

(2019) 12 PAT CK 0196

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5192, 9712 Of 2015, 4791, 5878, 6136, 6578, 6606, 6886, 7194, 7897, 7906, 8150, 9026, 11382, 12798, 12829, 12875, 15452, 15607, 16108, 16161, 18202, 19187, 19990, 20569, 20589 Of 2016, 84, 1020, 1069, 2081, 4410, 4503, 487

Yogendra Prasad And Ors

APPELLANT

Vs

Magadh University Bodhgaya Through And Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 7, 14, 16, 16A, 21, 23.3, 27, 30, 148(5), 300A, 309

Central Civil Services (Pension), Rules, 1972 — Rule 30, 34, 49, 54(3)(a)

Arbitration And Conciliation Act, 1996 — Section 15(2)

Citation : (2020) 1 PLJR 243

Hon'ble Judges : Anil Kumar Upadhyay, J; Sanjay Karol, CJ

Bench : Division Bench

Advocate : Raghav Prasad, Lalit Kishore, Shivendra Kishore, Binodji Verma, Subodh Kumar Jha, Purushottam Kumar Jha, Shashi Bhushan Singh, Sanjay Sahay, Sanjay Parasmani, Sanjay Parasmani, Zaki Haidar, Sunil Kumar Singh, Arabind Nath Pandey, Patanjali Rishi, Arbind Nath Pandey, Praveen Kumar Singh, Dhananjay Kumar, Dr. Anshuman, Rajeev Kumar, Sanjeev Kumar, Arabind Nath Pandey, Shashi Bhushan Singh, Shashi Bhushan Singh, Sanjeev Kumar, Rajesh Kumar Singh, Sanjeev Kumar, Purushottam Kumar Jha, Madhav Prasad Yadav, Arbind Nath Pandey, Anil Singh, Raghav Prasad, Pranav Kumar Jha, Digvijay Singh, B.J. Jha, Ajit Pratap Singh, Anil Kumar Sinha, Ritesh Kumar, Vijay Kumar Verma, Ashok Priyadarshi, Uma Shankar, Archana Prasad, Manoj Kr. Ambastha, Rajeev Ranjan Kr. Pandey, Ajeet Kumar, Sanjay Parasmani, R.R.K. Pandey, Jitendra Kumar Roy, Prabhat Kumar Verma, Vikas Ratan Bharti, Ashutosh Ranjan Pandey, Mukund Mohan Jha, Madanjeet Singh, Subhash Chandra Mishra, Sanjay Kumar, Madanjeet Kumar, B. Singh, Rajeev Kumar, Madhaw Pd. Yadav, Jitendra Kumar Ray, S.C. Mishra, Zalo Jaoder, A. R. Pandey, Shilpa Singh, Zaki Haider, Kameshwar Kumar, Binita Singh, Indrajeet Kumar, Jitendra Kr. Roy, Prabhakar Jha, Zaki Haidar, Madhaw Prasad Yadav

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

1. CWJC No. 5192 of 2015 was filed by the petitioner, Dr. Himanshu Bhushan, for the following reliefs:-

(i) To hold and declare that the petitioner is entitled for getting his pension fixed as per the pay fixation provided in Table No. 5 annexed with the State Government Resolution No. 2374 dated 29.07.2010 (Annexure-2) to this writ petition.

And consequent upon such declaration

A writ in the nature of mandamus may be issued commanding the respondents concerned to re-fix the pension of the petitioner @ Rs. 25,445/- per month w.e.f. 01.01.2006 notionally, actual benefit whereof is payable from 01.04.2007.

(ii) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case."

The other writ applications involving similar matter was tagged with CWJC No. 5192 of 2015 and the cases were heard on different dates involving the issue of pension to the teachers of the Universities and the Constituent Colleges. During the pendency of the writ applications, the State Government in the Finance Department issued Resolution No. 582 dated 17.7.2018, which was challenged by the petitioner by Interlocutory Application No. 6314 of 2018 and other such applications. Vide order dated 20.08.2018, the learned Single Judge allowed the interlocutory application as to challenge of the Resolution No. 582 dated 17.7.2018. The learned Single Judge noted that in view of the challenge as to the Resolution dated 17.7.2018, the batch of cases require adjudication by appropriate Division Bench.

2. CWJC No. 4649 of 2019 was filed by the petitioner Yogendra Prasad for the following reliefs:-

"a) Issuance of a writ in the nature of mandamus to re-fix Pension/revised pension of the petitioner at 23,200=00 P.M. which is the fifty percent of minimum pay band plus grade pay admissible to an associate Professor after 6th pay revision w.e.f. 1.1.2006 and to grant the consequential benefits accordingly by applying Para-2(V) of the 6th Pension Revision notified by the Government on 23.09.2009 after interpreting it correctly in the light of various Courts judgments/orders including the Apex Court.

b) For quashing of amended part of the Bihar Gazette notification dated 08.08.2012 (Annexure-8) which provides for pro-rata reduction on the basis of 33 years of qualifying service in the above provision.

c) To direct the State Government to modify the Pension Rule in the light of notification of the Central Government dated 06.04.2016 issued by the Department of Pension and Pensioner's Welfare (Annexure-9) which is based on Court judgments/orders including the Apex Court."

3. In view of the common question of facts and law involved in CWJC No. 5192 of 2015 and analogous cases and CWJC No. 4649/2019 and analogous cases, they have been taken up together and heard on different dates. CWJC No. 4649 of 2019 was tagged with CWJC No. 13124 on 4.9.2019 and the State was granted time to file supplementary counter affidavit after examining the latest judgment of the Apex Court passed in Civil Appeal No. 10857 of 2016 (The All Manipur Pensioners Association Vs. The State of Manipur) disposed of on 11th July, 2019.

4. On 18.10.2019 a supplementary counter affidavit has been filed in which following stands have been taken in paras 3 to 15 thereof.

"3. That at the outset it is stated that the answering respondent has already filed a counter affidavit in the present case and the present supplementary counter affidavit is being filed in pursuance of the order dated 04.09.2019 passed in the present case, whereby it has been directed to examine the latest judgment of the Hon'ble Apex Court passed in Civil Appeal No. 10857 of 2016 (The All Manipur Pensioners Association Vs. The State of Manipur).

4. That it is stated that the dispute in the aforesaid All Manipur Pensioners Association case was the decision of the Government of Manipur to increase fixed percentage of the average emoluments, applicable to those who retired after 01.01.1996. It appears from the order that the pension calculated to employees who have retired before 01.01.1996 will be 50% of the average emoluments subject to a maximum of Rs. 4500/- but the said 50% has been increased to the post 01.01.1996 retiree. Despite the best of efforts, the answering respondent could not procure the office memorandum dated 23.04.1999 issued by the Government of Manipur whereby the said percentage has been increased.

5. That it is stated that in the present case the ceiling of 50% for calculating the pension has not been increased while implementing the recommendation of either 6th pay Revision Committee or 7th Pay Revision Committee.

6. That in this connection it is further stated that the aforesaid fact is evident from the resolution appended with the earlier filed counter affidavit.

7. That it is stated that the answering respondent is bringing on record the resolution contained in Memo no. 592 dated 06.03.2019, whereby a mechanism has been provided to calculate the pension/family pension has been provided as per the recommendation of the 7th pay Revision Committee.

8. That it is stated that a bare perusal of Clause 4(i) of the aforesaid Memo dated 06.03.2019 clearly states that the quantum of pension will be fixed at 50% of the last basic pay scale or average pay of last 10 months, whichever is higher.

