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**(2012) 05 KAR CK 0008**

**In the Karnataka High Court**

**Case No :** Writ Appeal No's. 1758-1785 of 2003 (S-RES) c/w W.A. No's. 1786 of 2003, 2286 of 2003, 1754 of 2003, 1725 of 2003 and 2145-2174 of 2003

Syndicate Bank

APPELLANT

Vs

Y.R. Shenoy

RESPONDENT

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**Date of Decision :** 25-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 21

**Citation :** (2012) 05 KAR CK 0008

**Hon'ble Judges :** Vikramajit Sen, C.J.;B.V. Nagarathna, J

**Bench :** Division Bench

**Advocate :** Pradeep S. Sawkar, for M/s. Sundaraswamy Ramdas and Anand, in W.P. No. 1758-1785, 1786/2003, Smt. S.R. Anuradha in W.A. No. 2286/2003, Shri. S.V. Narasimhan in W.A. No. 1754/2003, Shri. D.L.N. Rao in W.A. Nos. 1725/2003 and 2145-2174/2003, for the Appellant; N. Nagaraja Rao, Advocate for Mr. Harikrishna S. Holla, Advocate for R1 to R3 and R5 to R8, Shri. M.N. Prasanna, Advocate for Mr. P.S. Rajagopal, Advocate for R1 to 11 12 (AC), 13 to 21, 22 (A-D), 23 (A-C) and 24 to 29, Shri. D.L.N. Rao, for R-30 in W.P. No. 1758-1785/2003, Shri. M.N. Prasanna, Advocate for Mr. P.S. Rajagopal, Advocate for R1 in W.A. No. 1786/2003, Shri. M.N. Prasanna, Advocate for Mr. P.S. Rajagopal, Advocate for R-1, Shri. S.N. Aswathnarayana, Advocate for R-3, Shri. D.L.N. Rao, for R-4 in W.A. No. 2286/2003 Shri. N. Nagaraja Rao, Advocate for Shri. Harikrishna S. Holla, Advocate for R-1 to R-7, R9 and R10, Shri. M.N. Prasanna, Advocate for Shri. P.S. Rajagopal, Advocate for R-12 to R-22, 23 (A-C), 24 to 29 and 31 and also for LR's of R-12, Mr. Pradeep S. Sawkar, Advocate for M/s. Sundaraswamy Ramdas and Anand, Advocates for R-39, Mr. S.V. Narasimhan, Advocate for R-37 in W.A. Nos. 1725/2003 and 2145-2174/2003, for the Respondent

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**Judgement**

Vikramajit Sen, C.J.—The writ petitioners who are respondents before us, were Bank Officers who had retired between 01.07.1993 and 31.10.1994. The Five Year Bipartite Settlement had by then expired on 01.11.1992. After extensive parleys a Joint Note dated 23.06.1995 was signed on the "Conclusion of

Discussions Between Indian Banks Association and the Officers" Organisation". Clause 7 thereof dealt with Gratuity and stipulated thus - "As per the consensus reached, gratuity computed in terms of the Officers" Service Regulations to be now amended shall be recalculated and difference paid only to such eligible officer employees who cease to be in the Bank's service on or after 01.11.1994. No arrears on account of gratuity shall be payable to officers who ceased to be in Bank's service prior to 01.11.1994." The writ petitioners have successfully challenged the treatment meted out to them as they have been placed beyond the purview of the Settlement which according to them is discriminatory and violative of Article 14 of the Constitution of India. As per Regulation 4(1) although they were entitled to the benefits of revision of payscales, by operation of Joint Note dated 23.06.1995, they were placed beyond the ameliorative wage negotiations so far as gratuity benefits were concerned. This controversy has already received the attention of the High Court of Kerala which ruled in favour of similarly placed writ petitioners in Syndicate Bank Vs. Celine Thomas, WA. No. 1584/2002 (DB). By Order dated 08.08.2005 the concerned Banks were ordered to pay these ex-employees "the amount of gratuity payable based on the revised pay as entitled to them." SLA (Civil) 3719/2006, by which that judgment had been assailed, was dismissed by the Apex Court on 22.02.2010. A somewhat piquant situation has arisen because of filing of SLP No. 1975/2010 titled Central Bank of India -Vs- Sethu Madhavan. It is in respect of the very same Judgment delivered by the Kerala High Court. The said SLP has been admitted for hearing. We have come to a conclusion akin to that preferred by the Division Bench of the Kerala High Court. The dialectic is similar and so is our verdict. The Writ Petitioners have put in atleast two decades of service with the sundry Banks in which they were employed including Canara Bank, Punjab National Bank, State Bank of Mysore, Syndicate Bank etc.

