

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 9738 OF 2016

Sukhendu Bhowmik

Vs.

The State of West Bengal & ors.

For the Petitioner : Mr. J. C. Das
Mr. Binoy Kr. Das
.....advocates

For the State : Mr. Tapan Kr. Mukherjee
Mr. Joyak Kr. Guptaadvocates

Heard on : 11.08.2022

Judgment on : 29.09.2022

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for direction upon the respondents to grant pension in terms of the Memorandum no. 3942 dated September 3, 2009 upon a declaration that the clause in the said memo denying extension of benefits under the said memorandum to the Panchayat employees who have retired on or after the first

day of January, 2006 but before the issuance of the said memorandum is *ultra vires* the Constitution of India. The petitioner has also challenged the order dated August 6, 2014 by virtue of which the claim of the petitioner for grant of pension was turned down by filing this writ petition.

2. Facts which are relevant for the purpose of disposal of this writ petition are as follows-
3. Petitioner was initially appointed in the post of Job Assistant on September 8, 1980 at Dasgram No.4 Gram Panchayat (for short “the Panchayat”) and subsequently he was promoted to the post of Secretary of the said Panchayat in the year 2006. He retired from service on superannuation on March 31, 2009 after rendering service for about 28 years and 6 months. The Government of West Bengal introduced a pension scheme for the Panchayat employees in the year 1985 and the petitioner at the time of retirement was governed by the provisions of the Death Cum Retirement Benefits Scheme, 1985 (for short “1985 Scheme”). The pay scale of the petitioner was revised in terms of the memorandum no. 854 dated February 27, 2009 which came into force on the first day of January, 2006. The Department of Panchayat and Rural Development, Government of West Bengal issued a memorandum no. 3942 dated September 3, 2009 thereby revising the pension/ family pension, gratuity and commutation of pension of post 01.01.2006 pensioners of Panchayat bodies. Petitioner applied for grant of full pensionary

benefit before the Director, Pension, Provident Fund and Group Insurance and such prayer of petitioner was rejected by order of the Director, Pension, Provident Fund and Group Insurance dated August 6, 2014 which was modified subsequently by issuing a corrigendum dated October 30, 2014. The claim of the petitioner for full pension was rejected vide orders dated 06.08.2014 read with 30.10.2014 as he superannuated prior to the date of issuance of the memorandum no. 3942 dated 03.09.2009. Petitioner alleged discrimination in making a further classification within a homogeneous class. Being aggrieved, petitioner has filed this writ petition.

4. The stand of the State in the affidavit-in-opposition is that the Government is entrusted to decide and frame rules and regulations for its employees and the Finance Department is the sole authority to sanction the financial benefit keeping in mind the availability of financial resources. It was further stated therein that the Panchayat Department issued the memorandum dated September 3, 2009 with concurrence of Finance Department order no. 460-F(Pen) dated September 1, 2009. It was contended therein that the question of discrimination does not arise as the memorandum was issued with cut-off date of implementation considering all aspects including financial resources. It was further stated therein that the memo dated September 3, 2009 is prospective in its application and the employees who retired prior to the issuance of the memo dated

September 3, 2009 are not entitled to any benefit under the said Memorandum.

5. Mr. Das learned advocate appearing for the petitioner contended that the pensioners belong to a homogeneous class and a further classification on the basis of the date of retirement for applicability of the revised pension scheme is not permissible. According to Mr. Das, the differential treatment to pensioners on the basis of the date of retirement for the purpose of extending the benefits of revised pension is unconstitutional as being in violation of Article 14 of the Constitution of India. The plinth of argument of Mr. Das is the decision of the Hon'ble Supreme Court of India in the case of *D.S. Nakara and ors. vs. Union of India* reported at AIR 1983 SC 130. He also relied upon a recent decision of the Hon'ble Supreme Court in the case of *All Manipur Pensioners Association by its Secretary vs. State of Manipur and ors.* reported at AIR 2019 SC 3338. According to Mr. Das, as the petitioner was extended the pensionary benefits in terms of the 1985 Scheme, the benefit of revised pension introduced vide memorandum dated September 3, 2009 cannot be denied to pensioners like the petitioner only because they retired prior to the date of issuance of the said memorandum. He further contended that by introducing a cut-off date equals are treated as unequals and such classification is unreasonable, discriminatory and arbitrary and is liable to be set aside by this Court.

