

**(1997) 11 AP CK 0022**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 8665 of 1996 and Batch**

K. Gundacchar

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

**Date of Decision : 28-11-1997**

**Acts Referred:**

Andhra Pradesh Aided Degree, Oriental and Degree Colleges Staff Pension Rules, 1993 — Rule 2  
Andhra Pradesh Education Act, 1982 — Section 78  
Constitution of India, 1950 — Article 14  
Fundamental Rules — Rule 56  
Hyderabad Civil Services Rules — Rule 231

**Citation : (1998) 3 ALD 196**

**Hon'ble Judges : G. Bikshapathy, J**

**Bench : Single Bench**

**Advocate : M/s. VVS Rao, for PVSS Rama Rao and C. Praveen Kumar, for the Appellant; Government Pleader for Higher Education, Mr. R.S. Murthy, SC for Central Government, for the Respondent**

## **Judgement**

1. All the three writ petitions raise common questions of law and hence they are disposed of by a common order.

2. In these writ petitions, constitutional validity of Section 78-B(i) of A.P. Education Act, 1982 and Rule 2 Part "A" of the A.P. Aided Degree Oriental and Junior Colleges Staff Pension Rules, 1993 issued in G.O. Ms. No.2, Education (CE-II) Department, dated 5-1-1994 are assailed and sought for consequential direction to fix the pension/family pension of the petitioners by applying A.P. Revised Pension Rules, 1980 with effect from the dates of their respective retirements.

3. Writ Petition No. 8722/1996 was filed by the Affiliated College Teachers Association and Teachers working in the Private Aided Colleges. The widow of the deceased pensioner is also one of the petitioners. The petitioners worked in various private aided colleges and they retired from service on attaining the age

of 58 years. It is necessary to trace the previous events for the introduction of pension scheme to the Teachers. The Government in G.O. Ms.No.3372, dated 31-10-1961 issued rules called A.P. Teachers Contributory Provident Fund-cum-Pension and Gratuity Rules, 1961 wherein the teachers employed in the schools run by the Aided Managements as well as the local bodies were granted retirement benefits, and the benefits were granted to those who retired from service on or after 1-4-1961. However, certain teachers who retired from service prior to 1-4-1961 made representations and the Government issued G.O. Ms. No. 1649, dated 5-7-1996 granting financial assistance to the teachers who have retired from service prior to 1-4-1961 instead of granting the retirement benefits under the aforesaid rules. By G.O. Ms. No.1132, Education-I Department, dated 16-11-1973, the Government extended the A.P. Liberalised Pension Rules, 1961 to the teachers working in the Aided Schools and Local Bodies, but they were not extended to the teachers who were working in the Aided Colleges. However, G.O.Ms. No.544, dated 11-4-1975 was issued in respect of Lecturers and the financial benefits were granted only from 1-1-1974 while giving retrospective operation. The Government issued A.P. Revised Pension Rules, 1980 (for brevity RPR 80) in G.O. (P) No.88, dated 22-3-1980 applicable to all State Government employees. These rules were made applicable to the teachers under All Private Aided Managements, who retired from service on completion of 55 years of age by G.O. Ms. No.902, dated 11-11-1992. But, subsequently, an amendment was issued in G.O. Rt. No. 1026, dated 19-8-1993 wherein the words "Private Aided Managements" was deleted and "Private Aided Schools" was substituted, by which all the teaching and non-teaching staff are denied the benefits of RPR 80. It has been the grievance of the Association that the teachers in the Aided Schools and Teachers in the Aided Colleges form an homogeneous cadre and denying the pension benefits working in the schools while giving pension under the RPR 80 to the Teachers in the schools and therefore they have been requesting the Government to make applicable RPR 80. This request appears to have convinced the Government and accordingly brought amendmnets to the Education Act, The Government amended A.P. Education Act by Act 17 of 1993 which came into force from 13-7-1993 by which Sections 78-A and 78-B were inserted in the Parent Act. Section 78-A deals with the age of superannuation of the staff working in the Private Aided Institutions while Section 78-B mandates that all the employees in the Private Aided Institutions shall be entitled to pension with effect from 1-11-1992 in accordance with the prescribed rules de hors the executive instructions. It is the case of the petitioners that Section 78B(i) creates unreasonable classification of teachers into two categories those who retired from service prior to 1-1 i-1992 and those who retired from service after 1-11-1992. It is their contention that under the rules those who retired prior to 1-11-1992 would not be entitled for pension in RPR 80 and also the other benefits of gratuity and family pension, while the persons who were retired after 1-11-1992 would get all the benefits under Revised Pension Rules. It is their case that under 1961 Rules, the maximum ceiling on pension is fixed as Rs.1,000/- per month while the RPR 80, different higher rates were prescribed. The rules

