



2025:DHC:5840-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11178/2023 & CM APPL. 43441/2023

PRIYANKA JAIN

.....Petitioner

Through: Dr. L.S Chaudhary with
Dr. Ajay Chaudhary, Mr. Bharat Chaudhary,
Ms. Vinita, Monika, Mr. Anirudh Sharma
and Mr. Vishesh Kumar, Advs.

versus

PUNJAB NATIONAL BANK AND ANR

.....Respondents

Through: Mr. Rajat Arora, Mr. Niraj
Kumar and Mr. Sourabh Mahala, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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17.07.2025

C.HARI SHANKAR, J.

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1. This writ petition assails the constitutional validity of Regulation 2(o)(c) of the Punjab National Bank (Employees) Pension Regulations, 1995¹, “so far as it restricts the benefit of family pension to a deceased employee’s daughter, on completing the age of 25 years”. The provision reads thus:

“2. **Definitions:**

¹ “the Pension Regulations”, hereinafter



In these regulations, unless the context otherwise requires :-

(o) “family” in relation to an employee means :-

c) son or daughter including widow or divorced daughter till he or she attains the age of twenty five years or up to his or her marriage or re-marriage, whichever is earlier including such son or daughter adopted legally.

2. Regulation 2(o)(c) is only a definition clause. It merely defines expressions used in the Pension Regulations. While, classically, a definition clause has no independent substantive operational existence, and becomes meaningful only when it is employed to understand the expression as it occurs in one or the other provision as contained in that statutory, or quasi-statutory instrument, nonetheless, if the definition of an expression, as contained in the definition clause, is itself invidiously discriminatory in nature, so as to violate Articles 14 or 16 of the Constitution of India, it renders itself vulnerable to challenge.

3. The grievance of the petitioner stems from the exclusion, in Regulation 2(o)(c) of the Pension Regulations, of unmarried daughters above the age of 25 from the definition of “family” for the purposes of applicability of the Regulations. Thus, the consequence of the impugned clause is that, while an unmarried daughter of a deceased employee of the Bank would be entitled to the benefit of the Pension Regulations and, consequently, to family pension thereunder, she becomes disentitled to family pension if she is over the age of 25,



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even if she is unmarried and otherwise satisfies the criteria stipulated for entitlement to family pension. Age, and age alone, excludes her. This, according to the petitioner, is completely unconstitutional, and cannot be allowed to remain on the statute book.

4. In its counter affidavit, the Bank, while otherwise seeking to support the validity of the impugned Regulation 2(o)(c), also refers to Regulation 40(1)(b) of the Pension Regulations, which, to the extent it is relevant, reads as under:

“40. **Period of payment of family pension**

1) The period for which family pension is payable shall be, –

b) this in the case of a son or daughter (including widowed/divorced) till she attains the age of twenty-five years or up to the age of his/her marriage/remarriage, whichever is earlier:

Provided the family pension payable to sons/daughters (including widowed/divorced) shall be discontinued/not admissible when the eligible son/daughter starts earning a sum in excess of ₹ 2550/- per month from employment in Government/private sector/self-employment etc:

Provided further that if the son or daughter of an employee is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely,

(i) If such son or daughter is one among 2 or more children of the employee, the family pension shall initially be payable to



the minor children in the order set out in clause (e) of sub- regulation (1) until the last minor child attains the age of 25 years and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him or her for life;

(ii) If there are more than 1 such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder above him or her ceases to be eligible:

Provided that where the family pension is payable to such twin children it shall be paid in the manner set out in clause (f) of sub-regulation (1); ...”

5. The nub of the controversy, quite simply, therefore, is whether the exclusion of unmarried daughters from entitlement to family pension, consequent on the death of her father, as envisaged by Regulation 40(1)(b), as well as Regulation 2(o)(c) of the Pension Regulations, is constitutionally sustainable.

6. We, therefore, have examined this aspect of constitutionality both in respect of Regulation 2(o)(c), as well as Regulation 40(1)(b), of the Pension Regulations. We have not restricted our determination to Regulation 2(o)(c), as Regulation 40(1)(b) is the substantive *avatar* of Regulation 2(o)(c), and is being cited as a defence to the challenge to the validity of Regulation 2(o)(c).



