

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10000 of 2017

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Sitaram Singh, Son of late Rajdeo Singh, Resident of Mohalla- Badi
Dariyapur, New Colony, P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Finance Department,
Government of Bihar, Patna.
2. The Principal Secretary, Finance Department , Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The District Education Officer, Munger.
5. The District Magistrate, Munger.
6. The Accountant General, Birchand Patel Marg, R-Block, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Senior Advocate Mr. Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 03-05-2023

Heard Mr. Mrigank Mauli, learned Senior Counsel
assisted by Mr. Prince Kumar Mishra, learned Counsel
appearing on behalf of the petitioner and Mr. Prabhakar Jha,
learned GP-27 appearing on behalf of the State.

Re: I.A. No. 9233 of 2018

2. An Interlocutory Application No. 9233 of 2018 has
been filed for amending the relief(s) sought thereto and adding
the following relief hereunder:-

“(I) For issuance of writ in the nature of
Certiorari, quashing the resolution number
50/VI dated 15/01/2016, issued under the



signature of Secretary (Expenditure). Department of Finance Government of India, whereby and where under, amendment in the resolution no. 819 dated 23/09/ 2009 has been carried out but the benefit of full pension on completion of 20 years has been given only those persons who have superannuated on or after 01/04/2007 and those employees, who retired from service after completing less than 33 year of service till 31/03/ 2007, their pension will be fixed after reducing proportionately in terms of service completed by them aforesaid distinction for grant of full pension is completely arbitrary, unintelligible and violative of article 14 of the Constitution of India as well as same is contrary to order of this 08/07/2014 (Ramadhar Sharma Vs The State of Bihar & Ors).

(II) For issuance of writ in the nature of Certiorari, quashing the resolution number 50/VI dated 15/01/2016. issued under the signature of Secretary (Expenditure), Department of Finance Government of India as same is contrary to law laid down by this Court in CWJC No.20478/2012(Ramadhar Sharma Vs The State of Bihar & Ors) whereby and whereunder this Court has been pleased to held that the requiring of 33 years for grant of pensionable service those who have retired between 1" January 2006 to 31/03/2007 is arbitrary suffers from hostile discrimination and it should be treated that Petitioner would be entitled to full pension on completion of 20 years of pensionable service which is available to those who have retired after 23 September 2009."

3. For the reasons stated in the application and the affidavit, the prayer for amending the relief is allowed.

4. Accordingly, I.A. No. 9233 of 2018 stands allowed.



5. The petitioner filed present writ petition *inter alia* for the following relief(s):

“a) For issuance of a writ/writs or order/orders in the nature of mandamus directing the Respondent to pay the full pension of the Petitioner considering the eligibility to full pension as 20 years- in view of the Judgment of this Hon’ble Court passed in C.W.J.C. No. 20478 of 2012.

b) For issuance of a writ in the nature of mandamus directing the Respondent to recalculate the entire pensionary dues and clear the same with statutory rate of interest.

c) Pass such other order(s), writ(s) and grant such other relief(s) as your lordship may deem fit and proper.”

6. In the instant writ petition, the petitioner has claimed that he is entitled for the full pension after completion 20 years of service, in light of notification dated 23.09.2009 of the State Government.

7. The petitioner was appointed as teacher on 21.02.1974 and had superannuated from the post of Headmaster on 28.02.2006. He is aggrieved by order of the concerned respondents, who have extended proportionate pension, treating the minimum pensionable service as 33 years. The admitted case is that the petitioner had served for around 32 years.

8. Learned Counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as Teacher on 21.02.1974 and retired as Headmaster, P.D. High School,



Jamalpur, Munger on 28.02.2006 after completing 20 years of service but has been given pension proportionately, treating minimum 33 years as pensionable service for full pension. He further submitted that the Government of Bihar vide notification dated 23.09.2009 took policy decision giving reference of letter of Central Government issued vide Memo NO. 38/37/08-P&P W(A) dated 02.09.2008, that persons who have retired on and after 23.09.2009, the minimum requirement of full pensionable service would be 20 years and for those who have retired before 23.09.2009, their gratuity would be calculated at revised scale of pay and the maximum limit for gratuity would be Rs. 10,00,000/- but those who have retired before the issuance of notification, their gratuity would be calculated on the basis of un-revised scale of pay and a limit was provided of Rs.3,50,000/-. The petitioner had retired on 28.02.2006 and in terms of the policy the benefit of revised pay scale and gratuity has been denied to him even having given his 20 years of service which entitles the petitioner for the benefit of the policy in view of the judgment/order passed in **CWJC No.20478 of 2012 (Rama Dhar Sharma Vs. The State of Bihar)**.

