

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 163 of 2023

Minati Chakraborty

Versus

State of West Bengal and others

For the Petitioner : Mr. Biswanath Chakraborti,
Mr. Krishnendu Bera.

For the State : Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Pinaki Dhole,
Mr. Sayan Dutta.

Judgment on : June 10, 2025

Madhuresh Prasad, J.:

1. The writ petitioner is applicant number 1 (one) before the West Bengal Administrative Tribunal ("SAT" for short) in O.A. No. 1057 of 2015, seeking the following relief:

"8. RELIEFS SOUGHT:

(a) Provision contained in sub Rule (vii) of Rule 189 A of the West Bengal Death Cum Retirement benefits Rule, 1971 be declared ultra vires to constitution of India.

b) In the event of a declaration proclaiming sub Rule (vii) of Rule 189 A of the West Bengal Death Cum Retirement benefits Rule, 1971 ultra vires to constitution of India direction be issued to grant the benefits of family pension to the applicants as admissible to the family of a deceased normal pensioner.

c) Respondents may be directed to transmit all records pertaining to this case for better appreciation of the matter by this Hon'ble Tribunal.

d) Any other order and/or orders and/or orders or further orders as this Hon'ble Tribunal may deem fit and proper for administration of justice and equity.

e) Leave be granted to file the application collectively.

f) Costs.”

2. The learned AGP raised a preliminary objection regarding maintainability of the instant writ petition. He submits that in view of decision of the Apex Court in the case of **L. Chandra Kumar vs. Union of India and others** reported in **(1995) 1 SCC 261** the jurisdiction of the writ Court under Article 226 of the Constitution of India has been recognized so as to exercise judicial review in respect of an order passed by the Tribunal. The judgment, however, has held that the Tribunal shall continue to be the Court of first instance. The petitioner has already moved the Tribunal and her O.A. is still pending. Under such circumstance, this Court should not proceed to consider the matter until and unless the petitioner's claim is decided by the Tribunal. He has also relied upon decision of the Apex Court in the case of **State of West Bengal and Others vs. Samar Kumar Sarkar** reported in **(2009) 15 SCC 444**.
3. We find that in the case of **L.Chandra Kumar** (Supra) the Apex Court has held the jurisdiction of this Court under Article 226/227 of the Constitution of India and the jurisdiction of the Hon'ble Supreme Court of India under Article 32 of the Constitution of India to be a part of the inviolable basic structure of our constitution. It has proceeded to hold that such jurisdiction cannot be ousted, though other Courts and Tribunals may perform a supplemental role in discharging the

powers conferred under Article 226/227 of the Constitution of India. The competence of the Tribunals created under Article 323-A and 323-B of the Constitution of India to test constitutional validity of statutory provisions and rules has also been acknowledged. The Apex Court thus held all decisions of these Tribunals to be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. Having observed so, the Apex Court has proceeded to state in unambiguous terms that “*the Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned*”.

4. The exposition of law has been made considering various earlier judgments of the Apex Court. The law has been stated as regards the basic structure of the Constitution of India, and the jurisdiction of the Tribunals within the country including Tribunals established under Article 323-A and 323-B of the Constitution of India. The concept of judicial review has also been elaborately dealt with, and considered that the Tribunals established under special branches of law in some cases do involve consideration of constitutional questions on a regular basis. The Apex Court has taken note of the fact that a large majority of the cases in service law matters involved interpretation of Articles

14, 15 and 16 of the Constitution of India, and has thus rejected a notion that Tribunal will have no power to handle matters involving constitutional issues as such a conclusion would not serve the purpose for which they were constituted. The Apex Court has thereafter proceeded to conclude that decision of the Tribunal will be subject to jurisdiction of the High Court under Article 226/227 of the Constitution of India within whose territorial jurisdiction the concerned Tribunal falls, but before a Division Bench and that such system of exercise of jurisdiction would ensure that frivolous claims are filtered out in the process of adjudication by the Tribunal and that the High Court will be benefited by a reasoned decision on merits, for finally deciding the matter.

