

(2024) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9866 of 2012

DR. Surendra Narayan Gupta

APPELLANT

Vs

Principal Secretary State of M.P. AND ORS.

RESPONDENT

Date of Decision : 01-07-2024

Acts Referred:

Constitution of India — Article 14, 16, 226, 227

Citation : (2024) 07 MP CK 0001

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Murtuza Bohra,

Final Decision : Allowed

Judgement

1] Heard finally, with the consent of the parties.

2] This order shall also govern the disposal of this batch of petitions being, W.P. Nos.7429/2015, 7434/2015, 9998/2020, 14226/2020, 14804/2020, 14909/2020, 15736/2020, 15759/2020 and 18685/2022, regard being had to the similitude of the issues involved. For the sake of convenience, the facts as narrated in W.P. No.9866 of 2012 are being taken into consideration.

3] This writ petition has been filed by the petitioner under Article 226/227 of the Constitution of India seeking the following reliefs:-

?(I) Issue appropriate Writ of Mandamus/certiorari or any other writ direction or order, quashing clause 1.1 of order dated 3rd August, 2009 Annexure P/1.

(II) Issue appropriate Writ of Mandamus or any other writ, direction or order, directing the respondents not to insist upon Annexure P/1 i.e. the order dated 03.08.2009 and grant benefit of pension / 6th Pay Commission to the petitioner as per commitment dated 10.09.2008 (Annexure P/2).

(III) Issue appropriate writ of mandamus or any other writ direction or order, directing the respondents to revise the pension of the petitioner, in accordance

with the recommendations of 6th Pay Commission as well as commitment dated 10.09.2008 (Annexure P/2) with immediately effect.

(IV) Allot (sic) (Allow) this petition with costs.

(V) Any other relief deemed fit may kindly be awarded to the petitioner, in the facts and circumstances of the case.?

4] The petitioner is aggrieved by the order dated 03.08.2009, Reference No.9/2/2009 (Part -I) passed by the respondents/State Government. By the aforesaid order dated 03.08.2009, the petitioner and the other identically placed persons have been denied the revision of pension with effect from 01.01.2006, whereby the petitioner and the other identically placed persons stood retired prior to 01.01.2006, their pension stood consolidated/revised and it was directed that they would be entitled to 2.26 times the pension/family pension, which would be the consolidated amount and it would be payable from September, 2008.

5] The grievance of the petitioner is that the State Government has discriminated against the petitioner who has retired in the month of March, 1986, i.e., prior to 01.01.2006, vis-a-vis the persons, who have retired after 01.01.2006, whose pension has been consolidated on a different formula by way of separate order issued on 03.08.2009 itself, describing it as a Part - II of the original order No.9/2/2009.

6] In brief, the facts of the case are that the petitioner was earlier posted as Professor and took voluntary retirement in the month of March, 1986. After his retirement, his pension was fixed at the rate of Rs.968/- per month. The case of the petitioner is that vide the Part - I of the impugned order (Annexure P/1) dated 03.08.2009, as also the order passed on the same date which is mentioned as Part - II of the same order, different treatment has been given to the persons, who have retired prior to 01.01.2006, and those who retired post 01.01.2006, which has resulted in considerable prejudice to the petitioner because according to the petitioner, he should get Rs.23,700/- + D.A. in pension, whereas he is getting only Rs.12,062/- + D.A., which is also mentioned in the synopsis filed by the petitioner.

7] Shri Murtuza Bohra - learned counsel for the petitioner has submitted that earlier an identical petition W.P. No.18811 of 2023 (Madhya Pradesh (Uccha Siksha) Seva Nivrita Pradhyapik Sangh, Jabalpur & Anr. Vs. State of Madhya Pradesh and Ors.) was allowed by this Court at Principal Seat, Jabalpur vide order dated 18.12.2019. Thereafter, another petition W.P. No.7429 of 2015 (V. K. Nagar Vs. State of M.P.) was also decided on 30.01.2020 again passed by the Principal Seat, Jabalpur. And in the light of the aforesaid order passed on 30.01.2020 in W.P. No.7429 of 2015, the present petition was disposed of by this court on 14.08.2020, with directions to the respondents to consider the claim of the present petitioner. However, before the fruits of the aforesaid order could be extended to the petitioner, a review petition was filed by the State R.P. No.261 of

2021 against the order passed by this Court in this writ petition dated 14.08.2020, and vide the common order dated 25.04.2022, the orders passed in all such writ petitions, which were allowed in the light of the earlier order passed by this Court in W.P. No.7429 of 2015, were recalled and the matter was again directed to be heard afresh in the light of the decision rendered by this Court at Principal Seat, Jabalpur in the case of P.V. Sreenivasaiah and others Vs. State of M.P. and others reported as 2017 (3) MPLJ 400.

