision of pension and family pension and they are not eligible for other benefits available to the teachers in service as on 1-4-1992 and thereafter. The crux of the problem is that when all the teachers were governed by the Pension Rules, 1961 and when the pension rules are further liberalised would it be open for the authorities to discriminate

and segregate the persons who were not in service as on 1-4-1992 and those who continued after 1 -4-1992. Admittedly, it is an extension of pension benefits. By virtue of retirement, the petitioners were made to receive the benefits under 1961 Rules. But when the rules are further liberalised, the benefit of liberalised pension cannot be denied to them. This aspect was directly dealt with in Kasturi's case and the observation of the Supreme Court has already been extracted. Therefore, the dicta laid down by the Supreme Court in Nakara's case (supra) and Kasturi's case (supra) apply in all its fours to the case on hand. It is true that the policy of the Government is normally not interfered with by Court under Article 226 of the Constitution of India. But, when the policy colludes with Article 14 necessarily it has to be declared as arbitrary and unconstitutional. Further in this case the homogeneous group was not totally eliminated, but a portion of the benefits were also released as a mark of grace to the pre 1-4-1992 retirees. The homogeneous group cannot be split when better benefits are introduced and no reasonable justification is forthcoming from the respondents.

25. For the foregoing discussions, I am of the considered opinion that denial of benefit of liberalised Pension Rules, 1992 to the petitioners is wholly arbitrary and illegal. Hence, the Rules insofar as they seek to exclude the Pre 1-4-1992 retirees are set aside and it is declared that the petitioners and other teaching staff of Andhra University, Ostania University, S.V. University, Nagarjuna University, Kakatiya University, Sree Krishna Devaraya University, Sree Padmavathi Mahila Vishwavidyalayam, Telugu University, Dr. B.R. Ambedkar University and Jawaharlal Nehru Technological University, who retired prior to 1-4-1992 and alive as on the said date are also eligible for the benefit of Revised 1992 Pension Rules on par with the teaching staff who retired after 1-4-1992. They shall be permitted to exercise the option under Part-A or Part-B of their choice and their pension and other benefits shall be released accordingly.

26. This exercise shall be done within a period of 3 months from the date of receipt of the orders. In case of any pensioner who was alive on 1-4-1992 and died subsequently the benefits shall be released to legal heirs of the deceased pensioner as per rules.

27. A copy of this order shall be forwarded to all the Universities covered by the G.O. referred to above for taking action as directed above.

28. Accordingly, all the writ petitions are allowed with directions. No costs.