9. That it is stated that similar provision is there in the resolution by which the recommendation of the 6th pay Revision Commission has been implemented, which is appended in the earlier counter affidavit filed by the answering respondent.

10. That it is stated that Clause 3 of the resolution dated 06.03.2019 prescribe the method for calculating the pension/family pension of those employees retired prior to 01.01.2016.

11. That it is stated that similar provision has been made in the resolution by which the recommendation of the 6th pay Revision Committee has been implemented.

12. That it is stated that the State Government has never increased the percentage i.e. 50% by which the pension is fixed, whereas the Government of Manipur has increased the percentage by which the pension is fixed.

13. That in the facts and circumstances mentioned hereinabove, it is evident that the case of All Manipur Pensioners Association is on a different facts which is quite distinguishable from the present issue.

14. That it is stated that the pension/family pension that is fixed after implementing the recommendation of the pay revision committee is not arbitrary and it does not create class within class, which is evident from the calculation that is being made in fixing the revised pension/family pension.

15. That it is stated and submitted that the subsequent of the decision rendered by the Hon'ble Apex Court in D.S.Nakara case, it has been held by Hon'ble Apex Court that the decision in the case of D.S.Nakara is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement, in the cases of R. Veeraswamy case. Amar Nath Goyal and P.N. Menon case."

5. After filing of the supplementary counter affidavit, the matter was heard at length on different dates and after hearing the parties, order was reserved on 3.12.2019.

6. All the writ applications involve the common question of fact and law, albeit during the course of argument Mr. Raghav Prasad, learned counsel appearing on behalf of the petitioner in CWJC No. 4649 of 2019 has confined his prayer to the extent of challenging the decision of the State Government as to pro-rate reduction of pension for not completing 33 years of continuous service in the matter of teachers retired before 23.09.2009 vide resolution dated 8th August, 2012 and declaring it as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. Mr. Raghav Prasad, learned counsel for the petitioner of CWJC No. 4649 of 2019 submitted that the artificial distinction drawn vide resolution dated 8.8.2012 does not satisfy the test of rationality. He contended that teachers retiring after 1.1.2006 and before 23.09.2009 and after 23.09.2019 form one homogeneous class as they are retiree after coming into force the 6th PRC and as such, he placed reliance on the judgment in the case of D.S.Nakara and ors. Vs. Union of India: (1983) 1 SCC 305. He submitted that the distinction drawn

by the State is based on illusionary and imaginary distinction and it has no rational nexus to achieve any lawful object. Mr. Raghav Prasad further submitted that on principle the State Government has taken a decision to grant pension to the University teachers on the line of the decision to grant pensionary benefit to State Government employees and the State used to frame and modify their scheme in the light of the Central Government decision for grant of pension. Mr. Raghav Prasad has placed reliance on various notifications issued from time to time by the State Government to indicate that the State Government essentially followed the line of notification of the Central Government in relation to grant of pensionary benefit. He placed reliance on Annexure-5B, the resolution dated 23rd September, 2009 which was issued on the line of the Central Government pensioners. Similar is the letter of the Finance Department contained in Annexure-6 dated 8th February, 2010 which was again issued by the State Government in the light of the Central Government 6th Pay Commission Recommendation. Mr. Raghav Prasad has drawn attention of this Court to Annexure-7, the decision of the Central Government for reduction of pension on pro-rata basis. The Central Government on 28th January, 2013 issued office memorandum and following decision was taken in the said memorandum which is quoted below:-

"F.No. 38/37/08-P&PW(A)

Government of India

Ministry of Personnel, PG & Pensions

Department of Pension & Pensioners' Welfare

3rd Floor Lok Nayak Bhawan,

Khan Market, New Delhi-110 003.

Dated the 28th January, 2013

OFFICE MEMORANDUM

Sub:- Revision of pension of pre-2006 pensioners - reg.

1. The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, orders were issued for revision of pension/family pensioners vide this Department's OM No.38/37/08- P&PW(A) dated 1.9.2008, as amended from time to time.

2. It has been decided that the pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. In the case of HAG

and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.8.2008 of Ministry of Finance, Department of Expenditure.

3. The normal family pension in respect of pre-2006 pensioners/family pensioners as revised w.e.f. 1.1.2006 in terms of para 4.1 or para 4.2 of the aforesaid OM dated 1.9.2008 would also be further stepped up to 30% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale in which the Government servant had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. In the case of HAG and above scales, this will be 30% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above OM dated 30.8.2008 of Ministry of Finance (Department of Expenditure).

4. A revised concordance table (Annexure) of the pre- 1996, pre-2006 and post 2006 pay scales/pay bands indicating the pension/family pension (at ordinary rates) payable under the above provisions is enclosed to facilitate payment of revised pension/family pension.

5. The pension so arrived at in accordance with para 2 above and indicated in Col. 9 of Annexure will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable before 1.1.2006 and in no case it will be less than Rs.3,500/- p.m.

6. The family pension at enhanced rates (under sub rule (3)(a) of Rule 54 of the CCS (Pension) Rules, 1972) of pre-2006 pensioners/family pensioners revised w.e.f. 1.1.2006 in terms of para 4.1 or this Department's OM No.1/3/2011-P&PW(E) dated 25.5.2012 would be further stepped up in the following manner:

(i) In the case of Government servants who died while in service before 1.1.2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government, i.e.24.9.2012, the enhanced family pension will be stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre- revised pay scale in which the Government servant had died, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. In the case of HAG and above scales, this will be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables annexed to the above-referred OM dated 30.8.2008 of Ministry of Finance, Department of Expenditure.

(ii) In the case of a pensioner who retired before 1.1.2006 and in respect of whom enhanced family pension is applicable from the date of approval by the Government, i.e.24.9.2012, the enhanced family pension will be stepped up to the amount of pension as revised in terms of para 2 read with para 5 above. In case the pensioner has died before from the date of approval by the Government

i.e. 24.9.2012, the pension will be revised notionally in terms of para 2 read with para 5 above. The amount of revised enhanced family pension will, however, not be less than the amount of family pension at ordinary rates as revised in terms of para 3 above.

7. In case the pension consolidated pension/family pension/enhanced family pension calculated as per para 4.1 of OM No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

8. All other conditions as given in OM No. 38/37/08- P&PW(A) dated 1.9.2008, as amended from time to time shall remain unchanged.

9. These orders will take effect from the date of approval by the Government, i.e. 24.9.2012. There will be no change in the amount of revised pension/family pension paid during the period 1.1.2006 and 23.9.2012, and, therefore, no arrears will be payable on account of these orders for that period.

10. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

11. All the Ministries/Departments are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and subordinate Offices under them on a top priority basis. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

12. Hindi version will follow."

(Tripti P.Ghosh)

Director.

To

All Ministries/Departments of Government of India as per mailing list."

8. Mr. Raghav Prasad has drawn attention of the Court to the impugned letter dated 8th August, 2012, memorandum regarding pension issued by the Central Government. He referred to various decisions rendered by the Central Administrative Tribunal, Delhi High Court, Kerala High Court and the Apex Court and finally office memorandum dated 6th April, 2016 issued by the Ministry of Personnel, PG & Pensions Department of Pension & Pensioners' Welfare, Government of India, Annexure-9, paras 5 and 6 whereof are crucial for this case and as such are quoted below:-

"5. In accordance with the order issued in implementation of the recommendation of the 6th CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been delinked from qualifying service of 33

years. In OA No. 715/2012 filed by Shri M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Ernakulam Bench, vide its order dated 16.8.2013 directed that the revised pension w.e.f. 1.1.2006 under para 4.2 of OM dated 1.9.2008 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT/High Court in several other cases also.