Rival Submissions and Analysis

7. We have heard Mr. L.S. Chaudhary for the petitioner and Mr. Rajat Arora for the Bank, at length.

8. Reliance by the Bank on the second proviso to Regulation 40(1)(b)

8.1 The Bank, in its counter-affidavit, has sought to emphasise the fact that the proscription on grant of family pension is not absolute, but stands relaxed, by the second proviso to Regulation 40(1)(b), in a case in which the unmarried daughter suffers from any disorder or disability of mind, or is physically crippled or disabled so as to render her unable to earn a living. In such cases, submits the Bank, the unmarried daughter, even after attaining the age of 25, would be eligible for family pension subject to satisfaction of the conditions envisaged in the proviso.

8.2 The argument is obviously unsustainable. The relaxation granted to unmarried daughters suffering from the conditions envisaged by the second proviso to Regulation 40(1)(b) cannot, quite obviously, be cited as a defence to the challenge, by the petitioner, to the exclusion of unmarried daughters above the age of 25 from family pension, except where they suffer from the conditions envisaged in the proviso.

8.3 Family pension, like pension itself, is not a charity. It is a



recognition for years of service rendered by the employee. It is, additionally, a means for the family of the deceased employee to tide over the financial distress in which it finds itself. If the employee, otherwise entitled to pension, dies, leaving his family in the lurch, family pension is intended to extend, to the surviving family of the employee, the pensionary benefits to which the employee would have been entitled, had he been alive. The entitlement of the family of the employee to family pension, therefore, does not stand on a pedestal lower than the entitlement of the employee himself to pension.

8.4 As such, the mere relaxation, envisaged in the second proviso to Regulation 40(1)(b) of the Pension Regulations, to the rigour of the main Regulation 40(1)(b), is no defence to the challenge to the validity of Regulation 40(1)(b) itself.

8.5 The reliance, by Mr. Arora, on the second proviso to Regulation 40(1)(b) is, therefore, obviously misguided.

9. On merits

9.1 It is practically fossilised in the law that a challenge to the constitutional validity of statutory or quasi-statutory enactment, predicated on Article 14 or 16 of the Constitution of India, has to be tested by ascertaining whether the provision results in an invidious discrimination between persons or classes of persons between or among whom there is no intelligible differentia or, if there is an intelligible differentia, the differentia has no rational nexus with the



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object of the concerned statutory or quasi-statutory instrument.

10. Clearly, the impugned Regulation 40(1)(b) of the PNB Regulations creates a distinction between unmarried daughters of deceased employees of the Bank who are below the age of 25 years and unmarried daughters of the employees of the Bank who are above the age of 25 years. It results in the cleavage of an otherwise homogenous class of unmarried daughters of a deceased Bank employee into two categories – daughters below 25 and daughters above 25.

11. The Court has, therefore, to examine whether this distinction constitutes an intelligible differentia, which has a rational nexus to the object of the provision.

12. As Mr. Rajat Arora, learned Counsel for the respondent, correctly submits, the object of family pension is to provide succour to the survivors of a deceased employee – in the present case, of the Bank.

13. We have queried of Mr. Arora as to how, if that is the object of family pension, there can be a distinction between unmarried daughters who are below the age of 25 years and unmarried daughters who are above the age of 25 years. Is it that unmarried daughters below the age of 25 years are in need of succour whereas unmarried daughters above the age of 25 years are not? Or is one category more in need of succour than the other?



14. Mr. Arora's submission is that there is a general belief that, by the time an unmarried daughter reaches the age of 25 years, she would have started earning her own livelihood or would have the capacity to stand on her own legs and attain self-sufficiency. He also submits that family pension is intended for persons who are not dependent on others and that this is also a governing consideration which has weighed with the framers of the Regulations in fixing the age of 25 years.

15. Let us examine the contention.

16. *J.S. Rukmani v. Govt of Tamil Nadu*

16.1 A bench of three learned Judges of the Supreme Court, in *J.S. Rukmani v Government of Tamil Nadu*², was seized with the issue of whether family pension would be denied to the petitioner J.S. Rukmani³ before the Supreme Court on the ground that her late husband was, at the time of his retirement, serving in Cannanore, which did not form part of the state of Tamil Nadu at the time of grant of family pension to her. Rukmani, being a lady without means, directly petitioned the Supreme Court under Article 32 of the Constitution of India. The Supreme Court issued notices to the States of Tamil Nadu and Kerala. Both states were represented. While the entitlement of Rukmani to family pension was not disputed, the states joined issue on the state on which the liability to pay the said pension would fall.

