

(2003) 09 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20755 of 2002

State Government Pensioners Association

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Pension and Gratuity Rules — Rule 9

Citation : (2004) 1 ALD 338

Hon'ble Judges : Gopala Krishna Tamada, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : P. Kishore Rao, M. Surender Rao, A.V.V.S. Bhujanga Rao, S. Satyam Reddy, J.R. Manohar Rao, P. Lakshmananna, Mantha Srinivas, K.K. Chakravarthy, Meherchand Nori, Gopala Rao, Gandrakota and V.V. Sarma, Nooty Rama Mohan Rao, A.A.G., A.V. Vijaya Kumari and S. Swarna Reddy, for the Appellant; T. Suryakaran Reddy, SC for Central Government, Srinivas Murthy and A.A.G., for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The lis is voiced by the retirees" interregnum. The petitioners are the State Government Pensioners Association, Hyderabad and the individual pensioners. They approached the Tribunal assailing the orders issued by the Government in G.O. Ms. Nos. 157 and 158, Finance and Planning Department, dated 16-9-1999 having effect of denying the Pensionary benefits including the enhanced Gratuity, Pension, Commutation, encashment of Leave and other retirement benefits as illegal, arbitrary and violative of Articles 14, 16, 21 and 300A of the Constitution of India.

2. The facts which are not in dispute are as follows:

The Government has been constituting Pay Revision Commissions from time to time for fixing appropriate Pay Scales to its employees and also the matters relating to Pension and Gratuity. One such Commission was constituted by the Government in the year 1997. The terms of reference will be referred to in the

succeeding paragraphs.

3. The Pay Revision Commission has submitted its report to the Government on 21-7-1999. It, inter alia, recommended the Revised Pay Scales notionally from 1-7-1998 with physical monetary benefits from 1-4-1999. Therefore, all the employees who were in service as on 1-7-1998 are brought under the fold of Revised Pay Scales (hereinafter called RPS-1999). After the recommendations were submitted by the Commission to the Government, the said recommendations were discussed with the recognised Body of employees viz., Joint Consultative Committee and after the deliberations and negotiations the Government not only accepted the recommendations of the Pay Revision Commission, but also enhanced certain benefits over and above the recommendations made by the Pay Revision Commission which will be referred to infra.

4. Some of the salient features of the recommendations of the Pay Revision Commission are (a) introduction of Master Scale of Rs. 2,550-19,675. The disparity ratio being 1:7.72, (b) The Dearness Allowance existing as on 1-7-1998 be merged with Basic Pay. (c) The Commission also recommended fitment benefit of 20% which was increased to 25% by mutual negotiations. (d) The pensioners shall be permitted to commute 40% of the pension sanctioned, (e) The retirement Gratuity was enhanced from Rs. 1,75,000/- to Rs. 2,50,000/-. (f) minimum pension of Rs. 1,275/- per month. (g) The monthly financial assistance was enhanced from Rs. 370/- to Rs. 750/- per month, (h) The recommendations shall be given effect from 1-7-1998 with financial benefit from 1-4-1999.

5. The above recommendations are some of the recommendations, which we are concerned with, apart from other recommendations, which have been accepted by the Commission.

6. Consequent on the acceptance of the recommendations by the Government, the Government issued implementation instructions by giving statutory back up under proviso to 309 of the Constitution of India and accordingly issued G.O. (P).No. 114, dated 11-8-1999. However, with regard to pension and pensionary benefits, it was stated that separate G.Os. will be issued. Accordingly, three separate G.Os. were issued viz., G.O.(P).No. 156 and G.O. Ms. No. 157 and G.O. Ms. No. 158, dated 16-9-1999. It is the case of the pensioners that they were in service as on the date when the Revised Pay Scales came into force from 1-7-1998 and they were retired between the period from 1-7-1998 and 1-4-1999. The Government have implemented the Revised Pay Scales to the pensioners who retired during the period referred to above and fixed the pension on the basis of the Revised Pay in accordance with the Revised Pay Scales-1999 notionally from 1-7-1998 or from the date of actual retirement, as the case may be and released the actual monetary benefit from 1-4-1999. But, however, the grievance of the pensioners is that the enhanced Gratuity was not calculated on the basis of the Revised Pay, the enhanced pension commutation of 40% was not permitted on the basis of the revised pay scales, the encashment of leave was

not computed on the basis of the Revised Pay. Therefore, they approached the Tribunal for appropriate relief in this regard. It is also worth noticing in this regard that during the pendency of the matters before the Tribunal, the Government issued G.O. Ms. No. 206, dated 23-12-1999 deleting para-9 from G.O.(P).No. 114, dated 11-8-1999. The same also came to be challenged by the petitioners.

7. The Tribunal, however, set-aside the order issued by the Government in G.O. Ms. No. 206, dated 23-12-1999 against which the Government filed writ petitions. The Tribunal while deliberating on the claims of the pensioners, held that the pensioners are not entitled for fixation of Gratuity on the basis of notional pay fixation and the calculation of Gratuity, consequently enhanced limits of Gratuity and enhanced limits of pension commutation but the applicability of the Revised Pay for the purpose of Leave Salary benefit was denied. Against such rejection, the Association carried the matter in writ petitions. Thus, we are concerned with two types of cases before us. One relates to the writ petition filed by the Government insofar as it related to the matter concerned in G.O. Ms. No. 206, dated 23-12-1999 and the order of the Tribunal upholding G.O.(P).No. 156, G.O.Ms. No. 157 and G.O. Ms. No. 158, dated 16-9-1999.

8. Arguments in extenso were advanced by the learned Counsel for petitioner Association/pensioners M/s M. Surender Rao and J.R. Manohar Rao assailing the order of the Tribunal on number of grounds and counter arguments were advanced by the learned Additional Advocate General.

