
(2013) 04 MP CK 0131

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1058 of 2011

Griha Nirman Mandal Adhikari/Karmachari Pensioners'
Association and Another

APPELLANT

Vs

Madhya Pradesh Housing Board and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 4 MPLJ 641

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : B.L. Pavecha and Nitin Phadke, for the Appellant; Manoj Munshi for Housing Board and Mukesh Parwal for State, for the Respondent

Judgement

S.C. Sharma, J.—The petitioner No. 1 before this Court is a registered association of pensioners registered in the name of Griha Nirman Mandal Adhikari/Karmachari Pensioners' Association and the petitioner No. 2 is the Secretary of petitioner No. 1 Association. The present writ petition has been filed on behalf of all retired employees, who have attained the age of superannuation while serving the Madhya Pradesh Housing Board. The contention of the petitioners is that the Madhya Pradesh Housing Board is a statutory Corporation incorporated u/s 3 of Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 and is an instrumentality of the State of Madhya Pradesh. It has further been stated that the retired employees of Madhya Pradesh Housing Board were earlier not granted pension and therefore, the employees preferred a writ petition before this Court claiming pension and the same was registered as W.P. No. 1940/93, Chandrakumar and Ors. vs. M.P. Graha Nirman Mandal and another. The aforesaid writ petition was allowed by an exhaustive order and by the judgment dated 13-9-1995 this Court directed the Madhya Pradesh Housing Board to grant pension and gratuity to its employees. The respondent No. 1 Madhya Pradesh Housing Board preferred a SLP before the Apex Court and the same was registered as SLP No. 837/96 and the order passed by this Court was upheld by the Hon''ble Supreme Court. The petitioners' contention is that the judgment

delivered by this Court in the case of Chandrakumar and ors. (supra) was implemented in respect of retired employees and the respondents Housing Board started paying pension to the members of the petitioner No. 1 association, meaning thereby to all the retired employees. It has further been stated that the State of Madhya Pradesh based upon the recommendations of the 6th Pay Commission has implemented the Pay Revision Rules, 2009 and the Finance Department of State of Madhya Pradesh vide memo dated 15-9-2008 has directed to grant 20% interim relief towards benefit of 6th Pay Commission recommendations to the government employees w.e.f. 1-9-2008 and also to grant arrears of dearness allowance from 1-9-2007 to 31-2-2008. It has further been stated that the Madhya Pradesh Housing Board in 202nd meeting passed a Resolution No. 4150-7/202/02/2009 dated 25-2-2009 for extending similar benefits to the regular employees of the Board and an office order has been issued on 2-3-2009, thereby confirming the interim relief of 20% and 27% dearness allowance along with the arrears to the regular employees of the Board. It has further been stated in the writ petition that in 205th meeting held on 15-9-2009, a resolution was passed for granting benefits based upon the recommendations 6th Pay Commission w.e.f. 1-9-2009 to the regular employees of the Madhya Pradesh Housing Board. Not only this a resolution was also passed for applying the M.P. Pay Revision Rules, 2009 w.e.f. 1-9-2009. A request was also made to the Principal Secretary, Housing and Environment Department, Bhopal for grant of a formal permission in respect of payment of emoluments as per 6th Pay Commission Report on 7-10-2009. It has further been stated that finally consent was granted by the State Government for grant of 6th Pay Commission benefits w.e.f. next financial year vide order dated 15-4-2010. It has been categorically stated in the writ petition that at present the Madhya Pradesh Housing Board has passed a resolution for adopting the M.P. Pay Revision Rules, 2009 w.e.f. 1-9-2009. Not only this, it has been brought to the notice of this Court that certain other orders were issued by the State Government for grant of an interim relief towards 6th Pay Commission benefits to its retired employees w.e.f. 1-9-2008 and the Housing Board in its 27th meeting held on 27-4-2010 rejected the prayer of the present pensioners for grant of 6th Pay Commission benefits at par with the retired government employees. The contention of the petitioners is that the action of the respondents Housing Board in extending the benefit of 6th Pay Commission to its regular employees and refusing to grant the benefits to the retired employees is clearly discriminatory and violative of the right to equality guaranteed to the members of the petitioner No. 1 association under Articles 14 and 16 of the Constitution of India. It has been further stated that employees, who have attained the age of superannuation on or after 1-9-2009 have been granted the benefits of the recommendations of 6th Pay Commission even in the matter of grant of pension and gratuity.

2. Various grounds have been raised by the learned Sr. Counsel for the petitioners and his contention is that as per Regulation 3 of Madhya Pradesh Housing Board Regulations 1977, the M.P. Civil Services (Medical Attendance)

Rules, 1958 have been made applicable to the officers and employees of the Housing Board and therefore, the members of the petitioner No. 1 association, who are pensioners, are entitled for medical benefits and facilities granted under the M.P. Civil Services (Medical Attendance) Rules, 1958. It has further been argued that the Madhya Pradesh Housing Board in exercise of power conferred under the Madhya Pradesh Housing Board Act, 1973 has framed the Regulations known as Madhya Pradesh Griha Nirman Mandal Regulations, 1998 and as per Regulations 5(d) grant of pension/family pension and death come retiral benefits to the officers and regular employees of the Housing Board w.e.f. 1-7-1973 are regulated in accordance with the statutory provisions as contained under the M.P. Civil Services (Pension) Rules, 1976 and therefore, all the benefits flowing out of the statutory provisions as contained under the M.P. Civil Services (Pension) Rules, 1976 are to be made applicable in respect of all the retired employees of the Housing Board irrespective of their date of retirement. The petitioners have prayed for following reliefs:--

(a) A writ the nature of certiorari or any other appropriate writ, direction or order be issued for quashment of Annexure P/15 and P/16.