which were framed in pursuance of Section 78B on 5-4-1994 in so far as Part "A" is concerned is also discriminatory as the cut off date namely 1-11-1992 has no reasonable nexus with the object sought to be achieved. Therefore, they submit that the petitioners who were retired prior to 1-11-1992 are also eligible for the benefit of RPR 80 and other benefits under the said rules. The petitioners further submit that some recoveries were made while refixing the pay scales from 1-11-1992 and the said recoveries are illegal and arbitrary". It is also the case of the petitioners that the family pension is not granted to the widows of the deceased pensioners who died between the period from 1-4-1973 to 1-11-1992 on the ground that the RPR 80 was given benefit only from 1-11-1992.

4. Counter affidavit has been filed on behalf of the Government stating that Government issued orders in G.O. Ms. No.2 to the effect that the RPR 80 are applicable to the Teachers and Staff who retired from service between the period from 1-4-1973 to 1-11-1992 and alive on that date. However, the monetary benefits were given only from 1-11-1992. Therefore, the Teachers and Staff in Private Aided Colleges, who retired from service between the period from 1-4-1973 to 1-11-1992 and alive on that date are also eligible for RPR 80, but the monetary benefits are given only from 1-11-1992. Therefore, it is submitted that there is no discrimination and that it does not offend Article 14 of the Constitution of India.

5. As already stated, the A.P. Teachers, Contributory Provident Fund-cum-Pension and Gratuity Rules, 1961 were introduced in G.O. Ms. No.3372, dated 31-10-1961 and made applicable to the Teachers, who retired on or after 1-4-1961, and the Teachers, who retired prior to 1-4-1961 certain financial assistance were granted to them, in G.O. Ms. No.1649, dated 5-7-1966. Subsequently, the Liberalised Pension Rules, 1961 were made applicable to the Teachers working in the Private Aided Schools and Local Bodies in 1973, and in 1975, the said rules were made applicable to the teachers working in the Aided Colleges giving monetary benefit from 1-4-1974. It is to be noted that A.P. Revised Pension Rules, 1980 were incorporated and notified in G.O. (P) No.88, dated 26-3-1980 containing two parts, 1st part is applicable to all the Government servants who were covered by A.P. Liberalised Pension Rules, 1961 as on 29-10-1979 and second part is applicable to the Government servants holding pensionary posts as on 31-3-1978 and those who retired between 1-4-1978 to 28-10-1979 and governed by 1961 rules and Hyderabad Civil Services Rules. The said provision was challenged in W.P. No.6690/1981 and Batch by the aggrieved State Government employees, who retired prior to 1-4-1978 and this Court allowed the writ petitions on 7-4-1984 declaring that the portion of the rules in Part II of 1980 Rules insofar as they exclude the applicability of the pensioners who retired on attaining the age of superannuation of 55 years prior to 1-4-1978 as unconstitutional and directed that all the pensioners who were governed by the Liberalised Pension Rules, 1961 and those who retired prior to 31-3-1978 are also eligible for benefits under Part II. Accordingly, the Government issued orders on 30-3-1985 in G.O. Ms. No. 143

giving benefits to the employees who retired prior to 31-3-1978. However, RPR 1980 was made applicable to the Teachers in Private Aided Schools initially and after the amendment to Sections 78A and 78B, it was also made applicable to all the Teachers including non-teaching staff working in the Private Aided Colleges also. But, however, while granting the benefit, a distinction was sought to be made that the employees in the Private Aided Institutions are entitled to the pension with effect from 1-11-1992 in accordance with the rules framed in that behalf. Sections 78A and 78B which were introduced by virtue of Amendment Act 17 of 1993 with effect from 13-7-1993 are extracted below :

"" 78-A. Age of superannuation of the staff in aided private educational institutions :--(1) Every teacher or member of the non-teaching staff employed in any aided, private educational institution, not belonging to last grade service, shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years :

Provided that a teacher or a member of the non-teaching staff aforesaid, who has already attained the age of fifty eight years and continuing in service on the date of commencement of Andhra Pradesh Education (Amendment) Act, 1993, shall retire on the afternoon of the last day of the month of the commencement of the said Act.

