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

+ LPA 704/2008

CENTRAL BANK RETIREES'
ASSOCIATION & ORS.

..... Appellants
Through: Mr. Manoj Swarup, Advocate
with Mr. Ashish Mohan,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents
Through: Ms. Meera Mathur, Advocate for
R-3, 4 and 5.
Mr. A.K.Bhardwaj, Advocate for
UOI.
Mr. Sanjay Bhatt and Mr. Arvind
Kumar, Advocates R-6 and 7.

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Reserved on 5th October, 2010
Date of Decision: 25th October, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J

1. The present Letters Patent Appeal has been filed challenging the judgment and order dated 6th June, 2008 whereby the learned Single

Judge dismissed the writ petition of the appellants being W.P.(C) 17825-28/2005. It is pertinent to mention that the appellants who were pre 1st January, 1986 retirees from various public sector banks, had challenged in the aforesaid writ petition, the cut off date of 1st January, 1986 for applicability/eligibility to the benefits under the Pension Regulations introduced by the respondents. The impugned applicability clause as contained in the Pension Scheme of one of the respondents, namely respondent no. 7, is reproduced hereinbelow :-

“(c) employees who were in service as on the 1st January, 1986 (excluding those on leave preparatory to retirement) and had retired before the 1st November, 1993, provided they exercise option to be governed by the said Regulations and refund within such period as specified, the Employer’s contribution to Provident Fund with interest received by them from the Corporation, together with simple interest at 6% per annum from the date of drawl till the date of payment.”

2. The learned Single Judge in his impugned order held that the issue raised in the present writ petition was no longer *res integra*. Learned Single Judge held that the Supreme Court in the case of ***All India Reserve Bank Retired Officers Assn. & Ors. Vs. UOI & Anr., 1992 Suppl. (1) SCC 664*** had upheld the cut off date of 1st January, 1986 for eligibility/applicability of Pension Regulations to employees. In the aforesaid case, the Supreme Court noticed that the scheme introduced by the Pension Regulations was not a liberalisation of the existing scheme but was a new scheme in respect whereof the retired employees had no legal vested right and, therefore, the executive/management could restrict the same in application to a

particular date having regard to the fact situation in which it was introduced. Additionally the Supreme Court held that if the Central Provident Fund retirees were not admitted to the new scheme, they could not make any grievance as they had already collected their retiral benefits under the CPF scheme, that means, the social security plan at the time of their retirement. Lastly, the Supreme Court held that upon the said payment, their relationship with employer had snapped and there was no continuing obligation inter se.

3. Learned Single Judge further pointed out that a similar cut off date in the Punjab National Bank Pension Scheme, 1995 was challenged by way of a writ petition before the Supreme Court. The said writ petition being W.P.(C) 467/1997 (***All India PNB Retired Officers Asscn. Vs. UOI & Ors.***) was dismissed by a Bench of three Judges of the Supreme Court vide order dated 17th November, 1998. The said order is reproduced hereinbelow :-

“No orders on application for intervention.

This Writ Petition is squarely covered by the judgment of this Court in All India Reserve Bank Retired Officers Assn. & Ors. Vs. UOI & Anr. (1992 Supp. (1) SCC 664). That judgment has rightly noted the distinction that Nakara’s case [1983 (1) SCC 30] does between a continuing scheme and a new scheme. So far as the judgments in M.C. Dhingra Vs. UOI & Ors. [1995 (7) SCC 634] and Dhan Raj & Ors. Vs. State of Jammu & Kashmir & Ors. [JT 1998 (2) SCC 590] are concerned, they apply to those who are pensioners and who are treated differently so that they draw pension at different rates.

The Writ Petition is dismissed. But for the fact that the petitioners are retired employees, we would have made an order of exemplary costs.”

4. Consequently, the learned Single Judge after relying upon the aforesaid two judgments of the Supreme Court and the principle of adherence to precedents dismissed the appellants’ writ petition.

5. Mr. Manoj Swarup, learned counsel for appellants urged that in view of the subsequent recommendation of Fifth Pay Commission wherein the disparity in the amount/calculation of pension between pre and post 1st January, 1986 retirees of the Government had been removed, the cut off date of 1st January, 1986 under the Pension Regulations had lost its significance. Consequently, according to him, the judgment of the Supreme Court in ***D.S. Nakara & Ors. Vs. Union of India, 1983 (1) SCC 305*** would apply on all fours to the present case. Mr. Swarup lastly submitted that in view of significant change in circumstances, the decisions in ***All India Reserve Bank Retired Officers Assn. & Ors.*** (supra) and ***All India PNB Retired Officers Assn.*** (supra) were no longer good law and the same needed to be reconsidered. In support of his submission, Mr. Swarup relied upon a judgment of Supreme Court in ***Satyawati Sharma (Dead) By Lrs. Vs. Union of India & Anr., 2008 (5) SCC 287*** wherein it has been held as under :-

31. In H.C. Sharma v. Life Insurance Corporation of India (supra), the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by

observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those up-rooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of Harbilas Rai Bansal v. State of Punjab (supra), which was reiterated in Joginder Pal v. Naval Kishore Behal (supra) and approved by three-Judges Bench in Rakesh Vij v. Dr. Raminder Pal Singh Sethi (supra). In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

32. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.....”

