(2004) 07 AP CK 0054

Andhra Pradesh High Court

Case No: Writ Petitions No''s. 13680, 16407 and 23938 of 2001 and 6122 of 2002

ANGR Agricultural University Retired Teachers'' Association and Dr. R. Radha Ramakrishna Reddy		APPELLANT
	Vs	
Government of A.P.		RESPONDENT

Date of Decision: July 27, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 39A
- Income Tax Rules, 1962 - Rule 89(2)
- State Bank of India Employees Pension Fund Rules, 1955 - Rule 22(1)

Citation: (2004) 5 ALD 244 : (2004) 4 ALT 666

Hon'ble Judges: Goda Raghuram, J

Bench: Single Bench

Advocate: P. Balakrishna Murthy, for the Appellant; B. Siva Reddy, for R-2 and A.A.G. for R-1 and R-3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Goda Raghuram, J.
All the writ petitions involve substantially similar issues and are therefore considered together and disposed of by this common judgment.

2. W.P. No. 1368 of 2001 is filed by Acharya N.G. Ranga Agricultural University Retired Teachers'' Association, Hyderabad and two retired teachers of the University (ANGRAU).

3. W.P. No. 16407 of 2001 is filed by the Retired College Teachers'' Association and two retired teachers.

4. W.P. No. 23938 of 2001 is filed by the Affiliated College Teachers'' Association and 67 other teachers or spouses of retired teachers.

5. W.P. No. 6122 of 2002 is by 13 retired teachers.

6. The challenge in these writ petitions is to the orders of the State Government in G.O. (P) No. 95 and G.O. (P) No. 389 Finance (Pension-I) Department, dated 1.8.2000 and 19.7.2003 respectively. The relief sought by the petitioners is for - (a) consolidation of the basic pension by merging the Dearness Relief (DR) as on 1.1.1996 instead of from 1.7.1998 and other fixation principles; (b) grant of consequent monetary benefits from 1.1.1996 instead of from 1.7.2000 and (c) sanction of DR to the pre-1996 UGC pay scale pensioners on par with the Dearness Allowance (DA) of serving UGC pay scale teachers.

7. The petitioners apart from the Teachers Association are members of the teaching staff or spouses of such members who had retired from service on or before 1.1.1996 after having served either in ANGRAU or in private aided degree and oriental colleges or Government colleges. The members of the teaching staff concerned had, while in service, opted for and were paid the UGC scales of pay.

8. Background History :-

University teachers were initially governed by the A.P. Liberalised Pension Rules 1961 (1961 Pension Rules) prior to the University Pension Rules 1992 (1992 Pension Rules). The pension of this class of employee was governed by the 1961 Pension Rules and the A.P. Government Servant Family Pension Rules 1964. Under this statutory regime the service pension was limited to a maximum of Rs1,000/-pm, while the family pension was limited to Rs. 500/-pm, regardless of the pay last drawn by them. Thus, even University teachers who retired while drawing UGC scales of pay were entitled to meagre pension in view of the fact that they were governed by the above statutory position. The DR was however paid to them at rates applicable to Central Government pensioners. Teachers who retired while drawing 1986 UGC scales also used to get meagre pension.

9. In so far as the State Government employees are concerned, the State Government from time to time constituted Pay Revision Commissions (PRC) to examine the pay structure of the State Government employees. On consideration of the recommendations of such Commissions, the State implements the pay scales or pension consistent with its perceived financial position. Pursuant to the recommendations of the 1978 State PRC, the A.P. Revised Pension Rules 1980 (1980 Pension Rules) were formulated and came into force with effect from 29.10.1979. After the 1980 Pension Rules, the State Government employees who were hitherto governed under different rules were brought under a common platform. After the 1980 Pension Rules another PRC was constituted in 1986. Thereafter there was a consolidation of pension for State Government pensioners w.e.f. 1986. This consolidation was consistent with the revision of pay scales to serving employees.