(2) Every member belonging to the last grade service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Explanation :--For the removal of doubts, it is hereby declared that an employee whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty eight or sixty years, as the case may be.

78-B. Pension to the employees of Aided Private, Junior and Degree Colleges :-

(1) Notwithstanding anything contained in any orders issued by the Government for the payment of pension to the employees of the aided, private, junior and degree colleges before the commencement of the Andhra Pradesh Education (Amendment) Act, 1993, such employees including those in the last grade service who attained the age of superannuation as specified in Section 78A shall be entitled to pension with effect from 1st November, 1992, in accordance with such separate rules as be made in that behalf.

(2) A teacher or a member in any aided, private, junior and degree colleges who continues in service beyond the age of fifty eight years for any reason shall be entitled to pension with effect from 1st November, 1992, in accordance with such separate rules as may be made in that behalf.""

By virtue of the powers conferred u/s 78B, the Government issued rules called Andhra Pradesh Aided Degree, Oriental and Degree Colleges Staff Pension Rules, 1993. These rules came into force from 1-11-1992. These rules consisted of

three parts. Part "A" in respect of teaching and non-teaching staff who retired from service on attaining the age of 58 years and Last Grade Staff who retired from service on attaining the age of 60 years. Part "B" is in respect of teaching and non-teaching staff who retired from service on attaining the age of 60 years and Part C is in respect of the teaching and non-teaching staff who continued in service beyond 58 years and retired from service before completing the age of 60 years. We are concerned in this writ petition only with Part A. The said Part A, B and C are extracted below :

#### "PART A

(a) The Andhra Pradesh Revised Pension Rules, 1980 shall apply mutatis mutandis to all the teaching and non-teaching staff of private aided degree, oriental and junior colleges who retired from service on attaining the age of 58 years and the members belonging to the Last Grade Service of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years before or after the commencement of the Andhra Pradesh Education (Amendment) Act, 1993 and alive.

(b) Refixation of pension :--Such of the teaching and non-teaching staff of private aided degree, oriental and junior colleges who have retired at the age of 58 years, even prior to commencement of Act No. 17 of 1993 shall be eligible to claim refixation of pension under these rules, with effect from 1-11-1992, or the date of their retirement, whichever is later. These staff members would also be eligible for arrears of pension from 1-11-1992. However, such staff members shall not be eligible for any increased gratuity. They shall also not be eligible for commutation on account of increase in the pension.

#### PART B

The Andhra Pradesh Liberalised Pension Rules, 1961 shall be applicable mutatis mutandis to all such members of teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years and are alive as on 1-11-1992 :

Provided that the maximum ceiling limit on pension as provided in Rule 2 of the A.P. Liberalised Pension Rules, 1961 shall not be applicable to the above staff members.

#### PART C

The pension formula given, in Part A is also applicable to these teaching and non-teaching staff of Private Aided, Degree, Oriental and Junior Colleges who continued in service beyond the age of 58 years and retired from service before completing the age of 60 years after coming into force of the Andhra Pradesh Education (Amendment) Act, 1993 (Act 17 of 1993) and alive. The services rendered beyond 58 years in any case shall not count as qualifying service and it shall be treated as just service, not qualifying in any manner for pensionary benefits.'''

A reading of the above said provision would initiate that the age of superannuation was fixed at 58 years on par with the State Government employees and that RPR 80 are made applicable to them. In respect of the teachers who retired from service on attaining the age of 60 years, the A.P. Liberalised Pension Rules, 1961 were made applicable except the maximum ceiling limit of pension. In case of persons, who retired from service between 58 years and 60 years, in pursuance of the Amendment Act, the RPR 80 was made applicable. However, the service rendered beyond 58 years was not counted as a qualifying service for the purpose of pensionary benefits. The pinch that was felt in Part A is that the employees retired at the age of 58 years prior to the commencement of the Act 17 of 1993 are not eligible for any increased gratuity and they are also not eligible for commutation on account of the increase of pension while the persons who retired on or after 1-11-1992 are eligible for these benefits. It is also argued that it is made applicable to the persons who were alive as on 1-11-1992. But, however, the persons who died between the commencement of RPR 80 and 1-11-1992, the widows were denied the benefit of family pension.

