

(1997) 04 PAT CK 0035
In the Patna High Court
Case No : L.P.A. No. 1200 of 1995

I.T.C. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Industrial Disputes Act, 1947 — Section 10, 10(1), 2A

Citation : (1998) 1 LLJ 418 : (1997) 1 PLJR 934

Hon'ble Judges : S.N. Jha, J;M.Y. Egbal, J

Bench : Division Bench

Advocate : Shanthi Bhushan, K. Kasturi, Ranjit Kumar Das, Jayant Bhushan and Shivaji Pandey, for the Appellant; Rameshwar Prasad, Advocate-General and Veena Kumari Jaiswal, J.C., Alok Kumar Sinha and Rakesh Kumar Tiwary, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This appeal under Clause 10 of the Letters Patent of the Patna High Court from the judgment of a learned Single Judge of this Court arises out of an award of the Labour Court. The appellant challenged the award by way of writ petition. Having lost before the Single Judge, it has come in letters patent appeal. The facts of the case, shortly stated, are as follows.

2. The workman, namely, S.S. Prasad, who is respondent No. 3 in this appeal, was one of the employees of the appellant company. He opted for voluntary retirement under the Voluntary Retirement Scheme in May 1982. His resignation was accepted by the management with effect from July 15, 1982. He was allowed pension @ Rs. 167 as per the Memorandum of Settlement dated August 17, 1981. Earlier, a pension scheme had been introduced by the management in terms of agreement dated June 27, 1977 in terms of which pension was payable for a period of ten years to such workmen, who retired on or after June 1, 1977. On August: 17, 1981, the management entered into another agreement with the

Indian Tobacco Company's Employees Union representing the workmen at Patna effective from May 1981. While the period of pension continued to be ten years, the amount of pension was slightly increased. Certain other modifications in the pension scheme were also made with which we are not concerned in this case. It may only be stated that as per the scheme, pension was payable for a period of ten years from the date of cessation of service and the amount was to be determined by multiplying the basic wage with the number of completed years of service and by dividing the product by 200. The minimum and maximum limits of pension were fixed at Rs. 40/- and Rs. 225/- per month. The respondent workman upon his retirement with effect from July 15, 1982 was accordingly allowed monthly pension of Rs. 167/- for a period of ten years from July 16, 1982.

3. In the year 1986. to be precise, on August 24, 1986. the company completed 75 years of its existence. The occasion was celebrated as Platinum Jubilee. As a part of the Platinum Jubilee Celebration the management created a Platinum Jubilee Pension Fund under Trust Deed dated May 27, 1987, to provide pension to the workmen who were entitled to pension benefits in accordance with the provisions of the rules of the Fund appended to the Trust Deed. Though the Trust Deed was executed on May 27, 1987, the Scheme was made operative from August 24, 1986, that is, the date when the company completed 75 years, of its existence. Later, on January 30, 1988, the management entered into a fresh bi-partite settlement with the employees at Patna represented by the Indian Tobacco Company Limited Employees' Union (It appears that some workmen had sought voluntary retirement from the service of the company and they had made a request for revision of the retirement benefits for the workmen proceeding on voluntary retirement). As per the terms of the Settlement dated January 30, 1988, which superseded the previous settlement of August 17, 1981, the terms and conditions of workmen, who were on the permanent rolls of the Patna Branch of the Company as on January 29, 1988 would be revised, as per provisions of the Settlement, for the purpose only of computing the gratuity and leave encashment, on their voluntary retirement from the service of the company. As regards pension, however, the settlement provided that the pension Scheme envisaged under Platinum Jubilee Pension Fund Rules shall be applicable to all workmen on the rolls of the company as on August 24, 1986. As regards workmen, who had retired prior to August 24, 1986 and were getting their pension under the 1981 Settlement, it was clarified that they would be governed by the previous settlement and the provisions of the Platinum Jubilee Pension Fund Rules would not be applicable to them. It may be mentioned here that in terms of the Platinum Jubilee Pension Fund Rules the pension was payable for life and not for period of ten years only. The method of calculation was also modified. Instead of dividing the product of the basic wage multiplied by the completed years of continuous service by 200 as before, the product was made divisible by 180.