5. However, it has been left open for a party to approach the High Court directly where any question regarding the *vires* of the parent statute under which the Tribunal was established is questioned and relief is sought for declaring such statute to be unconstitutional.
6. In the case of **Samar Kumar Sarkar** (Supra) the High Court exercising jurisdiction under Article 227 of the Constitution of India withdrew a matter pending before the Administrative Tribunal since the Tribunal had failed to decide the matter. The High Court exercised its powers of superintendence under Article 227 of the Constitution of India. Such power was exercised when the Tribunal was in seisin of the matter and was considering the same. Under such circumstances the Apex Court in para 20 and 23 of the report stated:

“20. But, at this stage, we are not concerned in this appeal with Article 228 of the Constitution but only with Article 227 of the Constitution and more specifically with the correctness of the order passed by the Division Bench of the High Court wherein the High Court has withdrawn the application pending before the Administrative Tribunal for its consideration and decision.

...

23. In the light of the above discussions, in our view, it would have been proper if the High Court in exercising its jurisdiction under Article 227 had directed the Tribunal to dispose of the matter expeditiously, instead of transferring the matter to itself.”

7. The facts and circumstances in the present case, as noted above, are completely different. Due to long pendency of the O.A. the petitioner earlier moved this Court by filing W.P.S.T. No. 84 of 2022 wherein this Court requested the Tribunal to consider the petitioner’s prayer for preponement of the date and to dispose of the proceedings as expeditiously as possible, preferably within three months. The earlier writ petition has thus been disposed of on 23.09.2022. However, we find that the O.A. filed by the petitioner in 2015 is pending for the last about a decade.
8. The learned Counsel for the petitioner has drawn attention of the Court to certain orders passed by the SAT during pendency of the case; and averments made in the writ petition to the effect that the matter has not been considered all this while in view of repeated adjournments and other such reasons. Since the last about 3 years, i.e. since September 2022 the Tribunal is functioning with only a single Administrative Member. Since *vires* of Rule 189 A (vii) of the West Bengal Service (Death-cum-Retirement-Benefit) Rules 1971 (DCRB 1971 for short) was challenged in the Original Application the

matter was directed to be placed before a Division Bench of the Tribunal for hearing vide orders dated 28.02.2022 and 12.09.2022. The learned Counsel submits that consequential claim for family pension is also involved in the present case, which has remained pending for nearly a decade now before the Tribunal and at present is incapable of being considered for want of a second Member in the Tribunal.

9. We thus find that since there is no second member available in the SAT, it is not possible for the matter to be placed before a bench of two members. The petitioner's approach to the forum of first instance, has thus been rendered an exercise in futility and petitioner is left remediless.
10. Considering the above noted facts and circumstances as well as exposition of law laid down by the Apex Court in the case of **L.Chandra Kumar** (Supra) we are conscious that it is not open to a litigant to directly approach this Court invoking writ jurisdiction, without approaching the Tribunal at the first instance. We are also mindful that allowing such direct approach may lead to more and more matters being filed directly in an attempt to overshoot the jurisdiction of the Tribunal which in terms of the decision of the Apex Court in the case of **L.Chandra Kumar** (Supra) we do not propose to encourage.
11. In the instant case, the issue of directly approaching this Court does not arise. The petitioner has approached the Court of first instance namely the S.A.T. The fact that her O.A. is pending for a

decade now is not in dispute. It is also not in dispute that there are other cases also pending for a similar period of time before the Tribunal and merely because of pendency of the matter before the Tribunal for a long period, a litigant cannot be permitted to approach this Court for deciding the issue under Article 226/227 of the Constitution of India. Pendency of matters, though undesirable, having regard to the large volume of dockets, compounded by various other reasons, is by now a reality. Thus, mere pendency of the matter for a long period of time may not in every case justify invoking the writ jurisdiction. At the same time, we considered the unique facts and circumstances of the present case taken note of above where the widow applicants assail to the constitutional validity of a rule in the expectation of grant of benefit of family pension has been pending before the Tribunal now for nearly a decade. The petitioner, who is applicant No. 1 before the Tribunal was aged about 65 years at the time of filing of the O.A. in the year 2015 which is apparent from the verification executed by her in the O.A. Thus, by now she would have become about 75 years old. The issue has been directed by the Tribunal to be placed before a two Member Bench of the Tribunal under Section 5(6) of the Administrative Tribunals Act, 1985 in terms of decision in the case of **L.Chandra Kumar** (Supra). However, since there is no second member in the S.A.T. for the last about 3 years the matter has been pending consideration. In fact, consideration of the applicant's/ petitioner's claim has presently become impossible for want of the second member in the Tribunal, and she is remediless.

Thus, taking a holistic view of these facts and circumstances of the present case, we proceeded to exercise our extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India for considering the petitioner's claim.

