



2024:DHC:462



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

% Judgment reserved on: 11.01.2024
Judgment pronounced on: 23.01.2024

+ W.P.(C) 1489/2016

Y. KRISHNASAMY

..... Petitioner

versus

CHAIRMAN & MANAGING DIRECTOR
BHARAT HEAVY ELECTRICAL LTD. AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. N. Rajaraman and Mr. Subrata Das,
Advocates

For the Respondents : Mr. A.K. Ray, Advocate for R-1. Mr.
Ruchir Mishra, Mr. Sanjiv Kr Saxena,
Ms. Poonam Shukla and Ms. Reba Jena
Mishra, Advocates for R3 & 4,
Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the
Constitution of India seeking the following reliefs:-

*“a. Issue a writ of Certiorarified Mandamus for calling for
the records of the respondent no. 1 with respect to the
reply dated 16.09.2015, and quashing of the reply issued
on behalf of the respondent no.1 as a response to the
petitioner’s representation dated 28.07.2014 and directing
the respondent to confer pensioners benefits to the pre-*



2007 retirees of BHEL as per law settled by the supreme court in D.S.Nakara's case

b. Pass any other or such further order or orders as may be deemed fit and proper in the facts and circumstances of the present case."

2. The facts as narrated in the petition are as under:-
- (i) Between the years 1962-1971 majority of the members of the petitioners association had joined the respondent no.1/ BHEL in various capacities.
 - (ii) The recommendation of the 4th Central Pay Commission (hereinafter referred as "CPC") were effected and according to the petitioner as per the ratio laid down in the judgment of the Supreme Court in ***D.S. Nakara and Others vs. Union of India*** reported as **(1983) 1 SCC 305**, the recommendation regarding pension scheme should be retrospectively brought into effect from 01.01.1986 simultaneous to the 4th CPC recommendations.
 - (iii) It is the case of the petitioner that in the year 1995, the Justice Mohan Committee recommended the amendment of Employees' Pension Scheme 1995 so as to enable the Public Sector Enterprises (hereinafter referred to as "PSEs") to formulate and implement alternate pension scheme.
 - (iv) The petitioner submits that on the basis of Mohan Committee recommendation the petitioner and the members of the organization had received their last pay revision/wage revision as employees of BHEL in the year 1997.



- (v) The 2nd Pay Revision Committee (hereinafter referred to as “2nd PRC”) recommendations were to be brought into effect after 01.01.2007. *Vide* OM No. 2(81)-DPE (WC) dated 08.07.2009 issued by the Ministry of Heavy Industries and Department of Public Enterprises (hereinafter referred to as “DPE”), a move was made for conferment of benefits of 2nd PRC in respect of the employees of the Central Public Sector Enterprises (hereinafter referred to as “CPSEs”).
- (vi) In pursuance to the above, the respondent no.1 resolved that the BHEL Employees’ Pension Scheme (hereinafter referred to as “BEP Scheme”) would become applicable to regular employees of the company at Board Level and below Board Level who are on the rolls of the company as on 01.01.2007 and onwards.
- (vii) The petitioner claims to have sent a RTI query dated 27.11.2012 seeking information in respect of the source of the BHEL Pension Scheme Funds. By the reply dated 05.12.2012, the respondent no.1 informed that the funds for BEP Scheme was not from the employees’ salary but was a contribution to the extent of Rs.877.64 Crore from the company itself covering the period from 01.01.2007 to 31.03.2012.
- (viii) Subsequently in pursuance of OM issued by DPE the respondent no.1 *vide* the decision dated 10.07.2013 decided to introduce the “BHEL Emergency Needs Mitigation Scheme” to all the retired employees of the company at Board Level and below Board Level who retired prior to 01.01.2007.



- (ix) The petitioner filed his representation dated 11.08.2014 raising the issue of the BEP Scheme to be made applicable to the employees of the respondent no.1, who retired before 01.01.2007. On not receiving any response thereto, the petitioner filed W.P.(C) 7906/2015 before this Court, which issued notice on 24.08.2015.
- (x) While the aforesaid writ petition was pending, by the letter dated 16.09.2015 the Deputy General Manager, Human Resources, BHEL Corporate rejected the representation dated 11.08.2014 of the petitioner. On the basis of the said rejection, the W.P.(C) 7906/2015 was disposed of *vide* the order dated 17.09.2015, with liberty to the petitioner to challenge the same if aggrieved.
- (xi) The present petition was filed challenging the impugned rejection order dated 16.09.2015 passed by the DGM of respondent no.1.

CONTENTIONS OF THE PETITIONER

3. Mr. N. Rajaraman, learned counsel appearing for the petitioner had predicated his argument on the basis of the ratio laid down by the Supreme Court in the case of ***D.S. Nakara (supra)***. According to learned counsel, in ***D.S. Nakara (supra)***, the Supreme Court had categorically held that all the pensioners have equal right to receive the benefits of liberalized pension scheme and that the pensioners together form a class as a whole and cannot be micro classified by an arbitrary, unprincipled and unreasonable eligibility criteria for the purpose of revised pension. He submits that it was further held that the date of enforcement of the revised scheme entailing benefits of the said revision scheme only to those employees retiring after a certain date and



simultaneously depriving the retirees prior to that date would be violative of Article 14 of the Constitution.

4. On the aforesaid basis, he submits that the Supreme Court held that the pension scheme ought to be made applicable to the retirees prior to the date so fixed by the Government in that case. He submits that in the present case too, the discrimination is apparent, in that, the respondent no.1 formulated a pension scheme bringing in an artificial cutoff date of 01.01.2007 to discriminate between the pre and post 01.01.2007 retirees of the respondent. This, according to learned counsel, is violative of the ratio laid down in ***D.S. Nakara (supra)***.