² 1984 Supp SCC 650

³ "Rukmani" hereinafter



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16.2 The Supreme Court observed that, as the Kerala Pension Rules applied only to government servants who retired on or after 1 April 1964, Rukmani could not claim family pension from the state of Kerala. The contention of the state of Tamil Nadu that the liability to pay family pension to Rukmani could not devolve on it as, by the time she became entitled to family pension, Cannanore, by virtue of the States Reorganisation Act which was enacted in the interregnum, was no longer in the state of Tamil Nadu, was found unsustainable in law. Though this is not the precise issue which arises for consideration before us, the following observations of the Supreme Court, as contained in para 9 of the report, are of relevance:

“... Only ground on which the State of Tamil Nadu sought to exclude the petitioners from the benefit of the family pension was that their respective husbands served at the time of their superannuation at places which as a result of the States Reorganisation Act, 1956 were no more in the State of Tamil Nadu but became parts of other successor States. We do not think any such limitation can be read in the notification dated May 26, 1979. It is true that by reason of the subsequent government order dated March 18, 1982 issued by the State of Tamil Nadu clarifying the notification dated May 26, 1979 the petitioners would be excluded from the benefit of the family pension since the places where their respective husbands were serving at the time of superannuation became part of States other than the State of Tamil Nadu. But the learned counsel appearing on behalf of the petitioners challenged the constitutional validity of the government order dated March 18, 1982 and contended that the place where a government servant was serving at the time of superannuation has no rational nexus with the object of granting family pension under the notification dated May 26, 1979 and that the government order dated March 18, 1982 is therefore discriminatory and void. This contention is, in our opinion, well founded and must be accepted. *The object of granting family pension under the notification dated May 26, 1979 is obviously to alleviate the economic distress of widows and other members of the family of government servants who retired after faithfully serving the State of Madras as also the successor State of Tamil Nadu and who subsequently died leaving widows and other*



members of the family. Now admittedly the widow of a government servant who was in employment of the former State of Madras and who retired before the reorganisation of the States would be entitled to family pension under the notification dated May 26, 1979 if the place where her husband was serving at the time of superannuation was situate in the territories of the successor, State of Tamil Nadu. If that be so, then it is difficult to see how the widow of a government servant who served the former State of Madras in the same manner and who retired before the reorganisation of the States should not be entitled to family pension under the notification dated May 26, 1979 merely because the place where her husband was serving at the date of superannuation subsequently came to form part of the territories of a State other than the State of Tamil Nadu as a result of the reorganisation of the States. The object of the notification dated May 26, 1979 does not warrant any such distinction to be made between the widows of one class of government servants and the widows of another class merely on the basis of the place where the government servant last served at the time of superannuation, although in both cases the government servant served the same State, namely, the former State of Madras and superannuated before the reorganisation of the States. We are therefore of the view that the restrictive limitation imposed by the government order dated March 18, 1982 confining the benefit of family pension to the members of the family of only those government servants who last served at a place falling within the territories of the successor State of Tamil Nadu must be held to be violative of Article 14 of the Constitution and hence unconstitutional and void.”

(Emphasis supplied)

17. ***D.S. Nakara v. UOI***

17.1 The linking of the entitlement of pension to a particular date immediately brings to mind the classic judgment of the Supreme Court, rendered by a Constitution Bench, in ***D.S. Nakara v UOI***⁴. In that case, the Supreme Court was concerned with executive instructions which made entitlement to pension dependent on whether the concerned government servant retired on or after 1 April 1979.

⁴ (1983) 1 SCC 305



The instructions restricted the entitlement to pension to government servants who retired on or after the said date. The constitutionality of the provision was challenged before the Supreme Court. The following passages, from the judgment of the Supreme Court, are illuminating:

“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 Article 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.