8] The review petition was allowed by this Court on the ground that this Court did not consider the earlier decision of P.V. Sreenivasaiah and others (supra) which is prior in time. Thus, this petition has come up for re-hearing before this Court in the light of the order passed by the Principal Seat of this Court at Jabalpur in R.P. No.261 of 2021.

9] Shri Murtuza Bohra, learned counsel for the petitioner has submitted that it is true that in the case of V. K. Nagar Vs. State of M.P. (W.P. No.7429 of 2015) decided on 30.01.2020, the decision rendered by the Co-ordinate Bench of this Court P.V. Sreenivasaiah and others (supra) has not been considered, however, the petitioner's contention is that the aforesaid decision in the case of P.V. Sreenivasaiah and others has also been passed without taking into account the decision rendered by the Supreme Court in the case of D. S. Nakara and others Vs. Union of India reported as (1983) 1 SCC 305, which provides that all pensioners have equal right to receive the benefits of liberalized pension scheme and pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension, and it is held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date, is violative of Article

14. Thus, it is submitted that in the case of P.V. Sreenivasaiah and others (supra), this Court has relied upon the decision rendered by the Supreme Court in the case of India Ex-Services League Vs. Union of India reported as AIR 1991 SC 1182, which judgement has already been taken care of by the Supreme Court in a subsequent decision rendered in the case of All Manipur Pensioners Association by its Secretary Vs. State of Manipur and others reported as AIR 2019 SC 3338 wherein it is held that the dispute was with respect to PF retirees and Pension retirees, and it was held that PF retirees and Pension retirees constitute different classes and, therefore, the Supreme Court distinguished the decision in the case of D.S. Nakara (supra) and it was held that the aforesaid decision would not be applicable in the case at hand as in which also the dispute was only about the revision of pension on or after 01.01.1996. Similarly, in the case of P.V. Sreenivasaiah and others (supra), the other decision relied upon by this Court in the case of Union of India Vs. P. N. Menon reported as AIR 1994 SC 2221 would also not be applicable in the light of D.S. Nakara (supra). It is also submitted that the other decision relied upon by this Court in para 11 in the case

of Chaudhary Kesava Rao Vs. State of Andhra Pradesh reported as AIR 1990 SC 2043 is also considered by the Supreme Court in the case of D. S. Nakara and others (supra) as also the decision referred to in para 12 Union of India Vs. P. N. Menon (supra). Although, it is admitted that so far as the decision relied upon by this Court in para 14 in the case of Government of Andhra Pradesh and others Vs. N. Subbarayudu and others reported as (2008) 14 SCC 702 has not been considered by the Supreme Court in the case of All Manipur Pensioners Association (supra). However, it is submitted that in the aforesaid case, the facts are distinguishable as it was a case of fixing the cut off dates for the pension and not for the revision of pension.

10] So far as the decision rendered in the case of Sultan Khan Vs. State of M.P. (W.P. No.21238 of 2018) dated 28.02.2020 is concerned, which has also been referred to by this Court in R.P. No.261 of 2021 dated 25.04.2022, it is submitted that the facts are clearly distinguishable, as in the aforesaid petition the petitioners had simply sought for the benefits of the recommendation made by the 5th, 6th and 7th pay commission and thus, the aforesaid decision has nothing to do with the revision of pension. It is also submitted that in the aforesaid writ petition, the grievance of the petitioner Sultan Khan was that he has not been given the benefits of 5th, 6th and 7th pay commission with effect from 01.01.1996, 01.01.2006 and 01.01.2016 respectively and there was no such grievance that he has not been given the pension at par with the persons, who have retired after 01.01.1996, and there was also no challenge to the circular and there is no reference of circular dated 03.08.2009. Thus, it is submitted that the aforesaid decision would also not be applicable in the facts and circumstances of the case. The petitioner has also relied upon the Resolution notified in the Gazette dated 10.09.2008 in which it has been resolved that the pensioners of the State shall also be given the benefit of the recommendation made by 6th pay commission. Thus, it is submitted that the petition be allowed in the light of the order passed by the Supreme Court in the case of D.S. Nakara (supra).