4. The respondent workman raised a demand that his pension be revised in

terms of the 1988 Settlement. Later, the Bihar State Sales Representative Union took up the dispute. A conciliation proceeding was sought to be held which did not yield any result on account of management's refusal to participate in the proceeding. On receipt of failure report the State Government referred the dispute u/s 10(1)(c) of the Industrial Disputes Act for adjudication to the Labour Court, Patna. The reference was in these terms: -

"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.?"

5. Before the Labour Court the Management challenged the validity of the reference on the ground that the dispute was never sponsored by an appreciable number of the workmen or any trade union representing the workmen and therefore, was not an industrial dispute covered by Section 10 of the Act. Nor it was a referable "individual dispute" within the meaning of Section 2A of the Act. The management also pleaded that the workman having retired before August 24, 1986, he was governed by the settlement of August 17, 1981. The Labour Court rejected the contentions. It held that the reference was competent. On merits it held, following the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . that all the pensioners constituted a single class and the workman cannot be treated as a separate class merely because he had retired from service prior to a cut off date. He was, therefore, entitled to the benefits of the revised pension scheme in terms of 1988 settlement. The Labour Court accordingly directed the management to revise the pension of the respondent workman, in terms of the 1988 agreement, pay him the amount of difference for the stipulated period of 10 years between August 24, 1986 and July 15, 1992 and, further, to give him pension at the revised rates till his life.

6. Similar contentions were raised before the learned Single Judge and, indeed, before this Bench as well. As has been noted by the Learned Single Judge, before the Labour Court, both the management and the workmen appear to have confined themselves to the question as to whether the present case is covered by the ratio of law laid down in Nakara's case (supra). In this connection, while dealing with the submissions advanced on behalf of the appellant that Article 14 of the Constitution which was the sheet-anchor of the decision in Nakara's case, (supra) cannot be enforced against private employer, the learned Single Judge has observed that although Article 14, as such, is not enforceable in the case of private employer, the principle of equality contained in that Article would certainly apply to matters pertaining to industrial law and, therefore, is not without relevance in the case of private industrial employee. The learned Single Judge added, "viewed in this light, Nakara's judgment does have an application in the case of private industrial employer too. "Having said so, the learned Judge clarified:

"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

Governments 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 August 24, 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 same 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,"

The learned Single Judge then observed that the Labour Court committed a fundamental error by confining itself to the parameters laid down in Nakara's case (supra) and not considering that in the dispute regarding pension as in the case of wages, industrial adjudicator is required to reconcile a number of conflicting considerations. 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, therefore, taken into consideration, on the basis of tangible evidence, the financial implications of the demand and the financial burden the revision of pension was likely to put on the employer, and whether or not the employer is in a position to bear the same.

7. The learned Single Judge observed that as the case had been contested before the Labour Court, "in an over simplified manner and on misconceived lines," normally he should have remanded the case to the Labour Court to reconsider the matter, giving permission to the parties to amend their pleadings and adduce evidence. However, the learned Judge did not take that course in view of the very "trivial amount" involved in this case.

(The learned Single Judge found on calculation, that the pension of the respondent workman, which was fixed at Rs. 167/- in terms of 1981 settlement, (would increase to Rs. 185.55 in terms of the Platinum Jubilee Pension Fund Rules). The learned Judge observed: "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 of his case would amount to unnecessary waste of judicial time." Thus, having held, on merit, that the case was covered by the principle laid down in the Nakara "s case (supra) and denying the benefit of the revised pension, in terms of 1988 settlement, on the basis of a cut off" date (August 24, 1986) was arbitrary, and that the revised pension was not likely to cause any heavy financial

burden on the company, the learned Single Judge dismissed the writ petition.

8. Mr. Shanti Bhushan, learned Counsel for the appellant, dealing with the finding of the learned Single Judge regarding financial implications of the award, submitted that the Company was not so much concerned with the case of single workman as with the implications of the award. It was stated that, following the impugned award, other retired workmen of the company raised similar dispute which was referred for adjudication to the Industrial Tribunal, Patna although the Industrial Tribunal has given an award against the workmen, if the award in the present case is upheld by this Court and the Company has to pay pension as provided under the Platinum Jubilee Pension Fund Rules to such workman who had retired prior to August 24, 1986, it may cause a very heavy financial burden on the company.