8. Primary contention is that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners. The expression “pensioner” is generally understood in contradistinction to the one in service. Government servants in service, in other words, those who have not retired, are entitled to salary and other allowances. Those who retire and are designated as “pensioners” are entitled to receive pension under the relevant rules. Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression “pensioners”.

9. *Is this class of pensioners further divisible for the purpose of “entitlement” and “payment” of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is*



correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual government servant happens to fall. In other words, all government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Article 14?

10. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in ***Maneka Gandhi v Union of India***⁵ from which the following observation may be extracted:

“[W]hat is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....”

11. The decisions clearly lay down that though Article 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)*

⁵ (1978) 1 SCC 248



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 that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see **Ram Krishna Dalmia v Justice S.R. Tendolkar**⁶). 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 Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in **In re Special Courts Bill, 1978**⁷ restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

“* * *

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

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

⁶ AIR 1958 SC 538

⁷ (1979) 1 SCC 380



(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

* * *”

13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in *Maneka Gandhi case* in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *E.P. Royappa v State of T.N.*⁸ it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

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

⁸ (1974) 4 SCC 3



14. Justice Iyer has in his inimitable style dissected Article 14 in *Maneka Gandhi* as under:

“That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of ‘executive excesses’ — if we may use current cliché — can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.”

Affirming and explaining this view, the Constitution Bench in *Ajay Hasia v Khalid Mujib Sehravardi*⁹ held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India v Nergesh Meerza*¹⁰ the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. *Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being 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.*

16. As a corollary to this well-established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and

⁹ (1981) 1 SCC 722

¹⁰ [(1981) 4 SCC 335]



legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. *The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved.* This approach is noticed in **Ramana Dayaram Shetty v International Airport Authority of India**¹¹ when, the Court observed that *a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*

17. *The basic contention as hereinbefore noticed is that the pensioners for the purpose of receiving pension form a class and there is no criterion on which classification of pensioners retiring prior to specified date and retiring subsequent to that date can provide a rational principle correlated to object viz. object underlying payment of pensions.* In reply to this contention set out in para 19 of the petition, Mr S.N. Mathur, Director, Ministry of Finance in para 17 of his affidavit-in-opposition on behalf of the respondents has averred as under:

“The contentions in paras 18 and 19 that all pensioners form one class is not correct and the petitioners have not shown how they form one class. Classification of pensioners on the basis of their date of retirement is a valid classification for the purpose of pensionary benefits.”

These averments would show at a glance that the State action is

¹¹ (1979) 3 SCC 489



sought to be sustained on the doctrine of classification and the criterion on which the classification is sought to be sustained is the date of retirement of the government servant which entitled him to pension. Thus according to the respondents, pensioners who retire from Central Government service and are governed by the relevant pension rules all do not form a class but pensioners who retire prior to a certain date and those who retire subsequent to a certain date form distinct and separate classes. It may be made clear that the date of retirement of each individual pensioner is not suggested as a criterion for classification as that would lead to an absurd result, because in that event every pensioner relevant to his date of retirement will form a class unto himself. What is suggested is that when a pension scheme undergoes a revision and is enforced effective from a certain date, the date so specified becomes a sort of a rubicon and those who retire prior to that date form one class and those who retire on a subsequent date form a distinct and separate class and no one can cross the rubicon. And the learned Attorney-General contended that this differentiation is grounded on a rational principle and it has a direct correlation to the object sought to be achieved by liberalised pension formula.

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? *If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date?* We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in ***Deokinandan Prasad v State of Bihar***¹² wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view

¹² (1971) 2 SCC 330



was reaffirmed in *State of Punjab v Iqbal Singh*¹³.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The *quid pro quo* was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see Retirement Systems for Public Employees by Bleakney, p. 33).

24. A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on “considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development”. And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as “Northcote-Trevelyan Report”. The Report was pungent in its criticism when it says that:

“[I]n civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system. [See Gerald Rhodes: Public Sector Pensions, pp 18-19] ”

¹³ (1976) 2 SCC 1



26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, “that is funny, I could not before”. It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and

“pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed”. (See Social Security Law by Prof. Harry Calvert, p. 1)

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions



under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

29. Summing up it can be said with confidence that *pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings*. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

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

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 Article 309 and clause (5) of Article 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 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, *the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice — social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.* Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v Union of India*¹⁴. Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under:

“Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.”