6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualified service of less than 33 years at the time of retirement. Accordingly, Para-5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006."

9. After placing reliance on the memorandum dated 6th April, 2016, learned counsel has also placed reliance on the judgment of the Division Bench of Delhi High Court in WP(C) No. 1535 of 2012 and analogous cases dated 29th April, 2013 wherein similar issue was considered and those decisions were the basis of Memorandum dated 6th April, 2016 (Annexure-9) of CWJC No. 4649 of 2019.

10. In substance Mr. Raghav Prasad submitted that once the State Government took policy decision to grant pensionary benefits on the line of the State Government employees and the State Government has followed the principle applicable in the matter of pension to the Central Government employees then, the State is not justified in denying the benefit of full pension to the petitioner on the ground that the petitioner has not completed 33 years of service and consequential action of pro-rata reduction in pension is illegal, arbitrary, more so, when the State Government has decided to grant the benefit of full pension on completion of 20 years of service to those who retired on or after 23.09.2009 as the distinction drawn by retiree before 23.09.2009 and after 23.09.2009 is arbitrary and based on artificial distinction as the teachers who retired after 1.1.2006 form one homogeneous class and in that view of the matter, the State is not justified in taking decision to fix cut off date as 23.09.2009 for the purpose of full pension on completion of 20 years and pro-rata deduction in pension to those who retired before 23.09.2009 vide resolution No. 1674 dated 16.08.2012.

11. Mr. Raghav Prasad submitted that the decision as to pro-rate reduction was taken by the State Government essentially on the line of Central Government decision but the Central Government has already withdrawn the decision of pro-rata reduction for non-completion of 33 years service and decided grant of full pension on completion of 20 years service. Hence, State is obliged to adopt corrective measures on the line of Central Government decision dated 6.4.2016, Annexure-9.

12. Mr. Purushottam Jha, learned counsel for the petitioner in CWJC No. 5192/2015 and analogous cases has drawn attention of this Court to the Service Statute which, inter alia, admits the entitlement of the University Teachers pension on the principle applicable to the State Government employees. The relevant part of the Statute is quoted below:-

"APPENDIX - 'A'

Article 16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in schedule 'A' (I) if he ceased to be in University service between 1.4.72 and 31.12.72 and schedule A (ii) if he ceased to be in University service between 1.1.73 and 30.3.79. For those who ceased to be in University service from 31.3.79 onwards, the scales given in Schedule A (iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules, will be equally applicable to the University employees. Article 16A. Wound and other extraordinary Pensions-Employees of the University who sustain any injury or die as a result thereof or are killed as a result of special risk of office, will be entitled to injury gratuity and pension or family pension, as the case may be, under the same rules and conditions as are applicable to the employees of the Government of Bihar. The rates of injury gratuity and pension and family pension payable under this Rule are given in Schedules B and E respectively. Article 23.3. The rates and the amounts of gratuity provided for in this section shall be changed to the rates applicable to the employees of the State Government whenever there is any change in these latter rates.

Article 27. The rates and maximum amounts of family pension as provided for in this Section shall be changed to the rates applicable to Government employees whenever the latter rates undergo any change.

Article 30. In all matters, not specifically dealt within these Rules (both Appendix 'A' and 'B') the rules and orders applicable to the employees of Government of Bihar, will apply mutatis mutandis to the employees of this University.

APPENDIX - 'B'

Article 7. The rates and amounts of Gratuity as provided for in this Section shall be changed to the rates applicable to employees of the State Government whenever there is any change in these latter rates."

13. Mr. Jha also placed reliance on the various notifications issued from time to time to contend that the pension and other pensionary benefits are admitted to the teachers like the petitioners on the line and the modality which is applicable to the State Government employees. He also submitted that whatever modality is followed in the case of Central Government employees are applied in the case of the State Government employees and consequently the petitioners and other similarly circumstanced are entitled to the benefit at par with the Central

Government/State Government employees.

14. Mr. Jha with reference to Annexure-2 to the writ petition, CWJC No. 5192 of 2015, the resolution dated 29th July, 2010 submitted that the State Government itself took a conscious decision while introducing 6th PRC with effect from 1.1.2006. He submitted that in terms of the conscious decision of the State Government and the fitment index appended to the decision dated 29th July, 2010, the corresponding minimum revised pay scale of the Professor including Principal of P.G. colleges is Rs. 50,890/- in the revised pay band 37,400-67,000 plus AGP 10000/-. He submitted with reference to fitment table that teachers who were in particular pay is entitled to fitment in the pay scale of 37,400-67,000 plus AGP 10000 and the action of the respondents in fixing pension ignoring the corresponding fitment for the purpose of grant of pension is illegal and arbitrary.

15. Mr. Jha has also placed reliance on the decision relied upon by Mr. Raghav Prasad in support of his case. He has also relied upon the judgment of the Division Bench of Panjab and Haryana High Court, dated 21.12.2012 passed in CWP No. 19641 of 2009 by Chief Justice A.K.Sikari, (as his lordships then was) and after consideration of various judgments on the point it has been held in paras 23 to 26 as follows:-

"23. After considering the arguments of learned counsels for all the parties, we are of the opinion that it is not even necessary to go into the various nuances and nitty gritty, which are insisted by learned counsels for the petitioners based on D.S. Nakara line of cases and N. Subbarayudu and others and S.R. Dhingra and others (supra), wherein ratio of D.S. Nakara is explained. We proceed on the basis that fixation of cut off date by the government was in order and to this extent we agree with the reasoning given by the Tribunal where similar arguments, as advanced by the petitioners before us, were rejected. The issue can be resolved on the interpretation of OM dated 29.08.2008 itself. It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No. 12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued. We have also reproduced para 4.2 thereof. This states in unequivocal terms that "revised pension in no case shall be lower than 50% of the minimum of pay in the pay band plus grade pay corresponding to the pre-revised pay scale-----". The clear purport and meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. However, notwithstanding the same and

without any provocation, the junior functionaries in the Department of Pension nurtured a doubt "though there was none" and note was prepared on that basis, which led to issuance of Oms dated 03.10.2008 and 14.10.2008. The effect of these two OMs was to make revision in the pension of pre-2006 retirees by giving them less than 50% of the sum of minimum of the pay in the pay band. To demonstrate this, Mr. H.L. Tikku, learned senior counsel appearing in some of these cases drew our attention to the following chart:-

Min of Prerevised scale

Pay in the Pay Band

Grade Pay

Revised Basic Pay (2+3) (Rs.)

Pension 50% of (2+3) (Rs.)

1

2

3

4

5

S-24 (14300)

37400

8700

46100

23050

S-25 (15100)

39690

8700

48390

24195

S-26 (16400)

39690

8900

48590

24295

S-27 (16400)

39690

8900

48590

24295

S-28 (14300)

37400

10000

47400

23700

S-29 (18400)

44700

10000

54700

27350

The first 4 columns of the above table have been extracted from the pay fixation annexed with MOF OM of 30th August, 2008 (referred to in para 4.5 (iii) above). Revised pension of S 29 works out to Rs. 27,350 which has been reduced to Rs. 23,700 as per DOP OM of 03.10.2008 (para 4.8 (B) below).