(b) A writ in the nature of Mandamus be issued directing the respondents to remove the discrimination between regular employees and pensioners of the Board by ordering for grant of the same benefits of 6th pay commission to the pensioners from the same dates as have been granted to the regular employees as also by granting to the regular employees as also by granting interim relief to the pensioners as granted to the regular employees from time to time; and

(c) A writ in the nature of Mandamus be issued directing the respondents to grant 6th pay commission benefits to such retirees to whom 20% interim relief was sanctioned prior to their retirement.

(d) A writ in the nature of Mandamus be issued against the respondents directing them to grant pay revision benefits to the pensioners as and when they are granted to the regular employees.

(e) A writ in the nature of Mandamus be issued against the respondents directing them for enforcement and grant of the benefits of M.P. Civil Services (Medical Attendance) Rules, 1958 to the pensioners of the Board.

(f) To award costs of the petitioner to the petitioners;

(g) To grant any other relief to the petitioner, which this Hon''ble Court deems fit in the facts and circumstances of the case.

3. Learned Sr. Counsel appearing for the petitioners has placed a reliance upon a judgment delivered by the Apex Court in the case of All India Judges'' Association and Others Vs. Union of India and Others, and his contention is that the respondent Housing Board has strongly pleaded in the return that the payment of enhanced pension will result in heavy financial burden and therefore keeping in view the judgment delivered by the Apex Court, the grievance of the Housing

Board in respect of financial burden cannot be looked into as the duties of the Housing Board to pay pension are obligatory in nature.

4. Learned Sr. Counsel appearing for the petitioners has also placed a reliance upon a judgment delivered by the Apex Court in the case of Kallakkhurichi Taluk Retired Officials Association, Tamil Nadu and others vs. State of Tamil Nadu and connected petitions, reported in (2013) 2 SCC 772 and his contention is that there cannot be two classes of pensioners in respect of an organization and payment of dearness pay/pension based upon the cut off date fixed by the employer has been held to be bad in law by the Apex Court.

5. On the other hand, learned counsel for the respondents-Housing Board has vehemently argued before this Court that the members of the petitioner No. 1 association are not entitled for the benefits of revised pension based upon the M.P. Pay Revision Rules, 2009, which have been made applicable to the employees of the Housing Board w.e.f. 1-9-2009. It has also been stated that the Housing Board is an autonomous and an independent body having its own rules and regulations framed for retirement and pension for its employees and the Madhya Pradesh Housing Board in exercise of powers conferred under the Madhya Pradesh Housing Board Act 1973 has framed the Regulations dealing with the employment conditions of the employees of the Board known as Madhya Pradesh Griha Nirman Mandal Regulations, 1998 and the Regulations have been amended from time to time. It has further been stated that the State Government does not grant any financial assistance to meet the liability of pension and the Housing Board has to manage the pension scheme from its own resources. The Housing Board has enclosed copy of letters dated 13-8-1996 and 2-9-1996 in support of the aforesaid averments. The Housing Board has further stated that the financial condition of the Housing Board is not good. The Housing Board has suffered heavy losses and is not in a position to bear any additional financial burden. It has further been stated that as per the balance sheet dated 31-1-2009, in the pension fund an amount of Rs. 3.83 crores was in existence and the same has been reduced to 1.10 crores on 31-3-2010, meaning thereby Rs. 2.73 crores have been exhausted from the accumulated pension fund. It has further been stated that a situation will arise in future when no fund would be available for payment of pension. It has also been stated that the Housing Board has suffered heavy losses and the balance sheets have also been filed along with the reply. The respondents have also admitted that they have accepted the recommendations of 6th Pay Commission and the M.P. Pay Revision Rules, 2009 have been made applicable to the Corporation w.e.f. 1-9-2009 and the employees of the Housing Board are being paid emoluments as per the M.P. Pay Revision Rules, 2009 w.e.f. 1-9-2009. It has further been stated that as per the Regulation-5(a) of the Madhya Pradesh Griha Nirman Mandal Regulations, 1998 the benefits of 6th Pay Commission has been granted to the existing employees of the Housing Board w.e.f. 1-9-2009 and the petitioners, who are pensioners have been granted dearness allowance to the extent of 53% and the same has been raised up to 83% at present, though the benefit of 6th Pay Commission has

not been extended and they have been adequately compensated. It has also been stated that the M.P. Civil Services (Medical Attendance) Rules, 1958 have not been applicable in the case of pensioners. The contention of the Housing Board is that the question of payment of revised pension as per M.P. Pay and Revision Rules, 2009 to the members of the petitioner No. 1 association specially in light of the fact that the Housing Board has suffered heavy losses, does not arise and the writ petition be dismissed.

