IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2024:PHHC:090987

Reserved on: 03.04.2024
Pronounced on: 19.07.2024

(1) CWP-17310-2015 (O&M)

Shamsher Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(2) CWP-101-2016

Daljeet Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(3) CWP-10118-2016

Bhoop Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(4) CWP-10213-2016

Nawab Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(5) CWP-10491-2016

Hanuman Dass and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(6) CWP-10570-2016

Jaipal Singh Chauhan and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(7) CWP-10998-2016

Radhey Shyam and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(8) CWP-11046-2016

Shiv Kumar and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(9) CWP-11585-2017

Dr. Raj Pal Singh Balwada and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(10) CWP-11649-2017

Prem Singh Malik .. Petitioner

Versus

State of Haryana and others .. Respondents

(11) CWP-11992-2016

M. Lakhraj and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(12) CWP-14364-2017

Rajinder Singh Ahlawat and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(13) CWP-16283-2016

Sumitra Devil .. Petitioner

Versus

State of Haryana and others .. Respondents

(14) CWP-16295-2016

Rajinder Singh Dangi and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(15) CWP-1708-2019 (O&M)

Dr. Prahlad Rai Yadav .. Petitioner

Versus

State of Haryana and another .. Respondents

(16) CWP-17322-2021

Surinder Pal Singh Chauhan .. Petitioner

Versus

State of Haryana and others .. Respondents

(17) CWP-1772-2016

Ram Chander and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(18) CWP-1795-2016

Ram Chander Sharma and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(19) CWP-18343-2016

Shri Niwas Goyal and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(20) **CWP-19019-2018**

Om Parkash Ranga .. **Petitioner**

Versus

State of Haryana and others .. **Respondents**

(21) **CWP-19325-2015**

S.K. Mathur and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(22) **CWP-10233-2016**

Harbans Singh and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(23) **CWP-22695-2016**

Kapoor Singh Pannu and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(24) **CWP-23591-2015 (O&M)**

Rajan Guglani and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(25) **CWP-24961-2015**

Satish Kumar Chawla .. **Petitioner**

Versus

State of Haryana and others .. Respondents

(26) CWP-19840-2016

O.P. Mehta and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(27) CWP-21189-2021

Dalbir Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(28) CWP-21386-2016

Sukhbir Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(29) CWP-21543-2016

Dewan Chand .. Petitioner

Versus

State of Haryana and others .. Respondents

(30) CWP-2184-2017

Kamlesh Kumari and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(31) CWP-21978-2018

Bimla Devi @ Bimla Malik and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(32) CWP-22203-2020

Ishwar Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(33) CWP-23335-2016

Krishan Chander Sahu and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(34) CWP-23728-2015

K.D. Sharma and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(35) CWP-24134-2018

Manohar Lal .. Petitioner

Versus

State of Haryana and others .. Respondents

(36) CWP-1480-2019

Randhir Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(37) CWP-23665-2018

Ghanshyam Das Sharma .. Petitioner

Versus

State of Haryana and another .. Respondents

(38) CWP-28165-2018

Dr. Prem Chand Gupta and others .. Petitioners

Versus

State of Haryana and another **.. Respondents**

(39) **CWP-29410-2018**

Radha Krishan Grover **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(40) **CWP-29415-2018**

Bhawani Prashad Mishra and others **.. Petitioners**

Versus

State of Haryana and another **.. Respondents**

(41) **CWP-2423-2017**

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(42) **CWP-24231-2015**

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(43) **CWP-24483-2016**

Amrik Singh and others **.. Petitioners**

Versus

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(44) **CWP-2519-2021**

Ram Niwas Gupta **.. Petitioner**

Versus

State of Haryana and others .. Respondents

(45) CWP-25272-2015

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State of Haryana and others .. Respondents

(46) CWP-10330-2016

Raghbir Singh and another .. Petitioners

Versus

State of Haryana and another .. Respondents

(47) CWP-12063-2016

Jagbir Rathee .. Petitioner

Versus

State of Haryana and others .. Respondents

(48) CWP-13276-2016

Geeta Chaudhary .. Petitioner

Versus

State of Haryana and others .. Respondents

(49) CWP-16402-2016

Amar Nath and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(50) CWP-16403-2016

D.R. Bansal and others .. Petitioners

Versus

State of Haryana and another .. Respondents

(51)	**CWP-16493-2016**	
Suraj Bhan Rathee and another		**.. Petitioners**
	Versus	
State of Haryana and others		**.. Respondents**
(52)	**CWP-21089-2015**	
Sresh Kumar Redhu		**.. Petitioner**
	Versus	
State of Haryana and others		**.. Respondents**
(53)	**CWP-22312-2016**	
Madan Lal and others		**.. Petitioners**
	Versus	
State of Haryana and others		**.. Respondents**
(54)	**CWP-22347-2016**	
Nafe Singh and others		**.. Petitioners**
	Versus	
State of Haryana and others		**.. Respondents**
(55)	**CWP-22358-2016**	
Digh Ram Yadav and others		**.. Petitioners**
	Versus	
State of Haryana and others		**.. Respondents**
(56)	**CWP-22381-2016**	
Jagvir Singh and others		**.. Petitioners**
	Versus	
State of Haryana and others		**.. Respondents**
(57)	**CWP-3398-2016**	

Om Narain Sharma and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(58) **CWP-3416-2016**

Dharamvir Singh **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(59) **CWP-3865-2016**

Satyvir Singh and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(60) **CWP-25283-2018**

Chander Singh Sharma **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(61) **CWP-25566-2018**

Sukhdarshan Kumar Rangray **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(62) **CWP-25630-2018**

Charat Singh **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(63) **CWP-25658-2015**

Kamlesh Kumari and others **.. Petitioners**

Versus

State of Haryana and others .. Respondents

(64) CWP-2580-2018

Krishan Kumar Khurana and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(65) CWP-25991-2015

Ran Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(66) CWP-26143-2018

N.K. Verma and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(67) CWP-26228-2015

Usha Rani and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(68) CWP-26549-2021

Dr. Nirmala Mittal .. Petitioner

Versus

State of Haryana and another .. Respondents

(69) CWP-26610-2015

Jagbir Singh Dhull and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(70) CWP-27019-2015

Jagdish Chander and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(71) CWP-27078-2015

Bharat Singh and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(72) CWP-27080-2015

Krishan Narain Srivastava and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(73) CWP-27318-2015

Rajender Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(74) CWP-27368-2015

Sube Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(75) CWP-28005-2019

Suresh Kumar .. Petitioner

Versus

State of Haryana and others .. Respondents

(76) CWP-2936-2018

O.P. Kathuria and others .. Petitioners

Versus

State of Haryana and others .. **Respondents**

(77) **CWP-3106-2021**

Suraj Bhan Hooda .. **Petitioner**

Versus

State of Haryana and another .. **Respondents**

(78) **CWP-3159-2022**

Dharam Pal Asht .. **Petitioner**

Versus

State of Haryana and others .. **Respondents**

(79) **CWP-32092-2018**

Mam Chand Yadava and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(80) **CWP-32351-2018**

Dr. Girish Chandra Chaturvedi and another .. **Petitioners**

Versus

State of Haryana and another .. **Respondents**

(81) **CWP-3296-2016**

Ashok Kumar and others .. **Petitioners**

Versus

State of Haryana and others .. **Respondents**

(82) **CWP-3344-2016**

Munni Devi and others .. **Petitioners**

Versus

State of Haryana and others **.. Respondents**

(83) **CWP-3371-2016**

Rajender Kumar and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(84) **CWP-36124-2019**

Yashpal Verma and others **.. Petitioners**

Versus

State of Haryana and another **.. Respondents**

(85) **CWP-3668-2021**

Virender Singh Dahiya **.. Petitioner**

Versus

State of Haryana **.. Respondent**

(86) **CWP-3744-2016**

Veer Parkash and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(87) **CWP-4481-2016**

Pritam Singh and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(88) **CWP-4669-2021**

Shanti Sarup Jindal and others **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(89) **CWP-4701-2017**

Ish Kumar and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(90) CWP-4879-2021

Ram Chander .. Petitioner

Versus

State of Haryana and another .. Respondents

(91) CWP-5195-2016

S.C. Sikka and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(92) CWP-5334-2019

Mohan Lal Gera and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(93) CWP-5875-2019

Dr. Surendrra Singh and another .. Petitioners

Versus

State of Haryana and another .. Respondents

(94) CWP-6168-2016

Azad Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(95) CWP-6171-2021

Ram Kumar Arya and others .. Petitioners

Versus

State of Haryana and others .. **Respondents**

(96) **CWP-6242-2016**

Jaswant Singh and others .. **Petitioners**

Versus

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(97) **CWP-6260-2017**

Ram Chander Punia .. **Petitioner**

Versus

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(98) **CWP-6296-2017**

Dharam Pal .. **Petitioner**

Versus

State of Haryana and others .. **Respondents**

(99) **CWP-6725-2017**

Ram Lal Goyal .. **Petitioner**

Versus

State of Haryana and others .. **Respondents**

(100) **CWP-7083-2018**

Bijender Singh .. **Petitioner**

Versus

State of Haryana and another .. **Respondents**

(101) **CWP-7452-2017**

Satya Parkash .. **Petitioner**

Versus

State of Haryana and another .. **Respondents**

(102) CWP-7469-2021

Mahabir Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(103) CWP-7470-2021

Om Singh and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(104) CWP-7879-2019

Attar Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(105) CWP-8335-2019

Kamla Devi .. Petitioner

Versus

State of Haryana and others .. Respondents

(106) CWP-845-2016

Parmod Kumar Gupta and others .. Petitioners

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(107) CWP-8801-2019

Usha Rani and others .. Petitioners

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State of Haryana and others .. Respondents

(108) CWP-9213-2021

Dei Chand Phogat **.. Petitioner**

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State of Haryana and others **.. Respondents**

(109) **CWP-9390-2017**

Jagdish Chander and others **.. Petitioners**

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State of Haryana and others **.. Respondents**

(110) **CWP-9505-2016**

Ashok Kumar Sharma and another **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(111) **CWP-9532-2017**

Radhey Shaym and another **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(112) **CWP-9821-2016**

Zile Singh and another **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(113) **CWP-13726-2016**

Gulab Singh **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(114) **CWP-17663-2016**