6. Per Contra, Mr. Mukherjee, learned Senior Counsel for the State contended that while introducing a scheme for revision of pension, a date from which it becomes effective has to be provided. He further contended that restricting the applicability of the said scheme only to the employees who retired on or after the date of issuance of the said memorandum cannot be said to be an arbitrary one as such date was fixed after taking into consideration the financial resources and the financial implications for the purpose of extending the benefits of revised pension. He relied upon the decisions of the Hon'ble Supreme Court in the case of *Krishena Kumar vs. Union of India and ors.* reported at AIR 1990 SC 1782, *Union of India vs. P.N. Menon and ors.* reported at (1994) 4 SCC 68 and *Hari Ram Gupta (Dead) Through L.R. Kasturi Devi vs. State of UP* reported at (1998) 6 SCC 328 in support of his contention that 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.
7. Heard the learned advocates for the parties and perused the materials placed.
8. The Department of Panchayat issued the memorandum no. 3942 dated September 3, 2009 for revision of pension/ family pension, gratuity and commutation of pension of post 01.01.2006 pensioners of Panchayat bodies.

9. After going through the decisions cited by the learned advocates of the respective parties, this Court is of the considered view that the following proposition of law emerges therefrom. An employee who at the time of retirement was governed by the Pension Scheme and was extended the benefits of such scheme upon retirement and such scheme was subsequently modified or amended, such retired pensioner would be eligible to get enhanced pension or the benefits of the new or revised formula for calculation of pension in terms of a scheme brought into force after his retirement with a caveat that such pensioner would be entitled to financial benefits only from the date of implementation of the revised scheme.
10. The memorandum no. 3942 dated 03.09.2009 is to be examined before applying the aforesaid proposition of law.
11. The relevant provisions in the 1985 Scheme for the employees of panchayat were modified by issuing the memorandum no. 3942 dated September 3, 2009. It appears from the said memorandum dated September 3, 2009 that the question of modification of scheme granting pensionary benefits to the Panchayat employees consequent on the revision of pay structure of the employees under Panchayat bodies in the State with effect from 01.01.2006 in terms of the memo no. 854 dated February 27, 2009 had been under consideration of the Government. It further appears therefrom that after careful consideration of the matter, the Governor has been pleased to decide that the pensionary benefits

in respect of the Panchayat employees who retired after coming into force of the memo no. 854 dated 27.02.2009 and whose pay has been fixed under the said memo or in whose favour such revised pay has been allowed notionally shall be revised.

12. The object behind introduction of the Memo dated 03.09.2009 is to benefit the employees who retired after coming into force of the Memo dated 27.02.2009 and whose pay has been revised as per the Memo dated 27.02.2009.
13. The portion of the memorandum no. 3942 dated September 3, 2009 that would be relevant for the purpose of deciding this writ petition is extracted below.

“A. Pension

(i) A Panchayat employee retiring in accordance with the provisions of Death-cum-Retirement Benefits Scheme, 1985 for the employees of Panchayat and before completion of minimum qualifying service of ten year shall not be entitled to pension, but he shall continue to be entitled to gratuity.

(ii) Linkage of full pension with 33 years of qualifying service shall be dispensed with. Once a Panchayat employee has rendered a minimum qualifying service of 20 (twenty) years, pension shall be paid at 50% of the last basic pay drawn. For Panchayat employees who at the time of retirement have rendered qualifying service for 10 (ten) years or more but less than 20 (twenty) years, proportionate reduction shall be made while calculating the amount of pension.

This provision, however, shall be applicable to the Panchayat employees retiring on or after the date of issue of this memorandum and should not be made applicable in respect of

those employees who have retired on or after the 1st day of January, 2006, but before issue of this memorandum.

(iii) The existing maximum amount of monthly pension of Rs. 11,200/- (Rupees eleven thousand two hundred) only per month as laid down in Memo No. 4386/PN/N/III/2P-18/99 dated 1.12.99 shall be raised to Rs. 24,050/- (Rupees twenty four thousand and fifty) only per month.

(iv) The existing minimum amount of monthly pension/family pension of Rs. 1300/- (Rupees one thousand three hundred) only as laid down in Memo No. 4386/PN/N/III/2P-18/99 dated 1.12.99 shall be raised to Rs. 3300/- (Rupees three thousand three hundred) only per month.”

