
(2005) 07 CAL CK 0030
In the Calcutta High Court

Case No : F.M.A. No's. 1556 and 1560 of 2000 and M.A.T. No. 293 of 2000

Steel Authority of India Ltd. and Another APPELLANT

Vs

Pranabesh Kumar Samanta and Others RESPONDENT
Authority of India Ltd. and Others Vs Ashim Kumar Bakshi
and Others RESPONDENT
Vs Steel Authority of India Ltd. Vs Muktipada
Khan and Others

Date of Decision : 14-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2005) 4 CHN 802 : (2006) 2 LLJ 129

Hon'ble Judges : V.S. Sirpurkar, C.J.;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Pradip Ghosh, in P.M.A. No. 1556 of 2000, Arunava Ghosh, in F.M.A. No. 1560 of 2000, Tapas Banerjee, in MAT. No. 293 of 2000, C. L. Singh, Chhabi Chakraborty and Kanchan Roy, for the Appellant;Kalyan Bandopadhyay in F.M.A. Nos. 1556 and 1560 of 2000, Debjani Sengupta in M.A.T. No. 293 of 2000 and Sandipan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—This judgement shall dispose all three appeals they being F.M.A No. 1556 of 2000; F.M.A No. 1560 of 2000 and M.A.T No. 293 of 2000. For the sake of convenience we shall deal with the facts in appeal being F.M.A No. 1556 of 2000. All these appeals are at the instance of Steel Authority of India Limited (hereinafter referred to as SAIL) against the judgement of the learned Single Judge whereby the learned Single Judge has allowed three writ petitions filed by the respondents herein. He issued a writ of mandamus directing SAIL to extend the benefit of the modified voluntary retirement scheme contained in Circular No. PERS(C/F)/VR-98/I/Modi/262 dated 29th May, 1998 to the writ petitioners and also to take appropriate steps in respect thereof within two months from communication of the orders.

2. Some basic facts would be required to be stated for understanding the

controversy.

3. All the respondents herein and the original writ petitioners were working with the SAIL in various capacities. By Circular No. PI-CF/VR/98/1 dated 16th February, 1998 a Voluntary Retirement Scheme was introduced for the regular employees like the original writ petitioners. This was to remain in effect from 1st March, 1998 till 31st March, 1998. As per the scheme the employees were invited to apply preferably a month before the date on which they intend to take voluntary retirement. Under the scheme the employees were to get certain benefits which are as under:

"4. Benefits under the Scheme:

4.1. An employee whose offer for voluntary retirement is accepted (*4) will be entitled to the following benefits (5).

i) Monthly benefit - An amount equivalent to the specified percentage given below of Basic Pay (*) + D.A. on the date of voluntary retirement for a period of 10 years or till 58 years of age whichever is earlier.

Age Percentage of Basic Pay + D.A. Above 55 years of age. 100% Above 52 years and upto 55 years of age 90% 52 years of age and below 80% Basic pay includes personal pay/special pay which is counted as pay for all purposes.

ii) Leave encashment for the unavailed earned leave and half pay leave encashment as per rules shall be calculated at the time of voluntary retirement and shall be divided into equal instalments and paid along with monthly benefit.

iii) Total monthly benefit shall be the amount arrived as per (i) plus (ii).

iv) Provident Fund and Gratuity - As admissible under the respective rules."

4. It was the case of the original writ petitioners that they accordingly applied under the scheme and their proposal for voluntary retirement was accepted and they were allowed to retire and most of them retired in the month of March, 1998. It is an admitted position that at the time when the scheme was introduced offers for voluntary retirement was made and accepted the retiring age of the employees was 58 years. Their benefits including the monthly benefits were thus calculated on the basis of this age of 58 years. However, it seems that the Government of India took a decision on 19th May, 1998 to raise the age of retirement of employees in SAIL from 58 years to 60 years. This decision was informed to SAIL by communication dated 19th May, 1998 being G.M. No. I8(6)/98-GM-GL/002. Accordingly, the SAIL immediately on 29th May, 1998 modified the said scheme dated 16th February, 1998. As per the modified scheme the employees whose voluntary retirement offer was accepted was to be eligible for the monthly benefit as specified for a period of 12 years instead of 10 years in the original scheme and/or till 60 years of age in place of 58 years of age whichever was earlier. There was a clause in the aforementioned scheme as under:

"The above modifications in the VR-98 Scheme will come into effect from 29.5.98. Employees who have already applied for V.R. but are not yet to be released may also be covered under the modified V.R. Scheme.