9. In the said writ petition, the employees, who had retired before the effective date and had been denied the benefit filed



CWJC No.20478 of 2012 (Rama Dhar Sharma Vs. The State of Bihar). The writ petition was allowed by treating the employees who had retired between 01.01.2006 to 23.09.2009 constitute the homogeneous class and the benefit was directed to be given to all those employees who had retired at least between 01.01.2006 and 23.09.2009, the State Government thereafter by making amendment in the policy, vide resolution no.50/VI dated 15.01.2016 made the policy effective to all the government employees retrospectively from 01.01.2006, however the financial benefit of new revised pay scale/structure was made effective from 01.04.2007, however no amendment was brought with respect to calculation of pension and gratuity. He further stated that the question of entitlement of leave encashment and the gratuity is based on the cut off date as per notification dated 23.09.2009, which was challenged in **CWJC No.20041 of 2012 (Hari Ram Vs. State of Bihar)** and this Court struck down the notification vide order dated 30.04.2013 by holding that the notification is unfair, capricious, arbitrary, unreasonable and is a hostile discrimination and also violative of Article 14 of the Constitution and in conflict with the Constitution Bench judgment of the Hon'ble Apex Court in the case of **D.S. Nakara & Ors. Vrs. Union of India** reported in (1983) 1 SCC 305, this



court held that the employee cannot be denied to receive his gratuity as per the revision of his gratuity as per the retrospective revision of the pay scale/structure.

10. He further submitted that thereafter issue regarding discrimination was raised before this Court in **CWJC No.176 of 2013 (Raksha Ray Vs. State of Bihar)**, that benefit granted should relate back to 01.01.2006. This Court vide order dated 15.5.2014 extended the benefit of only 20 years of service for making pensionable service to all such person, who had retired on or after 01.04.2007 instead of 23.09.2009 i.e. the date of notification. He further submitted that the discriminatory part of the notification was struck down, thereafter, yet another writ petition was filed seeking grant of full pension on the basis of 20 years of service and not 33 years as required under the notification, in question, in **CWJC no 20478 of 2012 (Ramadhar Sharma vs State of Bihar)**. This Court after discussing the facts and carefully examining the contents of the notification dated 23.09.2009 arrived to hold the notification to be arbitrary and suffers from hostile discrimination and gave the benefit of full pension to all those employees on completion of 20 years of pensionable service, which is available to those who have retired after 23.09.2009.



11. The State Government being aggrieved by the said order preferred **LPA No.44 of 2015 (State of Bihar Vs. Ramadhar Sharma)** against the order dated 08.07.2014 passed in **CWJC no 20478 of 2012 (Ramadhar Sharma vs State of Bihar)**, which was dismissed by this Hon'ble Court, vide order 17.5.2015. Thereafter, The State Government again revised the notification dated 23.09.2009 by resolution no. 50/VI dated 15.01.2016 by giving benefit of full pension on completion of 20 years of service only to those employees who have superannuated on 01.04.2007 and those employees who have retired completing less than 33 years of service till 31.03.2007, their pension will be fixed after reducing proportionately in terms of service completed by them. Petitioner's case is that the resolution no 50/VI dated 15.01.2016 is contrary to this Court's order passed in **CWJC no 20478 of 2012 (Ramadhar Sharma vs State of Bihar)**, the Resolution no.50/VI dated 15.01.2016 is challenged by the petitioner in the present writ petition vide I.A. no 9233/2017 on the ground that it is arbitrary unintelligible and violative of Article 14 of the Constitution of India. He further submitted that the aforesaid Government resolution no.819 dated 23.09.2009 requiring 33 years for those persons, who have retired between 01.01.2006 to



23.09.2009 was struck down by this Hon'ble Court in ***C.W.J.C. No. 20478 of 2012 (Ramadhar Sharma v. The State of Bihar & Ors.)***.