6. Learned counsel for the respondents/Housing Board has also placed a reliance upon a judgment of Hon"ble Apex Court delivered in the case of K.L. Rathee Vs. Union of India and others, , wherein the Apex Court has held that D.S. Nakara and Others Vs. Union of India (UOI), is not a case of universal application irrespective of the facts and circumstances of the case.

7. He has also placed reliance upon a judgment delivered by the Apex Court in the case of State of Punjab v. Boota Singh, (2000) 3 SCC 733 . In the aforesaid case, there were two different sets of rules governing the retired employees. In those circumstances, the Apex Court has held that the employees, governed by two different sets of rules cannot be equated and specifying the date for the conferment of such additional benefits cannot be considered as arbitrary as two sets of rules were applicable therein.

8. He has also placed reliance upon a judgment delivered by the Apex Court in the case of State of Punjab and Another Vs. J.L. Gupta and Others, and his contention is that two classes of employees, who were retired employees cannot be treated as at par and the employees cannot claim the same benefits which became available on a much later date to the retiring employees by reason of change in the rules relating to pensionary benefits. Learned counsel for the respondents/Housing Board has also placed reliance upon a judgment delivered by the Apex Court in the case of Union of India and Another Vs. R. Sarangapani and Others, wherein the question was in respect of grant of certain benefits based upon the cut off date. Learned counsel for the respondents/Housing Board has also placed reliance upon a judgment delivered by the Apex Court in the case of State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others, , wherein the Apex Court has held that the emoluments have to be calculated as per governing rules at the time of retirement of employees and the contention of the learned counsel for the respondents is that keeping in view the aforesaid judgment, the question of granting benefit based upon the recommendations of 6th Pay Commission to the members of the petitioner No. 1 association does not arise. Lastly he has placed reliance upon a judgment delivered in the case of Gujarat State Khadi Gramodyog Board Pensioners Association Vs. Gujarat State Khadi Gramodyog Board, and his contention is that in the aforesaid case, the Gujarat High Court has directed the payment of pension to the retired employees keeping in view the Revision of Pay Rules, however the liability has been fastened upon the State Government and similarly as the M.P. Housing Board is facing financial problems and it is an

instrumentality of the State, therefore, liability should be fastened upon the State Government. He has prayed for dismissal of the writ petition.

9. Learned counsel for the respondent-State has vehemently argued before this Court that the Housing Board is a separate and an independent body constituted by virtue of statutory provisions as contained under the Madhya Pradesh Griha Nirman Mandal Regulations, 1972 and does not receive any financial aid from the State Government. It has also been stated that the Housing Board has to pay salary to its employees and has to pay pension to its employees from its own funds and by no stretch of imagination the liability can be fastened upon the State of Madhya Pradesh in the matter of payment of pension.

10. A rejoinder as well as additional return has also been filed in the matter and the same arguments and grounds have been raised for claiming the pension by the petitioners keeping in view the M.P. Pay Revision Rules, 2009 as well as almost the same grounds have been raised by the Housing Board for denying the benefit of M.P. Pay Revision Rules, 2009 to the petitioners.

11. Heard the learned counsel for the parties at length and perused the record. The matter, as it relates to pensioners, who are senior citizens, has been heard finally and is being disposed of with the consent of the parties at the motion hearing stage itself.

12. The petitioner No. 1 before this Court is a registered association registered under the provisions of Madhya Pradesh Society Registrickaran Adhiniyam, 1973 and has been established to protect the rights of the pensioners, who have attained the age of superannuation after serving the Madhya Pradesh Housing Board for decades. The petitioner No. 2, is the Secretary of petitioner No. 1 association. The respondent No. 1 Madhya Pradesh Housing Board is a statutory corporation incorporated by the statutory provisions as contained u/s 13 of the Madhya Pradesh Griha Nirman Mandal Regulations, 1972. It is also a State as defined under Article 12 of the Constitution of India. Earlier the retired employees of the Madhya Pradesh Housing Board were not paid pension nor gratuity and some of the employees came up before this Court by filing a writ petition claiming pension and gratuity and the same was registered as W.P. No. 1940/93. The writ petition was heard at length and after considering all the statutory provisions governing the field, this Court arrived at a conclusion that the employees of the Madhya Pradesh Housing Board are entitled for grant of pension as well as gratuity. This Court in the case of Chandrakumar and others (supra) vide order dated 13-9-1995 in paragraphs 16, 17, 18, 19, 20, 21, 22, 23 and 24 has held as under:--

16. For better appreciation of the controversy involved in this case, the relevant provisions i.e. section 15 of the Adhiniyam 1972 is reproduced hereinbelow:

15. Conditions of service of officers and servants.-- (1) The remuneration and other conditions of service of the officers and servants of the Board appointed u/s 14, shall be such as may be determined by regulations.

(2) Until regulations are made under sub-section (1) the remuneration and conditions of officers and servants of the Board shall instructions relating to remuneration and officers and servants of the corresponding grade in the service of the State Government.

