

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM

THE HON'BLE MR. JUSTICES.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.A.No.1272 of 2015
and
M.P.Nos.1 and 2 of 2015

Tamil Nadu Retired Temple Employees
Association rep. by its President
Mr.C.Kandasamy,
No.6/6, Rajiv Gandhi Street,
Elango Nagar,
Virugambakkam, Chennai-92.

...Appellant

vs

1. The Secretary to Government,
Tamil Development Culture and Religious
Endowment Department,
Fort St. George,
Chennai-9.
2. The Commissioner,
Hindu Religious-cum-Charitable Endowment,
Nungambakkam, Chennai-34.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act for
setting aside the order dated 23.03.2015 made in W.P.No.31178 of 2013.

Prayer in W.P.No.31178 of 2013:

Writ petition filed under Article 226 of the Constitution of
India, praying for the issuance of a Writ of Certiorarified Mandamus,
calling for the records relating to the letter of the 1st respondent
in Government Letter (P) NO.142 dated 4.6.2012 and quash the same and
consequently direct the respondents to implement G.O. (Rt) NO.397
Tamil Development Hindu Religious Endowment and Information (HR4-1)

Department dated 31.12.2009 with restrospective effect so as to enable the members of the petitioners association to receive arrears of pension from 1.1.2006 to 1.1.2010

For Appellant : Ms.Dr.R.Gouri

JUDGMENT

(Judgment of the Court was pronounced by S.MANIKUMAR, J.)

The impugned Government Letter (P) No.142, dated 04.06.2012 reads as follows:

Tamil Development Endowment Department
Secretariat, Chennai - 600 009.

Government Letter (P) No.142, Dated 4.6.2012

From
Dr.M.Rajaram, I.A.S.,
Secretary to Government

To
Thiru.E.Muthulingam,
State President,
Tamil Nadu Temples retired employees Association,
No.62/91A, Vinayagapuram, 1st street,
Arumbakkam, Chennai - 600 106.

Sir,

Sub: Hindu Religious Charitable Endowment Dept.,
- Pension Scheme - Demand to disburse the
arrears of pension w.e.f. 1.1.2006 to the
employees who have Retired during the period
1995 to 2005 - Order made in W.P.No.23143 of
2011 by Hon'ble High Court, Madras - Reply to
the Writ Petitioner Thiru.E.Muthulingam-Reg.

Ref:

1. G.O.(Ms)No.55, Tamil Development, Cultural and Endowment Department, dated 13.2.2006
2. G.O.(Ms)No.397 Tamil Development, Cultural and Endowment Department, dated 31.12.2009
3. Your Representation dated 23.08.2011
4. Order dated 12.10.2011 made in W.P.No.23143/2011 by

the Hon'ble High Court, Madras
5. G.O. (Ms) No.68, Tamil Development, Endowment
Department, dated 12.03.2012

Your attention is drawn to the order dated 12.10.2011 passed by the Hon'ble High Court, Madras cited in the reference above.

2. By virtue of Government Order cited in the 1st reference above, monthly pension for a sum of Rs.750/- was sanctioned to the employees of the temples under the control of Hindu Religious and Endowment Department who have retired from the year 2006 w.e.f 1.1.2006. By virtue of Government Order cited in the 2nd reference above, monthly pension for a sum of Rs.800/- was sanctioned to the employees of the temples under the control of Hindu Religious and Endowment Department who have retired during the year 1995-2005 w.e.f 1.1.2010.

3. Representation has been made by the Tamil Nadu Temple retired employees to review the Government Order cited in the 2nd reference so as to sanction pension to all the employees who have retired during the year 1996-2005 w.e.f 1.1.2006 and thereby to incorporate suitable amendments so as to enable the retired employees to receive the arrears of pension amount. The requisition has been duly scrutinized based upon the order passed by the Hon'ble High Court in W.P.No.23143 of 2011 filed by the Tamil Nadu Temple Retired Employees Association in this regard.

4. By Virtue of Government Order cited in the 5th reference above, monthly pension for a sum of Rs.800/- was sanctioned to the employees of the temples who have retired prior to the year 1996. Since the requisition to sanction the pension to all the employees of the temples under the control of Hindu Religious and Endowment Department who have retired during the year 1996-2005 w.e.f. 1.1.2006 and thereby to incorporate suitable amendments so as to enable the retired employees to receive the arrears of pension amount is purely relating to Government Policy, it is hereby informed that the said requisition is rejected and the same cannot be considered at present.