9. We shall refer to the contentions raised by the learned Counsel for the petitioner Association/pensioners. It is their case that the Government constituted Pay Revision Commission and accepted the said recommendations and in fact much higher benefits were conferred. The benefits were sought to be applied with effect from 1-7-1998 notionally and with monetary benefit from 1-4-1999. Therefore, any person who retired between these two dates should be allowed to compute retirement benefits on the basis of the pay drawn notionally and the denial of such benefit would be negation of their right to receive retirement benefits. The learned Counsel for the pensioners would also submit that the pensioners who retired between the period from 1-7-1998 to 1-4-1999 and subsequent to 1-4-1999 form homogenous group and there cannot be further class discrimination in the matter of either Pay Scales or the retirement benefits. They relied heavily on the principles laid down by the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . It is also their contention that when once a decision was arrived at by the Government after consultation with the recognized Unions, such a decision cannot be unilaterally altered to their prejudice and thus the Government is estopped from acting in derogation of the decisions taken. They also contended that when once the pension has been fixed on the basis of notional pay drawn, there is no reason why other retirement benefit, like Gratuity and higher commutation limits cannot be granted. They rely

on various decisions of the Supreme Court in this regard which will be referred to hereinafter.

10. The learned Additional Advocate General in his usual undisturbed attire and persuasive posture contented that the order of the Tribunal was quite legal and valid and that what was extended to the petitioners/pensioners was in accordance with the Rules framed by the Government. He also submits that the notional pay cannot be equated with the pay actually drawn. The retirement benefits, such as Gratuity, Pension and Leave encashment are correlated to the actual pay drawn and not the notional pay and therefore, the petitioners are entitled for the retirement benefits only on the actual pay drawn. He further submits that a cut off date for the purpose of retirement benefits, such as Gratuity and higher commutation was fixed from 1-4-1999 and that cut off date cannot be said to be irrational and has no nexus to the object sought to be achieved. He submits that since the actual benefits to the employees had flown only from 1-4-1999, such a cut off date was fixed and hence any person who retired between the period from 1-7-1998 and 1-4-1999 is not entitled for the higher limits of Gratuity, Pension, commutation and Leave encashment. He further submits that keeping in view the financial position of the State also, such a cut off date is permissible and that cannot be found fault with. Thus, the learned Additional Advocate-General makes an earnest efforts to attenuate the rigors of petitioners claims. Relying on various judgments of the Supreme Court, which would be referred to hereinafter, he submits that the order of the Tribunal was quite legal and valid and the same cannot be assailed. Attacking the order of the Tribunal so far as it relates to G.O.Ms.No. 206, dated 23-12-1999 he submits that when an executive order is issued by the Government, it is always open for the Government to amend or repeal the same and such power is available to the Government. The executive instructions issued in G.O.(P).No. 114, dated 11-8-1999 in para-9 have been substituted by separate instructions in G.O. Ms. No. 206, dated 23-12-1999. Therefore, the Tribunal has misconstrued the scope of such an order. Hence the order to the extent of setting aside the G.O. Ms. No. 206, dated 23-12-1999 is liable to be set-aside.

11. The principal issue that arises for consideration is, whether the petitioners are entitled for calculation of the retirement benefits based on the notional fixation which was prevalent during the period from 1-7-1998 to 1-4-1999 and during which period the petitioners retired from service. The calculation of Leave Salary benefit is dependent on the determination of the aforesaid issue.

12. Before delving into the actual matrix of the issue, we, however, make it clear that we are dealing with the cases of the Government employees relating to the pensionary benefits including the Gratuity and Leave encashment who retired between the period from 1 -7-1998 to 1-4-4999 only. It is also not in dispute that the Government has constituted the Pay Revision Commission in G.O. Ms. No. 565, General Administration Department, dated 2542-1997. The terms of reference of the Commission are as follows:

(1) To evolve the principles which should govern the structure of emoluments and those conditions of service of various categories of employees of the State Government, Local Bodies and Aided institutions, non-teaching staff of Universities including Acharya N.G. Ranga Agricultural University, Jawaharlal Nehru Technological University, Regional Engineering College, Warangal, Work-Charged Employees and Full-Time Contingent Employees, which have a financial bearing, taking into account the total packet of benefits available to them and suggest changes therein which may be desirable and feasible;

The Commission shall, however, not dealt with the teaching staff in Government Colleges and Government Aided Private Colleges drawing UGC/AICTE and ICAR scales.

(2) To examine as to what extent the existing Dearness Allowance should be merged in pay and to evolve a new set of pay scales merging Dearness Allowance therein and to suggest the mode of fixation of pay in the Revised Pay Scales.

(3) To study the Automatic Advancement Scheme as modified from time to time keeping in view the anomalies that have arisen during the implementation of the said scheme and also to examine whether the said scheme should continue in its present form and to make its recommendations in this regard.

(4) To examine the need for the various Special Pays, Compensatory and other Allowances and other perquisites in cash or kind now allowed, including scheme of sanction of Advance Increments, for acquiring/possessing higher qualifications, with special reference to the circumstances and conditions governing their initial sanction and to make recommendations regarding their continuance or otherwise and if continuance is recommended what modifications, if any, are deemed desirable with regard to their rates, terms and other conditions which should govern them in future.

(5) To examine, with a view to having a proper pension structure for pensioners, the existing pension structure including death-cum-retirement benefits and make recommendations relating thereto which may be desirable and feasible.

(6) To give its recommendations on any other matter referred to it by the State Government during the tenure of its office.

13. However, there were additions of some more terms of reference with which we are not concerned. The report was submitted by the Commission after public hearings and also hearing the Associations and Unions. As already noticed above, the Pay Revision Commission recommended Master Pay Scales and other Pay Scales to various categories of employees. The Pay Revision Commission also recommended with regard to the Pension and other retirement benefits as follows:

(1) Commutation of Pension up to 40%.

