
(1995) 08 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 10387 of 1994

I.T.C. Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-08-1995

Acts Referred:

Citation : (1995) 08 PAT CK 0004

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ application is tiled at the instance of the management of I.T.C. Limited. It seeks to challenge an award dated 16.8.1994 given by the Labour Court, Patna on a reference made to it u/s 10(1)(C) of the Industrial Disputes Act, 1947. The dispute under reference was:

Whether the pension being paid to Sri S.S. Prasad, retired Sales Representative by M/s. Indian Tobacco Company Limited is justified? If not, what should be the rate of his pension, and from what date.

Before proceeding to examine what the Labour Court said in its award and why did it say so, it would be appropriate to briefly state the facts and circumstances giving rise to the reference.

2. On 17.8.1981, the management entered into a conciliation agreement with Indian Tobacco Company's Employees Union representing the workmen at Patna. This agreement was on a number of issues but the present dispute relates only to the scheme of pension. It is not in dispute that the provision for payment of pension was first introduced by the management in terms of a conciliation agreement dated 27.6.1977. Under the 1977 agreement pension was payable for a period of ten years to such workmen who retired on or after 1.6.1977. In the 1981 agreement the period during which pension was payable after cessation of service was retained to ten years but the amount of pension was slightly increased. The main features of the 1981 agreement on the subject of pension were as follows:

The pension scheme under the agreement dated 17.8.1981 was made effective from 1.4.1981 it was applicable to (i) such workmen who retired on reaching the age of superannuation, or (ii) the legal heirs of any workmen who died while in Company's service, or (iii) workmen who voluntarily resigned or resigned on ground of ill health, accident etc. or (iv) to workmen retrenched from the service of the company; the workmen in categories (iii) and (iv) could become entitled to pension after having put in twenty years of continuous service. As noted, the pension was payable for a period of ten years from the date of cessation of service and the amount of pension was to be determined by multiplying the basic wage with the number of the completed years of service and by dividing the product by 200. The minimum and the maximum limits of pension were fixed at Rs. 40/- and Rs. 225/- per month. With the other details of the scheme, we are not concerned in this case.

3. Shortly before the agreement was finalised on 17.8.1981, Respondent No. 3, the concerned workman, who had by then completed 31 years of continuous service, sought voluntary retirement. His request was accepted and he was retired from service with effect from 15.7.1982. At the time of his retirement, he was paid all his dues and the retrial benefits and was also given a pension in terms of the 1981 agreement. The amount of monthly pension was determined at Rs. 167/- which was payable to him for a period of ten years commencing from 16.7.82.

4. According to the case of the management, the company completed 75 years of its existence on August 24, 1986 and the occasion was celebrated as the Company's Platinum Jubilee. As part of the Platinum Jubilee celebrations the management by a trust deed dated May 27, 1987 created the Platinum Jubilee Pension Fund with the sole object of providing pension to its workmen who were entitled to pension benefits in accordance with the provisions of the rules of the Fund appended to trust deed. Though the trust deed was executed on May 27, 1987, the rules appended to it provided that the Fund would be deemed to have come into operation with effect from August 24, 1987. According to the management the retrospectivity was accorded to the pension fund/scheme with a view to make it coincide with the 75th anniversary of the Company.

5. A little later on January 30, 1988, the management entered into a fresh bi-partite agreement with its employees at Patna who were represented in the agreement by Indian Tobacco Company Limited Employees Union. The background of the 1988 agreement, as it appears from the recital made therein, was that a few workmen had sought voluntary retirement from the Company's service. Their applications were pending decision as also the question of determination of their pension following their retirement. It further appears that the workmen were making a demand for a more liberalised scheme of pension and hence the company was requested "to consider the revision of the existing terms and conditions for the purpose only of computing dues of the workmen proceeding on voluntary retirement". The 1988 bi-partite agreement terminated

the earlier conciliation agreement dated August 17, 1981 and provided that the terms , and conditions of workmen who were on the permanent roll of the Patna Branch of the Company as on 29.1.1988 would be revised as provided in the agreement for the purpose only of computing their gratuity and leave encashment on their voluntary retirement from the services of the Company As regards pension the 1988 bi-partite agreement provided that the pension scheme envisaged under the Platinum Jubilee Pension Fund and its rules shall be made applicable to all workmen on the rolls of the company as on August 24, 1986. It is emphasised on behalf of the management that though the bi-partite agreement was arrived at on January 30, 1988, its benefit was given retrospectively from August 24, 1986, once again, with a view that the workmen should be able to enjoy the benefit from the date the Company completed 75 years of its existence. As regards those workmen who had retired prior to August 24, 1986 and were getting their pension under the 1981 agreement, it was clarified that they would continue to be governed by the earlier agreement and the benefit under the Platinum Jubilee Pension Fund and its rules will not extend to them.