Other terms and conditions of the said VR-98 Scheme shall remain unaltered."

5. On this basis it was obvious that the employees who remained in service on 29th May, 1998 whether they had given the proposal for voluntary retirement or not were to get the benefit of two years extension and in the process would have received more benefits as compared to those who were in service on 29th May, 1998 and have retired in pursuance of their offer for voluntary retirement. The petitioners, therefore, approached this Court by way of a writ petition claiming therein a direction that they should also be given the benefit as available to the employees who were in service on 29th May, 1998.

6. The stand of the petitioner was that there could not have been a discrimination between the employees who had applied for voluntary retirement prior to 29th May, 1998 and whose offer was accepted prior to that date on the one hand and employees who had applied earlier to 29th May, 1998 but whose offers were either not accepted till 29th May, 1998 or who had given an option to retire after that date. The stand was that this amounted to the discrimination and violative of Articles 14 16 and 21 of the Constitution of India. According to the petitioners all employees who applied under the voluntary retirement scheme before 29th May, 1998 whose applications also were accepted by the appellant form a single class and consequently when such scheme was subsequently modified giving more benefits to those who remained in service on 29th May, 1998 that was a patent discrimination against those who had retired earlier to 29th May, 1998. It was their case that they also were bound to be given the benefit of the modified scheme. Learned Single Judge took a view that considering the view of the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), , all the employees who opted for the voluntary retirement and whose offer was accepted form a single class. Therefore, there could not be any discrimination in favour of those who remained in service on 29th May, 1998. According to the Learned Judge this amounted to a mini-classification which was not permissible. According to the learned Judge once the offer for voluntary retirement by the employees is made and the same was accepted by the appellant, the date when the particular employee retired is wholly immaterial. Learned Judge held "what is material is that each of them opted under the such scheme and his application for voluntary retirement for grant of such benefit under the scheme were not also accepted". The learned Single Judge, therefore, came to the following finding:

"All such applicants, in my view, therefore will form a single class like the pensioners in the aforesaid D.S. Nakara's case (supra). That being the position when because subsequent enhancement of retirement age from 58 to 60 years, the respondent had modified such scheme extending further benefit to the applicants under the voluntary retirement scheme, they certainly cannot make

mini-classification amongst the said class and grant such benefit only to such applicants under the scheme who have not yet been released and declining to give the same to such applicant who have been released already."

7. Learned Judge heavily relied on Clause 4.1 of the voluntary retirement scheme providing that an employee whose offer for voluntary retirement was accepted would not be entitled to any future increase due to annual increments or D.A. or prospective wage revision but wage revision implemented from a date prior to the date of voluntary retirement would be considered for increase in the monthly benefit. According to the learned Judge this language was indicative of the fact that it was the date of acceptance of the offer made by the employee, which was the relevant.

8. On this basis the learned Single Judge held that the action on the part appellant SAIL was discriminatory. He, therefore, issued direction which we have already quoted above.

9. Learned Judge undoubtedly referred to the other decisions of the Supreme Court like Krishena Kumar and Others Vs. Union of India and others, and All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, . He, however, distinguished those decisions. He also referred to the decision in the case of Chaudhary Kesava Rao v. State of A. P., reported in AIR 1990 SC 2048. He, however, came to the conclusion that those decisions were different on facts.

10. All the appeals are directed against the aforementioned judgement of the learned Single Judge.

11. Learned Senior Counsel Mr. Pradip Ghosh and Mr. Arunahha Ghosh and Mr. Tapas Banerjee who addressed the Court assailed the decision of the learned Single Judge submitting that the learned Judge was in error in treating in one class all the petitioners who had applied under the voluntary scheme and whose applications were accepted prior to 29th May, 1998. The contention raised was that there could absolutely be no question of treating such persons as one class as it was clear from the modified scheme that there were two distinct classes as contemplated by the scheme such as employees who stood retired before 29th May, 1998 and the employees who continued to be as such on and from that date till they actually retire. Learned Counsel argued that what was of importance was as to whether on a particular day that is on 29th May, 1998 an employee was there in service or not. Learned Counsel pointed out that nothing depended upon the acceptance of the offer and everything depended upon as to whether on 29th May, 1998 when the age of retirement was raised from 58 to 60 years as the benefit of raising of age of retirement was to be available only to those persons who were employees of SAIL on 29th May, 1998.