5. Learned counsel next contends that pension is a beneficial welfare measure for rendering socio-economic justice and neither a bounty nor a matter of whims of the respondent depending upon the sweet will of the employer nor an *ex gratia* payment. It is for the past services rendered. He submits that the artificial distinction between the pre and post 01.01.2007 retirees is not based on any rationale nor does the same have any nexus with the BEP Scheme and as such, is arbitrary and unconstitutional.

6. Learned counsel further submits that the respondent no. 1 has been unable to show any reason, policy or even a document to establish that there was indeed some material before the respondent no.1 to exclude the petitioner and other pre 01.01.2007 retirees from getting the benefit of pension in accordance with BEP Scheme.

7. He submits that the denial is totally arbitrary and whimsical and the petitioner and other retirees have not been dealt with fairly and as



2024:DHC:462



such the rejection may be quashed and the respondents may be directed to extend the benefits under the BEP Scheme even to the retirees prior to 01.01.2007.

8. Learned counsel referred to page 113 of the petition, which is the impugned order, particularly to page 117 and the contents of para (II) to submit that the stand of the respondent no. 1 in the impugned order was that the pensionary benefits could not be extended to pre 01.01.2007 retirees due to lack of government/DPE Instructions in that regard. In contrast to the reasons contained in the impugned order, learned counsel submits that the reasons now given in the counter affidavit are at variance. By referring to the counter affidavit of the respondent, learned counsel submits that the reason now furnished by the respondent no. 1, is that since the BEP Scheme is not statutory in character and is related to an employees' contribution as percentage of salaries drawn by those employees on the roll of the company after 01.01.2007, it cannot be made applicable to pre 2007 retirees. It was further urged in the counter affidavit that those employees retiring after 01.01.2007 constituted a separate class in itself. Thus, the contradiction is apparent.

9. Yet another reason put forward by the petitioner challenging the rejection of the representation is based on the reply dated 10.01.2014 which is the RTI reply given by respondent no.1 informing that as on 31.10.2013, a total amount of Rs. 799 Crore and odd has been remitted to the insurance companies towards individual pension corpus in respect of 14819 employees who retired on or after 01.01.2007 and applied for pension under the BEP Scheme. The reply also informed that the said amount has been allocated out of the funds remitted by the company to



the BHEL employees superannuation fund at the end of each financial year. Learned counsel also referred to the letter dated 05.12.2012, which was again a response under RTI Act 2005 informing that a sum of Rs.877.64 Crore at the company level was contributed by BHEL for the period 01.01.2007 to 31.03.2012 as contribution to the pension fund and not deducted from the employees' salary for such purpose.

10. By referring to the aforesaid letters, which were handed over the bench and taken on record, learned counsel submits that the stand taken by the BHEL has been shifting according to its convenience and as such the rejection of the representation appears to be on completely unfounded and *malafide* reasons.

11. Learned counsel submits that the classification is not based on any intelligible differentia and the creation of two separate classes of the same category of persons is impermissible. Such artificial, arbitrary and whimsical separation of same class of people is wholly unjust, unfair, unconstitutional and as such ought to be struck down. Consequently, he prays that the petitioners also be conferred the same pensionary benefits under the BEP Scheme as is being extended to the post 2007 retirees alongwith arrears and interest.

CONTENTIONS OF THE RESPONDENT

12. *Per Contra*, Mr. A.K. Ray, learned counsel appearing for the respondent no.1, at the outset, refutes the contentions urged by the petitioner predicated on the ratio laid down by the Supreme Court in ***D.S. Nakara (supra)***. He submits that it is trite that judgments are not Euclid's theorem to be applied without appreciating the facts which



arise in that particular case. According to learned counsel, **D.S. Nakara (supra)** was a case pertaining to the employees of the Central or State Governments and not a ratio laid down in respect of employees of CPSE. He submits that the observations, findings and the ratio in the said case were purely in respect of Central Government employees governed by CCS (Pension) Rules 1972 (hereinafter referred to as “Pension Rules”), whereas in the case of Employees of CPSEs, the terms and conditions, governing the conditions of service of the employees is governed by its own individual set of rules and regulations which have no nexus or connection at all with the Pension Rules applicable to the Central Government Employees. That apart, the accrual of pension as a part of the remuneration/emoluments or as a consequence of the services rendered is already inherent in the terms of the appointment itself and as such are not separately introduced. The revisions in such cases which are recommended by the Pay Commissions from time to time, therefore, obviously enure to the benefit of the retirees as a class. Whereas, in the case of CPSEs, the effective date, according to learned counsel would be the date when such policy is brought into force on the directions or stipulations contained in the OMs or Presidential Directives issued by the Central Government or the DPE. Learned counsel relies upon para 21 of the **D.S. Nakara (supra)** to submit that the Supreme Court itself had limited its enquiry to the non-contributory superannuation or the retirement pension paid by Government to its erstwhile employees and the purpose and object underlying it and had not clearly referred to any of the issues raised in the present petition in respect of CPSEs. Thus, according to



learned counsel, the ratio of ***D.S. Nakara (Supra)*** upon which the core argument of the petitioner is predicated, is wholly inapplicable to the facts of the present case.