Another State PRC was in 1993 and again a consolidation of pension was made for the State Government pensioners in the light of the revision of pay implemented to serving State Government employees consequent on the 1993 PRC. Thereafter the 1999 State PRC submitted its recommendations and the pay of the State Government employees was again revised. Consequent on such revision of the pay scales of serving employees consolidation of pension was also effected for the State Government pensioners from 1.7.1998 with monetary benefit from 1.4.1999. As all the State Government pensioners were governed by the 1980 Pension Rules the benefits accrued to them in respect of the pension, consolidation, percentage of DR commutation and Gratuity were all similar.

10. The 1992 Pension Rules ushered in a regime similar to the 1980 Pension Rules. Teachers who opted for Part-A of the 1992 Pension Rules would be entitled to benefits similar to those available under the 1980 Pension Rules. The 1992 Pension Rules were however not finalised by the time of the consolidation of pensions for State Government employees consequent on the revised pay scales under the 1993 State PRC. On account of this factual circumstance, bringing the UGC pensioners on the same platform as State Government pensioners, was not considered. The consolidation of pension for UGC pensioners was also not made in 1993 on par with the consolidation of pensions for State Government pensioners for the same reason. Therefore the UGC pensioners were paid DR as per the rates applicable to Central Government pensioners.

11. While pay revisions for the State and Central Government employees took place in 1986, thereafter while the State Government revised the pay scales of its employees in 1993, the Central Government did not. On account of this fact, consolidation was made for such of those pensioners who were drawing State pensions while this was not done for UGC pensioners. This resulted in the rate of DR paid to these two categories of pensioners being different. With effect from 1.1.1996 the Central Government revised the pay scales for its employees by merging the DA existing as on 1.1.1996. In response the State Government revised the pay scales to the University teachers drawing UGC scales of pay by merging DA as existing on 1.1.1996. The pensions of UGC pensioners were however not consolidated, according to the State Government, with a view to examine this issue further in the context of State Government pensioners.

12. While the Government of India revised the pay scales of its employees with effect from 1.1.1996, the State Government did not do so in respect of its employees. The scales of pay of State Government employees were revised again in 1999 by merging the DA as on 1.7.1998 with monetary benefit from 1.4.1999 as per the recommendations of the State PRC 1999. The 1999 State PRC did not make any recommendations as regards pensioners drawing UGC pensions.

13. In view of the distinct regimes operating for State pensioners and UGC pensioners and with a view to implement and bring the UGC pensioners on a

common platform with State Government pensioners, the State Government went about examining the issue of consolidation of pensions of UGC pensioners. Though the UGC pensions were calculated as per the principles obtaining under the 1980 Pension Rules, the consolidation of the pension and the percentage adopted for calculation of DR were done separately to the UGC pensioners, who retired while drawing the UGC pay scales and these pensioners drew DR at rates applicable to Central Government pensioners while the State Government pensioners were drawing DR at different rates i.e., those applicable to State Government employees.

14. It requires to be noticed that of the amount incurred towards payment of salaries to (serving) UGC teachers, the amount is initially borne by the State Government and 80% of the amount constituting the basic pay and DA of this class of employees is reimbursed by the Central Government. The expenditure incurred on pensions of UGC pensioners is however entirely borne by the State Government. This appears to be a crucial factor that weighed with the State in the formulation of the principles for consolidation of the pensions of UGC pensioners, as set out in the impugned G.Os.

15. After the State PRC 1999, the State addressed itself to the task of consolidating the pensions of UGC pensioners with a view to bring these pensioners and the State Government pensioners on a common platform. This resulted in the issuance of G.O. (P) No. 95, Fin. & Plg. Department, dated 1.8.2000.