11.1. Learned Counsel further argued that it was for this reason that the benefit under the modified scheme was accorded to such employees sheerly considering that they were the employees of SAIL on 29th May, 1998 and their age of

retirement was raised from 58 to 60 years. Learned Counsel further argued that in case of an employee who had retired even a day earlier to 29th May, 1998 could not have insisted upon surviving and continuing in service merely because the age of retirement was raised with effect from 29th May, 1998. Under such circumstances if the petitioners who had already retired and snapped their bond with the organization they could not have insisted upon getting the benefits of the scheme.

11.2. Learned Counsel also argues that this was a distinct and new benefit accorded only to those employees who were working as employees of the appellant on 29th May, 1998 what was reflected in the modified scheme was this decision which was not applicable to those who have already retired from the organization before that date. Heavy reliance was placed on few Supreme Court decisions like *Krishena Kumar and Others Vs. Union of India and others*, ; *State of Punjab v. J.L. Gupta*, reported in 2003 SCC 736 : *K.L. Rathee Vs. Union of India and others*, ; *State of U.P. and Another Vs. Jogendra Singh and Another*, ; *V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another*, ; *Vice Chairman and Managing Director A.P.S.I.D.C. Ltd. and Another Vs. R. Varaprasad and Others*, ; *Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others*, . Learned Counsel were at pains to point out that the decisions in *Nakara's* case (supra) could not have been relied upon as has been done by the learned Judge in view of the subsequent developments in law. It was also argued by the learned Counsel for the appellants that though it was called as modified scheme which was based on completely new factor of raising the age of retirement from 58 to 60 years and therefore that benefit could not be extended to the others who had already retired. In that view it was urged that the benefit was not a liberalized same scheme as was applicable to the petitioners but was distinct benefit which was not available to the petitioners.

12. As against this Mr. Kalyan Bandopadhyay and Ms. Debjani Sengupta learned Counsel for the respondents argued that the decision in *Nakara's* case (supra) was not overruled as yet and was still a good law. Mr. Bandopadhyay very earnestly argued that this was nothing but a liberalized or extension of the scheme and therefore what was available to the post 29th May, 1998 retirees should also be made available to the pre 29th May, 1998 retirees. Learned Counsel heavily relied on the language of the scheme and pointed out that though the persons like the writ petitioners were to get benefits of subsequent pay revision, etc. there was nothing in the scheme preventing them to get the benefits like raising the age of retirement. Argument was that after all as in *Nakara's* case (supra) the benefit of raising the age of retirement was made a part of the same scheme and therefore even if the petitioners had already retired they would still be entitled to get the benefit of the modified scheme. Learned Counsel pointed out that an absurd situation would be obtained where two persons who had applied for voluntary retirement one indicating the date of retirement to be prior to 29th May, 1998 and another indicating the date to be

subsequent to 29th May, 1998 and though the offer is accepted even before 29th May, 1998 one would get the benefit and the other would not. According to the learned Counsel the date of retirement was an irrelevant consideration.

12.1. Ms. Sengupta heavily relied on some observations made in the Nakara's case particularly paragraphs 9, 13, 35, 42 and 46 and stressed that, that law still holds good and was fully applicable to the case of the petitioners. Ms. Sengupta placed reliance on the decisions of the Supreme Court in the case of V. Kasturi v. Managing Director, State Bank of India Bombay and Ors. (supra) and All India Reserve Bank Retired Officers Association v. Union of India and Ors. reported in 1992 Suppl(1) SCC 664, to contend that the petitioners are still entitled to the benefits of the modified scheme. On the backdrop of the rival contentions raised it will be our basic task to see whether the learned Judge was right in allowing the writ petitions as aforesaid.