Yours faithfully,
For the Secretary to Government''

2. Tamil Nadu Retired Temple Employees Association represented by its President, Chennai, while seeking to quash the above said Government Letter dated 04.06.2012, consequently has prayed for a

direction to the respondents to implement G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information (HR4-1) Department dated 31.12.2009 retrospectively, so as to enable the members of the Tamil Nadu Retired Temple Employees Association, to receive arrears of pension from 01.01.2006 to 01.01.2010.

3. According to the petitioner Association, pursuant to the directions issued by this Court in Review Application No.60 of 1998 and W.P.No.3213 of 1997 dated 24.11.2000 [The Government of Tamil Nadu represented by its Secretary to Government, Commercial Taxes and Religious Endowments Department, Fort St. George, Chennai-9 and another vs. Thirukoil Paniyalargal Sangam, Ambasamudram (Trade Union Regn.No.500/TJN represented by its Secretary, 21, Krishnan Koil Street, Ambasamudram, Tirunelveli District and another reported in 2001 (1) CTC 141, the Government have issued G.O.Nos.54 and 55, Tamil Development, Culture and Hindu Religious Endowment Department dated 13.02.2006 introducing Employees' Provident Fund Scheme for payment of pension and subsequently, the Government have issued G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information Department dated 31.12.2009, introducing pension scheme for the employees, who retired during the period 1.1.1996 to 31.12.2005.

4. The grievance of the Tamil Nadu Retired Temple Employees Association represented by its President, Chennai, is that the Government, while issuing G.O.(Rt.)No.397 dated 31.12.2009, had given prospective effect to the said Government Order from 01.01.2010 and benefits have been given only from 01.01.2010. According to the petitioner, arrears of pension from 2005 to 2010 should be given to the employees, in the temples, in the State of Tamil Nadu, retrospectively.

5. While advertng to the above said contentions and following the decision of the Hon'ble Apex Court in The State of Bihar v. Bihar Pensioners Samaj reported in (2006) 5 SCC 65, wherein, the Apex Court held that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons are not arbitrary and are based on some rational consideration, vide order dated 23.03.2015, Writ Court dismissed the W.P.No.31178 of 2013, and at paragraph No.6, held as follows:

'6. The Government have introduced pension scheme in the interest of temple employees. It is true that the order was passed only after submitting series of representations by the petitioners and other employees. However, the fact remains that the Government have sanctioned pension to the employees who have retired from 1

January 1996 to 31 December 2005. The Government having found that it would involve considerable expenditure by way of arrears, restricted the benefit with effect from 1 January 2010. The Government have taken a policy decision to pay the benefits prospectively. Since it was a policy decision taken by the Government, there is no question of issuing a direction to give retrospective effect. In matters relating to economic policy the Court should not normally interfere to substitute its views. The petitioners are now getting pension. It is true that they are denied of arrears. However that would not give them a right to claim that payment should be made retrospectively. I am therefore of the view that no relief could be granted to the petitioners."

Challenging the dismissal of the relief sought for, the present appeal has been filed.

6. Though Ms.Gouri, learned Counsel for the appellant herein-Tamil Nadu Retired Temple Employees Association, Chennai, contended that there is no rational in fixing a cut-off date for extending the pensionary benefits to those who retired between 01.01.1996 and 31.12.2005 and that it was the appellant, who had been all along fighting for the formulation of a pension scheme, which was subsequently framed in G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information Department dated 31.12.2009, in terms of the decision in Thirukoil Paniyalargal Sangam, Ambasamudram's case (cited supra) and that there should be a retrospective application of G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information Department dated 31.12.2009 and further contended that it is not just and reasonable, on the part of the Government, in restricting the benefits only from the cut-off date, and further submitted that it is irrational and discriminatory, insofar as the same class of employees is concerned, this Court is not inclined to accept the said contentions for the reason that bare reading of G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information Department dated 31.12.2009 itself makes it clear that the Government have considered the expenditure to be incurred while granting the pensionary benefits to the temple employees. At this juncture, it is worthwhile to extract G.O.(Rt) No.397, Tamil Development, Hindu Religious Endowment and Information Department, dated 31.12.2009:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Pension- Departmental pension scheme 2009-2010 - Hindu Religious and Charitable endowment Board - subsidy demand No.8 - grant of pension for the temple employees who had retired from the year 1996 - enhancement of pension from Rs.750/- to 800/- orders passed to providing powers to the commissioner.