12. He further submitted that Article 14 of the Constitution of India forbids class legislation but permits reasonable classification for the purpose of legislation. He further submits that the Hon'ble Court was pleased to hold that the employees in between at least 01.01.2006 and 23.09.2009 constitute one homogeneous class. He further stated that why two classes have been created is not apparent from the notification. As the point is for creating a different class in the same class, it was required that it should be based on reasonable classification for the purpose of legislation and that classification must satisfy the test of classification being founded on differential basis which distinguishes persons or things that are grouped together from those that are left out of group and that differentia must have a rational relation to the object sought to be achieved. He further submitted that the petitioner went several times to the office of the Accountant General to consider and fix his pension in light of the order dated 08.07.2014 passed in C.W.J.C. No. 20478 of 2012 (***Ramadhar Sharm v. The State of Bihar & Ors***) passed by this



Hon'ble Court but except verbal assurance nothing was done to remove the anomaly. He further submitted that petitioner even approached the office of the Director, Secondary Education, Government of Bihar, Patna to redress his grievance but there also except verbal assurance nothing concrete was done. He further submitted that the respondent authorities have completely ignored the fact that this Hon'ble Court has been pleased to set aside the Government notification dated 23.09.2009 which requires 33 years of service for those who have been retired between 01.01.2006 and 23.09.2009 as arbitrary, suffers from hostile discrimination. In support of his contention he placed his reliance on a judgement of the Hon'ble Apex Court in *All Manipur Pensioners Association Versus State of Manipur and others* reported in (2020)14 SCC 625. He further stated that the action of respondent authorities is unjust, arbitrary and illegal and is as such violation of Article 14 and 19(i)(g) of the Constitution of India.

13. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the present writ petition has been filed by the petitioner for the grant of full pension considering the eligibility to full pension as 20 years, in view of the judgment passed by this Hon'ble Court passed in **CWJC**



No.20478 of 2012 (Rama Dhar Sharma Vs. The State of Bihar) and against the resolution issued by the Finance Department bearing no.819 dated 23.09.2009. He submitted that the Government vide Finance Department Resolution No.819 dated 23.09.2009 had decided to extend the benefit of full pension to such government employees, who have obtained 20 years of service and this benefit was allowed to such retired government servant who retired from service on or after 23.09.2009 i.e. the date on which the aforesaid resolution was issued . It is further submitted that the aforesaid provision was again considered by the government and the government was pleased to modify the aforesaid provision vide Finance Department Resolution no.50 dated 15.01.2016. By this modified Resolution, it has been provided that such government servant who retired from service on or after 01.04.2007 and have completed 20 years of service shall be allowed 50 % pension. But such government servant who retired till 31.03.2007 after attaining less than 33 years of service have not been allowed the benefit of 50% pension. The aforesaid modification has been made by the government as per the order of the Hon'ble High Court passed on 15.05.2014 in **CWJC No.176 of 2013 (Raksha Rai & Ors. Vs State of Bihar)**



wherein this Court directed to extend the benefits of 50 % to such employees who had retired in between 01.04.2007 to 23.09.2009. He further submitted that the petitioner is not entitled for the grant of full pension in the light of order of this Hon'ble Court passed in CWJC No.20478 of 2012 (supra). In this regard, it is further submitted that against the order passed in the aforesaid writ petition the LPA filed on behalf of the department has been dismissed by the Division Bench of this Hon'ble Court in view of the fact that necessary notification dated 15.01.2016 has been issued covering the period of 01.04.2007 to 23.09.2009. In this regard, it has also been submitted that the petitioner of **CWJC No.20478 of 2012 (Rama Dhar Sharma Vs. The State of Bihar)** retired on 31.12.2007 had and accordingly, his matter was fully covered with the resolution dated 15.01.2006. Therefore, the present petitioner is not entitled the benefit of 50 % pension in the light of order of this Hon'ble Court passed in CWJC No. 20478 of 2012 (supra).

14. He further submitted that as per resolution no.774 dated 27.05.2013 gratuity amounting to Rs.10 lacs is admissible with effect from 01.04.2007. Since the petitioner retired on 28.02.2006 hence, in view of the aforesaid resolution full



pension (of 20 years qualifying service) is not admissible to the petitioner.

15. He further stated that the petitioner superannuated on 28.02.2006 i.e. prior to the implementation dated 6th PRC and prior to the date of aforesaid resolution. In view of the facts, petitioner having no case. He further submitted that however a letter dated 30.08.2017 has been sent to the Department with regard to the decision taken by the department in the matter.