12. The writ petitioner is wife of one late Raghunath Chakrabarty who was appointed as Sub-Inspector in the Food and Supplies Department, Government of West Bengal on 1965. By virtue of an agreement dated 12.12.1966 between the Food Corporation of India ("FCI" for short) and the State government in Food and Supplies Department (hereinafter referred to as "Department"), procurement, transportation, storage and distribution of food grains under Public Distribution System was taken over by the FCI. Employees of the Department were also transferred on deputation to FCI. Sometime later the department and FCI agreed that the employees including the petitioner's husband was to be absorbed in the FCI. The State Government vide a memo dated 05.08.1985, bearing no. 5814-FS, laid down the procedure and terms and conditions for such appointment by way of absorption. The husband of the applicant was thus absorbed in regular employment of the FCI. There is no dispute that the petitioner's husband was given the pensionary benefits including terminal benefits admissible under the DCRB 1971 as per the terms of absorption.

13. Other employees similarly situated as the petitioner's husband moved the West Bengal Administrative Tribunal ("SAT" for short) claiming revised pension, dearness relief, revised pension after

restoring the commuted amount of pension, and grant of family pension. O.A. No. 722 of 2012 and other analogous cases filed by them were disposed of by judgment dated 21.06.2013. All the dues claimed by the applicants therein were allowed by the SAT, except the claim of family pension.

14. The State Government assailed the judgment of the SAT in W.P.S.T. No. 278 of 2014 and its analogous cases. The writ petitions filed by the State Government was dismissed. As a result, all the employees of the Department who were absorbed in the FCI, including the petitioner's husband became beneficiary of the order passed by the Tribunal as regards the pensionary benefits including revised pension, dearness relief on pension and grant of revised pension after restoration of the commuted amount of pension.

15. The learned advocate for the petitioner, submits that the applicants before the Tribunal in the earlier proceedings (O.A. No. 722 of 2012) did not question the *vires* of Rule 189 A (vii) of the West Bengal Service (Death-cum-Retirement Benefit) Rules 1971 (hereinafter referred to as "DCRB 1971") and, therefore, relying on this Rule the Tribunal rejected the prayer for family pension. It is under such circumstances that the High Court had affirmed the judgment of the Tribunal in WPST No. 278 of 2014.

16. In the present proceedings the petitioner who was not a party to the earlier proceedings has claimed the benefit of family pension by assailing the *vires* of Rule 189 A (vii) DCRB 1971 before the S.A.T. on the ground of being discriminatory and violative of Article 14 of the

Constitution of India. The learned Counsel for the petitioner has submitted that deprivation of family pension is also in contravention of Article 21 of the Constitution of India which guarantees the right of a citizen to meaningful existence and to live with dignity. By depriving the petitioner, the benefit of family pension her life has been reduced to a mere existence without dignity, in penury so that it offends Article 21 of the Constitution of India. The learned advocate has submitted that the concept of family pension was introduced to provide livelihood to the wife and dependents of a Government servant, in the event of death while in-harness; or after his retirement, embracing the doctrine of a meaningful life with dignity, and livelihood as enunciated in Article 21 and 39(a) of the Constitution of India. The concept of family pension is founded on the concept of social security desperately required by a woman subsequent upon death of her husband, resulting in deprivation of his pensionary benefits, since in such a situation, she is the worst sufferer.

17. It is submitted that Rule 189 A (vii) of DCRB 1971 insofar as it deprives the dependents of a Government servant permanently absorbed in a service or post under a Corporation or Company, the benefit of family pension, is discriminatory. The petitioner's husband has served the State Government till his absorption in the FCI and has been granted certain pensionary benefits under DCRB 1971, noted above. The wife of other State Government pensioners, or state government employees who die while in harness, are entitled to family pension. In such circumstance depriving the petitioner, wife of an

absorbee pensioner the same benefit of family pension is discriminatory. It is submitted by the learned advocate for the petitioner that Rule 189 A (vii) of the DCRB 1971 which provides the basis for such deprivation is opposed to the equality clause enshrined under Article 14 of the Constitution of India. It also deprives the petitioner her right to livelihood and meaningful existence with dignity in contravention of Article 21 of the Constitution of India.

18. It is submitted that Rule 189A (vii) seeks to create an illegitimate classification between the employees/ pensioners of the State Government based on the fact that at some point of time some of them like petitioner's husband was absorbed in the FCI, based on agreement dated 26.11.1966 between the State Government and the Central Government. Application of these Rules results in hostile discrimination and is, therefore, unsustainable.

