B. Prabhakar Rao and Others Vs State of Andhra Pradesh and Others

Court: Supreme Court of India

Date of Decision: Aug. 19, 1985

Acts Referred: Constitution of India, 1950 â€" Article 14, 142, 142(1), 16, 309

Citation: AIR 1986 SC 210 : (1985) 51 FLR 501 : (1985) LabIC 1555 : (1985) 2 SCALE 256 : (1985) SCC 432 Supp : (1985) 2 SCR 573 Supp

Hon'ble Judges: V. Khalid, J; V. Balakrishna Eradi, J; O. Chinnappa Reddy, J

Bench: Full Bench

Advocate: K.K. Venugopal, Shanti Bhushan, Govindan Nair, F.S. Nariman and V.M. Tarkunde, for the Appellant; K. Subramanya Reddy, advocate General, K.K. Venugopal, T.V.S.N. Chari and Naresh Mathur, for the Respondent

Final Decision: Disposed Of

Judgement

1. Tossed about by the Executive, the Legislature and, we are sorry to say, by us (the Judiciary) too, and therefore, totally bewildered, several civil

servants employees of public sector corporations and teachers working under various local authorities are now before us wanting to know where

they stand and to what justice and relief they are entitled. In February, 1983, the Government of Andhra Pradesh decided to reduce the age of

superannuation of its employees from 5b to 55 years. The Government also issued directives to local authorities and public corporations under its

control to do likewise. The age of superannuation was in fact 55 years to begin with. But, earlier, in the year 1979, the Government of Andhra

Pradesh had raised the age of superannuation to 58 years, presumably, because of the increased average human longevity in India, the better health

and medical facilities available, the improved standard of living, the usefulness in service of experienced employees, the employment situation and

potential and such other relevant considerations. But in February 1983, the Government decided to reduce the age of superannuation. In order to

give effect to their policy of reversal, i.e. the policy of reducing the age of superannuation from 58 to 55, the Government amended Rule 56(a) of

the Fundamental Rules and Rule 231 of the Hyderabad civil Services Rules by subsituting the figure "55" for the figure "58" and by making a

special provision that those who had already attained the age of 55 years and were continuing in service beyond that age on 8.2.1983 shall retire

from service on the afternoon of 28.2.1983. The notifications by which these amendments were carried out were followed by another notification

dated 17.2.1983 deleting the proviso to Rule 2 of the Fundamental Rules which protected a civil servant against a change of his conditions of

service to his detriment after he entered service. This was followed by the promulgation of the Andhra Pradesh Ordinance No. 5 of 1983

regulating the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the State of

Andhra Pradesh and the officers and servants of the High Court of Andhra Pradesh. Clause 10 of the Ordinance provided that ''every Government

employee, not being a workman and not belonging to Last Grade Service shall retire from service in the afternoon of the last day of the month in

which he attains the age of fifty five years.'' In the case of Government employees belonging to the Last Grade Service, it was provided that they

shall retire from service on the afternoon of the last day of the month in which they attain the age of sixty years. Clause 18(1) provided that the

proviso to Rule 2 of the Fundamental Rules shall be and shall be deemed always to have been omitted. Now immediately after the notifications

reducing the age of superannuation from 58 to 55 were issued, a large number of Government employees, employees of public sector corporations

and teachers working under various local authorities filed writ petitions in this Court as well as in the High Court of Andhra Pradesh challenging the

vires of the provisions reducing the age of superannuation. After promulgation of the ordinance, they were permitted to amend the petitions to

question the appropriate provisions of the ordinance too. The petitions in this Court were heard at great length for several days by Chandrachud,

CJ, Pathak, J. and S. Mukharji, J. and judgment was reserved on 27.7.83. The judgment was however pronounced only on January 18, 1985.

The impugned provisions were upheld and all the writ petitions were dismissed. In the meanwhile much water had flown under the bridge. There

were agitations and agreements. There were twists and turns of political power. There were amendments to the legislation, once more raising the

age of superannuation. Learned Counsel informs us that the subsequent events were brought to the notice of the court and that a petition was also

filed to amend the writ petitions and to raise additional grounds. The Court however refused to take notice of the subsequent events and

proceeded to pronounce their judgment with reference to a situation which obtained several months ago and which situation stood considerably

altered and had even become unreal by the subsequent march of events. It was a great pity. Much confusion and heart-burning might have been

avoided, as we shall presently see.

2. It is now necessary to mention in greater detail the events that followed the reduction of the age of superannuation from 58 to 55 years. We

referred to agitations and agreements. It appears that soon after the reduction of the age of superannuation, there was a state-wide agitation by

affected employees and on August 3, 1983, an agreement was arrived at between the Government of Andhra Pradesh and the Action Committee

of Employees and Workers in Andhra Pradesh.

3. Clause (1) of the Agreement is important and may be usefully extracted. It is as follows:

All provisions relating to Ordinance 5 of 1983, except those relating to the age of superannuation, will be deleted at an early date. Proviso to F.R.

2 will be restored in respect of all matters, except the age of superannuation retrospectively. The provisions of the Ordinance relating to the age of

superannuation will also be removed after the judgment of the Supreme Court, provided that such removal will not adversely effect the right of

Government as determined by the Supreme Court judgment to fix the age of superannuation.

If the Supreme Court upholds the power of the Government to reduce the age of superannuation without referring to the provisions in the

ordinance and F.R. 2, the entire ordinance will be scrapped and F.R. 2 will be restored.

This clause of the Agreement shows that while the Government was anxious to obtain a judgment of the Supreme Court securing their right of "fix

the age of superannuation", they had also realised that grave wrong and injustice had been done to its employees by their earlier action in reducing

the age of superannuation. They were anxious to undo the wrong and do justice to their employees, while preserving their own power to act in the

future, if and when necessary. That apparently was the reason why the Government agreed to scrap the whole of the ordinance if the Supreme

Court upheld the power of the Government to reduce the age of superannuation and further agreed to delete provision relating to the age of

superannuation in the ordinance, after the judgment of the Supreme Court was pronounced. Clause (1) of the Agreement expressly provides that

proviso to F.R. 2 will be restored in respect of all matters, except the age of superannuation retrospectively. It is then followed by the sentence :

The provisions of the ordinance relating to the age of superannuation will also be removed after the judgment of the Supreme Court." The clear

implication appears to be that the provisions of the ordinance relating to the age of superannuation will also be removed in the same manner as the

proviso to Fundamental Rule 2 i.e. restrospectively. Otherwise the agreement would make no sense. Those attaining the age of 55 years before

judgment was pronounced would just have to walk out while those who did not would stay on. Surely their fate was not to hang on a date.

4. The Agreement, however, contained a further curious stipulation that it was not to be placed before the Supreme Court either by the

Government or by the employees. Perhaps the stipulation was intended to prevent the Supreme Court from abstaining from pronouncing upon the

power of the Government to reduce the age of superannuation. Quite obviously the Agreement contemplated that the judgment of the Supreme

Court would be forthcoming very soon. But that was not to be.

5. There was considerable discussion at the Bar whether the agreement contemplated and stipulated restoration of 58 years as the age of

Superannuation if the power of the Government to reduce the age of superannuation was upheld by the Supreme Court. The agreement appears to

us to be clear and categoric and a reference to the pleadings demonstrates that the Government also never doubted the emplooyees'' interpretation

of agreement. In Para 2(h) of the petition in Writ Petition No. 3420-26 of 1985, the petitioners asserted,

It is pertinent to point out that in the interregnum between the Writ Petition being admitted in this Hon''ble Court and the judgment being delivered a

State wide agitation took place in Andhra Pradesh by the Non Gazetted employees in the Andhra Pradesh State Government in June and July

1983. That agitation was for the purpose of demanding inter alia that the retirement age of the State Government employees be restored to 58

years. Ultimately, on 3.8.1983, an agreement was arrived at between the State Government and the Action Committee of the Employees and

workers in Andhra Pradesh by which it was agreed the State Government would restore the age of retirement to 58 years if the Supreme Court

upheld the State Government''s Power to reduce the age of retirement. The said agreement which was a detailed agreement entered into between

the State A.P. on behalf of the whom the negotiations were conducted by the then Chief Secretary Shri G.V. Ramakrishna, I.A.S. and the Action

Committee of the employees and workers, which Action Committee represented 39 service organisation.