16. Heard the Parties.

17. The undisputed facts of the case is that the Petitioner was appointed as Teacher on 21.02.1974 and superannuated from the post of Head Master on 28.02.2006. The Petitioner has been extended proportionate pension treating the minimum pensionable service as 33 years. After, the superannuation of the Petitioner, the State of Bihar took a policy decision to fix the minimum service requirement for full pension as 20 years adopting central government policy and consequently issued a notification dated 23.09.2009 wherein the cut-off date for applicability of the said policy decision was fixed as date of notification i.e. 23.09.2009. In essence, as per the notification dated 23.09.2009, the minimum requirement for full pension for employees retiring before 23.09.2009 remained as 33 years



whereas for such employees who retired after 23.09.2009 the minimum requirement for full pension was reduced to just 20 years of service. Similarly, the notification dated 23.09.2009 further provided that for employees retiring after 23.09.2009, the gratuity shall be calculated at revised scale of pay and the maximum limit of gratuity was fixed as Rs. 10, 00, 000/- [Rupees Ten Lakhs only] whereas the unrevised scale of pay was applicable to employee who have retired prior to 23.09.2009 and the maximum limit of gratuity was fixed as Rs. 3, 50, 000/- [Rupees Three Lakhs Fifty Thousand only].

18. In fact, the State of Bihar decided to revise the pay structures/pay-scales of all State Government employees in tune with the recommendations of the Sixth Central Pay Commission. Accordingly, the State Government vide its resolution no.11070 dated 30.12.2008 constituted a State Level Pay Committee for recommending the same in the light of the recommendations as made by the Sixth Central Pay Commission. However, while the matter was pending with the State Pay Committee, several interim orders / notifications were issued by the State Government to extend the benefits of the recommendation of the Sixth Central Pay Commission. The aforesaid Notification dated 23.09.2009 issued to revise the



pension of the employees. Ultimately, reports of the State Level Pay Committee were accepted, and the State Government ultimately accepted and notified the new revised pay structure/pay scales for the State Government employees vide its resolution dated 21.01.2010. The pay revision resolution dated 21.01.2010 was made effective to all Government employees retrospectively from 01st of January, 2006, but the actual payment, financial benefits, of the new revised pay structure/pay scale were to be given only with effect from 01.04.2007. This was applicable to all State Government employees who were in service as on 01.01.2006. However, for calculation of pension and gratuity Notification dated 23.09.2009 was still applicable. Thus, the said Notification dated 23.09.2009 was subject to several challenges before this Court.

19. The question of entitlement of enhanced gratuity based on the cutoff date, as per Notification dated 23.09.2009, became a subject matter of challenge in ***Hari Ram v. The State of Bihar & Ors.*** [(2013) 3 PLJR 186] wherein a Co-ordinate Bench vide order dated 30.04.2013 struck down the notification to the extent it had created the anomalous situation in matters of award of enhanced gratuity and observed that “... 42. *To conclude, that for calculating gratuity, depriving a groups of retirees of the*



benefit that would accrue to them by virtue of retrospective pay revision, while allowing the benefit of the retrospective pay revision to another group similarly situated as done by the pension revision notification dated 23.09.2009, cannot be sustained as legal and valid ...”. Thereafter, the State Government decided to accept the aforesaid order of this Court and issued a modified Notification No. 774 of 27.05.2013.

20. The aforesaid Notification dated 23.09.2009 was also subject matter of CWJC No. 176 of 2013 [*Raksha Ray & Ors. v. The State of Bihar & Ors.*] and another analogous case wherein vide order dated 15.05.2014 another Co-ordinate Bench of this Court, struck down the particular provision in the said Notification whereby benefit of reduced minimum requirement for full pension of 20 years was extended to only such employees who superannuated after 23.09.2009 i.e. the date of issuance of the notification. The petitioner claims that his case is identical to that of the case of Ramadhar Sharma (*supra*), in which the Co-ordinate Bench of this Court vide order dated 08.07.2014, after examining the issue in detail, has held *inter alia* as under :

“... Accordingly, this Court is of the view that to the extent of limiting 33 years for those who have retired between 1st January 2006 to 23rd September 2009 is arbitrary suffers from hostile discrimination and it



should be treated that they would also be entitled to full pension on completion of 20 years of pensionable service which is available to those who have retired after 23rd September 2009. ...”. An appeal was preferred by the State Government against the order passed in CWJC No. 20478 of 2012 which was dismissed by a Division Bench of this Court vide order dated 17.05.2017 passed in LPA No. 44 of 2015. Thus, the decision rendered in *Ramadhar Sharma v. The State of Bihar & Ors.* [CWJC No. 20478 of 2012] has now attained finality as the Respondents have failed to apprise this Court about any challenge to the order passed in LPA No. 44 of 2015 before the Hon’ble Apex Court.”

