

(2004) 05 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No. 305 of 2002 (S/B)

Naresh Chandra Saxena and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16 , 309
Industrial Employment (Standing Orders) Act, 1946 — Section 13B
Road Transport Corporations Act, 1950 — Section 3 , 45(2)
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 39, 4(1), 83

Citation : (2004) 05 UK CK 0025

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : M.C. Pant, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—By the present writ petition, the Petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the cut off date mentioned in the impugned Government Order dated 19th August, 1993 and circular dated 3rd February, 1994 as well as for quashing the circular dated 4th January 2001, by which, the Petitioners are denied the pensionary benefits on account of change of option. A further prayer has been made for a writ of mandamus directing the Respondents to extend the benefits of the impugned Government Order dated 19th August, 1993 and the benefits of the circular dated 3rd February, 1994.

2. Brief facts giving rise to the present writ petition are that the Petitioners were initially employed in the U.P. Government Roadways on different posts, which was a department of U.P. State and as such the Petitioners were the employees of the State Government. The details about their initial appointment, promotion on pensionable post, confirmation, retirement etc. are given below:

S.N. Name of Date of Initial Date of Date of Date & place

Petitioners apptt. & post promotion on Post Confirmation, if any of retirement

1. N. C. Saxena 17.02.1956 12.9.89 J.S.I. 1.4.67 31.7.95

CI/Conductor 1.2.94 S.S.I. Dehradun

2. Santosh Kumar 2.8.56 29.12.89 J.S.I. 1.4.67 31.7.94

CI/Conductor 22.10.93 S.S.I. Dehradun

3. Hukam Singh 15.12.56 28.11.89 J.S.I. 1.4.67 30.11.94

CI/Conductor 1.1.94 S.S.I. Dehradun

4. Daya Ram 19.1.57 CI/Conductor 24.5.94 J.S.I. 1.4.67 31.10.94 Dehradun

5. J.K. Thapliyal 8.1.58 Conductor 5.7.91 J.S.I. 1.3.63, 1.4.72 31.3.97 Dehradun

6. S.C. Pharasi 12.2.58 Conductor 16.3.93 J.S.I. 1.4.72 31.7.95 Dehradun

7. M.S. Aswal 9.4.58 CI/Conductor 15.6.93 J.S.I. 1.4.72 28.2.94 Hardwar

8. B.S. Rawat 10.10.58 CI/Conductor 24.6.93 J.S.I. 1.4.63, 1.4.72 31.12.93 Dehradun

9. Laxman Das 7.11.58 CI/Conductor 25.5.93 J.S.I. 1.4.72 31.1.97 Dehradun

10. T.S. Pal 1.2.59 CI/Conductor 29.10.93 J.S.I. 1.4.62 1.4.72 30.9.95 Kotdwar

11. Satendra Singh 15.4.59 Conductor 10.7.96 J.S.I. 1.4.72 30.4.98 Dehradun

12. C.S. Saxena 1.7.59 Conductor 3.3.95 J.S.I. 1.4.72 30.6.98

13. Suraj Mall 28.08.59 CI/Conductor 10.7.96 J.S.I. 1.4.69 1.4.72 31.7.96 Dehradun

14. Ram Singh 15.8.59 7.11.89 J.S.I. 1.4.72 31.12.97

CI/Conductor 31.1.93 S.S.I. Dehradun

15. V.K. Sharma 28.8.59 CI/Conductor 26.6.96 J.S.I. 1.4.72 30.9.98 Dehradun

16. N.S. Pharswan 1.12.59 Conductor 16.3.95 J.S.I. 1.4.72 30.9.96 Dehradun

17. A.M. Maithani 1.5.60 7.12.89 in 1.4.72 30.6.99

Conductor J.S.I. Rank 16.3.95 S.S.I. Dehradun

18. B.N. Sharma 12.5.60 6.7.90 in 1.4.72 31.1.99

Conductor J.S.I. Rank 16.3.95 S.S.I. Dehradun

19. R.S. Agarwal 1.3.61 Conductor 15.3.96 J.S.I. 1.4.72 30.4.97 Kotdwar

20. B.P. Sharma 15.6.61 Conductor 10.4.97 J.S.I. 1.4.72 28.2.98 Dehradun

21. Yogendra Pal 14.2.62 Booking Clerk 24.2.95 J.S.I. 1.6.72 31.7.97 Hardwar

22. J.P. Mamgain 15.3.63 5.8.96 J.S.I. 1.4.72 28.2.97

Booking Clerk Dehradun

23. Inder Singh 11.12.63 Cleaner 30.3.90 J.F. 1.4.72, 30.11.87 30.4.98 Dehradun

24. Ballu Singh 17.7.64 Booking Clerk 10.3.95 J.S.I. 1.6.72 31.8.97 Kotdwar

25. Dayal Mani 16.6.65 16.10.84 J.F. 1.6.72 28.2.2001

