

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.5976 of 2015

And

M.P.No.2 of 2015

- 1.V.Pankajam
- 2.G.Rajeswari
- 3.K.Banumathi
- 4.G.Ayyamperumal
- 5.P.Kaliyamoorthy
- 6.R.Rengabashyam
- 7.S.Ramakrishnan
- 8.M.Veerassamy
- 9.C.Krishnamoorthy
- 10.P.Uthirasu
- 11.S.Subramanian
- 12.V.Subramanian
- 13.D.Kalyanasundaram
- 14.Manicka Kasinathan
- 15.K.Govindarajan
- 16.V.Masilamani
- 17.A.Annadurai
- 18.A.V.Veeraian
- 19.S.Gnanaprakasam
- 20.K.Jayapal
- 21.G.Mangaiyarkarasi
- 22.R.Subramanian
- 23.K.Balakrishnan
- 24.T.Tamilarasi
- 25.V.Sambamoorthy
- 26.G.Balakrishnan
- 27.G.Veeraian
- 28.C.Theivanai
- 29.S.Fathima
- 30.G.Sukumaran
- 31.M.Kannagi
- 32.K.Vijayalakshmi
- 33.P.Parithipandian
- 34.P.Renuka
- 35.T.Dakshinamoorthy
- 36.R.Radhabai
- 37.U.Kanagambal
- 38.U.Thairiyam
- 39.N.Balakrishnan
- 40.K.Thenammal
- 41.K.Jayarani
- 42.P.Balakrishnan
- 43.G.Premakumari
- 44.R.Sivasubramanian
- 45.P.Packrisamy
- 46.R.Panneerselvam



WEB COPY

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The District Elementary Education Officer,
Tiruvarur District,
Tiruvarur - 610 001.

4.The Assistant Elementary Education Officer,
Mannargudi Block,
Mannargudi, Tiruvarur District.

5.The Assistant Elementary Education Officer,
Needamangalam Block,
Needamangalam, Tiruvarur District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking the issuance of a Writ of Certiorarified Mandamus, calling for the proceedings of the 1st respondent made in G.O.Ms.No.179 School Education (EE1(2) Department dated 06.09.2013 and quash the same consequently directing the respondents herein to implement the Government Order in GO Ms.No.216 School Education Department dated 30.12.2011 in favour of the petitioners.

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.T.Kavitha, GA for R1 to R5

ORDER

The relief sought for in this writ petition is to call for the proceedings of the 1st respondent made in G.O.Ms.No.179 School Education (EE1(2) Department dated 06.09.2013 and quash the same and to direct the respondents herein to implement the Government Order in G.O.Ms.No.216 School Education Department, dated 30.12.2011 in favour of the petitioners.

2. The petitioners have sought for the extension of the benefits granted by the Government in G.O.Ms.No.216, School Education Department, dated 30.12.2011. On a perusal of the abovesaid Government Order, it is stated that the proposal submitted by the Director of Elementary Education, was considered by the Government and it was decided that the persons, irrespective of the fact, whether they have filed writ petitions or not, the benefit of counting of the services in the post of Secondary Grade Teachers and the Elementary School Headmaster rendered prior to 1.6.1988 to be calculated

for the purpose of awarding selection grade and special grade. More-so, the selection grade and special grade in the cadre of Elementary School Headmaster.

3. However, the Government thought that the above G.O.Ms.No.216, dated 30.12.2011 was ambiguous and accordingly, withdrawn the said Government Order and issued the revised Government Order in G.O.Ms.No.179, School Education Department, dated 6.9.2013. In the said Government Order, the Government thought fit that the benefit should be extended to the persons, who have obtained orders from the High Court numbering 1,528 and accordingly, restricted the relief only to those persons.

4. Secondly, they have stated that the persons, who have promoted in between 1.6.1988 and 31.12.1995, alone are eligible for the benefit granted in respect of counting of their services rendered in the post of Secondary Grade Teachers and Elementary School Headmaster prior to 1.6.1988. Thirdly, they have stated that the persons, who were promoted alone to be granted selection grade and special grade in the cadre of Elementary School Headmasters.