To this the answer of the Government in their counter was:

I state with respect to paragraph 2 that this paragraph deals with narration of facts regarding the circumstance under which the age of retirement

was enhanced and the recommendations of the Pay Revision Commission etc. Hence they require no comments. It is respectfully submitted that ail

these relevant facts have been taken into consideration by the Supreme Court while rendering the judgment upholding G.O.Ms. No. 36 dt.

8.2.1983. In its judgment since reported in [1985] 1 S.C.C 524. Hence there is no necessity to traverse those facts once again herein.

and

I further state that it is not proper for the petitioner to have filed the agreement reached between the employees Union and the State of Andhra

Pradesh as Annexure to the Writ Petition. Under the last clause of the Agreement reached between the Employees Union and the State of Andhra

Pradesh that the agreement shall not be placed before the Supreme Court by the Government or the members of the employees associations.

Contrary to the provisions of the agreement the petitioners have chosen to file this agreement in support of their case and pleaded for enhancement

of the age of retirement.

The Government''s objection was not to the interpretation placed upon the agreement by the parties but to its being brought to the notice of the

Court.

6. The Andhra Pradesh Legislature enacted the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act No. 23 of 1984

making it applicable to all persons appointed to public services and posts in connection with the affairs of the State, all officers and other

employees working in any local authority, whose salaries and allowances were paid out of the Consolidated Fund of the State, all persons

appointed to the Secretariat staff of the House of the State Legislature : and all officers or employees whose conditions of service were regulated

by rules framed under the poviso to Article 309 of the Constitution immediately before the commencement of this Act. Sub-section (3) of Section

1 stated Clause (i) of Section 7 shall be deemed to have come into force on the April 29, 1983. Sections 3(1) and (2) were as follows:

3(1) Every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service on the afternoon of the

last day of the month in which he attains the age of fifty five years.

(2) Every Government employee not being a workman but belonging to the Last Grade Service shall retire from service on the afternoon of the last

day of the month in which he attains the age of sixty years.

Explanation II(b) to Section 3 was to the following affect:

(b) a Government employee who attained the age of superannuation but who was allowed to continue to hold the post beyond that date, but virtue

of a stay order of a Court, shall be deemed to have ceased to hold the post and relieved of his charge from the date of the judgment dismissing his

petition, irrespective of whether the charge of the post was handed over or not as prescribed in any rule or order of the Government for the time

being in force.

On August 23, 1984, the Andhra Pradesh Public Employment [Regulation of Age of superannuation Act No. 23 of 1984 was amended by the

promulgation of Andhra Pradesh Ordinance No. 24 of 1984 providing that in Section 3(1) of the Act and in Explanation II (a), the words fifty

eight years" shall be substituted for the words fifty five years. This was obviously done to give effect to the agreement of August 3, 1983 and to

fulfil the promise held out therein that the age of Superannuation would be restored to 58 years. Clause 3(1) of the Ordinance is the much disputed

provision and it has therefore, to be extracted in full. It is as follows:

3(1) The provisions of this Ordinance shall not apply to persons who attained the age of superannuation in pursuance of the notifications issued in

G.O.Ms. No. 36, Finance and Planning (Finance Wing-F.R.I.) Department, dated the 8th February, 1983, or in pursuance of the provisions of the

Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as in force prior to the commencement of this Ordinance.

Andhra Pradesh Ordinance No. 24 of 1984 was replaced by Act No. 3 of 1985. By Section 2 of the Amending Act, the words "fifty five years"

were substituted by the words "fifty eight years" in Section 3(1) and Explanation II (a) of the Principal Act. Section 4 of the Amending Act which

is more or less on the same lines as Clause 3(1) of the Ordinance says:

4(1) The provisions of Section 2 of this Act shall not apply to persons who attained the age of superannuation in pursuance of the notifications

issued in G.O.Ms. No. 36 Finance and Planning (Finance Wing F.R.I.) Department, dated the 8th February, 1983, or in pursuance of the

provisions of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as in force prior to the commencement of

this Act.

7. No explanatory statement accompanying Ordinance No. 23 of 1984 was brought to our notice. The Statement of Objects and Reasons of Act

No. 3 of 1985 was however placed before us but it is not helpful to ascertain the reasons which led the legislature to restore the age of

superannuation to 58 years. If merely states that ""the Government considered it necessary to raise the age of superannuation from 55 to 58 years"".

But we are not altogether helpless. Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of

the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction. Thus "Enacting History" is

relevant : ""The enacting history of an Act is the surrounding corpus of public knowledge relative to its introduction into Parliament as a Bill, and

subsequent progress through, and ultimate passing by, Parliament. In particular it is the extrinsic material assumed to be within the contemplation of

Parliament when it passed the Act."" Again ""In the period immediately following its enactment, the history of how an enactment is understood forms

part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history may, under the doctrine that an

Act is always speaking, indicate how the enactment is regarded in the light of development from time to time."" ""Official statements by the

government department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority

on the meaning of its provisions."" Justice may be blind but it is not to be deaf. Judges are not to sit in sound proof rooms.

8. Committee reports, Parliamentary debates, Policy statements and public utterances of official spokesmen are of relevance in statutory

interpretation. But "the comity, the courtesy and respect that ought to prevail between the two prime organs of the State, the legislature and the

judiciary", require the courts to make skilled evaluation of the extra textual material placed before it and exclude the essentially unreliable.

Nevertheless the court, as master of its own procedure, retains a residuary right to admit them where, in rare cases, the need to carry out the

legislator"s intention appears to the court so to require."" ""No rule prevents the court from inspecting in private whatever materials it thinks fit to

ensure that it is well informed, whether in relation to the case before it or generally. Where these materials constitute publicly available enacting

history, the court takes judicial notice of them."" ""The court has an inherent power to inspect any material brought before it."" Francis Bennien :

Statutory Interpretation. This is to enable the court to determine whether the material is relevant to the point of construction in question, and if so

whether it should be admitted. This has to be done with a degree of inhibition and an amount of circumspection.

9. Here, the facts speak for themselves. Res Ipsa Loquitur. The history and the succession of events, the initial lowering of the age of the

superannuation, the agitation consequent upon it and the agreement that followed the agitation clearly indicate that the object of Ordinance No. 23

of 1984 and Act No. 3 of 1985 was to undo the mischief or the harm that had been done by the lowering of the age of superannuation from 58

years to 55 years and to restore the previous position. Quite obviously, it was not a case of change of social circumstances. It was a case of a

change of policy to set right immediately a recent wrong perpetrated by a well intentioned but perhaps ill-thought measure. It was not at all a case

of reversal of policy because of changed circumstances. A reference to the note file which was made available to us by the learned Advocate

General of Andhra Pradesh at our instance shows that it was after a careful consideration of the representations made by the various services

associations In regard to the restroation of the age of superannuation to 53 years that the Government resolved to restore the age of

superannuation to 58 years, In the counter, the Government appeared to take the stand that the Governments of the States of Karnataka and

Rajasthan had raised the age of superannuation to 58 years and the Government of Andhra Pradesh wanted to fall In line. It was a wholly

inaccurate statement. There is no reference in the note file or elsewhere, except for the first time in the counter, to the circumstance that two other

State Governments had raised the age of superannuation and the Andhra Pradesh Government had a accepted their wisdom. The statement in the

counter must be ignored. A reference to the pleadings is revealing, if not, startling. In Writ Petition Nos. 3420-3426/85 in paragraph 5, the

petitioner averred:

In fact Shri N.T. Rama Rao, Chief Minister himself admitted that he was misguided and misled by the then Finance Minister and the Chief

Secretary when his Government took the decision to reduce the age of retirement. His press conference dated 25.9.1984 was reported in the :

Deccan Chronicle as follows:

Chief Minister N.T. Rama Rao today announced that his government would retain the age of superannuation of the Government employees at 58

years as decided by the short-lived Bhaskara Rao Ministry.

Briefing newsmen after the Cabinet meeting this aftenoon, Mr. Rama Rao said the Cabinet had reviewed the decision of the previous Government

to raise the age of superannuation from 55 years to 58 with effect from August 23, 1984.

The Chief Minister charged that Mr. N. Bhaskara Rao, the then Finance Minister and the then Chief Secretary Mr. B.N. Raman had misled him

when his Government decided to reduce the age of superannuation from 58 to 55. Both have not raised any objection to the proposal. Despute

knowing well that the ''unpopular'' move would be detrimental to the Government, they had allowed it go with the evil intention of discrediting him,

he alleged.