6. At this stage, it would be apposite to take a look at the pension scheme envisaged under the Platinum Jubilee Pension Fund and its rules. Shorn of its verbiage, the substance of the scheme was that the pension would now be payable for life instead of for the limited period of ten years from the date of cessation of service. There was also some slight liberalisation in determining the amount of pension which was now to be calculated by multiplying the pension able wage, (that is to say, basic wage) with pension able service (that is, completed years of continuous service) and then by dividing the product by 180 instead of 200. On the basis of the formula for determining the pension under the Platinum Jubilee Pension Rules. I made a calculation and found that the workman whose pension was fixed at Rs. 167/- per month in terms of the 1981 settlement would get under the Platinum Jubilee Pension Rules, his pension @ Rs 185.55 per month. I also showed the calculation to the counsel for the parties but no one contradicted the calculation made by me.

7. Though the 1988 agreement excluded all those who had retired before 24.8.1986, the concerned workman raised a demand that his pension should also be revised in terms of that agreement. When no favourable response came from the management, a trade union under the name of the Bihar State Sales Representatives Union took up the dispute and wrote to the Deputy Labour Commissioner so as to redress the grievances of the concerned workman. A conciliation proceeding was, in fact, initiated which, however, failed to make any progress due to the management's refusal to participate. On the failure of the conciliation proceeding, the appropriate Government made a reference of the dispute (in terms quoted at the beginning of this judgment) for adjudication before the labour court u/s 10(1)(c) of the Industrial Disputes Act. In the labour court, the reference was registered as Case No. 17 of 1991.

8. Before the labour court the management challenged the validity and competence of the reference order on a number of grounds. The labour court rejected the management's challenge to the validity of the reference order and held it to be competent.

9. On the merits of the workman's claim the contest between the parties appears to have revolved around the question whether or not the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), would apply to the facts of this case. It was contended on behalf of the workmen that Nakara's judgment laid down that all pensioners constituted a single class and it was impermissible to divide them in further subclasses by introducing a cut-off date for the implementation of the revised pension/retirement benefit scheme was up-held as valid.

10. The labour court in its award dated 16.8.1994 accepted the workmen's contention and held and found that Nakara's judgment applied to the facts of this dispute and that the concerned workman was situated similarly as those who retired after 24.8.1986 and, therefore, he too should have been given the benefits of the revised pension scheme in terms of the 1988 agreement. The labour court accordingly directed the management to revise the pension of the concerned workman, in terms of the 1988 agreement, pay him the differential amount between the period 24.8.1986 and 15.7.1992 and further to give him pension at the revised rates till his life.

11. From a perusal of the award, it appears that the labour court gave its award on the sole ground that the facts and circumstances of this case fell within the ratio of Nakara's judgment. In the penultimate paragraph of the award, there is indeed a reference to the financial implication of the demand raised by the concerned workman but there is hardly any worthwhile consideration of this aspect of the matter. For this however, the labour court can not be faulted as the parties before it seem to have contested the dispute only on the basis of Nakara's judgment; in the written statement filed on behalf of the management, there is absolutely no reference to the financial implications of the demand and the financial burden which the management might have to bear in case the award was made against it.

12. Mr. Shanti Bhushan, learned Counsel appearing on behalf of the Petitioner assailed the award on merits and submitted that the labour court's finding regarding the application of Nakara's judgment to the facts of this case was clearly erroneous. He also challenged the validity of the reference order. First attacking the workman's demand on its merits and then adverting to the technical questions regarding the maintainability of the reference, the counsel, in a subtle way, displayed a healthy sense of priorities. For the sake of convenience, however, I propose to deal first with the question of the validity and maintainability of the reference order.

13. Mr. Shanti Bhushan submitted that the dispute at its inception was

admittedly a dispute between the management and one of its erstwhile employees. In other words, it was a dispute between the management and a single person. He further submitted that the dispute was never sponsored by an appreciable number of the management's workmen or any trade union representing the management's workmen. The dispute had, thus, all along remained confined between the management and a single person and hence it never assumed the character of an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.