5. In view of the restrictions imposed in G.O.Ms.No.179, dated 06.9.2013, again a writ petition was filed before this Court, challenging the said Government Order.

6. The issue in nutshell is that the retired teachers, who have served as Secondary Grade Teachers and Elementary School Headmasters were of the point that prior to 1.6.1988, the said posts were interchangeable and was carrying the same scale of pay. In the V Pay Commission, the scale of pay of the post of Headmaster was enhanced and accordingly, it became a separate category. Thus, the dispute aroused whether the services rendered prior to 1.6.1988 in the post of Secondary Grade Teachers to be taken into account for the purpose of granting selection grade and special grade in the post of Elementary School Headmasters. It is not lis integra that the issue has been settled and the government also admitted the fact that the period of services rendered prior to 1.6.1988 in the interchangeable posts shall be taken into account for the purpose of granting selection and special grade.

7. However, the confusions aroused in respect of fixation of pay on account of long delay in settling these issues even after implementing another three Pay Commissions. More confusions aroused on account of the revision of pay implemented pursuant to the recommendations of the Pay Commission as well as the rectification of anomalies by the respective One Man Commissions and the Pay Redressal Grievance Committee periodically. On account of these confusions, the respondents have also committed various mistakes and irregularities in respect of fixation of pay for counting of the services rendered by these teachers prior to 1.6.1988.

8. This Court made it very clear that the counting of the past services rendered by these teachers prior to 1.6.1988 in the post of Secondary Grade Teachers and Primary School Headmasters are not disputed by the parties and G.O.Ms.No.179 stipulates fixation of pay and cut off date as 31.12.1995 for granting all these benefits. The learned counsel, appearing on behalf of the writ petitioners, is of the opinion that when the benefit was granted to the promotees promoted prior to 31.12.1995, the same benefit cannot be denied to the promotees, who were promoted after 31.12.1995 and it causes a discrimination and the principle of uniformity has been violated. Their only contention is that the revision of pay is to be effected uniformly to all the writ petitioners and also to the persons who are not before this Court. Such an argument advanced by the learned counsel for the writ petitioners is found to be reasonable.

9. This Court is of the opinion that the monetary benefits extended to a particular class of people belongs to the same category, then the same is to be extended uniformly and equally to all such similarly placed persons, who have worked or served in the particular cadre, and there cannot be any discrimination within the class. If there are two classes, then it is different and, in respect of the single class, the implementation of monetary benefits are to be identical and there cannot be any discrimination in this regard.

10. The learned Government Advocate appearing on behalf of the respondents, contended that in some of the cases on account of the numerous litigations before the High Court, double sanctions were made, granting selection grade and special grade twice to certain teachers. Granting of selection and special grade, twice to a particular person, caused great financial loss to the State Exchequer.

11. At the outset, the learned Government Advocate appearing on behalf of the respondents informed this Court, by citing the Government Orders, one way or the other, the selection grade and special grade were granted twice to the employees and the same caused financial loss to the State.

12. The learned counsel, appearing on behalf of the writ petitioners, admitted the legal principle that there can be one selection grade and one special grade for a teacher in his official career and more so in one post. This Court is also of the opinion that the very concept of selection grade and special grade was introduced by the Pay Commissions in order to mitigate the stagnation caused on account of non-promotion to the employees. The selection grade is given to an employee by fixing his scale of pay applicable to the higher post in view of the fact, that he was stagnated in a particular post for more than 10 years. If the same person is further stagnated upto 20 years, then special grade is granted and the

scale of pay applicable to the next higher post will be fixed to that employee. The very concept of selection grade and special grade are to mitigate the non promotion for more than 10 years and 20 years respectively. When such being the concept of selection grade and special grade in a particular post, the same is to be granted once to an employee in his career. Normally, a Government employee would be serving for about 30 to 35 years maximum in total.

13. There cannot be any two selection grade or two special grade in the same post. It is clarified that there can be one selection grade and one special grade in the same post and there cannot be any recounting of the services rendered in the same post for the second time for the purpose of granting selection grade or special grade in the higher post. Thus, it is for the respondents to make a reassessment in respect of such grant of selection grade and special grade to the teachers in respect of the cadre in which they have worked.