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that *if pensioners*

¹⁴ (1982) 1 SCC 618



*form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations *unsuited to their age or strength*. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.*

33. Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression “socialist” was intentionally introduced in the Preamble by the Constitution (Forty-second amendment) Act, 1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted:

“The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time....

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism ... to make the directive principles more comprehensive....”

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to



be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to PhD but the pursuit must be by those who have the necessary intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power — Legislative, Executive and Judiciary — to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal.

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.

36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.

37. If such be the goals of pension, if such be the welfare State which we propose to set up, if such be the goals of socialism and conceding that any welfare measure may consistent with economic capacity of the State be progressively augmented with wider width and a longer canvas yet when the economic means permit the augmentation, should some be left out for the sole reason that while in the formative years of the nascent State they contributed their mite but when the fruits of their labour led to the flowering of economic development and higher gross national produce bringing in larger revenue and therefore larger cake is available, they would be denied any share of it? Indisputably, viewed from any angle pensioners for payment of pension form a class. Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the scheme....

38. *What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?*

39. Both the impugned memoranda do not spell out the *raison d'etre* for liberalising the pension formula. In the affidavit in opposition by Shri S.N. Mathur, it has been stated that the



liberalisation of pension of retiring government servants was decided by the Government in view of the persistent demand of the Central Government employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the pre-liberalised pension scheme did not provide adequate protection in old age and that a further liberalisation was necessary as a measure of economic security. When Government favourably responded to the demand it thereby *ipso facto* conceded that there was a larger available national cake part of which could be utilised for providing higher security to erstwhile government servants who would retire. The Government also took note of the fact that continuous upward movement of the post of living index as a sequel of inflationary inputs and diminishing purchasing power of rupee necessitated upward revision of pension. *If this be the underlying intendment of liberalisation of pension scheme, can anyone be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date but those who had already retired did not suffer the pangs of rising prices and falling purchasing power of the rupee? What is the sum total of picture? Earlier the scheme was not that liberal keeping in view the definition of average emoluments and the absence of slab system and a lower ceiling. Those who rendered the same service earned less pension and are exposed to the vagary of rising prices consequent upon the inflationary inputs. If, therefore, those who are to retire subsequent to the specified date would feel the pangs in their old age, of lack of adequate security, by what stretch of imagination the same can be denied to those who retired earlier with lower emoluments and yet are exposed to the vagaries of the rising prices and the falling purchasing power of the rupee. And the greater misfortune is that they are becoming older and older compared to those who would be retiring subsequent to the specified date. The Government was perfectly justified in liberalising the pension scheme. In fact it was overdue. But we find no justification for arbitrarily selecting the criteria for eligibility for the benefits of the scheme dividing the pensioners all of whom would be retirees but falling on one or the other side of the specified date.*

42. *If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must*



have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

43. *Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. ...*

50. *There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event*



is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case under Article 14, the approach is not: “either take it or leave it”, the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge the liberalised pension scheme. They seek the benefit of it. *Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation and we find no difficulty in severing and quashing the same.* This approach can be legitimised on the ground that every government servant retires. State grants upward revision of pension undoubtedly from a date. Event has occurred revision has been earned. Date is merely to avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pension will have to be paid from the actual date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of each pensioner. But effective from the specified date future pension of earlier retired government servants can be computed and paid on the analogy of fitments in revised pay scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains the beneficial portion. It does not adversely affect future pensioners and their presence in these petitions becomes irrelevant. But before we do so, we must look into the reasons assigned for eligibility criteria, namely, “in service on the specified date and retiring after that date”. The only reason we could find in affidavit of Shri Mathur is the following statement in para 5:

“The date of effect of the impugned orders has been selected on the basis of relevant and valid considerations.”

51. *We repeatedly posed a question: what are those relevant and valid considerations and waited for the answer in vain.* We say so because in the written submissions filed on behalf of the Union of India, we find not a single valid or relevant consideration much less any consideration relevant to selection of eligibility criteria. The tenor is “we select the date and it is unquestionable; either take it or leave it as a whole”. The only submission was that the date is not severable and some submissions in support of it.