14. Mr. Shanti Bhushan read out the reference notification ("industrial dispute exists between the management of M/s I.T.C. Limited and their workman Sri S.S. Prasad represented by Bihar State Sales Representatives Union

(Emphasis added) and submitted that from the reference notification itself it was evident that what was referred to the labour court was an individual dispute and not a collective dispute so as to qualify as an industrial dispute. He further submitted that the support of the dispute by the Bihar States Sales Representatives Union was of no avail because this union had no representative character and no workmen of I.T.C. Limited were its members. According to Mr. Shanti Bhushan it was a case where a dispute which at its inception was an individual dispute had been at a later stage supported by a body of persons having no relationship of employer and workman with the Petitioner company. The Bihar Sales Representatives Union not being competent to raise an industrial dispute with the Petitioner management, its support to the dispute raised by Sri S.S. Prasad would not make it an industrial dispute.

15. In support of the contention that an industrial dispute can come into existence only in case the dispute was supported and sponsored by an appreciable number of workmen or an union of the workmen of the employer against whom the dispute was raised, Mr. Shanti Bhushan relied upon the decision of the Supreme Court in (i) The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, and (ii) The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, The submissions on this point led the counsel to its ancillary question regarding onus and he strongly argued that when the validity of the reference order came under challenge on the ground that the dispute under reference did not have the support of an appreciable number of the workmen of the concerned employer, the onus lay heavily on the workmen to establish that the union sponsoring the dispute had a representative character or that the dispute had otherwise the support of an appreciable number of workmen of the employer. In support of this contention, learned Counsel relied upon a number of decisions which are as follows:

(i) P.M. Murugappa Mudaliar Rathina Mudaliar and Raju Mudaliar 1965 (II) LLJ 489 (Mysore High Court), (ii) Murugalii Estate and Industries Tribunal, Madras 1964 (II) LLJ 164 (Madras High Court), (iii) The Management of Madura Mills Company Limited and the Presiding Officer, Industrial Tribunal, Madras 1973 (II) LLJ 341 and (iv) 1975 Lab. I.C. 1685 (Calcutta High Court).

16. I do not propose to examine the submissions advanced by Mr. Shanti Bhushan in detail as I am of the opinion that this objection is bound to fail for want of necessary pleadings. It is to be noted that the basic premise underlying the submissions is that the Bihar State Sales Representatives Union did not have any appreciable number of the employees of I.T.C. Limited as its members. It is a pure question of fact which could be decided before the labour court only by leading evidence on the basis of necessary pleadings. Even assuming in favour of Mr. Shanti Bhushan that it was for the workmen to lead such evidence in order to establish the validity of the reference, the objection in this regard was first required to be raised by the management. Now, the management in its written statement filed before the labour court challenged the competence of the reference on a number of grounds. In this regard, it also took objection to the Union, party to the reference, seeking to raise the dispute. The objections concerning the union are to be found in paragraphs 2(A), (C) and (F) of the management's written statement. In those paras it was stated that the union had no locus standi to raise the dispute as it was not a party to the memoranda of settlement dated 17.8.1981 and 12.7.1982; it was further stated that the concerned workman was a member of India Tobacco Company Employees Union at all material times during his employment and as such the union, party to the reference, could not espouse his case; it was also stated that the union in reference could not espouse the case of the concerned workman who was a member of the India Tobacco Company Employees Union at the time of the execution of the settlement dated 17.8.1981 and was bound by it. It is, thus, evident that the management did not only challenge the competence of the concerned union to sponsor or support the dispute but also assigned specific reasons for the same, it is further to be noted that nowhere in the written statement it was stated that the concerned union was not competent to sponsor or support the dispute because it did not have any representative character and the employees of the Petitioner company were not its members in any appreciable number. It is also important to note that on this question the labour court, on the basis of the aforementioned objections taken by the management, framed the following issue:

1 (c). That raising of the dispute by the General Secretary of the Bihar Sales Representatives Union on behalf of the so called workman is wholly incompetent as it was not a party to the memorandum of settlement dated 12.7.1982 and had also not represented the cause of the employee concerned during the course of his employment.