Bahuguna Asstt. Mech. Hardwar

26. M.S. Rawat 1.2.66 Fitter 5.10.90 J.F. 1.12.72 31.7.2001 Dehradun

27. Biru Ram 2.7.68 Majdoor 7.10.98 J.F. 31.11.87 31.8.99 Dehradun

3. The State Government of U.P. revised the terms and conditions of the services of the temporary employees of the U.P. Government Roadways vide Government Order dated 16.9.1960 issued by the Joint Secretary, U.P. Shashan, Parivahan Anubhag, Lucknow. Thereafter, in continuance of the aforesaid Government Order, the State Government issued another Government Order dated 28.10.1960 declaring the permanent gazetted and non-gazetted incumbents of the following three categories in the Roadways Organisation would be entitled to the Contributory Provident Fund-cum-Pension Rules:

i. The employees working in the office establishment of General Manager, Asstt. General Manager, Chief Mechanical Engineer, Roadways Central Workshop Kanpur & the Head-Quarter's Office of Transport Commissioner.

ii. Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

iii. Technical staff of the rank of Junior Foremen and above on the engineering side.

4. Further, the aforesaid Government Order also provided that the rest of the permanent non-gazetted Roadways employees, both in traffic and engineering section of the organization, would be treated as non-pensionable. However, they will be entitled for the Provident Fund benefit in accordance with the provisions of the Employees Provident and Miscellaneous Provisions Fund Act, 1952.

5. Regarding the temporary employees, it was provided that all such employees will also be entitled for Provident Fund benefits under the Employees Provident and Miscellaneous Provisions Fund Act, 1952 as and when they become permanent and they have the option to elect the Contributory Provident Fund-cum-Pension benefits in lieu of Employees Provident Fund. The Government Order dated 28.10.1960 with regard to inviting of the options is quoted below:

In continuation of CO. No. 3014D/xxx-135-V/1959 dated 16.9.1960, I am directed to say that the question of declaring the permanent posts in the

Roadways Organisation (including the Roadways Central Workshop Rampur) as pensionable has been under the consideration of Government for sometime past. In this connection, the Governor has been pleased to order that the permanent gazetted and non-gazetted incumbents of the following three categories would be entitled to the contributory provident fund cum pension Rules:

(a) The employees working in the office establishment of the Asstt. General Manager, General Manager, Service Managers, Chief Mechanical Engineers, Roadways Central Workshop, Rampur and the Headquarters office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

(c) Technical staff of the rank of Junior Foreman and above on the engineering side.

2. The Governor has been further pleased to order under noted below 3 Article 350 of the Civil Service Regulations that the rest of the permanent non-gazetted Roadways employees both in traffic and engineering sections of the organization, would be treated as non-pensionable. The incumbents of the permanent non-pensionable posts referred to above, will be eligible for provident fund benefit in accordance with the provisions of the Employees Provident Fund Act.

3. I am also to add that the temporary employees of the categories mentioned in para 1 above will be entitled to provident Fund benefits as provided under the Employees Provident Fund Act. As and when they became permanent, they will have the option to elect the contributory Provident Fund-cum-Pension benefits in lieu of Employees Provident Fund.