Tamil Development and Charitable institutions and information (CD4-1) Department

G.O. (Ms) .No.397

Date: 31.12.2009

Markazhi 16, Thiruvalluvar year 2040

Ref:

1. G.O. (Ms) .No.77, Tamil Development Culture and Charitable Department dated 22.03.2001.
2. G.O. (Ms) .No.54 Tamil Development Culture and Charitable Department dated 13.02.2006.
3. G.O. (Ms) .No.55 Tamil Development Culture and Charitable Department dated 13.02.2006.
4. Hindu Religious and Charitable endowments Commissioner Letter Na.Ka.No.22130/2001/P, dated 23.03.2009.
5. Demand for grant Notice No.8 for the year 2009-2010 to Hindu Religious and Charitable Department.
6. Letter Na.Ka.No.22130/2001/P, dated 27.08.2009 from the Commissioner Hindu Religious and Charitable Department.

ORDER:

As per the letter of the Commissioner of Religious Endowments referred to at four above the archakas, Othuvass, Vedham learners, Divya Prabandham preachers and Musical Vidwans who had retired after receiving low salary and retired demanded pension as paid to the regular State

Government Employee which demand was made by the Ambasamudram Temple employees Sangam Secretary in the year 1996 and a case was filed against the state and the Commissioner W.P.No.3213/97. It was ordered that as like the retirement benefits paid to the Archakas, Othuvas, Vedham learners, Divya Prabandham preachers and Musical Vidwans of the Hindu Religious and Charitable Department the benefits of pension should be extended to other temple employees and a scheme to be evolved within 6 months and implement the same within a year. Against this order a W.A.No.60/98 was filed in the High Court and on 24.11.2000 the order in W.P.No.3213/97 was confirmed and directions given to pay the pension a scheme may be evolved within 6 months. On this basis to pay the pension to the temple employees in the G.O. first cited as per the recommendations of the committee in respect of the employees of the temples where the C.P.F. scheme is force and those permanent employees put in service of over 10 years in the financially well off temples and those under less than 10 years of service for the grant of departmental pension under two different schemes was decided upon.

2. The respective temples joining under the E.P.S. scheme provide pension to the employees in the reference 2nd cited G.O. an order was passed and has been implemented. To enable the grant of pension under the auspicious of Hindu Religious and Charitable Department the excess income from the financially well off temples a sum of Rs.50 crores the kept as crore amount and the interest derived from such amount the employees be paid at the rate of Rs.750/- per month was ordered to be paid under the reference 3rd cited and being paid accordingly.

3. The retiree employees of temples of Tamil Nadu retired earlier to 01.01.2006 requested for the grant of pension from 01.01.2006 and following this the pension being paid under the departmental pension scheme and E.P.F scheme was implemented because of the litigation filed by the Retirees Association in the year 1996 and the pension paid by the department basis scheme be implemented from the interest from the amount of Rs.50 crores received from financially well off temples and the balance amount of interest every year after paying the pension is being reinvested as principal as made known by the Commissioner.

4. Since the demand of the Retired Temple Employees Association between the year 1996 to 2005 nearly 1500 (except Archakas, Othuvas and Musical Vidwans) had retired and if that 1500 persons are paid at the rate of Rs.750/- per month the amount of Rs. 11,25,000/- will have to be paid as pension which amounts to yearly payment of Rs. 1,35,00,000/- this amount can be met from the interest received as now from the investment since an amount of Rs.8,00,00,000/- is received as rent and that there shall be no financial problem and that in case if any additional funds are required that can be met from the excess income of the bigger temples and increase the capital investment and that the retirees of the temples is paid pension only after the cases filed by the temple employees union in the year 1996 from 01.01.2006 and that for the retirees from the year 1996 to 2005 of other temples till the relevant G.O. is passed a sum of Rs.750/- per month may be paid under the departmental pension scheme as pension as per the suggestion of the Commissioner.

5. In the mean time during the grant demand for the Hindu Religious and Charitable Department for the period 2009-2010 the Hon'ble Minister for Hindu Religious and Charitable Endowments Board the Welfare scheme No.8 was announced as below.

NOTICE NO.8

For the temple employees under Departmental Pension Scheme for those retired from 01.01.2006 a sum of Rs.750/- is paid as pension. This amount is increased by Rs.50/- and Rs.800/- will be paid for those retirees earlier to 01.01.2006 since there is a demand for payment of pension the Government had considered sympathetically and steps will be taken for the payment of pension from 01.01.1996.