14. For instance, if a teacher worked in the post of Secondary Grade Teacher, there can be one selection grade and one special grade in that particular post and there cannot be any double selection grade and double special grade in that particular post. The grievances of the respondents are that by virtue of various Government Orders issued periodically by the Government, the confusion aroused on account of that double time selection grade and special grade were granted to the teachers. Granting additional pay and pension, which caused financial loss to the State. If such cases are found, it is the duty of the officials concerned, to see that a revision of pay is effected correctly. Thus, the arrears and a grade pay to be fixed to the concerned teachers and the revision of pay and pension to be settled in accordance with the rules in force.

15. This Court made it clear that the excess payments, if any, granted to the teachers, at the instance of the respondents, cannot be recovered. However, if any error took place in the fixation, the same alone can be rectified and the pay may be revised with retrospective effect. Thus, it is made clear that correction of error is permissible and the same is to be done in respect of all the teachers, who have sanctioned with selection grade and special grade by counting the services rendered in the post of Secondary Grade Teachers and Primary School Headmasters prior to 1.6.1988. In respect of recovery, it is impermissible and it is further made clear that if there is any misrepresentation or an undertaking given by the teachers, then the amount can be recovered as per the Hon'ble Supreme Court in the case of State of Punjab and Others vs. Rafiq Masih [(2015) 4 SCC 334], the relevant paragraph 18 is extracted hereunder:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery,

where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

16. In the case of High Court of Punjab & Haryana vs. Jagdev Singh [(2016) 14 SCC 267], the Hon'ble Supreme Court says in paragraph 11 that "the principle enunciated in proposition (ii) in the case of State of Punjab and Others vs. Rafiq Masih [(2015) 4 SCC 334], cannot apply to a situation such as in the present case. In the present case, the Officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The Officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

17. Thus, the respondents are bound to verify the error took place in the revision of scale of pay and grant of arrears and if there is any such error is found, then the same is liable to be rectified and a correct revision is effected in respect of all teachers. However, if no such revision is effected to the candidates, then the respondents are bound to grant the benefits, which were already granted to the other similarly placed teachers.

18. Next the writ petitioners have questioned the cut off date of 31.12.1995 fixed by the respondents for grant of selection grade and special grade. The only contention is that the VI State Pay Commission was implemented with effect from 1.1.1996. Thus, the revised pay was granted to all the cadres with effect from 1.1.1996. When the revised pay scale was granted, then the grievances addressed were settled in respect of the teachers.

19. It is contended that the teachers who were promoted to the post of Elementary School Headmasters in between 1.6.1988 and 31.12.1995 alone were affected and the teachers, who were promoted to the post of Elementary School Headmasters after 31.12.1995, will be directly fixed with the revised scale of pay implemented with effect from 1.1.1996. The reason for fixing the date of 31.12.1995 is that the parity between the teachers and the Elementary School Headmasters aroused prior to 1.6.1988. The V Pay Commission was implemented with effect from 1.6.1988 and the VI Pay Commission was implemented with effect from 1.1.1996.

20. Such being the factum of the case, the services rendered prior to 1.6.1988 alone can be counted for the purpose of grant of selection grade and special grade as a one time measure. Once the period is counted, then there cannot be any second time counting of the same period for the purpose of granting selection grade and special grade. Thus, the Government thought fit that such a benefit can be implemented only upto 31.12.1995 and thereafter, all the teachers would be brought under the revision of pay in the particular cadre. Accordingly, the selection grade and special grade will be granted as per the rules thereafter.

21. The learned counsel for the writ petitioners have questioned the cut off date of 31.12.1995 fixed by the Government. This Court is of the opinion that fixing the cut off date is an executive prerogative of the State Government and such a cut-off date fixed for the purpose of granting monetary benefits on pensionary benefits cannot be questioned by the pensioners. Further, the pre-retiries of 31.12.1995 is a separate class of people and post-retiries of 01.01.1996 form a different group. On account of the implementation of the Pay Commission, this Court has to draw an inference that these people form a separate class and cannot be construed as a single class. Thus, the State has not created a class within a class and one group of pre-retiries of 31.12.1995, cannot be compared with the post-retiries of 01.01.1996. So also the grant of selection grade and special grade to the promotees before 31.12.1995 and after 1.1.1996.