6. Petitioners have submitted that all the temporary employees who were working in the U.P. Government Roadways contributed towards Employees Provident Fund w.e.f. 1.5.1959. Petitioners have further submitted that in continuation of the Government Order dated 28.10.1960, the Transport Commissioner, U.P. Lucknow vide letter dated 11.12.1961, addressed to the Accountant General U.P., Allahabad, declared 18 posts of the Roadways Branch including the posts of Senior Station Incharge, Junior Station Incharge, Senior Foreman & Junior Foreman. In addition to this, the Transport Commissioner further mentioned that the incumbents of permanent non-pensionable posts of the clerical, traffic, watch & ward and technical staff of the bus-station, booking station and workshop, when posted in the office of Transport Commissioner, Chief Mechanical Engineer, Service Manager, General Manager and Asstt. General Manager became entitled to the benefits of pension in accordance to para 1 of the Government Order dated 28.10.1960.

7. Petitioners have further submitted that subsequent to the Government Order dated 28.10.1960 and Transport Commissioner letter dated 11.12.1961, when the incumbents on non-pensionable posts were promoted to pensionable posts,

the question arose as to how the non-pensionable period of service of such incumbents would be regulated towards qualifying service of Pensionary Benefits. Then, the State Government of U.P. issued another Government Order dated 22.2.1972 in respect of additional benefits to the Roadways employees and in para 1 (8) thereof, formulated the conditions for counting the non-pensionable period of service towards pensionary benefits in the following manner:

8. The Petitioners have further submitted that the State Government of U.P. vide Notification dated 31.5.72 constituted the U.P. State Road Transport Corporation w.e.f. 1.6.72 u/s 3 of the Road Transport Corporation Act, 1950 and the assets and liabilities of the erstwhile UP Government Roadways stood transferred to the Corporation. It is further submitted that by Government Order dated 7.6.72, as amended by Government Order dated 5.7.72 all the employees of the erstwhile UP Government Roadways were sent on deputation with the UP State Road Transport Corporation and paid out of the funds of the said Corporation. It was provided in the Government Order dated 5.7.72 that as and when the Corporation frames the rules for the service conditions, an undertaking of the State Government would be incorporated therein to this effect that the service conditions of such employees under the Corporation would in no case be inferior or less favourable than those service conditions available to them in the UP Government Roadways before absorption in the corporation, and that the Government period of service and their seniority, promotion, pay fixation, right to leave and retiral benefits under the corporation will be considered in the same manner as if it were obtaining in the Government service. The said Government Order dated 5.7.72 is quoted below:

9. Petitioners have also stated that the UP State Road Corporation framed the service regulations known as UP State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 for its employees u/s 45(2)(c) of the Road Transport Corporation Act, 1950, which was published in the Gazette of 19.6.81, and which was subsequently notified u/s 13-B of the Industrial Employment (Standing Orders) Act, 1946, vide Notification dated 12.4.91. As the employees of the UP Govt. Roadways were working on deputation at that time in the Corporation, the Service Regulation did not apply to such employees of the UP Govt. Roadways. Regulation 39 deals with Pension and other retirement benefits and Regulation 83 deals with Special Provisions regarding Erstwhile employees of the State Govt., which reads as under:

39(1)(i) Subject to the provisions of Clause (ii) of this sub-regulation, an employee of the Corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in sub-regulation (2).

(ii) A person, who was the employee of the State Govt., in the erstwhile UP Govt. Roadways and has opted for the service of the Corporation shall be entitled to pension and other retirement benefits in terms of the Government Order No. 341/30-2-1-70N-72 dated July 5, 1972.

(2) Without prejudice to the provisions of sub-regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile UP Government Roadways Department), shall be entitled to the following retirement benefits:

- (i) Employees Provident Fund or the General Provident Fund, as the case may be;
- (ii) Gratuity in accordance with the Payment of Gratuity Act; 1972 other relevant Government Rules, as may be applicable;
- (iii) Amount due under Group Insurance Scheme, 1972.
- (iv) One free family pass in a year for journey within the State;
- (v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;
- (vi) Any other benefit that may be allowed by the Corporation from time to time.

83. Notwithstanding anything to the contrary contained in these Regulations, the service conditions, including the conditions relating to seniority, promotion, pay fixation, leave and retirement benefits of the persons who were employees of the State Government in the UP Government Roadways department shall not be inferior to the conditions before their absorption in the service of the Corporation and the provisions of G.O. No. 3414/30-2-170-N-77, dated July 5, 1972 shall apply.