16. In so far as the petitioners - pre-1996 retired pensioners who retired while drawing UGC/ICAR/AICTE pay scales are concerned, under G.O. (P) No. 95 the pension/family pension of the pre-1996 pensioners are ordered to be consolidated (paragraph-8 of G.O. (P) No. 95) with effect from 1.4.1999 by adding together (i) the existing pension/family pension; (ii) DR as on 1.7.1998 as sanctioned in paragraph-6 of G.O. Ms. No. 280 Fin. & Plg. (FW-PEN.I) Department dated 8.12.1998; (iii) IR-I; (iv) IR-II and (v) fitment weightage at 40% of the existing pension/family pension. The amount arrived at as above is to be recorded as consolidated pension/family pension. Other principles to work out this position are set out in Paragraph-8.1 of G.O. (P) No. 95.

17. Another contentious aspect is that set out in paragraph-10 of the G.O., whereunder it is ordered that payment of DR on the consolidated pension is to be @ 8.18% with effect from 1.4.1999. In paragraph-11 of G.O. (P) No. 95 it is specified that the amount already paid on account of the 3rd instalment of IR vide the orders in G.O. Ms. No. 245, dated 12.11.1998, shall be recovered from the pension/family pension and DR payable to the pensioners. In paragraph-15 of the G.O. it is clarified that the consolidation of pension/family pension ordered in G.O. (P) No. 95 is applicable to all employees who had retired or died prior to 1.1.1996 while drawing the pre-A.P. Revised Pension under UGC scales of pay 1996 and who were covered by the orders of the State Government in G.O. Ms. Nos. 106 and 245 dated 15.7.1997 and 12.11.1998 respectively, as also to those who retired or died on or after 1.1.1996

without the benefit of the APRUGC scales of pay 1996.

18. Paragraph-15 also specified that persons who had retired after 1.1.1996 under the benefits of the APRUGC scales of pay 1996 are not eligible for consolidation of pension ordered in G.O. (P) No. 95. In respect of the post-1.1.1996 UGC pensioners, the differential amount on retirement and commutation of pension due to revision of pay by APRUGC scales of pay, is to be paid in five equal instalments as set out in paragraph-16 of G.O. (P) No. 95.

19. Paragraph-17 sets out that the orders in G.O. (P) No. 95 will come into force from 1.7.2000. Thus the monetary benefits of the consolidation are effective from 1.7.2000.

20. The grievance of the petitioners in all these writ petitions is as regards the failure to consolidate pension w.e.f. 1.1.1996 along with the D.A. granted in paragraph-2 of G.O. (P) No. 116, Finance & Planning Department, dated 25.8.2000, vide G.O. (P) NO. 95, Finance & Planning Department, dated 1.8.2000 and G.O. Ms. No. 389 Finance & Planning Department dated 12.7.2000. They seek a declaration that the action of the respondents in denying benefits to pre-1996 UGC Scale retirees on par with post-1996 retirees, is unconstitutional.

21. The case of the petitioners in W.P. NO. 13680/2001 is representative of the grievance of the petitioners in all the writ petitions and the plea of the petitioners, in brief is as under:

A) In the State of Andhra Pradesh there are two categories of Lecturers - those drawing State scales of pay and those drawing UGC scales of pay in accordance with the options exercised by them. The two categories were always treated distinct from each other in the matters of pay, pension, revision, DA and other benefits. According to the petitioners, lecturers who had opted or who were being paid UGC pay scales were being paid DA on the basis of Central Government pay scales.

B) Revision of pay scales to teachers and employees drawing the pay scales of State Government, was made on three occasions in the years 1986, 1993 and 1999, whereas the revision of pay scales to UGC opted lecturers, was made only twice i.e., 1986 and 1996.

C) The State Government issued G.O. (P) No. 239 Fin & Plg Dept., dated 4.6.1993 sanctioning consolidated pension to State pay scales petitioners who retired prior to 1.1.1993. In a subsequent order in G.O. (P) No. 341 Fin & Plg Department, dated 25.9.93, Dearness Relief (DR) was revised to the petitioners. These orders were not made applicable to those lecturers who had retired while drawing UGC scales of pay.