(Emphasis added)

In such a situation, when the management questioned the competence of the union to support the dispute for reasons specifically assigned in the written statement, it is only logical that the other side would be called upon to meet only the reasons assigned by the management in its written statement and it would not be required to meet any or all other reasons even though not raised by the

management. I am, therefore, of the definite opinion that on the basis of the pleadings filed by the management, there was no occasion for the workmen to lead evidence to establish the representative character of the concerned union and accordingly this challenge based on a pure question of fact cannot be permitted to be raised for the first time in this writ petition before the High Court.

17. Mr. Shanti Bhushan next submitted that any dispute concerning Sri S.S. Prasad, Respondent No. 3 could not be an industrial dispute. According to him, the definition of workman as contained in Section 2(s) of the Act envisaged an existing relationship of employer and employee and, therefore, Sri S.S. Prasad who had retired from the service of the Petitioner company as far back as in the year, 1982 could not be said to be the Petitioner's workman. He further submitted that the workmen of the Petitioner company (meaning thereby those who were currently in the employment of the company) did not have any direct or substantial interest in the dispute concerning the pension payable to Sri Prasad and hence the present dispute would not qualify as an industrial dispute even on the basis of the expression ".... connected with the employment or non-employment or the terms of employment or with the condition of labour, of any person" in Section 2(k) of the Act.

18. I am unable to accept both the submissions. It is true that in a preponderance of cases the nature of the disputes is such that they concern persons having subsisting contract of employment and, therefore, can be raised only by persons who are in employment at the time of raising of the disputes. (This is of course leaving aside dismissed workmen, who by definition are deemed to be workmen in case they were dismissed as a consequence of an industrial dispute or whose dismissal etc. has given rise to the dispute). That, however, will not make a rigid and Inflexible rule that no dispute can be raised concerning persons who have ceased to be in service. At this stage, it must be borne in mind that on the dates the present dispute was raised and the reference was made, Sri S.S. Prasad had a subsisting right to receive pension from the Petitioner company. The Supreme Court in National Building Construction Corporation Vs. Pritam Singh Gill and Others, has held that the term "workman" as used in Section 33C(2) includes all persons whose claim, requiring computation under this Sub-section is in respect of an existing right arising from his relationship as an industrial workman with his employer. Relying upon this Supreme Court decision a learned Single Judge of the Delhi High Court in Delhi Cloth and General Mills Co. Ltd. Vs. Sohan Pal and Another, held that Section 2(s) had Refined workman very widely taking within fold "any person employed in any Industry" to do the kind of works mentioned herein and, therefore, there was nothing to prevent a workman who had retired from service to maintain an application u/s 33C(2) of the Act.

19. In this case, it has been noted that at the material time Sri Prasad had a subsisting right to receive pension from the management. Now, assuming the management withheld the payment of his pension, it is undeniable that Sri

Prasad could make a claim in terms of Section 33C(2) of the Act for the recovery of the pension money due to him. It logically follows that he must also be included in the definition of workman in any dispute regarding the revision of his pension as the dispute would relate to a subsisting right. To state it as a principle, I should say that if the dispute relates to a subsisting right arising from a person's relationship as an industrial workman with his employer, then in relation to that dispute that person would be included in the definition of workman notwithstanding the fact that he was no longer, in the service of the employer when the dispute was raised.

20. I feel inclined to clarify here that the position would have been quite different had Sri Prasad retired from service prior to 1.6.1977 and had never got any pension from the management or had he sought to raise the dispute after the period of ten years, during which he was entitled to receive pension, was over. Because in that case there would have been no subsisting right to receive pension in respect of which any dispute could have been raised.

21. At this juncture, I may note that a learned Single Judge of the Bombay High Court in *Ici India Ltd. Vs. Presiding Officer and others*, by his own elaborate method of reasoning has come to the same conclusion and has observed:

In my view there was no need for the Tribunal to be apologetic or make this detour, it could as well have, held that industrial dispute could have been validly raised by retired employees with regard to their subsisting pensionary rights under the pension scheme.

I find myself in fullest agreement with this view.

22. Looking at the question from another point of view, an industrial dispute relating to the pension payable to retired workmen can also be raised by workmen who are currently in employment. Section 2(k) of the Act defines industrial dispute as any dispute which is connected with the terms of employment or with the condition of labour of any person. The words "any person" in the definition clause have been held to mean a person in whose terms of employment or condition of labour the workmen as a class have a direct and substantial interest. Mr. Shanti Bhushan contended that the workmen presently in employment had no community of interest with Sri S.S. Prasad, a retired workman, in the dispute concerning the pension payable to him and they had no direct or substantial interest in a dispute of this nature.