10. State Govt., under Article 309 of the Constitution of India and vide Notification dated 28.4.82 framed rules known as "UP Govt. Roadways Organisation (Abolition of posts and absorption of Employees) Rules, 1982" by which the employees working on deputation in the UP State Road Transport Corporation were asked to exercise their option about being absorbed in the services of the UP State Road Transport Corporation within three months. Petitioners have further submitted that as none of the employees exercised any such option, they were deemed to have been absorbed in the services of the UP State Road Transport Corporation after the expiry of three months and as such, by virtue of deeming clause, all the employees of the erstwhile UP Govt. Roadways on deputation were deemed to have absorbed in the UP State Road Transport Corporation after 28.7.82. The said Notification dated 28.4.82 is quoted below:

3414/30 - 2 - 179 /72, 5 ?, 1972 ? ? 3000/30 - 2 - 170 /72 7 ?, 1972 ? ? ? ? |

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3. (1) ????????? |

(2) , ???? |

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4. (1) ????????? , ???? , ??, ??? |

(2) ? (1) ?? , ????? |

(3) ???? (2) ??? , ????? |

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5. ?????? :

(1) ?????? 4 (2) ??? |

(2) 6 ???? , ???? , ?, ? |

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6. ??? :

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(2) ??? |

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February, 1994 are confined only to the promotees upto 28.7.82. Petitioners have submitted that fixing the cut off date and not giving the pensionary benefits to those who were promoted on pensionable posts after 28.7.82 is arbitrary, unreasonable and discriminatory.

14. Petitioners have further submitted that some employees who were eligible for pension, but could not deposit refundable amount, as required under the above Government Order dated 19th August, 1993 and Circular dated 3rd February, 1994, approached the State Government for adjusting the refundable amount from their pensionary arrears. The State Government vide Government Order dated 18.5.99 provided that those employees who are eligible for pension will be paid pensionary benefits after adjusting the amount of Employers Share with interest and difference amount of Gratuity, from the pensionary arrears, which was adopted by the Corporation vide Circular dated 7.6.99.

15. The Corporation Circular dated 4.1.2001 has put a bar for the grants of pension to those employees who have retired from service on pensionable posts and are eligible for pension. The said circular dated 4.1.2001 is quoted below:

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? ? ? " ? . . . ? ? 1997 (1) . . . ? . . 439, 1997 ? - 1 . . . 1939 ? ? ? ? ? ? ? ? : ? |

: ? : ? ? ? ? |

16. Petitioners have submitted that V.K. Ram Murti case (decided on 13.8.96) as cited in the circular dated 4.1.2001 is not applicable in the case of the Petitioners and is quite distinguishable.

17. In view of the aforesaid facts, the Petitioners have stated that the Government Order dated 19th August, 1993 and the Circular dated 3rd February, 1994 are ultra vires to the Constitution of India to the extent of fixing cut off date in respect of the employees who have been promoted on pensionable posts upto 28.7.82 and about those who have been promoted on the same pensionable posts after 28.7.82 and therefore, fixing the cut off date is unconstitutional and liable to be struck down and the Petitioners should also be made entitled for the pensionary benefits.

18. A counter affidavit has been filed by the Corporation, in which it was submitted that after creation of Corporation all the employees working in erstwhile UP Government Roadways became the employees of UPSRTC and as such, they were deemed to be employees of Corporation. It was submitted that all the employees whose provident fund was deducted, the receipt was provided to them every year and none of the employees raised any objection during their service time on the aforesaid Provident Fund deduction.

19. In the case D.S. Nakara and Others Vs. Union of India (UOI), , the Apex Court has referred the observations of Justice Iyer regarding Article 14 of the Constitution of India as under:

The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore not to be held identical with the doctrine of classification. As was noticed in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, in the earliest stages of evolution of the Constitutional law. Article 14 came to be identified with the doctrine of classification because the view taken was the Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *E.P. Royappa Vs. State of Tamil Nadu and Another*, it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constructional law and it, therefore, violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

Justice Iyer has to his inimitable style dissected Article 14 as under:

The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictats. Equality is the antithesis of arbitrariness and ex cathdra ipse dixit is the ally of demagogic authoritarianism. Only knight errant of "executive excesses" if we may use current cliché can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law. Be you ever so high, the law is above you" *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, at P. 728 Affirming and explaining this view, the constitution Bench in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must be necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions hearing on the subject in *AIR India Vs. Nergesh Meerza and Others*, the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equal are treated differently without any reasonable basis.