6. The learned senior Counsel appearing on behalf of the petitioners Mr. VVS Rao assisted by Mr. PVVS Rama Rao submits that there is no rationale in dividing the teachers working in Private Aided Degree, Oriental and Junior Colleges for the purpose of getting benefit of RPR 80. While the teachers retired on or after 1-11-1992 are entitled for all the benefits under RPR 80, but the same teachers who retired prior to 1-11-1992 are not entitled for the benefits. Therefore, they submit that the fixation of the date 1-11-1992 is highly arbitrary and unjust. Though Article 14 of the Constitution permits the reasonable classification, but in case like this, no such classification can be made as admittedly all the teachers in the Aided Colleges formed one homogeneous group. The learned Counsel heavily relies on the decision of the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, . Para 9 of the said judgment is extracted below :

"The memorandum issued by the Government of India dated May 25, 1979 and September 23, 1979 liberalising the form for computation of pension in respect of employees governed by the Central Civil Services (Pension) Rules, 1972 who retired on or after March 31, 1979 was challenged to be arbitrary and violative of Article 14. This Court came to conclusion that when the State considered it necessary to liberalise the Pension Scheme in order to augmenting the social security in old age to Government servants, it could not grant benefit of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Article 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from

the dates specified in the impugned memoranda.""

The Supreme Court held at para 15 as follows :

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

With regard to the fixation of the date, it is now well settled that it cannot be picked out from hat and that it must have a rational nexus to the objects sought to be achieved (See D.R. Nim, I.P.S. Vs. Union of India (UOI), , Jaila Singh and Another Vs. State of Rajasthan and Others, .

7. The Counsel for petitioners also relied on B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, . In that case a somewhat similar issue arose before the Supreme Court. Prior to 28-2-1983, the age of superannuation of the employees of the State Government was 58 years, but, however, it was reduced to 55 years on 28-2-1984. Accordingly Government amended Rule 56(a) of Fundamental Rules and Rule 231 of Hyderabad Civil Services Rules substituting "55" for "58". The employees who completed 55 years and continuing were made to retire with effect from 28-2-1983. State also promulgated A.P. Ordinance No.5 giving effect to the reduced age. The Supreme Court finally sustained the reduction of superannuation age. Thereafter, again it was restored to 58 years with effect from 23-8-1984 and necessary amendments were made to the statutory rules. However, the persons, who retired on attaining the age of 55 years between 28-2-1983 and 23-8-1984 were denied the benefit of wages, promotion and other benefits by virtue of provisions of Act 3 of 1985. The benefits of wages, promotion etc. to those persons who were retired at the age of 55 years was held to be arbitrary and illegal. However, instead of striking down the entire clause 3(i) of A.P. Ordinance 24 of 1984 and Section 4(1) of A.P. Act 3 of 1985 and to make it in conformity with the requirement of Article 14, the word "not" was deleted. Accordingly, the directions were issued to reinduct the persons if they had not completed the age of 58 years with all benefits. However, in case of those who have already attained the age of 58 years, they were directed to be paid with wages and other benefits. The Apex Court thus held that the persons who were retired between the period 28-2-1983 and 23-8-1984 cannot be treated as a different class, the employees in service earlier to 28-2-1983 and subsequent to 24-8-1984 have enjoyed the retirement age of 58 years and there is no reason why the persons between 28-2-1983 to 23-8-1984 should be denied the said benefit. The Supreme Court observed thus :

"Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should

be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's lyfriend and counsellor, "the common man", if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The common sense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory. The principle of Nakara clearly applies. The division of Government employees into two classes, those who had already attained the age of 55 on 28-2-1983 and those who attained the age of 55 between 28-2-1983 and 23-8-1984 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. Legislations to remedy wrongs ought not to exclude from their purview persons, a few of the wronged, unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. We do not find that there is any such impossibility or detriment to the public interest involved in reinducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and sought to be remedied. As observed in D.S. Nakara and Others Vs. Union of India (UOI), , the burden of establishing the reasonableness of a classification and its nexus with the object of the legislation is on the State. Though no calamitous consequences were mentioned in any of the counter-affidavits, one of the submissions strenuously urged before us by the learned Advocate-General of Andhra Pradesh and the several other counsel who followed him was the oft-repeated and now familiar argument of "administrative chaos". It was said that there would be considerable chaos in the administration if those who had already retired are now directed to be reinducted into service.