2. Briefly stated, the facts are that a wage revision had become due in respect of all Banks on 01.11.1992 consequent upon the efflux of the five year period for which the previous Memorandum of Understanding held the field. The unfortunate practice that seems to have evolved is that wage negotiations inevitably commence after the expiry of the life of the previous Settlement, rather than in anticipation of this event. We record this reflection for the reason that it is evident to us that had a Settlement been arrived at immediately on the expiry of the previous one, the present Writ Petitions would have become unnecessary. Due to this practice, the Settlements that are eventually arrived at between the employees and officers on the one hand and the Indian Banks Association representing several Banks on the other, perforce have retrospective effect. This is the simple reason why pay escalation as well as gratuity revisions have retroactive operation for a tranche of five years. By the time of signing of the Joint Note dated 23.06.1995, the Writ Petitioners had already retired between the period 01.07.1993 to 31.10.1994. It does not require a paranoid mind to suspect that the Unions or Associations were not as receptive or assiduously loyal to the cause of the older employees as they were of officers or

employees in harness. We reiterate that the wage package which had been introduced with effect from 01.11.1987 was due for its next avatar after 5 years i.e. from 01.11.1992. It is for these reasons that revised Settlement was notionally operational from 01.11.1992 and arrears of HRA was applicable from 01.11.1992; Scale of Pay and D.A from 01.11.1993; CCA, PF, Advance Increment and Fixed Personal Allowance from 01.11.1993. However, for reasons recondite in respect of Gratuity, Medical Aid, Second Stagnation Increment etc., the applicable date was fixed from 01.11.1994.

3. So far as the Appellant Banks are concerned, their stance is that the writ petitioners having taken advantage of the revised Pay and DA scales applicable from 01.07.1993 pursuant to the Joint Note are estopped from challenging any other conditions contained therein. It is also contended that gratuity is a one-time payment payable at the event of retirement. Thirdly, the Banks had made it clear to the Unions and Associations that the new package would have to be worked out within the ceiling of 10.5%; circumscribed in this additional load factor or financial implication, the Unions and Associations had been given liberty of movement and choice of relief. It is contended that if the petitioners' demands are to be acceded to, the load factor would increase beyond the said 10.5% limit and the resultant financial burden would become unsustainable for the Banks. All the arguments raised on behalf of the Banks, who are Appellants before us, has found disfavour with the learned Single Judge. We find no error in the conclusions arrived at in the impugned judgment.

4. Before we go into the complexities of the nature and character of gratuity and the impact of the decision in D.S. Nakara -vs- Union of India, we would like to reject forthwith the arguments which were vociferously voiced by the learned Senior Counsel on behalf of the Appellants - Banks pertaining to 10.5% additional load factor/financial implications. The responsibility, it is clear to us, lies on the employer to ensure that any arrangement or settlement arrived at does not violate the equality clause of the Constitution. If discrimination is manifest, especially of a segment of the workforce which is no longer in service and whose interest predictably recede to the background when compared to the current employees, the Banks would have to bear the additional burden. It is not left just to the Court but equally to every "model" employer to ensure that the interest of every employee is given due consideration. In the particular circumstances of the present case, the Indian Bank Association was duty bound to consider the wisdom in granting payment of gratuity only to persons who retired post 01.11.1994. We shall further amplify hereinafter, but suffice it to state that retired employees, all of whom are within the purview of the subject Wage negotiations and settlements, form a single class which cannot be fragmented. It is certainly clear that all retiral benefits including pension and gratuity must be given to all employees evenhandedly. These benefits are meant not only as a recompense for past loyal service, but also as a means to tide-over the time when old age makes it practically impossible to earn a living. We do not live in a Utopia where the retired or aged members of society enjoy purchasing

power frozen to the date on which they had retired. Ever escalating and increasing prices take their toll on society as a whole; indeed it is relentlessly more cruel to the aged to whom the vicissitudes of failing health are unwanted and unwelcomed company which has to be endured.