11] Counsel for the respondents/State Shri Mukesh Parwal and Ms. Geetanjali Chourasia have vehemently opposed the prayer and it is submitted that no case for interference is made out as this Court in the case of P.V. Sreenivasaiah and others (supra) has already taken into account all the aspects of the matter. It is submitted that the decision rendered by the Supreme Court in the case of D. S. Nakara and others (supra) has been referred to in the case of India Ex-Services League (supra); Chaudhary Kesava Rao (supra), which has been relied upon by this Court in the case of P.V. Sreenivasaiah and others (supra), as also the decision rendered by the Supreme Court in the case of N. Subbarayudu and others (supra). Counsel has stressed that the case of N. Subbarayudu and others (supra) has not been considered in the subsequent decision on which the petitioner has relied upon in the case of All Manipur Pensioners Association (supra). Thus, it is submitted that the decision rendered in the case of All Manipur Pensioners Association (supra) would not prevail over N. Subbarayudu

and others (supra), which has not been considered in the said decision. Counsel has also relied upon the decision rendered by the Supreme Court in the case of Kallakkurchi Taluke Retired Officials Association, Tamil Nadu and others Vs. State of Tamil Nadu reported as (2013) 2 SCC 772 as also the State of Punjab and others Vs. Amar Nath Goyal and others reported as (2005) 6 SCC 754, and the decision rendered by Single Bench of Madras High Court in the case of V. Rajendra Vs. Union of India passed in W.P. No.17026 of 2015 dated 26.07.2017.

12] Counsel has also submitted that the decision in the case of All Manipur Pensioners Association (supra) would also not be applicable looking to the fact that it was rendered in the case of a small State Manipur, whereas in the case of M.P., which is the second largest State in India, the financial constraints are also required to be looked into by the State Government while giving pensionary benefits to its employees. It is also submitted that the petitioners are claiming the pension as per the 6th pay commission, which was not in existence at the time of retirement of the petitioner hence they cannot claim parity with those employees who have been granted the said benefits. Shri Parawal has also relied upon the decision rendered by the co-ordinate bench of this court in the case of Sultan Khan (supra). Lastly, it is also submitted that since it is a policy matter, the petition may be disposed of with a direction to the petitioner to submit a representation, which shall be decided by the State Government, in accordance with law, sympathetically.

13] In rebuttal, Shri Murtuza Bohara, learned counsel for the petitioner has also submitted that in the reply the State has also taken a ground that the petitioners are claiming the pension as per the 6th pay commission, which was not in existence at the time of retirement of the petitioner, however, the aforesaid contention has already been taken care of by this Court in the earlier decision rendered in the case of Smt. Kamla Jain Vs. State of M.P. and Ors. in W.P. No.5802 of 2011 dated 08.02.2012. A copy of which is also filed on record as Annexure P/11 by way of rejoinder.

14] Heard counsel for the parties and perused the record.

15] From the record, it is found that the controversy revolves around the decision rendered by the Single Bench of this Court in the case of P.V. Sreenivasaiah and others (supra), as also the order passed by this Court in R.P. No.261 of 2021, wherein this Court has recalled its earlier order and has directed the matter to be listed afresh and afforded an opportunity of hearing to the parties to argue on available grounds including the judgements passed by the Co-ordinate Bench in the case of P.V. Sreenivasaiah and others, as also the judgment dated 28.02.2020 in W.P.No.21238/2018 in the case of Sultan Khan vs. State of M.P.

16] So far as the order passed by this Court in R.P. No.145 of 2021 is concerned, the relevant paras are as under:-

?After meticulously evaluating the fact situation of the case, I deem it fit to

rehear the arguments of rival parties in the writ petitions, therefore, at this stage instead of re-deciding the writ petitions, it is better to afford opportunity of hearing to the parties for arguing the matter and address this Court on available grounds including the judgment passed by the coordinate bench in case of P.V. Sreenivasaiah (supra).

The parties are also apprised that in a similar issue, during the pendency of these review petitions, an identical petition has been dismissed by the Indore Bench of this Court in W.P. No.21238/2018 (Sultan Khan v. State of M.P. & others) on 28.02.2020.?