D) The Central Government on the recommendations of 5th PRC (Central) sanctioned consolidated pension to pensioners of the Central Government w.e.f. 1.1.1996. This scheme should apply to the UGC petitioners also. While implementing

the central pension scheme to the petitioners who retired while availing UGC pay scales, the State Government issued G.O. (P) No. 95, Fin & Plg Department dated 1.8.2000 ordering consolidated pension of all lecturers who retired prior to 1.1.1996 drawing UGC scales of pay. However, the consolidation of pension was ordered w.e.f. 1.7.2000 at State Government rates of DR thereon. By this action of the State Government the UGC pensioners who retired prior to 1.1.1996 are treated differently from those who retired after 1.1.1996 and this classification has no rational nexus with the objects sought to be achieved. The classification is therefore hostile, arbitrary and subversive of the equality injunctions of the Constitution.

E) Subsequent to G.O. (P) No. 95 Fin & Plg Department, dated 1.8.2000, a clarification was issued by the letter dated 30.3.2001 that while consolidating the benefits to pensioners who retired while drawing pre-revised UGC pay scales and prior to 1.1.1996, the DR as on 1.7.98 is merged with their basic pension on par with pensioners who retired in the State Government scales of pay and that they were accordingly sanctioned 8.18% and 13.08% DR on par with the pensioners of State pay scales. This clarification, the petitioners characterise as intended to deprive them of the benefits of higher DR on par with Central pensioners. They are principally aggrieved by the date specified for consolidation of their pensions w.e.f. 1.7.98 but with monetary benefit from 1.7.2000, vis-�-vis lecturers who retired subsequent to 1.1.1996 for whom the consolidation is w.e.f. 1.1.1996 also for the purpose of monetary benefits.

F) The representation of the petitioners to the State Government not yielding a positive response, they have come to this court for appropriate reliefs.

22. The State Government has filed a counter affidavit on 29.10.2002. The defence to the petitioners'' allegations as pleaded in this counter affidavit is :-

(a) The petitioners who retired while drawing UGC/ICAR/AICTE pay scales are covered by A.P. Revised Pension Rules 1980. Pensioners who retired from State service are also covered by the same Rules. However, the consolidation of pension was being ordered separately for both these categories of pensioners. While pensioners who were drawing UGC/ICAR/AICTE pay scales were allowed the benefit of consolidation of pension by merging DR, this class of pensioners, though governed by the A.P. Revised Pension Rules 1980, their pensions were being calculated on the UGC pay scales of 1986 and were being paid separate DR on their pension.

(b) Consolidation of pension was ordered on the basis of the revised pay scales of the State Government to State Government pensioners in 1992 vide G.O. Ms. No. 303 Fin. & Plg. Department dated 2.9.1994 and in the year 1999 vide G.O. Ms. No. 156 Fin. & Plg. Department dated 16.9.1991. This consolidation benefit however was not extended to UGC pensioners as the UGC pay scales were not revised. On the other hand these pensioners were sanctioned three Interim Reliefs as were given to

Central Government employees as under:

A. First instalment of interim relief @ Rs. 50/- p.m. with effect from 1.4.1997 vide G.O. Ms. No. 106, Finance Department dated 15.7.1997.

B. Second instalment of interim relief @ 10% of the Basic pension subject to minimum of Rs. 50/- per month, w.e.f. 1.4.1997 vide G.O. Ms. No. 106, Finance Department, dated 15.7.1997.

C. Third instalment of interim relief @ 10% of the Basic pension subject to a minimum of Rs. 100/- p.m. w.e.f. 1.10.1998 vide G.O. Ms. No. 245, Finance Department, dated 12.11.1998.