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 1000 per month. The President is, now, pleased to decide that with effect from March 31, 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.

59. In reading down the memoranda, is this Court legislating? Of course “not”. When we delete basis of classification as violative of Article 14, we merely set at naught the unconstitutional portion retaining the constitutional portion.

65. That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: “being in service and retiring subsequent to the specified date” for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the



classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of “being in service on the specified date and retiring subsequent to that date” in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ex. P-1, the words:

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

and in Exhibit P-2, the words:

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

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

18. *All Manipur Pensioners Association v State of Manipur*

18.1 *Nakara* has been followed in *All Manipur Pensioners Association v State of Manipur & Ors*¹⁵. In that case, the provision under challenge was in an Office Memorandum¹⁶ dated 21 April 1999 issue by the Government of Manipur, whereby employees who retired

¹⁵ (2020) 14 SCC 625



or after 1 January 1996 were entitled to a revised pension at rates higher than those applicable to employees who retired prior to that date.

18.2 Following *Nakara*, the Supreme Court held that the State Government was not justified in creating two classes of pensioners, in the form of pre-1996 retirees and post-1996 retirees. The following passages from the judgment are relevant:

“7. The short question which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the decision of this Court in *D.S. Nakara* shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners viz. pre-1996 retirees and post-1996 retirees for the purpose of payment of revised pension and whether such a classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not?

7.1. *At the outset, it is required to be noted that in the present case, the State Government has justified the cut-off date for payment of revised pension solely on the ground of financial constraint. On no other ground, the State tried to justify the classification. In the backdrop of the aforesaid facts, the aforesaid question posed for consideration before this Court is required to be considered.*

7.2. It is not in dispute that the State Government has adopted the Central Civil Services (Pension) Rules, to be applicable to the State of Manipur. The State has also come out with the Manipur Civil Services (Pension) Rules, 1977. *It is also not in dispute that subject to completing the qualifying service the government servants retired in accordance with the pension rules are entitled to pension. Therefore, as such, all the pensioners form only one homogeneous class. Therefore, it can be said that all the pensioners form only one class as a whole. Keeping in mind the increase in the cost of living, the State Government increased the quantum of pension and even pay for its employees. The State Government also enhanced the scales of pension/quantum of*

¹⁶ “OM” hereinafter



pension with effect from 1-1-1996 keeping in mind the increase in the cost of living. However, the State Government provided the cut-off date for the purpose of grant of benefit of revised pension with effect from 1-1-1996 to those who retired post-1996 and denied the revision in pension to those who retired pre-1996. The aforesaid classification between these pensioners who retired pre-1996 and post-1996 for the purpose of grant of benefit of revision in pension is the subject-matter of this appeal. As observed hereinabove, the aforesaid classification is sought to be justified by the State Government solely on the ground of financial constraint.

7.3. At the outset, it is required to be noted that in **D.S. Nakara**, such a classification is held to be arbitrary, unreasonable, irrational and violative of Article 14 of the Constitution of India. ...

8. Even otherwise *on merits also*, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be 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. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, 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 therefore must necessarily be satisfied.

8.1. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while



revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. *Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court.* At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in ***D.S. Nakara***. The decision of this Court in ***D.S. Nakara*** shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in ***D.S. Nakara*** and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement viz. pre-1996 retirees shall be entitled to revision in pension on a par with those pensioners who retired post-1996. The arrears be paid to the respective pensioners within a period of three months from



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today.”

19. We are of the considered opinion that, in the light of the law laid down in these decisions, the outcome of this litigation is predetermined. Though these decisions dealt with the issue of whether the entitlement to pension, or to liberalised or revised pension, could be based on a cut-off date, thereby rendering pensioners who retired prior to that date ineligible for revised pension, and those who retired thereafter eligible therefor, the principles clearly apply, *mutatis mutandis*, to the entitlement of dependent family members, of a deceased pensioner, to family pension.