14. Upon reading the aforesaid clauses, it appears to this Court, that by the memorandum dated September 3, 2009 the minimum qualifying service for full pension has been reduced from 33 years to 20 years. However, the employees who have retired on or after the first day of January, 2006, but before issue of such memorandum have been kept outside the purview of the revised pension scheme by inserting a clause therein to that effect.
15. Sub-clause (iii) provided that the existing maximum amount of monthly pension of Rs. 11,200 as per the memo no. 4386 dated 01.12.1999 shall be raised to Rs. 24, 050 only per month.
16. Since the petitioner did not render 33 years of qualifying service he was not granted full pension after his retirement. The petitioner now claims the benefit of full pension in terms of the memo dated September 3, 2009 as he has rendered 28 years 6

months of service i.e., more than 20 years minimum qualifying service which is required for getting full pension in terms of the memo dated September 3, 2009.

17. All the Panchayat employees who were on service on 01.01.2006 were extended the benefits of revised pay scale in terms of Memo dated 27.02.2009. The pay scale of the petitioner was also revised in terms of Memo dated 27.02.2009. The petitioner satisfied the twin tests i.e., he retired after coming into force of the Memo dated 27.02.2009 and his scale of pay was also revised in terms of the said Memo. The object behind introduction of Memo dated 03.09.2009 is also to benefit the pensioners who are similarly situated to that of the petitioner.
18. After going through the said scheme, this Court is of the considered view that the Memo dated 03.09.2009 is not a new scheme but it modified some of the provisions of the 1985 scheme in order to extend the benefits of an upward revision in pension to the Panchayat employees whose pay scale were revised vide Memo dated 27.02.2009.
19. This Court has to now consider whether rejection of the claim of the petitioner for extending the benefits of revised pension in terms of the memorandum dated September 3, 2009 by order dated August 6, 2014 can be sustained in the eye of law and also whether the classification of pensioners on the basis of the date

of retirement qua the revised pension scheme is valid in the eye of law.

20. Article 14 of the Constitution of India forbids class legislation but does not prohibit classification for purpose of legislation. A reasonable classification is, however, not open to challenge on the ground of denial of equal treatment. A classification can be said to be reasonable if the following twin conditions are satisfied.
 - i. That the classification must be found on intelligible differentia which distinguishes the persons grouped together from others who are left out of the group and
 - ii. That differentia must have a rational connection to the object sought to be achieved.
21. Article 14 is attracted only when discrimination is meted out to equals and similarly circumstanced without any rational basis.
22. It is not in dispute that the petitioner at the time of retirement enjoyed the benefits under 1985 Scheme and pension was granted to him upon his superannuation. It is also not in dispute that the petitioner enjoyed the benefit of revised pay scale in terms of the memorandum no. 854 dated February 27, 2009.
23. The respondent authorities in their affidavit-in-opposition have not assigned any reason as to why such employees who were on service as on 01.01.2006 but retired on or before 02.09.2009 i.e.,

before the issuance of the memorandum dated 03.09.2009 could be kept out of the purview of the benefits extended by the memorandum no. 3942 dated 03.09.2009. The State has failed to substantiate the basis of further classification on the basis of date of retirement of employees whose pay scale was revised as per Memo dated 27.02.2009.

24. In *D.S. Nakara*(supra) the Hon'ble Supreme Court of India while dealing with the issue whether the date of retirement is a relevant consideration for eligibility when a revised formula of pension is ushered in and made effective from a specified date held that pensioners for the purpose of pension benefits form a homogeneous class which cannot be divided by arbitrarily fixing an eligibility criteria unrelated to the purpose of revision. The Hon'ble Supreme Court held thus-

“42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered

necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs. 8,100/- p a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000/- p.a. and average emolument will be computed on the basis of last ten months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14."

25. In *All Manipur Pensioners Association* (supra) the Hon'ble Supreme Court reiterated the aforesaid propositions of law and held that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. The Hon'ble Supreme Court held thus-

"8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore

must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.”

26. The Hon’ble Supreme Court in *All Manipur Pensioners Association* (supra) further held that whenever a new benefit is granted and or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources but the same shall not be applicable in case of revision of pension.
27. In the case on hand the petitioner who is enjoying the pensionary benefit is claiming revision in pension in terms of the Scheme introduced vide memorandum dated 03.09.2009. The decision in the case of *D.S. Nakara* (supra) and *All Manipur Pensioners Association* (supra) are squarely applicable to the facts of the instant case.
28. This Court is of the considered view that the employees whose pay scale were revised vide memo dated 27.02.2009 and who

subsequently retired on or after 01.01.2006 but before 03.09.2009 belong to the same homogeneous class as that of the persons who have retired on or after 03.09.2009. Financial constraints in a case of this nature also cannot be the sole ground for denying the benefits to the pensioners who retired prior to 03.09.2009 as held in *All Manipur Pensioners Association* (supra). Since all these retirees were enjoying the benefits of pension under the 1985 Scheme prior to its modification vide memorandum dated September 3, 2009, this Court holds that the classification made on the basis of the date of retirement qua the eligibility criteria for the benefit of revised pension under memorandum dated September 3, 2009 is discriminatory, arbitrary and unconstitutional.