The other provisions which may also require consideration is section 17(e) of the Adhiniyam, 1972 which is also reproduced hereinbelow:--

17. Service regulation.-- Subject to the provisions of this Act, the Board shall, with the previous approval of the State Government, make regulation--

xxx xxx xxx

(e) for determining the conditions under which the officers and servants or any of them shall on retirement receive gratuities or compassionate allowance and the amount or such gratuities

17. Learned counsel Shri B.L. Pavecha appearing for the petitioners contended that u/s 15 of the Adhiniyam, 1972, the respondent No. 1 is liable to pay pension and gratuity to the petitioners and other such employees. His submission is that perusal of sub-section (1) and sub-section (ii) of section 15 of the Adhiniyam, makes it clear that in case the sub-section (1) is not applicable, then sub-section (2) shall be applicable and in either way the benefit has to be given only to the petitioners" and there is no escape from the same. His further submission is that regulations have actually been framed u/s 17 of the Adhiniyam which were sent to the Government for its approval on 20-7-1973. Thereupon the State Government has granted its approval on 22-9-1973 vide Ann. P. 4. It has also been mentioned in the said letter which is issued by the Under Secretary of the Government that the said regulations with regard to payment of pension and gratuity would be applicable from 1-7-1973. These letters and correspondence of the respondents leave no scope for any doubt. They are unambiguous and clear in terms.

18. After going through the abovesaid letters I am fully satisfied and convinced that these regulations were formulated and created u/s 17(6) of the Adhiniyam, 1972 and have duly been approved and sanction accorded u/s 15 of the Adhiniyam.

19. The necessary consequences would be that the petitioners and all such other employees would become entitle to receive the payment of pension and gratuity from the respondent No. 1. It is also not seriously disputed that the legal heirs of Khalil Khan Driver and Hansraj Asudamal were granted family pension under the same very regulation. Consequently the respondents are stopped from saying that the regulations have not been framed or the same has not been approved by the State Government. Had it been so then they would not have started granting pension to the legal heirs of these two deceased employees of the Board.

20. The petitioners have categorically mentioned that all those employees who had opted the scheme for provident fund are ready and willing to return back the

amount of contribution of the Board together with interest; but would like to avail of the facility of pension and gratuity. It appears that between the two respondent's Board and State there appears to be some difficulty as to who should bear the expenses of the payment of pension and gratuity; but perusal of the document clearly shows that the Board has accepted its liability to make the payment of the same provided the regulations already framed have been approved by the State Government.

21. As mentioned above, since the regulations have already been approved and permission to continue the same has been granted by their respondent No. 2 State Government, there should not be any hesitation on the Board to start making payment to the petitioners and all such other employees.

22. The petitioners have also placed reliance on a decision of this Court in Janki Prasad vs. M.P. Housing Board and others, W.P. No. 1330/91 decided on 18-8-1994 (Gwalior Bench). In the said order it has been mentioned that the pension be paid to the employees either by the State or by the Board as the case may be. But in the case at hand in view of the overwhelming documents filed by the petitioners it is clearly made out that the payment of pension/gratuity is to be made by the respondent No. 1 only. The petitioner who have been paid the contributory provident fund, shall have to refund back the amount of contribution of the board with interest of 6% p.a. from the date of payment till they actually pay, within six months from today.

23. The respondent No. 1 shall start examining the papers of each of the petitioners as also of other such employees who have already attained the age of superannuation and shall then make the payment of pension/gratuity to them within the period of six months from today. The payment of pension and gratuity to the petitioners Nos. 5 to 7 would be subject to their refund of the contribution of the respondent No. 1 towards contributory provident fund as mentioned above, as they have already been paid the provident fund.

24. For reasons stated, this petition stands allowed. It is held that the respondent No. 1 is liable to make payment of the pension and gratuity not only to the petitioners but also to all such other employees who have either already attained the age of superannuation or are likely to attain the same in future. In the facts and circumstances of the case, the parties shall bear their own costs on this petition. Security amount, if any be refunded to the petitioners, after verification.

13. This Court in the aforesaid paragraphs has held that the employees of the respondent No. 1 Housing Board are entitled for grant of pension. Not only this, it was also held by this Court that it is the Madhya Pradesh Housing Board, Bhopal who has to pay pension and gratuity to its retired employees, meaning thereby the liability to pay pension was also fastened upon the Housing Board and not upon the State of Madhya Pradesh. A SLP was preferred by the Madhya Pradesh Housing Board before the Hon'ble Supreme Court and the Apex Court

has declined to entertain the SLP and the same was dismissed vide order dated 22-4-1996 passed in SLP No. 837/96, meaning thereby the judgment granting pension and gratuity to the retired employees has been upheld by the Apex Court. The Madhya Pradesh Housing Board has thereafter implemented the judgment delivered in the case of Chandrakumar and others (supra) and started paying pension to all its employees. The dispute in the present case relates to grant of revised pension to the retired employees, who are members of the petitioner No. 1 association on account of M.P. Pay Revision Rules, 2009. The State of Madhya Pradesh based upon the recommendations of the 6th Pay Commission Report has granted the benefit of recommendations of 6th Pay Commission to its employees by framing M.P. Pay Revision Rules, 2009. It is an undisputed fact that the Madhya Pradesh Housing Board in its 25th meeting held on 15-9-2006 has passed a resolution for granting the benefits of 6th Pay Commission recommendations w.e.f. 1-9-2009 to its regular employees. A resolution has also been passed to make the M.P. Pay Revision Rules, 2009 rules applicable w.e.f. 1-9-2009, meaning thereby the employees, who have attained the age of superannuation prior to 1-9-2009 are receiving the less pension and the employees, who have attained the age of superannuation after 1-9-2009 are receiving higher pension on account of M.P. Pay Revision Rules, 2009.