24. As per the impugned OM dated 14.10.2008 in the case of S-24 officers the corresponding pay in the Pay Band against 14,300/- is shown as 37,400/-. In addition, Grade Pay of Rs. 8700/- was given totaling Rs. 46,100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 14th October, 2008. The illegality which has been perpetrated in the present matter is apparent from the fact that whereas an officer who was in the pre-revised scale S-24 and receiving a pay of Rs. 14,300/- would now receive Rs. 37,400/- plus grade pay of Rs. 8700/- and his full pension would accordingly be fixed at Rs. 23,050/- (i.e. 50% of 37,400/- pay plus grade pay Rs. 8700/-) pursuant to the implementation of VI CPC recommendations after 01.01.2006, whereas a person retiring before 01.01.2006, who was drawing a pay of Rs. 18,400/- or even Rs. 22,400/- (maximum of scale) in the pre-revised S-29 scale will now be getting pension as only 23,700/- (i.e. 50% of pay of Rs. 37,400/- plus grade pay of Rs. 10,000/-).

25. This has arisen because of resolution dated 29.08.2008 and has resulted because of deletion of certain words in para 4.2 of the OM dated 01.09.2008 or 03.10.2008. This aspect is beautifully demonstrated by the Tribunal in its Full

Bench judgment in the following manner with which we are entirely agree:

"25. In order to decide the matter in controversy, at this stage, it will be useful to extract the relevant portions of para 5.1.47 of the VI CPC recommendation, as accepted by the Resolution dated 29.08.2008, para 4.2 of the OM dated 1.9.2008 and subsequent changes made in the garb of clarification dated 3.10.2008, which thus read:

Resolution No.38/37/8-P&PW (A) dated 29.08.2008- Para 5.1.47 (page 154-155)

Para 4.2 of OM DOP&PW OM No. No.38/37/8 P&PW(A) dated 1.09.2008 (page 38 of OA)

OM DOP&PW OM No. No.38/37/8-P&PW(A) dated 3.10.2008

The fixation as per above will be subject to the provision 'that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale form which the pensioner had retired.

The fixation as per above will be subject to the provision 'that the revised pension, in no case, shall be lower than 50% of the(sum of the) minimum of the pay in the pay band plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired

The Pension Calculated at 50% of the [sum of the] minimum of the pay in the pay band [and the grade pay thereon corresponding to the pre- revised pay scale] plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre- revised scale of pay plus) the grade pay corresponding to the prerevised pay scale. For example, if a pensioner had retired in the pre- revised scale of pay of Rs.18400- 22400, the corresponding pay band being Rs.37400- 67000 and the corresponding grade pay being Rs.10000 p.m., his minimum guaranteed pension would be 50% of Rs.37400+Rs.10000 (i.e.Rs.23700)

Strike out are deletions and

bold letter addition

Strike out are deletions and bold letters addition.

26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre- 2006 retirees should not be less than 50% of the sum of the minimum of the pay in the Pay Band and the grade pay thereon corresponding to the pre-revised pay scale held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired

has been given a go-by by deleting the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised pay scale' and adding 'irrespective of the pre-revised scale of pay plus' implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised scale' 'and addition of the words 'irrespective of the prerevised scale of pay plus', as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet."

26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent Oms dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that "the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired", this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months. In case, the arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost."

16. Learned counsel for the petitioner submitted that the judgment of the Division Bench of Punjab and Haryana High Court is applicable in relation to the teachers who retired before 1.1.2006 and the State is required to fix pension of those retired after notional fixation of pay in the revised pay scale giving fitment on 6th PRC.

17. Per contra, Mr. Lalit Kishore, learned Advocate General as well as Mr. Ashutosh Ranjan Pandey, Additional Advocate General No. 15 submitted that the State is well within its competence to fix cut-off date and action of the State cannot be called as arbitrary decision. Mr Lalit Kishore has placed reliance on the judgment of the Apex Court in the case of State of Bihar and another Vs. Bihar Pensioner Samaj: (2006) 5 SCC 565 stating that it is well settled that fixation of cut-off date for payment of revised pension is well within the power of the Government and the reasoned order is not arbitrary which is based on some rational consideration.

18. Mr. Lalit Kishore, learned Advocate General submitted that after order dated 13.4.2018 passed in CWJC No. 15607 of 2016, the State Government after due consideration decided not to apply the resolution dated 6.4.2016 and issued resolution dated 17.7.2018 and as such the decision of the Punjab and Haryana High Court is distinguishable. He further submitted that there is no infirmity in the policy decision of the State Government. The decision is well considered and the judgment of the Apex Court in the case of D.S.Nakara & Ors. Vs. Union of India: (1983) 1 SCC 305 is not attracted in the present case. He also submitted that in the matter involving financial implication, the State is justified in taking decision in fixing cut-off date and adopting its own policy to grant post retiral benefits.

19. In the conspectus of the facts and circumstances and the submissions of the parties, the following questions require adjudication in the preset batch of writ applications.

(i) What should be the approach of deciding constitutional validity of the Statute, Rules, Regulations, Circular and notification and interpretation thereof?

(ii) Whether the teachers retired after 1.1.2006 and before 23.09.2009 and after 23.09.2009 form homogeneous or heterogeneous classes?

(iii) Whether the State can depart from its policy of granting pension in the light of the decision of the Central Government or it is required to follow the line of grant of pension like the Central Government employees?

(iv) Whether the teachers of Homogeneous class can be differently treated in the matter of grant of pensionary benefit including the benefit of Full Pension on completion of 20 years as done vide notification dated 16.08.2012, Annexure-A to CWJC No. 5192 of 2015?

(v) Whether the action of the State Government in reducing the pro-rata pension to those who retired before 23.09.2009 but not completed 33 years of service but more than 20 years of service and the teachers retiring after 23.09.2009 but completed 20 years in the matter of grant of full pension are based on reasonable classification?

(vi) Whether the cut-off date 23.09.2009 satisfies the twin test of reasonable classification i.e. classification based on inelible differentia which must be

rational nexus to the object sought to be achieved?

(vii) Whether the teachers can be differently treated in the matter of grant of pensionary benefits?

(vii) Whether the resolution no. 582 dated 17.7.2018 is arbitrary and violative of Articles 14 and 16 of the Constitution of India?

(viii) Whether the teachers who retired before 1.4.2006 before coming into force the 6th PRC can claim that they form homogeneous class like the teachers retired after 1.1.2006?

20. It is true that the State has competence to fix cut-off date but it is equally true that the fixation of cut-off date must have rational basis and must satisfy the requirement of test of reasonableness.

21. In order to answer the issue of approach of Court in deciding the validity of Government decision, it would be appropriate to discuss the principles laid down in the case of Hari Mohan Singh & Ors. Vs. The State of Bihar & Ors in CWJC No. 9617 of 2011 & analogous cases vide judgment dated 8.11.2017 with regard to (1) Approach of the Court in deciding the constitutional validity of Statute and (2) rational behind cut off date, Para-31 to 33 of the judgment of the Apex Court in the case of Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla: (2016) 3 SCC, 619, for the purpose of purposive interpretation, are relevant and quoted below:

31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/ purpose of such a provision is achieved thereby. The principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:

"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."

32. Of the aforesaid three components, namely, language, purpose and discretion "of the court", insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the test is designed to actualise. It is the function that the test is designed to fulfill."