22. In view of the fact that the implementation of the VI Pay Commission was under taken with effect from 01.01.1996, there is a relevance in fixing the cut-off date and such a

relevancy in relation to the financial burden and other aspects of the State Government. Thus, the cut-off date fixed is very much relevant for the purpose of granting monetary benefits and for adopting the recommendations of the VI Pay Commission with effect from 1.1.1996.

23. The legal principle in this regard is that a class within a class alone is prohibited and to be treated as in violation of Articles 14 and 16 of the Constitution of India. However, a class can be created, based on the implementation of a new Pay Commission and, the same cannot be construed as in violation of Articles 14 and 16 of the Constitution of India. The State can fix the cut-off date and such a power cannot be questioned by the writ petitioners and the differences in pension also cannot be compared in view of the fact that it is not necessary that an equal pension to be given in all cadres at all times, in view of the fact that the pensions are sanctioned for the State pensioners based on their respective qualifying service rendered on the basis of the Last Pay Drawn by them. Therefore, the pension vary from one pensioner to another pensioner and the differences in pension, cannot be questioned by other pensioners. This apart, the Rule of stepping up of pay on par with the juniors for in-service candidates are not available to the pensioners, since the pensions are fixed based on the Pension Rules and on the basis of the Last Pay Drawn by the respective pensioners, considering the total length of service rendered by them in the respective cadres.

24. Whenever a Pay Commission is implemented, such a cut-off date is prescribed and for instance, the State has now implemented the VIII Pay Commission. Right from the First Pay Commission, the cut-off is fixed for the implementation of the Pay Commission recommendations for the purpose of revision of pay, both to the serving employees as well as to the retired employees. Thus, cut-off date cannot be construed as unknown to Service Law and such a cut-off date is necessary under various circumstances, while considering the financial implications of the State. The only point to be considered is as to whether such a cut-off date fixed by the State have any relevance with regard to the object sought to be achieved in this regard.

25. In the case on hand, no doubt the grievances of the writ petitioners were that their services rendered in the post of Secondary Grade Teachers and Elementary School Headmasters prior to 1.6.1988 to be counted for the purpose of granting selection grade and special grade. However, that is to be granted as one time measure and once such a benefit is granted to the writ petitioners, they cannot claim the same benefit for the second time. For this reason, the Government, while implementing the VI Pay Commission with effect from 1.1.1996 for State that the person promoted till 31.12.1995 will be given such benefit. Further, the benefit granted to the

employees ought to be given uniformly is the principle to be followed.

26. The learned Government Advocate for the respondents states that if no such Committee is formed by the State, then it will cause huge financial loss and at every point of time, the period to be counted even at the second time, such fixation will create double benefit to the teachers, which would result in financial losses, and also impermissible as per the Pay Rules.

27. The Government fixed various cut-off dates, keeping in view the economic conditions, financial constraints and many other administrative and other mitigating circumstances. Thus, the fixing of cut-off date is within the domain of the Executive Authority. It is well settled that when two sets of employees of the same rank retired at different point of time, one set cannot claim the benefit extended to the other set, on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or group. The method of calculation of revised pension from 01.01.1996 was determined, as was done in the earlier revision. Thus, the anomaly in respect of grant of revision of pay between the teachers prior to 31.12.1995 and after 1.1.1996, cannot be compared nor accepted.

28. Due to the constant increase in the expenditure on pension, Contributory Pension Scheme has been implemented with effect from 01.04.2003. Moreover, all the concessions granted to the Central Government employees/pensioners are not extended to the State Government employees/pensioners. The resources of the State Government cannot be compared with that of the Central Government, but the sources of tax revenue to the State is very much limited like Sales Tax, State Excise, the resources of the State alone are to be taken into account for the purpose of grant of revision of pay and arrears and other attendant monetary benefits. Sometimes, due to the financial constraints, the State Government could not extend the benefits to its employees/pensioners to the level available to the Central Government employees/pensioners.