6. In the reference 6th cited the Commissioner for Hindu Religious and Charitable Endowments following the Ministers announcement furnished the following details.

1. As per the assembly announcement those retired from 01.01.1996 Departmental Pension may be paid.

2. The temple employees are eligible for pension from 01.01.1996 to pay the same to be retirees prior to 2006 from the temple service a writ petition was filed by the retired Thirukoil Employees Union as W.P.No.47752 and 49733/2006 and by this it will become infructuous and

therefore there will be no bar because of the court cases.

3. Under the Departmental Pension Scheme goes retired during the year 2006 numbering 241 and 276 retired in the year 2007 and 274 retired in the year 2008 and those retired till date in the year 2009 numbering 132 the pension is allowed and from the capital amount preserved for this a sum of Rs.6,92,250/- is paid as pension every month.

4. As per the announcement of the Hon'ble Minister the amount of pension is increased by Rs.50/- and to be paid at Rs.800/- per month.

5. Since the pension is increased by 50/- the additional expenditure may be adjusted from the rent of Central investment amount and details are as below.

- a. Central Finance Investment Rs.50 Crores
- b. Interest treated as capital Rs.14 Crores

Total Rs.64 Crores

The approximate interest on this year is Rs.5 crores.

The expenditure towards pension due to increase at Rs.800/- P.M.

1. 2006 Retirees - 241 x 800 x 12 =	Rs. 23,13,600/-
2. 2007 Retirees - 276 x 800 x 12 =	Rs. 26,49,600/-
3. 2008 Retirees - 274 x 800 x 12 =	Rs. 26,30,400/-
4. 2009 Retirees - 132 x 800 x 12 =	Rs. 12,67,200/-

	Rs. 88,60,800/-

Further from 01.01.1990 to 31.12.2005 about 1500 retirees paid at the rate of Rs.800/- P.M., and paid expenses for that

Rs. 1,44,00,000/-

Thus the total pension expense

Rs. 2,32,60,800/-

Since this amount is within the limit of interest now received no capital investment is required. In future if the further capital investment is found necessary this can be obtained from the excess income of the well of temple income.

7. From the above details the Minister's announcement in the assembly to be implemented the Commissioner as requested for the permission for payment of pension as below.

i. Under the Departmental pension scheme of the Hindu Religious and Charitable Board for the pension benefits of the retirees the pension payment may be increased from Rs.750/- to Rs.800/-.

ii. Under the Departmental Pension Scheme for the retirees between 01.01.1996 to 31.12.2005 proper application may be obtained and after scrutiny they may also be paid pension at Rs.800/- per month.

iii. The above 1 and 2 payments may be given effect to from the date of issue of Government order.

8. The recommendations of the Commissioner of Hindu Religious and Charitable Endowments Department was examined by the Government closely. In the grant of subsidy to the Hindu Religious Charitable Endowments Board for the year 2009-2010 as per the Minister's announcement (No.8) for the implementation thereof and the payment of pension under the Departmental pension scheme the powers are given to the Commissioner for 'Implementation and orders issued accordingly.

1. Under the Departmental pension scheme of the Hindu Religious and Charitable Board for the pension benefits of the retirees the pension payment may be increased from Rs.750/- to Rs.800/-.

2. Under the Departmental Pension Scheme for the retirees between 01.01.1996 to 31.12.2005 proper application may be obtained and after scrutiny they may also be paid pension at Rs.800/- per month.

3. The above 1 and 2 payments may be given effect to from the date of issue of Government order.

9. This G.O. is issued with the concurrence of finance department reference No.74766/Pension/2009 dated 29.12.2009.

(issued by order of Governor)

WEB COPY

K.Muthusamy,
Secretary to Government

7. Reference can be made to few decisions, on the aspect of fixing of cut-off date.

(i) In Union of India v. P.N.Menon reported in 1994 (4) SCC 68, at Paragraphs 7 and 8, held as follows:

"7.Public service is bilateral in nature in the sense that a public servant is remunerated for the service he renders to the public. Such public servant shall get pension after retirement, is one of the integral part of his employment. That is why it has been repeatedly said by the courts that pension is not a charity. Every public servant becomes entitled, after retirement for pension under the relevant rules for the service he has rendered to public for years. Keeping in view the services rendered in the past and to ensure that they live and lead a dignified life even after superannuation, the Government has been revising the rates of pension or providing certain additional benefits from time to time. But the demand of retired personnel is that throughout they should be treated on a par and as a class with persons who retire later.