We are afraid we are unable to agree with this submission. Those that have stirred up a hornet's nest cannot complain of being stung."

8. In the A.P. Non-Govt. Retired Teachers Association rep. by its The A.P. Non-Govt. Retired Teachers Association and Others Vs. The State of A.P. and Another, , "the question that arises for consideration in this appeal is whether the teachers who were employed in the schools run by Aided Managements as well as Local Bodies and retired from service prior to 1st April, 1973 are entitled to the same pensionary benefits as are extended to those who retired from service on or after 1st April, 1973".

9. The Full Bench following the principle laid down in D.S. Nakara's case (supra), held thus :

"By extending the operation of the A.P. Liberalised Pension Rules, 1961 to the teachers working in the non-Government schools, virtually it amounted to liberalisation of the formula for computation of pension. In such circumstances, it is not open to the State Government to classify the teachers into two categories on the basis of the date of extension of operation of the Andhra Pradesh Liberalised Pension Rules, 1961 to the teachers working in the non-Government schools and deprive those who retired after 1st April, 1961 but prior to 1st April, 1973 from the benefit of the liberalised pension rules. When the State Government had chosen to treat the teachers who had retired on or after 1st April, 1961 as a homogeneous class for payment of pension and implemented the pension scheme for about twelve years on that basis, it cannot be permitted to classify such teachers into two categories on the ground that the operation of the Andhra Pradesh Liberalised Pension Rules, 1961 which are statutory in nature had for the first time been extended to the teachers employed in the non-Government schools, only with effect from 1st April, 1973. Such classification is, in our view, irrational and discriminatory, thereby violating Article 14 of the Constitution."

Finally it was held that the teachers, who had working in non-Government schools run by the Aided Management and had retired from service on or after 1961 and prior to 1-4-1973 and who are surviving as on the date of the judgment shall be entitled for payment of pension under A.P. Liberalised Pension Rules, 1961 and consequently Part II of A.P. Revised Pension Rules, 1980 with effect from 1-1-1985 as the writ petition had been filed in Decanter, 1984.

10. On the other hand, the learned Government Pleader submits that the decision in Nakara "s case (supra) was given a go-bye and that it is always open for the authorities to fix different dates. He relied on the decision of the Supreme Court in State of Rajasthan and another Vs. Prem Raj, . Under Rule 256 of Rajasthan Service Rules, 1951, the Dearness Allowance received by the employees in service was not taken into account for computation in the amount of the pension. On 18-3-1971 the rules were amended with retrospective effect from 1-4-1970, stipulating that in case of Government servants retiring from service on or after 1-4-1970, the emoluments used for the purpose of pension, service gratuity and death-cum-retirement gratuity shall mean the pay as defined in Rule 7(24) and shall include dearness allowance, dearness pay and appropriate to pay if any or the officer was receiving immediately before his retirement. By the said notification the relevant rule was also amended giving retrospective effect from 1-4-1970. By another notification dated 2-12-1974, giving retrospective effect, with effect from 31-10-1974, Rule 256B was also amended, by which the maximum pension in respect of Government servants who retired from service on or after 1-4-1970 was Rs.8,100/-, but those who have retired on or after 31-10-1974 it became Rs.12,000/- and while in case of

former, the pension was computed 30/80th, but in case of later it became 33/80th. The aggrieved employees filed the writ petition holding that the cut off date of 1-4-970 in Rule 256A and also the cut off date 1-4-1973 in Rule 250C was arbitrary. The Rajasthan High Court struck down those dates as arbitrary and held that the computation of Rule 256B should be made applicable to all the Government servants irrespective of date of retirement. Aggrieved by the said orders, the matter was carried before the Supreme Court, A contention was sought to be raised that the decision in Nakara's case (supra) was watered-down in subsequent decisions and therefore it is open for the Government to fix different dates. This aspect was not gone into by the Supreme Court as can be seen from para 8 which is extracted below :

"Having examined the rival contentions and on a closer scrutiny of the notification of the Government of Rajasthan dated September 2, 1985 we are of the considered opinion that the High Court committed gross error in examining the validity of the earlier amended provisions and striking down the same and granting the relief to respondent without striking down the notification dated September 2, 1985 or atleast paras 3 and 5 thereof. In this view of the matter, it would not be necessary to examine the bigger issue raised by Mr. Gupta as to whether the decisions of this Court in Nakara's case is really not being followed in the later decision, though we would briefly notice the extent to which the Nakara's decision has been explained in the later decision.""