(c) Based on the orders of the Government of India, the State Government issued orders in G.O. Ms. No. 208 Fin. & Plg Department dated 26.8.1989, revising the pay scales of UGC scale employees under the A.P. Revised UGC Scales of Pay 1996 w.e.f. 1.1.1996. As a consequence of these orders the pensionary benefits of the other lecturers who were drawing UGC scales of pay had to be revised in accordance with the orders of the Government of India by adjusting Interim Reliefs already sanctioned.

(d) For the purpose of adopting a uniform method of extending the benefit of DR for both categories of pensioners i.e., State Government pensioners and UGC pay scale pensioners, a decision was taken to consolidate the pension in respect of UGC pay scale pensioners by consolidating the pension as on 1.7.1998. Accordingly pre-1996 pension/family pension was to be consolidated w.e.f. 1.4.1999 by including the components - (i) existing pension/family pension; (ii) DR as on 1.7.1998 sanctioned in paragraph-6 of G.O. Ms. No. 280 Fin. & Plg. Department dated 8.12.1998; (iii) IR-1; (iv) IR-2 and (e) fitment weightage at 40% of the existing pension/family pension.

The amount so computed is to be recorded as consolidated pension/family pension. However, where the consolidated pension is treated as final pension, it should not be lower than 50% of the minimum of the revised scales of pay of the post last held by the pensioner at the time of retirement. Other provisions as to DR and consolidated pension have also been worked out.

(e) With a view to adopt a uniform method for computing the pensions of both categories i.e., State pensioners and UGC pensioners, the Government having taken a policy decision, issued G.O. (P) No. 95 Fin. & Plg. Department dated 1.8.2000. By these orders the basic pension of the State pensioners and the UGC pensioners has not been affected and DR has now been extended uniformly to both the categories by consolidating their pension.

23. With regard to fixation of cut off date whereby monetary benefit has been allowed i.e. from 1.7.2000, the answering respondent contends that this postponement of the date for the purpose of grant of monetary benefit has been done in view of the financial implications, from the date of issuance of the orders.

24. At an interlocutory stage this court, by an order dated 25.3.2003 after having recorded the grievances of the petitioners, on a perception that adequate attention was not bestowed while classifying pre and post 1.1.1996 pensioners drawing UGC pay scales, directed the State Government to constitute a committee involving various specified Departments to consider the grievances of the petitioners. A committee was accordingly constituted with the Principal Secretaries to the Government of A.P. in the Agriculture, Higher Education and Finance Departments. The committee submitted its report and inter alia concluded that the grant of monetary benefit from 1.7.2000 (as the consolidation of UGC pensions was done by merging the rate of DR existing as on 1.7.1998 and in view of the heavy burden on the State finances), was in order. Grant of monetary benefit from a date earlier to 1.7.2000 could not be recommended, is the opinion of the committee. With regard to sanction of DR to UGC pensioners on par with serving UGC teachers, the committee recommended that the State Government examine this issue afresh.

25. Consequent on the recommendations of the committee the State Government issued G.O. Ms. No. 389, Finance (Pension-I) Department dated 19.7.2003 accepting the recommendations of the committee. After considering the orders issued in G.O. (P) No. 95 dated 1.8.2000, the Government concluded that these orders do not require any modification. With regard to sanction of DR on par with DA of serving UGC teachers to pensioners of the petitioners'' categories, the State Government in G.O. Ms. No. 389 considered the issue and rejected the same on the ground that the State Government pensioners were not granted four instalments of DR on par with the DA of serving State Government employees in view of the huge financial burden and decided that for reasons alike the question of sanction of DR to UGC pensioners on par with DA to serving UGC teachers, be declined.

26. The basic plea of the petitioners is - (a) to consolidate the basic pension by merging DR as on 1.1.1996 instead of as on 1.7.1998 and following other fixation principles; (b) to grant monetary benefit from 1.1.1996 instead of 1.7.2000; (c) to sanction DR on par with DA of serving UGC teachers. This claim of the petitioners is urged on the following premises:

(1) The State had revised pay scales of State Government employees six times since 1963 to 1999 i.e., during 1969, 1974, 1978, 1986, 1993 and 1999. It had also been consolidating pensions of retired employees to achieve parity amongst existing pensioners, serving employees and prospective retirees by adopting the same principle of merger of DA existing on the same date and extend the percentage of fitment in all these revisions of pay and pension. In all matters of revision of pay scales and pensions State Government employees and UGC pay scale holders were treated distinctly.