8.Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the fiat", as was said by this Court in the case of D.R.Nim v. Union of India [AIR 1967 SC 1301] in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

(ii) In State of Rajasthan v. Amritlal Gandhi reported in 1997 (2) SCC 342, teachers of Jodhpur University (now Jai Narayan Vyas University), were governed by contributory provident fund rules and there was no pension scheme applicable to them. A committee constituted in 1983 by the University Grants Commission made recommendations inter alia, for extending pension-cum-gratuity scheme to the teachers of universities and colleges. Pursuant thereto, the Syndicate and the Senate of the University passed resolutions for introduction of pensionary scheme, but did not specify a date for that purpose. Under that scheme the university employees could opt

for provident fund or pension in lieu thereof. As the proposed scheme had financial implications, the University seek the approval of the Government, which were given by the Rajasthan Government, by letter, dated 16.04.1991. The said letter stated that the State Government had decided to introduce the pension scheme in the Universities of the State w.e.f. 01.01.1990. Pursuant to the said letter, the Cabinet of the University approved the regulations of the Syndicate and the Senate. Thereafter, Pension Regulations, 1990 and General Provident Fund Regulations, 1990 were framed on 03.08.1991, options were invited from all persons who were in the service of the University of Jodhpur on or after 01.01.1990 to give their options for being governed by either set of Regulations.

(iii) In State of Rajasthan's case (cited supra), held that the pension scheme ought to have been made applicable w.e.f. 01.01.1986, instead of 01.01.1990. After considering the decision made in Union of India v. P.N.Menon reported in 1994 (4) SCC 68, the Apex Court in State of Rajasthan's case (cited supra), at Paragraph 16 and 17, held as follows:

"16. Applying the ratio of the aforesaid decisions to the present case, we find no justification for the High Court having substituted the date of 1..1986 in lieu of 1.1.1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the Rajasthan Government was required. In the letter of 16.4.1991. written to the Vice-Chancellors of different universities of Rajasthan, it was stated as follows:

"As per the direction in regard to the aforesaid subject, the State Government has decided to introduce Pension Scheme in the Universities of the State w.e.f. 1.1.1990. In this regard the State Legislature has passed University Pension Rules and General Provident Fund Rules. Therefore, by enclosing a copy of University Pension Regulations and General Provident Fund Regulations with this letter, it is requested that by obtaining approval of the competent body or syndicate of the University, these Regulations be implemented in the University together and necessary information regarding implementation be intimated."

17. The Syndicate and forwarded their recommendations in 1986, did not contain a specific date with effect from which the pension scheme was to be made applicable. Their recommendations were subject to approval. The approval was granted by the Government, after the State Legislature had passed University Pension Rules and General Provident Fund

Rules. The Government had stated in its affidavit before the High Court that the justification of the cut-off date of 1.1.1990 was "wholly economic". It cannot be said that the paying capacity is not a relevant or valid consideration while fixing the cut-off date. The University could, in 1991, validly frame Pension Regulations to be made applicable prospectively. It, however, chose to give them limited retrospectively so as to cover a larger number of employees by taking into account the financial impact of giving retrospective operation to the Pension Regulations. It was decided that employees retiring on or after 1.1.1990 would be able to exercise the option of getting either pension or provident fund. Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990."

(iv) In Tamil Nadu Electricity Board v. R.Veerasamy reported in 1999 (3) SCC 414, the common issue, that arose before the Hon'ble Supreme Court, was whether, the appellant-Board has acted illegally or contrary to law, in introducing a pension scheme to the employees, who were hitherto not governed by such pension scheme, prospective from 01.07.1986. In the words of the Apex Court, "To put it differently, whether the employees (respondents therein) retired before 01.07.1986, after receiving all retiral benefits available to them, as per law existing on their dates of retirement, can compel the appellant-Board to extend the benefit of the newly introduced pension scheme with retrospective effect." This Court directed the Board to grant the benefit of pension, to all the regular work charge establishment personnel, irrespective of the date of retirement. On appeal, after considering the earlier judgments in Union of India v. Lieut.E.Iacats [1997 (7) SCC 334], Hari Ram Gupta v. State of U.P., [1998 (6) SCC 328] and V.Kasturi v. Managing Director, State Bank of India, Bombay [1998 (8) SCC 30], the Hon'ble Apex Court, at Paragraph 16, held as follows:

"In the light of the foregoing discussion and applying the rulings of this Court above-noted, we answer the issue set out at the outset by holding that the appellant-Board has not acted illegally or contrary to law in introducing the pension scheme prospectively from 1.7.1986 and that the employees (respondents) retired

before 1.7.1986 cannot compel the appellant-Board to extend the benefit of the newly introduced pension scheme with retrospective effect."