Mahender Pal Singh and others **.. Petitioners**

Versus

State of Haryana and another .. Respondents

(115) CWP-17665-2016

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Versus

State of Haryana and another .. Respondents

(116) CWP-19635-2016

Parkash Vir Dalal .. Petitioner

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State of Haryana and another .. Respondents

(117) CWP-21066-2016

Hari Chand Hooda .. Petitioner

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(118) CWP-9909-2017

Dhanpati and others .. Petitioners

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(119) CWP-18075-2022

Prem Chand Yadav .. Petitioner

Versus

State of Haryana and others .. Respondents

(120) CWP-27095-2019

Dharam Pal Shivrain and others .. Petitioners

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State of Haryana and others .. Respondents

(121) CWP-3116-2023

Ashok Kumar Virmani and others .. Petitioners

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(122) CWP-3419-2023

Mahabir Prasad and others .. Petitioners

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State of Haryana and others .. Respondents

(123) CWP-8092-2023

Dilbag Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(124) CWP-3532-2023

Kanwal Bir Kaur and others .. Petitioners

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State of Haryana and others .. Respondents

(125) CWP-4083-2023

Shambhu Dayal Sharma and another .. Petitioners

Versus

State of Haryana and others .. Respondents

(126) CWP-27075-2022

Om Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(127) CWP-10646-2023

K.L. Bhayana and others .. Petitioners

Versus

State of Haryana and others **.. Respondents**

(128) **CWP-27802-2023**

Chand Ram Gulia and another **.. Petitioners**

Versus

State of Haryana and others **.. Respondents**

(129) **CWP-27884-2023**

Khem Chand **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(130) **CWP-27857-2023**

Daksh Arya **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MRS. JUSTICE LAPITA BANERJI

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate, for the petitioner(s)
in CWP-25272-2015.

Mr. Karan Nehra,
Mr. Abhay Josan,
Mr. Harvinder Singh, Advocates, for the petitioner(s)
in CWP-19325, 23728, 23591-2015, CWP-10233, 22695
and 5195-2016, CWP-6725-2017, CWP-10646-2023.

Mr. Umesh Narang, Advocate, for the petitioners
in CWP-3116-2023, 3419-2023, 3532-2023.

Mr. V.D. Sharma, Advocate, for the petitioner(s)
in CWP-9213-2021.

Mr. Rakesh Nagpal, Advocate, for the petitioner(s)
in CWP-9532-2017.

Mr. Gurmail Singh Duhan, Advocate, for the petitioner(s)
in CWP-25630 and 25566-2018.

Mr. R.S. Sangwan, Advocate, for the petitioner(s)
in CWP-3865-2016.

Mr. Ajay Redhu, Advocate, for the petitioner(s)
in CWP-21089-2015.

Mr. P.C. Yadav, Advocate, in person
in CWP-18075-2022.

Mr. R.S. Panghal, Advocate, for the petitioner(s)
in CWP-27075-2022.

Mr. Nitin Rathee, Advocate, for the petitioner(s)
in CWP-21066-2016, CWP-13726-2016, CWP-8092-2023.

Mr. Ravi Verma, Advocate, for the petitioner(s)
in CWP-9505, 9821, 16402, 22312-2016, CWP-9390-2017,
CWP-32092-2018.

Mr. Suraj Bhan Hooda, Advocate, for the petitioner(s)
in CWP-7083-2018, CWP-4879-2021.

Mr. Suraj Bhan Hooda, petitioner in person
in CWP-3106-2021.

Mr. B.S.Mittal, Advocate for the petitioner(s)
in CWP-19840-2016, CWP-4701-2017.

Mr. Prem Karanpal, Advocate in CWP-24085-2021.
(through video conferencing.)

Mr. Satish Garg, Advocate, for the petitioner(s)
in CWP-36124-2019.

Mr. Inder Pal Goyat, Advocate, for the petitioner(s)
in CWP-21543-2016.

Mr. Gursher Singh Bhandal, Advocate and
Mr. Brahmjot Singh Nahar, Advocate for the petitioner(s)
in CWP-1708-2019, CWP-23665-2018, CWP-28165-2018,
29415-2018, 10330-2016, 32351-2018.

Ms. Mannu Chaudhary, Advocate, for the petitioner(s)
in CWP-29410-2018, CWP-12063-2016, CWP-3668-2021.

Mr. Satya Vir Singh Yadav, Advocate, for the applicants
in CM-17919-2017 in CWP-17310-2015.

Mr.R.N.Lohan, Advocate,
Mr. Kuldeep Sharma, Advocate, for the petitioner(s)
in CWP-17663, 17665, 19635-2016, CWP-6260-7452-2017,
CWP-27802-2023, CWP-27857-2023.

Mr. S.N. Pillania, Advocate, for the petitioner(s)
in CWP-23335-2016, CWP-2423-2017.

Ms. Anita Balyan, Advocate for the petitioner
in CWP-2519-2021.

Mr. Kulvir Narwal, Advocate and
Mr. Satish Kumar, Advocate,
Mr. Shubham Chaudhary, Advocate for
Mr. Rahul Rathore, Advocate, for the petitioner(s)
in CWP-2936-2017.

Mr. Roshan Lal Saini, Advocate for
Mr. Subhash Ahuja, Advocate, for the petitioner
in CWP-2519-2021.

Mr. Karan Bhardwaj, Advocate, for the petitioner
in CWP-18343-2016, 25283-2018, 4669-2021.

Mr. Ganesh Sharma, Advocate, for the petitioners
in CWP-10570-2017.

Mr. Samarth Sagar, Additional A.G., Haryana along with
Mr. Sankalp Sagar, Advocate, for the respondents-State.

Mr. Deepak Balyan, Advocate, for the respondent
in CWP-2519-2021.

Mr. D.S. Nalwa, Advocate for Nigam-respondent
in CWP-5195-2016, CWP-26143-2018.

Ms. Kushaldeep K. Manchanda, Advocate for
Mr. Ankur Mittal, Advocate, for respondents No.3 to 6
in CWP-10233-2016, CWP-24961, 23591, 19325, 17390-2015 and
19840- 2016.

Ms. Divya Sharma, Advocate for respondent No.2
in CWP-21543-2016.

Mr. Divyansh Shukla, Advocate for
Mr. Hitesh Pandit, Advocate for respondents No.4 to 7
in CWP-10646-2023.

Mr. Ravi Sharma, Advocate, for respondent No.3
in CWP-25991-2015, CWP-1795, 3296, 10213-2016.

Ms. Swati Dayalan, Advocate, for the respondent No.2
in CWP-19635-2016, for respondent No.3
in CWP-24231-2015, for respondent No.4
in CWP-2184-2017, for respondent No.03 in
CWP-1772-2016, for respondent No.06
in CWP-3744-2016, for respondent No.3
in CWP-4481-2016, CWP-27318-2015, for respondent No.4
in CWP-6168-2016, for respondent No.3
in CWP-6171-2021, 6296- 2017, 27019-2015.

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__Harsimran Singh Sethi, J.__

Through this judgment, the bunch of petitions, which have been referred by the Division Bench for consideration of the Full Bench vide order dated 08.03.2017 as referred to in the head note are being decided.

Before deciding the issue referred through the said bunch of petitions, certain facts/background needs to be mentioned so as to appreciate the issues referred by the Division Bench vide order dated 08.03.2017.

__Background__

1. The Government of Haryana vide two separate Notifications dated 17.04.2009 decided to implement the recommendations of the 6th Pay Commission. Two separate Rules were notified i.e. Haryana Civil Services (Revised Pension) Part-I Rules 2009 (here-in-after referred to as 'Part-I Rules, 2009') and Haryana Civil Services (Revised Pension) Part-II Rules, 2009 (here-in-after referred to as 'Part-II Rules, 2009) respectively for the implementation of the same. Through Part-I Rules, 2009 pension of employees who retired prior to 01.01.2006 was directed to be fixed in a manner envisaged therein and the method of fixing pension of employees who were in service as on 01.01.2006 and were to retire thereafter was dealt by Part-II Rules 2009. The

Part-I Rules, 2009 as well as Part-II Rules, 2009 were made operational with retrospective effect i.e. from 01.01.2006 although the same were notified only on 17.04.2009.

2. Upon the Notification of the Part-I and Part-II Rules, 2009, certain grievances were raised by the retired employees qua the Part-I Rules, 2009 as well as by Part-II Rules, 2009.

3. The grievance raised by the petitioners, who had already retired upto 31.12.2005 was that vide the provisions of Part-II Rules, 2009, 33 years which was envisaged for the grant of maximum pension has been reduced to 28 years, the benefit of the same was not given to them as the said Part-II Rules, 2009 have only been made applicable to employees who retire post 31.12.2005, causing prejudice to them and on account of the same, plea was raised before this Court to grant the maximum pension on completion of 28 years of service even to the retired employees, who had retired prior to 01.01.2006, while implementing Part-I Rules, 2009 as well as Part-II Rules, 2009.

4. Said grievance of the employees who retired prior to 01.01.2006 qua fixation of cut off date as 01.01.2006 as envisaged under Part-II Rules, 2009, due to which benefit of Rule 8(1) of Part-II Rules, 2009 was not being extended to them, came up for consideration before a Division Bench of this Court in a Bunch of Petitions, which issue was decided by the Division Bench on 21.12.2012 through the case titled as ***R.K. Aggarwal and others Vs. State of Haryana and others,*** 2013(4) SCT 286. The Division Bench, after noticing the grievance of the employees who retired prior to 01.01.2006, who were petitioners therein, decided to uphold the cut off date of 01.01.2006 prescribed by Part-II Rules, 2009 holding that both the set of employees i.e. those who retired prior to 01.01.2006 and those who were in service on the said date on

account of being governed by separate rules formed a separate class. The only benefit given to them was within the scope of interpretation of Part-I Rules, 2009, however, the computation formula for their pension calculation remained the same as applicable to them at the time of their retirement. It may be noticed that certain Notifications which were issued by the State of Haryana on the lines of Government of India with regard to the fixation of pension of the retired employees, who had retired prior to 01.01.2006, which were causing prejudice to them even qua implementation of Part-I Rules, 2009, were though set-aside by the Division Bench and a direction was given to fix the pension of the retired employees, who had retired prior to 01.01.2006 in the particular manner as envisaged by the substantive provisions of Part-I Rules, 2009.