(2) Maximum limit of Gratuity up to Rs. 2,50,000/-

(3) Calculation of the Gratuity on the basis of Revised Pay Scales.

But, however, after the report containing the recommendations was submitted to the Government, the Government conducted deliberations and negotiations with the Unions and in fact accepted much higher benefits. The Government in G.O. (P) No. 114, dated 11-8-1999 has accepted the recommendations of the Pay Revision Commission to implement the same from 1-7-1998 with monetary benefit from 1-4-1999. Para-2 is relevant which is extracted below:

"The Pay Revision Commission submitted its Report to Government on 21-7-1999 and recommended, inter alia, revised scales of pay by merging in its entirety. Dearness Allowance as on 1-7-1998 sanctioned in the Government Order 4th read above. The Pay Revision Commission evolved a Master Scale of Rs. 2550-50-2750-60-3050-80-3450-100-3950-120-4550-150-5300-170-6150-200-7150-250-8400-300-9900-350-11650-450-13900-525-19675 of which all the revised scales are segments and recommended to implement its recommendations from 1-7-1998 with monetary benefit from 1-4-1999."

14. Apart from that the Government also in consultation with the Unions enhanced certain benefits over and above that were recommended by the Commission which are stipulated in para-3, which reads thus:

"3. Government held discussions with the office bearers of the Joint Action Committee of Employees, Teachers and Workers of Andhra Pradesh, the Telangana Non-Gazetted Officers Union and the A.P. Secretariat Coordination Committee. It has been decided to implement the recommendations of the Pay Revision Commission with the following modifications:

(i) It was agreed that the initial pay of those who maybe recruited henceforth to the last grade service will be fixed by allowing two increments in the time scale of Rs. 2550-4550, thereby allowing them a minimum of basic pay of Rs. 2,650/-.

(ii) It was agreed to allow an additional fitment benefit of 5% in addition to the 20% fitment recommended by the Pay Revision Commission.

(iii) The maximum amount of House Rent Allowance of Rs. 1,500/- per month recommended by the Pay Revision Commission will be raised to Rs. 2,000/-per month.

(iv) It was agreed to constitute a Committee to look into the anomalies that arise as a result of the implementation of the recommendations of the Pay Revision Commission.

(v) Government have decided to pay Rs. 45/-per month per employee towards the premium for the Medical Insurance Scheme under discussion between the Employees. Teachers and Workers and Insurance Company/Companies for which the monthly premium per employee per month has been worked out to be Rs. 90/-."

15. It was also directed that the initial pay of the persons who will be recruited on or after 1-7-1998 to the Last Grade Service shall be fixed by allowing two increments in the time scale of pay of Rs. 2550-4550 and allowing them a minimum pay of Rs. 2650/-. It is further stated that the revised scales shall be deemed to have come into force from 1-7-1998 and the monetary benefit shall be allowed from 1-4-1999. The options were directed to be filed by the employees concerned within six months and failure to exercise the option within stipulated period would be deemed that the employees opted for Revised Pay Scales-1999. But, however, as far as this case is concerned, no dispute arises relating to the option.

16. Para-9 of G.O. Ms. No. 114 covers the pensionary benefits, which reads thus:

"9. Persons who retired between 1-7-1998 and 31-3-1999 shall also be eligible for the Revised Pay Scales, 1999. The notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders, shall in such cases count towards pensionary benefits."

17. Keeping in view the aforesaid recommendations and the decision taken by the Government in the very same G.O., the Government issued Notification in exercise of powers conferred by proviso to Article 309 of the Constitution and made the Rules, called "Andhra Pradesh Revised Scales of Pay Rules, 1999". Under Sub-rule (2) of Rule 1, the Rule shall be deemed to have come into force on 1-7-1998. Under Sub-rule (3) of Rule 1, the Rule shall apply to all Government employees, whether temporary, regular or permanent, appointed before 1-7-1998. Under the said Rules, "basic pay" was defined as appearing in Fundamental Rule 9(21)(a)(i). The process of working out existing emoluments was carved out in Rule 2 of the Rules. The principles of fixation of pay in the Revised Pay Scales was stipulated in Rule 6. The overriding effect was given to these Rules under Rule 9 which ordains thus:

"No rules made or deemed to have been made under proviso to Article 309 of the Constitution shall, insofar as it is inconsistent with any of the provisions of these rules, have any effect and these rules are in addition to any other rules existing and not in derogation of the rules."

18. Therefore, by virtue of the consensus arrived between the employees and the Government, the recommendations of the Pay Revision Commission were accepted and they were given effect to from 1-7-1998 with monetary benefit from 1-4-1999. These recommendations not only include the restructuring of Pay Scales, but also the pensionary benefits which was one of the terms of reference of the Pay Commission.

19. As far as the pay structure is concerned, it was given a Statutory back up by the Notifications issued under the said G.O.(P).No. 114, dated 11-8-1999. However, the Government issued G.O.(P).No. 156, dated 16-9-1999 while reiterating that the revised pay scales were given effect from 1-7-1998 stated in paras-5 and 17 as follows:

"5. The employee retired between 1-7-1998 and 1-4-1999 are eligible to revision of their pay in the Revised Pay Scales, 1999 notionally as per the orders issued in the G.O. 7th read above. As such, the pensions of these employees may be revised notionally as per the revised pay in Revised Pay Scales, 1999 and monetary benefit should be allowed from 1-4-1999. No difference on Retirement Gratuity and Commutation shall be allowed in the pension notionally fixed as above.

17. The pensioners are not entitled to commute any portion of pension on the difference in pension now admissible as per these orders."

20. Similarly in respect of revised maximum limits of retirement Gratuity, G.O. Ms. No. 157, dated 16-9-1999 was issued in pursuance to the acceptance of the recommendation of the Pay Revision Commission. Para-3 reads thus:

"3. These orders will come into force from 1-4-1999 and shall apply to all Government Servants who retire or whose death taken place on or after that date. The arrears due to issue of these orders to the employees retired after 1-4-1999 shall be paid as per para 4.4 of the Government Order fifth read above."