29. The Government would tend to incur a huge amount, as it will lead to severe financial constraints and the State would not be able to implement the development and other infrastructural schemes. The State Government has also constituted an Official Committee to recommend the revision of pay and pension based on the recommendations of the various Central Pay Commissions. Thus, the retrospective relief, if any, granted would cause a great financial concern to the State Exchequer.

30. In the case of UNION OF INDIA v. P.N.MENON AND OTHERS [(1994) 4 SCC 68], the relevant portions, viz paragraph Nos. 10 & 20 of the said Judgment reads as follows:

"10. The concept of 'dearness pay' was evolved in respect of employees in different pay ranges with different percentages of the dearness pay. Thereafter the pension and gratuity were worked out and an option was given to persons, who retired on or after 30-9-1977 but not later than 30-4-1979, to choose either of the two alternatives (i) to have their pension and death cum-retirement gratuity calculated on their pay excluding the element of dearness pay as indicated in paragraph 2 of the said office memorandum; or (ii) to have their pension and death-cum-retirement gratuity recalculated after taking into account the element of dearness pay. If the stand of the respondents is to be accepted that this scheme should have been made available, without there being a cut-off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, according to us, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index. Different institutions/departments have introduced the system of payment of dearness allowance at different stages to mitigate the hardship of their employees with the rise in the prices of the essential articles as a result of the inflation. "

"20. The scheme to merge a part of the dearness allowance for purpose of fixing the dearness pay, was evolved, and was linked with the average of cost of living index fixed at 272, which fell on 30-4-1977. In this background, it cannot be said that the date, 30-9-1977, was picked out in an arbitrary or irrational manner, without proper application of mind. The option given to employees, who retired on or after 30-9-1977 but not later than 30-4-1979, to exercise an option to get their pension and death-cum-retirement gratuity calculated by excluding the element of dearness pay as indicated in the aforesaid office memorandum or to get it included in their pension and death-cum-retirement gratuity, was not an exercise to create a class within class. The decision having a nexus with the price index level at 272, which it reached on 30-9-1977, was just and valid. It has been rightly pointed out that respondents had never been in receipt of dearness pay and as such the office memorandum in question could not have been applied to them. Similarly, the encashment of leave was a new scheme introduced which could not have been extended retrospectively to respondents, who had retired before the introduction of the said

scheme. Same can be said even in respect of family pension scheme which was earlier contributory, but with effect from 22-9- 1977 the scheme was made non-contributory. The respondents not being in service on the said date, were not eligible for the said benefit and no question of refunding the amount, which had already been contributed by them, did arise. According to us, the High Court was in error in applying the principle of D.S. Nakaral in the facts and circumstances of the present case. "

31. In the case of STATE BANK OF INDIA v. L.KANNAIAH AND ORS [(2003) 10 SCC 499, the Hon'ble Supreme Court has observed as follows:

"6. Para 5 of the circular stipulated that the age limit (viz. not being over 35 years) for admission to pension fund shall continue. Thus the pensioned ex-service personnel were admitted to pensionary benefits with effect from 1.1.1965 subject to the restriction of the age limit of 35 years (which was later on enhanced to 38 years) on that date. As the date of confirmation of the respondents was much earlier to 1.1.1965, the crucial date for admission to the pension fund would be 1.1.1965. On that date, the confirmed employee of the Bank should not have exceeded 35 years of age. That is the combined effect of the staff circular No. 18 dated 8.4.1974 read with the Pension Fund Rules referred to supra. The reason for prescribing the maximum age limit of 35 or 38, as the case may be, for the purpose of induction into pension fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rationale or discernible basis for fixing the cutoff date as 1.1.1965, notwithstanding their earlier confirmation in Bank service. True, a new benefit has been conferred on the ex-servicemen and therefore a cutoff date could be fixed for extending this new benefit, without offending the ratio of the decision in D.S. Nakara and others Vs. Union of India [AIR 1983 SC 130]; but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to

ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view. "

32. In the case of GOVERNMENT OF ANDHRA PRADESH v. N.SUBBARAYUDU AND OTHERS [(2008) 14 SCC 702], the Hon'ble Supreme Court relying on the Judgment of the Constitution Bench in D.S.NAKARA v. UNION OF INDIA [(1983) 1 SCC 305, held as follows:

"5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab & Ors. Vs. Amar Nath Goyal & Ors., (2005) 6 SCC 754).