9. On merit of the case, Mr. Shanti Bhushan contended that both the Labour Court as well as the learned Single Judge committed error in applying the principle laid down in Nakara 's case (supra). He submitted that, as has been explained by the Supreme Court in subsequent cases, the ratio of the decision in Nakara's case can be applied only in cases where employees governed by the same rules are treated as two separate classes on the basis of a "cut off date having no rational basis "picked out of the hat" and denied the benefit of the pension scheme. It was pointed out that in Nakara the Court was dealing with the case of liberalisation of existing pension scheme and not a new, revised scheme. In the present case, by virtue of the settlement of January 30, 1988, an entirely new scheme as contained in the Platinum Jubilee Pension Fund Rules was introduced and made applicable with effect from August 24, 1986. It was further submitted that the date August 24, 1986 was not picked out of the hat, as in Nakara's case. The Platinum Jubilee of the company was a happy event in its life. In order to commemorate the event it was decided to give larger benefits with respect to pension, amongst other things to the employees. Mr. Shanti Bhushan also submitted that in subsequent cases the Supreme Court has held that in the matter of giving pensionary benefits it is permissible to the employer to fix a cut off date provided there is a rational basis for the same. The view taken in Nakara's case stands substantially diluted by those decisions.

10. Mr. Shanti Bhushan submitted that the learned Single Judge was not correct in extending and making applicable the principles underlying Article 14 of the Constitution. It was urged, in this connection, that rights of private employer are larger than those of Government as employer. What is not permissible to the Government as an employer may be permissible to the private employer. Although vice versa is not true. Learned Counsel referred to the details of the old pension scheme under 1981 Settlement and the new scheme under the 1988 Settlement to substantiate his contention that the respondent workman by reason of his retirement prior to the cut-off date was not entitled to the benefits of the new pension scheme contained in ITC Platinum Jubilee Pension Fund Rules.

11. I would first consider the question whether the respondent workman is

entitled to similar treatment as admissible to the employees retiring on or after August 24, 1996 in the matter of pensionary benefits as if there was no cut-off date. The reliance on the decision in the case of D.S. Nakara's (supra), in the facts and circumstances of this case, appears to be somewhat misplaced. But before advertent to Nakara's case, (supra) I would refer to the observations regarding the necessity of fixing a cut off date in the matter of giving monetary benefit of pay/pension fixation in the case of Union of India Vs. P.N. Menon and others, occurring in paragraphs 8 and 14 of the judgment, as follows at p. 310:-

"Whenever the Government or an authority, which can be held to be State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rationale in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat" as was said by this Court in the case of D.R. Nim, I.P.S. Vs. Union of India (UOI), in connection with fixation of seniority. Whenever a revision takes place, a cut- off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

The Government decides to revise pay scales of its employees and fix the first day of January of the next year for implementing the same or the first day of January of the last year. In either case a big section of its employees are bound to miss the said revision of scale of pay, having superannuated before that date. An employee, who has retired on December 31 of the year in question will miss that pay scale only by a day which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed on objective and rational considerations.

12. Adverting to the case of D.S. Nakara (supra), it would appear that the Union of India by reason of the impugned office memoranda, while liberalising the pension scheme with respect to its retired employees, fixed a cut off date and denied the benefits of the revised/liberalised scheme to such employees who had retired before the cut-off date, although both categories of retirees i.e those who had retired before the cut off date or after the cut off date were governed by the same rules. The Court held, firstly, that there was no rational basis for fixing the cut off date and "secondly," such fixation of cut off date amounted to making classification between two similarly placed persons without any rational or intelligible differentia.

13. The decision in Nakara's case (supra) came up for consideration before the Supreme Court on several occasions. In Krishena Kumar and Others Vs. Union of

India and others, a Constitution Bench of the Court pointed out that in the case of D.S. Nakara(supra) it was never required to be decided that all the retirees for all purposes formed one class or no further classification was permissible. In another Constitution Bench decision in Indian Ex-services League v. Union of India 1992 I LLJ 765 it was observed that the decision in Nakara (supra) has to be read as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the retirees or a demand for identical amount of pension to every retiree irrespective of the date of retirement.