19. The learned Counsel for the petitioner relies upon decision of the Apex Court in the case of **Poonamal (Smt.) and Others vs. Union of India and Others** Reported in **(1985) 3 SCC 345**. He has also placed reliance on another decision, rendered by the Apex Court in the case of **All Manipur Pensioners Association by its Secretary vs. State of Manipur and Others** reported in **(2020) 14 SCC 625**. He submits that all pensioners form a single class. Article 14 ensures equality before the law and equal protection of laws. The classification effected by operation of Rule 189A(vii) is not a valid classification as there is no just objective sought to be achieved by such classification. The twin test for justifying such classification as enunciated in the

case of **Manipur Pensioners Association** (supra) requires the Court to see that the distinguishing rational is based on a just objective and secondly that the choice of differentiating one set of persons from another must have a reasonable nexus to the object sought to be achieved. He submits that the classification is required to be based on an intelligible differentia, which has a rational relationship with the objects sought to be achieved. This twin test is not satisfied in the present case as the classification is not based on any intelligible differentia. The Rule, in fact, mandates differential treatment between two pensioners solely on the fact that one of them (the petitioner's husband) got absorbed in the FCI.

20. Laying great emphasis on the case of **Poonamal (Smt.)** (Supra) he submits that benefit of family pension is not linked to any contribution, thus Rule 189 A (vii) of the DCRB 1971, denying family pension to widows and dependents of absorbee pensioners like petitioner's husband is baseless and unsustainable. He has relied upon para 3 of the said judgment wherein the Court has dealt with conceptualization of family pension in view of hardships suffered by the woman on account of death of her husband (employee or pensioner) such as deprivation of companionship; and also the fact that she becomes economically orphaned. It is under such circumstance that the family pension was conceptualized to provide succour so that the widow can tide over the crisis and meet the family liabilities for a meaningful existence. The apex court was considering the concept of family pension in the said case wherein the

Government sought to discriminate in the matter, and deprive grant of family pension on the ground that the petitioners therein were widow of such Government servants who chose not to make contributions as required under the 1964 Scheme. The Court took note of the fact that since September 22, 1977 the contributory scheme ceased to exist. The apex court was of the view that requirement of contribution being done away, there was no basis to discriminate between those who had contributed under the earlier 1964 Scheme; and those who had not contributed, since post 1977 the requirement of contribution was done away with. In such facts and circumstance, the Apex Court was of the view that a glaring dissimilar treatment emerged and that an anomalous situation arose by denying family pension to the writ petitioners therein.

21. The learned AGP appearing on behalf of the state submits that validity of Rule 189 A (vii) DCRB 1971 was not assailed in O.A. Nos. 722 of 2012 and analogous cases. Having omitted to pray for such relief which was then also available, the same is now barred by the principles of constructive *res judicata*. He proceeded to submit that the argument of discrimination and violation of Article 21 is without any factual foundation for such submissions. Rule 189 A (vii) is part of the DCRB 1971, which is framed under the proviso to Article 309 of the Constitution of India and framing of such Rules by the State Authorities is within their legislative competence derived from Article 309 of the Constitution of India.

22. The writ petitioner is widow of an ex-employee of the Department who was voluntarily absorbed in the FCI. Subsequent upon his absorption he became employee of the FCI and ceased to be a State Government employee. The petitioners' husband was receiving *pro rata* pension from the State, proportionate to service rendered under the State Government. He enjoyed the benefit of such pension without any demur, while he was alive. During his lifetime, he never made any claim for grant of family pension for his dependents. The petitioner's husband died in the year 2010. The petitioner, therefore, now has no right whatsoever to claim parity in the matter of grant of family pension with the dependents of employees of the state government, who died in-harness or retired as a state government employee.

23. Learned AGP has relied upon Rule 15 of the DCRB 1971, wherein family pension has been defined:

“15. Family pension– In case of death of a Government servant while in service or after retirement, if the deceased officer was entitle to, or was in receipt of, as the case may be, of a compensation, invalid, retiring or superannuation pension, the family of the deceased Government servant shall be entitled to a gratuity and/or pension as provided in Chapter X of this rule.”

24. He has also drawn attention of the Court towards Rule 101 of the D.C.R.B. which reads:

“101. Application of these rules,- (1) These rules, shall subject to the provisions of sub-rule (3), apply in case of death of a Government servant while in service,-

(a) who entered service on or after 1st April 1965; or

(b) who was in service before 1st April 1965 and has not opted specifically not to come under this scheme, and who has rendered at least three years service.