It is worthwhile to reproduce the judgments, considered by the Apex Court in Tamil Nadu Electricity Board's case (cited supra), as follows:

"8. As noticed earlier, the law is very well settled on the issue on hand. In the latest judgment dated 9.10.1998 of this Court in V.Kasturi v. Managing Director, State Bank of India. Bombay & Anr., [1998] 8 SCC 30 after noticing all the judgments of this Court up to that date on this issue, it was held as follows:

"However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter v. Cap.Bipiabendra Chanda [1997 (1) SCC 208] and Govt. T.N. v. K.Jayaraman and Ors. [1997 (9) SCC 606] to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand; the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit,"

9. This Court in Union of India v. Lieut.E.Iacats, [1997] 1 SCC 334, to which one of us (Sujata V. Manohar

J.) was a party, had considered a case similar to the one on hand and held as follows:

"The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensionary benefits is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date, such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable".

10. In Hari Ram Gupta (dead) through Lr, Kasturi Devi v. State of U.P., [1998] 6 SCC 328, this Court held as follows :

"9. The only other question that survives for our consideration is Whether the ratio in Nakara case will assist the appellant in getting the relief sought for D.S.Nakara v. Union of India [1983 (1) SCC 305], the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and their upon make provision granting some benefits to one group denying the others. In the aforesaid case, the provisions for pension were applicable to all retirees and, therefore, pensioners form a class as a whole. But when the Liberalised Pension Scheme was introduced, the said Scheme was made applicable to a group of pensioners and not to all and, therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, in principled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution Bench judgment of Krishena Kumar v. Union of India [1990 (4) SCC 207], where in the decision of Nakara was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand,

the Rules governing the provident fund and its contribution are entirely different from the Rules governing pension arid, therefore, if would `not be reasonable to argue what is applicable to the pension retirees must also equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallised on his retirement whereafter no continuing obligation remained in case of those who are governed by Provident Fund Rules whereas in case of pension retirees, the obligation continues till the death of the employee. This Court categorically held that Nakara cannot be an authority for the decision in Krishena Kumar. In Union of India v. P.N.Menon [1994 (4) SCC 68], a similar question came up for consideration and distinguishing Nakara and following Krishena Kumar and other similar cases, the Court held that whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such, any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable arid rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a; cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. When the army personnel claimed the same pension irrespective of their date of retirement, this Court in the Constitution Bench case of the Indian Ex-services League v. Union of India [1991 (2) SCC 104] considered the grievance of ex-servicemen who had laid the claim on the bases of Nakara but ultimately negatived the same and followed Krishena Kumar. In All India Reserve Bank Retired Officers' Assn. v. Union of India [1992 Supp. (1) SCC 664], when the validity of the introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme was challenged on the ground that bank employees who retired prior to 1.1.1986 have not been given the benefit of the said scheme it was held by this Court that there is no arbitrariness in the same."

(v) In Tamil Nadu Electricity Board's case (cited supra), the

Hon'ble Supreme Court considered that the Board therein had given well-founded reasons for introducing pension scheme from 01.07.1986, including the reason of financial constraint, which is a valid ground and with reference to the date of retirement, further held that those who had retired from service from 01.07.1986 and those, who were in employment on that date, cannot be treated alike and they do not belong to one class.