Therefore, the contention of the learned Government Pleader that the decision of Nakara's case (supra) is no more to be followed cannot be accepted. In Krishena Kumar and Others Vs. Union of India and others, , the Supreme Court held thus :

"In the said case prior to 1957 the only scheme of retirement benefits in the railways was the Provident Fund Scheme. The same scheme was replaced in the year 1957 by a pension scheme. Thus all the employees who were in service prior to the introduction of pension scheme were given option either to retain the Provident Funds benefits or to switch over to pensionary benefits on condition that the contribution made by the railways to Provident Fund accounts would revert to the railways on exercise of option. The employees who did not opt for pension" scheme even though had ample opportunity to opt for the same, came forward with a claim that they should be given the benefits of pensionary scheme following the principle of Nakara's case (supra). This Court held that the pension scheme and the provident fund scheme are structurally different and applying the principles of Nakara 's case, it cannot be held that the pension retirees and the provident fund retirees form a homogeneous class. The Court also further held that the rules governing the provident fund are entirely different from rules governing pension scheme and, therefore, it would not be reasonable to argue that the rule applicable to the provident fund retirees. It was noticed by the Court that in Nakara's case the provident fund retirees were not in mind before the Court and only the pension retirees were treated as a homogeneous class- The Court further held that there would be no discrimination in treating the

provident fund retirees differently from the pension retirees."

In the case of Indian Ex-Services League and others Vs. Union of India, , the Supreme Court held thus :

"In yet another Constitution Bench case the liberalised pension scheme and fixation of cut off date for applicability of the same came up for consideration before the Court. The petitioners therein claimed "one rank one pension", for all retirees in the armed forces irrespective of the date of retirement by application of Nakara's case. The Court held that the decision in Nakara's case has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different, hi the aforesaid case, consequent upon the decision of this Court in Nakara's case (supra), a notification was issued on 3rd December, 1983 by the Government of India for recomputing the revised pension of pre-April 1, 1971 retirees according to liberalised pension scheme. The recomputation was made according to the liberalised pension scheme giving the same benefit to all retirees irrespective of their date of retirement. But the petitioners contended that the ratio of Nakara case is that all retirees who held the same rank irrespective of the date of retirement must get the same amount of pension. This Court rejected the said contention. On reading the memorandum of the Government of India the Court held that the benefit of liberalised pension scheme was made applicable even to pre-April 1, 1979 retirees of the armed forces and the computation according to the liberalised formula for them was done by Government order dated 22nd November, 1983 and December 3, 1983. In other words, what was held by this Court in the Indian Ex-services League's case (AIR SCW 327), that after introduction of the liberalisation scheme, from a specified date, even the \* retirees earlier to the same date would get the benefit of the liberalisation scheme but not in the same manner and to the same extent which person in service and retiring after the date would get.""

In State of West Bengal and Others Vs. Ratan Behari Dey and Others, , the Supreme Court held thus :

"This Court considered the question whether in providing a pension scheme the State could fix up a particular date and make it applicable to those who retired on or after that date. The Court distinguished the Nakara's case (supra) by holding that in, Nakara's case an artificial date had been specified classifying the retirees governed by the same rules and similarly situated into two different classes depriving one such class of the benefit of the liberalised pension rules and that was held to be bad. Following the decision of the Court, in Krishena Kumar's case, it was held that the State can specify a date with effect from which the Regulations framed or amended conferred the pensionary benefits shall come into force but the only condition is that the State cannot pick a date out of its hat and the date has to be prescribed in a reasonable manner having

regard to all the facts and circumstances."

In *State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti*, , the Supreme Court held thus :

"The provisions contained in Rule 268-H of Rajasthan Service Rules came up for consideration as to whether the aforesaid provisions restructuring the rights of Government servants in service on 29-2-1964 can be held to be violative of Article 14. The Court applied the principle in *Krishena Kutnar's* case (supra) and *Indian Ex-Services league's* case (supra) and held that the fixation of 29-2-1964 as the cut off date with effect from which the new liberalised pension scheme in Chapter XXIII-A was introduced cannot be said to be arbitrary or violattve of Article-14 of the Constitution. As has been stated earlier for deciding the present controversy it is not necessary for us to further delve into the question as to the extent to which the decision of this Court in *Nakara's* case (supra), has been followed or explained. But suffice it to say that the contention of Mr. Gupta, the learned Counsel for the appellant that the decision of this Court in *Nakara's* case has been given a complete go-by cannot be sustained."