21. With regard to the enhanced commutation of pension, Government have issued G.O. Ms. No. 158, dated 16-9-1999. Paras-3 and 4 are relevant which reads thus:

"3. After careful consideration of the report, Government decided to implement the recommendations of the Pay Revision Commissioner and hereby order that the limit for commutation of pension under A.P. Civil Pension (Commutation) Rules, 1944 shall be enhanced to 40% of the pension sanctioned to the pensioner. All other provisions for this purpose shall remain unchanged.

4. These orders will come into force from 1-4-1999 and shall apply to all Government Servants who retire or whose death taken place on or after that date. The arrears due to issue of these orders to the employees retired after 1-4-1999 shall be paid as per para 4.4 of the Government Order fifth read above. The pensioners who have already commuted their pensions can avail this enhancement and their claims shall be settled as per the orders issued in the reference first and second read above."

22. Thus, it is noticed that by virtue of these three G.Os., viz., G.O. (P) No. 156, G.O. Ms. No. 157 and G.O.Ms.No. 158, dated 16-9-1999, the retirement benefits were sought to be computed only on the basis of actual pay drawn and not on notional pay with effect from 1.4.1998.

23. To decorticate the feeling of ambiguity and reinforce the stand expressed in the aforesaid G.Os. the Government have issued amendment in G.O. Ms. No. 206, dated 23-12-1999 by deleting para-9 of G.O.(P).No. 114, dated 11-8-1999, and substituting the same by the following:

"The persons who retired between 1-7-1998 and 31-3-1999 shall also be eligible for Revised Pay Scales, 1999. Notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders shall in such cases count towards pensions notionally and the monetary benefits of the revised pension shall be allowed with effect from 1-4-1999."

24. In the background of the aforesaid material prima facie, the issue has to be considered. As already observed supra, the Pay Revision Commission was entrusted with the restructuring of pay structure and also pensionary benefits which terms of reference was included in this Commission only and in the last Commission, there was no reference relating to pensionary benefits. Whatever be the recommendations made by the Pay Commission were accepted in toto after consultation with the Unions. The recommendations not only include the pay structure, but the pension and the pensionary benefits also. Therefore, what is required to be noticed is that the Government has accepted to implement the recommendations which inter alia include the recommendations relating to pensionary benefits with effect from 1-7-1998 with monetary benefit from 1-4-1999. In fact higher benefits were also given apart from the benefits recommended by the Pay Commission which were already narrated above. When once the recommendations of the Pay Commission were extended to the Government Servants in pursuance of the settlement reached between the parties, they are required to be implemented by means of various instructions and in some cases by means of statutory provisions. Therefore, as far as the recommendations relating to pay structure was concerned, the Government issued notifications in G.O. (P) No. 114, dated 11-8-1999 with which there is no dispute. Relating to the pensionary benefits. Government have also accepted to issue similar G.O. in tune with the recommendations of the Pay Commission. But, however, we find that the G.Os. issued with regard to the pensionary benefits are not in conformity with the consensus arrived between the employees and the Government. What was agreed between the employees and the Government relating to pensionary benefits as per para 9 of G.O. Ms. No. 1 14 was that the pensionary benefits shall be fixed on the basis of the notional pay drawn between the period from 1-7-1998 to 1-4-1999. But, however, that was given a go-bye in the subsequent G.Os. and contrary intentions were expressed unilaterally which has affected the pensionary benefits of the employees during the relevant period. When a consensus was arrived and the Pay Scales and the pensionary benefits in tune with the recommendations of the Pay Commission coupled with mutual negotiations, the Government is under an obligation to implement the said consensus and as it has no power to unilaterally alter the same detrimental to the interests of the Government employees. It cannot take away the delictus personae in the guise of sovereign fiat. It would not also be open for the Government to contend that in view of the financial position, the benefit was sought to be denied. But at the same time, it is to be remembered that the Government cannot violate the solemn decisions taken after consultation with the Unions and also after unconditionally accepting the implementation of the

recommendations of the Pay Revision Commission from 1-7-1998 with monetary benefit from 1-4-1999. The Government obviously intended to ride off its commitment to the employees, which ultimately ricocheted.

25. Thus, we are of the considered view that the orders issued by the Government in G.O. (P) No. 156, G.O. Ms. No. 157 and G.O. Ms. No. 158, dated 16-9-1999 are not in consonance with the decisions arrived at which were replicated in G.O. (P). No. 114, dated 11-8-1999 and thus run counter to the understanding reached between the parties.

26. Coming to the consideration of the question on merits also, it is to be noted that the Government issued Statutory Notification by virtue of the powers vested in it under proviso to Article 309 of the Constitution of India. The Revised Pay Scales were given effect to from 1-7-1998 with monetary benefit from 1-4-1999. They shall be deemed to have come into force from the said date i.e., 1-7-1998. Therefore, by legal fiction, the Government employee is deemed to be drawing the pay fixed under Revised Pay Scales, 1999, even though he has not actually received the said amount. Therefore, the affect of the legal fiction has to be considered in this regard in respect of the situation.

27. In Wharton's Law Lexicon, Fourteenth Edition, the word "fiction" is referred at page 413 as follows:

""Fiction. Fictions are "those things that have no real essence in their own body but are so accepted in law for a special purpose." "Fictio" in old Roman Law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; e.g., an averment that the plaintiff was a Roman citizen, when in truth he was a foreigner, the object of these "fictions" being of course to give jurisdiction; see Maine's Anc. Law, Ch.II."