14. In All India Reserve Bank Retired Officers" Association v. Union of India. 1992 Supp (1) SCC 264 a two Judge Bench of the Court reiterated the distinction between liberalisation of an existing scheme and introduction of a wholly new scheme, and held that while in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principles of equality in treatment unless there is a strong rationale discernible for so doing, in the case of new scheme in respect of which the retired employees have no vested right, the employer can restrict the same to certain class of retirees having regard to the fact situation in which the scheme is introduced, the extent of additional financial burden, the capacity of the employer to bear the burden etc. The following observations occurring at pages 677-678 of the Report may usefully be quoted:

"Nakara Judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principle of equality in

treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree etc."

Their Lordships approved the cut-off date (January 1, 1986) as being rational on the ground that the same cut off date had been made applicable to the employees of the Central Government.

15. In *State of West Bengal and Others Vs. Ratan Behari Dey and Others*, another two -Judge Bench of the Supreme Court observed (at pages 743-744 of Report):

"In our opinion, the principle of *Nakara* (supra) has no application to the facts of this case. The precise principle enunciated in *Nakara* has been duly explained in *Krishna Kumar* by a Coordinate Bench It is open , to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted , power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date to which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long such date is specified in a reasonable manner i.e. without bringing about a discrimination between similarly situate persons, no interference is called for by the Court in that behalf.

As rightly pointed out in *Krishna Kumar*, *Nakara* was a case where an artificial date was specified classifying the retirees governed by the same rule and similarly situated, into two different classes, depriving one such class of the benefits of the liberalised Pension Rules, It was found in that case that specification of the date (from which liberalised Rules were to come into force) was arbitrary."

After having made these observations, their Lordships found that in the case in hand the employees retiring prior to the fixed cut off date (April 1, 1977) were governed by different sets of rules. They also noticed that it was in the year 1977-78 that the employees had submitted fresh representation in the matter of pension and a Pay Commission was also appointed to examine their claim. Although the Commission submitted its report later and the State Government took its own time to accept the same making the decision effective from April 1, 1977, their Lordships found nothing wrong and arbitrary with such fixation of cut off date.

16. Again in *State of Rajasthan v. Seva Nivatra Karmchari Hitkari Samiti* JT 1995 1 SCC 315 another two Judge Bench of this Court noticed the decision in *Nakara's* case (supra) and held that the ratio of the decision can be made applicable only where an artificial date is specified classifying the retirees governed by the same rules and similarly situated in two different classes. Where the employees retiring prior to the cut off date and those retiring thereafter are governed by different sets of rules, different pension schemes are permissible for them. The following observations (at Page 324 of the Report) may be quoted:

"It is permissible to introduce two different retiral benefit schemes for Government servants on the basis of the date of retirement as indicated in the decision of this Court in *Krishna Kumar's* case (supra), *Indian Ex-services League's* case and *Pensioners' Samaj's* case (Supra). The wisdom in a policy decision of the Government, as such, is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical, thereby offending the Rule of the law as enshrined in Article 14 of the Constitution or such policy decision offends any statutory provisions or the provisions of Constitution. Save as aforesaid, the Court need not embark on uncharted ocean of public policy."

17. In view of the aforesaid decisions of the Apex Court there cannot be any doubt that it is open to the employer to fix cut off date in the matter of pensionary benefits provided it does not amount to any discrimination between two similarly placed groups of persons governed by the same rules. Where they are governed by different sets of rules it is permissible to treat them as belonging to different classes. The only matter about which the Court should satisfy itself is whether the cut off date has any rationale basis or not. Secondly, there is distinction between liberalisation or revision of an existing scheme and its substitution by an entirely new scheme. The past retirees i.e. those retiring prior to the cut-off date fixed, have no vested right to receive pension as per the new scheme. Such classification is not arbitrary.