21. The Respondents have admitted to this fact in the Counter Affidavit, that in compliance of the order passed in CWJC No. 176 of 2013 [*Raksha Ray & Ors. v. The State of Bihar & Ors.*], amendments were made in Notification dated 23.09.2009 and a Resolution dated 15.01.2016 [Annexure B to the Counter Affidavit of Respondent No. 4] was issued wherein the cut-off date for receiving the benefit of reduced minimum requirement of 20 years of service for grant of full pension was shifted to 01.04.2007.

22. In view of the aforesaid order dated 08.07.2014 passed in *Ramadhar Sharma v. The State of Bihar & Ors.* [CWJC No. 20478 of 2012], now the issue is no more *res integra* and coupled with the fact that the decision has now attained finality, the employees superannuating after 01.01.2006 form a single class. Any sub classification among similarly situated employees



is per se unfair, capricious, arbitrary, unreasonable and is a hostile discrimination as also violative of Article 14 of the Constitution.

23. This proposition of law is well settled and has recently been espoused by the Hon'ble Apex court in ***All Manipur Pensioners Association Versus State of Manipur and others*** reported in ***(2020)14 SCC 625*** (Supra), in this regard paragraphs number 7 and 8 are reproduced hereinbelow:

“7. The short question which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners viz. pre-1996 retirees and post-1996 retirees for the purpose of payment of revised pension and whether such a classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not?

7.1. At the outset, it is required to be noted that in the present case, the State Government has justified the cut-off date for payment of revised pension solely on the ground of financial constraint. On no other ground, the State tried to justify the classification. In the backdrop of the aforesaid facts, the aforesaid question posed for consideration before this Court is required to be considered.

7.2. It is not in dispute that the State Government has adopted the Central Civil Services (Pension) Rules, to be applicable to the State of Manipur. The State has also come out with the Manipur Civil Services (Pension) Rules, 1977. It is also not in dispute that subject to completing the qualifying service the government servants retired in accordance with the pension rules are entitled to pension. Therefore, as such, all the pensioners form only one homogeneous class. Therefore, it can be said that all the pensioners



form only one class as a whole. Keeping in mind the increase in the cost of living, the State Government increased the quantum of pension and even pay for its employees. The State Government also enhanced the scales of pension/quantum of pension with effect from 1-1-1996 keeping in mind the increase in the cost of living. However, the State Government provided the cut-off date for the purpose of grant of benefit of revised pension with effect from 1-1-1996 to those who retired post-1996 and denied the revision in pension to those who retired pre-1996. The aforesaid classification between these pensioners who retired pre-1996 and post-1996 for the purpose of grant of benefit of revision in pension is the subject-matter of this appeal. As observed hereinabove, the aforesaid classification is sought to be justified by the State Government solely on the ground of financial constraint.

7.3. At the outset, it is required to be noted that in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] , such a classification is held to be arbitrary, unreasonable, irrational and violative of Article 14 of the Constitution of India. In paras 42 and 65, this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] has observed and held as under : (SCC pp. 330-31 & 344-45)

“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 8100 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 10 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 Article 14.

7.4. While the aforesaid decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] was relied upon by the appellant herein and as such which came to be considered and followed by the learned Single Judge, the Division Bench considering some of the observations made in Hari Ram Gupta [Hari Ram Gupta v. State of U.P., (1998) 6 SCC 328 : 1998 SCC (L&S) 1485] ; R. Veerasamy [T.N. Electricity Board v. R. Veerasamy, (1999) 3 SCC 414 : 1999 SCC (L&S) 717] ; Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910] and P.N. Menon [Union of India v. P.N. Menon, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] , has observed and held that the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 :



1983 SCC (L&S) 145] is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. However, by not following the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] , considering some of the observations made by this Court in the aforesaid decisions, namely, P.N. Menon [Union of India v. P.N. Menon, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] and other decisions, the Division Bench of the High Court has not at all considered the distinguishable facts in the aforesaid decisions.