28. In Black's Law Dictionary 6th Edn. at Pages 623 and 894, the expressions "fiction of law" and "legal fiction" are explained thus:

"Fiction of Law: An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption, for purposes of justice, of a fact that does not or may not exist. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Ryan v. Motor Credit Co. 30.N.J.Eq. 531. 23 A.2d. 607, 621.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character.

Legal Fiction: Assumption of fact made by Court as basis for deciding a legal question. A situation contrived by the law to permit a Court to dispose of a matter, though it need not be created improperly; e.g., fiction of lost grant as

basis for title by adverse possession.

Therefore, by legal fiction something known to be false or unreal is assumed by law as true. Similarly from presentation of law, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted.

29. Distinguishing the expression presumption of law and of right, it is stated in the said book that "a presumption *Juris et de jure*, or an irrebuttable presumption, is one which the law will not suffer to be rebutted by any counter-evidence, but establishes as conclusive; while a presumption *juris tantum* is one which holds good in the absence of evidence to the contrary, but may be rebutted.

30. By introducing the deeming provision and creating legal fiction, the effect of the Revised Pay Scales which were given effect to on 1-7-1998 with monetary benefit from 1-4-1999 would lead to inevitable conclusion, that even though de facto payment is not effected, but at the same time it was recognised legally as if the pay of the employee was fixed with reference to the Revised Pay Scales, 1999 and he was deemed to have drawn the revised pay. In fact the notional pay fixed under R.P.S. 99 was given effect to with reference to the pension and the pension was fixed as if the employee had drawn the pay under the 1999 Revised Pay Scales, even though he did not actually draw. But, however, the Government released the pension notionally from 1-7-1998 to 31-3-1999 and actual monetary benefits were released from 1-4-1999. We are not inclined to consider whether this process was valid or not, as there is no such dispute before us. But, however, it is contended by the State that the notional pay cannot be taken into consideration for the fixation of pension and the pensionary benefits. If this contention is accepted taking into consideration notional fixation for purpose of pension also would not arise. But the Government had acted on the notional pay and fixed the pension, may be notionally. If the pension is to be fixed on the basis of the actual pay drawn, then the only requirement is that the pension ought to be fixed only from 1-4-1999 and not prior to that period. Having done so, when the pensionary benefits were sought to be computed, it is sought to be contended that the benefits have to be quantified only on the basis of actual payment and not on notional payment. The word notional payment has to be construed with reference to the actual payment only and the sweep of this word cannot be extended to other benefits.

31. Whether it is notional fixation of pay or actual monetary benefit of pay when once the law declares that the employee is deemed to have drawn the pay fixed under Revised Pay Scales, 1999, it has to be given its due meaning. Even if he had not actually drawn, it has to be interpreted as if he has drawn and this deeming provision has overriding effect on other Rules by virtue of Rule 9 extracted supra framed in G.O. (P) No. 114, dated 11-8-1999. It is also not in dispute that in the Rules relating to fixation of pension and gratuity, the actual pay drawn by the employee has to be taken into consideration. Hence, by virtue

of Rule 9 in G.O. Ms. No. 114, coupled with the deeming clause the expression "pay actually drawn" has to be interpreted preserving the supremacy of Rule 9. Therefore, the word "Pay" defined in Rule 9(21)(a)(i) of Fundamental Rules which definition was adopted in Pension and Gratuity Rules, is to be construed as deemed pay fixed under Revised Pay Scales, 1999. Therefore, when Revised Pay Scales, 1999 were given effect to from 1-7-1998, it is not only the pension has to be fixed on the basis of the deemed pay, but also the pensionary benefits were required to be computed and released on the basis of deemed pay only. The benefit of increased gratuity and computation of pension are beneficial provision conceived in the interest of Government employees. Therefore, they ought to be interpreted in such a manner as to advance cause of these benefits. Interpreting the deemed pay in another manner would be nothing but straining and strangulating the beneficial provision.

32. It is the cardinal principle rule of construction that an effort should be made to sustain a provision or to render harmonious construction. The Supreme Court in *British Airways Plc. Vs. Union of India and ors*, , observed thus:

"It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy."

33. The Supreme Court in *Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others*, , the Supreme Court observed thus:

"It is a settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly. Justice G.P. Singh in his *Statutory Interpretation* (Edition 2001) states (at page 113): "In selecting out of different interpretations "the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided."

34. It may be that, for various financial constraints deeming provision was brought into effect for the purpose of continuing the financial obligation of implementing the Revised Pay Scales, 1999 and in fact releasing the monetary

benefits from a future date was stipulated in the recommendations and the same was agreed. But the same principle cannot apply to one-time retirement payments, like Gratuity, Commutation of Pension and Leave encashment. Therefore, it cannot be said that it has a continued financial burden on the State Exchequer. It cannot also be heard to say that the State intended to save by curtailing the pensionary benefits of handful of pensioners, who unfortunately retired during the period from 1-7-1998 to 31-3-1999 and there is no discernible criteria forthcoming to deny such benefit. Further, it is also noticed that in earlier pay commissions, when the recommendations of revised pay were notionally applied from an earlier date with monetary benefits from a later date, the Government issued Orders for calculation of pensionary benefits on the basis of notional pay drawn. The same situation is present in this case also. However, the learned Additional Advocate General submits that in earlier revisions, specific Orders were given to that effect, but in this case there are no such specific Orders. We find no force in this contention. In fact, para 9 of G.O. Ms. No. 114 is the answer. Though it was deleted in G.O, Ms. No. 206, it has no effect at all for the reasons infra. Thus on this ground also, we are of the considered view that the pensionary benefits are required to be calculated on the basis of the pay deemed to have been drawn during the period, in question. These crucial aspects were not considered by the learned Tribunal.

35. Coming to the decisions cited by both the parties, petitioners tried to seek the assistance from Nakara's case (supra) and subsequent cases while the learned Additional Advocate General, however, reiterated with a emotive appeal that the decision in Nakara's case (supra) does not apply to the facts of this case and the said decision has not been followed in the subsequent cases.