13. At the outset the scheme dated 16th February, 1998 and the modified scheme dated 29th May, 1998 would have to be examined and the various factors contained therein would have to be taken into account. The scheme envisages that those employees who had a minimum of 20 years of service in SAIL or who were above 50 years of age could offer for voluntary retirement and such employees would get the monthly benefits as per paragraph 4.1 in the percentages stated therein. The scheme as it stood on 16th February, 1998 also specifically mentions "an employee whose offer for voluntary retirement is accepted will not be entitled to any future increase due to annual increments or dearness allowance etc. or prospective wage/salary revision. However, wage revision implemented from a date prior to date of voluntary retirement will be considered for increase in monthly benefit".

14. Much debate went on and it seems that the learned Judge also referred to the language of this clause to hold that the acceptance of the offer for voluntary retirement was the basic norm or date. In fact, the learned Judge has based his judgement on that singular factor holding that the employees whose offer for voluntary retirement was "accepted" would form a single class, in our opinion, such is not the import of the aforementioned clause. The clause simply means the employee who would cease to be the employee on account of their offer of voluntary retirement. This would be clear from the fact that such employee were not entitled to the future increase due to annual increment or D.A. etc. or prospective wage/salary revision. What the clause conveys is that an employee who ceases to be an employee on account of his voluntary retirement would not be able to claim any future increase of salary on account of the annual increment or D.A. or wage/salary revision. The words "an employee whose offer for voluntary retirement is accepted" signifies the employee actually retiring. It does not have any significance with the date on which the offer was accepted. These words cannot be read in narrow fashion as has been read by the learned Judge. Learned Counsel also tried to rely on this very words, but in our opinion, the whole paragraph would have to be read and not only the first sentence thereof.

The confusion has arisen on account of reading these words not with the following words of the paragraph. When the whole paragraph is read the meaning is clear that those employees who ceased to be employees on account of their voluntary retirement would not be entitled to any future benefits and that they would be entitled only to the benefits or the scales as were available to them on the date of retirement. This clause was tried to be relied on by the learned Counsel for the respondents. Mr. Bandopadhyay suggested that this clause lists exclusively the benefits which the retired employee would not be able to claim and therefore if there are any other benefits beyond the one's referred to in the clause they could certainly be claimed by the employees. In our opinion such would not be the correct reading of the clause. The clause is clear that beyond the benefits which were available on the date of retirement the employee will not get any future benefits. We cannot visualize the situation that where the minor benefits like annual increments, D. A. or prospective wage/salary revision would be denied to the employees whereas a major benefit like two years' extension would be conceded in their favour, such cannot be the way of reading the clause.

15. The clause becomes all the more important because by this clause a retiring employee has specifically agreed to give up all the future benefits. The last sentences signifies that if any revision prior to the date of voluntary retirement is made then it certainly would be available to the employee, this signifies two things. Firstly, the relevant date is the date of voluntary retirement and not the date when the offer for voluntary retirement is accepted. It secondly signifies that the retiring employee says good bye to the organization on the basis of the service condition as they were available on the date of his retirement.

16. Once the employee had specifically agreed with this clause can he then turn around and claim that due to the subsequent raise in the age of retirement he would still continue and would be entitled to the extra benefits? In our opinion, the answer is in the negative. It cannot be forgotten that the employee had walked into the scheme with open eyes. He had also taken the benefits thereof. He had also agreed that he would not claim any future benefits after his retirement. In such circumstance merely because there is a rise in the age of retirement he cannot be allowed to turn around and claim the same benefits.

17. When the learned Judge held that only the employees whose offer was accepted is one class, the last words in the aforementioned para "every wage revision implemented from a date prior to the date of voluntary retirement" were completely ignored. The scheme was clear that when an employee who offers the voluntary retirement from a particular date and it is accepted what is significant is the date of retirement and not the date of acceptance because the employee is getting all the benefits not on the date of acceptance but on the date when he actually retires. Therefore, in our opinion, the date of acceptance of the offer was irrelevant in the scheme of things and for that reason there would be no question of any discrimination much less mini discrimination because of the modification

of the scheme and because of the refusal on the part of the appellant to give the advantage of the modified scheme to those who had already retired.