23. I am unable to accept the contention and to my mind the interest of the present workmen was obvious. In supporting the demand for revision of pension of a retired workman, the present workmen were plainly supporting a future revision of their own pension when, after retirement, they would no longer be in service. The test of community of interest has been held to be satisfied in cases where the interests of the workmen under subsisting employment was much more remote and indirect.

24. In standard Vaccum Refining Company of India Limited v. Their Workmen 1960 (II) LLJ 223, the workmen employed in the company raised a dispute that the contract system of labour adopted by the company for cleaning and maintenance of the refinery belonging to it should be abolished. The Supreme Court held that though the persons working under the contractor were not the workmen of the company, the workmen of the company had real and substantial interest in the question of the employment of the contract labour for the work of the company and therefore the dispute was an industrial dispute.

25. Another judgment of which note may be taken is by a Division Bench of the Calcutta High Court in Asiatic Company (India) Private Limited v. 4th Industrial Tribunal. In that case the dispute related to the payment of bonus to workmen who had been already retrenched from the service of the company. An objection was raised that such a dispute could not constitute an industrial dispute within the meaning of Section 2(k) of the Act as the existing workmen of the company had no direct or substantial interest in the payment of bonus to the retrenched workmen. The Calcutta decision relying upon the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, held that the workmen who had raised the dispute can be said to have a community of interest with the retrenched workmen in the general interest of labour welfare because they put forward a claim that under circumstances similar to those of the present case, they were entitled to claim bonus. In this sense the workmen raising the dispute had a nexus with the dispute because they had taken up the case of the retrenched workmen in the general interest of labour welfare.

26. Similarly, the Kerala High Court in the case of Travancore Rubber Works Employees' Union Vs. Industrial Tribunal and Others, held that a dispute, regarding the employment of casual workmen, taken up by the regular workmen employed in an establishment was an industrial dispute as the workmen had community of interest with the cause of the casual workmen.

27. In view of the aforesaid decisions, am firmly of the opinion that in a dispute regarding the revision of pension of the retired workmen the existing workmen have a real and substantial interest and in case such a dispute is supported and sponsored by the existing workmen, it would doubtlessly be an industrial dispute.

28. From the above discussion, I come to the inference that a dispute relating to the revision of pension can be lawfully and validly raised by an appreciable number of retired workmen acting together or alternatively it can also be raised by the existing workmen of an industrial establishment and in both cases it would be an industrial dispute within the meaning of Section 2(k) of the Act.

29. For the aforesaid reasons, the Petitioner's challenge to the validity and competence of the reference order fails and I find and hold that the reference was legally valid and maintainable.

30. On merits, learned Counsel for the Petitioner disputed the workman's claim by submitting that by the 1988 agreement a new pension scheme had been

substituted in place of the old scheme under the 1981 agreement and there was a reasonable basis for fixing 24.8.1986 as the cut-off date. It was further submitted that the labour court had seriously erred in holding that the present dispute was covered by Nakara's judgment. According to the counsel the facts and circumstances of the present dispute actually fell within the ratio of some later decisions where the validity of the cut-off date for the implementation of the new pension/retirement benefit scheme was upheld by the Supreme Court. In this court too, as before the labour court, the submissions for and against the workman's claim mostly centered around the question of applicability or inapplicability of Nakara's judgment to the facts and circumstances of this dispute and the arguments were advanced within those parameters only.

31. Mr. Shanti Bhushan strongly contended that Nakara's judgment was inapplicable to the facts of this case for three reasons:

(i) Nakara's judgment was given in a case against the Union of India and the decision was founded on Article 14 of the Constitution which had no application in the case of a private employer;

(ii) Nakara's judgment was based on a finding that the cut-off date introduced to segregate and exclude the past pensioners was unreasonable and arbitrary and had been "picked out of a hat". Hence, if it was Shown in the facts of a given case that the cut-off date for the implementation of a new scheme had a reasonable basis, it must be upheld as valid as in a number of later decisions of the Supreme Court and in such a case Nakara's judgment will have no application;

(iii) Nakara's judgment will have no application when a new scheme was substituted in place of an old scheme of pension/retirement benefit and in case of introduction of a new scheme the beneficiaries under the earlier scheme could be reasonably and lawfully excluded from its application.