7.5. In P.N. Menon [Union of India v. P.N. Menon, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] , the controversy was altogether different one. The factual position that needs to be highlighted insofar as P.N. Menon [Union of India v. P.N. Menon, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] is concerned, is that the retired employees had never been in receipt of “dearness pay” when they retired from service and therefore the OM in question could not have been applied to them. This is how this Court examined the matter. This Court also noticed that prior to the OM in question, the pension scheme was contributory and only with effect from 22-9-1977, the pension scheme was made non-contributory. Since the respondent employees in the first cited case were not in service at the time of introducing the same they were held not eligible for the said benefit. Therefore, the said decision shall not be applicable to the facts of the case on hand, more particularly while considering and/or applying the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] .

7.6. In Amrit Lal Gandhi [State of Rajasthan v. Amrit Lal Gandhi, (1997) 2 SCC 342 : 1997 SCC (L&S) 512] , pension was introduced for the first time for the University teachers based on the resolution passed by the Senate and Syndicate of Jodhpur University. The same was approved by the State Government with effect from 1-1-1990. Therefore, the controversy was not between one set of pensioners alleging discriminatory treatment as against another set of pensioners. There were no pensioners to begin with. The retirees were entitled to provident fund under the existing provident fund scheme. The question of



discrimination between one set of pensioners from another set of pensioners did not arise in the said decision. With the aforesaid facts, this Court observed that financial viability is a relevant issue.

7.7. Similarly, the decision of this Court in Indian Ex-Services League [Indian Ex-Services League v. Union of India, (1991) 2 SCC 104 : 1991 SCC (L&S) 536] also shall not be applicable to the facts of the case on hand. The facts in this case and the facts in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] are clearly distinguishable. In Indian Ex-Services League [Indian Ex-Services League v. Union of India, (1991) 2 SCC 104 : 1991 SCC (L&S) 536], the dispute was with respect to PF retirees and Pension retirees and to that it was held that PF retirees and Pension retirees constitute different classes and therefore this Court distinguished the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]. Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand at all.

7.8. Similarly, the decisions of this Court in Hari Ram Gupta [Hari Ram Gupta v. State of U.P., (1998) 6 SCC 328 : 1998 SCC (L&S) 1485] and Kallakkurichi Taluk Retired Officials Assn. [Kallakkurichi Taluk Retired Officials Assn. v. State of T.N., (2013) 2 SCC 772 : (2013) 2 SCC (L&S) 452] also shall not be applicable to the facts of the case on hand.

7.9. In view of the above, we are satisfied that none of the judgments, relied upon by the learned Senior Advocate for the respondent State, has any bearing to the controversy in hand. The Division Bench of the High Court has clearly erred in not appreciating and/or considering the distinguishable facts in Hari Ram Gupta [Hari Ram Gupta v. State of U.P., (1998) 6 SCC 328 : 1998 SCC (L&S) 1485]; R. Veerasamy [T.N. Electricity Board v. R. Veerasamy, (1999) 3 SCC 414 : 1999 SCC (L&S) 717]; Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910]; P.N. Menon [Union of India v. P.N. Menon, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] and Amrit Lal Gandhi [State of Rajasthan v. Amrit Lal Gandhi, (1997) 2 SCC 342 : 1997 SCC (L&S) 512].

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 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 valid 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 cut-off 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.

8.1. 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.

8.2. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of



whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed 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 with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”

The Hon'ble Apex Court recently in the case of **Maharashtra State Financial Corporation 'Ex-Employees Association & Ors. Vs. State of Maharashtra and Ors.)** reported in **2023 SCC OnLine SC 100**, have reiterated the above proposition of law by discussing the same in paragraph nos.2, 28, 29, 30, 31, 32, 39 and finally in paragraph no. 37 has placed his reliance in ***All Manipur Pensioners Association Versus State of Manipur and others*** case reported in **(2020)14 SCC 625 (Supra)**, which are reproduced hereinafter :

“2. What is involved in this case, is the fixation of date for the implementation of the Fifth Pay Commission recommendations, when applied to the respondent Corporation. That framing a policy concerning fixation of pay for the salaries of its employees, the extent of its revision, and even the date of its implementation, are matters of undoubted exclusive executive decision making powers. However, the manner of its



implementation, the timing of applicability of a scheme, and its impact, especially where it results in exclusion of a certain section of public employees from the benefit, are subject matters of scrutiny by the court, especially, when the complaint is of discrimination and violation of Article 14 of the Constitution. This is one such case.