Mr. Rama Rao said it was not his intention to hurt the interests of any section of the people and the Government employees constituting a sizeable

number who had voted his party to power. ""However it is not possible for the Government to concede the request of those who had already

retired"", he observed.

10. The said report has never been denied or resiled by the Chief Minister.

In answer, the averment was not denied. The deponent of the counter affidavit stated:

I state with respect to paragraphs that it is not open to the petitioner to rely on paper cuttings in support of their contention unless otherwise they

are proved apart from the fact that the statement in paper cuttings are in no way advance the case of the petitioner.

11. This can hardly be considered to be a denial of what was said in paragraph 5 of the petition. We must therefore, proceed on the basis that the

Chief Minister (Shri N.T. Rama Rao) did allege that when the Government took the decision to reduce the age of superannuation, he was,

''Misguided and misled'' by his Finance Minister and the Chief Secretary. It may be a sorry confession to make on the part of a Chief Minister,

especially when it was a momentous decision involving the lives and future of thousands of employees. One wonders how a decision concerning

the lives and the future of civil servants, who all their lives in the past, had loyally served the Government, could have been taken in such a hasty

and haphazard fashion. One would expect such a decision to be taken after a full investigation into the multitudinous pros and cons, after deep

collection of all pertinent data and after deep consideration of every aspect of the question. But there we have a statement attributed to the Chief

Minister that he was ''misled and misguided'' by the Finance Minister and his Chief Secretary. Sorry confession, it may be, but a frank and

courageous admission it was, exposing him to criticism. It does require a sturdy spirit to own a mistake.

12. During the pendency of the Writ Petitions in this Court, several employees of local authorities etc. obtained orders of stay from the High Court

and were continuing in service on the dates when the judgment of the Supreme Court was pronounced. After the pronouncement of the judgment

of the Supreme Court, the authorities that be have sought to give effect to the provisions of the Act and the Ordinance by seeking to throw them

out on the ground that they had completed 55 years of age during the interregnum between February 28, 1983 and August 23, 1984 some others

who had completed 55 years between February 28, 1983 and August 23, 1984 but who had not completed 58 years sought re-entry

notwithstanding the raising of the age of superannuation from 55 years to 58 years. Their re-entry was sought to be resisted on the basis of C1ause

3(1) of the Ordinance and Section 4(1) of the Amending Act. Those employees who were sought to be removed from service or who were denied

re-entry into service on the ground that they had attained the age of 55 years between February 28, 1983 and August 23, 1984, have once again

invoked the jurisdiction of this Court and sought appropriate writs from this Court to continue or to reinstate and continue them in service until they

attain the age of 58 years. They are the petitioners in Writ Petitions Nos. 3203, 3413-3419, 3420-3426 etc. of 1985. They sought interim orders

from this Court.

13. On 23.4.85 interim directions to the following effect were issued by Desai and Khalid, JJ:

(1) From amongst those Government servants and servants of Local and other authorities governed by the decision of the Government of A.P. on

reduction of age of retirement from service from 58 years to 55 years, who continued in service or continued to hold the post on April 1, 1985 for

any reason including the grant of interim relief by Courts and who are removed from that post after that data shall be reinducted and put back in the

post from where he/she was removed.

(2) Those Government Servants and others enumerated in No. (1) here and who are today in service and are likely to be removed on account of

the reduction in age of superannuation notwithstanding restoration of higher age, whatever be the case, shall continue in service till further orders.

(3) Those Government servants and others enumerated in No. (1) here who were in service prior to April 1, 1985 and who are removed from

service on account of reduction in age, shall be reinducted in service, if the posts from each one was removed is still vacant or someone is holding a

temporary charge.

(4) Those directions shall be carried out and given effect to within one week from today.

(5) These directions will also cover those Government servants who are similarly situated but have not filed the SLPs and WPs.

(6) Government servants referred to in No. (1) will also comprehend members of State Judicial Service.

The matter was mentioned again on two occasions for clarification and the following orders were then made by Tulzapurkar, Desai and Sen, JJ.

The order made on May 6, 1985 said:

We do not see any ambiguity in C1ause 3 of the order dated 23rd April, 1985. It is directed that C1ause 3 or the order dated 23rd April, 1985

should be implemented to the extent that promotions made to the posts which are held by the officers will be made under Rule 37 by temporary

appointments and the Chief Secretary and other two senior Secretaries will examine the question as to how many such vacancies could be filed

and it is further directed that from out of the petitioners one who has the longest service will be selected. The order will be carried out within two

weeks from today. This is without prejudice to the vacancy clause. All these appointments will be subject to the result of these petitions.

14. The order made on May 7, 1985 said:

We do not see any ambiguity in Clause 3 or the Order dated 23rd April, 1985. It is directed that Clause 3 of the order dated 23rd April, 1985

should be employees were moved are still vacant or where such post is held temporarily by others on promotion under Rule 37 of the A.P. States

Subordinate service Rules. The Chief Secretary and two other Senior Secretaries will examine the question as to how many such posts could be

filed and it is further directed that in cases where more than one person has retired from a post, the person having the longest service should be

selected. The Order will be carried out within two weeks from today. All these appointments will be subject to the result of the Petitions.

These interim orders were made under the misapprehension that all so-called promotions would only be made under Rule 37 whereas whenever a

promotion was made from a lower service to a higher service, it was not called a promotion but was styled as an appointment and was made

under Rule 10. Since Rule 10 was not mentioned in the orders, persons who had been "promoted" and appointed under Rule 10 claimed that they

could not be displaced. Some others though promoted under Rule 37 claimed that they had in fact been promoted regularly after a proper

selection by the Departmental Promotion committee but that according to the practice prevailing in Andhra Pradesh, their orders of promotion

mentioned that they were promoted temporarily, though in fact they had been promoted regularly. Many such persons, claiming to have been

appointed under Rule 10 or claiming to have been promoted regularly notwithstanding the mention of Rule 37, filed Writ Petition Nos. 5447-5546

of 1985 etc questioning the orders of reversion with which they were faced consequent on the interim directions given by Desai and Khalid, JJ.

During the vacation, R.B. Misra, J. stayed the orders or reversion passed by the Government in order to reinduct the retired employees. The

interim orders granted by R.B. Misra, J. appeared to conflict with the earlier interim orders granted by this Court. When all the interim applications

came before us a few days back, we directed that all the Writ petitions may be placed before us for final disposal and that is how the matters are

now before us.

15. Before referring to the submissions of the parties on the principal question of discrimination and arbitrariness, it is necessary to ascertain the

exact factual situation in regard to certain other matters, besides those to which we have, already referred. First in regard to the question whether

the vacancies arising consequent on the application of the reduced age of superannuation have been filled and if filled, whether they have been filled

on a regular or temporary basis? In Writ Petition No. 3170/85, a Deputy Secretary to the Government of Andhra Pradesh, speaking for the

government of Andhra Pradesh swore to a counter-affidavit in toy 1985 in which he stated that:

I state with respect to paragraph 8, that it is not correct to state that only few vacancies have been filled on temporary basis on the specific

condition of review and revision on the basis of outcome of the judgment in the Writ Petitions filed by the employees due to the retirement at the

age of 55 years pending in this Hon"ble Court. It is submitted that it is wholly untrue to say that few vacancies have been filled up. Consequent on

the reduction in the age of superannuation the Government took every step to see that most of the vacancies have been filled up in accordance with

rules on regular basis. It is only in few cases, temporary promotions have been effected pending writ petitions. It is submitted that Ann. -I to this

counter affidavit gives particulars regarding the vacancies that arose due to the reduction in the age of retirement on 28.2.1983 and the vacancies

filled up and the vacancies existing. There are very few vacancies in the lower echelons. I also submit that the existing few vacancies are due to

administrative delay, or vacancies that arose latter after originally filling the vacancies.