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.

20. In the case of *Krishena Kumar and Others Vs. Union of India and others*, , the Apex Court has held as under:

32. In *Nakara* it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the provident Fund is finally crystallized and thereafter no statutory obligations continue. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund Account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is application to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retirees finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in *Nakara* that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. *Nakara* cannot, therefore, be an authority for this case.

21. In the case of *State of Rajasthan v. Rajasthan Pensioner Samaj* reported in 1991 (Suppl.) (2) SCC 141, the Apex Court has held as under:

2. We heard both the learned Counsel for the respective parties for a considerable length of time. The main submission, urged on behalf of the Appellant-State is that after the judgment of the Constitution Bench of this Court in *Krishena Kumar and Others Vs. Union of India and others*, the impugned judgment of the High Court following *D.S. Nakara* judgment cannot be sustained and that the contributory provident fund retirees (hereinafter called as CPF Retirees) from a different class from those who had opted for pension scheme

according to the decision in Krishena Kumar case and as such they are not entitled now to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the CPF Retirees are not entitled to the benefits granted to the Pension Retirees. It has been further contended that the widows of Jodhpur CPF Retirees and Pension Retirees do not form one homogeneous class but form two different classes and therefore the widows of CPF Retirees are not entitled to opt for pension scheme in view of the judgment of Krishena Kumar case and that moreover the right to opt for pension scheme was the right of the employees which right cannot be either inherited or exercised by the widows of the Retirees. Finally, it has been stated that in the light of the present position of law laid down in Krishena Kumar case the impugned judgment is liable to be set aside.

22. Relying upon the aforesaid judgments in the case of Krishna Kumar and in the case of State of Rajasthan, the Apex Court, in the case of V.K. Ramamurthy v. Union of India reported in 1997 (1) UPLBEC 439, has held as under:

In the Constitution Bench decision in Krishna Kumar's case this Court was also considering an identical case of a retired railway employee who had opted for the Contributory Provident Fund Scheme but after his retirement wanted to switch over to the Pension Scheme. This Court did not allow the relief of switching over to the Pension Scheme on a conclusion that the Pension Scheme and the Provident Fund Scheme are structurally different and they do not belong to one class. It was also observed that in the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution. Referring to the earlier decision of the Court in Nakara's case, it was observed that in the Nakara it was never held that both the pension retirees and the provident fund retirees form a homogeneous class and further in Nakara it was never required to be decided that all the retirees form a class. It was also observed that while deciding the case of pension retirees in Nakara's case the provident fund retirees were not in mind. This Court also further held in Krishna Kumar's case.

"The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the provident Fund is finally crystallized and thereafter no statutory obligations continue. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund Account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be

reasonable to argue that what is application to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retirees finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the pension retirees."

In Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath and Others, , this Court also came to hold that the contributory provident fund retirees form a different class from those who had opted for Pension Scheme according to the decision in Krishna Kumar's case and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the Pension Retirees. In yet another case of All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those belonging to the Pension Scheme and those belonging to the Contributory Provident Fund Scheme has been rightly emphasised by this Court in Krishna Kumar's case.

23. The Government Order dated 5.7.72 came up for consideration in the case of Ram Chandra Pathak Vs. State of U.P. and Others, , in which it has been held as under:

20. The Government order did not have the effect of legislation by reference. The intention of the Government order dated 5.7.72 was not to continue the rules applicable to Government service applicable to the employees of Corporation holding non pensionable service. Having been absorbed as employees of the Corporation, the service regulation application to the Corporation became applicable to such employees. The assurance given in the government order

dated July 5, 1972 was subject to the regulations to be framed for the employees of the Corporation, and thus the later portion of the assurance that their service conditions shall not be less advantageous, was applicable until the service rules were framed by the Corporation with regard to conditions of their service. In case Service Regulations, 1981 were not acceptable to such employees, they could have opted out from the service of the Corporation under Regulation 4(1) (iii) of the Service Regulations, 1981.