13. Learned counsel appearing for the petitioner submits by referring to the prayer clause of the petition that the petitioner has only challenged the impugned order/reply dated 16.09.2015 and has not challenged the OMs dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013. Learned counsel submits that that the respondent no. 1 is legally and administratively bound to follow the directions of the Pay Commissions as also the Government and the DPE as also the Presidential Orders. He also submits that the OMs referred to above were issued either by the Government or the DPE and were binding upon the respondents and as such the petitioner ought to have challenged the validity or otherwise of the aforesaid OMs before laying challenge to the impugned order.

14. Learned counsel invites attention of this Court to the order dated 17.09.2015, passed by the learned Single Judge of this Court in W.P.(C) 7906/2015 filed by the petitioner to submit that other than the reference to the impugned order dated 16.09.2015, there is no reference to any of the OMs either. In that, learned counsel seeks to impress that even in the previous round of litigation, the challenge to the aforesaid OMs was conspicuous by its absence.

15. Learned counsel while referring to the OMs dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013 submitted that the guidelines stipulated for the provisions of 30% of



2024:DHC:462



basic pay and DA as superannuation benefits which may include Contributory Provident Fund (hereinafter referred to as “CPF”), Gratuity, Pension and Post Superannuation benefits. He submits that the aforesaid OMs have clearly and categorically specified that the said guidelines were applicable to the employees who were/are on the rolls of the company on or after 01.01.2007. He submits that the pensionary benefits under the scheme are in accordance with the OMs, being one of the superannuation benefits as has been extended as part of those guidelines and thus applicable to the employees on or after 01.01.2007 only.

16. Learned counsel submits that the OMs noted above which was related to the pre 2007 retirees, was with respect to the guidelines and the approval of administrative ministry/department as mandated in the OM, and in respect of those retirees a scheme was simultaneously introduced, called “BHEL Emergency Needs Mitigation Scheme”. This scheme was commenced on 10.07.2013 for such of those employees who retired prior to 01.01.2007 and not covered by BEP Scheme. The said scheme is stated to be dependent on the profitability of the company.

17. Learned counsel for the respondent further submitted that the 2nd PRC did not mention about the employees who retired prior to 01.01.2007 for coverage under the fund created out of 1 to 1.5 % of Profit Before Tax (hereinafter referred to as “PBT”), rather, the fund was recommended to take care of medical and other emergency needs of the retired employees not covered by the pension scheme. The Government of India after due consideration accepted the



recommendations of 2nd PRC with several modifications including creation of a corpus by CPSEs by contributing upto 1.5% of PBT for the aforesaid medical emergency for pre 2007 retirees not covered by pension scheme.

18. He also submitted that *vide* the OM dated 24.01.2013, the DPE clarified that the two categories of employees are different with a further clarification that creation of corpus by contribution upto 1.5% of PBT has no relationship with 30% ceiling prescribed for grant of superannuation benefit. According to learned counsel, the respondent had created two separate and distinct schemes for the two different sets of employees. As such, the classification is based on intelligible differentia.

19. Learned counsel reiterates that the petitioner not having challenged any of the relevant OM's issued by the DPE or the government, is barred from laying any challenge to the pension scheme as floated by the respondent no. 1 in respect of post 2007 retirees. He further submits that the respondent is bound by the OM's issued by the DPE and Central Government and as such, argument of the petitioner without having laying challenge to the aforesaid OM's is without any merit. He prays that the petition be dismissed with cost being frivolous and misconceived.

20. Learned counsel in support of the aforesaid submission relies upon the following judgments:-

(a) ***Krishena Kumar vs. Union of India & Ors***, reported in (1990) 4 SCC 207;



(b) *Indian Ex-Services League & Others vs. Union of India*, reported in (1991) 2 SCC 104;

(c) *Commander Head Quarter, Calcutta & Others vs. Capt. Biplabendra Chanda*, reported in (1997) 1 SCC 208;

(d) *K.L. Rathee vs. Union of India & Others*, reported in (1997) 6 SCC 7.

ANALYSIS AND CONCLUSION

21. This Court has heard the arguments addressed by learned counsel for the parties, perused the documents on record and considered the judgments relied upon.

22. The issues raised in the present petition for the consideration of this Court are as under:-

- (i) Whether the ratio laid down in *D.S. Nakara (supra)* is applicable upon the respondent-BHEL (Public Sector Enterprise)?
- (ii) Whether the distinction sought to be drawn between pre and post 2007 retirees of respondent No.1 is based on ‘*intelligible differentia*’?
- (iii) What is the effect of the petitioner not having challenged the OMs dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013?

23. Issue (i) - **Whether the ratio laid down in D.S. Nakara (Supra) is applicable upon the respondent-BHEL (Public Sector Enterprise)?**



23.1 The counsel for the petitioner had predicated the entire arguments upon the ratio laid down by the Supreme Court in ***D.S. Nakara (supra)*** and accordingly, the need to consider the same at the first instance is necessitated.

23.2 The case before the Supreme Court in ***D.S. Nakara (supra)*** was in respect of the interpretation relating to the Pension Rules of the Central Government. Under the earlier pension scheme, the pension was related to the average emoluments during 36 months just preceding retirement. In May, 1979, the Government of India, Ministry of Finance issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalized but made it applicable to government servants who were in service on March 31, 1979 and retired from service on or after that specified date. By the Memorandum of the Ministry of Defence No.b/40725/AG PS4-C/1816/AD(Pension)/Services dated September 28, 1979, the liberalized pension formula introduced for the government servant governed by the Pension Rules was extended to the Armed Forces Personnel subject to limitations set out in the memorandum with a condition that the new rules of pension would be effective from April 1, 1979, and may be applicable to all service officers who become/ became non-effective on or after that date. The liberalized scheme introduced a slab system for computation of pension, raised pension ceiling and provided for average emoluments with reference to last 10 months' service. Consequently, the pensioners who retired prior to the specified date had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement. Thus they suffered triple jeopardy viz. lower average



emoluments, absence of slab system and lower ceiling. Being so aggrieved they filed the writ petitions in Supreme Court contending that the memoranda were in violation of Article 14 of the Constitution of India. Therein, the petitioners 1 and 2 are retired pensioners of the Central Government who retired prior to the specified date and Petitioner 3 is a society registered under the Societies Registration Act, 1860, formed to ventilate the legitimate public problems and consistent with its objective, it is espousing the cause of the pensioners all over the country.