In Writ Petition Nos. 5447-5546/85, there was a complete volte face and the very same Deputy Secretary speaking again for the Government of

Andhra Pradesh said:

In so far as the first point is concerned in none of the cases there were regular promotions. All the promotions were officiating/Temporary/adhoc

which would be clear from orders of promotion, some of which have been produced by the petitioners themselves. The promotions were either

subject to the result of the writ petitions then pending in this Honourable Court challenging reduction of retirement age from 58 to 55 years, or

some other proceedings relating to inter-se seniority pending either in this Honourable Court or in the High Court or in the Administrative Tribunal,

or because of the pendency of finalisation of seniority lists and consequent review of promotions under the State Reorganisation Act. Further the

Writ Petitions questioning the reduction of age of retirement from 58 to 55 in G.O.Ms. No. 36, dated 8.2.83 were heard and judgment was

reserved on 27th July, 1983. Since the judgment was reserved, the judgment was expected at any movement. Hence the Government were

making only officiating/temporary promotions under Rule 37. Under the circumstances it was not possible to make regular

appointments/promotions. therefore, the petitioners were rightly reverted in accordance with the directions of the Honourable Court dated

6.5.1985 and 7.5.85. There was no question of either giving them any notice or hearing before the orders of the reversion are passed, as in terms

of Rule 37(dd), they could be reverted without any notice or hearing.

Persons holding the posts under Rule 10 have no right to the posts and their appointments/promotions were purely temporary/adhoc

Hence, I state that the petitioners continue to be adhoc promotees under Rule 37 and not regular employees as claimed by them.

and:

Admittedly, the petitioners were promoted under Rule 37 consequent to the vacancies which arose due to the retirement of several persons at the

age of 55 years. The Government never intended to appoint them on regular basis pending writs and judgment before the Supreme Court. In case

the promotions were effected regularly legal complications will set in the event of the judgment of the Supreme Court going against the State

Government deliberately made Rule 37 promotions so that in the event of the judgment going adversely against the State Government, there may

not be any difficulty in reverting Rule 37 promotees and reinducting the employees affecting by G.O.Ms. No. 36 dated 8.2.83. Fortunately, the

judgment of the Supreme Court comes in favour of the State Government.

It is amazing that the same Deputy Secretary to the Government, representing the same Government, should have sworn to two such contradictory

affidavits. It reveals a total sense of irresponsibility and an utter disregard for veracity. It shows that the deponent had signed the affidavits without

even reading them or that he signed them to suit the defence to the particular writ petition without any regard for truth. In either case, it is

reprehensible and totally unworthy of the spokesman of a Government and most unflattering to the Government on whose behalf he spoke. We

would have contemplated severe action against the dependent, had we not the feeling that the responsibility for his statements lies with undisclosed

higher echelons and we need not make a scapegoat of him. In fact, in a case like this involving the entire body of Government servants in Andhra

Pradesh, we would have, expected the Chief Secretary or a Principal Secretary to file the counter. But they have chosen to keep themselves back.

16. However we have a duty to discover the truth. We think that the truth is what is stated in the counter-affidavit in Writ Petition Nos. 5447-

5546/85. The counter-affidavit itself gives good reasons why the promotions appointments were made on a temporary basis and the reasons are

acceptable. The statements in the counter-affidavit in writ Petition Nos. 5447-5546/85 are supported by the findings of the Committee which was

appointed by the government under the interim orders of this Court. The Committee consisted of the Chief Secretary and two senior Secretaries

and it was asked to examine the question of the availability of posts for reinduction of retired employees. The findings of the Committee were

mentioned in the counter-affidavit in Writ Petition Nos. 5447-5546/85 and this is what was said:

The Committee constituted under G.O.Ms. No. 205, dt. 9.5.1985 has completed its task of determing the number of vacancies for which retired

employees can be reinducted as per the directions of this Honourable Court. Here below is given an abstract of the position as emerged. Total

number of persons retired from 28.2.83 to 23.8.1984 due to reduction of age of retirement from 58 to 55 is 15,529 of these people 8.928 are

eligible for reinduction as they are below 58 years. The Committee found that 2,770 posts are vacant and that 1751 persons have to be reverted

as they were holding the posts on temporary promotions under Rule 37. Thus, the total number of vacancies to which retired persons could be

reinducted as 4,521.

17. It was said that it was a practice in the State of Andhra Pradesh to make even regular appointments and regular promotions under Rule 10 and

Rule 37 only and therefore, the mere fact that Rule 10 or Rule 37 was mentioned in an order of appointment or promotion would not necessarily

make the appointment or promotion temporary. Such appointments or promotions, if made after going through the regular process or selection

were to be considered as regular and not temporary notwithstanding the mention of Rule 10 or Rule 37. But here as pointed out in the counter,

there was a special situation immediately after the age of superannuation was reduced, writ petitions were filed in the Supreme Court and in the

High Court and there was considerable agitation by the employees. The entire situation was fluid as it were and there was good reason for the

Government to make the appointments and promotions on a purely temporary basis, and that was "what they did. That the Departmental

Committees recommended the temporary appointments and promotions made on the recommendation of the Departmental Promotion Committee.

This is clear from the counter-affidavit in Writ Petition on Nos. 5447-5546/85 where it is stated as follows in paragraph IV-B:

In certain cases, the promotions were given on the basis of the recommendations of the Departmental Promotion Committee but that does not

mean that their promotions were regular. The Departmental Promotion Committee also makes recommendations for temporary

appointments/promotions otherwise it will offend Articles 14 and 16 in case all eligible candidates are not considered for promotion even though

the promotions is either officiating/temporary. therefore, the mere selection by the Departmental Promotion Committee does not make their

promotions regular. Promotion or posting after completion of training does not make the promotions regular. The promotion orders of the

petitioners promoted under Rule 37 clearly show that their promotions were purely temporary.

18. It is in this setting and background of facts that we are required to consider the submissions made to us. The submission made by Sarvasri

K.K. Venugopal, V.M. Tarkunde and F.S. Nariman who appeared for the employees who attained the age of 55 years between 28.2.83 and

23.8.84, was that the classification of these persons as a separate group for the purpose of excluding them from the benefit of the redressal of the

wrong done to the employees and the relief given to them by the amending Ordinance and the Act, was an unreasonable classification having no

nexus whatever with the object of the legislation. They urged that every person who was in Government employment on 28.2.83 was hit by the

reduction of the age of superannuation from 58 to 55 years and when it was realised that a grievous wrong had been done which it was necessary

to set right by reversing the policy and such a policy decision was in fact soon taken there was no reason to postpone effect being given to the

reversal of policy to an uncertain date, namely the pronouncement of the judgment by the Supreme Court and thereby to exclude from the benefits

of the change of policy that group of persons who had the misfortune of attaining the age of 55 years between the two dates. The learned Counsel

pointed out that the decision to reverse the policy having been taken, the uncertain date of pronouncement of judgment was an irrelevancy in fixing

the date from which to give effect to the policy. In the event, the government also did not await the pronouncement of the judgment but came

forward first with the Ordinance and then with the Act. therefore the learned Counsel urged, by merely giving them the appellation "retirees" as the

Government had done in this case, the group of persons who had attained the age of 55 years before the delayed date of giving effect to the

reversal of policy could not be discriminated against. The question according to the learned Counsel, was not one of retrospectivity at all, but one

whether when making a legislation to right a wrong or remedy a mischief a group of persons who had also been wronged and suffered the mischief

could be excluded by the mere mechanics of delayed legislation. Shri Venugopal further submitted that several persons who were continuing in

service by virtue of orders of stay obtained from the High Court, were also sought to be sent away by the government on the ground that had they

not obtained the orders of stay, they would have retired from service on having attained the age of 55 years. This he urged was patently

unreasonable. On the other hand it was urged by the learned Advocate General of Andhra Pradesh, who appeared for the Government of Andhra

Pradesh, Shri Shanti Bhushan, Shri Govindan Nair, Shri Parmeshwar Rao, Shri H.S. Guru Raja Rao and Shri Kanta Rao, learned Counsel who

appeared for the officers who were promoted in the vacancies created by the retirement of those who had attained the age of 55 years, that there

was no discrimination whatever and that what the Government had done was merely to classify those employees who had ceased to be in service

or who should have ceased to be in service and refuse to apply the increased age of superannuation to them. It was said that having gone out of

service, there was no question of their being eligible to the increased age of superannuation and therefore, the classification was perfectly

reasonable. It was also urged that appointments and promotions were made subsequent to the reduction of the age of superannuation on regular

basis and those appointments and promotions could not be disturbed. We were told that interference by us at this stage would lead to

administrative disorder, disaster and chaos. We would like to mention here that the learned Advocate General of Andhra Pradesh as well as the

other learned Counsel who appeared on either side presented their respective points of view very fairly and with moderation. The task, of the

learned Advocate General was particularly difficult as he stood between the devil and the deep sea as it were.