20. The observations of the Supreme Court can easily be extrapolated to such a case. In line with the observations of the Supreme Court in the above decisions, unmarried daughters of a deceased employee of the Bank form one homogenous class. They cannot be artificially divided on the basis of a cut-off age of 25. Family pension, as the respondents themselves accept, is intended to provide succour to the family members of a deceased pensioner. Among such family members are unmarried daughters. The Pension Regulations do not disclose any basis for the cut-off age of 25, in the case of unmarried daughters. The counter-affidavit filed by the Bank proceeds on a presumption that unmarried daughters, once they cross the age of 25, are self-sufficient. No basis for this presumption is forthcoming. Insofar as the plea, of Mr. Arora, that, if the plea of the petitioner were to be allowed, it would result in severe financial burden on the Bank, already stand rejected by the Supreme Court in its



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decision in *All Manipur Pensioners Association*.

21. Besides, if the concern of the Bank was that daughters of a deceased pensioner, who were self-sufficient and possessed of the means to manage their lives, would nonetheless seek family pension, the solution, if at all, would be to incorporate, in the Pension Regulations, provisions to make the financial status of the dependent family members, including unmarried daughters, a governing criterion for entitlement to family pension. Of course, in such an event, the Pension Regulations would also have to provide objective and legally sustainable criteria on the basis of which the financial condition of such unmarried daughters would have to be reckoned. Here, again, it would not be permissible for the Bank to incorporate some artificial criterion, such as a cut-off age, as the sole basis to determine financial wherewithal. Any such basis would be unscientific and irrational, and would necessarily have to perish beneath the sabre of Articles 14 and 16 of the Constitution of India.

22. Besides referring to some general perception and general belief – for which, too, no empirical data is forthcoming – Mr. Arora has not been able to justify, on the basis of any principle of science or economics, the presumption that, on her 25th birthday, an unmarried girl crosses the Rubicon of dependency. The figure of 25 is based on no legally sustainable principle. It does not constitute a legitimate consideration on the basis of which unmarried daughters of deceased pensioners, who otherwise form one homogenous class, can be divided into two. It is, therefore, entirely arbitrary.



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23. It is worthwhile to reiterate, before proceeding or concluding the discussion, that the impugned provisions of the Pension Regulations do not make entitlement of an unmarried daughter to family pension dependent on her financial position or her financial wherewithal. Her entitlement is made solely dependent on her age.

24. In fact, the first proviso to Regulation 40(1)(b) of the Pension Regulations itself factors in the consideration of financial dependency by stipulating that the entitlement to family pension would cease if the son or daughter – which would include unmarried daughters – starts earning over ₹ 2550/–, per month. If anything, this provision may be regarded as unduly stringent. However, it is not under challenge, and it is not our remit, therefore, to offer any comment in that regard. The apprehension of the Bank that, if a cut-off age is not stipulated, unmarried daughters possessed of the financial wherewithal to fend for themselves would also seek to claim family pension, however, stands addressed.

25. Mr. Arora also submitted that, if the regulation is to remain open-ended, it would result in unmarried daughters becoming eligible forever.

26. The submission which is one which hinges on imponderables. The entitlement to family pension survives only till the daughter is unmarried. If, beyond the age of 25 years the daughter marries, she is no longer entitled to family pension under the said clause. The



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entitlement would also cease if the daughter commences earning more than ₹ 2550/- per month. This proviso, in our view, more than amply protects the Bank, and is sufficient to allay the apprehension expressed by Mr. Arora.

27. We, therefore, are of the considered opinion that exclusion, from the benefit of family pension, of unmarried daughters of deceased employees of the Bank, on their attaining the age of 25, is unconstitutional, as it infracts Articles 14 and 16 of the Constitution of India.

28. Regulations 2(o)(c) and 40(1)(b), to the extent they render unmarried daughters who are above the age of 25 years as ineligible for family pension are, therefore, struck down. It is declared that unmarried daughters of deceased employees of the Bank would not become *ipso facto* disentitled to family pension merely because they are 25 years of age or above, provided they satisfy the other stipulations and conditions envisaged in the Pension Regulations for entitlement to family pension.

29. As, till today, the respondents have not granted family pension to the petitioner only because of the existence of the impugned Regulations on the statute book, we do not think it would be appropriate to grant any arrears of pension. The petitioner would, therefore, be entitled to family pension, from today, subject to her satisfying the other conditions envisaged in the Pension Regulations in that regard.



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30. The petition is allowed to the aforesaid extent with no orders as to costs.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 17, 2025/AS