23.3 It is clear from the aforesaid facts which arose in ***D.S. Nakara (supra)*** that the Supreme Court had passed its judgement on the basis of the facts before it. So far as the issue in the present case is concerned, the same are distinguishable on facts in as much as undoubtedly the respondent no. 1 is a CPSE having its own rules, regulations and terms and conditions of service which govern its employees including the petitioner. It is neither the case of the petitioner nor could it be, that they are governed by Pension Rules applicable to the Central Government employees. It is also not disputed that not only are the CPSEs governed by their own set of rules and regulations, but at the same time, are also governed by the OMs, Circulars and Notifications issued by the Department of Public Enterprises, Government of India.

23.4 In the above context and undisputed facts this Court has to consider whether the judgement of ***D.S. Nakara (supra)*** would at all be applicable to the facts of the present case. There are catena of judgements of the Supreme Court which have distinguished the ratio



laid down in ***D.S. Nakara (supra)***, particularly on the peculiar facts arising in those cases. The said judgements have also gone so far to hold that even when there is a pension scheme and subsequently there is a revision of the said pension, however without having any provision granting retrospectivity, there is no discrimination between the two sets of retirees. In fact the judgements have held that the ratio in ***D.S. Nakara (supra)*** is not applicable across the board without testing the same on the facts which arise before the Court for consideration. The line of judgements start from the one rendered by the learned Constitution Bench of the Supreme Court in ***Krishena Kumar (supra)*** followed by ***Indian Ex-Services League (supra)***, ***Commander Head Quarter, Calcutta & Others V Capt. Biplabendra Chanda (supra)***, ***K.L. Rathee (supra)*** and ***T. N. Electricity Board vs. R. Veerasamy & Others***, reported in (1999) 3 SCC 414.

The relevant paragraph of the judgement of the Supreme Court in ***Krishena Kumar (supra)*** is extracted hereunder:-

“32. In Nakara¹ it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a “fund”. The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules



governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara¹ that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara¹ cannot, therefore, be an authority for this case."

(emphasis supplied)

The relevant paragraph of the judgement of the Supreme Court in **Indian Ex-Services League (supra)** is extracted hereunder:-

"14. Nakara¹ decision came up for consideration before another Constitution Bench recently in Krishena Kumar v. Union of India². The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in Nakara¹ that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in Nakara¹, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara¹ decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different."



(emphasis supplied)

The relevant paragraph of the judgement of the Supreme Court in **Capt. Biplabendra Chanda (supra)** is extracted hereunder:-

“4. We are of the opinion that the ratio of D.S. Nakara¹ has no application here. D.S. Nakara¹ prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised pension rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1-1-1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from 1-1-1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences; even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be.”

The relevant paragraphs of the judgement of the Supreme Court in **K.L. Rathee (supra)** are extracted hereunder:-

“9. This aspect of the question was examined in the case of Indian Ex-Services League v. Union of India². The case was argued on behalf of Armed Forces personnel retiring from commissioned ranks as well as Armed Forces personnel retiring from below the commissioned rank who were represented by Shri K.L. Rathee, J.S. Verma, J. (as His Lordship then was) speaking for the Constitution Bench which heard the matter observed that the contention of the writ petitioners on the basis of Nakara¹ decision was untenable. On behalf of the petitioners, it had been contended that all retirees who held the same ranks irrespective of their date of retirement must be given the same amount of pension. In effect, what was urged was that there must be “one rank one pension” for all the retirees irrespective of their date of retirement. This contention of the petitioners was rejected by the Constitution Bench by holding that Nakara¹ decision was of limited application. There was no



scope for enlarging the ambit of that decision to cover all claims made by the petitioners for identical amount of pension to every retired person from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of pension were different.

10. xxx

11. xxx

12. xxx

13. It clearly appears from all these cases that Nakara¹ is not a case of universal application irrespective of the facts and circumstances of the case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in Nakara¹ that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the persons who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same. This argument was specifically negated by the Constitution Bench in the case of All India Services Pensioners' Assn.⁴ What the petitioner is claiming in this case is more or less the same relief as was denied to him in the above case.”

(emphasis supplied)

The relevant paragraph of the judgement of the Supreme Court in

R. Veerasamy (supra) is extracted hereunder:-

“15. As noticed earlier, the learned Judges even after noticing that the ratio in the judgment of this Court in Nakara case¹ cannot be pressed into service, erroneously granted relief on the alleged delay on the part of the appellant-Electricity Board in introducing the pension scheme which certainly cannot be a ground for the Court to give retrospective effect to the pension scheme. Moreover, the appellant-Board had given well-founded reasons for introducing the pension scheme from 1-7-1986 including financial constraints, a valid ground. We are of the view that the retired employees (respondents), who had retired from service before 1-7-1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class.”