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

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

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar vs. Ramjee Prasad, 1990(3) SCC 368, Union of Indian & Anr. vs. Sudhir Kumar Jaiswal, 1994(4) SCC 212 (vide para 5), Ramjee & Ors. vs. All India Backward Class Bank

Employees Welfare Association & Ors., 2004 (2) SCC 76 (vide para 31), University Grants Commission vs. Sadhana Chaudhary & Ors., 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

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

33. In the case of COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ORS v. RAMESH CHANDRA AGRAWAL AND ANOTHER [(2009) 3 SCC 35], the Hon'ble Supreme Court has observed as follows:

"29. A 'State' is entitled to fix a cut off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2.5.1997 was the date fixed as the cut off date in terms of the scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularization scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr. Patwalia, by choosing 2.5.1997 as the cut off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.

30. The High Court, however, proceeded on the basis that the cut off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut off date an employee misses his chance very

narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut off date.

31. The scheme was a one-time measure. The number of posts was not confined to the posts which have been sanctioned. The validity of the scheme has been challenged as unrealistic, illusive, arbitrary or unworkable. We may at this juncture notice that whereas the Tribunal directed framing of a scheme, this Court directed the appellants to consider the same.

32. Cut off date has been fixed for those who are eligible as per the criteria laid down by the scheme. The service rules were framed in terms of the bye-laws of the society. It would bear repetition to state that the appellant No. 1 is not a statutory authority. It is a research oriented organization. It knows its needs. The research fellows and research associates because of their involvement in the research work are to get priority in their appointments. Particular projects whether funded by the Ministry concerned or others would depend upon the nature thereof. It, by a judicial fiat, could not have been made a continuous scheme."

34. In the case of STATE OF A.P. & ANR v. A.P. PENSIONERS ASSOCIATION & ORS [(2005) 13 SCC 161], the Hon'ble Supreme Court has observed as follows:

"28 It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."

Mr. Lalit placed strong reliance on D.S. Nakara and Others Vs. Union of India [(1983) 1 SCC 305] for the proposition that the financial implication for implementation of the recommendations of PRC has not much relevance. Therein, the Constitution Bench came to the conclusion that the increased liability upon the said judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme.

The decisions of this Court which have been noticed in Amar Nath Goyal (supra) categorically point out that financial implication is one of the relevant considerations for the State to deny certain benefits to a class of employees who retire on or before a particular date."

35. In the case of TRANSPORT AND DOCK WORKERS UNION AND ORS v MUMBAI PORT TRUST AND ANOTHER [(2011) 2 SCC 575, the Hon'ble Supreme Court observed as follows:

"38. As regards cut-off dates, this Court in Government of Andhra Pradesh and Ors. vs. N. Subbarayudu and Ors., 2008 (14) SCC 702 has observed vide paragraphs 5 to 9 :

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab vs. Amar Nath Goyal, 2005(6) SCC 754)

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

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the

cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

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

9. As has been held by this Court in *Aravali Golf Club vs. Chander Hass*, 2008(1) SCC 683 and in *Govt. of A.P. vs. P. Laxmi Devi*, 2008 (4) SCC 720, the court must maintain judicial restraint in matters relating to the legislative or executive domain."

39. In our opinion, there is often a misunderstanding about Article 14 of the Constitution, and often lawyers and Judges tend to construe it in a doctrinaire and absolute sense, which may be totally impractical and make the working of the executive authorities extremely difficult if not impossible.

40. As Lord Denning observed :

"This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to

make decisions. The Courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in this matter." (See 'Judging the World' by Garry Sturgess Philip Chubb).

41. In our opinion Judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions. "In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language : It is misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

42. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote :

"It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism-by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest." (see 'Essays on Legal History in Honour of Felix Frankfurter' edited by Morris D. Forkosch.)

43. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges' preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely, former Chief Justice of the West Virginia Supreme Court of Appeals :

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

44. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrators unless the decision is clearly violative of some statute or is shockingly arbitrary. In this connection, Justice Frankfurter while Professor of Law at Harvard University wrote in 'The Public and its Government' -

"With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

45. In the same book Justice Frankfurter also wrote -

"In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship."