5. We also find no substance in the arguments that since the upward revision of salaries with effect from 01.11.1993, has been accepted by the Writ Petitioners (who are Respondents before us) they are precluded from claiming arrears of gratuity. Gratuity is calculated on the basis of salary last drawn and as soon as an escalation takes place on that salary an increase in the quantum of gratuity must follow suit. We need to emphasize that we are not dealing with the demands of those former employees whose interests were not under consideration in the subject Wage Settlement i.e. those who had retired on or before 01.11.1992 till when the previous Settlement was current. As we have said hereinbefore, had the Wage Talks commenced anticipating the efflux of the previous Settlement, the Writ " Petitioners would have got the benefits of the pay revisions which would then have been in vogue on the date of their retirement. Salary is paid only to persons in service and if arrears of salary are legally payable because of a revision post retirement, logically identical measures must apply to gratuity also.

6. It is necessary to draw the distinction between ex-gratia, gratuity and pension. The etymology of the first two words or concepts is traceable to Latin : "gratis", and has been in vogue since the late 15th Century in England and France. Both terms connote an act of kindness, grace, gratefulness or thankfulness. More recently however, ex-gratia payment are made voluntarily and without any legal obligations, whereas, gratuity has evolved into a legal obligation to pay and a legal right to receive. Whilst ex-gratia can be paid at any time and in any transaction, gratuity is a sum of money paid to an employee at the end of a period of employment intended to help the employee after retirement, be it as a result of rules of superannuation or a consequence of suffering a disability which makes it difficult to continue in employment. Ex-gratia does not require consideration, an essential concomitant of a contract, since it is a unilateral voluntary payment. On the other hand, gratuity contains consideration inasmuch as it is given in recognition of service rendered. Gratuity, quite like pension, is a retirement benefit given as recompense or a grateful acknowledgement of services rendered Both are legally enforceable. The difference between the two is that gratuity is a single payment normally given contemporaneously with retirement or superannuation. However, pension, except for a portion which is allowed to be commuted, is protracted over remaining years of the life of the employee or his/her spouse. Whilst they are similar in source, they are different in dispensation.

7. Learned Counsel for the Appellants-Banks have unsuccessfully endeavored to explain away the decision of the Constitution Bench in D.S. Nakara and Others Vs. Union of India (UOI), which they contend has been subsequently diluted by

smaller Benches of the Supreme Court. While we accept that a smaller Bench can distinguish or differentiate the decision of a larger Bench on the platform of facts, the principle of precedents and the discipline of stare decisis brooks no deviation from the ratio of a larger Bench, or of even of a previous coordinate Bench. The United States Supreme Court as also the Canadian Apex Court sits in its plenary strength and even then maintains a healthy respect for earlier decisions. Where a ratio or ruling has attained reverence because of longstanding, in all common law regime. Courts are loathe not to adhere to the previous wisdom. The neat question that arises for cogitation in these Appeals is whether the Appellant-Banks are legally competent to accord differential treatment in the payment of "gratuity" to their former employees who have retired between 1st July 1993 and 31st October, 1994. Can the Court countenance the contention of the Appellants-Banks that it is legally permissible for them to create two groups predicated on a particular date.

8. The learned Single Judge has granted the relief mentioned above almost entirely on the decision of the Constitution Bench in *Nakara* in which retired pensioners of the Central Government, other Civil Servants and members of the Armed Forces were the petitioners. The Court formulated three questions which required to be considered and decided. Firstly, whether pensioners governed by the Central Services (Pension) Rules formed a homogeneous class; secondly, whether the date of retirement remained a relevant consideration for eligibility even though the revised formula for computation of pension was ushered in and made effective from a specified date; and thirdly, would the financial treatment to pensioners unrelated to the date of retirement result in the revised formula for computation of pension falling foul of Article 14 of the Constitution? It seems to us that the fortunes of the present petitioners/pensioners must inevitably swim or sink depending on whether they fall within or without the ratio of *Nakara*. This is despite the vehement arguments of Senior Counsel for the Appellants to the effect that *Nakara* dealt with arrears of pension and not gratuity. The Constitution Bench in *Nakara* had referred to its previous Constitution Bench decision in *Deokinandan Prasad Vs. The State of Bihar and Others*, and reiterated that it is indeed an antiquated notion that pension is a bounty or gratuitous payment flowing from the sweet will or grace of the employer and that it is not claimable as a right. The Constitution Bench in *Nakara* opined that pension is not merely compensation for loyal services rendered, but that it also partakes of a measure of socio-economic justice; that "the continuous upward movement of the cost of living index as a sequel on inflationary input and diminishing purchasing power of rupee necessitated upward revision of pension". We can do no better than to reproduce extracts from the celebrated judgment for the reason that it is our understanding that the decision of this Appeal must perforce be predicated completely and comprehensively on the ratio decidendi of *Nakara*.