19. A situation such as the one before us had never presented itself to the court previously. Make this case a precedent for justice say one side; let

this not be the first say the other. We have had cases where the age of superannuation had been, raised from 55 to 58 years; we have had cases

where having earlier raised the age of superannuation from 55 to 58 years, there was later a change of policy and the age of superannuation was

once again reduced to 55 years. But this is the first occasion-neither our researches nor those of the learned Counsel have been able to trace

another case of this kind-where the age of superannuation was first raised from 55 to 58 years, there was then a change of policy a few years later

reducing the age of superannuation from 58 to 55 years and finally there was again, within a few months, a reversion to the higher age of

superannuation of 58 years.

The cases of 289102 and 290703 , belong to the second category of cases. In Bishnu Narain Mishra''s case, by a notification dated November

27, 1957 the Government of Uttar Pradesh raised the age of superannuation from 55 to 58 years. On may 25, 1961 the Government reduced the

age once against to 55 years, and further laid down that those who had continued beyond the age of 55 years owing to the earlier notification

would be deemed to have been retained in service beyond the age of superannuation and would be compulsorily retired on December 31, 1961.

The appellant who attained the age of 55 years on December 11, 1960 and was continued in service was one of those who was retired on

December 31, 1961. He questioned the change in the rule of retirement on the ground that it was hit by Article 14 inasmuch as it resulted in

inequality between public servants in the matter of retirement. The argument was that when all those who had passed 55 years were asked to retire

on December 31, 1960 some had just completed 55, some were 56, some were 57 and so on and, therefore, there was discrimination. Dealing

with this question, Wanchoo, J. speaking for the Court observed:

The last argument that has been urged is that the new rule is discriminatory as different public servants have in effect been retired at different ages.

We see no force in this contention either, retirement namely December 31, 1961 in the case of all public servants and fixes the age of retirement at

55 years. There is no discrimination in the rule itself. It is however urged that the second notification by which all public servants above the age of

55 years were required to retire on December 31, 1961 except those few who completed the age of 58 years between May 25, 1961 and

December 31, 1961 shows that various public servants were retired at various ages ranging from 55 years and one day to up to 58 years. That

certainly is the effect of the second order. But it is remarkable that the order also fixed the same date of retirement namely December 31, 1961 in

the case of all public servants who had completed the age of 55 years but not the age of 58 years before December 31, 1961. In this respect also,

therefore, there was no discrimination and all public servants who had completed the age of 55 years which was being introduced as the age of

superannuation by the new rule by way of reduction were ordered to retire on the same date, namely December 31, 1961. The result of this seems

to be that the affected public servants retired at different ages. But this was not because they retired at different ages but because their services

were retained for different periods after the fifty-five. Now it cannot be urged that if Government decides to retain the services of some public

servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period

of retirement depends upon their efficiency and the exigencies of public service, and in the present case the difference in the period of retention has

arisen on account of exigencies of public service. We are, therefore, of opinion that the second notification of May 25, 1961 on which reliance is

placed to prove discrimination is really not discriminatory, for it has treated all public servants alike and fixed December 31, 1961 as the date of

retirement for those who had completed 55 years but not 58 years up to December 31, 1961. The challenge therefore, to the two notifications on

the basis of Article 14 must fail.

20. The situation which was considered in Bishnu Narain''s case was exactly the identical situation which obtained on February 28, 1983 in the

present case and precisely the situation which was considered by the judgment pronounced on January 18, 1985 and which is reported in 290703

as K. Nagaraj v. State of Andhra Pradesh, the very judgment the delay in pronouncing which is said to have led to this confusion. Neither in

Bishnu Narain Mishra''s case nor in Nagaraja''s case had the court occasion to consider the further step that had been taken in the present case,

namely, once again raising the age of superannuation to 58 years and the exclusion of a class of persons from its benefit. Both the case are

therefore plainly distinguishable and are of no assistance to us in solving the problem before us.

21. Another case on which reliance was palced by the learned Counsel appearing for the respondents in Writ Petition Nos. 3203, 3413-3419,

3420-3426 etc.etc of 1985 was 271849 . In that case a Government servant who was due to retire from service on and from January 1, 1961,

was suspended from service on December , 1960, pending a departmental inquiry. His services were extended till March 31, 1961. The

departmental inquiry was, however, not concluded even by then. So on May 9, 1961, the Government passed an order extending his services for

a period of 3 months with effect from April 1, 1961. This Court held that the government had no jurisdiction to extend the services of a

Government servant, after he had retired from service, merely for the purpose of continuing the departmental inquiry. Rule 56 of the Departmental

rules did not authorise such a course. It is difficult to see how this case can possibly assist the respondents in Writ Petitions Nos. 3203, 3413-

3419, 3420-3426 etc etc. of 1985. It is one thing to say that the Executive Government has no power to pass an order extending the service of a

Government servant after he has retired from service; it is altogether a different thing to say that the State while making a law raising the age of

superannuation cannot make an unreasonable classification to exclude some Government Servants from the benefit of the increased age of

superannuation. The classification must pass the dual test of being reasonable and related to the object of the legislation, besides not being

arbitrary. It is not open to the State to make an arbitrary classification first by making the date dependent on an uncertain event namely, the date of

pronouncement of judgment by the Supreme Court and next by making a legislation excluding persons who had attained the age of 55 years before

the legislation took effect though the legislation itself was designed to undo the wrong already done to the very Government employees. Some

other cases were also cited before us to illustrate the point that it was open to the Legislature and the Executive to choose a ''cut-off date for

bringing into force laws such as Land Reform Laws etc. It is true that whenever a law is made or whenever an action is taken, it has to be with

effect from a certain date but it does not necessarily follow that the choice of the date of not open to scrutiny at all. If the choice of the date is made

burdensome to some of those, the wrong done to whom is sought to be rectified by the law it would certainly be open to the Court to examine the

choice of the date to find out wether it has resulted in any discrimination.

22. We think that the one case which is really of assistance to us in this matter is the recent decision of the Constitution Bench in 275522 . We

propose not merely to quote extensively from Nakara''s case, not merely to adopt the principles therein laid down but also to employ the very

techniques applied there to solve the problem. The question arose there whether, for the purpose of application of the liberalised pension rules, the

Government of India could stipulate March 31, 1979 as the date for dividing Government employees into two classes: one class who had retired

before March 31, 1979 who would not be entitled to the benefits of the liberalised pension rules and the other class who retired after March 31,

1979 who would be entitled to such benefits. The submission was that the differential treatment accorded to those who had retired prior to the

specified date was Violative of Article 14 as the choice of the date was arbitrary and the classification based on the fortuitous circumstance of

retirement before or subsequent to the specified date was invalid. This submission was accepted by the Constitution Bench. Justice D.A. Desai

speaking for a unanimous Court, considered the question at great length in all its implications. First considering the scope of Article 14, it was

observed:

The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of

legislation. In order, however to pass the test of permissible classification two conditions must be fulfilled, viz. (i) that the classification must be

founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii)

that differentia must have a rational relation to the objects sought to be achieved by the statute in question.... The other fact of Article 14 which

must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of

classification.

Thereafter the Court posed the question:

As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on

which the classification is founded correlated to the object sought to be achieved?

The question was answered and it was said:

The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State

establishes not only the rational principle on which classification is founded but correlate it to objects the sought to be achieved.

23. The submission made by the learned Attorney-General on behalf of the Union of India was summarised:

Thus according to the respondents, pensioners who retire from Central Government service and are governed by the relevant pension rules all do

not form a class but pensioners who retire prior to a certain date and those who retire subsequent to a certain date form distinct and separate

classes. It may be made clear that the date of retirement of each individual pensioner is not suggested as a criterion for classification as that would

lead to an absurd result, because in that event every pensioner relevant to his date of retirement will form a class unto himself. What is suggested is

that when a pension scheme undergoes a revision and is enforced effective from a certain date, the date so specified becomes a sort of rubicon and

those who retire prior to that date from one class and those who retire on a subsequent date form a distinct and separate class and no one can

cross the Rubicon.