(Emphasis supplied)

17] So far as the case of P.V. Sreenivasaiah and others (supra), it would be germane to refer to the relevant paras 10 to 15 of the same, which read as under:-

10. Apparently, the petitioners have not chosen to challenge the validity of the Circular dated 3-8-2009, fixing the pension of pre 1-1-2006 retirees. And, rightly so, as it is within the competence of the State to have different criteria for fixing the pension for pre and post 1-1-2006 retirees. In *Indian Ex-Services League v. Union of India*, (1991) 2 SCC 104 : AIR 1991 SC 1182, the Supreme Court rejected the argument that all pre 1-4-1979 retirees were to be paid the same pension (amountwise) as the post 1-4-1979 retirees. It was held:—

?18. The above words leave no doubt that by this Memorandum the personnel of Armed Forces were extended the same benefit of liberalised pension formula for computation of their pension as was given to the civil servants on the same basis. The words which follow thereafter indicate that appendices ?A', ?B' and ?C' attached to the Memorandum specified the revised rates of pension calculated on the liberalised basis for each rank ?on the basis of reckonable emoluments payable as on 1-4-1979 since the memorandum when issued confined the benefits of the liberalised scheme only to post 1-4-1979 retirees. There is no scope for reading these appendices tom out of the context of the Memorandum in its original form to which they were appended. So read, it is obvious that the calculations given in the appendices ?A', ?B' and ?C' to this Memorandum contain the computation according to the liberalised formula for each rank of the three wings of the Armed Forces for post 1-4-1979 retirees only. It follows that as a result of the Nakara decision when the benefit of the liberalized pension scheme was made applicable even to pre 1-4-1979 retirees of the Armed Forces, computation according to the liberalised formula for pre 1-4-1979 retirees had to be made in the same manner as it was done for post 1-4-1979 retirees and shown in appendices ?A' ?B' and ?C' to this Memorandum. This was done by the impugned G.Os. dated 22-11-1983 and 3-12-1983.

19. The petitioners claim that all pre 1-4-1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices ?A', ?B' and ?C' for each rank is clearly untenable and does not flow from the Nakara decision.

11. Similarly, in *Chaudhary Kesava Rao v. State of A.P.*, (1990) 4 SCC 165 : AIR 1990 SC 2043, it is held:

¶6 ... We are fully convinced that the claim of the petitioners is based on a complete misconception of the Rules. A perusal of the Rules clearly goes to show that Part I of the Rules was no doubt made applicable to all Government servants who would retire on or after 29-10-1979 while Part II was made applicable to such Government servants who were holding pensionable posts on 31 March, 1978 and who retired between 1st April, 1978 and 28th October, 1979 and this distinction was necessary in view of the fact that the age of superannuation for retirement was increased from 55 years to 58 years w.e.f. 29th October, 1979. However, all the benefits have been granted to the pensioners like the petitioners who had retired between 1-4-1978 and 29-10-1979 in the amount of pension retirement gratuity and family pension as granted to the Government servants falling under Part I. So far as the amount of pension is concerned, the formula of completed six monthly periods of qualifying service was worked out as 30/60 of average emoluments which was equal to 50% of the pay. On account of the fact that the Government servants falling in Part I and retiring at the superannuation age of 58 years the above formula was calculated as 33/66 which was also 50% of the average emoluments. Similarly in the case of retirement gratuity and family pension no distinction has been made in the case of the two categories of pensioners. This clearly goes to show that neither there is any discrimination nor any disadvantage to the pensioners falling in the category of petitioners and the formula working out the amount of pension is based on a rational principle and it cannot be said that such differential rates have no reasonable nexus to the object sought to be achieved or the same are in any manner violative of Article 14 of the Constitution.

7. In view of the circumstances mentioned above the case of *D.S. Nakara v. Union of India* (supra) is not at all applicable in the facts and circumstances of this case and renders no assistance to the petitioners.?

12. In *Union of India v. P.N. Menon*, (1994) 4 SCC 68 : AIR 1994 SC 2221, it is held:

14. ... Not only in matters of revising the pensionary benefits, but 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. This can be illustrated. The Government decides to revise the pay-scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question will miss that pay-scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service.

12. What is true of revision of pay scale is equally true in respect of fixation/revision of pension.

13. In *Govt. of Andhra Pradesh v. N. Subbarayudu*, (2008) 14 SCC 702, it is held:

5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab v. Amar Nath Goyal*, 2005 (3) SCT 770 : (2005) 6 SCC 754).