28. It is noticeable from the facts that two justifications were provided by the MSFC to deny the benefit of pay revisions, in terms of the Fifth Pay Commission recommendations. One, that it is "in order to motivate the present staff to recover maximum amount in NPA Accounts..." and two, that the fixation of cut-off date falls within the state's policy making domain, involving among others - an important consideration, which is the state's financial concerns, which the court should not interfere in.

29. That on whether, and what should be the extent of pay revision, are undoubtedly matters falling within the domain of executive policy making. At the same time, a larger public interest is involved, impelling revision of pay of public officials and employees. Sound public policy considerations appear to have weighed with the Union and state governments, and other public employers, which have carried out pay revision exercises, periodically (usually once a decade, for the past 50 years or so). The rationale for such periodic pay revisions is to ensure that the salaries and emoluments that public employees enjoy, should keep pace with the increased cost of living and the general inflationary trends, and ensure it does not adversely impact employees. Pay revisions also subserve other objectives, such as enthusing a renewed sense of commitment and loyalty towards public employment. Another important public interest consideration, is that such revisions are meant to deter public servants from the lure of gratification; of supplementing their income by accepting money or other inducements for discharging their functions.

30. Article 43 of the Constitution obliges the state



to ensure that all workers, industrial or otherwise, are provided with a living wage and assured of a decent standard of living. In this context, the need for providing a mechanism to neutralize price increase, through dearness allowance has been emphasized, in past decisions of this court. In Hindustan Lever Ltd. v. B.N. Dongre, the court explained that if pay packets are “frozen”, the purchasing power of the wage would shrink, and there would be a fall in real wages, which needs to be neutralized. The court also noted neutralization of wages, through dearness allowance is on a “sliding scale” with those at the lowest wage bracket, getting full neutralization and those in the highest rungs being given the least of such allowance:

“Workers are therefore concerned with the purchasing power of the pay-packet they receive for their toil. If the rise in the pay-packet does not keep pace with the rise in prices of essentials the purchasing power of the pay-packet falls reducing the real wages leaving the workers and their families worse off. Therefore, if on account of inflation prices rise while the pay-packet remains frozen, real wages will fall sharply. This is what happens in periods of inflation. In order to prevent such a fall in real wages different methods are adopted to provide for the rise in prices. In the cost-of-living sliding scale systems the basic wages are automatically adjusted to price changes shown by the cost-of-living index. In this way the purchasing power of workers' wages is maintained to the extent possible and necessary. However, leap-frogging must be avoided. This Court in Clerks & Depot Cashiers of Calcutta Tramways Co. Ltd. v. Calcutta Tramways Co. Ltd. [AIR 1957 SC 78], held that while awarding dearness allowance cent per cent neutralisation of the price of cost of living should be avoided to check inflationary trends. That is why in Hindustan Times Ltd. v. Workmen [AIR



1963 SC 1332] Das Gupta, J. observed that the whole purpose of granting dearness allowance to workmen being to neutralise the portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase when the cost-of-living increases and a decrease when it falls. The same principle was reiterated in Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen [AIR 1969 SC 360] and Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. v. G.S. Barot, Member, Industrial Court, Gujarat [(1979) 4 SCC 622] and it was emphasised that normally full neutralisation is not given except to the lowest class of employees and that too on a sliding scale.”

31. Therefore, the state and public employers have an obligation to address - as a measure of public interest, the ill-effects of rise in the cost of living, on account of price rise, which results in fall in real wages. This obligation should be discharged on a periodic basis. Yet, there cannot be any straitjacket formula as to when such pay revisions are to be made and to what extent revisions should take place. As a general practice, the Union and state governments have been undertaking such exercises each decade.