(2) The benefit shall also be admissible in case of death after retirement, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension [or gratuity provided the Government servant has completed three years service.]

**352-F (Pen) dt. 25.6.08 (emp. Who received gratuity and retired prior to 30.7.07 will not come under the preview of 674- F (Pen) dt. 30.07.07)*

(3) These rules shall not be applicable to–

(a) persons who retired on or before the 1st April 1965 but may be re-employed on that date or thereafter;

(b) persons paid from contingencies;

(c) work-charged staff who have not been declared quasi-permanent and who are not in service with permanent status;

(d) Casual labourer;

(e) Contract Officers

Compiler's Note : The position of rule 100(1) has been liberalised with effect from 1.4.81 to the effect that the condition of rendering three years' service for admissibility of the benefit of family pension in case of death while in service. Stands reduced to one year service, vide, F.D.Memo.No.5625-F dt.27.7.81 (See Rule 959-F(Pen) dt. 20.7.95 at next page)

***In respect of persons who retired' on or before the 1st April 1965 a scheme of 'ad-hoc family pension has been introduced with effect from 1.4.81 under F.D. Memo.No.6153-F dated 13.8.81. In respect of employees who died while in service prior to 1.4.65 but after 15.8.47, another ad-hoc family pension' has been .introduced with effect from 1.10.87 under F.D. Memo No. 11585-F dated 19.10.87. .*

Worked-charged staff as mentioned in rule 101(3)(c) has been brought under the purview of F.B.Memo.No.5625-F dated 27.7.81 vide F;D.Memo.No.657-F dated 18.1.90 read with No.4120-F dated 26.4.90.

In respect of missing employee / pensioners, provisions have since been made for grant of family pension etc. to, the family concerned, vide F.D.Memo. No.4671-F dated 14.5.90 read with No. 1500-F (Pen) Dated 17.7.92.

674F (Pen) dt. 30.7.07 (The benefit of family pension shall be admissible in case of death after retirement, if at the time of death the retired officer was in receipt of compensation invalid, retiring or super annotation pension).

• 959 –F (Pen) dt. 20.7.95 (family pension for employees who dies before completion of one year's service.)”

25. He submits that from a plain reading of Rule 101 of D.C.R.B. it

is clear that the same is applicable for grant of family pension in case

of death-in-harness of a state government employee; or death after retirement of an employee of the state government. Plain reading of rule 15 also reveals the intention of the statute that entitlement of family pension is limited to a state government employee in case of his death while in service or after his retirement. Upon his absorption in FCI the petitioner's husband ceased to be an employee of the state government and, therefore, petitioner is not in a position to claim parity with an employee of the state government for grant of family pension. The petitioner's allegation that denial of family pension is discriminatory or violative of petitioner's right to livelihood under Articles 14 and 21 of the Constitution of India is untenable.

26. Learned AGP further submits that pension is no longer a fundamental right, since Act 19(1) (f) and Article 31 (1) of the Constitution of India has been omitted by Constitution (forty fourth amendment) Act, 1978, with effect from 20.06.1979. He has also referred to decision of the Apex Court in the case of **D.S. Nakara vs. Union of India** reported in **(1983) 1 SCC 305**, to submit that pension is payment for the past service rendered, as a social welfare measure, but can be paid based on provisions contained in Statutory Rules. In view of Rule 189A (vii) of DCRB 1971 there is no legal obligation to pay pension. The decisions relied upon by the learned Counsel for the petitioner in the case of **Manipur Pensioners Association** (supra) **and Poonamal** (supra) at best make out a moral obligation in view of the pathetic situation of the dependant family members left behind on

account of the death of the employee in-harness or pensioner. Claim to family pension, therefore, cannot be elevated to a fundamental right.

27. Insofar as the other benefits being received by the petitioners' husbands during his lifetime, it is submitted that the grant of such benefits was in view of entitlement declared by the Tribunal in O.A. No. 722 of 2012, as affirmed by decision of the Co-ordinate Bench of this Court in W.P.S.T. No. 278 of 2014 and its analogous cases. The various heads under which benefit of *pro rata* pension, revision and dearness relief has been allowed by the Tribunal are under the other provisions of DCRB 1971. The Tribunal and the High Court found a basis in the relevant rules, namely DCRB 1971 for extending such benefits to the petitioners' husbands. At the same time the Tribunal as well as the High Court came to a finding that Rule 189 A (vii) mandates that the state government would have no liability for family pension in respect of a Government servant absorbed in an undertaking, such as the petitioner's husband. Rule 189 A (vii) therefore does not suffer from any vice of being opposed to Article 14 or 21 of the Constitution of India.