But, in the instant case, it has to be seen that the Government brought about an amendment by the Act and directed the payment of pension with effect from 1-11-1992 in accordance with the rules. In the rules, it is stated that the persons who retired prior to 1-11-1992 will not get the benefit of higher gratuity and facility of computation and further the benefit is extended to those persons who were alive as on 1-11-1992. When once it is held that the teachers working in the Aided Colleges form homogeneous group the further division among themselves for the purpose of granting of pension by bringing out a cut off date can it be said to be a valid classification. By this process, admittedly, the two compartments were created. One-the teachers who retired prior to 1-11-1992 and the other-teachers who retired subsequent to 1-11-1992. While the teachers, who retired on or after 1-11-1992 are also eligible for fixation of pension from 1-11-1992, the others are entitled from the date of their retirement. As already been held, the cut-off date should have a reasonable nexus to the object sought to be achieved. When the object of the State is to confer the pensionery and other benefits to the teachers working in the Aided Colleges by making applicable RPR 80 mutatis mutandis, such benefit cannot be conferred in a discriminatory or arbitrary manner. The teachers, who retired prior to 1-11-1992 and those retired after 1-11-1992 stand on the same footing. As held by the Supreme Court in various decisions referred to above fixing of a date per se cannot be said to be arbitrary. But if the date is fixed without any nexus or rationale, by which it discriminates between same class of persons then such a date is held to be arbitrary. It is not open for the State to pick out a class of persons who deserved the same treatment and exclude from the benefit of higher pension and other benefits by classifying them a separate class of persons on the basis of date of retirement. Admittedly, in the instant case, no details arc forthcoming as to how the date 1-11-1992 was fixed for the purpose of granting

of pension. In the rules, it is clear that the benefits arising under RPR 80 are made applicable mutatis mutandis to the persons, who are alive as on 1-11-1992 and refixation of pension is made with effect from the said date. Admittedly, 1980 Rules came into force with effect from 29-10-1979. The fixation under 1961 and the RPR 80 contain different methods and it is only an extension or improved version in 1980 Rules by which higher pension and other benefits are conferred. Admittedly, all the teachers were governed by 1961 Rules and they were drawing the pension and other benefits under the said Rules. When the RPR 80 were made applicable mutatis mutandis there is no reason why they should not be given from the date it came into force. The persons who retired from 29-10-79 to 1-11-92 are denied 1980 pension, but only given pension under 1961 Rules. As observed by the Full Bench of this Court in A.P.Non-Govt. Retired Teachers Association's case (supra), it is only a liberalisation formula for computation of pension and held it would not be open for the State Government to classify the teachers into two categories on the basis of date of extension of operation of A.P.Liberatised Pension Rules, 1961 to the teachers working in Non-Government Schools and deprive those who retired after 1-4-1961 to prior to 1-4-1973 from the benefit of Liberalised Pension Rules. It is not the case of the State that the teachers working in the colleges are treated differently and not homogeneously. Admittedly, the Revised Pension Rules came into effect from 29-10-1979. So, therefore, a teacher who has retired between 29-10-1979 and 1-11-1992 is being denied the benefit of Revised Pension Rules and it is only refixed only from 1-11-1992. When it is only an extension of Liberalised Rules and there cannot be any cut-off date as held in Prem Raj's case (supra). Therefore, fixing a date for refixation of pension at 1-11-1992 to those persons who retired between the period 29-10-1973 to 1-11-1992 is arbitrary and has no nexus to the object sought to be achieved. But, however, it is settled principle that the statutory provisions have to be interpreted harmoniously instead of striking them down straightaway, in the Act, it is stated that the Pension will be granted with effect from 1-11-1992 while in the Rules it is contained that the Pension will be refixed from 1-11-1992 in respect of the persons those who retired at the age of 58 years prior to 1-11-1992. In order to save these provisions from the onslaught of the Article 14 of the Constitution, they have to be synthesised so as to fall in conformity with the Article 14 of the Constitution. The Supreme Court in Nakara's case (supra), adopted the same principle by saying thus:

"Now if the choice of the date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalised pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interpretes keeping in view the underlying intention and the object, the impugned measure seeks to subserve? Even though it is not possible to oversimplify the issue, let us read the impugned memoranda deleting the unconstitutional part. Omitting, it the memoranda will

read like this :

"At present, pension is calculated at the rate of 1/80th of average emoluments for each completed year of service and is subject to a maximum of 33/80 of average emoluments and is further restricted to a monetary limit of Rs.1,000/- per month. The President is, now, pleased to decide that with effect 31st March, 1979 the amount of pension shall be determined in accordance with the following slabs."