(2) The State Government after having considered the recommendations of the Pay Commission instituted to examine and make an in depth study regarding implementation of UGC pay scales to teaching staff of Universities and Colleges in

the State, had extended the revised UGC scales of pay to university teachers w.e.f. 1.1.1996 in G.O. Ms. No. 208 dated 29.6.1999.

(3) The 5th Central Pay Commission considered the glaring disparity between the persons of equivalent status and rank drawing vastly unequal pensions on the date of retirement and suggested a formula for ensuring complete parity between the past and present pensioners while recommending moderate parity between pre and post 1996 pensioners. This recommendation, the Pay Commission felt would ensure total equity between persons who retired prior to 1996 and those who retired later.

(4) The 5th Central Pay Commission also recommended that as pension is not in the nature of a dole it should be fixed, revised, modified and changed in ways not entirely dissimilar to the salary granted to the serving employees.

(5) As the Government of India had accepted the recommendations of the 5th Central Pay Commission with regard to revision of pre 1996 pensions/family pension and has also accorded consolidation as on 1.1.1996, a similar benefit should be given to them.

(6) Contrary to the Central pattern, the State Government fixed basic pension of pre 1996 pensioners by merging the DR as on 1.7.1998 while the pay of the serving teachers is fixed by merging the DA as on 1.1.1996. This action of the State Government constitutes discrimination amongst a homogeneous class of UGC teachers into pre and post 1996 retirees. This classification has also resulted in accentuating the disparity by adopting an irrational formula for pensioners based on the date of retirement, contrary to the salutary principles contained in the recommendations of the 5th Central Pay Commission. The fortuitous circumstance of the date of retirement cannot constitute a legitimate ground for classification and a classification founded on such fortuitous circumstance would not stand the test of Articles 14 and 16 of the Constitution, is the meat of the petitioners'' case.

(7) Pre 1996 retired IAS and IPS Officers were extended the benefit of consolidation including the DR benefit w.e.f. 1.1.1996 qua the 5th Central Pay Commission, while the petitioners, who while in service as UGC teachers were governed by the federal pattern of pay scales were isolated for differential treatment without any rational nexus with the object sought to be achieved by the consolidation formula in G.O. (P) No. 95.

(8) The consolidation of pension to their class is done as on 1.7.1998 with monetary benefit from 1.7.2000, whereas for serving teachers their pay is fixed as on 1.1.1996 with monetary benefit also from the same date. Petitioners also urge that the financial implication of giving them the monetary benefits they claim is very meagre and does not constitute a burden on the State exchequer.

27. The following precedents were cited at the bar on behalf of the petitioners and on behalf of the respondent-State as well:

D.S. Nakara and Others Vs. Union of India (UOI), :

By an office memorandum dated 25.5.1979 issued by the Ministry of Finance, Government of India and a memo dated 28.9.1979 issued by the Ministry of Defence for the members of the Union Civil Service and Defence personnel a liberalised pension formula was made available. It was applicable to Government servants who had retired on or after 31.3.1979 and to defence personnel who become/became non-effective on or after 1.4.1979, respectively. As a consequence of the cut off date so prescribed, Government servants or defence personnel who retired prior to the specified dates were rendered ineligible for the liberalised pension benefits. The effected class of pensioners filed writ petitions u/Art 32 of the Constitution challenging the cut off date as arbitrary and discriminatory and contended that pensioners of the Central Government form one class for the purpose of pensionary benefits and there could nor be a mini-classification within such homogeneous class. To sustain the validity of the cut off/specified date the Union contended that the classification between Government servants who retired prior to the specified date and subsequent thereto is a valid classification and that in a pension scheme in case of revision and enforced effective from a certain date, the date so specified is a relevant bench mark for determining pensionary benefits to those who retired prior or subsequent thereto.