28. Upon consideration of the rival submissions, it is useful to quote Rule 189 A (vi) and (vii) of DCRB 1971:

“189 A, Grant of pro-rata pension and gratuity to Government servants absorbed in public sector undertakings on or after the 16th June 1967–

(1) (i) On permanent absorption on or after the 16th June, 1967 in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Government or in or under a

body controlled or financed, by Government (hereinafter referred to the undertaking), a permanent Government servant shall be eligible for pro-rata pension and gratuity based on the length of his qualifying service under Government till the date of absorption in accordance with the pension rules of Government in force on the date of absorption. The emoluments for the purpose of pro-rata pension and gratuity shall mean the emoluments which the Government servant would have drawn under the Government but for his transfer to the undertaking.

....

(vi) For the period of service rendered in the undertaking the absorbed Government servant shall be entitled to all the benefits admissible to other corresponding employees of the said undertaking.

(vii) Government would have no liability for family pension under rule 15 of the said rules in respect of a government servant absorbed in the undertaking referred to in clause (vi).”

29. The DCRB 1971 is applicable to Government servants, which expression has subsequently been substituted by the term “Government Employee”. Rule 6 specifies that Government employees claim to pension is regulated by the Rules in force at the time the Government servant resigns or is discharged from service on retirement or otherwise. As per Rule 18 the service of an officer does not qualify for pension unless the service is under the Government and the employment is substantive and permanent or of a permanent status or quasi permanent. Another condition to qualify for grant of pension is that the service of the officer must be paid by the Government. Pensions have been divided into 4 classes under Rule 37 namely compensation pension, invalid pension, superannuation pension and retiring pension.

30. The application of the DCRB Rules 1971 for the purposes of grant of family pension is specified in Rule 101 of the DCRB 1971 noted above. From a plain reading of rule, it is obvious that the DCRB

1971 insofar as the grant of family pension is concerned applies in case of death of a Government employee while in service, as also in case of death after retirement of a Government employee, if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension or gratuity provided the Government servant has completed the qualifying service for the said purpose. Rule 101 also specifies the persons to whom the rules insofar as grant of family pension shall not apply. The various provisions of the DCRB 1971 taken note of above leaves no room for doubt that pension and family pension is payable to a Government employee subject to terms and conditions contained in the various rules therein.

31. In view of the various nature of activity in the State Government, necessity arises from time to time of deputing Government employees of the State Government to other organizations including Central Government or any other Boards/Corporations etc. On many occasions employees of Central Government, Boards/ Corporation etc. are also deputed within the State Government as per administrative need and exigency. For such circumstances, the DCRB 1971 contains certain provisions in Chapter XV dealing with Miscellaneous Provisions. Rule 186, 187 and 188 of Chapter XV of DCRB 1971 deals with counting of temporary service under the Government of India on subsequent absorption in the State Government, special provisions regarding practicing lawyers recruited

as Government servant and counting of Air Raid services towards pension respectively. Rule 189A provides for grant of *pro rata* pension and gratuity to employees who cease to be Government employees and are absorbed in public sector undertaking on or after 16 June, 1967.

32. We find such classification is founded on a rational. A Government employee who serves the State Government right from the date of his appointment in State Government till attaining the age of superannuation has been taken as one class; whereas persons/employees who come into the State Government service after rendering service under another employee and are carrying benefits in respect of the services rendered under the earlier employee are treated differently. Likewise, the Rule contemplates a differential treatment to such Government employees, such as the present petitioner's husband who do not serve the State Government till attaining the age of superannuation and who after serving the State Government for some time is absorbed in another organization/ undertaking. Thus, it cannot be said that the classification is without any rational, arbitrary or unsustainable. We do not see any substance in the submission of learned Counsel for the petitioner that an employee who voluntarily leaves the State Government service to be absorbed in another service, where he serves till attaining the age of superannuation can claim parity with a Government employee who chooses to serve the State Government from the time of his initial appointment in State Government service till attaining the age of superannuation.

33. The law as regards pension and family pension is considered, is by now well settled. In the case of **Bhagwanti vs. Union of India** reported in **(1989) 4 SCC 397** the Apex Court relying upon its earlier decisions in the case of **D.S. Nakara** (supra), in the case of **Deokinandan Prasad vs. State of Bihar and Others** reported in **(1971) 2 SCC 330**, and in the case of **Poonamal (Smt.)** (Supra) held pension to be linked to the past service rendered by a Government servant. It was also held that a claim to family pension is on the same consideration. Relevant extract of paragraph 9 of this report reads:

“9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the government servant. Payability of the family pension is basically on the selfsame consideration.”