14. This Court has carefully gone through the various statutory provisions, which are necessary for adjudication of the controversy involved in the present case. Section 15 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 reads as under:--

15. Conditions of service of officers and servants.-- (1) The remuneration and other conditions of service of the officers and servants of the Board appointed u/s 14, shall be such as may be determined by regulations.

(2) Until regulations are made under sub-section (1) the remuneration and conditions of officers and servants of the Board shall instructions relating to remuneration and officers and servants of the corresponding grade in the service of the State Government.

Similarly section 17 and 17(e) of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 reads as under:--

17. Service regulation.-- Subject to the provisions of this Act, the Board shall, with the previous approval of the State Government, make regulation--

xxx xxx xxx

(e) for determining the conditions under which the officers and servants or any of them shall on retirement receive gratuities or compassionate allowance and the amount or such gratuities.....

15. The aforesaid statutory provision of law, makes it very clear that the rules applicable to the State Government employees in the matter of retirement, gratuity and compassionate allowance are applicable to the employees of the

Housing Board, till the regulations are framed by the Housing Board for its employees. The Housing Board has also framed regulations for its employees in exercise of power conferred under the Madhya Pradesh Housing Board Act, 1973 known as the Madhya Pradesh Griha Nirman Mandal Regulations, 1998 and the Regulation 5 of the Madhya Pradesh Griha Nirman Mandal Regulations, 1998 reads as under:--

5. Service Regulations:

(a) Unless otherwise provided by any general or special order of the Board for a particular grade or category of allowances, the salary allowances of the regular officers and servants of the Board shall be the same as are admissible to the officials of corresponding grades under the State Government.

(b) The regular officers and servants of the Board shall have to subscribe to the General Provident Fund with effect from 1-7-1973 consequent upon the introduction of the pension scheme. The subscription to the GPF shall be regulated in accordance with the provisions of the M.P. General Provident Fund Rules.

(c) The age of superannuation of the Class I, II and III officers and employees of the Board shall be fifty-eight years, whereas that of Class-IV employees shall be sixty years.

(d) Grant of pension/family pension and death-cum-retirement benefits to the regular officers and employees of the Board with effect from 1-7-1973 shall be regulated in accordance with the M.P. Civil Services (Pension) Rules, 1976.

(e) The M.P. Civil Service (Commutation of Pension) Rules shall not be applicable to the officers and servants of the Board.

16. The Housing Board in its return has graciously quoted the entire relevant Regulations of 1998. The Regulation (d) of the aforesaid Regulations makes it very clear that the provisions of M.P. Civil Services (Pension) Rules, 1976 are very much applicable in respect of pension/family pension and death-cum-retirement benefits to the regular officers and employees of the Board w.e.f. 1-7-1973. The petitioners, who are pensioners are therefore certainly entitled for the benefit flowing out of the statutory provisions of law as contained under the M.P. Civil Services (Pension) Rules, 1976.

17. This Court has carefully gone through the aforesaid statutory provisions of law as well as judgment relied upon by the learned counsel for the petitioners as well as learned counsel appearing for the M.P. Housing Board.

18. Learned counsel appearing for the M.P. Housing Board has placed a reliance upon a judgment of Hon''ble Apex Court delivered in the case of K.L. Rathee (supra) and the paragraph 12 of the aforesaid judgment reads as under:--

12. Clearly appears from all these cases that D.S. Nakara and Others Vs. Union of India (UOI), is not a case of universal application irrespective of the facts and

circumstances of the case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in *Nakara*, that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the person who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same. This argument was specifically negated by the Constitution Bench in the case of *Union of India (UOI) Vs. All India Services Pensioners' Association and Another*, . What the petitioner is claiming in this case is more or less the same relief as was denied to him in the above case.

19. The Apex Court in the aforesaid case has not dealt with the similar controversy involved in the present case. There cannot be two classes of pensioners specially when one set of rules is applicable to all pensioners serving the Housing Board, meaning thereby the decision to deny the benefit of revised pension keeping in view the M.P. Pay Revision Rules, 2009 to the members of the petitioner No. 1 association, in view the aforesaid judgment, is certainly violative of the Articles 14 and 16 of the Constitution of India. Once, the State Government has accepted to grant the benefit of M.P. Pay Revision Rules, 2009 to its employees and the statutory provision also entitles the retired employees for grant of pension as well as revision of pension at par with the employees of the State Government, the Housing Board cannot deny the benefit of revision of pension to its own retired employees, who have attained the age of superannuation prior to 1-9-2009.