36. The question in Nakara's case (supra) was the date of retirement is a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date resulting denial of benefit of pension formula to pensioners, who had retired prior to the specified date. The Supreme Court after elaborately discussing about the concept of the pension, summed up in paras 28 to 30 as follows:

"Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past....

Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or

emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them inane (see *American Jurisprudence* 2d. 881."

37. The Supreme Court also observed that the benefit of the scheme is available only from the specified date irrespective of the date of retirement of the concerned Government servant and that all the pensioners irrespective of the date of their retirement date constitute one class for grant of the benefits of the liberalised pension scheme and no further classification within them is permissible for this purpose with reference to their date of retirement. In para 42, it was held thus:

"If it appears to be indisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would in its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to for purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot worst (sic) off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory.... The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counterproductive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours" difference in matter of retirement would

have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14."

The Supreme Court further observed thus:

"... Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive.

Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it..."

"It was very seriously contended, remove the event correlated to date and examine whether the scheme is workable. We find no difficulty in implementing the scheme omitting the event happening after the specified date retaining the more humane formula for computation of pension. It would apply to all existing pensioners and future pensioners. In the case of existing pensioners, the pension will have to be recomputed by applying the rule of average emoluments as set out in Rule 34 and introducing the slab system and the amount worked out within the floor and the ceiling.

But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retire would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised,"

38. Thus, it was clearly stated by the Supreme Court that if the pensioners form a class homogenous, their pension computation cannot be on a different formula affording in equal treatment solely on the ground that some retired earlier, some retired later. In the instant case, all the Government employees were deemed to have been drawn the revised pay scales from 1.7.1998 by virtue of statutory provisions contained in G.O. Ms. No. 114 and therefore, when once all the Government employees formed a homogenous group having come under the umbrella of R.P.S. 1999, with effect from 1.7.1998 to classify further on the basis

of pre 1-4-1999 retirees and post-1.4.1999 retirees cannot be said to be reasonable classification and thus no nexus is established to the object sought to be achieved by such sub-classification. Admittedly, the petitioners were in service from 1.7.1998 till the date of the retirement which is prior to 1.4.1999 and they were on par with other Government employees, who continued in service beyond 1.4.1999. To illustrate (A) and (B) employees were having the benefit of R.P.S. 99 from 1.7.1998. Out of them, "A" retires on 31.12.1998 and "B" retires on 15.4.1999. While former gets lesser commuted pension and gratuity, later gets better benefits of above scheme even though they were in the same pay scales. In such an event, cut of date becomes arbitrary as there was no means to the object intended to be achieved. Admittedly, revised pension and Gratuity have better benefits and it is not the case of the petitioners that they are claiming the arrears and that they are claiming only the benefits prospectively from 1.7.1988 or from the date of retirement as the case may be.

39. The learned Counsel for the petitioners also relied on the decision of this Court reported in *K. Ch. Veerabhadra Rao v. Government of India*, 1990 (1) SLR 48, wherein the Division Bench held in para 16 as follows:

"Whenever revised pay scales were given with retrospective effect, temporary injunction is open to the Government or concerned authority either not to pay or to pay in full or part the arrears from the date from which they were given retrospective effect till the date on which they are published. But, when once these arrears, are given in toto or in part, it cannot be hold that they were as ex-gratia or grace. It may be noted that the revision of pay scales is not an unilateral act. On the basis of negotiations and discussions with the concerned employees the revised pay scales will be announced. So, it is more in the nature of settlement. As a part of the settlement if the difference in pay either in toto or in part is agreed to be paid it cannot be held that it was paid as ex-gratia or grace. In such a case, it should be treated as a part of the settlement. So there is force in the contention for the petitioners that the arrears payable under para 8 of the guidelines in relation to Regulation 8 can be claimed by the Officers as of right and it is not a payment by grace or ex-gratia."

40. The Division Bench also in that regard referring to *Nakara's* case (supra) observed in paras 19 and 20 as follows:

"19. Article 14 of the Constitution for bids class legislation, but permits reasonable classification if the same is founded on an intelligible differentia which distinguishes person or things that are grouped together from those that are left out of the group and that differentia must have a rational news to the object sought to be achieved by the statute in question.

20. In *D.S. Nakara and Others Vs. Union of India (UOI)*, the revised pension formula as per Central Civil Services (Pension) Rules was considered. The same was made applicable to the employees who retired on or after 31.3.1979. It was held therein that there was no justification for disallowing the benefit arising

from the said formula for the period subsequent to 1.4.1979 even for those who retired prior to 1.4.1979. So it was held that the portion "being in service on the specified date and retiring subsequent to that date" in the memoranda, referred in that decision, violated Article 14 and is unconstitutional and liable to be struck down."

41. The Counsel also referred to the decision of the Allahabad High Court presided over by K.N. Singh and V.N. Khare, JJ (as they then were) in *M.P. Tandon v. State of U.P* 1984 (2) SLR 254, wherein the Division Bench observed as follows:

"Article 14 secures equality. By this Article the State is enjoined to ensure equality to citizens in all respects. Article 14 forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things which are grouped together from those left out of the group and the differentia has a rational nexus to the object sought to be achieved. It is imperative that there must be a nexus between the basis of classification and the object of the Act, Rule or Order under consideration. See *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *AIR India Vs. Nergesh Meerza and Others*, . The Supreme Court again In *In Re: The Special Courts Bill, 1978*, , reaffirmed these principles and it held that the principle underlying the guarantee of Article 14 is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person, and another if as regards the subject-matter of the legislation their position is substantially the same. If the law is sought to be justified on the basis of classification, it must pass two conditions, namely, that the classification is founded on intelligible differentia and, secondly, that the differentia has rational relation with the object sought to be achieved.