(emphasis supplied)



2024:DHC:462



23.5 All these judgements were either relied upon or affirmed by the Supreme Court in the case of ***Indian Ex-Servicemen Movement and Others vs. Union of India & Others***, reported in (2022) 7 SCC 323 which is a recent judgement of the Supreme Court also known as “*One Rank One Pension Case*”. In this case, the issue concerned the pensioners of the army, however despite there being a homogeneous class, the Supreme Court had upheld the decision of the Union Government of granting some benefit as a policy decision and had held that it is not a legal mandate that pensioners who hold the same rank must be given the same amount of pension. It was also held that the benefit of a new element in a pensionary scheme can be prospectively applied, with a caution that the scheme cannot bifurcate a homogeneous group based on a cut-off date. In the present case, the BEP Scheme was introduced by the respondent in the year 2007 for the first time and as such it cannot be said that the pre 2007 retirees would form a homogeneous group with the post 2007 retirees. Inasmuch as, there was no such scheme available in the respondent prior to 2007.

23.6 So far as the employees of the Central Government governed by the Pension Rules are concerned, the accrual of pension as a part of the remuneration/emoluments or as a consequence of the services rendered is already inherent in the terms of the appointment itself and as such are not separately introduced. The revisions in such cases which are recommended by the Pay Commissions from time to time, therefore, obviously enure to the benefit of the retirees as a class. Whereas, in the case of CPSEs, the effective date, would be the date when such policy is brought into force on the directions or stipulations contained in the OMs



or Presidential Directives issued by the Central Government or the DPE. In para 21 of the ***D.S. Nakara (supra)***, the Supreme Court itself had limited the scope of its enquiry to the non-contributory superannuation or the retirement pension paid by Government to its erstwhile employees and the purpose and object underlying it and was not concerned with such Schemes being introduced by CPSEs.

23.7 If the argument of the learned counsel for the petitioner is applied to the facts of the case, the same would obviously be violative and contrary to the ratio laid down by the Supreme Court in the aforesaid cases. That apart, as laid down by the Supreme Court in the aforesaid judgements, there was no provision available in the BEP Scheme, nor could the learned counsel for the petitioner point out any such provision which would grant retrospectivity to such scheme.

23.8 That apart from the above, even the Supreme Court in ***D.S. Nakara (supra)*** was conscious of the fine distinction between the existing pension scheme and its applicability to the pre-existing retirees to what it considered as merely an upward revision of such existing pension scheme *vis-a-vis* the entitlement of such retirees to a totally new pension scheme introduced post their retirement.

23.9 It is trite that judgements cannot be applied like Euclid's theorem irrespective of the facts obtaining in that particular case without examining as to whether such facts arise in the case under consideration. It is clear in the present case, what is for consideration before this Court is a pension scheme introduced by a CPSEs which was not pre-existing as on the date of introduction and as to whether the said new pension



scheme could be applied retrospectively. The ratio laid down by the overwhelming judgement aforesaid prohibits such retrospective applicability.

23.10 In that view of the matter, it is clear that the judgement of ***D.S. Nakara (supra)*** is not only distinguishable on facts as obtaining in the present case but also was passed in respect of Central Government employees governed by CCS (Pension) Rules, 1972.

23.11 Therefore, the issue no. 1 is held in the negative.

24. Issue (ii) - **Whether the distinction sought to be drawn between pre and post 2007 retirees of respondent no.1 is based on ‘intelligible differentia’?**

24.1 Apart from predicating his arguments on ***D.S. Nakara (supra)***, learned counsel has also submitted that the discrimination between the pre & post 2007 retirees is arbitrary, whimsical, unjust and wholly unconstitutional. According to learned counsel, the date fixed by the BEP Scheme of being prospective on and from 01.01.2007, is itself without any rationale or any legal basis. He submitted that the cut-off date has discriminated between the same set of homogeneous retirees which is impermissible in law. Learned counsel had also argued that the respondent no. 1 has been unable to show any reason, policy or even a document to establish that there was indeed some material before respondent no. 1 to exclude the petitioner and other pre 2007 retirees from the benefit of pension in accordance with BEP Scheme. He submitted that such denial is totally arbitrary and whimsical and pre 2007 retirees have not been dealt with fairly by respondent no. 1. He



sought quashing of the rejection and a direction that the benefit under BEP Scheme be granted to the petitioner and other similarly situated employees.

24.2 Learned counsel also had laid emphasis on, according to him, what were contradictory stands of the respondent no. 1 in the impugned order in comparison with the contents of the counter-affidavit. Learned counsel also laid emphasis on the fact that though on the one hand, the respondent no. 1 had denied the benefit to the petitioner on the ground that the said pension scheme was on contributory basis to be deducted from the employees salary and no such deduction having been made from the pre- 2007 retirees, the benefits of pension cannot be extended to retirees like the petitioner, whereas on the other hand in a reply to a query under the Right to Information Act, 2005 the respondent no. 1 had categorically admitted that Rs.877.64 Crore at the company level was contributed by BHEL for the period 01.01.2007 to 31.03.2012 as contribution to the pension fund and not deducted from the employees salary for such purpose. It is this shifting stand which according to the learned counsel was taken as per the convenience of the respondent no. 1 and is impermissible in law. In view of the aforesaid learned counsel submits that the stand of the respondent no. 1 and denial of extension of pension scheme to pre 2007 retirees is neither founded on facts nor on law.