33. We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well."

22. In the aforesaid judgment the Apex Court has noted the principle of purposive interpretation and purposive construction referring to the Aharon Barak annotation and noted that language, purpose, and discretion are the three basic components of purposive interpretation. The core principle discussed by the Apex Court in that judgment is to ascertain what is designed to accomplish and the court is supposed to realise the goal that the legal text is designed to realise.

23. The Apex Court has also laid down the principle to be followed in considering the validity of the Statute in the case of State of Bihar & Ors. Vs. Bihar Distillery Limited and others: (1997) 2 SCC 453, paras 17 to 20 of the said judgment is quoted below:

17. Now coming to the reasoning in the impugned judgment, we must say with all respect that we have not been able to appreciate it. The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application. Now, the result of the impugned Judgment is that the Amending Act has become an exercise in futility - a purposeless piece of Legislation. And this result has been arrived at by pointing out some drafting errors and some imperfection in the language employed. If only the High Court had looked into the minutes of the meeting dated 15th December, 1989 and the two letters of the Commissioner aforementioned, it would have become clear that the Amending Act was doing no more than repeating contents of the said letters and placing the legislative imprimatur on them. As the impugned judgment itself suggests, part of the imperfection of language is perhaps attributable to translation from Hindi to English. Indeed, it is surprising that the

Court has not even referred to the long preamble to the Act which clearly sets out the context and purpose of the said enactment. It was put in at such length only with a view to aid the interpretation of its provisions. It was not done without a purpose. To call the entire exercise a mere waste is, to say the least, most unwarranted besides being uncharitable. The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and the Executive are expected to show due regard and deference to the Judiciary. It cannot also be forgotten that our constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme.

18. Though the above propositions are well settled, it may not be out of place to refer to a few decisions. In *Charanjit Lal Chowdhary v. Union of India* [A.I.R. 1951 S.C. 41], Fazal Ali, J. stated: "it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles". In *Burrakur Coal Company v. Union of India* (A.I.R. 1961 S.C. 654 AT 963], Mudholkar, J., speaking for the Constitution Bench, observed: "Where the validity of a law made by a competent legislature is challenged in a court of law, that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained."

19. We may quote the pertinent propositions enunciated in *Ram Krishna Dalmia, Etc. v. Justice S.R. Tendolkar & Others Etc.* [A.I.R. 1958 S.C. 538] to the following effect:

"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and.."

24. We may also refer to the following perceptive observations in the decision of Lord Denning in *Seaford Court Estates Ltd. v. Asher* [1949 (2) K.B. 481]:

"Whenever a statute comes up for consideration it must be remembered that it is not within human power to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing

himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsman have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in *Heydon's case*, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden. . . . Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

25. In view of the decision of the Apex Court discussed above, we are required to proceed on the well settled principle and presumption as to legality and validity of government decision unless the decision is found to be abnoxious and does not satisfy the twin test of reasonableness, (a) classification based on intelligible differentia and (b) the classification must have rational nexus to the object sought for.

26. In the light of the discussions above, the Court finds that the Government resolution does not satisfy the test of rationality in drawing distinction between those retired after 1.1.2006 and before 23.09.2009 and after 23.09.2009. The Court is of the considered view that there is no rational behind the exclusion of the teachers retired after 1.1.2006 and before 23.09.2009 and those who retired after 23.09.2009, the Court may not have any difficulty in holding the notification as arbitrary. So far as exclusion of teachers retired after 1.1.2006 and before 23.09.2009 as those retired after coming into force 6th PRC forms one Homogeneous class.

27. The Apex Court in *D.S.Nakara and others Vs. Union of India*: AIR 1983 Supreme Court 130, has elaborately discussed the principles applicable in fixation of cut-off date in paras 2,11,15,31,35,49 and 58 which are quoted below:-

"2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ('1972 Rules' for short) form a class as a whole ? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date ? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract

Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14 ? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.

11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.*: AIR 1958 SC 538) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

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

31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Art. 309 and clause (5) of Art. 148 of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

35. With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme.

The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned Government servant actually retired from service.

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 31st March, 1979 and retiring from service on or after the 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 severed 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.

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

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

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

28. From the discussion of the Apex Court in these paragraphs, it is evident that classification for the purpose of computation of pension from the homogeneous class of pensioners was held to be arbitrary. Therefore, in order to attract the judgment of the Apex Court in D.S.Nakara case (supra), this Court has to examine whether the teachers retired after 1.1.2006 and before 23.09.2009 form heterogeneous class or homogeneous class.

29. It may not be out of place to mention here that the Apex Court has considered the judgment in D.S.Nakara case (supra) in various other cases. In the case of Krishna Kumar Versus Union of India: (1990) 4 SCC 207, the Apex Court has drawn distinction if the petitioner forms heterogeneous and not homogeneous class. Similar was the view expressed by the Apex Court in Indian Ex-services League & Ors. Vs. Union of India: (1991) 2 SCC 104. The Constitution Bench of the Apex Court held out that the decision in D.S.Nakara has to be read for limited application and it cannot be enlarge to cover all claims made by pensioners. Para 4 is quoted below.

"4. After summing up the concept of pension as above, the Constitution Bench set out the challenge of the petitioners in that case and indicated that the challenge was merely to that of the scheme by which its benefits were confined to those who retired from service after a certain date. Even though, undoubtedly the benefit of the scheme is available only from the specified date irrespective of the date of retirement of the concerned Government servants, it was pointed out that all pensioners irrespective of the date of their retirement constitute one class for grant of the benefits of the liberalised pension scheme and no further classification within them is permissible for this purpose with reference to their date of retirement. This was stated thus:

"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 worst off than those who retired later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory..... The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art.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 Art. 14".

30. In fact, the Apex Court has examined the fixation of cut-off date in the matter of grant of benefit in normal cases in the case of *State of West Bengal & Ors. Vs. Ratan Behari Dey & Ors.*: (1993) 4 SCC 62. The Apex Court has examined the competence of the State or its instrumentalities as to the change of the service condition including terminal benefits as well as pensionary benefits. The Apex Court has discussed the core principle in paragraphs 4 to 10 which are relevant and quoted hereinbelow:

"4. The writ petitioners (respondents 1 to 43 in these appeals) approached the High Court of Calcutta in the year 1985 for issuance of writ of mandamus applying the said Regulations to all those employees who retired even prior to April 1, 1977. The prayer was granted as prayed for. The High Court has mainly relied upon the decision of this Court in *D.S. Nakara and Ors. v. Union of India*: (1983) 1 SCC 305. The High Court was of the opinion that all the retired employees of the Corporation constituted one single class and classifying them into two categories with reference to April 1, 1977 is neither reasonable nor is it in any manner related to the object of the Regulations. The correctness of the said view is challenged in these appeals.

5. The learned Counsel for the appellants, S/Sri S.B. Sanyal and D.N. Mukherjee

relied strongly upon the later decision of this Court in *Krishena Kumar v. Union of India and Ors.*: (1990) 4 SCC 207, a decision of the Constitution Bench. It is submitted that the specification of April 1, 1977 as the date from which the Pension Scheme provided by 1982 Regulation was to come into force was neither arbitrary nor discriminatory. The writ petitioners who had retired prior to April 1, 1977 and had drawn out the terminal benefits permissible to them, constituted a different class from those who retired after April 1, 1977 and were governed by Regulations. Counsel submitted that the High Court was not right in holding that the Government and Corporation have not satisfactorily explained the reasons for specifying April 1, 1977 as the date from which the Regulations were given effect to. They submitted that the representation of the employees for grant of pension was reiterated in the year 1977 and the appointment of Pay Commission to examine their claim was also ordered in the financial year 1977-78. Though the Commission submitted its report later and it was accepted after some time, the Government was justified in fixing the first day of the financial year 1977-78 as the date from which the said Regulations were to be given effect to.