5. The judgment in ***R.K. Aggarwal and others (supra)*** upholding the cut off date of 01.01.2006 prescribed by Part-II Rules, 2009, whereby a classification has been made between the employees who retire prior and post 01.01.2006 has already been upheld by the Hon'ble Supreme Court of India as the Special Leave to Appeal (Civil) No. (s) 19784 of 2013 filed against the said judgment has already been dismissed by the Apex Court vide order dated 28.10.2013.

6. Thereafter, certain employees who were in service as on 01.01.2006 but had all retired before the promulgation of Part-II Rules, 2009 on 17.04.2009, raised a grievance that the benefit of Rule 8(1) of the said Rules has not been extended to them as the same has been taken away by Rule 8(3) of Part-II Rules, 2009 only on the ground that they had retired by the date the Notification dated 17.04.2009 was issued. The grievance of such employees was that once they were in service as on 01.01.2006, the benefit of Rule 8(1) of Part-II Rules 2009 should also be extended to them for fixing their pension, as

they were in service for all intents and purposes keeping in view the fact that the said Rules were made effective retrospectively i.e. from 01.01.2006.

7. The said issue came to be decided by the Division Bench of this Court in CWP No. 352 of 2012 titled as ***Gurtek Singh and others Vs. State of Haryana and others,*** 2012(4) SCT 114***,*** decided on 11.01.2012. The said issue was decided in limine by the Division Bench upholding the validity of Rule 8(3) of Part-II Rules, 2009 denying the employees, who though were in service on 01.01.2006 but had retired prior to the promulgation of Part-II Rules, 2009 the benefit envisaged by Rule 8(1) of the said Rules.

8. Thereafter, the Part-II Rules, 2009 were amended by the Government of Haryana vide Notification dated 25.08.2014. Rule 8(1-A) was added by which, for the grant of maximum pension, the service required was further reduced from 28 years to 20 years and the said amendment was made operational prospectively i.e. the benefit of the said amendment was made available to only those employees, who were in service on the date of coming in force of the amendment i.e. from 25.08.2014.

9. That after the amendment to the Part-II Rules, 2009, by which Rule 8(1-A) was inserted, challenge was raised before this Hon'ble Court to the prospective implementation of Rule 8(1-A) as well as to Rule 8(3) of Part-II Rules, 2009. The ground taken was that the fixation of cut off date as 17.04.2009 qua Rule 8(3) and 25.08.2014 qua amended Rule 8(1-A) is bad and the benefit of Rule 8(3) and 8(1-A) should be extended to all the retirees of Government of Haryana irrespective of their date of retirement.

10. In reply to the said challenge, the Government came up with the plea that the cut off date of 01.01.2006 has already been upheld in ***R.K. Aggarwal and others (supra)*** and further that Rule 8(3) of Part-II Rules, 2009

which denies the benefit of Rule 8(1) to the employees, who though were in service as on 01.01.2006 but had retired prior to 17.04.2009, has already been upheld in ***Gurtek Singh's case (supra)*** and keeping in view the said judgments, it was also pleaded that challenge to amendment dated 25.08.2014 by which Rule 8(1-A) was inserted, which was made operational prospectively from the date of Notification, is also liable to be upheld.

11. The Division Bench considered the issue on 08.03.2017 and decided to refer the issue qua legality of fixing a cut off date qua Rule 8(3) of Part-II Rules, 2009 and the amendment to the said Rules while adding Rule 8(1-A) prospectively for the consideration of a larger Bench. As per the reference order, the judgment of the Division Bench in ***Gurtek Singh's case (supra)*** needs reconsideration in view of the judgments of the Hon'ble Supreme Court of India as well as of this Court in ***R.K. Aggarwal and others (supra)*** and other judgments of this Court as well as of the Delhi High Court, as mentioned in the reference order itself. The order dated 08.03.2017 referring the issue to the larger bench is as under :-

> *"(1) The petitioner in this bunch of writ petitions are the retired Government employees of State of Haryana who retired before 01.01.2016. They have laid challenge to Rule 8(3) of the Haryana Civil Services (Revised) Pension Part-II Rules, 2009 to the extent it discriminates amongst the pre and post-01.01.2006 retirees in the matter of fixation of pension. They have also laid challenge to the notification dated 25.08.2014 whereby Clause (1-A) has been inserted after sub-Rule (1) of Rule 8 of the Rules ibid, according to which, the persons retiring after 25.08.2014 have been granted the benefit of full pension after rendering the minimum 'qualifying service' of 20 years whereas such benefit has been denied to those who retired before 25.08.2014.*

(2) The question which falls for determination is whether the classification based upon the date of retirement for the purpose of extending benefit of liberalised pension scheme is permissible and can stand to the test of 'reasonable classification'?

(3) A Division Bench of this Court vide order dated 11.01.2012 while dismissing CWP No.352 of 2012 (Gurtek Singh & Ors. vs. State of Haryana & Ors.) in limine has observed that Rule 8(3) of the 2009 Rules is neither discriminatory nor it violates Articles 14&16 of the Constitution. From the plain reading of the above-cited order, it appears that neither the relevant case law was cited nor the Coordinate Bench was appropriately assisted for determining the question as to in what circumstances such a classification is permissible and when would it amount to artificial distinction between the same set of persons. Various binding, persuasive and relevant judicial precedents starting from D.S. Nakara & Ors. vs. Union of India (1983) 1 SCC 305 onwards were neither cited nor considered.

(4) Subsequent to the Division Bench decision in Gurtek Singh, the Hon'ble Supreme Court has expressed its views in State of Rajasthan & Ors. vs. Mahendra Nath Sharma (2015) 9 SCC 540 which appear to have some bearing on the point in issue. Some of the observations made by this Court in (i) R.K. Aggarwal & Ors. vs. State of Haryana & Ors. 2013 (4) SCT 286; (ii) State of Punjab & Ors. vs. A.P. Sharma & Ors. 2017 (1) SCT 322; as well as the Delhi High Court decision in S.A. Khan & Anr. vs. Union of India & Ors. 2015 (9) AD (Delhi) 1 too have some persuasive value for determining the controversy in hand.

(5) The Government of India has issued Office Memorandum dated 06.04.2016 in compliance to some of the judgments referred to above and the contents of this Office Memorandum will also be taken notice for understanding the issues sought to be canvassed.

(6) We are therefore of the view that the decision taken by the Coordinate Bench in Gurtek Singh & Anr. case (supra) requires reconsideration by a larger Bench.

(7) Let the paper-book of the lead case be put up before Hon'ble the Chief Justice for constituting a larger Bench."

Arguments raised on behalf of the respective parties:

12. Learned counsel appearing on behalf of the petitioners have raised a grievance with regard to the fixation of the cut off date as 01.01.2006 in Part-II Rules of 2009 for the grant of benefits envisaged therein. Learned counsel for the petitioners have argued that once the retiree is a homogeneous class, any benefit granted to one set of retiree, the same has to be extended to all the retirees irrespective of the date of their retirement hence, fixation of the cut off date as 01.01.2006 is contrary to the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara and others Vs. Union of India,*** (1983) 1 SCC 305. It has been further argued by the learned counsel for the petitioners is that the similar issue had also been raised before the Delhi High Court in W.P.(C) 8012 of 2013 titled as ***S.A. Khan and another Vs. Union of India and others,*** decided on 07.05.2015, wherein, the cut off date of 01.01.2006 was held to be bad hence, the benefit of full pension upon completion of 28 years as per Rule 8(1) of Part-II Rules, 2009/20 years as per Rule 8(1-A) of Part-II Rules, 2009 as amended on 25.08.2014, as the case may be is to be extended to all the retirees of the Government of Haryana irrespective of their date of retirement.

13. Learned counsel for the petitioners further argue that the judgment in ***Gurtek Singh (supra)*** of the Division Bench has been passed without noticing the judgment in ***D.S. Nakara (supra), R.K. Aggarwal and others (supra)*** as well as ***S.A. Khan and another's case (supra)*** hence, all the retirees are entitled for re-computation for their pension as per Rule 8(1) and 8(1-A) of Part-II Rules, 2009 and all those retirees, who had completed 28/20 years of

service, are entitled for the grant of full pension irrespective of their date of retirement.

14. Learned State counsel, on the other hand, submits that the contention being raised by the petitioners qua the fixation of cut off date as 01.01.2006 is bad in law and is liable to be rejected on the ground that the cut off date for the grant of benefit of Rule 8(1) of Part-II Rules, 2009 as 01.01.2006 has already been upheld by the Division Bench while passing order in ***R.K. Aggarwal and others (supra)***, which judgment has already been upheld by the Hon'ble Supreme Court of India hence, once the said cut off date has already been upheld by the Hon'ble Supreme Court of India, the said issue has already attained finality and the same cannot be agitated again.

15. Learned State counsel further submits that the reliance being placed by the petitioners on the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara (supra)*** is misplaced keeping in view the various judgments on the same issue of the cut off date by the Hon'ble Supreme Court of India subsequently, wherein the judgment in ***D.S. Nakara (supra)*** has been diluted and the State has been given power to fix the cut off date while granting any new benefit qua a serving employee as against a retired employee.

16. Learned State counsel has further argued that the judgment of Delhi High Court in ***S.A. Khan and another's case (supra)*** is being misinterpreted and cannot be made applicable upon the case of the petitioners as, the same issue has already been decided by the Division Bench in ***R.K. Aggarwal and others (supra)*** which judgment has been noticed by Delhi High Court in ***S.A. Khan and another's case (supra)*** and the issue which has attained finality upto the Hon'ble Supreme Court of India cannot be re-opened on the basis of a subsequent judgment.

17. Lastly, learned counsel for the State has argued that as per the settled principle of law, the financial status of the State for the grant of benefit is to be treated as a relevant issue while considering the grant of a benefit to a retired employee or to a serving employee and once, the State had taken note of financial aspect before issuing the Notification dated 17.04.2009, this Court may kindly reject the prayer of the petitioners for declaring the fixation of cut off date of 17.04.2009 qua Rule 8(3) of Part-II Rules, 2009 as arbitrary or illegal or without any valid justification.

18. Having heard learned counsel for the parties and after going through the record with their able assistance, the understanding reached is that for the purpose of adjudication, the issues raised through the present bunch of petitions can be bifurcated into three parts.

