

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2532 of 2020

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Shyam Bihari Singh Son of Late Baidhnath Singh Resident of Village-Taranpur, P.S. Gaurichak, P.O. Lakhanpur, Via-Punpun, District-Patna, PIN Code-804453.

... .. Petitioner/s

Versus

1. The State of Bihar through the CVhief Secretary, Government of Bihar, Secretariat Building, P.S. Sachiwalaya, District-Patna.
2. The Principal Secretary, Department of Finance Government of Bihar, Secretariat Building, P.S. Sachiwalaya, District-Patna.
3. The Principal Secretary, Department of Industry Bihar, Vikash Bhawan, New Secretariat, P.S. Sachiwalaya.
4. The Additional Secretary, Department of Industry, Govt. of Bihar, Vikash Bhawan, NewSecretariat, P.S. Sachiwalaya, District-Patna.
5. The Principal Secretary, Industry Department, Govt. of Bihar,-Cum-the Chairman, Bihar State Khadi and Village Industries Board, Road No.,22A, Shrikrishna Nagar, P.S.Kotwali, District-Patna.
6. THe Bihar State Khadi and Village Industries Board through its Chief Executive Officer, Road NO. 22A, Shrikrishna Nagar, P.S. Kotwali, District-Patna
7. The Chief Executive Officer, the Bihar State Khadi and Village Industries Board, Road No.,22A, Shrikrishna Nagar, P.S.Kotwali, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Sinha, Adv., Mr. Atul Chandra, Adv., Mr. Abhas Chandra, Adv.
For the State	:	Mr. Z. Haider, AC to SC-9
For B.S.Housing Board	:	Mr. Rajan Prakash, Adv., Mr. Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

9 04-07-2023 Heard Mr. Sunil Kumar Sinha, Mr. Atul Chandra and

Mr. Abhas Chandra, learned counsels appearing on behalf of the

petitioner, Mr. Z. Haider, learned counsel appearing on behalf of

the State and Mr. Rajan Prakash and Mr. Dr. Anand Kumar,

learned counsel appearing on behalf of the Bihar State Housing

Board.



2. Learned counsel appearing on behalf of the petitioner seeks to withdraw the present writ petition with a liberty to file a detailed representation before the Chief Secretary, Government of Bihar to decide the effective date of granting the benefit of 6th Pay Revision to the petitioner in light of Law laid down by the Apex Court in case of **All Manipur Pensioners Association by its Secretary Vrs. State of Manipur & Ors.** reported in (2020) 14 SCC 625, 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 post1996 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 ExServices 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.”

3. Recently this Hon’ble High Court vide order dated 03.05.2023 has reiterated the above preposition of Law in the case of **Sitaram Singh Vrs. The State of Bihar & Ors.,** in **C.W.J.C. No. 1000 of 2017.**

4. Considering the law laid down by the Apex Court as well as the specific prayer of the petitioner that he will file a detailed representation before the Chief Secretary, Government of Bihar to consider the effective date of granting benefit of 6th Pay Revision to the retired employees of the Bihar State Khadi and Village Industries Board. The Chief Secretary is directed to get all the relevant records from the Chief Executive Officer of the Bihar State Khadi and Village Industries Board and the Chairman, Bihar State Khadi and Village Industries Board, if required, he may also seek presence of all the authorities for placing the cases of all such employees, who are affected by the decision of the Government contained in Memo No. 2832, dated 15.05.2023.

5. The Chairman of the Bureau of Public Enterprises may also place cases relating to other Board and Corporation, if



required.

6. The Chief Secretary, Government of Bihar may consider to decide the issue involved with respect to the grant of benefit of 6th Pay Revision to the petitioner and similarly situated employees of Board and Corporation within a period of six weeks from the date of filing of representation after affording hearing to the petitioner and take final decision in the matter to ensure uniformity with respect to the employees of the Boards and Corporations of the State in conformity with the law laid down by the Apex Court in case of **All Manipur Pensioners Association by its Secretary Vrs. State of Manipur & Ors.** reported in **(2020) 14 SCC 625 (supra)**.

7. Accordingly, the writ petition stands disposed of.

(Purnendu Singh, J)

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