24.3 As such learned counsel submits that the distinction sought to be brought by the respondent no. 1 under the BEP Scheme is not based on any intelligible differentia. Learned counsel asserts that the pre and post 2007 retirees form a homogeneous class and cannot be



discriminated against merely on the basis of a cut-off date which is without any rationale and is absolutely unfair. While considering the arguments of learned counsel of the petitioners as also the respondent no. 1 as noted in detail in the preceding paragraphs, this Court had found that the distinction between pre and post 2007 retirees is one based on intelligible differentia. In order to understand what would constitute intelligible differentia in respect of “seemingly same set of homogeneous retirees”, this Court had considered the ratio laid down by the following judgements in ***Budhan Choudhary vs. State of Bihar***, reported in 1954 SCC OnLine SC 19 and ***All India Reserve Bank Retired Officers Association & Others vs. Union of India & Another***, reported in 1992 Supp (1) SCC 664.

24.4 The learned Seven Judge Constitution Bench judgement of the Supreme Court in ***Budhan Choudhary (supra)*** had, while considering the scope of interference under Article 14 of the Constitution, in para 5 held as under:-

*“5. The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Chowdhuri v. Union of India [(1950) 1 SCR 869] , State of Bombay v. F.N. Balsara [(1951) 2 SCR 682] , State of West Bengal v. Anwar Ali Sarkar [(1952) 3 SCR 284] , Kathi Raning Rawat v. State of Saurashtra [(1952) 3 SCR 435] , Lachmandas Kewalram Ahuja v. State of Bombay [(1952) 3 SCR 710] and Qasim Razvi v. State of Hyderabad [AIR 1953 SC 156 : (1953) 4 SCR 581] and Habib Mohamad v. State of Hyderabad [(1953) 4 SCR 661] . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. **In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that***



are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore to be tested in the light of the principles so laid down in the decisions of this Court.”

(emphasis supplied)

The Constitution Bench had postulated that the allegation of discrimination under Article 14 of the Constitution of India in respect of persons stated to form a homogeneous class of persons had to be tested on the basis of intelligible differentia coupled with the said doctrine having a reasonable nexus or rationale sought to be achieved by such distinction.

24.5 The Supreme Court in the case ***All India Reserve Bank Retired Officers Association (supra)*** while examining almost a similar fact situation had held as under:-

“8....There is no doubt that whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12 of the Constitution, the choice of the cut-off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touchstone of Article 14. If the choice of the date results in classification or division of members of a homogeneous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be offensive to the philosophy of equality



enshrined in the Constitution. This is quite clear from the ratio of *Nakara* case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] as well as the decision of this Court in *B. Prabhakar Rao v. State of A.P.* [1985 Supp SCC 432 : 1986 SCC (L&S) 49 : 1985 Supp 2 SCR 573] We have, therefore, to consider the limited question whether the classification introduced by clauses 3(3) and 31 of the Regulations is inconsistent with Article 14 of the Constitution as alleged by the petitioners.

9. The scheme introduced by the Regulations is a totally new one. It was not in existence prior to its introduction with effect from November 1, 1990. The employees of the Reserve Bank who had retired prior to that date were admittedly governed by the CPF scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the extant Rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. The Bank employees were, however, clamouring for a pension scheme, firstly on a restricted basis as a third retiral benefit and later in lieu of the CPF scheme. The Central Government had not approved of a pension scheme, as a third retiral benefit. After that proposal was spurned it appears that the employees of the Bank demanded a pension scheme on the pattern of the scheme available to Central Government employees in lieu of the CPF Scheme. This was approved by the Central Government and consequently it was introduced with effect from November 1, 1990 under the Regulations. There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. **But the moot question is whether it was open to the employer to grant the benefit of the pension scheme to one group of CPF retirees who had retired from Bank service on or after January 1, 1986 and deny the same to all those who had retired on or before December 31, 1985. Is this division of CPF retirees discriminatory and violative of Article 14 of the Constitution?**

10. *Nakara*¹ judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof,



it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara case¹ this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara case¹ drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which



they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in Krishena case².

(emphasis supplied)

24.6 From the aforesaid it is clear that the distinction can be drawn between two sets of individuals on the basis of intelligible differentia as also after examining that such distinction has a reasonable nexus with the object sought to be achieved. In the present case, while introducing the BEP Scheme, both the respondent no. 1 and concerned Ministries through DPE were aware and alive to the existence of pre and post 2007 retirees, in that both the respondents had, on their own level considered the impact of introducing such Contributory Pension Scheme and while being aware of the fact that pre 2007 retirees had been granted all the terminal benefits post superannuation including the CPF, had yet, introduced a policy called “BHEL Emergency Needs Mitigation Scheme” whereby the medical emergency etc. of all the pre 2007 retirees of the company at Board Level and below Board Level could adequately be taken care of. Moreover, undoubtedly, the petitioner and other pre 2007 retirees had all received the retiral benefits accruable to them in terms of the service conditions at the time of their retirement and as such had availed all such benefits as available and existing.

24.7 So far as the rationale or nexus of the BEP Scheme introduced by the respondent no. 1 is concerned, the respondent no. 1 had placed on record a number of documents including relevant OMs issued by DPE as the Controlling Ministry to the respondent no. 1 for formulating such pension scheme based on the recommendations of the



2nd Pay Revision Committee for the Executives of CPSEs. It appears to this Court, from the overall reading of the OM's and the other relevant documents placed on record that the respondent No. 1 had enough material before it alongwith the directions of the DPE through the Office Memorandum and formulated two separate scheme, one being the pension scheme for post 2007 retirees and the other being the BHEL Emergency Needs Mitigation Scheme for the pre 2007 retirees.