19. First issue is whether, the employees who have retired prior to 01.01.2006 are entitled for the benefit of Rule 8(1) of Part-II Rules 2009 so as to grant them the benefit of full pension upon completion of 28 years of service while fixing their pension w.e.f. 01.01.2006 as envisaged under Part-I Rules, 2009. The second issue raised is whether, the employees who were in service as on 01.01.2006 but had retired on the date of publication of the Notification of Part-II Rules 2009 i.e. 17.04.2009 can be denied the benefit of Rule 8(1) so as to fix their pension as done vide Rule 8(3) of Part-II Rules, 2009. The third issue raised is whether, the amendment to Part-II Rules 2009 vide Notification dated 25.08.2014 so as to grant benefit of full pension upon completion of 20 years of service instead of 28 years only to employees who were in service on the date of Notification of the said amendment, thus applying the same only prospectively, is bad keeping in view the settled principle of law. All the issues are being dealt with separately.

Issue No. 1 :

Qua the challenge to the fixation of cut off date as 01.01.2006 for the grant of benefits envisaged under Part-II Rules 2009, which Notification was issued on 17.04.2009.

20. Learned counsel for the petitioners have raised the contention that the cut off date of 01.01.2006 as fixed in Part-II Rules, 2009 is arbitrary and illegal and without any valid justification as it creates an artificial distinction between a homogeneous class of retired employees so as to deny the benefit as envisaged under Rule 8(1) of Part-II Rules 2009 to employees who retired prior to 01.01.2006 while fixing their pension under Part-I Rules, 2009 hence, keeping in view the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara (supra), S.A. Khan and another(supra)*** and various other judgments on the issue of the fixation of cut off date qua the retired employees, the same is liable to be set-aside and the benefit of full pension should be given to all the retirees while fixing their pension w.e.f. 01.01.2006, who had completed 28 years of service by taking into consideration the formula as envisaged under Part-I Rules 2009.

21. The said contention needs to be considered keeping in view the various aspects and the facts, which have already come into existence even before the passing of the order of reference by the Division Bench dated 08.03.2017. The issue qua the fixation of cut off date of 01.01.2006 as fixed in Part-II Rules, 2009 was agitated before this Court in ***R.K. Aggarwal and others (supra).*** The Division Bench, after hearing the parties upheld the cut off date fixed as 01.01.2006 for the grant of benefit as envisaged under Part-II Rules 2009. The relevant paragraph 23 of the judgment in ***R.K. Aggarwal and others (supra)*** is as under :-

> *"23. After considering the arguments of learned counsels for all the parties, we are of the opinion that it is not even necessary to go into the various nuances and nitty grittys, which are insisted by learned counsels for the petitioners based on D.S. Nakara line of cases and N. Subbarayudu and others and S.R. Dhingra and others (supra), wherein ratio of D.S. Nakara is explained. We proceed on the basis that fixation of cut off date by the government was in order and to this extent we agree with the reasoning given by the Tribunal where similar arguments, as advanced by the petitioners before us, were rejected."*

22. A bare perusal of the above would show that the fixation of the cut off date as 01.01.2006 in Part-II Rules, 2009 has already been upheld by the Division Bench which judgment of the Division Bench had already been upheld by the Hon'ble Supreme Court of India. Once, the cut off date of 01.01.2006 has attained finality upto the Hon'ble Supreme Court of India, there exists no reason to raise the same issue as, the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara and others (supra)*** has been considered by the Division Bench while passing order in ***R.K. Aggarwal and others (supra)***. Therefore, the issue of the fixation of cut off date as 01.01.2006 under Part-II Rules, 2009 cannot be agitated by the petitioners once again in these proceedings.

23. Further, the order of reference by the Division Bench has noticed the judgment in ***R.K. Aggarwal and others (supra)*** while referring the issue to the larger Bench. The Division Bench was aware of the fact that in ***R.K. Aggarwal and others (supra)*** the fixation of cut off date as 01.01.2006 in Part-II Rules, 2009 has already been upheld. That is why, only the decision of the Division Bench in ***Gurtek Singh's case (supra)***, which actually relates to Rule 8(3) of Part-II Rules, 2009 has been referred to the larger Bench for

consideration and there is no reference to be decided by the larger Bench qua Rule 1(2) of Part-II Rules 2009, which deals with the fixation of cut off date as 01.01.2006.

24. Once, even the reference order has not referred the issue of fixation of cut off date as 01.01.2006 as envisaged under Rule 1(2) of Part-II Rules 2009 to the larger Bench for consideration, the petitioners cannot agitate the said issue before this Court so as to invite an order as to whether, Rule 1(2) of Part-II Rules 2009 fixing cut off date as 01.01.2006 is valid or not. A complete reading of the reference order dated 08.03.2017 clearly transpires that the only issue which has been referred by the Division Bench to the larger Bench is qua Rule 8(3) of the Haryana Civil Services (Revised Pension) Part-II Rules, 2009 i.e. whether same discriminates between similarly situated employees, who though were in service as on 01.01.2006 but had retired prior to the issuance of the Notification dated 17.04.2009 so as to debar them for the grant of benefit as envisaged under Rule 8(1) of Part-II Rules, 2009. In the absence of any reference qua the validity of Rule 1(2) of Part-II Rules, 2009, the petitioners cannot be allowed to agitate the same, especially when the cut off date envisaged under Rule 1(2) of Part-II Rules, 2009 has already been upheld by the Division Bench in ***R.K. Aggarwal and others (supra)***, which judgment has already been upheld by the Hon'ble Supreme Court of India and has been noticed by the Division Bench while referring the issue to the larger Bench.

25. The issue qua challenge to Rule 1(2) of Part-II Rules, 2009 is to be seen from another angle also. Once, there is a reference order referring a particular issue for consideration before the larger Bench, the judgment of the larger Bench is to confine to the adjudication to the issues referred to it. Once, the Division Bench in the reference order dated 08.03.2017 has only referred

the issue qua Rule 8(3) of Part-II Rules, 2009 by doubting the judgment of the Division Bench in ***Gurtek Singh's case (supra)*** as well as the issue of amendment to Part-II Rules, 2009 as done on 25.08.2014 so as to grant the benefit envisaged under Rule 8(1-A) only prospectively, larger Bench cannot go beyond the reference order to decide the legality of Rule 1(2) of Part-II Rules 2009 which is not the part of reference order.

26. As per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 4854 of 2000 titled as ***Kerala State Science & Technology Musuem vs Rambal Company & Ors***, decided on 02.08.2006 while deciding a reference the larger Bench cannot adjudicate upon an issue which has not been referred to it. The relevant paragraph 8 of the said judgment is as under :-

> *"8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the Larger Bench cannot adjudicate upon an issue which is not the question referred. (See : Kesho Nath Khurana v. Union of India and others [1981 (Supp.) SCC 38], Samaresh Chandra Bose v. The District Magistrate, Burdwan and others [1972 (2) SCC 476] and K.C.P. Ltd. v. State Trading Corporation of India and another [1995 Supp. (3) SCC 466]."*

27. The same issue again came up for consideration in Civil Appeal No. 8422 of 2001 titled as ***T.A. Hameed Vs. M. Viswanathan,*** decided on 21.02.2008. Again, the Hon'ble Supreme Court of India held that the Full Bench has to only answer the question referred to by the Division Bench. Keeping in view the said principle of law, the petitioners cannot be allowed to agitate the challenge to Rule 1(2) of Part-II Rules, 2009, validity of which has already been upheld upto the Hon'ble Supreme Court of India while upholding

the judgment of the Division Bench of this Court in ***R.K. Aggarwal and others (supra).*** Therefore, the grievance being raised by the petitioners qua Rule 1(2) of Part-II Rules, 2009 cannot be allowed to be agitated once again as the same has attained finality and is not the part of reference order. Hence the said contention as raised is declined.

<u>Issue No. 2 :</u> **Qua challenge to the vires of Rule 8(3) of Part-II Rules, 2009.**

28. The second issue which has been agitated before this Court is the validity of Rule 8(3) of Part-II Rules, 2009 by which, the benefit envisaged by Rule 8(1) of the same Rules has been denied to the employees who though were in service as on 01.01.2006, but had retired prior to the issuance of the Notification dated 17.04.2009 by which Part-II Rules, 2009 were promulgated.

29. For the adjudication of the said issue, certain Rules forming part of Part-II Rules, 2009 need to be reproduced herein for ready reference.

> ***<u>Rule 1</u>***
>
> *(1) These rules may be called the Haryana Civil Services (Revised Pension) Part-II Rules, 2009.*
>
> *(2) They shall apply to all pensioners/family pensioners who retire/die in harness on or after Ist January, 2006 and are drawing/entitled to draw their pension/family pension under the Punjab Civil Services Rules Volume II as amended from time to time and as applicable to the pensioners/family pensioners under the rule making powers of Haryana Government and whose pension/family pension is debitable to the Consolidated Fund of the State of Haryana.*
>
> ***<u>Rule 8</u>***
>
> *(1) Linkage of full pension with 33 years of qualifying service shall be modified to the extent that once a Government servant retires after rendering the minimum qualifying service of 28 years, pension shall be sanctioned at 50 percent of the*

emoluments as defined in rule 4 above subject to other conditions regulating the same;

(2) *In all such cases where Government servant becomes entitled to pension on superannuation after completion of 10 years of qualifying service in accordance with rule 6.16(2) of Punjab Civil Services Rules Volume II as amended from time to time and as applicable to the pensioners/family pensioners under the rule making powers of Haryana Government, pension shall be sanctioned as a proportion to the amount of full pension admissible to him;*

(3) *The revised provisions for calculation of pension shall come into force with effect from the date of issue of this notification and shall be applicable to Government servants retiring on or after that date. The Government servants who have retired on or after Ist January, 2006 but before the date of issue of this notification will continue to be governed by the rules which were in force immediately before these rules came into effect as regards qualifying service.*

30. A bare perusal of the above reproduction would show that Part-II Rules, 2009 notified on 17.04.2009 have been given retrospective effect from 01.01.2006. Once, the benefit of the Rules have been made applicable from 01.01.2006 and all the employees who were in service as on 01.01.2006, have been granted the benefit of Part-II Rules, 2009, the rational for taking away the said benefit qua the employees, who were in service as on 01.01.2006 but had retired by the time of issuance of Notification dated 17.04.2009 under Rule 8(3) of the said Rules, needs to be explained by the respondents. Unless and until there is an intelligible rational for creating the said classification, the employees who were in service as on 01.01.2006, are to be treated in the same manner irrespective of their date of retirement without there being any discrimination.