6. No doubt in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara's case* (supra), as observed in para 29 of the decision of this Court in *State of Punjab v. Amar Nath Goyal* (supra).

7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

15. Furthermore, reference to the decision by the Central Government fixing the pension of its pre and post 1-1-2006 retirees, is of no assistance. The pension of existing Central Government pensioners was decided by the Central Government as per resolution dated August 29, 2008 which accepted Para 5.1.47 of the recommendation of 6th Pay Commission to the following effect:

?All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1-4-2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1-1-2006. This is consistent with the fitment benefit being allowed in case of the existing employees. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.?

(Emphasis supplied)

18] The aforesaid decisions, D. S. Nakara and others (supra), India Ex-Services League (supra); and P. N. Menon (supra) have also been taken into account by the Supreme Court in a relatively recent decision of 2019, in the case of All Manipur Pensioners Association (supra), the relevant paras of the same reads as under:-

"7. The short question which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the decision of this Court in D.S. Nakara (AIR 1983 SC 130) (supra) shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners viz. pre-1996 retirees and post-1996 retirees for the purpose of payment of revised pension and whether such a classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not?

7.1. At the outset, it is required to be noted that in the present case, the State Government has justified the cut-off date for payment of revised pension solely on the ground of financial constraint. On no other ground, the State tried to justify the classification. In the backdrop of the aforesaid facts, the aforesaid question posed for consideration before this Court is required to be considered.

7.2. It is not in dispute that the State Government has adopted the Central Civil Services (Pension) Rules, to be applicable to the State of Manipur. The State has also come out with the Manipur Civil Services (Pension) Rules, 1977. It is also not in dispute that subject to completing the qualifying service the government servants retired in accordance with the pension rules are entitled to pension. Therefore, as such, all the pensioners form only one homogeneous class. Therefore, it can be said that all the pensioners form only one class as a whole. Keeping in mind the increase in the cost of living, the State Government increased the quantum of pension and even pay for its employees. The State Government also enhanced the scales of pension/quantum of pension with effect from 1-1-1996 keeping in mind the increase in the cost of living. However, the State Government provided the cut-off date for the purpose of grant of benefit of revised pension with effect from 1-1-1996 to those who retired post-1996 and denied the revision in pension to those who retired pre-1996. The aforesaid classification between these pensioners who retired pre-1996 and post-1996 for the purpose of grant of benefit of revision in pension is the subject-matter of this appeal.

As observed hereinabove, the aforesaid classification is sought to be justified by the State Government solely on the ground of financial constraint.

7.3. At the outset, it is required to be noted that in D.S. Nakara (AIR 1983 SC 130) (supra) , such a classification is held to be arbitrary, unreasonable, irrational and violative of Article 14 of the Constitution of India. In paragraphs 42 and 65, this Court in D.S. Nakara (supra) has observed and held as under:

¶42. If it appears to be undisputable, as it does to us that the pensioners for the

purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

65. That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of

liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exts. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ext. P-1, the words:

'that in respect of the government servants who were in service on 31-3-1979 and retiring from service on or after that date'

and in Ext. P-2, the words:

'the new rates of pension are effective from 1-4-1979 and will be applicable to all service officers who became/become non-effective on or after that date'

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by the 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.

7.4. While the aforesaid decision of this Court in D.S. Nakara (AIR 1983 SC 130) (supra) was relied upon by the appellant herein and as such which came to be considered and followed by the learned Single Judge, the Division Bench considering some of the observations made in Hari Ram Gupta (AIR 1998 SC 2483) (supra) ; R. Veerasamy (AIR 1999 SC 1768) (supra); Amar Nath Goyal (AIR 2006 SC 1768) (supra) and P.N. Menon (AIR 1994 SC 2221) (supra), has observed and held that the decision of this Court in D.S. Nakara (supra) is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. However, by not following the decision of this Court in D.S. Nakara (supra), considering some of the observations made by this Court in the aforesaid decisions, namely, P.N. Menon (supra) and other decisions, the Division Bench of the High Court has not at all considered the distinguishable facts in the aforesaid decisions.