In support of his submissions mentioned at serial Nos. (ii) and (iii) above, Mr. Shanti Bhushan relied upon a number of decisions given after Nakara's judgment where the exclusion of the past retirees from the new pension/retirement benefit scheme was held to be legally valid. These are (i) All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, (ii) State of West Bengal v. Ratan Behari Dey and Ors. 1993 (4) 62 , (iii) Union of India Vs. P.N. Menon and others, (iv) Indian Ex-Services League v. V. Venkatesan (1991) Lab. I.C. 575 and (v) State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti,

32. For the reasons to be stated herein-after, I am not inclined to undertake a detailed analysis of the judgments relied upon by the learned Counsel or to consider his submissions at serials (ii) and (iii) in any detail. At this stage, however, I would only like to state that, in my opinion, the present dispute on its facts appears to be closer to Nakara's case than the cases relied upon by the counsel for the Petitioner. I am unable to hold that the 1988 agreement

introduced any new scheme of pension. What was introduced was a revised and liberalised pension scheme and it would not be quite correct to describe it as a new scheme or one essentially different from the earlier scheme. I am also unable to see the reasonableness of 24.8.1986 as the cut-off date merely on the ground that it coincided with the platinum jubilee of the Petitioner company. I am, therefore, of the opinion that Nakara's judgment does have an application to the facts of this case.

33. This is, however, not to say that its similarity with Nakara's case would alone provide sufficient justification to allow the claim of the workman or that an award could be given in his favour solely and exclusively on the basis of Nakara's judgment.

34. Before proceeding further in this regard, I would like to refer back to Mr. Shanti Bhushan's submission regarding non-applicability of Article 14 in case of a private employer. As noted above, Mr. Shanti Bhushan submitted that Nakara's judgment was based on Article 14 of the Constitution. It was found in that case that the Union of India had introduced an artificial and arbitrary cut-off date for the implementation of the liberalised scheme of pension. This had led to an exclusion of the employees who had retired before the cut-off date, which was violative of Article 14 of the Constitution. Mr. Shanti Bhushan submitted that it was quite elementary that the guarantee of equality as provided under Article 14 of the Constitution of India was not enforceable against the Petitioner, a private company and, thus, the very basis on which Nakara's judgment was founded was not available in this case. I am not entirely in agreement with the counsel. It is indeed true that Article 14, as such, is not enforceable in case of a private employer but the principle of equality enshrined in that Article would certainly apply to matters pertaining to industrial law. The action of an industrial employer must be reasonable and fair. Discrimination and arbitrariness cut at the roots of reasonableness and fairness and absence of arbitrariness and equal treatment of workmen similarly situated would be only some of the facts of reasonableness and fairness.

35. An analogy that comes to mind in this regard can be found in the industrial law relating to disciplinary proceedings. The provisions contained in Article 311 of the Constitution are as inapplicable in the case of a private industrial worker as Article 14 of the Constitution. There is also no similar provision in the Industrial Disputes Act or any other law. Yet, from the earliest the Courts have insisted that before dismissing or punishing an industrial worker for any misconduct, he must be informed regarding the alleged misconduct in the form of a charge sheet and must further be given a reasonable and adequate opportunity to defend himself against the charges in a domestic enquiry. Thus the protection available to a member of a civil service in terms of Article 311 of the Constitution is also afforded to a worker of a private industry on the basis of the principles of natural justice.

The purpose of this discussion was to point out that the principle of equality is

not without relevance even in the case of private industrial employer. Viewed in this , light, Nakara's judgment does have an application in the case of private industrial employer too in as much as it lays down an important test for judging the fairness and reasonableness of the employer's action But in the case of a private employer the matter (in a case regarding revision of pension) would not stop there.

36. It has been stated above that the action of an industrial employer must be informed by reasonableness and fairness and equality of treatment and absence of arbitrariness are only some of the facts of a reasonable and fair action. I must, however, clarify that the tests for the reasonableness and fairness of the actions of a private industrial employer will not be the same as in the case of the Union or the State Government and the action of a private industrial employer cannot be tested by the same standards as those for the Union or the State Governments. Therefore, the claim of the workman cannot be justified on the sole ground that he was similarly situated as the workmen retiring after 24.8.1986. Because in doing so, while recognising the equality between the workmen, one would be overlooking the far greater inequality between the employers, i.e., a private company and the Union Government. This may give rise to highly unreasonable and inequitable results. It is self evident that a private industrial establishment, small or big, is not in the class as the Union or the State Governments and hence an action of the State which may be unreasonable may not be so held keeping in view the numerous limitations of a private industrial establishment. Nor do all private industrial establishments belong to the same class and they vastly differ in their size and financial resources etc. Hence, no general and uniformly applicable formula can be laid down for testing the action of each industrial employer Specially in cases relating to revision of pension.