18. At this stage I may refer to the salient features of the pension scheme made effective under the Settlement of January 30, 1988. But before I refer to the details of the said pension scheme, it may be relevant to state that the aforesaid settlement appears to have been arrived at in the wake of the representations by certain workmen of Patna Branch who expressed their desire for voluntary retirement from the service of the company as per the Company's Voluntary Retirement Scheme. That is why the Settlement provides that "this agreement terminates the Memorandum of Settlement dated August 17, 1981 and is in substitution of all the terms contained therein. The terms and conditions of workmen, who are on the permanent rolls of Patna Branch as on January 29, 1988 will be revised as provided below, for the purpose only of computing their gratuity and leave encashment, on their voluntary retirement from the services of the Company, accepted by the Company w.e.f. close of work on January 31, 1988". It would be appropriate to quote the relevant clauses dealing with the pension (to such employees on their voluntary retirement) as hereunder:

"(i) The Company has by a Deed of Trust dated May 27, 1987 set up a Trust Fund entitled the ITC Platinum Jubilee Pension Fund for Payment of Pension to its workmen. With effect from the date of signing this Memorandum of Settlement all workmen on the rolls of the Company as on August 24, 1986. and thereafter will be eligible to become members of the aforesaid ITC Platinum Jubilee Pension Fund and will be eligible to receive benefits in accordance with the aforesaid Trust Deed and the ITC Platinum Jubilee Pension Fund Rules.

(ii) With immediate effect the ITC workmen's Pension Scheme as contained in clause 11, Part I, and Annexure VI of the Memorandum of Settlement dated August 17, 1981 will cease to be applicable to workmen on the rolls of the Company as on August 24, 1986. and thereafter. It is expressly agreed and understood that such workmen will be governed only by ITC Platinum Jubilee Pension Fund Deed and Rules.

(iii) It is clarified that workmen who were on the rolls of the Company prior to August 24, 1986, and who are in receipt of pension under the ITC Workmen's Pension Scheme as contained in Clause 11, Part I, and Annexure- VI of the Settlement dated August 17, 1981 will continue to be governed by the rules of the ITC Workmen's Pension Scheme. The ITC Platinum Jubilee Pension Fund Deed and Rule will not be applicable to them."

19. It would also be appropriate to notice some of the provisions of the Platinum Jubilee Pension Fund Trust Deed and Rules . Clause 2 of the Trust Deed provides that the Deed shall constitute a Trust established in India which trust shall be irrevocable and the Trustees shall hold the Fund upon trust for the benefit of the members or other persons more particularly set forth in the Rules, and no money belonging to the Fund in the hands of the Trustees shall be recoverable by the Company, nor shall the company have any lien or charge of any description on the same. Clause 6 of the Trust Deed lays down that the funds of the Fund being the trust property shall consist of the accumulations of the contributions being the total of contributions received by the Trustees in accordance with the Rules, Securities, or other investments acquired in accordance with the Rules, interest and other accretions arising from the assets of the Fund as reduced by payments and disbursements, such credits and debits being made in accordance with the Rules and of no other sums.

20. Clause 11 of the Platinum Jubilee Pension Fund Rules, which contains the charging/ substantive provision, lays down that the pension, computed in the manner laid down therein shall be payable to a member throughout his lifetime. The term "Member" has been defined under Clause 2(i) of the Rules to mean "a workman" as hereinbefore defined, whose name is communicated by the Company to the Trustees for admission to membership and who has been admitted as a member of the Fund in accordance with the Rules but shall not include an employee, who having been admitted as a member, has subsequently retired or has ceased to be eligible for membership as hereinafter prescribed or whose services have otherwise been terminated by reason of dismissal,

resignation, retrenchment or otherwise". The said Clause further provides that no employee shall be simultaneously a member of the ITC Platinum Jubilee Pension Fund and a member of the ITC Pension Fund (that is, 1981 Pension Scheme). The term "workman" (for the purpose of these Rules) has been defined under Clause 2 (h) of the Rules to mean that, for the purpose of the said Rules, "confirmed, permanent, regular staff...on the rolls of the Company". Certain categories of workmen have been excluded from the definition with which we are not concerned in this case.