6. Sri P.P. Rao, learned Counsel appearing for the respondents 1 to 43 not only relied upon the principle of *Nakara* but also tried to distinguish the decision in *Krishena Kumar*. He submitted that the Regulations were not merely prospective; they were given retrospective effect on and from April 1, 1977. The employee who retired on or after April 1, 1977 but prior to the date of publication of the Regulations were situated similarly to the writ petitioners. All of them were governed by the Provident Fund Scheme. But the Regulations created a distinction among them with reference to an artificial date viz., April 1, 1977. Those who retired earlier to the said date were made ineligible for the benefit of the Pension Scheme while those who retired on or after the said date were made eligible. A similar option, as has been given to the employees retiring on or after April 1, 1977 but before the date of publication of the Regulations, ought to have been given to all those employees who retired prior to April 1, 1977 but were alive on the said date. Since this was not done, the appellants must be held to have discriminated against the employees retiring prior to April 1, 1977.

7. In our opinion, the principle of *Nakara* has no application to the facts of this case. The precise principle enunciated in *Nakara* has been duly explained in *Krishena Kumar* by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay-scales as also terminal benefits/pensioners benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that behalf. It appears that in the Calcutta Corporation, a pension

scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced Under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the Fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive years in the year 1977. may be because in that-year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in specifying the said date. It may also be that, that was the year in which the Left Front came into power in that State, but that does not detract from the validity of the aforesaid reasons assigned by the State in its counter-affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High Court that the reasons assigned by the State Government are neither relevant not acceptable.

8. In this context, it may be remembered that the power of the State to specify a date with effect from which, the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint of discrimination must fail.

9. Now coming to the argument of Sri P.P. Rao that the Regulations bring about an unreasonable classification between similarly placed employees in concerned, we must say that we are not impressed by it. It is not submitted that the Corporation had no power to give retrospective effect to the Regulations. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, as repeatedly held by this Court, in such cases the State cannot, as the expression goes, pick a date out of its hat. It has to prescribe a date in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, question of discrimination does not arise. Reference in this behalf may also be had to the decision of this Court in *Sushma Sharma v. State of Rajasthan*: 1985 Supp. Scc 45, a decision of the Division Bench comprising

E.S. Venkataramiah and Sabyasachi Mukherji, JJ.

10. As rightly pointed out in *Krishna Kumar, Nakara* was a case where an artificial date was specified classifying the retirees, governed by the same Rules and similarly situated, into two different classes, depriving one such class of the benefit of liberalized Pension Rules. It was found in that case that the specification of the date (from which the liberalised Rules were, to come into force) was arbitrary. Whereas in this case, the employees retiring prior to April 1, 1977 and those retiring thereafter were governed by different sets of Rules. The argument to the contrary may mean that the Government can never change the conditions of service relating to retirement benefits with effect from a particular date. No such absolute proposition can be stated that while effecting any such change, no date from which such change will come into force can be specified. As stated above, a date can be prescribed but such date should not be drawn in such a manner as to bring about discrimination between persons situated similarly i.e., in a manner violative of Article 14. This aspect has been elaborately dealt with and explained in *Krishna Kumar* and we do not think it necessary to repeat the same."

31. Again in the case of *Commander Headquarter, Calcutta & Ors. Vs. Capt. Biplabendra Chanda*: (1997) 1 SCC 208 the Apex Court considered the applicability of new and revised rule which were not given retrospective effect like the present one. The Apex Court noticing the applicability of Rule with effect from 1.1.1986 held out that there is no infirmity in fixing cut off date to come into force the new rule referring to the judgment of the Constitution Bench in *Krishna Kumar Vs. Union of India*, paras 4 and 5 of the said judgment is quoted below:

"4. We are of the opinion that the ratio of *D. S. Nakara* (AIR 1983 SC 130) has no application here. *D. S. Nakara* prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised Pension Rules as the cut- off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1.01.1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from 1.01.1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be.

5 The decision in *D. S. Nakara* (AIR 1983 SC 130) has indeed been explained by two subsequent Constitution Bench decisions of this Court in *Krishna Kumar V/s.*

Union of India, (1990) 4 SCC 207 and Indian Ex-Services League V/s. Union of India, (1991) 1 SCR 158 : (1991 AIR(SCW) 327). In the latter decision, it has been held that "the petitioners' claim that all pre-1-4-1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices 'A', 'B' and 'C' for each rank is clearly untenable and does not flow from the Nakara decision". We may also refer in this connection to the observations in another decision of this Court in State of West Bengal V/s. Ratan Behari Dey (1993) 4 SCC 62 : (1993 AIR(SCW) 2980, Paras 7 and 8) to the following effect :

"... it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits / pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits / pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that behalf... the power of the State to specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory. Since we have found that the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint of discrimination must fail."

32. The Apex Court has again considered the case of fixing cut off date for the purpose of judicial review with reference to D.S. Nakara in the case of Govt. of Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors.: (2008) 14 SCC 702, paras 6 to 9 of the said judgment is guiding matrix for the purpose of the present case which is quoted below.

"6. No doubt in D.S. Nakara & Ors. vs. Union of India 1983(1) SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab & Ors. vs. Amar Nath Goyal & Ors. (1983) 1 SCC 305.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular

reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide *State of Bihar vs. Ramjee Prasad* 1990(3) SCC 368, *Union of India & Anr. vs. Sudhir Kumar Jaiswal* 1994(4) SCC 212 (vide para 5), *Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors.* 2004 (2) SCC 76 (vide para 31), *University Grants Commission vs. Sadhana Chaudhary & Ors.* 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in *Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr.* 2008(3) 3 JT 221 and in *Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi* 2008(2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain."

33. In the case of *State of Himachal Pradesh and others Vs. Rajesh Chander Sood and others*: (2016) 10 SCC 77, the Apex Court has examined the issue of withdrawal of pension scheme and the prospectivity of such revocation of pension by fixing cut off date, the Apex Court examined the various aspect of constitutionality of policy decision regarding the withdrawal of pension scheme. The Apex Court upheld the legality and constitutionality of the policy decision of repeal notification vide paras 75,76 and 95 which are worth quoting.

"75. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view, that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut- off date can therefore legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are therefore satisfied to conclude, that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned repeal notification dated 2.12.2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in the *R.R. Verma* case (supra), wherein this Court held, that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the above mentioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power, should be in consonance with all legal and statutory obligations.

76. It is equally true, that the power of administrative review can only be exercised, for a good and valid justification. Such justification besides being founded on reasonable consideration, should also not be violative of any legal

right - statutory or constitutional, vested in the affected employees. Insofar as the permissibility of the administrative action taken, in issuing the impugned repeal notification dated 2.12.2004 is concerned, whether the said power was exercised by the State Government for good and valid reasons, and/or whether the same violated any statutory or constitutional right vested in the respondent-employees, shall be examined by us in the succeeding paragraphs.