If from the impugned memoranda the event of being in service and retiring subsequent to specified date is severed, all pensioners would be governed by the liberalised pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague unenforceable or unworkable."

It is not as if for the first time the pension scheme, gratuity and family pension is being made applicable to the petitioners. In fact they have already drawing the pension under 1961 Rules- But, this is only an extension of further beneficial pension schemes as introduced in RPR 80. If the scheme is made applicable right from the date of its commencement namely 29-10-1979 rationally, no prejudice will be caused to the State and Section 78B(i) could be kept intact with its validity. Therefore, the Rule has to be read as if the RPR 80 are applicable from the date of the retirement of the respective teachers, who retired between 29-10-1979 and 1-11-1992 and the pension shall be fixed in accordance with RPR 80 on the date of their respective retirement on notional basis and refixed pension as on 1-11-1992 taking into consideration the other enhancements such as Dearness Allowance etc. notified by the Government from time to time and physical monetary benefits shall be released from 1-11-1992. In respect of commutation of pension, it need not be extended as the commutation depends on the longevity of the person as on the date of the retirement. Therefore, the rule which denies the commutation of pension in pursuance of applicability of RPR 80 to the persons, who retired prior to 1-11 -1992 cannot be said to be arbitrary.

11. An enshrined under Article 14 of the Constitution, instead of striking down the provisions, it is also permissible for this Court to read down the provisions thereby deleting the unconstitutional portions. If the portion "however such staff members shall not be eligible for any increased gratuity" is removed, both the teachers, who retired prior to 1-11-1992 and subsequent to 1-11-1992 will be placed on the same footing for the purpose of benefits arising out of RPR 80. It will thus set at naught unconstitutional portion and retaining the constitutional portion. The rule after the deletion of the words, shall read as follows :

"Part-A

(a) The Andhra Pradesh Revised Pension Rules, 1980 shall apply mutatis mulandis to all the teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 58 years and the members belonging to the last grade service of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years before or after the commencement of the Andhra Pradesh (Amendment) Act, 1993 and alive,

(b) Refixation of Pension : Such of the teaching staff of Private Aided Degree, Oriental and Junior Colleges who have retired at the age of 58 years even prior to commencement of Act No. 17 of 1993 shall be eligible to claim refixation of pension under these rules, with effect from 1-11-92 or the date of their retirement whichever is later, these staff members would also be eligible for arrears of pension from 1-11-92. They shall also not be eligible for commutation on account of increase in the pension.

12. For the foregoing reasons, the writ petitions are allowed to the extent indicated above. Consequently, the following directions shall issue to the respondents :

(1) That the teachers and other staff working in the Private Aided Colleges, who retired from service between 29-10-1979 and 1-11-1992 shall also be eligible for the benefit of RPR 80 rath effect from the respective dates of their retirements and their pension shall be notionally fixed taking into account the increases if any made from the date of their retirement till 1-11-1992. The actual monetary benefits of refixed pensioners on 1-11-1992 shall be released to them. The arrears arising out of the refixation as directed above, shall be paid to them within three months. In case any pensioner who has retired during the period and expired as on the date, the arrears arising out of the said refixation shall be paid to the wife or legal heirs of the deceased pensioner.

(2) The Gratuity shall be revised in terms of RPR 80 and the difference shall be paid to the pensioner or in the event of his death to his wife or legal heirs of the deceased pensioner in accordance with the rules within a period of three months from the date of receipt of copy of this order. The family pension as applicable under RPR 80 shall be refixed and the difference arising out of the said refixation shall bc.paid to the eligible persons in accordance with the rules.

(3) In cases where the recovery proceedings have been initiated, the authorities shall refix the pension and gratuity and family pension as directed above and if it is found that if the excess amounts were paid under 1961 Rules or on account of bona fide mistakes, the same shall be recovered after giving due notice to the employees or the other concerned persons.

No costs.