21. The aforesaid Rules make all confirmed and regular workmen of the company to be eligible for the membership of the Funds. They are, however, required to make an application in the prescribed form (Annexure-I to the Rules), giving particulars of the nominees in the prescribed form (Annexure 2 to the Rules). The Company is required to make scrutiny of applications and to forward the same to the Trustees. It is only thereafter that the Trustees can approve the application and admit the employee to the membership of the Fund.

22. Annexure-1 containing the format of the application for membership runs as follows: -

Form of Request For Admission

To Members of the ITC Platinum

Jubilee Pension Fund

The Trustees,

ITC Platinum Jubi

lee Pension Fund

Through the Unit Head

I.....S/O, d/o, w/o.....of (Place of positing) hereby request that I may be admitted as a member of the above Pension Fund as from19..... and I agree to be bound by the Trust Deed and the Rules thereof for the time being in force. I undertake to continue as a member so long as I remain qualified to do so.

Signature

Name in full

Ticket Number

Prov. Fund A/c No.

Unit/Branch

Witness

.....

Date.....

23. It would appear from the aforesaid provisions that although all confirmed and regular workmen of the Company, amongst others, are eligible for the membership of the Fund, such membership is not automatic. The workman concerned has to submit application in the prescribed form. Thereafter the Company on receipt of the application has to satisfy itself that application is in order and particulars given therein are correct and then to forward the application to the Trustees. It is only thereafter that the Trustees can admit the person concerned as member of the Fund. The 1981 Pension Scheme called ITC Workmen's Pension Scheme, on the other hand, was applicable to all confirmed and permanently employed workmen (at the marketing branch of the company at Patna). The said Scheme did not contemplate creation of any fund or trust.

24. The ITC Platinum Jubilee Fund Scheme, in terms, was made applicable to only such workmen who were in the rolls of the Company on August 24, 1986 by the Memorandum of Settlement of January 30, 1988. The Memorandum expressly provided that the workmen on the rolls prior to August 24, 1986 and in receipt of pension under the ITC Workmen's Pension Scheme contained in the Settlement dated August 17, 1981 "will continue to be governed by -the rules of the ITC Workmen's Pension Scheme. The ITC Platinum Jubilee Pension Fund Deed and Rules will not be applicable to them" .The cut off date (August 24, 1986), in my opinion, is of less significance than the fact that the ITC Platinum Jubilee Pension Fund Deed and Rules provided new scheme unlike the Memorandum of Settlement dated August 17, 1981, which introduced a modified or liberalised pension scheme providing for higher pension by bringing about change in the method of calculation etc. It should be kept in mind that the 1981 scheme continued to exist with option to the employee concerned to become member of the Platinum Jubilee Trust Fund and get the benefits of the new Scheme . This is obvious from the fact that membership of the "Fund" was not automatic. It was subject to the employee submitting application for the same. This also becomes evident from Clause 2 (i) of the ITC Platinum Jubilee Pension Fund Rules which provides that no employee shall be simultaneously a member of the Fund i.e. ITC Platinum Jubilee Pension Fund and a member of the ITC Pension Fund i.e. 1981 Pension Scheme. The definition of the term "beneficiary" in Clause 2(c) also suggests that beneficiary shall mean an individual presently or prospectively eligible for a benefit payable under the Rules and shall include "a member as hereinafter defined."

25. In the above premises, I have no hesitation in holding that the present case is not covered by the ratio of Nakara 's case (supra). The present case is not one of liberalisation of the existing pension scheme but one of introduction of a new scheme. The old scheme, effective from April 1, 1981, was applicable to workmen retiring from the service of the Company on reaching the age of superannuation legal heir of the workmen dying in harness and workmen opting for voluntary retirement or resigning from service on grounds of ill-health/

accident and consequent incapacity to work, having put in 25 years of completed continuous service. The new scheme is applicable to only such workmen who are admitted to the ITC Platinum Jubilee Pension Fund in accordance with the Fund Rules. While the old scheme was completely financed and administered by the Company the new scheme is to be administered by trustees, and provides for a fund, being a trust property, consisting of the accumulations of the contributions from the Company as well as securities and other investments, interest and accretion arising therefrom. There are several other features which make the two schemes distinct and separate. For instance there was a commutation clause, which is not found in the new scheme. It is relevant to mention here that in paragraph 63 of the judgment in Nakara's case (supra) the Supreme Court had made it clear that it was not dealing with the case of "Pension Fund."