20. Similarly, the learned counsel for the respondents has placed reliance upon a judgment delivered in the case of *Boota Singh (supra)*, the Apex Court in the aforesaid case in paragraph No. 7 has held as under:--

7. On merits we find that the retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders/notifications. Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons who retired were governed by two different sets of rules. They cannot therefore be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary.

21. In the aforesaid case, the Apex Court was once again dealing with a different kind of situation altogether, wherein two classes of persons were governed under two sets of rules, whereas in the present case there are no two sets of rules. There is only one set of rule i.e. M.P. Civil Services (Pension) Rules, 1976. Not only this, once the Housing Board by its own Regulations i.e. Regulation-5(d) has made it mandatory on the part of the Housing Board to regulate the pension keeping in view the M.P. Civil Services (Pension) Rules, 1976, the question of giving a differential treatment to the employees, who have attained the age of

superannuation prior to 1-9-1999 (sic) does not arise and therefore, the judgment relied upon by the learned counsel for the respondents is again of no help to the Housing Board.

22. Learned counsel for the respondents has placed reliance upon a judgment delivered by the Apex Court in the case of J.L. Gupta and others (supra). Paragraphs 4 and 5 of the aforesaid judgment reads as under:--

4. In Boota Singh's case it has also been held that the benefit conferred by the Notification dated 9th July, 1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary. It was further held that:

In the case of Indian Ex-Services League and others Vs. Union of India, this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished D.S. Nakara and Others Vs. Union of India (UOI), . The latest decision is in the case of K.L. Rathee Vs. Union of India and others, where this Court, after referring to various judgments of this Court, has held that Nakara's case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits.

5. The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the Notification dated 9th July, 1985 since the said benefits became available on a much later date to the retiring employees by reason of change in rules relating to pensionary benefits. In this view, the judgment of the High Court cannot be sustained.

In the aforesaid case also the Apex Court has relied upon the judgment delivered by the Apex Court in the case of Boota Singh and has held that two categories of pension and two categories of pensioners, who are governed by different two sets of rules cannot be equated, wherein in the present case, there are no such two categories of pension and pensioners. There is only one category of pension and there is one set of rules i.e. M.P. Civil Services (Pension) Rules, 1976, which are applicable. The aforesaid judgment again is of no help to the respondents as

it is distinguishable on facts.

23. Learned counsel for the respondents/Housing Board has placed reliance upon a judgment delivered by the Apex Court in the case of Union of India vs. R. Sarangapani and others (supra) and it has been argued by learned counsel that financial burden is also one of the relevant factor for consideration, as in the present case the Housing Board is facing financial crunch, the question of granting revised pension to the members of the petitioner No. 1 association does not arise.

24. He has also placed reliance upon a judgment delivered in the case of Gujarat State Khadi Gramodyog Board Pensioners Association (supra) and he has placed heavy reliance upon paragraphs 55 and 56 of the aforesaid judgment. His contention is that the M.P. Housing Board is an instrumentality of the State Government and therefore the State Government be directed to pay revised pension, if any, in the peculiar facts and circumstances of the case.

25. This Court has carefully gone through the paragraphs 55 and 56 of the aforesaid judgment. The aforesaid case was again a case of pensioners claiming revised pension by virtue of revision of pay rules based upon the recommendations of 5th Pay Commission Report. The Gujarat High Court in the aforesaid case of Gujarat State Khadi Gramodyog Board Pensioners Association (supra) has held that the pensioners are entitled for grant of revised pension keeping in view the revision of pay rules and at the same time the Gujarat State Government as well as Khadi Gramodyog Board have been made liable jointly and severally. In the present case, there is a distinguishing feature. The respondent No. 1 Housing Board is not receiving any grant from the State Government, it's totally an independent body so far as the financial resources are concerned. The Khadi Gramodyog Board, Gujarat was an organization, receiving 100% grant from the State Government and in those circumstances the State of Gujarat was held to be liable to share the burden arising out of the revised pension and therefore, this Court is of the considered opinion that in the present case as this Court in the earlier round of litigation in the case of Chandrakumar and ors. (supra) has held that the respondent No. 1 Housing Board is liable to pay pension dues, the question of deviating from the aforesaid order specially in light of the fact that no grant is being received from the State Government, does not arise and therefore, the liability, if any, has to be discharged by the M.P. Housing Board alone. It has been vehemently argued by learned counsel appearing for the respondents/Housing Board that due to financial problems of the Corporation, the Corporation is not paying the revised pension as per M.P. Pay Revision Rules, 2009 to its employees, who have attained the age of superannuation before 1-9-1999 (sic).