18. Now let us see as to whether the modified scheme was the continuation of the scheme or it introduced a distinct benefit on those who were the employees of SAIL on 29th May, 1998. Though apparently it is the same scheme which is continuing with other clauses remaining unaffected, it cannot be forgotten that the age of retirement was raised from 58 to 60 years. This was not in contemplation of the original scheme at all. However, since the age of retirement was increased with effect from 29th May, 1998 it had to be introduced by way of a modified scheme and to that extent the scheme dated 16th February, 1998 had to be modified and that is exactly what was done. Every voluntary retirement scheme is essentially connected with the age of retirement. It has inextricable nexus with the age of retirement. Here was a case where the age of retirement was raised with effect from 29th May, 1998. Curiously enough, the petitioners did not find fault with the Government of India decision to raise the age of retirement with a cut-off date of 29th May, 1998, that is nobody's argument that such cut-off date was arbitrary or without any basis and in fact such argument could not be made because the Supreme Court is unanimous on this point that a cut-off date can be provided for offering a distinct and separate benefit on the employee. If there was nothing arbitrary in providing the date for raising the age of retirement, in our opinion, no fault could be found with the raising of the retirement age to the voluntary retirement scheme, that was bound to be done. In our opinion, therefore, though apparently it is the same scheme which continued, there was a very major difference that a distinct and separate benefit of raising the age of retirement was conferred on a class of employees who were employees of the appellant on 29th May, 1998 and, therefore, in our opinion, there are two separate classes of employees one, those who retired before 29th May, 1998 and those who were still the employees and continued to be the same after 29th May, 1998. The attempt on the part of the petitioner to still carve out a class on the basis of the date of acceptance of the offer of voluntary retirement, in our opinion, cannot exist. All the difference was made in the original scheme and the modified scheme was simply regarding the date of retirement. Therefore, the argument that the denial of the benefits to those whose offer was accepted earlier and who retired earlier and the grant of benefits to those whose offer was accepted prior to 29th May, 1998 who continued to be the employee on 29th May, 1998 is discriminatory must fall.

19. We must then take into consideration the argument on the basis of Nakara's case (supra). We have scanned the decision very carefully. However, firstly it will have to be considered that Nakara's decision was regarding the pension benefits. Pension gives a right of the employee who serves for a particular number of qualifying service for the pension. It cannot be equated with the advantages of raised age in a voluntary retirement scheme. A voluntary retirement scheme is to be construed essentially as a distinct and separate scheme from the ordinary aspect of service and right of pension. The two are absolutely distinct and

separate aspect. A pensioner still continues his umbilical cord with the organisation. It is his right to get the pension and he enjoys the revision even after his retirement. Such is not the case for the voluntary retirees. In the case of voluntary retirement the person who has retired in pursuance of voluntary retirement scheme like the present scheme does not get any pension. He snaps his umbilical cord with the organization. He has no connection left with it excepting collecting his dues as calculated in terms of the scheme. Those dues can never increase unless it is provided in the scheme itself. In this case the monthly benefits given shall never increase on account of subsequent annual increment or D.A. or wage/salary revision. Therefore, the law made applicable to the pensioners cannot be made applicable to the voluntary retirement scheme. This question fell indirectly for consideration of the Supreme Court in *Krishna Kumar v. Union of India* (supra) where while referring to *Nakara's* case (supra) the Constitution Bench of the Supreme Court observed:

"In *Nakara* 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, 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 right qua the Government in respect of the provident fund is finally crystallized and thereafter no statutory obligation continues. 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 obligation under the provident fund account ends while under the pension scheme it begins. The rules governing the provident 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 P.F. retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regards 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 P.F. retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decided in *Nakara* that the State's obligation towards its P.F. 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 purpose."

(emphasis supplied)

20. The situation is not different here. In the aforementioned case. The question was all the employees who were members of the CPF scheme were at par with the members of the P.F. scheme or not. Here, in the present case the question is regarding the scheme of voluntary retirement. It is amply clear from the analysis made by us that the law was made applicable to the pensioners on account of their continuing bond with the Government. It was also observed by the Supreme Court that the provident fund scheme and CPF Scheme are distinct and separate. The ratio is also applicable here. It is admitted position that after the persons retires via the voluntary retirement scheme he would not retain any connection whatsoever with the appellant SAIL. This is clear from the prohibitory clause we have quoted above, which disentitles the employees from any future benefits. Under such circumstances, in our opinion, it would be futile to rely on the observations made in paragraphs 9, 13, 35, 42 and 46 which were relied upon by the learned Counsel for the respondent. On the other hand this would also suggest that the reliance on Nakara's case (supra) by the learned Judge was of no consequence and under the circumstances not called for.