95. Our determination, with reference to all the issues canvassed above, would also answer the question left open in paragraph 52 above. Namely, whether or not the contingent right, as was vested in the respondent- employees, was binding or irrevocable. We may now sum up the position determined by us, in the foregoing paragraphs. It is no doubt true that we have concluded, that 'the 1999 Scheme', created a contingent right in the respondent-employees. The respondent-employees comprise of all those employees of corporate bodies, who had opted for 'the 1999 Scheme', immediately on its having been introduced; all those, who were deemed to have opted for 'the 1999 Scheme' by not having exercised any option; and all those who were appointed after the introduction of 'the 1999 Scheme'. The first issue that arises is, whether any express right or obligation existed, between the respondent-employees and the State Government. One can understand, such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo - a trade off based on a relationship (as between, an employer and employee). We have however concluded, that there was no such relationship between the State Government, and the respondent-employees. All the corporate bodies in which the respondent-employees were/are engaged, are independent juristic entities. It is therefore apparent, that the claim raised by the respondent-employees, is not based on any right or obligation between the parties. We have also examined the submissions advanced by learned counsel premised on various constitutional provisions (Articles 14, 16, 21 and 300A of the Constitution of India), but have found, that no right can be stated to have been violated, thereunder. We have also examined the other legal submissions, advanced on behalf of the respondent-employees, and have found the same, as unjustified. The issue whether administrative review was permissible, after 'the 1999 Scheme' had become operational, has been answered in the affirmative. And finally, we have concluded, that the exercise of such power, while issuing the repeal notification, was based on due consideration. We therefore hereby uphold, the legality and constitutionality of the notification dated 2.12.2004."

34. Financial Constraint may be a ground for fixation of a particular cut-off date as held out by the Apex Court in (2008) 14 SCC 702

35. But again it has to be seen whether financial impact is crucial in the matter of excluding the teachers who retired after 1.1.2006 and before 23.09.2009 or not particularly when the State Government has adopted 6th PRC w.e.f. 1.1.2006. The Apex Court in the case of Kallakkurichi Taluk Retired Officials Association, Tamil Nadu & Ors. Vs. State of Tamil Nadu & Ors. (2013) 2 SCC 772,

has examined the issue of financial implication. In the present case the Court has to see financial effect on recipient of pension. The retiree before 1.1.2006 and after 1.1.2006 and further before 23.09.2009. It would be useful to quote the observation of the Apex Court in (2013) 2 SCC 772.

"32. First and foremost, it needs to be understood that the quantum of discrimination, is irrelevant to a challenge based on a plea of arbitrariness, under Article 14 of the Constitution of India. Article 14 of the Constitution of India ensures to all, equality before the law and equal protection of the laws. The question is of arbitrariness and discrimination. These rights flow to an individual under Articles 14 and 16 of the Constitution of India. The extent of benefit or loss in such a determination is irrelevant and inconsequential. The extent to which a benefit or loss actually affects the person concerned, cannot ever be a valid justification for a court in either granting or denying the claim raised on these counts. The rejection of the claim of the by the High Court, merely on account of the belief that the carry home pension for employees who would retire after 1.6.1988, would be trivially lower than those retiring prior thereto, amounts to bagging the issue pressed before the High Court. The solitary instance referred to above, which is not a matter of dispute even at the hands of the first, clearly demonstrates, that in a given situation, an employee retiring on or after 1.6.1988 could suffer a substantial loss, in comparison to an employee retiring before 1.6.1988. We are, therefore satisfied, that the High Court clearly erred while determining the issue projected before it.

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, *State of Kerala vs. N.M. Thomas* (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.

36. The only position adopted in the pleadings filed before this Court for introducing a cut off date for differential treatment, is expressed in paragraph 4 of the counter affidavit, filed by the State of Tamil Nadu, which is being extracted herewith:-

" With reference to the averments made in the Grounds of the Special Leave Petition, I submit that the fifth Pay Commission has revised pay and pension

effect from 1.6.1988. As per the recommendation of the above Pay Commission, the Government had issued orders for the revision of pension and Family Pension effect from 1.6.1988 in G.O.Ms. No. 810. Finance (PC) Department, dated 9.8.1989. It is submitted that the fourth Tamil Nadu Pay Commission has recommended that at the end of the period of three years, the Dearness Allowance sanctioned upto that period could be treated as Dearness Pay. The Fourth Pay Commission revision was given effect from 1.10.1984. Based on the above recommendation, the Government has issued orders in G.O.Ms. No.371, Finance, dated 30.4.1986, read Government letter No.124414/Pension/86-1, dt. 11.2.1987, that the Dearness Allowance sanctioned upto 30.9.1987 shall be treated as Dearness Pay for the purpose of pensionary benefit in the case of the Govt. Servant retiring on or after 1.10.1987.

The orders issued in G.O.Ms. 371, Finance dated 30.4.1985 as amended in Government letter No.70707- A/Pension /86-1, dated 8.7. 1986 read as follows: -

"The Fourth Tamil Nadu Pay Commission have among other things recommended that at the end of a period of three years the Dearness Allowance sanctioned upto the period could be treated as Dearness Pay in order to ensure a reasonable pension level. The Government accept the recommendation of the Commission and direct that in the case of Government servant, who will be retiring on or after 1.10.1987, the Dearness Allowance sanctioned upto 1.10.1987 shall be reckoned as Dearness Pay for purpose of pension in the case of death of a Government servant occurring on or after 1.10.1987 while in service the Dearness Allowance sanctioned upto 1.10.1987 shall be treated as Dearness Pay for the purpose of computing Family Pension." (emphasis supplied).

It is therefore, evident, that the State Government has not disclosed any object which is desired to achieve by the cut off date. Most importantly, the financial constraints of the State Government, were not described as the basis/reason for the classification made in the impugned Government order dated 9.8.1989.

37. The issue in hand needs to examine from another perspective as well. It must be clearly understood, that no employee has a right to draw "dearness allowance" as "dearness pay" till such time as the State Government decides to treat "dearness allowance" as "dearness pay". And therefore, the State Government has the right to choose whether or not "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government not to treat any part of "dearness allowance" as "dearness pay". In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government to treat a fraction, or even the whole of "dearness allowance" as "dearness pay". Based on Rule 30 of the Pension Rules, it is clear that the component of "dearness pay" would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of "dearness allowance" would be treated as "dearness pay", it cannot

discriminate between one set of pensioners and another, while calculating the pension payable to them (for the reasons expressed in the preceding paragraph). of course, a valid classification may justify such an action. In this case, the State Government has not come out any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment.

38. The instant controversy should not be misunderstood as a determination of the total carry home pension of an employee. All the Government orders referred to above, deal the quantum of 'dearness allowance' to be treated as 'dearness pay' for the calculation of pension. 'Dearness pay' is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on 'dearness pay', rather than on the eventual carry home pension. The relevance and purpose of treating 'dearness allowance' as 'dearness pay', has been brought out in the foregoing paragraphs. Therefore, clearly, the object sought to be achieved by adding 'dearness pay' to the wage of a retiree, while determining pension payable to him, is to remedy the adverse effects of inflation. The aforesaid object has to be necessarily kept in mind, while examining the present controversy. Any classification out reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India.

39. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the herein (who had retired after 1.6.1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1.6.1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of 'dearness pay' to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government order dated 9.8.1989 placing employees who had retired after 1.6.1988 at a disadvantage, vis-à-vis the employees who retired prior thereto, by allowing them a lower component of 'dearness pay', is clearly arbitrary and discriminatory, and as such, is liable to be set aside, as violative of Articles 14 and 16 of the Constitution of India.