The Court then proceeded to consider the question : what is a pension? and why a liberalised pension schemes? After answering these questions

the court referred to some of the very arguments now advanced before us that the date is an integral part of the scheme and so not severable from

the scheme at all and that the Court should not usurp legislative functions. The learned Attorney General''s argument on these questions was:

The Learned Attorney-General contended that the scheme is one whole and that the date is an integral part of the scheme and the Government

would have never enforced the scheme devoid of the date and the date is not severable from the scheme as a whole. Contended the learned

Attorney-General that the Court does not take upon itself the function of legislation for persons, things or situations omitted by the legislature. It

was said that when the legislature has expressly defined the class with clarify and precision to which the legislation applies, it would be outside the

judicial function to enlarge the class and to do so is not to interpret but to legislate which is the forbidden field. Alternatively it was also contended

that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the Court examines whether

the legislation must be incalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the

scope of legisation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if

by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme

which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or

elsewhere where the Court has included some category within the scope of provisions of a law to maintain its constitutionality.

24. Proceeding them to meet the submission of the learned Attorney General, Desai J. said,

If it appears to be undisputable as it does to us that the pensioners for the purpose of pension benefits form a class would its upward revision

permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision and would such classification be

founded on some rational principle. The classification has to be based, as is well settled, on some rational principle and the rational principle must

have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it

necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to

that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting

social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. therefore, this

division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing

pensioners with a view to giving something more to persons otherwise equally placed it would be discriminatory. To illustrate take two persons,

one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket the average emolument was

the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will

permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs. 8,100 p.a. and average

emolument to be worked out on 36 months" salary while the other will have a ceiling of Rs. 12,000 p.a. and average emolument will be computed

on the basis of last ten months average. The Artificial division stares into face and is unrelated to any principle and whatever principle, if there be

any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact: this arbitrary division has not only no

nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment

guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord

differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would

have a traumatic effect. Division is thus both arbitrary and unprincipled. therefore the classification does not stand the test of Article 14.

The Court then asked itself the question: ""By our approach, are we making the scheme retroactive."" The answer was an emphatic ''No''. They said,

In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the

benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for

past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retires only. therefore, there is no

substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.

The Court finally considered the favourite argument advanced against what some of the Counsel who appeared before us described as judicial

''tinkering'' with legislative policy. The Court took the view that the State cannot say ''Take it or leave it''. If there are words in a statute which bring

about discrimination, those words can be severed. They said,

There is nothing inmutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its

occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable

effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case

under Article 14, the approach is not : ''either take it or leave it'', the approach is removal of arbitrariness and if that can be brought about by

severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge

the liberalised pension scheme. They seek the benefit of it. Their grievance is of the denial to them of the same by arbitrary introduction of words of

limitation and we find no difficulty in severing and quashing the same. This approach can be legitimised on the ground that every Government

servant retires. State grants upward revision of pension undoubtedly from a date. Event has occured revision has been earned. Date is merely to

avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pensions will have to be paid from the actual

date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of

each pensioner. But effective from the specified date future pension of earlier retired Government servants can be computed and paid on the

analogy of fitments in revised pay-scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains the

beneficial portion. It does not adversely affect future pensioners and their presence in the petitions becomes irrelevant. But before we do so, we

must look into the reasons assigned for eligibility criteria, namely, ''in service on the specified date and retiring after that date''.

The learned judges then expressed their disinclination to share the fear expressed by the learned Attorney General that the Parliament would not

have enacted the measure if the unconstitutional part was struck down and added ""Our approach may have a parliamentary flavour to sensitive

noses."" Dealing with the question of frame of relief, the Court struck down as unconstitutional the words, ""that in respect of the Government

servants who were in service on the 31st March, 1979 and retiring from service on or after that date"" and the words ""the new rates of pension are

effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date"" in the impugned

memoranda, but specified that ""the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes

operative to all pensioners governed by 1972 Rules irrespective of the date of retirement.

It was declared ""all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the

liberalised pension scheme from the specified date, irrespective or the date of retirement.

25. In the course of our narration, we have already stated our conclusions on several of the questions at issue, both factual and legal. The final

situation that emerges is that almost immediately after the age of superannuation was reduced from 58 to 55 years, it was realised by the

Government of Andhra Pradesh that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their

employees. A decision was very soon taken to redress the wrong by reversing the decision but an unfortunate rider was added that they should

wait till the pronouncement of the judgment of the Supreme Court, which was perhaps expected to be pronounced shortly. As the judgment was

not pronounced for long, it became imperative for the Government to implement their decision of their own accord and so they passed Ordinance

No. 24 of 1984 and Act No. 3 of 1985, amending Act No. 23 of 1984 by substituting 58 years for 55 years. While doing so, unfortunately again,

those that had suffered most by being compelled to retire between 28.2.83 and 23.8.84 were denied the benefit of the legislation by Clause 3(1) of

the Ordinance and Section 4(1) of Act No. 3 of 1985. Now if all effected employees hit by the reduction of the age of superannuation formed a

class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should

be taken to undo what had been done, there was no reason to pick up out a class of persons who deserved the same treatment and exclude from

the benefits of the beneficent treatment by classifying them as a separate group merely because of the dealy in taking the remedial action already

decided upon. We do not doubt that the Judge''s friend and counsellor, ''the common man'', if asked, will unhesitatingly respond that it would be

plainly unfair to make any such classification. The common sense response that may be expected from the common man, untramelled by legal lore

and learning, should always help the judge in deciding questions of fairness, arbitrariness etc. Viewed from whatever angle, to our minds, the action

of the Government and the provisions of the legislation were plainly arbitrary and discriminatory. The principle of Nakara clearly applies. The

diversion of Government employees into two classes, those who had already attained the age of 55 on 28.2.83 and those who attained the age of

55 on 28.2.83 and 23.8.84 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former

class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had

retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to

the latter class only. Legislations to remedy wrongs ought not to. exclude from their purview persons a few of the wronged persons unless the

situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the

mischief of the remedy outweighs the mischief sought to be remedied. We do not find that there is any such impossibility or detriment to the public

interest involved in reinducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and

sought to be remedied. As observed in Nakara, the burden of establishing the reasonableness of a classification and its nexus with the object of the

legislation is on the State. Though no calamitous consequences were, mentioned in any of the counter-affidavits, one of the submissions strenuously

urged before us by the learned Advocate-General of Andhra Pradesh and the several other counsel who followed him was the oft-repeated and

now familiar argument of ''administrative chaos''. It was said that there would be considerable chaos in the administration if those who had already

retired are now directed to be reinducted into service.

26. We are afraid we are unable to agree with this submission. Those that have stirred up a hornet''s nest cannot complain of being stung. The

argument about administrative chaos has been well met by Lord Denning M.R. in Bredburry and Ors. v. London Borough of Enfield [1967] 3 All

E.R. 434, where the Master of Rolls in his characteristic and forceful way observed:

It has been suggested by the Chief education officer that, if an injunction is granted, chaos will supervene. All the arrangements have been made for

the next term, the teachers appointed to the new comprehensive schools, the pupils allotted their places, and so forth. It would be next to

impossible, he says, to reverse all these arrangements without complete chaos and demage to teachers, pupils and public. I must say this: if a local

authority does not fulfil the requirements of the law, this court will see that it does fulfil them. It will not listen readily to suggestions of ""chaos"". The

department of education and the council are subject to the rule of law and must comply with it, just like everyone else. Even if chaos should result,

still the law must be obeyed; but I do not think, that, chaos will result. The evidence convinces me that the ""chaos"" is much over-stated.... I see no

reason why the position should not be restored, so that the eight schools retain their previous character until the statutory requirements are fulfilled.

I can well see that there may be a considerable upset for a number of people, but I think it far more important to unphold the rule of law.

Parliament has laid down these requirements so as to ensure that the electors can make their objections and have them properly considered. We

must see that their rights are upheld.