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria

unrelated to 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 be worse 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. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs. 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000 p.a. and average emolument will be computed on the basis of last 10 months average. 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 counter-productive 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.

43. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?

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49. 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 retired 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. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on March 31, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be served without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

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65. That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria : "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under : In other words, in Ext. P-1, the words:

that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date

and in Ex. P-2, the words:

the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised

pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.

9. On behalf of the Appellants it has been conceded that if the ratio in *Nakara* applies to the present case, the Appeal would have to be rejected. However reliance has been placed on the subsequent decisions of two Judge Benches in *State of W.B. Vs. Monotosh Roy and Another, State of W.B. -vs- W.B. Government Pensioners' Association* (2002) 5 SCC 179; *State of Punjab and Others Vs. Amar Nath Goyal and Others*, and *Sudhir Kumar Consul Vs. Allahabad Bank*, There can be no cavil that all these judgments run counter to the tenor and essence of *Nakara*; nay they are all inconsistent and irreconcilable with the binding opinion of the Constitution Bench. What option lies before us is the conundrum that stares us in the face. It becomes imperative to delve into the principle of precedents and *stare decisis*, that is, the parameters within which a later Bench of a High Court or the Supreme Court can disregard a decision already rendered by a Bench of greater strength.

10. We shall briefly discuss what *stare decisis* connotes and how it differs from the discipline behind applying precedents. This is best brought out in *Waman Rao and Ors Vs. Union of India (UOI) and Others*, by the Constitution Bench in the following extracts -

.....It is also true to say that for the application of the rule of *stare decisis*, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of *stare decisis*. It is therefore, sufficient for invoking the rule of *stare decisis* that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of *stare decisis*, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as *stare decisis*.....A deliberate judicial decision made after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent; and the precedent by long recognition may mature into *stare decisis*.....In fact, the full form of the principle, *stare decisis et non quieta movere* which means to stand by decision and not to disturb what is settled", was put by Coke in its classic English version as : Those things which have been so often adjudged ought to rest in peace".....The principle of *stare decisis* is

regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case..... (It is important) for judges to conform to a certain measures of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken.

11. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., the following elucidation can be perused:

26. It is not necessary to refer to all the cases on the point. The broad guidelines are easily deducible from what has gone before. The possibility of further defining these guiding principles can be envisaged with further juridical experience, and when common jurisprudential values linking different national systems of law may make a consensual pattern possible. But that lies in the future.

27. There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt has arisen on the point because of certain observations made by O. Chinnappa Reddy, J. in Javed Ahmed Abdulhamid Pawala Vs. State of Maharashtra, Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in T.V. Vatheeswaran Vs. State of Tamil Nadu, that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three Judges in Sher Singh and Others Vs. State of Punjab, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in T. V. Vatheeswaran (supra), the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the conduct of the accused As a member of another Bench of two Judges, in Javed Ahmed Abdul Hamid Pawala (supra) O. Chinnappa Reddy, J. questioned the validity of the observations made in Sher Singh (supra) and went on to note, without expressing any concluded opinion on the point, that it was a serious question "whether a Division Bench of three Judges could purport to overrule the judgment of a Division Bench of two Judges merely because three is larger than two. The court sits in divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of

two Judges. Vide *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All ER 293. It may be otherwise where a Full Bench or a Constitution Bench does so." It is pertinent to record here that because of the doubt cast on the validity of the opinion of Sher Singh (supra), the question of the effect of delay on the execution of a death sentence was referred to a Division Bench of five Judges, and in *Triveniben Vs. State of Gujarat*, the, Constitution Bench overruled *T.V. Vatheeswaran Vasanta Vs. State of Maharashtra*,

28. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and, by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin Vs. State of West Bengal*, a Division Bench of three Judges found it right to follow the law declared in *Haradhan Saha Vs. The State of West Bengal and Others*, decided by a Division Bench of five Judges, in preference to *Bhut Nath Mete Vs. The State of West Bengal*, decided by a Division Bench of two Judges. Again in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, Beg, J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . In *Ganapati Sitaram Balvalkar and another Vs. Waman Shripad Mage (Since Dead)* through Lrs, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in *Mattulal Vs. Radhe Lal*, this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. this Court also laid

down in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others*, , that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was re-affirmed in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, which noted that a Division Bench of two Judges of this Court in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, had differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

12. In *Krishena Kumar and Others Vs. Union of India and others*, the Apex Court relied on *Raghubir Singh*, which was applied once again by the Constitution Bench in *Chandra Prakash -vs- State of U.P.*, AIR 2002 SC 1652 and their Lordships reiterated that "policy of courts is to stand by precedents and not to disturb settled point".

22. Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in *Parija's case* (supra). In that case, a Bench of two learned Judges doubted the correctness of the decision of a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, the five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench found fault with the reference made by the two-Judge Bench based on the doctrine of binding precedent.

23. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh* held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this

enunciation of law, this Court in the latter judgment of *Parija* (supra) held that-

But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

13. In order to avoid prolixity we shall go no further than mention *Union of India (UOI) and Another Vs. K.S. Subramanian, and M/s. Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena*, An entire and complete discussion on this subject is now to be found in *Shanker Raju Vs. Union of India (UOI)*, In this analysis, the principle of precedents, of stare decisis and of per incuriam, is that when a Bench is faced with a decision of a previous Bench of equal strength it is expected to follow the previous decision and apply its ratio. *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs.*, , followed in *M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.*, cogitated on the principle of per incuriam. Their Lordships held that "Certainty of law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases.....a prior decision of this Court on identical facts and law binds the court on the same points in a later case. Here we have a decision admittedly rendered on facts and law indistinguishably identical, and that ruling must bind". The same maxim has been considered in detail in the decision reported as *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*,

14. In *Official Liquidator Vs. Dayanand and Others*, the three Judge Bench had to contend with the observations in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, to the effect that the ratio in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, (Constitution Bench) "should not be applied by Courts mechanically as if it were an Euclid's formula without seeing the facts of a particular case..... as a little difference in facts can make Umadevi's case inapplicable to the facts of that case." In *Dayanand*, the Bench thereafter analysed several judgments of the Apex Court and eventually scathingly stated that the two Judge decision in *Pooran Chandra Pandey* "should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench." This homily is sufficient for disregarding the opinions of Benches which have not given due regard to decisions of larger Benches.

15. Reverting back to the conundrum facing us, Learned Counsel have drawn attention to the decision of the Constitution Bench in *Krishna Kumar and Others Vs. Union of India and others*, in which *Nakara* has been discussed in detail and distinguished. Its study and digestion will also underscore the disciplined respect

which should be accorded to precedents. Their Lordships were concerned with Pension *visa-vis* Contributory Provident Fund, both of which initially were schematically equally beneficial to the employees. Subsequently, when pensionary benefits became more attractive than Contributory Provident Fund those employees who had exercised their option or preference for Contributory Provident Fund contended that all ex-employees *perforce* should be treated with equality and therefore they should be allowed to avail of the Pension Scheme. In this regard reliance was placed by them on *Nakara* and their Lordships observed *inter alia* as follows;

32. In *Nakara* it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights *qua* the government in respect of the Provident Fund is finally crystallized and thereafter no statutory 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 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 PF 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 towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. *Nakara* cannot, therefore, be an authority for this case.

33. *Stare decisis et non quita movere*. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are

substantially the same. A

deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in *Nakara* it was never required to be decided that all the retirees formed a class and no further classification was permissible.

34. The next argument of the petitioners is that the option given to the PF employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Article 14 of the Constitution for the same reasons for which in *Nakara* the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of PF retirees each one's rights having finally crystallized on the date of retirement and receipt of PF benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a PF retiree was affected or benefitted by prices and interest rise was not kept any tack of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise.

35. It would also appear that most of the petitioners before their filing these petitions had more than one opportunity to switch over to the Pension Scheme which they did not exercise. Some again opted for PF Scheme from the Pension Scheme.

16. Learned Counsel for the Appellants have also set store on the opinion of the Constitution Bench in *Indian Ex-Services League and others Vs. Union of India*, in which both *Nakara* and *Krishena Kumar* were considered. Their Lordships clarified the law in these extracts-

14. D.S. Nakara and Others Vs. Union of India (UOI), decision came up for consideration before another Constitution Bench recently in Krishena Kumar and Others Vs. Union of India and others, The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PR retirees and pension retirees constitute different classes and it was never held in Nakara that pension retirees and P.F. retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalized pension scheme was impermissible. It was pointed out that in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

xxx xxx xxx

21. One of the prayers made in these writ petitions is for grant of same Death-cum-Retirement Gratuity to the pre-1-4-1979 retirees as to the post 1-4-1979 retirees. A similar claim was rejected by this Court in State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then not be re-opened as a result of the enhancement made at a later date for persons retiring subsequently. This concept of gratuity being different from pension has also been reiterated by the Constitution Bench in Krishena Kumar and Others Vs. Union of India and others, With respect, we are in full agreement with this view. This claim of the petitioners also therefore, fails.