(vi) In *State of Punjab v. Amarnath Goyal* reported in 2005(6) SCC 754, the respondents therein are the employees of Government of Punjab who retired during the period 31.7.1993 to 31.3.1995, sought for the benefit of a circular dated 13.12.1996 under which State Government employees, who retired or died on or after 1.4.1995, were entitled to get retirement gratuity/death gratuity on the basis of addition of certain portion of the dearness pay to the basic pay. This benefit was refused to them. The respondents therein challenged the decision of the State Government declining them the aforesaid benefit by a group of writ petitions (numbered CWP No. 4995/97 and others) before the High Court of Punjab & Haryana. The High Court partially allowed the writ petition and held that such of the State Government's employees, who had retired on or after 1.7.1993, were entitled to the higher amount of death gratuity and retirement gratuity consequent upon the merger of a portion of dearness allowance into the basic pay. The High Court, however, refused to grant this benefit to employees who had retired before 1.7.1993. The High Court also directed the State Government and its officers to calculate the death/ retirement gratuity of the respondents who had retired on or after 1.7.1993 in accordance with the notification dated 13.12.1996. The said judgment of the Hon'ble Division Bench of the Punjab & Haryana High Court is challenged before the Apex Court. After considering a catena of decisions, at Paragraphs 26, 31 to 33 and 35 to 37, held as follows:

"26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

31. In *Action Committee South Eastern Railway Pensioners v. Union of India* [1991 Supp. (2) SCC 544], it was held that, on merger of a part of dearness allowance as dearness pay on average price index level at 272 with

reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in D.S. Nakara (supra) was not applicable. In this connection, the ratios in Krishena Kumar v. Union of India [1990 (4) SCC 207], Indian Ex-services League v. Union of India [1991 (2) SCC 104], State Government Pensioners' Association v. State of A.P., [1986 (3) SCC 501], All India Reserve Bank Retired Officers' Assn. v. Union of India [1992 Supp. (1) SCC 664], are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In State of Rajasthan and Anr. v. Amritlal Gandhi & Ors., [1997 (2) SCC 342], this Court went so as far as to note that:

"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990"

33. More recently, in Veerasamy (supra), this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

35. In State of Punjab and Anr. J.L.Gupta and Ors., [2000 (3) SCC 736], where one of us was on the Bench (Sabharwal, J.), the views expressed in Boota Singh (supra) were reiterated, and it was held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.

36. In Ramrao and Ors., v. All India Backward Class Bank Employees Welfare Association and Ors., [2004 (2) SCC 76], a Division Bench of this Court said, even for the

purpose of effecting promotion, the fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. Moreover, the Court held that possible hardship to be endured by a person as a result did not make cut-off dates violative of Article 14.

37. In the instant case before us, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14."

(vii) In *State of Bihar v. Bihar Pensioners Samaj* reported in 2006(5) SCC 65, one of the issues considered by the Hon'ble Apex Court, was whether, the Government can fix a cut-off date, while introducing the pension scheme. In the said case, the State Government have filed a supplementary affidavit, setting out the details and financial expenditure to be borne by the State. After considering the decision of the Apex Court in *State of Punjab v. Amarnath Goyal* reported in 2005(6) SCC 754, at Paragraph 18, in *State of Bihar's* case (cited supra), the Hon'ble Supreme Court held as follows:

"A supplementary affidavit filed on behalf of the State Government by Mukesh Nandan Prasad dated 9.9.2002 brings out in paragraph 8 that the total amount of financial burden, which would arise as a result of making effective the payments from 1.1.1986 would be about 2,038.34 crores. In other words, the State Government declined to pay the arrears from 1.1.1986 on the ground of financial consideration, which, undoubtedly, is a very material consideration for any administration. In *State of Punjab v. Amarnath Goyal*, (2005) 6 SCC 754 this Court had occasion to consider the very same issue. After referring to a number of other authorities, it was held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. Thus, refusal to make payments of arrears from 1.1.1986 to 28.2.1989 on the ground of financial burden cannot be held to be an arbitrary ground or irrational consideration. Hence, the argument based on Article 14 of the Constitution must fail."

8. As rightly observed by the Writ Court, in matters relating to economic policy and even in the case of extending pensionary

benefits, fixing a cut-off date, while granting the pensionary benefits is well within the powers of the Government so long as the reasons are not arbitrary and based on some rational consideration.

9. Reasons for fixing a cut-off date is explicit even in the Government Order referred by the appellant. There is no place for discrimination. In the light of the discussion and the decisions cited supra, we find no merit in entertaining the Writ Appeal. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary to Government,
Tamil Development Culture and Religious
Endowment Department,
Fort St. George,
Chennai-9.
2. The Commissioner,
Hindu Religious-cum-Charitable Endowment,
Nungambakkam, Chennai-34.

1 CC to M/s. R.Gowri, Advocate SR.No. 47064

W.A.No.1272 of 2015

CNR (CO)
PSI (09.10.2015)

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