36. It is to be noted here that the teachers retiring after 1.1.2006 and further before 23.09.2009 and after 23.09.2009 form one homogeneous class as they are the teachers who continued in job after coming into force the 6th PRC and as such, the teachers who retired after coming into force the 6th PRC cannot be treated differently on artificial classification retirement before 23.09.2009 and after 23.09.2009. Thus, the Court has no difficulty in upholding the contention of the petitioners that the teachers retiring after 1.1.2006 and before 23.09.2009 and after 23.09.2009 form one homogeneous class and there should be no

distinction in the matter of grant of pensionary benefit and pro-rata reduction on non-completion of 33 years does not satisfy the twin test of reasonable classification as such benefit of full pension on completion of 20 years must accrue to the teachers recipient of 6th PRC.

37. On the question whether the respondents can treat the teachers differently, Mr. Lalit Kishore, learned Advocate General submitted that those who retired before coming into force the benefit of 6th PRC would be entitled to pension in terms of unrevised pay scale as they were in the basic pay scale of lecturer of Rs. 8000-13500/-, Senior Lecturer 10,000-15,200/-, Lecturer Selection Grade 12,000-18,300/-, Reader 12000-18,300/-, University Professor 16,400-22400/- but in order to extend favour the State Government decided to grant them the benefit of initial pay scale in the pay band plus AGP for the purpose of grant of pensionary benefits and thus the State has taken care that the financial interest of the teachers who retired in unrevised pay scale are protected. He submits that there is no arbitrariness in the decision of the State Government in fixing the pension on the basis of basic pay + grade pay. The claim of the petitioners for grant of a corresponding fitment in the revised pay band is unsustainable. The benefit of fitment in revised pay band + grade pay is only available to those who were in service on 1.1.2006, the date on which the revised pay scale was introduced.

38. The Court has considered the rival submissions of the parties. In CWJC 5192 of 2015 the petitioner retired on 30.4.2004 i.e. before implementation of the UGC pay scale i.e. before 1.1.2006. If the contention of the petitioner is accepted that the revised pay scale and the corresponding fitment is applicable in the matter of grant of pension then there is practical difficulty in fixing the cut-off date. The benefit of revised pension if extended before 1.1.2006 in that situation, one does not find to what further i.e. upto which date the teachers retiring would be entitled to the benefit of revised pension based on corresponding fitment in the revised pay scale. After thoughtful consideration of the contention of the parties, the Court is of the view that the fitment is available to those who retired after 1.1.2006 and it cannot be extended to any teacher who retired before 1.1.2006. However, if the State has taken a decision to grant benefit of basic pension to the teachers based on basic payment and according to pay, then the Court does not find any infirmity in the action of the respondents.

39. So far as the last limb of argument that pension is to be given in terms of the Central Government notification dated 18th January, 2017 is concerned, the State is free to adopt its policy in the matter of grant of pension having regard to the financial constraints and its policy decision which cannot be faulted unless it is arbitrary and without any cogent justification. Since the State has taken a conscious decision vide resolution No. 582 dated 17.7.2018, the Court does not find any infirmity particularly in view of the fact that the State Government in Finance Department Resolution No. 820 dated 23.9.2009 applies on uniform basis to the teachers for grant of basic pay, grade pay in the revised pay scale.

For grant of pension the Office Memorandum of the Central Government dated 6th April, 2016 cannot be ipso facto applied as the memorandum is applicable to the Central Government and the State Government is free in the matter of taking decision for grant of pension and pensionary benefits and may take appropriate decision as to adoption of pension scheme with modification considering their financial constraint. But in no case the State can adopt two different modality for pension fixation to Homogeneous class of teachers as well as the State cannot adopt different modalities for pension fixation for State Government employees and University employees.

40. Adverting to the submission of the petitioners that the decision of the State is violative of legitimate expectation inasmuch as the past practice of the State to adopt the same modalities as practiced by the Central Government in the matter of grant of pensionary benefit. The submission is misconceived in view of the latest judgment of the Apex Court in Kerala State Beverages (M and M) Corporation Limited Vs. P. P. Suresh and others: (2019) 9 SCC 710. Paras 14 to 20 reads as under:

B. Legitimate Expectation

"14. The main argument on behalf of the Respondents was that the Government was bound by its promise and could not have resiled from it. They had an indefeasible legitimate expectation of continued employment, stemming from the Government Order dated 20.02.2002 which could not have been withdrawn. It was further submitted on behalf of the Respondents that they were not given an opportunity before the benefit that was promised, was taken away. To appreciate this contention of the Respondents, it is necessary to understand the concept of legitimate expectation.

15. The principle of legitimate expectation has been recognized by this Court in Union of India v. Hindustan Development Corporation & Ors.: (1993) 3 SCC 499. If the promise made by an authority is clear, unequivocal and unambiguous, a person can claim that the authority in all fairness should not act contrary to the promise.

16. M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation in Punjab Communications Ltd. v. Union of India & Ors. (1999) 4 SCC 727. He referred (at SCCpp. 741-42 para 27) to the judgment in Council of Civil Service Unions and Ors. v. Minister for the Civil Service: 1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935 (HL) in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which,

27. (i) he had in the past been permitted by the decision- maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn".

17. Rao, J. observed in this case, that the procedural part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced.

18. It has been held by R. V. Raveendran, J. in *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381, (2006) SC (L & S 1986) that legitimate expectation is not a legal right. Not being a right, it is not enforceable as such. It may entitle an expectant:

"(a) to an opportunity to show cause before the expectation is dashed; or

(b) to an explanation as to the cause for denial. In appropriate cases, the Courts may grant a direction requiring the authority to follow the promised procedure or established practice."

19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such changes is something that is inherent in our constitutional form of government.

20. The decision makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."

41. On consideration of the materials on record, the Court finds that teachers who retired after coming into fore the 6th PRC forms one homogeneous class and those who had already retired cannot be clubbed together as those retired before 1.1.2006 forms heterogeneous class, more so, there will be no end to the retrospectivity in the matter of extending similar treatment like the teachers who retired before 1.1.2006. In a given situation it may be extended to the teachers who retired availing 3rd or 4th PRC, in such situation the Court cannot extend benefit which was available to the teachers who retired after 1.1.2006. The Court does not find substance in the submission of Mr. Purushottam Jha.

42. In the result the Court holds and declare as follows:-

(i) Teachers retired after 1.1.2006 form one Homogeneous Class and entitled to

identical treatment like all other teachers retired after 23.09.2009 for the purpose of entitlement of full pension on completion of 20 years of service. They are also entitled to pension fixation on the same line the teachers who retired after 23.09.2009.

(ii) Teachers retired before 1.1.2006 form Heterogeneous Class and as such the State can adopt different yardstick for fixation of their pension.

(iii) The benefit of corresponding pay revision in revised pay scale is available to only those retired on or after 1.1.2006.

(iv) The State is obliged to adopt the same modalities applicable to State Government employees in the matter of pension fixation of retired teachers.

(v) The State has competence to adopt the Central Government memorandum with modification considering financial constraints.

(vi) The Notification No. 852 dated 17.07.2019 is not violative of Article 14 of the Constitution of India. However, that decision cannot defeat the claim of full pension to teachers retiring on or after 1.1.2006, if completed 20 years service.

(vii) The Court has not gone into the validity of resolution No. 592 dated 6.3.2019 as it was neither argued nor pressed.

43. Accordingly, CWJC No. 4649 of 2019 is allowed in the manner indicated above and CWJC No. 5192 of 2015 is dismissed.

44. In view of the above discussion and declaration, all other writ applications are disposed of.