The relevant extracts of the OM's dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013 are as under:

OM dated 26.11.2008

*"1. **Revised Pay Scales** - The revised Pay scales for Board and below Board level executives would be as indicated in Annex-I.*

*2. **Fitment Benefit:***

(i) A uniform fitment benefit @ 30%, on basic pay plus DA @ 68.8% as on 01.01.2007 would be provided to all executives. The aggregate amount would be rounded off to the next ten rupees and pay fixed in the revised pay scale.

(ii) If any extra ordinary increment(s) and / or increase in the pay in respect of executives/ non unionized supervisors have been granted with retrospective effect, which affects the revision of pay as on 1.1.2007, such increment and / or increase in pay will be ignored for the purpose of fitment/ pay revision.

(iii) Where executives drawing pay at two or more consecutive stages in an existing scale get bunched, then, for every two stages so bunched, benefit of one increment shall be given.

3. xxx

4. xxx

5. xxx

6. xxx

7. xxx

8. xxx

9. xxx

10. xxx

11. xxx

12. xxx

13. xxx

14. xxx

15. xxx



16. xxx

17. Issue of Presidential Directive, effective date of implementation and payment of allowances etc.: The revised pay scales would be implemented by issue of Presidential Directive in respect of each CPSE separately, by the concerned Administrative Ministry/ Department. The revised pay scales will be effective from 1.1.2007. The payment of HRA, perks and allowances based on the revised scales will, however, be from the date of issue of Presidential Directive. The Board of Directors of each CPSE would be required to consider the proposal of pay revision based on their affordability to pay and submit the same to the Administrative Ministry/ Department for approval. The concerned Administrative Ministry with the concurrence of its Financial Advisor will issue the Presidential Directive. A Copy of the Presidential Directive issued to the CPSEs concerned may be endorsed to the Department of Public Enterprises.

18. Issue of instructions/clarifications and provision of Anomalies committee: The Department of Public Enterprises will issue necessary instructions/clarifications wherever required, in implementation of the above decisions. An Anomalies Committee consisting of the Secretaries of Department of Public Enterprises Department of Expenditure and Department of Personnel & Training has been constituted to look into further specific issues/problems that may arise in implementation of Government's decision on the recommendation of 2nd PRC. Any anomaly should be forwarded with the approval of Board of Directors to the administrative Ministry/ Department who will examine the same and dispose off the issue. However, if it is not possible for the Administrative Ministry, to sort out the issue, the matter may be referred to DPE, with their views, for consideration of the Anomalies Committee."

OM dated 02.04.2009

"2. The Government, after due consideration of the recommendations of the Committee of Ministers have decided further as follows:

i) xxx

ii) **Superannuation Benefit:** The ceiling of 30% towards superannuation benefits would be calculated on Basic Pay plus DA instead of Basic Pay alone. Any superannuation benefit will be under a defined contribution scheme and not under a "defined benefit scheme". CPSEs that do not have superannuation scheme, may develop such scheme and obtain the approval of their Administrative Ministry. However, no other superannuation benefit can be granted outside this 30% ceiling.



iii) xxx

iv) xxx

v) **Effective date for revised allowances:** It has been decided that if Presidential Directives are issued by the respective Ministries/ Departments within one month from the date of issue of this O.M., the effective date for revising allowances may be taken as 26.11.2008, being the date of issue of first O.M. by DPE. However, where Presidential Directives are not issued within one month from the date of issue of this O.M., the revised allowances shall be effective only from the date of issue of Presidential Directives. The effective date of allowances can in no case be prior to 26.11.2008.

vi) xxx

vii) xxx

3. xxx

4. The ceilings mentioned under various items given in O.Ms. dated 26.11.08, 09.02.09 and this O.M. are the maximum permissible limits. However, lower limits against these maximum permissible limits can be provided in the Presidential Directives, depending upon affordability, capacity to pay and sustainability of the concerned CPSE."

OM dated 08.07.2009

1. xxx

2. xxx

3. This Department had requested Ministries/ Departments concerned with the CPSEs for furnishing their considered views about the feasibility and the methodology of operationalising the above referred recommendation of the 2nd PRC. DPE, however, did not receive appropriate response from concerned Ministries/ Departments, to the said recommendation, it is found that it would not be feasible to have a common / unified scheme for all the CPSEs.

However, at the same time, a need is felt to have a scheme for the retired employees of a CPSE so that they could avail medical and other emergency benefits. In such a situation, it would be better if decision to create or otherwise, a corpus to implement the recommendation, is left to the individual CPSEs.

4. xxx

5. Administrative Ministries/Departments may, therefore, issue suitable instructions to the managements of CPSEs, to consider framing of a scheme, with the following guidelines:

(i) xxx

(ii) xxx

(iii) xxx

(iv) In the introductory year of operation of the scheme, not more than 1.5% of previous year's PBT would be permissible for funding



of the scheme. In subsequent years, depending upon the need, contribution to the Corpus, if required would be made. However, in no case the contribution to the Corpus, in any year will exceed 1.5% of the PBT of previous year.

(v) No budgetary support will be provided by the Government for the scheme.

6. The Board of Directors of each CPSE accordingly, may consider, framing of the scheme, keeping in view the above guidelines, based on their need and affordability, and submit proposal' to the Administrative Ministry/Department for approval, the concerned Administrative Ministry/Department may, with the concurrence of their Financial Advisor, obtain approval of the competent authority for the scheme.