34. This judgment thus held the consideration of past service rendered by the Government servant to be determinative of his entitlement to pension and family pension. Rule 189A also contemplates payability of pension to a Government servant absorbed in a public sector undertaking to be linked to his past service rendered in the State Government. It, therefore, provides for payment of a *pro rata* pension to a Government servant such as the petitioners who gets absorbed in another organization. The past service of such persons, is not at par with Government servants who serve the State Government till attaining the age of superannuation.

35. The Apex Court has laid down the law as regards payabiltiy of family pension to be based on the same consideration, i.e. past service. Thus, the stipulation contained under Rule 189A (vii) that the

Government would have no liability to pay family pension for such Government servants absorbed in an undertaking is also considering entitlement to grant of family pension based on the limited past service rendered by such Government servant, who are absorbed in public sector undertaking after rendering some service under the State Government. On a consideration of the limited past service rendered by such Government servants absorbed in an undertaking a distinction is created, with such Government servants, who, on the other hand, serve the State Government from the date of their entry in service till the date of their superannuation. The distinction being founded on a consideration of the past service rendered, which has been held as a valid basis for considering payability of pension and family pension, there is no occasion for the petitioners to contend that Rule 189A (vii) creates any illegal classification. The classification is founded on a relevant consideration being the length of service. The rule also takes into consideration the fact that Government employees who are absorbed elsewhere are entitled to all benefits admissible to other corresponding employees of the undertaking where they have been absorbed, whereas those who continue to serve the State Government till attaining the age of superannuation do not get any such benefit from another employer. The petitioner's claim to parity, therefore, appears to be unsustainable. We, thus, find no force in the submission of the learned Counsel for the petitioner that classification is unsustainable.

36. We also find that such classification under DCRB 1971 has a reasonable nexus with the object sought to be achieved, i.e. avoiding financial liability to pay family pension in such a circumstance, and forms a rational basis for denying liability of the Government to pay family pension to family of an employee who ceases to be a Government servant under the DCRB 1971 and is absorbed in an undertaking where they continue to serve till attaining the age of superannuation and by virtue of such service under the subsequent employer became entitled to the service conditions including retiral benefits from such subsequent employer.

37. There is no dispute that the absorption of the petitioner's husband was voluntary and with open eyes knowing the consequences of such absorption in terms of Rule 189A, including the emoluments and service benefits available in the undertaking where the petitioner was absorbed. In such circumstance, the State cannot be continued to be held liable for payment of family pension. It cannot be accepted that the State Government will continue to bear the responsibility of family pension for the petitioner whose husband immediately after his appointment in 1965 was deputed to the FCI in 1966 where he served continuously till his voluntary absorption in the FCI in 1985, and even thereafter, till his retirement upon attaining the age of superannuation in 2010. Absorbee pensioners, such as the petitioners cannot claim parity with other pensioners who render service to the State Government till attaining age of superannuation,

or die while in harness; or are receiving compensation pension, or invalid pension.

38. Plain reading of these relevant provisions contained in Rule 189A makes it clear that the classification between an absorbee petitioner and a retiree pensioner is based on an intelligible differentia which has a rational with the object sought to be achieved.

39. As regards decision of the Apex Court in the case of **Poonamal (Smt.)** (Supra) we find that the same is distinguishable from the facts and circumstances of the present case. Before the Apex Court in the said case the petitioners were claiming the benefit of family pension alleging discrimination between those who were earlier making contribution in accordance with the 1964 Scheme; and those who did not make contribution under the said Scheme. Such claim was founded on a completely different set of facts, where both were retiring pensioners in the same organization; and also because after 22.09.1977, the requirement of making contribution was not linked to the grant of family pension. It is under such circumstance that the Apex Court found a glaring dissimilar treatment emerging as there was no intelligible difference to justify denial of family pension to the petitioners therein. The Apex Court was thus of the view that dissimilar treatment was being accorded to pensioners in the same organization drawing pension under the same Rules based on no intelligible differentia. It is also worth taking note of the fact that in the case of **Poonamal (Smt.)** (Supra) the respondent Union of India had examined the matter, and on its own volition expressed the

Government's readiness to grant the pensionary benefits at par with other pensioners who were earlier making contribution under the Scheme, as claimed by the petitioners therein. The respondents in the present case, however, are opposing the claim of the writ petitioners.