In order to create a valid classification through Rule 8(3) of Part-II Rules, 2009 the onus is on the State to justify that the same is based on intelligible differentia having rational nexus with the object of the enactment i.e. Part-II Rules, 2009. It is a conceded fact that by operation of Rule 8(3) of Part-II Rules, 2009 the employees who were in service as on 01.01.2006, have been denied the benefit of Rule 8(1) of Part-II Rules, 2009 only on the ground that by the time the Notification dated 17.04.2009 was issued, they had actually retired from service. Mere retirement from service cannot be a ground to deny a benefit which is otherwise admissible under Part-II Rules, 2009 to a section of employees who were in service as on 01.01.2006 and are governed/covered by the same Rules. In absence of a valid justification all the employees who are in service as on 01.01.2006 i.e. from the date when Part-II Rules, 2009 have been made operational, are to be treated in a same manner by granting them all the benefits envisaged under Part-II Rules, 2009.

31. Learned State counsel has argued before this Court that before the promulgation of Part-II Rules, 2009, an assessment was got done of the financial burden which would fall upon the State and its ability to service the same and keeping in view of the same the benefit of Rule 8(1) of Part-II Rules, 2009 was confined to only those employees, who were serving on the date of Notification i.e. 17.04.2009 and contends that financial capacity of the State is a valid justification to deny the benefit to the employees, who though were in service as on 01.01.2006 but had retired prior to 17.04.2009.

32. This argument needs to be considered keeping in view the various aspects. Though, keeping in view the various judgments, which will be noticed while dealing with the other issue subsequently, the financial constraints upon a State while granting a particular benefit, has been held to be a valid aspect to

impose a cut off date for the grant of benefit. In the present case, the arguments raised qua the financial liability to justify the Rule 8(3) of Part-II Rules, 2009, is to be adjudicated.

33. Before proceeding further, the relevant averments made in the affidavit dated 16.03.2024 by the State qua the assessment of financial liability qua the pensioners is being reproduced here under for the ready reference. The relevant portion of the affidavit is as under :-

> *"3. That it is further respectfully submitted that the Committee, during its deliberations carried on from September 2008 till the month of February 2009 examined different issues related to the revision of pension/family revision/gratuity/commutation of pension and all other incidental and ancillary issues. The said Committee was also examining the proposal of reducing the period of qualifying service for full pension from 33 years to 28 years.*
>
> ***4.*** *That to enable the Committee to examine the above aforementioned issues in detail the Committee had sought information from departments on specific aspects that would have enabled the Committee to form an opinion in this regard. It is pertinent to mention that the Committee had sought information from departments about the total number of pensioners and family pensioners under each department. Furthermore, the Committee had also sought details from Banks about the total number of pension/family pension accounts of Haryana Government Employees, operating in the Banks. It is further pertinent to mention that in respect of the above communication, the State Bank of India had provided requisite information.*
>
> *5. That the above mentioned Committee, during the course of its deliberations, also held meetings with various representative organizations/associations of pensioners under the Government of Haryana and noted their concerns. During the course of its deliberations the Committee was provided with the*

data relating to total number of pensioners/family pensioners receiving pension from the State of Haryana which is as follows:-

Sr. No.	Description	Number
1.	Pensioners/family pensioners through Treasuries	26476
2.	Pensioners/family pensioners through Bank	173319
3.	Legislators	289
4.	Other Authority	13405
5.	Total Pensioners	2,13,489/-

6. That furthermore, the Committee had also considered the total financial outlay incurred by the State of Haryana under the head of Pension and other retirement benefits for the past four financial years, which is as follows:-

Expenditure under Major Head-2071-Pension and other retirement benefits

Rs. Crore

Sr. No.	Year	Pension	Family Pension	Gratuity	Communication
1.	2005-06	673.33	93.92	155.65	145.12
2.	2006-07	692.73	107.32	206.41	165.32
3.	2007-08	777.00	120.00	230.00	181.00
4.	2008-09	1000.00	170.00	375.00	249.00
		3107.06	**491.24**	**967.06**	**740.44**

After taking the views of Sh. J.S. Garg, Special Invitee and the representations made by the various representative organizations of pensioners into consideration, the Committee had made its recommendations.

7. That it is further most respectfully submitted that the Committee constituted for the purposes of examining the proposal for revision of pension/ family pension/ gratuity/ communication of pension and other related issues were seized of all relevant information, on the basis of which it could make its recommendations on the issue. The information regarding total financial outlay incurred by the State Exchequer under the head of pension/ family pension of the four prior financial years provided the Committee with the reasonable basis to get an idea of the proximate financial implication that would entail the said revision.

It is submitted that the information before the Committee was sufficient to enable it to arrive at its recommendations which would be in the best administrative and financial health of the State. The relevant recommendations made by the Pension Revision Committee of the State Government are as under:-

Sr. No.	Recommendations as accepted by Central Government	Recommendation of Pension Revision Committee	Tentative Decision of State Government
1.	----	----	----
2.	(i) " Linkage of full pension with 33 years of qualifying service should be dispensed with. Once a employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purpose of computing pension/related benefits should be withdrawn as it would no longer be relevant. (ii) As per order issued by the Central Government (Para 5.3) all the employees who have more than 10 years service at the time of retirement will also get full pension i.e. 50% of emolument last drawn.	Presently, full pension is payable only on the completion of 33 years of qualifying service. The Rules also allow grant of upto 5 years of additional qualifying service for superannuation pension in certain specialized categories. The weightage of 5 years is also admissible in the cases of voluntary retirement. The 6th Central Pay Commission has recommended to dispense with linkage of full pension with 33 years. Once an employee renders minimum pensionable service of 20 years, pension would be paid @ 50% of emoluments. The extant benefit of adding years of qualifying service and weightage at the time of voluntary retirement has been withdrawn. <u>This point has been examined by the Committee. In the Central Government, the decision of reducing the criteria of 33 years of qualifying service to 20 years is due to the</u>	

		fact that there is a lot of dead wood in the Central Government who will get a chance of alternative career options. However in the Haryana Government about 40% sanctioned posts are lying vacant. Therefore, the Committee do not find any justification to dispense with linkage of full pension with 33 years. However, keeping in view the fact that recruitment age has been increasing, the Committee recommends grant of full pension once an employee completes 28 years of qualifying service. The extant benefits of special addition to qualifying service in the case of some specialized categories and the weightage in the case of voluntary retirement will continue as here into.
3.	(iii) The recommendation regarding payment of full pension on completion of 20/10 years of qualifying service will take effect only prospectively i.e. date of issue of notification.	The Committee recommends that grant of full pension after 28 years of qualifying service will take effect only prospectively that is from date on or after the issue of notification.

(Emphasis supplied).

34. A bare perusal of the affidavit would show that the liability which was assessed by the Government was before promulgation of the Notification dated 17.04.2009. As per the affidavit, a High Power Committee was constituted to look into the recommendation of Pay Commission. The Committee consisted of Sh. Ajit M. Sharan, IAS-Chairman, Sh. V.S. Kundu,

IAS Member Secretary, Sh. S.N. Roy, IAS Member and Sh. J.S. Garg, Special invitee. The said Committee deliberated on the issue of financial aspect qua the reduction of maximum number of years of service for the grant of full pension which Committee deliberated on this issue starting from September, 2008 and reached its conclusion only in February, 2009.

35. The Committee went through various data of the pensioners and the expenditure being incurred upon the pensioners and after the same, a recommendation was made by the Committee that instead of grant of full pension after rendering 33 years of service, the same be granted on completion of 28 years of service instead of 20 years as recommended by Pay Commission. Though, the Pay Commission had recommended that the full pension be granted upon 20 years of qualifying service w.e.f. 01.01.2006 but the Committee recommended that as in the Government of Haryana, 40% of the sanctioned posts are lying vacant and keeping in view the fact that the recruitment age has been increasing, the Committee recommended that the full pension be granted upon qualifying service of 28 years, which was made the part of Haryana Civil Services (Revised Pension) Rules 2009.

36. After considering the said report of the High Power Committee, the Notification dated 17.04.2009 was issued. In the said Notification by which, Part-II Rules, 2009 were promulgated, the State in its wisdom decided to grant the benefit of Part-II Rules, 2009 to the employees, who were in service as on 01.01.2006. Once, the Part-II Rules, 2009 have been made applicable to the employees who were in service as on 01.01.2006, the benefits envisaged by it cannot be taken away from an employee who was in service as on 01.01.2006 on the ground that on the date of promulgation of Part-II Rules, 2009, he/she had retired. Once, a cut off date of 01.01.2006 has been fixed after deliberating

upon the recommendation of a High Power Committee, the benefit to the employees who were in service as on 01.01.2006 but retired prior to the issuance of the Notification dated 17.04.2009, cannot be deprived of the benefit of Rule 8(1) of Part-II Rules, 2009.

37. Further, it may be noticed that it was within the jurisdiction of the State to decide and make the benefit under Rule 8(1) of Part-II Rules, 2009 available from 17.04.2009. Despite the said jurisdiction, keeping in view all the consideration and decision taken at the highest level and that too after considering the financial aspect brought to the notice of the State by the High Power Committee, a decision was taken to grant of benefits under Part-II Rules, 2009 from 01.01.2006 which is the date from which Part-II Rules, 2009 were made effective, therefore, taking away the benefit from certain section of employees governed by the same set of Rules, who though were in service as on 01.01.2006, merely on the ground that they had retired upto the date of Notification dated 17.04.2009, cannot be accepted. The classification thus created by the State is without any intelligible differentia nor has any nexus with the purpose of Part-II Rules, 2009, hence the same cannot be accepted.

38. In somewhat similar circumstances, the Hon'ble Supreme Court of India while deciding Civil Appeal No. 778 of 2023 titled as ***Maharashtra State Financial Corporation Ex-Employees Association and others Vs. State of Maharashtra and others,*** on 02.02.2023 held that once a particular cut off date has been fixed, denying the benefit to the employees, who were in service as per the cut off date fixed on the ground that they had retired by the time the Notification was issued, is arbitrary and illegal. In the case of ***Maharashtra State Financial Corporation Ex-Employees Association and others (supra)***, the pay scale was revised vide Notification dated 29.03.2010 w.e.f. 01.01.2006.