26. Learned Sr. Counsel appearing for the petitioners has drawn the attention of this Court towards the judgment delivered in the case of All India Judges' Association (supra) and the paragraph 6 of the aforesaid judgment reads as under:--

6. This leaves us with the contention of the review petitioners that by the directions in question, this Court has encroached upon the powers of the executive and the legislature under Art. 309 to prescribe the service conditions for the members of the Judicial Service. In view of the separation of the powers under the Constitution, and the need to maintain the independence of the judiciary to protect and promote democracy and the rule of law, it would have been ideal if the most dominant power of the executive and the legislature over the judiciary, viz., that of determining its service conditions had been subjected to some desirable checks and balances. This is so even if ultimately, the service conditions of the judiciary have to be incorporated in and declared by the legislative enactments. But the mere fact that Art. 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the judiciary.

It is for this reason again that the present practice of entrusting the work of recommending the service conditions of the members of the subordinate judiciary to the same Pay Commissions which recommend the service conditions of the other services requires reconsideration. The service conditions of the judicial officers should be laid down and reviewed from time to time by an independent Commission exclusively constituted for the purpose, and the composition of such commission should reflect adequate representation on behalf of the judiciary.

However, it cannot be contended that pending such essential reforms, the overdue demands of the judiciary can be overlooked. As early as in 1958, the Law Commission of India in its 14th report on the System of Judicial Administration in this country made certain recommendations to improve the system. The Commission lamented that "though we have been pouring money into a number of activities, the administration of justice has not seemed to be of enough importance to deserve more financial assistance. On the contrary, in a number of States not only had the administration of justice been starved so as to affect its efficiency, but it has also been made to yield revenue to the State." The report made recommendations in respect of various aspects of the service conditions of the judicial officers and also emphasised that there was no connection between the service conditions of the judiciary and those of the other services. The report further pointed out the salient features of the distinct work of the Judges and emphasised the need among others, to increase the salaries and the superannuation age of the Judges as well as to improve the other facilities available to them including the provision for official residential accommodation.

These recommendations were made to improve the system of justice and thereby to improve the content and quality of justice administered by the Courts. The recommendations were made in the year 1958. Over the years the circumstances which impelled the said recommendations have undergone a metamorphosis. Instead of improving, they have deteriorated making it necessary to update and better them to meet the needs of the present times. Although the report made the recommendations in question to further the implementation of the Constitutional mandate to make proper justice available to the people, the mandate has been consistently ignored both by the executive and the legislature by neglecting to improve the service conditions. By giving the directions in question, this Court has only called upon the executive and the legislature to implement their imperative duties. The Courts do issue directions to the authorities to perform their obligatory duties whenever there is a failure on their part to discharge them. The power to issue such mandates in proper cases belongs to the Courts. As has been pointed out in the judgment under review, this Court was impelled to issue the said directions firstly because the executive and the legislature had failed in their obligations in that behalf. Secondly, the judiciary in this country is a unified institution judicially though not administratively. Hence uniform designations and hierarchy, with uniform service conditions are unavoidable, necessary consequences. The further directions given, therefore, should not be looked upon as an encroachment on the powers of the executive and the legislature to determine the service conditions of the judiciary. They are directions to perform the long overdue obligatory duties.

The contention that the directions of this Court supplant and bypass the constitutionally permissible modes for change in the law, we think, wears thin if the true nature and character of the directions are realised. The directions are essentially for the involvement of an appropriate national policy by the Government in regard to the judiciary's condition. The directions issued are mere aids and incidental to and supplemental of the main direction and as a transitional measure till a comprehensive national policy is evolved. These directions, to the extent they go, are both reasonable and necessary.

The contention with regard to the financial burden likely to be imposed by the directions in question is equally misconceived. Firstly, the Courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe, the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the calibre of the persons appointed to administer it are not of different grades in

different States. Such contentions are ill-suited to the issues involved in the present case.

27. In the present case, to pay revised pension at par with the existing employees and revision of pension at par with the employees of the State of M.P., as the M.P. Civil Services (Pension) Rules, 1976 are applicable to the employees/retired employees of the Housing Board, is the duty of the Housing Board and the plea of financial burden is of no help to the respondent Board. Therefore, the arguments canvassed by the learned counsel for the respondents stands repelled in light of the judgment of the Apex Court delivered in the aforesaid case. It has been further brought to the notice of this Court that the pension scheme itself has been withdrawn by the State Government w.e.f. 2004 and therefore, this Court is of the considered view that the expenditure under the pension head will decrease gradually and finally at some point of time later on there will be no expenditure under the pension head.

28. Learned Sr. Counsel appearing for the petitioners has placed reliance upon a judgment delivered only on 17-1-2013 by the Apex Court in the case of Kallakkhurichi Taluk Retired Officials Association, Tamil Nadu and others (*supra*). The Apex Court in the aforesaid case in paragraphs 33, 34 and 35 has held as under:--

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see. *State of Kerala and Another Vs. N.M. Thomas and Others*,). A valid classification is 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. Legalistically, the test for a valid Page 35 classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. 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) must necessarily be satisfied.

34. In the context of the instant appeals, it is necessary to understand the overall objective of treating "dearness allowance" (or a part of it) as "dearness pay". There can be no doubt, that "dearness allowance" is extended to employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life, to which an employee is accustomed. Likewise, the objective of "dearness pay" is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. Having understood the reason why the

Government extends the benefit of "dearness allowance" and "dearness pay", to its employees and pensioners respectively, we would venture to search for answers to the twin tests which must be satisfied, for making a valid classification (or a valid discrimination), in the present fact situation.