21. Krishna Kumar's case (supra) was also followed in V. Kasturi v. Managing Director, SBI, Bombay (supra) though in slightly different context. There also it was pointed out that the Constitution Bench had distinguished between pension retirees and P.F. retirees. After referring to paragraph 45 the learned Judges found that the pension and CPF were distinct and therefore the judgement in Nakara's case (supra) could not be pressed into service.

22. We may also refer to the observation of learned Judges referring to State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others, . This case was heavily relied upon by Mr. Bandopadhyay to suggest that where the benefits are part of the very scheme they would be available to the early retirees also. From the facts of State of Punjab v. Justice S.S. Dewan and Ors. (supra) it is quite clear that the decision would actually go against the writ petitioners. There it was held that a subsequent amendment to the rule conferring benefits on the District Judges of the years of practice being considered for the purpose of pension was a distinct and separate benefit and therefore the early retirees would not be entitled to the same. We have already pointed out that apart from the fact that the general law in Nakar's case (supra) cannot be made applicable to the present case, this being not a pension case and being a voluntary retirement scheme. It is also to be seen that the subsequent benefit granted by raising the age of retirement was distinct and separate benefit conferred on the employee who were in service at the relevant point of time. Learned Judges in V. Kasturi v. Managing Director, SBI, Bombay (supra) referring to a paragraph in State of Punjab v. Justice S.S. Dewan and Ors. (supra) quoted:

"If an employee is already covered by an existing scheme and the main determinative factor for computation of his pension at the time of his retirement undergoes any modification with respect to the other determinative factor, namely, qualifying service then such a modification cannot be treated as

elongation of the already accrued retiral benefit. On the facts of the present case, the said observations cannot be of any avail to the learned Counsel for the appellant for the simple reason that when the appellant retired in 1984, no right had accrued to him to get pension from the fund as per Rule 22(1)(c) as existing then. He was not a pensioner at all when he retired. Consequently, any subsequent amendment in the said pension scheme by which a new class of pensioners was brought in cannot be said to be enhancement of a prior existing retiral benefit already earned by the employee concerned. Efforts made by learned Counsel for the appellant, by submitting that in the present case the question is of in-service experience and hence observations in the aforesaid case help him cannot be of any avail as apart from the question of the consideration of in-service experience only or clubbing it with pre-service experience, the first requirement for earning the said benefit of clubbing would be to postulate that the employee concerned becomes a pensioner at the time of his retirement. If he was not a pensioner then he is out of the arena of contest for getting any enhanced rate of pension subsequently. For him, there is no retiring pension at all. Hence the further question of enhancing the said rates in future does not survive for him."

23. Same is the situation here. The subsequent grant of the rise in the age of retirement was of no consequence to the petitioners. They had no right whatsoever on the date when they retired firstly because of the retirement age being 58 years and secondly because of the specific commitment that they had made while offering the voluntary retirement of not claiming any subsequent benefits.

24. A reference can also be made to the case of *State of U. P. v. Jogendra Singh*(supra). This was a case where an employee would retire on superannuation at the age of 58 years on 20.10.1977. But the employee took voluntary retirement on 12.4.1976 along with all the retirement benefits including pension and gratuity under the provisions of Rule 56 of the Uttar Pradesh Fundamental Rules. This was on the basis of the provisions that a Government employee could take voluntary retirement in time after attaining the age of 45 years or after he had completed the qualifying service of 20 years. Rule 56(e) came to be amended and a proviso was added that where a Government servant voluntarily retires or is allowed voluntarily retire under that rule, the appointing authority may allow him for the purpose of pension and gratuity, if any, the benefits of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever is earlier. This amendment came on 18.11.1976. The employee therein, therefore, claimed that he should be given the benefit of the proviso and an additional service of one and half years should be granted for the purpose of pension and gratuity. The claim was tried to buttressed on the basis of *Nakara's* case (supra). However, that claim was negated. The Supreme Court observed:

"The ratio in Nakara case however, is not applicable in the present case. In Nakara case a specific cut-off date was provided for the grant of pensionary benefits. Those who had retired prior to that date were not given the benefits. This was considered as arbitrary in the facts and circumstances of that case. There is no question of any cut-off date being prescribed in the present case. The first respondent was governed by the Uttar Pradesh Fundamental Rules. On the date when he took voluntary retirement and left service, he was given retirement benefits on the basis of the Fundamental Rules and other provisions which were then in force. Fundamental Rule 56 has been subsequently amended by an amendment which came into force on 18.11.1976 because the amendment inserting the proviso came on the statute-book on that date. It will, therefore, be applicable to all those who take voluntary retirement after the proviso was inserted. All laws, in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. The Amending Act did not make the amendment retrospective. Therefore, persons who retired at a time when the proviso was not on the statute-book cannot claim the benefit of the proviso. The first respondent having retired prior to the insertion of the proviso in Fundamental Rule 56(e), cannot claim the benefit of the proviso."

25. In our opinion, the observations need no further elaboration and are applicable to the present case on all fours.

26. In the case of Vice Chairman & MD, A.P. SIDC Ltd. v. Varaprasad (*supra*) the Supreme Court held the voluntary retirement scheme to be in the nature of a contract between the parties. It was specifically declared that employees opting for voluntary retirement scheme and without compulsion knowing fully well the guidelines and circulars governing the scheme could not make a claim contrary to the terms accepted and that the Courts could not rewrite this contract.

27. V. Kasturi v. Managing Director, SBI, Bombay (*supra*) was also relied upon by Ms. Sengupta contending that the petitioners in this case could easily be termed as the employees in category--I as stated in paragraph 22 of that decision. For the reasons stated above, we cannot accede to the contentions. Her other contention was that since the writ petitioners were getting monthly benefits that was almost in the nature of pension and, therefore, the ratio in Nakara's case (*supra*) all the same be applicable to the case of the writ petitioners also. We cannot accede to this contention for the simple reason that what the writ petitioners were getting was not in the nature of pension at all, but a calculated deferred payment on their offer of voluntary retirement. This is apart from the fact that the amounts that they were entitled to get only till such time as they would have been in service as per their date of retirement. The learned Counsel also relied on the decision in the case of All India Reserve Bank Retired Officers' Association v. Union of India and Ors. However, according to us the ratio in that case is more against the petitioner as we have shown that it was not same scheme but a distinct and separate benefit was conferred by raising the age of retirement and that alone was introduced by way of modification of the scheme

so technically though it continued to be the same scheme, it depended entirely on a contingency which was not available to the petitioners at all. The observations of the Supreme Court in paragraph 10 are telling in this behalf. The observations are to the following effect:

"...It must be realized that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF 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. This is the reason why this Court in Nakara case drew a distinction between liberalization of an existing benefit and introduction of a totally new scheme. In the 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 CPF 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."

28. Though in somewhat different context, the observations are apposite to the present controversy.

29. Conclusion:

In our opinion:

(1) The writ petitioners were not entitled to the benefits of the modified scheme as they had already snapped their relation with SAIL on account of their retirement;

(2) Modified scheme was not the liberalization of the earlier scheme. It was modified on account of a distinct and separate benefit conferred on the employees who were on the roll on 29th May, 1998;

(3) It is erroneous to hold that the employees offering the voluntary retirement and whose offer was accepted form a separate class. We hold on the other hand that there were only two separate and distinct classes, firstly the employees who had already retired on account of acceptance of their offer for voluntary retirement and secondly those employees who continued to be in service on 29th May, 1998;

(4) The employees who had themselves agreed not to claim any future benefits after their retirement cannot be allowed to turn around and claim the future benefit merely because the age of retirement was subsequently raised from 58 to 60 years.

30. In short, the writ petitions had no merit and had to be dismissed. Accordingly, we set aside the judgment of the learned Single Judge and allow all the three appeals and dismiss the writ petitions. However, there will be no order

as to costs.

31. Urgent xerox certified copy of this judgment duly countersigned by the Assistant Court Officer may be supplied to the parties on usual undertakings.

Aloke Chakrabarti, J.

32. I agree.