46. In legal scholarship, Roscoe Pound challenged the rigid formalism of Justice Field. Pound strongly argued against a jurisprudence founded upon immutable first principles and sought in the social sciences and related fields a means for making the law responsive to a changing world.

47. As observed by Justice Frankfurter :

"It would be comfortable to discover a Procrustean formula..... If such were the process of Constitutional adjudications in this most sensitive field, it would furnish an almost automatic task of applying mechanical formula and would hardly call for the labors of Marshall or Taney, of Holmes or Cardozo. To look for such talismanic formula is to assume that the broad guarantees of the Constitution can fulfill their purpose without the nourishment of history."

48. In *Keshavanand Bharti vs. State of Kerala*, AIR 1973 SC 1461 (vide paragraph 1547) Khanna, J. observed :

"In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error."

49. In the present case there was a reasonable basis for the classification, and hence there is no violative of Article 14 of the Constitution."

36. In support of their contentions, the learned counsel appearing for the petitioners relied on the judgment of the Hon'ble Supreme Court in *UNION OF INDIA AND ANOTHER v. SPS VAINS (RETD) AND OTHERS* [(2008) 9 SCC 125]. The learned counsel, appearing for the petitioners, also relied on the Judgment of the Constitution Bench of the Hon'ble Supreme Court in *D.S.NAKARA*, contended that all the exercise irrespective of their retirement should be treated as homogeneous, one class and while extending the benefit of pension, it should be extended to all and fixing of the cut-off date as 01.01.1996, is illegal and violative of the principles laid down in *D.S.NAKARA*.

37. Such an argument has no force in law, in view of the fact that all the subsequent Judgments to the Judgment of *D.S.NAKARA*, the Hon'ble Supreme Court has reiterated and emphasized that the legal principles in the case of *D.S.NAKARA* to be tested with the facts and in the changing circumstances. In other words, the case of *D.S.NAKARA* was decided in the year

1983 and thereafter, the Hon'ble Supreme Court has considered various aspects of Pension Schemes and laid down the principles holding that fixing of cut-off date cannot be held to be illegal or arbitrary. Further, the date of implementation of the Pay Commission cannot be said to be arbitrary and further the Hon'ble Supreme Court considered the financial constraints of the State and other aspects while granting the relief in such kind of cases.

38. In this regard, the Government in its counter affidavit in W.P.No.12092 of 2013 in paragraph No.18, has narrated the statics about the expenditure to be incurred and paragraph No.18, is extracted below:

"18.The expenditure on pension has increased manifold and in 2006-2007, the number of pensioners was 5,60,168 and expenditure was Rs.5,442 crores. In 2015-16, the number of pensioners increased to 7,14,041 and pension expenditure is estimated at Rs.20,074/- crore. The Pension and retirement benefits expenditure was at 5.9% of total revenue expenditure in 1990-91 and 14.7% in 2011-12 and it is estimated that it may reach 20.5% during 2030-3. Due to various legal interventions, a number of Government Orders have been issued with huge impact on State finance by increased expenditure on pension and other retirement benefits, which is unsustainable in the long run. Further, retrospective upward revision of the pensionary entitlements and benefits create issues of inter-generational equity. The further revision of pension and other retirement benefits without considering financial constraint of the State will lead to more financial stress and the State cannot implement development and infrastructure schemes."

39. Thus, this Court is of the opinion that the benefits extended to the employees belongs to the same class to be extended equally and uniformly to all the persons worked in that particular cadre. There cannot be any discrimination, within the class and therefore, the benefit of counting of the services in respect of the Secondary Grade Teachers and the Elementary School Headmasters prior to 1.6.1988 to be extended to all the teachers, who have served in the particular cadre prior to 1.6.1988. The said policy was admitted by the Government and the scheme was extended to all. While-so, there cannot be any discrimination on the basis that the benefit to be extended to the persons who have approached the High Court. Even the teachers, who have not filed any writ petition also to be granted with the same benefit of counting of the services rendered prior to 1.6.1988 in the post of Secondary Grade Teachers and the Elementary School Headmasters.