17. In the impugned judgment, the learned Single Judge has considered and V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, which is also a decision of two Judge Bench. In that case, the appellant had joined the State Bank of India as an officer in October 1963 but resigned before completing 25 years which was the pensionable service period. Accordingly the resignation was treated as voluntary retirement therefore disentitling him for pension. In September 1986, after his resignation, the option for voluntary retirement was made available after 20 years of service in place of 25 years. The petitioner's appeal to the Apex Court was dismissed with these observations;

20. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over the years to which our attention was invited by Learned Counsel for the respective parties, the following

legal position clearly gets projected.

#### Category I

21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

#### Category II

22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter v. Capt. Biplabendra Chanda and Govt. of T.N. v. K. Jayaraman and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit.

18. What is the distinction between the "dictum" and the "ratio" of a decision, is a ponderous query that often arises. Black's Law Dictionary defines the former (dicta being the plural) as "a statement of opinion or belief considered authoritative because of the dignity of the person making it; or, a familiar rule or

a maxim. It appears to us that an articulation by a Court of Record or in a treatise which is intended to have general or ubiquitous applicability would correspond to a "dictum", it would have doctrinal attributes. The extracted paragraphs from In Re Special Courts Bill possess such qualities. Nakara is an extrapolation of that dictum, and the manner in which it was applied, i.e., that all pensioners comprise one indivisible group or class is its ratio. Black's Law Dictionary perspicaciously defines ratio decidendi as the principle or rule of law on which a Court's decision is founded", a general rule without which a case must have been decided otherwise." In this analysis, it may be superficial to contend that merely because Nakara was concerned with pension claims it has no relevance or bearing on the case in hand in which the claim is for gratuity. The equality doctrine constituting the dicta of both cases is that where a homogeneous class exists it ought not to be dismembered.

19. In culling out the ratio decidendi of Nakara we would perforce have to chalk out the contours of Article 14. In Nakara their Lordships referred to the celebrated case :- In Re : In Re: The Special Courts Bill, 1978, of which we extract the following paragraphs with our underlining:-

3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means 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.

20. Predicated on these passages Nakara held that all employees entitled to receive pension formed an indivisible class, and therefore changes effected in the pension schemes would enure to all; ergo, a fragmentation pegged arbitrarily on a chosen date would defeat the avowed purpose and existence of the equality mandate in our Constitution. Kasturi is a further refinement of this enunciation of the law inasmuch as it demarcates the distinctions that exist in what may appear to be a homogeneous whole; since the Petitioner was not eligible for pension when he left service he was not entitled to changes brought about in the scheme. In these Appeals, all the Petitioners were within the purview and contemplation of the negotiations and the "conclusions" crystallized in the Joint Note. If the Petitioners had already retired in the currency of the earlier wage regime they

would be beyond the benefits of the Joint Note dated 23.06.1995. This is not so since they have reaped the fruits available in the Joint Note, save for Gratuity. No reasonable explanation is forthcoming as to why the cut-off of 01.11.1995 was devised and decided. If it was because only 10.50 per cent escalation was available in the store, arbitrariness is manifest. Everyone within the class should have been bestowed with the benefits in like balance. The Rubicon does not flow along 01.11.1995. The Petitions must succeed and the Appeals must fail.

21. After considerable cogitation we think that the dictum of Nakara applies on all fours to the material facts that have been presented before us. If this is so, we must be shown a decision of a larger Bench which has come to a different conclusion. None has been shown to us and our research has also remained unrevealing. Therefore, presumption which must be drawn is that the two Judge Benches were seized of a factual matrix that was demonstrably and decidedly distinguishable from Nakara. The Petitions are sound and legally well founded. The Appeals fail. The number of pensioners have dwindled over the years; their demise has liberated them from their relative penury. But since we would be setting a precedent of large financial proportion, we shall abjure from going any further than the learned Single Judge had ventured. Arrears of gratuity must be paid to the Petitioners within four weeks, failing which these dues shall earn interest at the rate of six percent per annum with effect from 23.06.1995. In addition thereto each of the Writ Petitioners, Respondents in these Appeals, shall be entitled to costs quantified at Rs. 10,000/-.