6. Ms. Meera Mathur, Advocate, learned counsel for respondent nos. 3, 4 and 5 submitted that in the case of the banks, the Unions of the majority bank employees had raised a demand for payment of pension as a third retiral benefit. She stated that however, when the aforesaid

demand did not culminate into acceptance of the same, the Unions of the majority bank employees demanded that the pension scheme be introduced as a second retiral benefit. After due deliberation and prolonged negotiations held between the Respondent No. 5 – Indian Banks Association representing 58 member banks (including 19 Nationalised banks) and the majority Unions/Associations of the bank employees, an industry level settlement was signed between the respondent no. 5-Association as representing the majority employees of the banking industry. According to her, it was agreed between the parties that the pension scheme was to be broadly on the Central Government/Reserve Bank of India pattern. In fact, Ms. Mathur submitted that it was specifically agreed under the settlement which is a settlement under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 that pension as a second retiral benefit scheme in lieu of CPF shall be available to the following categories of the employees from 1st November, 1993 :

- a) who joined the service of the bank on or after 1st November, 1993;
- b) who were in the service of the bank as on 31st October, 1993 and who exercised option in writing as required by the scheme; and
- c) who were in the service of the bank on or after 1st January, 1986 but retired on or before 31st October, 1993 and who exercised their option in writing as required by the scheme.

7. Thus, according to Ms. Meera Mathur, the pension scheme in the banks was based on a negotiated settlement at an industry level and introduced as a statutory scheme in terms of the powers and provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 after consultation with the Reserve Bank of India and previous sanction of the Central Government. She pointed out that the pension schemes as adopted by the banks were laid before both the Houses of the Parliament before they were introduced in the shape of Regulations in 1995.

8. Ms. Meera Mathur also submitted that as the impugned scheme introduced by the respondents was a new scheme and not a liberalisation of the old scheme, the principle laid down by the Supreme Court in *D.S. Nakara & Ors.* (supra) would not be applicable in the present case. She lastly submitted that the issue raised in the present petition was no longer *res integra* in view of the validity of the cut off date of 1st January, 1986 having already been upheld by the Supreme Court in the case of a similar bank.

9. Having heard the parties, we were of the view that a subsequent event like the Fifth Pay Commission does not justify reconsideration or recalling the judgment of the Apex Court. In fact, the learned Single Judge in the impugned judgment, in our opinion, has rightly held as under :-

“35. The plea of the petitioners warranting reconsideration of the RBI Case is per se without merit, and if accepted, would run counters to the mandate under Article 141 of the Constitution of India wherein it is stated that “[t]he law declared by the Supreme Court shall be binding on all Courts within the territory of India”. There is, indeed, under Article 142 a tacit embargo on the High Courts to derogate from or overrule the decision of the Apex Court on the ground that the legal position in the said decision was laid down without consideration of material facts.

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39. Reliance by the petitioners on the Ananda Margi-II Case, I am afraid, is misplaced. The Judgment in the Ananda Margi-II Case, in fact, militates against the petitioners.... ..

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40. The crux of the decision in the Ananda Margi-II Case is that the essential part of a religious faith could not be altered at a subsequent point of time merely on the ground of non-availability of literature or prescribed documents. Even otherwise, it is the settled position of law, as laid down in Director of Settlement, A.P., v. M.R. Apparao and Anr. and B.M. Lakhani v. Malkapur Municipality, that a decision of the Apex Court cannot be assailed before any other Court on the ground that certain aspects were not considered or that the relevant provisions were not brought to the notice of the Apex Court.”

10. Even if we were to consider the appellant’s submission on merits, we are of the opinion that the introduction of the Pension Regulations for the first time in an organisation in lieu of the CPF scheme is a new scheme and there is a distinction between liberalisation of existing scheme and introduction of a new scheme. Consequently, the judgment of the Supreme Court in **D.S. Nakara & Ors.** (supra) is of no assistance to the appellants.

11. Moreover, the provident fund retirees who have retired and have already received their retiral benefit from the employers cannot claim a vested right of coverage under the Pension Regulations.

12. We are also of the view that the provident fund retirees and pension retirees form a separate and distinct class. While the relation of a provident fund retiree with the employer snaps upon retirement and receipt of retiral benefit, a pension retiree's relation with the employer merely undergoes a change upon retirement but does not get snapped altogether. Consequently, the CPF scheme and the pension scheme and rights of members thereunder are structurally different.

13. Moreover, the employer has a right to fix a cut off date and restrict the application while introducing the Pension Regulations in lieu of CPF for the first time. The cut off date of 1st January, 1986 is valid as the demand for pension as a second retiral benefit broadly on the lines of Central Government pattern, was mooted sometime in the year 1986 and the Central Government had adopted the same based on the Fourth Pay Commission recommendations.

14. Lastly, according to us, the appellants cannot question the fixation of cut off date for applicability/eligibility of the Pension Regulations as the Supreme Court in the case of *Government of Andhra Pradesh and Ors. Vs. N. Subbarayudu and Ors., 2008 (4) SCALE 117* has held that Courts should, normally, not interfere with cut off dates as they are policy decision which fall within the domain of the executive authority. The relevant observations of the Supreme Court in the aforesaid judgment are reproduced hereinbelow:-

4. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab and Ors. v. Amar Nath Goyal and Ors.*: (2005) III LLJ 759 SC).

5. No doubt in *D.S. Nakara and Ors. v. Union of India*: (1983)ILLJ104SC 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 and Ors. v. Amar Nath Goyal and Ors.* (supra).

6. 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.

7. 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 v. Ramjee Prasad* : [1990]2SCR468 , *Union of Indian and Anr. v. Sudhir Kumar Jaiswal*: (1995) ILLJ 1773 SC, *Ramrao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors.*: (2004) ILLJ 1061 SC, *University Grants Commission v. Sadhana Chaudhary and Ors.*: (1997)ILLJ272SC , 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.

8. As has been held by this Court in *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.*: 2007(14)SCALE1 and in *Government of Andhra Pradesh and Ors. v. Smt. P. Laxmi Devi*: AIR2008SC1640 the Court must

maintain judicial restraint in matters relating to the legislative or executive domain.”

15. In view of the aforesaid, the present appeal, being devoid of merit, is dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 25, 2010

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