29. This Court accordingly holds that the limitation imposed with regard to the applicability of Clause (ii) under Paragraph A. Pension in-so-far as it restricts the applicability of the said clause only to the employees who retired on or after the date of issuance of the memorandum no. 3942 dated 03.09.2009 is to be declared as *ultra vires* being violative of Article 14 of the Constitution of India. This Court is of the considered view that the Panchayat employees who have retired on or after 01.01.2006 and whose pay scale was revised in terms of the memorandum no. 854 dated 27.02.2009 cannot be denied the additional benefit which is being conferred to the pensioners who retired on or after 03.09.2009. This Court, therefore, holds that the retired

pensioners whose pay scale was revised as per the Memo dated 27.02.2009 shall be entitled to pension at 50% of the last basic pay drawn once such employee has rendered a minimum qualifying service of 20 years.

30. Now the question arises whether the petitioner shall be entitled to revised pension calculated in terms of the Memorandum dated 03.09.2009 with effect from the date of his retirement.
31. In *D.S. Nakara* (supra) it has been held that the revised scheme could be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. It was further held that when the State grants upward revision of pension it is undoubtedly from a specified date. Such specified date is merely to avoid payment of arrears which may impose a heavy burden.
32. By applying the said principles laid down in *D.S. Nakara* (supra) this Court holds that the petitioner would be entitled to revised pension in terms of the memorandum no. 3942 dated 03.09.2009 with effect from the date of issuance of such memorandum i.e., 03.09.2009. The reasons assigned by the concerned authority while rejecting the claim of the petitioner for revised pension thus suffers from infirmity as the same is contrary to the well settled proposition of law and the same is liable to be set aside and quashed. It is clarified that the petitioner shall not be entitled to

any arrears of revised pension for the period from 01.04.2009 till 02.09.2009.

33. The respondents have based their case on the decision of the Hon'ble Supreme Court in *Krishena Kumar* (supra) and the subsequent decisions following the said reports. In *Krishena Kumar* (supra) several options were given to the railway employees covered by provident fund schemes to switch over to the pension scheme and a cut-off date was fixed for switch over from the provident fund scheme to the pension scheme. Fixation of cut-off date in case of switch over from Provident Fund Scheme to pension scheme was in issue in *Krishena Kumar* (supra) and it did not deal with revision of pension. The question of law that fell for consideration before the Hon'ble Supreme Court in *Krishena Kumar* (supra) was what is the ratio decidendi in Nakara's case and how far it is applicable to the PF retirees. The Hon'ble Supreme Court held that in Nakara's case it was never held that both pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14 of the Constitution of India.
34. The decisions cited by the State following *Krishena Kumar* (supra) all relate to cases of introduction of a new scheme or benefit and did not deal with cases of revision of pension. Therefore, the decisions cited by Mr. Mukherjee learned Senior Counsel for the State in the case of *Krishena Kumar* (supra) and other decisions following such decisions have no manner of application to the

case on hand. Since the other decisions cited by Mr. Mukherjee were on identical issues as that of *Krishena Kumar* (supra), the same are not dealt with separately.

35. For all the reasons as aforesaid, the limitation imposed with regard to applicability of Clause (ii) under paragraph “A Pension” only to employees who retired on or after 03.09.2009 is declared as *ultra vires* the Constitution of India.
36. This Court accordingly holds that the memorandum no. 3942 dated September 3, 2009 in so far as the grant of pension is concerned shall be applicable to those employees who have retired on or after 01.01.2006. Accordingly the petitioner shall be entitled to the benefits of revised pension in terms of the memorandum no. 3942 dated September 3, 2009. The respondent authorities are directed to compute the pension of the petitioner afresh and a pension payment order in terms of such calculation be issued and the arrears of revised pension with effect from 03.09.2009 is to be paid to the petitioner within a period of 8 weeks from the date of communication of this order. It is, however, made clear that the petitioner shall not be entitled to any arrears of revised pension in terms of the memorandum dated September 3, 2009 for the period from 01.04.2009 to 02.09.2009. The order of the Director of Provident Fund and Group Insurance dated 06.08.2014 and the corrigendum dated October 30, 2014 are set aside and quashed. Writ petition

accordingly stands allowed without, however, any order as to costs.

37. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)