7.5. In P.N. Menon (AIR 1994 SC 2221) (supra), the controversy was altogether different one. The factual position that needs to be highlighted insofar as P.N. Menon (supra) is concerned, is that the retired employees had never been in receipt of 'dearness pay' when they retired from service and therefore the OM in question could not have been applied to them. This is how this Court examined the matter. This Court also noticed that prior to the OM in question, the pension scheme was contributory and only with effect from 22-9-1977, the pension

scheme was made non-contributory. Since the respondent employees in the first cited case were not in service at the time of introducing the same they were held not eligible for the said benefit. Therefore, the said decision shall not be applicable to the facts of the case on hand, more particularly while considering and/or applying the decision of this Court in D.S. Nakara (AIR 1983 SC 130) (supra).

7.6. In Amrit Lal Gandhi (AIR 1997 SC 782) (supra), pension was introduced for the first time for the University teachers based on the resolution passed by the Senate and Syndicate of Jodhpur University. The same was approved by the State Government with effect from 1-1-1990. Therefore, the controversy was not between one set of pensioners alleging discriminatory treatment as against another set of pensioners. There were no pensioners to begin with. The retirees were entitled to provident fund under the existing provident fund scheme. The question of discrimination between one set of pensioners from another set of pensioners did not arise in the said decision. With the aforesaid facts, this Court observed that financial viability is a relevant issue.

7.7. Similarly, the decision of this Court in Indian Ex-Services League (AIR 1991 SC 1182) also shall not be applicable to the facts of the case on hand. The facts in this case and the facts in D.S. Nakara (AIR 1983 SC 130) (supra) are clearly distinguishable. In Indian Ex-Services League (supra), the dispute was with respect to PF retirees and Pension retirees and to that it was held that PF retirees and Pension retirees constitute different classes and therefore this Court distinguished the decision of this Court in D.S. Nakara (supra). Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand at all.

7.8. Similarly, the decisions of this Court in Hari Ram Gupta (AIR 1998 SC 2483) (supra) and Kallakkurichi Taluk Retired Officials Association, Tamil Nadu (AIR Online 2013 SC 83) also shall not be applicable to the facts of the case on hand.

7.9. In view of the above, we are satisfied that none of the judgments, relied upon by the learned Senior Advocate for the respondent State, has any bearing to the controversy in hand. The Division Bench of the High Court has clearly erred in not appreciating and/or considering the distinguishable facts in Hari Ram Gupta (AIR 1998 SC 2483) (supra); R. Veerasamy (AIR 1999 SC 1768) (supra); Amar Nath Goyal (AIR 2006 SC 171) (supra) ; P.N. Menon (AIR 1994 SC 2221) (supra) and Amrit Lal Gandhi (AIR 1997 SC 782) (supra).

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is

truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.1 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.?

(Emphasis supplied)

19] A perusal of the aforesaid decision clearly reveals that in the aforesaid decision, the Supreme Court in para 7.3 has taken note of the decision rendered

in the case of D. S. Nakara and others (supra) and has also taken note of the decision in the case of India Ex-Services League (supra); and P. N. Menon (supra).

20] So far as the decision in the case of Chaudhary Kesava Rao (supra) referred to in para 11 of P.V. Sreenivasaiah and others (supra) is concerned, in that case itself it has been held that the decision rendered in the case of D. S. Nakara and others (supra) is not applicable in the facts and circumstances of the case, and on perusal of the para 6 of the aforesaid decision in the case of Chaudhary Kesava Rao (supra), it was also revealed that it refers to two categories of the employees as the age of superannuation for retirement was increased from 55 years to 58 years with effect from 29.10.1979 and thus, it was not a case of revision of pension.

21] Similarly, in the case of N. Subbarayudu and others (supra) the Supreme Court has referred to the decision of State of Punjab v. Amar Nath Goyal reported as (2005) 6 SCC 754 and Amar Nath Goyal's case has also been considered in the case of All Manipur Pensioners Association (supra). Although, in the case of N. Subbarayudu and others (supra) the Supreme Court has held that the decision rendered in the case of D. S. Nakara and others (supra) has already been considerably watered down in the subsequent decision in the case of Amar Nath Goyal (supra), but this court finds that so far as the case of Amar Nath Goyal is concerned, this judgement has also been considered by the Supreme Court in the case of All Manipur Pensioners Association (supra) in para 7.9. In such circumstances, the aforesaid decision would also not be of any avail to the respondents.