35. In the present context, it needs to be kept in mind, that "dearness allowance" is paid to Government employees keeping in mind the All India Consumer Price Index. Inflation in the market place is sought to be balanced by paying "dearness allowance" to Government employees. When a State Government chooses to treat "dearness allowance" as "dearness pay", the objective remains the same i.e., inflation in the market place is sought to be balanced for retired employees by giving them the benefit of "dearness pay". Since the component of inflation similarly affects all employees, and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of "dearness pay" to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the "dearness allowance" to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the "dearness pay" to be extended to retired employees. Truthfully, it may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. In the absence of any objective, projected in this case, the question of examining the reasonableness to the object sought to be achieved, simply does not arise. Our straying into this expressed realm of imagination, was occasioned by the fact, that the pleadings filed on behalf of the State Government, do not reveal any reason for the classification, which is subject-matter of challenge in the instant appeal.

36. The only position adopted in the pleadings filed before this Court for introducing a cut off date for differential treatment, is expressed in paragraph 4 of the counter affidavit, filed by the State of Tamil Nadu, which is being extracted herewith:- With reference to the averments made in the Grounds of the Special Leave Petition, I submit that the fifth Pay Commission has revised pay and pension with effect from 1-6-1988. As per the recommendation of the above Pay Commission, the Government had issued orders for the revision of pension and Family Pension with effect from 1-6-1988 in G.O.Ms. No. 810. Finance (PC) Department, dated 9-8-1989. It is submitted that the fourth Tamil Nadu Pay Commission has recommended that at the end of the period of three years, the Dearness Allowance sanctioned upto that period could be treated as Dearness Pay. The Fourth Pay Commission revision was given with effect from 1-10-1984. Based on the above recommendation, the Government has issued orders in G.O. Ms. No. 371, Finance, dated 30-4-1986, read with Government letter No. 124414/Pension/86-1, dt. 11-2-1987, that the Dearness Allowance sanctioned upto 30-9-1987 shall be treated as Dearness Pay for the purpose of pensionary benefit in the case of the Govt. Servant retiring on or after 1-10-1987. The orders issued in G.O.Ms. 371, Finance dated 30-4-1985 as amended in

Government letter No. 70707-A/Pension/86-1, dated 8-7-1986 read as follows:--
"The Fourth Tamil Nadu Pay Commission have among other things recommended that at the end of a period of three years the Dearness Allowance sanctioned upto the period could be treated as Dearness Pay in order to ensure a reasonable pension level. The Government accept the recommendation of the Commission and direct that in the case of Government servant, who will be retiring on or after 1-10-1987, the Dearness Allowance sanctioned upto 1-10-1987 shall be reckoned as Dearness Pay for purpose of pension in the case of death of a Government servant occurring on or after 1-10-1987 while in service the Dearness Allowance sanctioned upto 1-10-1987 shall be treated as Dearness Pay for the purpose of computing Family Pension." It is therefore, evident, that the State Government has not disclosed any object which is desired to achieve by the cut off date. Most importantly, the financial constraints of the State Government, were not described as the basis/reason for the classification made in the impugned Government order dated 9-8-1989.

29. Keeping in view the aforesaid judgment, this Court is of the considered opinion that the members of the petitioner No. 1 association cannot be discriminated in the matter of revised pension specially when they are governed by the rules framed by the Governor in exercise of powers conferred under the Proviso to Article 307 of the Constitution of India, known as M.P. Civil Services (Pension) Rules, 1976 and also keeping in view the fact that the other employees of the Housing Board have also been granted the benefits of revised pension, who have retired after 1-9-2009. The members of the petitioner No. 1 association before this Court are also claiming the benefits arising out of the statutory provisions as contained under the M.P. Civil Services (Medical Attendance) Rules, 1958. The Regulations framed by the M.P. Housing Board, known as Madhya Pradesh Griha Nirman Mandal Regulations, 1998 clearly reflects that the provisions of M.P. Civil Services (Medical Attendance) Rules, 1958 shall be applicable to the employees of the Housing Board also.

At this stage, learned Sr. Counsel appearing for the petitioners as well as learned counsel for the respondents have drawn the attention of this Court towards M.P. Civil Services (Medical Attendance) Rules, 1958 and section 1(3)(a) clearly reflects that the aforesaid M.P. Civil Services (Medical Attendance) Rules, 1958 are not applicable to the retired employees and therefore, the question of directing the Housing Board to confer the benefit as provided under the M.P. Civil Services (Medical Attendance) Rules, 1958 to the members of the petitioner No. 1 association, who are retired employees does not arise. As this Court has arrived at a conclusion that the members of the petitioner No. 1 association are entitled for revised pension keeping in view the M.P. Pay Revision Rules, 2009 at par with the other employees of the Housing Board w.e.f. 1-9-2009. The entire exercise of revising pension and payment of arrears of pension and pension by the M.P. Housing Board be concluded within a period of 3 months from the date of receipt of certified copy of this order.

30. With the aforesaid, the writ petition is allowed. No order as to costs.