The above principles were laid down while considering the validity of a law made by Legislature, but those principles apply with full force to executive Orders also. The State is enjoined by Article 14 to ensure equality not only in legislative matters but also in executive side. An executive Order must also withstand the test of equality as enshrined under Article 14 of the Constitution. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , the Supreme Court held :

"Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved."

The question arises whether the classification of pensioners as made by the State

Government on the basis of their retirement before or after the specified dates is reasonable and whether it has any nexus with the object sought to be achieved. While considering this question it is necessary to keep in mind the object underlying the grant of pension. In *Deokinandan Prasad Vs. The State of Bihar and Others*, , it was held that pension is not a bounty payable on the sweet will and pleasure of the Government, on the other hand, the right to pension is valuable right vested in the Government servant. It is property under Article 31 and also under Article 19(1)(f) of the Constitution. In *State of Punjab and Another Vs. Iqbal Singh*, it was held that pension is not only compensation for loyal services rendered in the past but it has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental power is ebbing corresponding to among process and therefore, one is required to fall back on savings. In *D.S. Nakara's* case the Supreme Court further explained that pension payable to an employee is earned by rendering long and efficient service and therefore, it can be said to be a deferred portion of the compensation for service rendered. It is now well settled that pension is in the nature of compensation payable to the Government servant on his retirement for the services rendered by him. There is no dispute that calculation and payment of pension is regulated by statutory rules, which confer a legal right on the petitioner to receive pension. Its payment or the amount, which is to be paid, is not left to the sweet will or whim of the Government. All Government servants on their retirement must be treated alike in matters relating to pensionary benefits."

42. The Division Bench also referred to the decision in *Nakara's* case (supra) and also in *Bidhubhushan Malik v. Union of India* AIR 1983 All. 209. Accordingly, they held that the directions contained in the State Government Order dated 7.9.1999 that the pensionary benefits as contained in that Order would be applicable to only those Government servants who may have retired from service on or after 31.3.1979, as well as the direction contained in the Government Order dated 10.5.1978 that the benefits conferred on the pensioners under that Order would be available to those who retired from service on or after 1.1.1978 are discriminatory.

43. However, the learned Additional Advocate General relies on the decision of the Supreme Court reported in *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, , *Krishena Kumar and Others Vs. Union of India* and others, and also *Indian Ex-Services League and others Vs. Union of India*, .

44. In *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, , the issue that arose for consideration was that part of the provision which provides for payment of a larger amount of gratuity with prospective effect from the specified date offends Article 14 of the Constitution of India? Whether gratuity must be paid on the stepped up basis to all those who have retired before the date of the upward revision, with retrospective effect, even if the

provision provides for prospective operation, in order not to offend Article 14 of the Constitution of India? The Division Bench of this Court held in negative, against which the matter was carried to the Supreme Court. The Supreme Court observed in para 2 as follows:

"We fully concur with the view of the High Court. The upward revision of gratuity takes effect from the specified date (1-4-1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara case. There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the notification, which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation - not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on 26-1-1950 and before the date of issuance of the notification on 26-3-1980. The Court will have to rewrite the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the Court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity, which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was

perfectly right in repelling the petitioners" plea in this behalf. For the sake of record we may mention that our attention was called to an order of a Division Bench of the High Court of Gujarat which does not discuss the issues involved but is based on a concession said to have been made by the Advocate-General who appeared for the State. And also to a decision of the Allahabad High Court and Punjab and Haryana High Court. In none of these decisions the relevant passage from Nakara case was considered. Nor was the aspect regarding prospective operation considered on principle. The High Court considered it shocking and was carried away by the fact that an employee who retired even one day before the enforcement of the upward revision would not get the benefit if the specified date of enforcement was not effaced by striking down the relevant provision. But in all cases of prospective operation it would be so. Just as one who files a suit even one day after the expiry of limitation would lose his right to sue, one who retires even a day prior to enforcement of the upward revision would not get the benefit. This cannot be helped, there is nothing shocking in it unless one can say legislation can never be made prospective, and nothing turns in it. These are the reasons which impelled us to dismiss the SLP on 18-7-1986."

45. This decision is not applicable to the facts of the case. Petitioners are not claiming revised gratuity retrospectively. Their only claim is for calculation of revised gratuity on the basis of deemed pay or notional pay.

46. In Union of India (UOI) Vs. All India Services Pensioners' Association and Another, , the matter relates to liberalised pension rules and also gratuity rules, but the Supreme Court was only concerned with the gratuity. The Central Administrative Tribunal allowed the claim made by the pensioners and directed the Government to pay gratuity in accordance with the notification dated 24.1.1975 even to those members of the All India Service, who had retired prior to January, 1973. The question for consideration was whether the members of a service who had retired prior to the date on which there is an upward revision of the gratuity on retirement to the members of such service would also be entitled to claim the difference between the gratuity payable to members of such service on such upward revision and the gratuity which had been actually paid to them on their retirement, even though the Government order revising the gratuity does not either expressly or by necessary implication state that the members of the service who had retired, earlier should also be paid gratuity at the revised rates. After referring to Nakara's case (supra) and State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, observed that the liability to pay the gratuity was not governed by the decision in Nakara's case (supra). Finally observed in para 8 as follows: "

"From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court, which

has taken a view contrary to the decision of Thakkar and Ray, JJ., in the Andhra Pradesh State Government Pensioners' Association case and to the decision in N.L. Abhyankar case" has been brought to our notice. The observations made in these two cases are binding on us insofar as the applicability of the rule in D.S. Nakara, case to the liability of the Government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to 1-1-1973 would be entitled to any additional amount by way of gratuity. The Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with the Government Notification No. 33/12/73-AIS(ii) dated 24-1-1975 to all those members of the All India Services who had retired prior to 1-1-1973."

47. This decision is also of no avail to the Government inasmuch as, the enhanced gratuity is not being claimed retrospectively. The gratuity as already noted by us is being claimed at the revised rates on the basis of the deemed pay fixed under 1999.