The benefit of arrears of pay upon revision of pay scale were denied to the employees, who had retired upto 29.03.2010 which grievance was raised and decided by the Hon'ble Supreme Court of India, wherein, it was held that once an employee was in service on the cut off date, merely that he had retired before the promulgation of the Rules which were otherwise given retrospective effect, cannot be a ground to deny the said benefit. The relevant paragraph 39 of the said judgment is as under :-

> *"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."*

39. The situation in the present case qua Rule 8(3) of Part-II Rules, 2009 is akin to the issue decided by the Hon'ble Supreme Court of India in *Maharashtra State Financial Corporation Ex-Employees Association and others (supra)*. In the present case also, though the employees who are in service as on 01.01.2006 i.e. the cut off date fixed under the Part-II Rules, 2009 which were promulgated on 17.04.2009, yet the benefit of Rule 8(1) of Part-II

Rules, 2009 is denied to them on the ground that they had retired by the date the Notification was promulgated. Hence, the judgment in ***Maharashtra State Financial Corporation Ex-Employees Association and others (supra)*** is fully applicable qua the grant of benefit as envisaged under Rule 8(1) of Part-II Rules, 2009 to the employees who were in service as on 01.01.2006 even though they might have retired prior to the issuance of the Notification dated 17.04.2009.

40. Qua the judgment of the Division Bench in ***Gurtek Singh's case (supra),*** which is being relied upon to support Rule 8(3) of Part-II Rules, 2009, it may be noticed that in the said writ petition the challenge was to the order dated 30.09.2011 passed by the Director Secondary Education denying the benefit of full pension on completion of 28 years of service in which petition the vires of Rule 8(3) of Part-II Rules, 2009 was also challenged. The order so passed by the authorities concerned was upheld by the Division Bench on the basis of Rule 8(3) of Part-II Rules, 2009 and qua the argument raised against the validity of Rule 8(3) of Part-II Rules, 2009, the said Rule was upheld by the Division Bench on the ground that the same does not violate Articles 14 and 16 of the Constitution of India. It may be noticed that without there being any discussion on the issue of validity of Rule 8(3) of Part-II Rules, 2009, either on facts or on relevant settled principle of law, the same was upheld by the Division Bench while passing the judgment in ***Gurtek Singh's case (supra)***. The judgments of the Hon'ble Supreme Court of India on the issue as detailed in the reference order were not noticed or dealt with. In absence of any reasoning given based upon facts of the case or on law on the issue to reach the conclusion so as to uphold Rule 8(3) of Part-II Rules, 2009 especially in view of the settled principle of law on the same issue by the Hon'ble Supreme Court

of India in ***Maharashtra State Financial Corporation Ex-Employees Association and others (supra)***, as noticed here-in-before, as per the rational of which employees who were in service as on 01.01.2006 who though retired prior to the Notification dated 17.04.2009 belong to the same class of employees who continued to be in service as on 17.04.2009 being governed by the same set of Rules, the finding recorded by the Division Bench in ***Gurtek Singh's case (supra)*** cannot be upheld so as to uphold the validity of Rule 8(3) of Part-II Rules, 2009.

41. Consequently, Rule 8(3) of Part-II Rules, 2009 is held to be violative of Articles 14 and 16 of the Constitution of India and is accordingly stuck down. All the employees who were in service as on 01.01.2006, will be entitled for the benefit of Part-II Rules, 2009 notified on 17.04.2009 irrespective of the fact whether they retired before the Notification dated 17.04.2009 or thereafter.

<u>Issue No. 3</u>

Qua challenge to the prospective Amendment dated 25.08.2014 to Haryana Civil Services (Revised Pension) Part II Rules, 2009.

42. Learned counsel for the petitioners have argued that once, by the amendment dated 25.08.2014, the minimum service required for the grant of full pension has been reduced from 28 years to 20 years, benefit of Rule 8(1-A) as inserted vide amendment dated 25.08.2014 has to be extended to all, who have retired even before the amendment dated 25.08.2014 by which Rule 8(1-A) was inserted into Part-II Rules, 2009. Learned counsel submit that there is no intelligible differentia to oust the retirees qua the grant of full pension on completion of 20 years, who had retired prior to the Notification dated 25.08.2014 by which Part-II Rules, 2009 were amended so as to insert Rule

8(1-A). The reliance is being placed upon the various judgments of Hon'ble Supreme Court of India which have been noticed in the reference order itself by the Division Bench.

43. Learned counsel for the petitioners have argued that the amendment to Part-II Rules, 2009, which was brought into operation vide amendment dated 25.08.2014 should be made applicable upon everyone, who has retired from the service of the State of Haryana irrespective of the date of the retirement as all the retirees belong to a homogenous class. Learned counsel for the petitioners have placed reliance upon the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara and others (supra)*** in Civil Appeal No. 10857 of 2016 titled as ***All Manipur Pensioners Association by its Secretary Vs. State of Manipur and others***, decided on 11.07.2019, to contend that the amendment dated 25.08.2014 amending Part-II Rules, 2009 prospectively is arbitrary and illegal and is discriminatory in nature. Further, the reliance is also being placed upon the judgment of the Division Bench of Delhi High Court in ***S.A. Khan and another(supra),*** to contend that all the retirees are entitled for the benefit of the amendment dated 25.08.2014 irrespective of their date of retirement so as to re-fix their pension in terms of the amended Rule 8(1-A) of Part-II Rules, 2009.

44. Learned State counsel, on the other hand, submits that once, even while promulgating unamended Part-II Rules, 2009, the financial liability upon the State was discussed and a cut off date of 01.01.2006 was fixed while reducing the maximum years of service required for full pension from 33 years to 28 years, which aspect has already been upheld in ***R.K. Aggarwal and others (supra)***, accepting the prayer of the petitioners to grant the benefit of the amendment dated 25.08.2014 to Part-II Rules, 2009 by which, the maximum

service required for full pension was further reduced to 20 years to all the retirees as being contended, will be antithetical to the rational given for upholding the cut off date of 01.01.2006 for grant of benefit of reduction in requirement of maximum service of 33 years to 28 years for grant of full pension, which has already been upheld in ***R.K. Aggarwal and others(supra)***.

45. Learned counsel for the respondents further argue that the financial aspect is a valid consideration to fix the cut off date keeping in view the judgment of the Hon'ble Supreme Court of India in Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Amar Nath Goyal and others***, 2005 (6) SCC 754 and keeping in view the recommendation of the High Power Committee, even while reducing the maximum service required for the grant of full pension from 33 years to 28 years, the same was also restricted to a set of employees, therefore, accepting the prayer of the petitioners will amount to rejection of the financial constraint pleaded by the State which is a valid consideration while granting new benefits.

46. Learned counsel further submit that the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara and others (supra)*** has already been diluted in various judgments of the Hon'ble Supreme Court of India including the judgment of 05 Judges Bench in ***Indian Ex-Services League and others Vs. Union of India and others,*** 1999 (2) SCC 104 1999 Vol. II SCC 104 to hold that the retirees cannot claim the same pension or the same benefit irrespective of the date of retirement.

47. Learned State counsel has further argued that in the recent judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 7230 of 2012 titled as ***Himachal Road Transport Corporation and another Vs. Himachal Road Transport Corporation Retired Employees Union,*** decided on

22.02.2021, the judgment of the Hon'ble Supreme Court of India in ***D.S. Nakara (supra)*** has been interpreted to be mean that the pensioners and the employees in service do not constitute a homogeneous class and the benefit can be granted to the employees within service keeping in view the financial capacity of the State and no grievance can be raised by the employees who have already retired from service.

48. In order to appreciate the respective contentions raised by the learned counsel for the petitioners and the respondent-State, it may be noticed at the cost of repetition that the State had issued two Notifications on 17.04.2009, one dealing with the arrears of pension of the employees, who had retired upto 01.01.2006 i.e. Part-I Rules, 2009 and the second qua the employees who were in service as on 01.01.2006 as to how their pension is to be calculated under Part-II Rules, 2009. The pensionary benefits of the retirees who were retired prior to 01.01.2006 were revised under the formula envisaged by Part-I Rules, 2009, whereas, certain benefits were given to the employees, who were in service as on 01.01.2006 with regards to the manner in which their pension was to be computed upon their retirement. In Part-II Rules, 2009 in order to become eligible for full pension, the qualifying service had been reduced from 33 years to 28 years and the said Rules were made effective from 01.01.2006, which cut off has already been upheld in ***R.K. Aggarwal and others (supra)***.

49. The Part-II Rules of 2009 have been further amended on 25.08.2014 whereby minimum service required to get full pension was further reduced from 28 years to 20 years but the said benefit was extended prospectively only i.e. from the date of amendment dated 25.08.2014 to the employees who were still in service on the date of the said amendment.

50. The claim of the petitioners is that once, the Part-II Rules, 2009 have been amended, the benefit extended vide Notification dated 25.08.2014 should also be made applicable to all the retirees of the State of Haryana irrespective of their date of retirement.

51. It is a settled principle of law that the recommendations, which have been made by Pay Commission are to be implemented subject to the approval to be granted by the State. The State has a jurisdiction to adopt the said recommendations from a particular date keeping in view various factors, financial liability being one of them.

52. The contention has been raised on the basis of the judgment in ***D.S. Nakara and others (supra)*** is that all the retirees irrespective of their date of retirement, constitute a homogeneous class, which cannot be bifurcated for the grant of benefit by the State and once, a particular benefit has been extended to a retiree, no cut off date can be fixed and the same is to be extended to all the retirees irrespective of their date of retirement.