37. Having given my anxious consideration to this matter, I am of the opinion that the fundamental error committed by the labour court was to overlook this aspect of the matter. The labour court merely found that the facts of this dispute were similar to those in Nakara's case and held that the Petitioner was similarly situated as the workmen retiring on or after 24.8.1986 and hence it was unreasonable on the part of the Petitioner management to deny him the benefits of the liberalised scheme of pension. In making its award on that basis, the labour court not only held that the concerned workman was similarly situated as those retiring after 24.8.84 but, by implication also held the Petitioner company equal .to the Union Government. In my view, this was an over simplification of the complicated question of revision of pension. For this, however, the labour court can hardly be blamed because the parties before it chose not to go beyond Nakara's judgment and to contest the dispute within the parameters of that decision. The case of the concerned workman was based on the assumption that he is bound to get the relief .once he succeeded in showing that his case was covered by Nakara's judgment; the management's case was based on the assumptions that the workman being a retired employee was not entitled to raise

any dispute for the revision of his pension, he was bound by the agreement of 1981 and in any event his case was not covered by Nakara's judgment. As shown above, all these assumptions were erroneous. The fact that the case of the workman was covered by Nakara's judgment was definitely a factor greatly in his favour but in a dispute regarding revision of pension of a workman of a private industrial employer, the parties were required to go beyond the parameters of Nakara.

38. Pension has been described as deferred wages. From this itself, it is evident that in disputes relating to revision of pension most, if not all, of the considerations relating to revision of wages must be taken into account. In a dispute regarding pension, as in the case of wages, the industrial adjudicator would be called upon to reconcile a number of conflicting considerations. It has also to be kept in mind that unlike the Union Government, the very purpose and object of a private and industrial employer is, often, to make profit and the employer is also lawfully entitled to make a reasonable profit. The labour court should have taken into consideration the erosion in the real value of the pension amount during the period when it was fixed and when the dispute for its revision was raised. It was also required to seriously consider on the basis of tangible evidence the financial implications of the demand and the financial burden, a revision of pension was likely to put on the employer and whether or not the employer was capable to bear the same.

39. I have cited these factors merely by way of illustrations. Factors required to be taken into consideration may vary from case to case. In a given case revision of pension may not be allowed for other overriding considerations even though the facts of the case may be similar to Nakara's case. Conversely, an award for revision of pension may be made even in cases which are similar on facts to the cases relied by the counsel for the Petitioner, that is to say, where a new scheme has been introduced in substitution of the old pension/retirement benefit scheme.

40. I am sorry to record that the case was contested before the labour court in an over simplified manner and on misconceived lines. Normally, therefore, I should have remanded the matter back to the labour court giving permission to the parties to add to their pleadings and would have directed the labour court to reconsider the matter in the light of the observations made here-in-above. However, I refrain from doing so in view of the very trivial amount involved in this case. I have no doubt in my mind that the Petitioner company can afford to pay, without feeling the slightest burden, the revised pension to the individual workman concerned in this case till his life and any remand of this case to my mind would amount to unnecessary waste of judicial time.

41. In this regard Mr. Shanti Bhushan has stated that the company was not so much concerned with the case of a single workman as with its consequences which according to him would lead to a very heavy financial burden for the company. He also stated that following the award, coming under challenge in this case, some retired workers of the company had raised a similar dispute which

had been referred for adjudication before the Industrial Tribunal, Patna. The tribunal had given its award against the workmen. A copy of the award has been brought on record along with a supplementary affidavit. The award of the tribunal has not come under challenge before this Court yet and I have only very cursorily gone through it. In case that award comes under challenge before this Court it will be considered in accordance with law and in the light of this decision and in that case it may not necessarily be taken into consideration that the award in favour of Respondent No. 3 had not been interfered with.

42. In the result, this application is dismissed with the aforesaid observations and directions.