48. In Krishena Kumar and Others Vs. Union of India and others, , the petitioners were retired employees, who were covered by Railway Contributory Provident Fund Scheme. The Supreme Court held that P.F. Retirees and the Pension Retirees constitute different class and the principle laid down in Nakara's case (supra) applies to retirees, who formed a homogenous class. Even though the pension retirees did constitute a homogenous class within which any further specification for purpose of Liberalised Pension Scheme was impermissible and the same cannot be applied to the P.F. Retirees. Distinguishing Nakara's case (supra), the Supreme Court observed thus:

"In Nakara, the Court treated the pension retirees only as a homogeneous class. It was never held that both the pension retirees and the P.F. 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, 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 applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual PF retiree 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 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."

We are not faced with such a situation in the instant case. Hence, the principle laid down by the Supreme Court cannot be made applicable.

49. In *A. Narsing Rao and others Vs. State of Andhra Pradesh and another*, one of us (G. Bikshapathy, J) while construing the provisions of A.P. Liberalised Pension Rules, 1992 held that when a body of persons form a homogenous class for the purpose of availment of certain benefits they cannot be subjected to different classification when better benefits are conferred on a latter date. However, if the scheme is introduced from time to time it is always open for the State to stipulate cut off date, which is essential. If the persons did not have the eligibility for the benefit as on the date of the new scheme, they would not be eligible to claim benefit of new scheme. Further, if the pensioners did not possess the criteria for the benefit, as on the coming into force of the new scheme they will not be eligible for the benefits. If the change is on account of change in policy of the Government it is not normally amenable for interference under Article 226 of the Constitution of India unless the policy is arbitrary and unconstitutional.

50. Therefore, the aforesaid judgment would clearly indicate that the decision in Nakara's case (supra) has been explained in other subsequent cases depending on the facts of each case and it cannot be said that the principle laid down in Nakara's case (supra) is no more valid principle. Hence, the facts in each case have to be taken into consideration to come to a conclusion whether the principle laid down in Nakara's case (supra) or other cases referred to above would be applicable.

51. Keeping in view the facts of this case, we are of the considered view that the principle laid down in Nakara's case (supra) applies in all its force. As already observed by us, homogeneous group enjoying the benefit of R.P.S. 99 cannot be bisected for the purpose of denying the higher pensionary benefits and gratuity benefits to those who retired prior to 1.4.1998 and we find no nexus to the objects sought to be achieved by such a process of elimination. Admittedly, it is a case of upward revision of pension and gratuity benefits and it is a continuation of existing benefits.

52. It is settled rules of interpretation that an interpretation, which is unreasonable or leads to discrimination must be avoided. (See: *Union of India (UOI) and Others Vs. Onkar S. Kanwar and Others*,

53. It is also beyond pale of controversy that while interpreting welfare legislation, beneficent construction has to be resorted to. It is the duty of the Court to give broad interpretation keeping in view the purpose of such legislation of preventing arbitrary action, but, however, subject to statutory rules. The

Supreme Court in this regard observed "Whilst it is true that the law seems to be rather well settled as regards the "bread and butter" statutes and the welfare legislation introduced in the statute book for the purposes of eradication of social malady, it is a duty incumbent on to the law Courts to offer a much broader interpretation since the legislation is otherwise designed to perpetration of any arbitrary action and no contra view thus is plausible." (See: *Essen Deinki Vs. Rajiv Kumar*,).

54. The learned Additional Advocate General attacking the Order of Tribunal in setting aside G.O. Ms. No. 206 submits that the State has inherent power to amend or rescind the executive Orders at any time and it has unfettered power. The Tribunal on a wrong notion interfered with G.O. Ms. No. 206. Hence, he submits that the same is liable to be set aside. This issue need not detain us any further. We have already held supra that the Government after negotiations agreed to implement the recommendations of P.R.C. 1999. G.O. Ms. No. 114 is the outcome of bilateral settlements between the Government and its employees. Therefore, the Government is obliged to issue Orders in implementation of the terms of the settlements. The Government having agreed to the effective date of enforcement with effect from 1.7.1998 with monetary benefits from 1.4.1999, cannot be allowed to resile from the commitment and prescribe different dates for the purpose of pensionary benefits viz., with effect from 1.4.1999. So also having specifically agreed to fix the pensionary benefits on the basis of deemed pay in para 9, the same cannot be permitted to be amended or substituted unilaterally. The sanctity of settlement has to be preserved and not putrefied. Though the basis on which the Tribunal has set-aside the G.O. Ms. No. 206 was rather unclear, yet, we find the said G.O. is not sustainable for the aforesaid reasons.

55. As we had held that the pensionary benefits have to be calculated on the basis of deemed pay, the petitioners are entitled for the calculation of leave encashment benefit on the said basis.

56. Thus we find that the Tribunal has failed to properly appreciate these contentions and thus committed an error apparent on the face of the record. Accordingly we set aside the order of the Tribunal and also G.O. Ms. No. 156, 157, 158 dated 16.9.1999 and G.O. Ms. No. 206, dated 23.12.1999. We declare that the Government employees who retired between the period 1-7-1998 and 31-3-1999 are entitled for computation of revised gratuity on the basis of the notional pay drawn. They are also entitled for higher ceiling limits in respect of gratuity and also the commutation of pension. The applicants and similarly situate persons are also entitled for the leave encashment benefit on the basis of notional pay during the relevant period. The Government shall calculate the differential amounts of gratuity, commutation of pension and encashment of leave salary and pay the same to the petitioners and other Government employees referred to above within a period of three months from today with interest at 9% per annum from the date of accrual of the benefits till the date of

payment.

57. The writ petitions filed by the pensioners/Associations are allowed. WP No. 25197/2002 filed by the State is dismissed.

58. No costs.