27. In the present case too, we think that the case of chaos is much overstated. The affidavits do not disclose what disastrous consequences,

insoluble problems and unsurmountable difficulties will follow and how chaos will inevitably result. True quite a large number of employees who

have been promoted will have to be reverted, but their promotions and promotional-appointments are all temporary (and, we take care to add

here it would make no difference even if a few were regularly promoted) and it is not as if they lose for ever their promotional opportunities. The

promotional opportunities are merely postponed to the dates on which they would be entitled to be promoted had not the fundamental rules and

the Hyderabad civil Services, Rules been amended and Act No. 23 of 1984 passed. What has now happened is that these persons have secured a

double advantage. First, by the initial reduction of the age of superannuation, they obtained early and unanticipated promotion, that is to say,

promotion ahead of the normal date on which they would have otherwise been promoted; and second their tenure in the promoted post was

increased by a further three years as a result of the subsequent increase of the age of superannuation. Having secured this double advantage they

naturally desire to stick to them and talk glibly of hardship and inconvenience. On the other hand, it would be a great injustice to deny justice to

those who have suffered injustice must merely because it may cause inconvenience to the administration. We are governed by the Constitution and

constitutional rights have to be upheld. Surely the Constitution must take precedence over convenience and a judge may not turn a bureaucrat. We

do not mean to suggest that creation of a chaotic State of administration is not a circumstance to be taken into account. It may be possible that in a

given set of circumstances, portentous administrative complexity may itself justify a classification. But, there must be sufficient evidence of that-how

the circumstances will lead to chaos. Ups and downs of career bureaucrats do not by themselves justify such a classification. It may however be of

some consequence in the matter of granting relief. For instance there would be really no point in reinducting an employee if he has but a month or

two to go to attain the age of 58 years and to retire. Reinduction of such a person is not likely to be of any use to the administration and may

indeed be detrimental to the public Interest. It is bound to be wasteful. In such cases as well as in cases where they can"t be reinducted because

they have already completed 58 years by now, they cannot obviously be reinducted. So other ways of compensating them must be found. The

obvious course is to compensate them monetarily. In Industrial Law we do award back and future wages on quite a large scale and there is no

reason why we cannot adopt the same principle here. If as a rule private employers in such situations are asked to pay backwages, we see no

impediment in doing so in the case of those that are expected to be model employers i.e. the Government, public corporations and local authorities.

28. An argument which requires to be dealt with is that it is not open to the Court to give retrospectively to a legislation to which the legislature

plainly and expressly refused to give retrospectivity. As pointed out in Nakara"s case, the question is not one of retrospectivity at all. The

circumstances that the relif given by Ordinance No. 24 of 84 and Act No. 3 of 1985 is not extended to those who had attained the age of 55 years

by February 28, 1983 or between 28.2.83 and 23.8.84, has the effect of limiting the field of operation of the Ordinance and the Act and

Introducing a classification which In order to be sustained must be shown to be reasonable and to have a nexus to the object to be achieved

besides not being arbitrary. While it is a general rule of law that statutes are not to operate retrospectively, they may so operate by express

enactment, by necessary implication from the language implied or where the statute Is explanatory or declaratory or where the statute is passed for

the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc. etc. But it would be

incorrect to call a statute ''retrospective'', ""because a part of the requisites for Its action Is drawn from a time antecedent to its passing"". (Vide R.V.

St. Mary, Whitechapel (Inhabitants) [1842] 12 Q.B. 120. We must further remember, quite apart from any question of retrospectivity, that, unlike

in the United Kingdom here in India we have a written Constitution which confers justificiable fundamental rights and so the very refusal to make an

Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself,

create an impermissible classification justifying the striking down of the non-retroactivity or non-application clause, as offending the fundamental

right to equality before the law and the equal protection of the laws. That is the situation that we have here.

29. We may now refer to two arguments which were mentioned in passing but were not pursued. The first was that a writ petition similar to Writ

Petition Nos. 3420-3426/83 etc. had been filed earlier and had been dismissed in limine by a Bench of this Court. We do not see how the

dismissal in limine of such a writ petition can possibly bar the present writ petitions. Such a dismissal in limine may inhibit our discretion but not our

jurisdiction. So the objection such as it was, was not pursued further. So also the second objection which related to the nonjoinder of all affected

parties to the litigation. We are quite satisfied that even if some individual affected parties have not been impleaded before us, their interests are

identical with those and, have been sufficiently and well represented. Further, the relief claimed in Writ Petition Nos. 3420-3426 of 1983 etc. is of

a general nature and claimed against the State and no particular relief is claimed against any individual party. We do not think that the more failure

to impead all affected parties is a bar to the maintainability of the present petitions in the special circumstances of these cases where the actions are

really between two ''warning groups''.

30. Finally we come to the question of the relief to be granted. We find that C1ause 3(1) of Ordinance No. 24 of 84 and Section 4(1) of Act No.

3 of 1985 may easily be brought to conform to the requirements of Article 14 of the Constitution by striking down or omitting the naughty word

''not'' from those provisions. We may possibly achieve the same object by striking down the whole of Clause 3(1) of the Ordinance and Section

4(1) of the Act but then the question may arise whether the rest of the Act would be sufficient to bring in these who have been excluded. We think

that the safer course would be to strike down the offending word "not" from these provisions. That we have such power is clearly laid down in

Nakara"s case where the court directed the deletion of some words from the offending clause and directed it to be read without those words. To

make matters clear and to put them beyond dispute, we give the following directions in exercise of our powers under Article 32 and 142 of the

Constitution:

1. All employees of the Government, public corporations and local authorities, who were retired from service on the ground that they had attained

the age of 55 years by 28.2.85 or between 28.2.83 and 23.8.84, shall be reinstated in service provided they would not be completing the age of

58 years on or before 31.10.1985.

2. All employees who were compelled to retire on February 28, 1983 and between February 28, 1983 and August 23, 1984 and who are not

eligible for rein statement under the first clause, shall be entitled to be paid compensation equal to the total emoluments which they would have

received, had they been in ser vice, until they attained the age of 58 years, less any amount they might have received ex gratia or by way of pension

etc. or under the interim orders of this Court. They will be entitled to consequential retiral benefits.

3. Such of the employees as have not been compelled to retire by virtue of orders of stay obtained from the High Court or the Administrative

Tribunal, or who have actually been reinstated in service pursuant to interim orders of this Court, shall be allowed to continue in service until they

attain the higher age of superannuation.

4. The reinduction of those employees that have been compelled to retire previously will put them back as regards their seniority in precisely the

same position which they occupied before they were retired from service. They will be entitled to all further consequential benefits.

5. The employees who were retired and who are reinducted will be entitled to be compensated for the period during which they were out of

service in the same manner as mentioned in Clause (2).

6. In the matter of reinduction of employees who do not attain the age of 58 years on or before 31st October, 1985 the Government may exercise

an option not to reinduct them in the case of all or some or any of the employees, as the case may be, provided the employees are paid the

compensation as in the case of those covered by (2) and (5).

7. All interim orders are vacated and subject to these directions, the Government is free to revert persons promoted or appointed to the posts held

by persons who were retired on having attained the age of 55 years by 28.2.1983 or between 28.2.83 and 23.8.84 to the posts which they held

on February 29, 1983 or on the dates previous to their promotion or appointment provided that they need not be so reverted, if they would

otherwise be entitled to be promoted or appointed even if the other employees had not been retired consequent on the lowering of the age of

superannuation.

8. The Government shall be free to create supernumerary posts wherever they consider it necessary so to do.

9. All payment of compensation to be made and completed before December 31, 1985. If for any reason the Government finds itself unable to

pay the entire amount at one time within the time fixed by us, the Government will be at liberty to pay the amount in not more than four instalments

within the time stipulated by us. The Government will also have the liberty to supply to us for extension of time, if so advised. Where the employees

are awarded compensation by the Government, such employees may apply to the concerned income tax Officer for relief u/s 89 of the income tax

Act read with Rule 21-A of the income tax Rules and income tax Officer concerned will grant the appropriate relief.

31. With these directions, Writ Petitions Nos. 3420-26 of 1985 etc. are allowed with costs and Writ Petitions Nos. 5447-5546 of 1985 etc. are

dismissed but in the special circumstances without any order as to costs.

Balakrishna Eradi, J.

32. While respectfully agreeing with the judgment prepared by my learned Brother Reddy, J. I have thought it fit to add a few words of my own

since I consider it necessary to make it absolutely clear that the conclusions reached by us in these cases are based entirely on the special facts and

circumstances constituting the legislative history of the impugned Andhra Pradesh Ordinance No. 24 of 1984 and Act 3 of 1985 which have been

set out in extenso in the judgment of Reddy, J.