53. The said judgment in ***D.S. Nakara and others (supra)*** came up for consideration before 05 Judges Bench in Writ Petition (Civil) Nos.13550-55 of 1984 titled as ***Indian Ex-Services League and others Vs. Union of India and others,*** decided on 29.01.1991. The judgment in ***D.S. Nakara (supra)*** was interpreted to mean that all the retirees/pensioners cannot demand the same pension irrespective of their date of retirement ignoring the fact that reckonable emoluments for the purpose of their pension to be different. The denial of certain benefits to pre 01.04.1979 retirees, which benefit was made available to the retirees after 01.04.1979, was upheld. The relevant paragraphs 14, 21 and 22 of the said judgment are as under :-

"14. An attempt was made by learned counsel for the petitioners to confine this meaning of Nakara only to civilian retirees. It was contended that the position in the case of ex-servicemen was different. It was urged that for the ex-servicemen, the relevant Memorandum (Ex. P-2) dated 28-5- 1979 which contained appendices showing the calculation of pension for each rank had to be equally applied to pre-1-4-1979 retirees since the only portion struck down in the Memorandum was the offending cut-off date confining the grant of the benefits of the liberalised pension scheme to those retiring after the specified date. In our opinion, no such distinction in the case of exservicemen can be made. A perusal of the Memorandum dated 28-9-1979 shows that it was the consequent action to liberalisation of the pension formula for civil servants extending the same benefit to the Armed Forces with no further addition. Appendices 'A', 'B' and 'C' to this Memorandum merely indicated the computation of the pension made for each rank according to the revised liberalised pen-sion formula, the rates being calculated on the ' basis of emoluments payable for those ranks on 1-4-1979 since the Memorandum was confined in application only to service officers retiring on or after 1-4-1979. In that Memorandum, therefore, no occasion arose for computation of revised pension for pre-1-4-1979 retirees. It is only as a result of the Nakara decision holding that the same liberalised pension formula for computation would apply to all pre-1-4-1979 retirees also that the question of re-computation of the pension of the earlier retirees on the basis of the liberalised formula arose and this is what has been done in the G.Os. dated 22-11-1983 and 3-12-1983 challenged in these writ petitions. It is a misreading of the Memorandum dated 28-9-1979 to contend that the appendices to that Memorandum became automatically applicable even to pre- 1-4-1979 retirees as a result of the Nakara decision. That amounts to reading something in that decision which would be contrary to its ratio.

15. xxx xxx xxx

16.	*xxx*	*xxx*	*xxx*
17.	*xxx*	*xxx*	*xxx*
18.	*xxx*	*xxx*	*xxx*
19.	*xxx*	*xxx*	*xxx*
20.	*xxx*	*xxx*	*xxx*

21. Another claim made is for merger of D.A. backwards also. From 1-1-1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D. A. at a time when it was not paid. This claim also is untenable.

22. Learned counsel for the petitioners referred to certain decisions which it is unnecessary to consider at length since they were cited only for reading the Nakara decision in the manner suggested by petitioners. The decision of this Court in Union of India v. Bidhubhushan Malik and others, (1984)3 SCC 95 by which special leave petition was dismissed against the decision of the Allahabad High Court reported in AIR 1983 Allahabad 209 is also of little assistance in the present case. This Court while dismissing the special leave petition upheld the Allahabad High Court's view that the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976, from 1-10-1974 and applied to all retired High Court Judges irrespective of the date of their retirement and there is no question of payment of arrears of pension for the period preceding 1-10-1974. We are unable to appreciate the relevance of this case to support the petitioner's claim in these writ petitions."

54. Again the issue of cut off date came up for consideration before the Hon'ble Supreme Court of India with regard to the fixation of cut off date in Transfer Case (C) No.106 of 2006 titled as ***Union of India Vs. S.R. Dhingra***

and others, decided on 14.12.2007. The Hon'ble Supreme Court of India held that when two set of employees of a same rank retired at different points of time, one set of employees cannot claim the benefit extended to the other set of employees on the ground that they are similarly situated though they might have retired but they are not of the same class or a homogeneous group hence, Article 14 of the Constitution of India has no application and an employer can validly fix a cut off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. The relevant paragraph 25 of the said judgment is as under :-

> *"25. It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence, Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment (vide Col B.J. Akkara (Retd) vs. Govt of India, (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union of India (1991) 2 SCC 104, V. Kasturi vs.Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma(2000) 7 SCC 662)."*

55. Keeping in view the judgments which have been cited here-in-before, the serving employees and the employees who have retired upto a

particular date, have not been treated as a homogeneous class so as to be treated in a similar manner while granting a particular benefit. The State can grant certain benefits to the serving employees and no right accrues to the retired employee to claim the same as a matter of right.

56. The grant of a benefit to the serving employees by fixing a cut off date can also be seen from an angle of financial issues relating to a particular state. The details of the financial consideration before issuing the Part-II Rules, 2009 on 17.04.2009 have already been reproduced here-in-before, hence, the same are not being repeated. After considering the recommendations of the High Power Committee the government for the grant of full pension only reduced the requirement of qualifying service from 33 years to 28 years and granted the said benefit only with effect from 01.01.2006 to employees who were in service on the said date despite recommendations of the pay commission to reduce the same to 20 years.

57. The Hon'ble Supreme Court of India in ***Amar Nath Goyal and others(supra)***, held that the grant of benefit of increased quantum of death-cum-retirement gratuity and the cut off date fixed for the grant of the said benefit was held to be valid. After considering the judgment in ***D.S. Nakara (supra)***, Hon'ble Supreme Court of India held that financial constraints for granting of benefit prospectively cannot be termed to be arbitrary and illegal or to violate Articles 14 and 16 of the Constitution of India. The relevant paragraphs of the judgment are as under :-

> *"29. D.S. Nakara (supra), which is the mainstay of the case of the employees, arose under special circumstances, quite different from the present case. It was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut-off line and granting the revised pensionary benefits*

to employees retiring on or after the cut-off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The reason given by the Court was that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. However, it must be noted that even in cases of pension, subsequent judgments of this Court have considerably watered down the rigid view taken in D.S. Nakara (supra) as we shall see later in T.N. Electricity Board v. R. Veerasamy and others, 1999(3) SCC 414, ("Veerasamy"). In any event, this is not a case of a continuing benefit like pension; it is a one-time benefit like gratuity.

30. In Union of India v. P.N. Menon and others, 1994(4) SCT 91 (SC) : 1994(4) SCC 68, while implementing the recommendations of the Third Pay Commission with regard to dearness pay linked to average index level 272, which was to be counted as emoluments for pension and gratuity under Central Civil Services (Pension) Rules, 1972, the Central Government had fixed a certain cutoff date and directed that only officers retiring on or after the specified date were entitled to the benefits of the dearness pay being counted for the purpose of retirement benefits. This was challenged as arbitrary and violative of Article 14 of the Constitution. This Court turned down the challenge and observed :

> *"Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for*

implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations." [Ibid at pp. 75-76 (para 14)]."

31. In Action Committee South Eastern Railway Pensioners v. Union of India, 1991(1) SCT 485 (SC) : 1991 Supp. (2) SCC 544, it was held that, on merger of a part of dearness allowance as dearness pay on average price index level at 272 with reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in D.S. Nakara (supra) was not applicable. In this connection, the ratios in Krishena Kumar v. Union of India, 1990(4) SCC 207; Indian Ex-Services League v. Union of India, 1991(1) S.C.T. 468 : 1991(2) SCC 104; State Government Pensioners' Association v. State of A.P., 1986(3) SCC 501 and All India Reserve Bank Retired Officers' Association v. Union of India, 1992 Supp. (1) SCC 664 are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In State of Rajasthan and another v. Amritlal Gandhi and others, 1997(1) SCT 699 (SC) : AIR 1997 Supreme Court 782 this Court went so as far as to note that : "... Financial impact of making the

Regulations retrospective can be the sole consideration while fixing a cut-of date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990." [Ibid at p. 78 (para 17)] (emphasis supplied).

33. More recently, in Veerasamy (supra), this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. 1999(3) SCC 414 at p. 421 (para 15)]. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

34. In State of Punjab and others v. Boota Singh and another, 2000(3) SCC 733, ("Boota Singh") after considering several judgments of this Court in D.S. Nakara (supra) to K.L. Rathee v. Union of India, 1997(3) SCT 478 (SC) : 1997(6) SCC 7, it was held that D.S. Nakara (supra) should not be interpreted to mean that the emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. [2000(3) SCC 733 at p. 735 (para 8)].

35. In State of Punjab and another v. J.L. Gupta and others, 2000(2) SCT 8 (SC) : 2000(3) SCC 736, where one of us was on the Bench (Sabharwal, J.), the views expressed in Boota Singh (supra) were reiterated, and it was held that for the grant of additional benefit which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary. [Ibid at p. 737 (para 4)]"

58. Learned counsel for the petitioners has placed reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 10857 of 2016 titled as ***All Manipur Pensioners Association by its Secretary Vs. State***

of Manipur and others, decided on 11.07.2019 to contend that as per the said judgment, the amendment to the Part-II Rules, 2009 so as to insert Rule 8(1-A) prospectively, is contrary to the said judgment. It may be noticed that in ***All Manipur Pensioners Association by its Secretary (supra)*** though, Hon'ble Supreme Court of India held that even the financial aspect cannot be brought into operation so as to bifurcate a homogeneous class but the same judgment has been considered by the Hon'ble Supreme Court of India in ***Himachal Road Transport Corporation (supra).*** After taking note of the judgment in ***All Manipur Pensioners Association by its Secretary (supra),*** the Hon'ble Supreme Court of India once again held that the serving employees and the retired employees do not constitute a homogeneous class hence, the benefit to be granted to the employees who are in service by prescribing a cut off date keeping in view the financial capability of the employer is perfectly valid. The relevant paragraph Nos. 17, 18, 19 and 23 of the said judgment are as under :-

> *"17. By O.M. dated 27.9.1993, the Ministry of Finance, Government of India directed that the dearness allowance payable to the Central Government employees with effect from 1.7.1993 would stand modified as declared therein at varying rates linked to the basic pay. By another O.M. dated 19.10.1993, the Government of India notified that for Central Government employees who retired or died on or after 16.9.1993, a portion of the dearness allowance as linked to Average Consumer Price Index of 729.91 obtaining as on 1.3.1988 (i.e. 20% of basic pay) would be treated as dearness pay. This would count only for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Services (Pension) Rules, 1972 and for no other purpose. The said orders came into effect from 16.9.1993. It was directed that the death-cum- retirement gratuity of*

persons who have already died or retired on or after 16.9.1993 should be recalculated on the basis of the said orders and arrears, if any, be paid.

18. By O.M. dated 14.7.1995, the Central Government directed that, as recommended by the Fifth Central Pay Commission in its Interim Report, dearness allowance as linked to the average All India Consumer Price Index ("AICPI") 1201.66 would be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity under the Central Civil Services (Pension) Rules, 1972. Further, it was directed that the ceiling on gratuity would stand enhanced to Rs. 2.50 lacs. The said O.M. indicated different percentages of dearness allowance, depending upon the basic pay drawn, to be added to pay for calculating gratuity.