26. The point for consideration therefore is whether the respondent workman was entitled to the benefit of the new scheme without being a member of the Fund . In my opinion, having retired much prior to the introduction of the new scheme, with effect from July 15,1982, he cannot claim any vested right to seek the benefits of the new scheme. It should also be kept in mind that introduction of the new scheme was not the unilateral act of the management, it was the result of a bipartite settlement between the Management and the Workmen's Representative, which provides that the terms and conditions of only such workmen who were on the rolls of the Company as on August 24,1986 will be eligible to become members of the ITC Platinum Jubilee Pension Fund and to receive the benefits in accordance with Trust Deed and Rules, and those who were on the rolls of the Company prior to the said date and were in receipt of pension under the old scheme, will continue to be governed by the old scheme. The new scheme will not be applicable to them. In my opinion, therefore, the respondent workmen was/is not entitled to the benefits of the new pension scheme.

27. In view of my finding that the present | case is one of introduction of a new scheme and not liberalisation of the existing scheme, the question as to whether the cut off date (August 24,1986) had been arbitrarily fixed becomes in significant. In fact, I have already held that the ratio of Nakara's case (supra),is not applicable in the present case. The question of a "cut off date being arbitrary or irrational, or not, would arise only where the employees governed by the same rules, that is, similarly placed, are distinguished on the basis of a cut off date, and while " some of them are allowed the benefits, the others are denied the same. I would, however, make a few observations in deference to the submissions of the Counsel for the parties.

28. As the Supreme Court has observed in Union of India v. P.N. Menon (supra) whenever the Government or any authority which can be held to be a State within the meaning of Article 12 of the Constitution, frames scheme for persons who have superannuated from service it is always not possible to extend the same benefit to one and all irrespective of the dates of superannuation. As such,

a cut off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. The only thing which is to be seen is that the date should not be "picked from the hat". As noticed above, according to the management, the cut off date, i.e. August 24, 1986, had been fixed as it coincided with the Platinum Jubilee of the Company. It was on that date that the Company completed 75 years of its existence. If the management wanted to commemorate the event by giving larger service benefits to its employees who were on the rolls of the Company on that date, it cannot be accused of acting arbitrarily, if it decided not to extend those benefits who had retired earlier. If it is permissible to the State to deny the benefits of the revised scheme to those who retired prior to the cut off date because of financial constraints, the Indian Tobacco Company being a private employer would certainly stand on a better footing. I do not want to go into this aspect of the matter, for even the learned Single Judge observed in his judgment that the reference had been contested in an "over- simplified" manner, and in the ordinary course, in order to find out the financial capabilities of the Company and so on, he should have remanded the case to the Labour Court for fresh adjudication. As far as treating the Platinum Jubilee Day as the cut off date is concerned, I may say that it depends, to some extent, on one's perception as to how he proposes to celebrate the day. Not only in one's private life but in public life as well, the date of birth of an individual or organization is celebrated as an event. I, therefore, do not think that the decision of the management, to which the workmen were party, can be said to be arbitrary or irrational, as if the date was "picked from the hat". For this reason also the decision in *Nakara* 's case (supra) is not applicable in the present case.

29. In the above premises, I hold that the respondent-workman was/is not entitled to the pensionary benefits under the ITC Platinum Jubilee Pension Fund Scheme, the pension already being paid to him under the ITC Pension Scheme of 1981 was fully justified. The award of the Labour Court as well as the order of the learned Single Judge cannot, therefore, be sustained.

30. In view of my finding on the entitlement of the respondent workman, which was the subject matter of reference before the Labour Court, I do not consider it necessary to go into the other branch of submissions of the Counsel for the appellant regarding in competency of the reference.

31. In the result, this appeal is allowed. The judgment and order of the learned Single Judge in CWJC No. 10387 of 1994 are set aside. The award of the Labour Court, Patna, in Reference case No. 17 of 1991 is also set aside. The writ petition preferred by the appellant consequently stands allowed. I will make no order as to cost.