33. We are not to be understood as laying down that whenever the age of superannuation of Government employees or of employees of local

authorities etc. is enhanced, the benefit of such enhancement should be extended not merely to persons in service on the date on which the change

is effected but also to persons who have already retired from service prior to that date. It is now well established by decisions of this Court that the

Government has full power to effect a change in the age of superannuation of its employees on relevant considerations. If in the exercise of such

power the age of superannuation is enhanced purely by way of implementation of a policy decision taken by the Government, such alteration can

legally be brought about with prospective effect from the date of the commencement of the operation of the Ordinance, Act or Rule and no

question of violation of Article 14 or 16 of the Constitution will arise merely because the benefit of change is not extended to employees who have

already retired from service. In these cases now before us our conclusion is rested entirely on the finding arrived at by us after a consideration of

the factual background and legislative history of the impugned Ordinance and Act that the underlying purpose and object behind the relevant

provisions of the Ordinance and the Act was to set right and nullify a wrong or injustice that had been done to the employees by the abrupt

reduction of the age of superannuation from 58 years to 55 years by Ordinance No. 8 of 1983 and the Government''s Notification issued as per

G.O.Ms. No. 36, dated 8th February, 1983 which preceded it. All that we are holding is that in the context of these telling facts and circumstances

which conclusively show that the object and purpose of the Legislation was to set right the injustice that had been done, there is no rational or

reasonable nexus or basis for separately classifying the employees who had retired from service prior to the date of commencement of Ordinance

No. 23 of 1984, who are the persons most affected by the wrong-by denying to them the benefit of the rectification of the injustice. It is solely on

this ground that we are allowing these Writ Petitions and granting the reliefs specified in the judgment of Reddy J.

V. Khalid, J.

34. After considering the rival contentions put forward by the learned Counsel on both sides, the factual matrix and the law involved, the following

points gave me some difficulty in accepting the petitioners'' case. 1 felt that these points posed hurdles in the way of the petitioners succeeding in

their attempt to secure the relief sought. I am formulating the points as I understood them.

1. This Court in 290703 , upheld the action of the Government in reducing the age of retirement from 58 to 55. The contention that such reduction

was arbitrary and irrational was not accepted. Further, the contention that the age of superannuation was increased from 55 to 58 years with effect

from October 29, 1979, after an elaborate and scientific enquiry by an one-man pay commission did not find favour with this Court because it felt

that the question of the age of retirement was not referred to the Commission. Accordingly the Court held that the decision regarding the age of

retirement was a matter of policy in the formulation of which the Government must be allowed a free and fair role to play. It is not always

necessary that such a decision is taken on the basis of empirical data collected on scientific investigation. The further submission that the decision to

reduce the age of retirement from 58 to 55 years was arbitrary in view of the fact that it was taken by the State Government within one month of

the assumption of office by it also did not find favour with this Court. This Court observed that the reasonableness of a decision in any jurisdiction,

did not depend upon the time which it took. This decision has became final and the petitioners before us cannot in any manner question it. This

decision is, therefore, an authority for the proposition that the charge of arbitrariness cannot be laid at the doors of the Government in matters

relating to policy decisions and that the Government have full powers to decide about the age of retirement considering the various data available

before it.

(2) 289102 , is a decision rendered by a Constitution Bench of this Court. In that case, a notification on November 27, 1957, raised the age of

superannuation from 55 to 58 years. On May 25, 1961, the age of retirement was reduced once-again to 55 years. It was provided in the second

notification that those who were retained in service beyond the age of superannuation on the basis of the earlier notification would be compulsorily

retired on December 31, 1961. The second notification was questioned as being arbitrary and hit by Article 14 since it resulted in inequality

between the public servants in the matter of retirement. In this Judgment the classification of Government employees who were in service into two

groups based on their age was upheld by the Constitution Bench as a reasonable classification. I felt that this case had a great bearing on the

petitions before us and the principle laid down there could be extended to the cases before us. It was strongly contended that if classification of

two groups of in-service employees on the basis of age and a cut off date could be justified as reasonable classification, it can be more so in cases

like the one before us where the classification is between the retired employees and those in service.

(3) By the operation of a valid law, some employees have retired by superannuation and have thus ceased to be members of their respective

service. What is now attempted is to retrospectively re-induct them into service, a procedure that Courts should frown upon and not encourage.

(4) For the purpose of the cases before us, Bishun Narain Mishra''s case is more appropriate and useful than that of 275522 , which dealt with

two classes of retired employees and a cut off date. The attempt to distinguish Bishnu Narain''s case on the factual difference avail able in these

cases is a matter for further probe, in order to see how for the distinction is destructive of the principle laid down there in its application to these

cases.

(5) The original attempt by the petitioners was to get Section 3 of the amending Act struck down in its entirety. Now they realise that such a relief

would not serve their purpose. What they now want is that this Court should remove the word ''not'' from the Section, so that the petitioners will

be rescued from the mischief of that word. Removing a word or adding words to a legislative enactment is an exercise, Courts have been

repeatedly warned against from embanking upon. I personally feel that this guideline is one that has to be respected by Courts of law.

(6) A petition, similar to one before us, was filed in this Court as W.P. No. 16080/1984 raising identical points. This writ petition came up for

hearing on 12.2.1985 before a Bench consisting of the Chief Justice, Justice D.A. Desai and Justice A.N. Sen. After hearing the counsel for the

petitioner as well as the State of Andhra Pradesh, the Bench suggested that the counsel for the State should take instructions from the State of

Andhra Pradesh about reinstating in service of those persons who had not attained 58 years of age, but without back-wages. The case was

adjourned to 19.2.1985 for that purpose. I understand that counter-affidavits were also filed in that case. The case appeared before a Bench

consisting of Justice R.S. Pathak and Justice A. Varadarajan on the next occasion. On that occasion, the petition was dismissed, after hearing.

Normally this Court will be disinclined to entertain or to hear petitions raising identical points again where on an earlier occasion, the matter was

heard and dismissed. Not that this Court has no jurisdiction to entertain such matters, but would normally exercise its discretion against it. One of

the counsel appearing for the respondents strongly pleaded the bar of Res Judicata against these petitions on the basis of the earlier decision.

(7) The learned Advocate General of the Andhra Pradesh with great concern and justifiably appealed to us that if the petitions were allowed, it

would cause serious dislocation in the administration. He strongly pleaded that the action taken did not have any tinge of mala fides that there was

no attempt at picking and choosing of any Government servant and that therefore the Court should not exercise its jurisdiction to annul a policy

decision.

2. I have given my anxious considerations to the above questions and the rival submissions in reply. I find that the case is more or less evenly

balanced between the parties. The important factors have, however, persuaded me, to agree with the main Judgment and to err on the side of

Justice more than that of law, invoking the benevolent jurisdiction under Article 142(1) of the Constitution of India which reads:

142(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice

in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such

manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the

President may by order prescribe.

35. These petitions involve a serious human problem. Employees of the State with limited resources, who have been planning their future with a

secure feeling that they could work till the age of 58 years, have as though overnight, been robbed of their tenure, their aspirations and future. They

have become the helpless victims of certain swift moves on the political chess board. These swift moves, perhaps taken in a hurry, without serious

application of mind have resulted in arbitrariness that has been forcefully projected by the petitioners. This plea cannot be light heartedly thrown

overboard. Justice demands that the petitioners should be saved of their predicament.

36. The second factor that has prevailed upon me to give succour to the petitioners is the blame that this Court has to share for the sorry state that

has come to pass in the matter. Without meaning disrespect to anyone, I firmly believe, that prompt action by the Court, would have eased the

situation, considerably and relieved the petitioners of their sad plight and us of this avoidable exercise. It is not as though that the subsequent

developments were not brought to the notice of this Court in Nagaraja''s case, (supra). We were told that the Bench was alerted in time about the

developments that had taken place but unfortunately they were not taken into account. When the Judgment ultimately came on 18.1.1985, as many

as 6000 employees had lost their service, a tragic result, not based on any relevant consideration having a nexus to the age of superannuation. The

damage had been done and it can be repaired only by extending this Court''s powers to a section of employees who deserves sympathy and fair

deal.

37. This short Judgment is only to vindicate my stand. I respectfully agree with the Judgment prepared by my learned brother Reddy, J. I am also

in entire agreement with my learned brother Eradi, J. about the limited scope of the principles laid down in these cases on their peculiar facts.