19. Following the aforesaid O.M. issued by the Central Government, the Government of Punjab in the Department of Finance issued orders dated 13.12.1996, wherein it was notified that the Governor of Punjab was pleased to decide that dearness allowance as admissible to the employees as on 1.7.1993 (linked to All India Consumer Price level 1201.66) would be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Punjab Civil Services Rules- Volume II. This was in respect of "Punjab Government employees who retire or whose death occurs on or after 1.4.1995". The said order indicated the varying percentages of dearness allowance to be added to the pay for calculating gratuity at different pay slabs. The order also notified that the ceiling of maximum amount of retirement gratuity and death gratuity was to be raised from Rs. 1 lac to Rs. 2.50 lacs with effect from 1.4.1995.

20. xxx xxx xxx xxx

21. xxx xxx xxx xxx

22. xxx xxx xxx xxx

23. The learned counsel for the Union of India and the State Governments contended that, though it is a fact that certain percentage of dearness allowance was to be merged with the basic pay with effect from 1.7.1993 (linked to the All-India Consumer Price level 1201.66) and that the said dearness allowance admissible to the employees on 1.7.1993 was to be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity, financial constraints impelled the Governments, both at the Centre and the State, to restrict such payments only to the employees who had died or retired on or after 1.4.1995."

59. The settled principle of law noticed here-in-before, clearly goes to show that the financial aspect is a relevant factor to be taken into account for the grant of benefit and retired employees and serving employees do not form a homogenous class and a cut off date can be prescribed by the State while extending benefit to serving employees.

60. As stated earlier, the financial aspect was already taken into account while issuing Haryana Civil Services (Revised Pension) Part-II Rules, 2009 so as to reduce the maximum number of years required to claim full pension from 33 years to 28 years and the said Rules have only been amended on 25.08.2014 by inserting Rule 8(1-A). The Courts should refrain from interfering into the decision dealing with the financial aspects of the State as the same would come within the exclusive domain of the Executive.

61. In the present case also, the amendment dated 25.08.2014 has been made applicable upon the serving employees and, therefore, the employees who had already retired upto the said date, cannot claim that they are homogeneous class as compared to the serving employees so as to claim the benefit of the

amendment dated 25.08.2014, which was not at all in existence at the time of their retirement.

62. Learned counsel for the petitioners argued that the financial burden upon the State, as being put forth by the State was only ascertained while issuing the initial notification dated 17.04.2009 by which Part-II Rules, 2009 were promulgated but no such consideration has taken place while amending the Part-II Rules, 2009 on 25.08.2014 hence, such financial aspect being pleaded should be ignored.

63. It may be noticed that in case the plea of the petitioners is accepted so as to operate the amendment dated 25.08.2014 retrospectively, all the employees who had retired upto 25.08.2014 will have to be granted the benefit of amended Rule 8(1-A) of Part-II Rules, 2009. This will mean that the earlier consideration on the financial aspect which was undertaken by a High Power Committee before notifying the unamended Part-II Rules, 2009 will stand overruled. Once the financial aspect was taken into account while issuing Part-II Rules, 2009 on 17.04.2009 by which the maximum period of service to claim full pension was only reduced from 33 years to 28 years, granting the benefit of full pension upon completion of 20 years as per the amended Rule 8(1-A) of Part-II Rules, 2009, as amended on 25.08.2014 to all the retirees will negate the cut off date of 01.01.2006 as fixed in the unamended Part-II Rules, 2009. If the prayer of the petitioners is accepted, then same will also have the effect of giving a complete go bye to the financial aspect taken into account by the Government while reducing number of years from 33 years to 28 years for the grant full pension which benefit was only applicable from 01.01.2006.

64. Even otherwise, the Hon'ble Supreme Court of India in ***Government of Andhra Pradesh and others Vs. N. Subbarayudu and others,***

2008 (14) SCC 702, has held that the fixing of the cut off date is an executive function based upon the several factors like economic condition, financial constraints and other administrative exigencies. The Hon'ble Supreme Court of India had gone to the extent to hold that even if no reason is forthcoming from the executive for fixing a particular date, it should not be interfered unless and untill, the said cut off date leads to blatantly capricious or outrageous results. In the present case, the financial aspects were already taken into account and High Power Committee had given recommendations, which were taken into account while notifying Part-II of Rules, 2009, which Rules have only been further amended by the impugned Notification dated 25.08.2014 hence, applying the amendment dated 25.08.2014 prospectively, in the facts and circumstances of the present case, which also has financial implications for the State, cannot be treated as arbitrary and illegal. The relevant paragraph Nos. 5 to 10 of ***Government of Andhra Pradesh and others (supra)*** are as under:

> *"5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab & Ors. v. Amar Nath Goyal & Ors., 2005(3) SCT 770 : (2005)6 SCC 754).*
>
> *6. No doubt in D.S. Nakara & Ors. v. Union of India, 1983(1) SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of*

this Court in State of Punjab & Ors. v. Amar Nath Goyal & Ors. (supra).

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

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar v. Ramjee Prasad, 1990(3) SCC 368, Union of Indian & Anr. v. Sudhir Kumar Jaiswal, 1994(3) SCT 322 : 1994(4) SCC 212 (vide para 5), Ramrao & Ors. v. All India Backward Class Bank Employees Welfare Association & Ors., 2004(1) SCT 775 : 2004(2) SCC 76 (vide para 31), University Grants Commission v. Sadhana Chaudhary & Ors., 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

As has been held by this Court in Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr., 2008(1) SCT 279 : 2008(1) RAJ 116 : 2008(3) 3 JT 221 and in Government of Andhra Pradesh & Ors. v. Smt. P. Laxmi Devi, 2008(2) RAJ 475 : 2008(2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain. For the reasons afore-stated, the impugned order of the High Court is set aside.

The appeals are allowed."

65. A bare perusal of the above observations would show that even if there is no reasons coming forward for prescribing a particular cut off date, still the cut off date is not be ordinarily interfered with. The stand of the State is to be given due meaning even if the financial implication is not borne from the pleadings qua amendment dated 25.08.2014 unless, it is shown that the said reason is totally capricious or outrageous, the same cannot be set-aside. Therefore, once the financial aspect was taken into account while issuing unamended Part-II Rules, 2009, said financial aspects remains relevant and has to be taken into account while deciding the issue of prospective amendment of Part-II Rules, 2009 vide notification dated 25.08.2014. Therefore, the amended Part-II Rules, 2009 vide notification dated 25.08.2014 prospectively cannot be faulted with so as to be declared arbitrary and illegal or violative of the Articles 14 and 16 of the Constitution of India.

66. Further, once a notification has been issued so as to be made prospectively applicable, the result is that one set of employees suffer as compared to the other ones but merely that one section of employees would face hardship is no ground to declare any amendment which is prospective, as ultra vires of Article 14 of the Constitution of India. Reliance can be placed upon paragraph 32 and 33 of the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos.4593-94 of 2002, titled as ***Ramrao and others Vs. All India Backward Class Bank Employees Welfare Association and others,*** decided on 05.01.2004, which are reproduced hereunder for the ready reference:

> *"32. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself*

cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

33. In State of W.B. v. Monotosh Roy & Anr., 1999(1) SCT 287 (SC), it was held:- "13. In All India Reserve Bank Retired Officers' Association v. Union of India, 1992 Supp. (1) SCC 664 : (1992) 19 ATC 856 a Bench of this Court distinguished the judgment in Nakara, (1983) 1 SCC 305 and pointed out that it is for the Government to fix a cut-off date in the case of introducing a new pension scheme. The Court negatived the claim of the persons who had retired prior to the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in Union of India v. P.N. Menon, (1994) 4 SCC 68 : (1994) 27 ATC 515 : 1994(4) SCT 91 (SC). In State of Rajasthan v. Amrit Lal Gandhi, (1997) 1 SC 421 : 1997(1) SCT 699 (SC) the ruling in P.N. Menon case (supra) was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.

> *14. In State of U.P. v. Jogendra Singh, (1998) 1 SCC 449 : 1998(1) SCT 274 (SC) a Division Bench of this Court held that liberalized provisions introduced after an employee's retirement with regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12.4.1976. Later on, the statutory rules were amended by Notification dated 18.11.1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalized provision which came into existence after his retirement. A similar ruling was rendered in V. Kasturi v. Managing Director, State Bank of India, (1998) 8 SCC 30 : JT (1998) 7 SC 147 : 1998(4) SCT 662 (SC).*
>
> *15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt*

> *whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition..........”*

67. Keeping in view the factual aspects noticed hereinbefore coupled with the settled principle of law, it cannot be said that the prospective amendment to Part-II Rules, 2009 vide notification dated 25.08.2014 is without jurisdiction or is arbitrary or illegal or violates the Articles 14 and 16 of the Constitution of India.

68. The prayer of the petitioners that the retired employees and the serving employees be treated as homogeneous class cannot be accepted qua the grant of benefit of amended Rule 8(1-A) of Part-II Rules, 2009. The benefit extended to serving employees, who were in service as on the date of amendment of Part-II Rules, 2009 i.e. 25.08.2014 only, cannot be treated as arbitrary and illegal hence, the challenge to the validity of Notification dated 25.08.2014 amending Part-II Rules, 2009 prospectively, needs no interference at the hands of this Court.

69. Further, learned counsel for the petitioners press into operation the judgment of the Division Bench of this Court in ***State of Punjab and others Vs. A.P. Sharma and others,*** 2017 (1) SCT 322. The said judgment cannot be made applicable in the facts and circumstances of the present case. Here, the petitioners who are retired employees, are claiming the benefit as extended to the serving employees whereas, the facts in ***A.P. Sharma and others (supra)*** were with regard to the revision of the pay scale retrospectively. As the facts of both the cases are different, the benefit of the judgment in ***A.P. Sharma and others (supra)*** cannot be extended to the petitioners so as to claim that the

amendment dated 25.08.2014 should be retrospectively made applicable to all the retired employees irrespective of the date of their retirement.

70. Therefore, the challenge to the amendment to Part-II Rules, 2009 dated 25.08.2014 so as to operate upon all the retirees of the State of Haryana cannot be accepted and is accordingly rejected.

71. The writ petitions are accordingly disposed of in terms of the findings recorded here-in-before.

72. A photocopy of this order be placed on the files of connected cases.

(G.S. SANDHAWALIA) (HARSIMRAN SINGH SETHI) (LAPITA BANERJI)
(JUDGE) JUDGE JUDGE

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Whether speaking/reasoned : Yes
Whether reportable : Yes