40. This apart, the clauses mentioned in G.O.Ms.No.179, to be followed scrupulously by the respondents and accordingly, the benefits to be extended to all the writ petitioners irrespective of the fact whether they have filed writ petitions or not. It is admitted by the learned counsel for the respondents that the Government will implement the clauses in G.O.Ms.No.179, School Education Department, dated 6.9.2013 in its letter and spirit. Thus, there is no dispute in respect of the implementation of the order passed by the Government in G.O.Ms.No.179, School Education Department, dated 6.9.2013. The Government has once assured that the benefit of the Government Order will be given to persons, who have filed cases numbering 1,528, then the same benefit cannot be denied to other similarly placed persons. To that extent, the Government Order seems to be bad in law.

41. The Hon'ble Supreme Court of India, time and again, emphasised that for the purpose of getting the benefits, the pensioners or the employees, cannot be driven to Court for filing a writ petition. The State, being a model employer, should implement the financial orders uniformly to all persons, who are eligible to avail the benefits and there cannot be any discrimination in respect of grant of monetary benefits amongst the same class of people. Thus, this Court is of the strong opinion that the benefit granted in G.O.Ms.No.179, School Education Department, dated 6.9.2013, should not be restricted only to the litigants, who were before this Court numbering 1,528 and the same is to be extended to all the similarly placed persons, who belongs to the same class.

42. Accordingly, the following directions are issued:

(i) The G.O.Ms.No.179, School Education Department, dated 6.9.2013 is upheld;

(ii) The benefits granted in G.O.Ms.No.179, School Education Department, dated 6.9.2013, to be implemented scrupulously in its terms and conditions to all the employees who have served in the same cadre and who are placed similarly;

(iii) If any double selection grade or double special grade was granted on account of an administrative error, the respondents are at liberty to rectify the errors in granting revision of pay and accordingly, fix the correct scale of pay as per the said Government Order;

(iv) If the revision of pay is not extended to the similarly placed persons, then the respondents are directed to grant the revision of scale of pay to all the similarly placed employees as per G.O.Ms.No.179, School Education Department, dated 6.9.2013. In this regard, the Director of Elementary School Education, is directed to prepare consolidated instructions with clear illustrations and communicate the same to all the subordinate officials, so as to avoid discrepancies and inconsistencies in respect of the implementation of G.O.Ms.No.179, School Education Department, dated 6.9.2013;

(v) The Government, in its counter affidavit in W.P.No.12092 of 2013 in paragraph 18, has narrated the statistics about the expenditure to be incurred and the same is extracted in paragraph-38 of this judgment. In view of the financial stress, the Government shall calculate and revise the pension and family pension in respect of those who expired, based on the revised scales of pay in terms of G.O.Ms.No.179, School Education Department, dated 6.9.2013 and the arrears and the consequential monetary benefits would be payable on and from 1st January, 2018;

(vi) If any wrong fixation is done after the consolidated instructions are issued, then the Government as well as the Director of Elementary School Education, have to initiate appropriate disciplinary proceedings against the officials, who have violated the Court orders and the Government instructions, in this regard;

(vii) These directions are issued to provide a quietus to the issue and to the irregularities, discrepancies and inconsistencies caused on account of erroneous implementation of various Government Orders issued in this regard by the Government. Thus, an uniform implementation is to be made by the officials without giving any room for any discriminations and confusions in future and thereby to ensure that the officials have to implement the orders in its letter and spirit and scrupulously and to avoid financial loss to the State Exchequer.

(viii) The said exercise shall be done by the respondents, within a period of six months from the date of receipt of a copy of this order.

43. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrarkak

To

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The District Elementary Education Officer,
Tiruvarur District,
Tiruvarur - 610 001.

4.The Assistant Elementary Education Officer,
Mannargudi Block,
Mannargudi, Tiruvarur District.

5.The Assistant Elementary Education Officer,
Needamangalam Block,
Needamangalam, Tiruvarur District.

+1cc to MR.S.Thirumavalavan, Advocate Sr.No.35177

+1cc to Government Pleader Sr.No.35320

sm:12.6.2018

W.P.No.5976 of 2015



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