40. The other judgment relied upon by the learned advocate for the petitioner in the case of **Manipur Pensioners Association** (Supra), also in our opinion, does not cover the case of the writ petitioners in the present case. The said judgment deals with a situation where pensioners who had served under the State Government service and were receiving pension from the State Government, but were deprived of benefits of revisions based on a cutoff date. Fixing of the cutoff date was found by the Apex Court to be unsustainable. The facts and circumstances in the present case as note above are completely different. In the case of **Manipur Pensioners Association** (Supra) there was no distinction based on the nature or length of services rendered by the employees who were granted the benefit of revision, with those who were not granted the benefit, as arising in the present case. The deprivation to benefits of revision to some pensioners in the case of **Manipur Pensioners Association** (Supra) resulted only on the basis of the cut off date and there was no other distinction. The petitioner herein is wife of an employee who subsequent upon his voluntary absorption in FCI ceased to be a Government employee and as such under rule 189A (vii) DCRB 1971 is not entitled to grant of family pension. Also the petitioner's husband during his lifetime did not raise any such claim for his family. He accepted the due and

admissible benefits from the state government in recognition of services rendered by him under the State Government, prior to his absorption in FCI with open eyes; and thereafter due and admissible benefits from FCI. Viewed thus we are of the opinion that the petitioners herein cannot derive any sustenance from decision of the Apex Court in the case of **Manipur Pensioners Association** (Supra).

41. The operation of Rule 189A (vii) DCRB 1971, therefore, in our considered opinion is not discriminatory in any way. The Rule acknowledges existence of absorbee pensioners like the petitioner's husband. Based on the past limited service rendered in the State Government it acknowledges a valid distinction of such absorbee pensioners with other pensioners. In view of the forgoing discussion, we find that no case is made out to assail validity of this rule as being *ultra vires* the provisions contained Article 14 and 21 of the Constitution of India. We have already considered that the distinction is based on a valid consideration being the past service. We have also considered the fact that the petitioner's husband received *pro rata* pension from the State Government, and would also be receiving benefits from the subsequent employer (FCI) where he was absorbed. The petitioners have not been able to make out any case of Rule 198A (vii) violative of Article 14 and 21 of the Constitution.

42. Upon going through the provisions contained in DCRB 1971, relied upon by the learned Advocates, considering their submissions and the decisions relied upon by them we find force in submission of the learned AGP that the petitioner's husband was voluntarily

absorbed in FCI. For the length of services rendered by him in the Department. He has been given the benefit of *pro rata* pension for the length of service rendered by him in the department as per DCRB 1971. The absorption was voluntary and with open eyes accepting the consequences of such absorption including application of Rule 189A (vii) to the petitioner's husband, subsequent upon his absorption in FCI. The petitioner's husband, therefore, never raised any such claim for grant of family pension to his dependent family members. He accepted the consequences without any demur. It is also not in dispute that he died in the year 2010 after getting dues admissible to him from the FCI, apart from the dues paid by the State Government under the provisions of DCRB 1971; and in terms of order passed in WPST No. 278 of 2014.

43. Submission of the learned State Counsel that the relief in the present OA is barred since no such prayer was made in the earlier OA no. 722 of 2012 to be unsustainable for the simple reason that the earlier OA was not filed by the present petitioner.

44. It is also relevant to consider that the petitioner's husband, ever since his absorption in FCI has been treated to be in a class distinct from the retiring pensioners, in as much as he never received pension at par with retiring pensioners. During his lifetime petitioner's husband was paid *pro rata* pension taking into consideration his service under the State Government prior to his absorption in FCI. The petitioner's husband thus has never been treated at par with retiring pensioners, even for the purpose of paying the benefit of

pension. For such reason also petitioner's claim for parity with retiring pensioners, in respect of the benefit of family pension is unsustainable.

45. In view of the foregoing discussion, we find no legitimate basis for the petitioner to claim the benefit of family pension from the State Government; or any legally sustainable grounds to assail the *vires* of Rule 189A (vii).

46. The present petitioner was the first applicant before the SAT. Another widow joined her in filing a Single application as contemplated under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987, since both had a common interest in the matter. The second applicant, however, has not joined present petitioner in these proceedings. We, therefore, consider it appropriate to dismiss the present writ petition, and OA No. 1057 of 2015 in so far as the present petitioner is concerned.

47. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)