32. Returning to the facts of this case, it is evident that the respondents have confined the grant of revised pay scales to employees existing as on 29.03.2010. Whilst the fixation of cut-off date for the grant of benefits cannot be questioned, what is within the domain of the court, is to examine the impact of such fixation and whether it results in discrimination. In the present case, the Pay Commission's recommendations for pay revision were with effect from 01.01.1996. However, the State and MSFC decided not to implement it from that date, but with effect from 01.01.2006, i.e., a decade later, because the benefit given to employees (or arrears) on the rolls of MSFC as on 29.03.2010 were confined or limited to arrears payable from 1 January 2006. At the same time,



fitment and fixation of salary was with effect from 1 January 1996, in terms of Para 6 of the MSFC's circular dated 09.04.2010, which stipulated that revised salary "will be fixed with effect from 01.01.1996 as per the formula of the Fifth Pay Commission as mentioned below". The formula was : "Old Basic Pay as on 01.01.1996 Add : applicable DA as on 01.01.1996 Add : Amount of 1st Interim Relief, i.e., Rs. 100/- only. Add : Amount of 2nd Interim Relief, i.e., 10% of old Basic Pay (subject to minimum Rs. 100/-). Add : 40% of old Basic Pay as on 01.01.1996 as loading =Total (1 to 5)". This fitment formula clearly envisioned the fixation in the new scales, even if notionally, from 01.01.1996. Arrears were made payable, based on that fitment and fixation, with effect from 01.01.2006.

37. In All Manipur Pensioners Association by its Secretary v. State of Manipur the classification by which the formula of pension, whereby those retiring prior to 01.01.1996 were given a lower rate of revised pension, as compared to those retiring later (who were given a higher rate of revision), was held to be discriminatory:

"The facts leading to the present appeal in a nutshell are as under : that the State of Manipur adopted the Central Civil Services (Pension) Rules, 1972, as amended from time to time. As per Rule 49 of the Central Civil Services Rules, 1972, a case of a government employee retired in accordance with the provisions of the Rules after completing qualifying service of not less than 30 years, the amount of pension shall be calculated at 50% of the average emoluments subject to a maximum of Rs. 4500 per month. It appears that considering the increase in the cost of living, the Government of Manipur decided to increase the quantum of pension as well as the pay of the employees. That the Government of Manipur issued an office memorandum dated 21-4-1999 revising the quantum of pension. However, provided that



those Manipur Government employees who retired on or after 1-1-1996 shall be entitled to the revised pension at a higher percentage and those who retired before 1-1-1996 shall be entitled at a lower percentage.

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 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 valid 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 cut-off 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.

As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed 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 with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.

In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305. The decision of this Court in D.S. Nakara shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in D.S. Nakara and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement viz. pre-1996 retirees shall be entitled to revision in pension on a par with those pensioners who retired post-1996. The arrears be paid to the respective pensioners within a period of three months from today.”

39. In the present case, therefore, applying the ratio in the above decisions, it is clear that there is no distinction between those who retired (or died in service) before 29.03.2010 and those who continued in service - and were given the pay revision. Those who worked during the period 01.01.2006 to 29.03.2010 and those who continued thereafter, fell in the same class, and a further distinction could not be made. The fact that the MSFC did not recover any interim relief, or ad-hoc amount disbursed between 18.09.1996 to



*31.12.2005 (towards recommendations of the 5th Pay Commission), also reaffirms that these ex-employees belonged to the same class as those that received the benefit of the pay revisions. **The exclusion of the retired employees, who retired between 01.01.2006 and 29.03.2010 on achieving their date of superannuation, is violative of Article 14 of the Constitution of India.***

[Emphasis supplied]

24. Considering the above settled position of law, the action of the State Government in issuing revised notification dated 23.09.2009 vide resolution no. 50/VI dated 15.01.2016 by giving benefit of full pension on completion of 20 years of service only to those employees who have superannuated on or after 01.04.2007 and those employees who have retired completing less than 33 years of service till 31.03.2007, their pension will be fixed after reducing proportionately in terms of service completed by them is in teeth of this Court's order passed in **CWJC no. 20478 of 2012 (Ramadhar Sharma vs State of Bihar)**, the above settled position of law by the Hon'ble Supreme Court, I am of the view that the resolution no.50/VI dated 15.01.2016 being arbitrary, unintelligible and violative of Article 14 of the Constitution of India is accordingly set aside and quashed.

25. Thus, Petitioner who superannuated on 28.02.2006 is entitled to receive full pension as he has attained 22 years of



service i.e. more than the qualifying service of 20 years.

26. The State Government is directed to compute and make payment of arrears of pension within a period of one month from receipt/production of a a copy of this order and ensure regular payment of full pension to the Petitioner.

27. The writ application is allowed with the aforesaid observation and direction.

28. There shall be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	11.04.2023
Uploading Date	03.05.2023
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