7. xxx”

(emphasis supplied)

OM dated 25.04.2011

1. xxx

2. As required under para ‘7’ of said O.M. dated 08.07.2009, a copy of the approved scheme is to be forwarded to DPE. However, this Department has not received so far a copy of any approved scheme. In the meanwhile, **a number of representations have been received from Retirees Officers Associations, Public Representatives etc. DPE has re-examined the recommendation of 2nd PRC regarding creation of Corpus, reasons etc. given in O.M. dated 08.07.2009 and effectiveness of scheme provided in O.M. dated 08.07.2009.**

3. It is therefore, proposed that:-

(i) xxx

(ii) xxx

(iii) xxx

(iv) Scheme based on individual CPSE as conveyed in O.M. dated 08.07.2009 to continue but basic conditions like not more than 1.5% PBT and no budgetary support by Government would also apply to the Ministry/Department based scheme proposed now.

(v) Purpose of the scheme (Individual or Common corpus under a Ministry/Department for its CPSEs) to be as per 2nd PRCs recommendation i.e. to be **“in order to take care of medical and any other emergency needs of retired executives and also those employees who are not adequately covered by the Pension Scheme”**, instead of “in order to take care of medical and any other emergency needs of those retired employees, who are not covered by the pension scheme and/or post superannuation medical benefit scheme.

4. xxx”

(emphasis supplied)



OM dated 20.07.2011

1. xxx
2. In view of the above, the following has been decided:-
 - i) xxx
 - ii) xxx
 - iii) xxx
 - iv) Scheme based on individual CPSE as conveyed in O.M. dated 08.07.2009 to continue but basic conditions like not more than 1.5% PBT (whether Ministry/Department based and/or individual CPSE based) and no budgetary support by Government would apply to the Ministry/Department based scheme proposed now. Therefore, there may be a situation, where a CPSE under a Ministry/Department may have a separate scheme for its retired employees, but at the same time contribute to common corpus for retired employees of other CPSE(s) under Administrative Ministry/Department. In such cases also the total contribution will not exceed 1.5% of PBT of a particular financial year. For individual CPSE based scheme, constitution of Committee will be that as already indicated in para 5(iii) of O.M. dated 08.02.2009.
 - v) xxx
 - vi) xxx
 - vii) xxx
 - viii) Such corpus will cover only those employees of CPSEs, who retired prior to 01.01.2007
3. xxx
4. xxx”

OM dated 24.01.2013

“The undersigned is directed to refer to Para ‘4’ of DPE O.M. No. 2(81)/08-DPE(WC) dated 08.07.2009 read with Para ‘2(i)’ of O.M. No.2(81)/08-DPE(WC) dated 20.07.2001 and Para ‘V’ of Annex-‘IV’ of DPE O.M. No. 2(70)/08-DPE(WC) dated 26.11.2008 read with Para ‘2(ii)’ of DPE O.M. 2(70)/08-DPE(WC) dated 02.04.2009 on the subject noted above and to state that the benefit for employees who have retired from CPSEs prior to 01.01.2007 is totally different from that of executives and non-unionized supervisors retiring subsequent to 01.01.2007 and the sourcing of funds for these two mutually exclusive categories of employees is also different. One of the administrative Ministry has requested comments of DPE on both the schemes. The clarifications sought and the comments/clarification of DPE in this regard are enclosed.

2. All administrative Ministries/Department of Government of India are requested to bring the foregoing to the notice of the CPSEs



2024:DHC:462



under their administrative control for action at their end.”

(emphasis supplied)

From the aforesaid extracts it is manifest that the DPE as well as the respondent no.1 had deeply deliberated and considered the issue of applicability of the BEP Scheme as well as the Emergency Needs Scheme to post 2007 retirees and pre 2007 retirees respectively, and it is only after consideration of such material before them that the individual Schemes were introduced. The decisions were neither arbitrary nor contrary to the Constitutional mandate. As such, the argument that the respondents had not considered or that they did not have enough material before them while deliberating upon and introducing aforesaid two schemes while drawing distinction between two set of employees is without a rationale, is noted to be rejected for the aforesaid reasons.

24.8 In view of the above, this Court has no hesitation in coming to the conclusion that not only of the introduction of BEP Scheme drawing distinction between pre and post 2007 retirees based on intelligible differentia but also that the same was based on adequate material and having reasonable rationale and nexus sought to be achieved while introducing such scheme.

24.9 As a consequence the issue no. (ii) is held in the affirmative.

25. Issue (iii) - **What is the effect of the petitioner not having challenged the OMs dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013?**

25.1 That the learned counsel for the respondent no. 1 had elaborately addressed arguments in respect of the aforesaid issue to submit that the basis of introduction of the BEP Scheme on the



2024 : DHC : 462



recommendations of 2nd PRC, were the OMs dated 26.11.2008, 02.04.2009, 08.07.2009, 25.04.2011, 20.07.2011 and 24.01.2013. Learned counsel had submitted that the petitioner had only challenged the rejection of his representation dated 28.07.2014 *vide* the impugned order dated 16.09.2015 and had not challenged the aforesaid OMs. He further submitted that the respondent no. 1 is bound by the OMs and Notifications issued by the Nodal Ministry, i.e., DPE and as such, was bound to introduce such schemes as were directed by the DPE. According to the learned counsel not laying challenge to the said OMs which were the edifice of the BEP Scheme, challenging only the impugned rejection order, would still not entitle the petitioner the consequential relief of granting the pensionary benefits under the said pension scheme to pre 2007 retirees.

25.2 In view of the conclusions arrived at by this Court in respect of Issue no. (i) and (ii), consideration of issue no. (iii) appears to be academic and as such this Court does not render any observation or opinion on the same.

26. In view of the above, the writ petition is without any merits and the same is dismissed along with the pending applications, if any, with no order as to costs.

**TUSHAR RAO GEDELA
(JUDGE)**

JANUARY 23, 2024/aj.m/rl