22. There is yet another aspect of the matter that almost all Petitioners have retired long ago. For example in writ petition No. 2603 of 2001 Petitioner retired on 30.5.1994 as Senior Station Incharge of the Corporation, Fazalganj Depot, Kanpur; in Writ Petition No. 2604 of 2001 Petitioner retired from the post of Driver on 28.2.1986 working under Regional Manager of the Corporation, Allahabad Region, Allahabad and in writ petition No. 19726 of 2000 Petitioner retired on 30.6.1997 from Varanasi Gramin Depot. All the Petitioners have received retiral benefits including the entire amount of employees provident fund, gratuity and other benefits. They were absorbed in the service of the Corporation in the year 1982 and thereafter till the date of their retirement, they did not make any protest with regard to the applicability of the Regulations. Having accepted the terms and conditions of the employment as employees of the Corporation, they cannot be allowed to turn around after their retirement and claim applicability of the service conditions as Government servants on deputation with Corporation. In *State of Rajasthan v. Rajasthan Pensioners Samaj* 1991 (Suppl.) (2) SCC 141, Supreme Court upheld the judgment of Constitution Bench in *Krishna Kumar and Others Vs. Union of India and others*, , explained and clarified the judgment of the Apex Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, and held that contributory provident fund retirees are not entitled to claim a right to switch over from Provident Fund Scheme to Pension Scheme on the ground of violation of Article 14 of the Constitution of India. It was found that widows of Jodhpur C.P.F. retirees and pension retirees do not form one homogeneous class but form two different classes and, therefore, the widows of C.P.F. retirees are not entitled to opt for pension scheme, as the right to opt for pension scheme cannot be inherited or exercised by the widows of the retirees.

23. It was held in *Krishna Kumar's* case that the right of each individual provident fund retiree is crystallized on his retirement after which no continuing obligation remains, while on the other hand, there is a continuing obligation of the State in respect of pension retirees. In the present case on the absorption of an employee holding non-pensionable posts in the Corporation, obligation of the State Government came to an end. These employees became employees of the Corporation and started subscribing to the Employees Provident Fund after transfer of the fund from their account of Employees Provident Fund. They became members of the employees provident fund. The State Government was not required to contribute towards their pension fund as in the case of employees who were holding pensionable posts. Their rights as such crystallized on the date

of their absorption in the corporation in the year 1982. Now after their retirement, having received the retiral benefits and having ceased the relationship as employees of the Corporation, they cannot agitate their rights after a long period of time. They form a different class than the employees of the State Government holding pensionable posts on the date of absorption.

24. All the writ petitions are accordingly, dismissed.

24. The Apex Court in the case of John Vallamattom and Another Vs. Union of India (UOI), , after relying upon the above judgment of D.S. Nakara v. Union of India, has held as under:

62. Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first part of Article 14 of the Constitution of India is a declaration of equality of civil rights for all purposes within the territory of India and basic principles of republicanism and there will be no discrimination. The guarantee of equal protection embraces the entire realm of "State action". It would extend not only when an individual is discriminated against in the matter of exercise of his right or in the matter of imposing liabilities upon him, but also in the matter of granting privileges etc. In all these cases, the principle is the same, namely, that there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. In my view, all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed. The classification should not be arbitrary; it should be reasonable and it must be based on qualities and characteristics and not any other who are left out, and those qualities or characteristics must have reasonable relations to the object of the legislation.

63. In the case of D.S. Nakara v. Union of India this Court has observed thus:

15. 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 found on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

64. It has also been observed in the above judgment that in the very nature of things, the society being composed of unequals, a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged and in the absence of the doctrine of classification such legislation is likely to flounder on the bedrock of equality enshrined in Article 14 of the Constitution.

25. The Government order did not have the effect of legislation by reference. The intention of the Government order dated 5.7.1972 was not to continue the rules

applicable to Government service applicable to the employees of Corporation holding non-pensionable service. Having been absorbed as employees of the Corporation, the service regulation applicable to the Corporation became applicable to such employees. The assurance given in the Government order dated July 5, 1972, was subject to the regulations to be framed for the employees of the Corporation, and thus the later portion of the assurance that their service conditions shall not be less advantageous, was applicable until the service rules were framed by the Corporation with regard to conditions of their service.

26. In view of the aforesaid facts and circumstances, I do not find any force in the submissions made by the learned Counsel for the Petitioners and the Petitioners are not entitled to any pensionary benefits.

27. Consequently, the writ petition is dismissed. No order as to costs.