22] So far as decision rendered by the coordinate bench of this court in the case of Sultan Khan (supra) is concerned, on perusal of the same, it is apparent that in the aforesaid case the Circular dated 03.08.2009 was not under challenge, and otherwise also it was not a case where the petitioner's grievance was that he is being discriminated vis.-a.-vis. the other persons, who have retired subsequently. In this case the petitioner's contention was that he is entitled to pension after implementation of the recommendations made by the 5th, 6th and 7th pay commission with effect from 01.01.1996, and there is no reference that the persons, who have retired subsequent to 01.01.1996, are being given the pension more than the petitioner.

23] So far as the contention of the counsel for the State that the decision in the case of All Manipur Pensioners Association (supra) would not be applicable because Manipur is a small State, whereas the State of M.P. is the largest State and the financial ramification of such decision would be different is concerned, this Court does not agree with the aforesaid submission as a bare perusal of the decision rendered in the case of All Manipur Pensioners Association (supra) clearly reveals that it is a judgement in rem and in fact the only contention raised by the State of Manipur was that if the petition is allowed, it would increase the financial burden on the State.

24] It is also found that in their reply in the case at hand, the State has taken the following stand in para 5 and 12, which read as under:-

25. It is submitted that the State Government has taken into consideration the report of the committee duly constituted for the purpose as also the Finance Department of the State Government examined the matter and after analyzing the financial burden, issued the necessary orders in respect of employees of the State Government.

12. It is most humbly submitted that admittedly the petitioners were retired prior to 01/01/2006. The MP Civil Services (Pension) Rules 1976 are applicable to the retired employees i.e. petitioners and they are getting all the pensionary benefits as were applicable under these rules at that time i.e. prior to 01/01/2006, but they are claiming the benefit of pensioner as per VIth Pay Commission which was not in existence at the time of retirement of the petitioners and thus circulars of the Central Government cannot be said to be applicable in the case of the petitioners, therefore, they are not entitled to get the pension as per VIth Pay Commission, because prior to 01/01/2006, there was no Central Pay Scale prevalent in the State of Madhya Pradesh, therefore, the petitioner cannot get the benefit of pension as per VIth Pay Commission, as is clear from the Annexure P/9 filed by the petitioners themselves, therefore, petition filed by the petitioner is liable to be dismissed.?

(Emphasis Supplied)

25] So far as the ground raised by the State regarding the financial burden is concerned, it is reiterated that it has already been taken care of by the Supreme Court in the case of All Manipur Pensioners Association (supra). Whereas, the contention of the respondents that the petitioner cannot be given the benefit of pension as per 6th pay commission which was not in existence at the time of retirement of the petitioner, it is found that the State has not clarified in their reply as to how the non-grant of the benefits of 6th Pay Commission to the petitioner would be a distinguishing factor in the present case. And otherwise also, in the case of Smt. Kamla Jain (supra), this Court, in para 5 has already taken into account the effect that it is only after 01.01.1996, that the pay commission's recommendations were implemented, and as has been noted in Sultan Khan (supra) in which the decision in the case of Smt. Kamla Jain (supra) has been distinguished, and it is also observed in para 8 of Sultan Khan (supra) that the writ appeal as also an SLP against the order passed in the case of Smt. Kamla Jain (supra) have already been rejected, thus, the case of the petitioner would also be covered by the decision in the case of Smt. Kamla Jain (supra).

26] So far as the submission of Shri Parwal, learned counsel for the State that the petitioner may be given liberty to file a fresh representation is concerned, this Court is of the considered opinion that this matter is pending since 2012, and at this juncture no such orders can be passed which would again drag the petitioner in further litigation for yet another decade or so, and even otherwise,

the representation dated 05.06.2010 (Annexure P/8) was already pending when the petition was filed, which could have been decided by the State until now.

27] In view of the same, this Court has no hesitation to come to a conclusion that in respect of the issue involved i.e., whether the petitioner, while being granted the revision of pension, can be treated differently only because he stood retired prior to 01.01.2006 vis-à-vis the persons who stood retired after 01.01.2006, in the light of the subsequent decision of Supreme Court in the case of All Manipur Pensioners Association (supra), the decision rendered by this Court in the case of P.V. Sreenivasaiah and others (supra) does not govern the field anymore.

28] In view of the same, the petition stands allowed and Clause 1.1 of the order dated 03.08.2009 Annexure P/1 is hereby quashed and the respondents are directed to accord the benefit of revised pension to the petitioner in the light of the resolution Annexure-P/2 dated 10.09.2008, along with arrears with interest @ 6% per annum, within a period of four months from today.

29] A copy of this order be placed in the record of other connected petitions.