28. The Supreme Court held that pension is neither a bounty nor a gratuitous payment depending solely upon the sweet will or grace of the employer, it is a right and its payment does not depend upon the discretion of the Government. Entitlement to pension to Government servants being a product of statutory rule is an enforceable right. Pension is paid as a monthly compensation for past satisfactory service rendered while the employer was physically and mentally alert and in expectation that he would be looked after in the fall of life. Classification of pensioners will have to answer the test of Art.14 of the Constitution, further held the court. On an analysis of the Government memoranda prescribing the cut off date, the Supreme Court found no justification for limiting the benefits of the liberalised pension package to those employees who retired after such specified date. On an analysis of the relevant factual matrix and the legal principles and precedents, the Supreme Court concluded that pensioners for the purpose of pensionary benefits form a class. Such homogeneous class could not be arbitrarily divided when the pension undergoes an upward revision. The fixing of the cut off date was arbitrary and constituted an eligibility criteria unrelated to the purposes of revision of pension. The division classifying pensioners into two classes is not based on any rational principle, held the court. Revision of existing benefits stands on a different footing than a new retiral benefit, pointed out the Supreme Court. Consequently the writ petitions were allowed. The cut off dates were struck down and the revision of

pensionary benefits made applicable to all employees whether they retired prior or subsequent to the specified date, subject however to the condition that arrears of pension prior to the specified date as per the fresh computation was not admissible.

29. Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others,

Persons in the employment of the State of Haryana, who were ex-servicemen challenged the amendments made by the State of Haryana to the Punjab Government National Emergency (Concessions) Rules 1955, which were adopted by the Haryana Government. The Rules as they originally stood enable incremental benefits to the ex-servicemen employed by the Haryana Government, for the period spent by such ex-servicemen on military service. Similar benefits were also available in the areas of seniority and pension. The impugned amendments disentitled persons who had been released from military service on compassionate grounds for such benefits earlier available to all ex-servicemen. Following an earlier decision in Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, , the Supreme Court held that persons relieved from military service constitute one class and it is impermissible to single out certain persons of the same class for differential treatment. There is no reasonable classification between persons who were released on compassionate grounds and those released on other grounds and therefore the petitioners had been deprived of equal opportunity and the amendment ran foul of Articles 14 and 16 of the Constitution, ruled the Supreme Court while allowing the writ petitions.

30. R.L. Marwaha Vs. Union of India (UOI) and Others, : Marwaha was in service of the central Government in a temporary capacity during 4.10.1950 to 23.11.1953. On the latter date he joined service in ICAR, an autonomous body. The posts where he served both in the central Government and in the ICAR were pensionable. He retired from the ICAR service on 30.9.1980 and claimed counting of the period of service put in under the central Government also for computation of his pensionary benefits qua an OM of the central Government dated 20.8.1984. He was however granted pensionary benefits by reckoning his service in ICAR from 23.11.1953 to 30.9.1980 on the ground that the OM was issued subsequent to his retirement. He challenged this action.

31. The Supreme Court held that in the absence of any acceptable explanation or justification the classification of pensioners who were working in the Government/autonomous bodies into two classes merely on the basis of the date of retirement is unconstitutional and bears no nexus to the object to be achieved by the OM. The court further held that the OM is prospective in operation only in the sense that the extra benefits thereunder can be claimed only after 29.8.1984. It therefore looks backward and takes into consideration the past events i.e., the period of service under the central Government for the purpose of computing qualifying service since such additional service can only be the service rendered

prior to the date of issue of the G.O. Therefore those who had rendered service during any past period would be entitled to claim the additional pensionary benefits of that service if he were alive on 29.8.1984, held the court.

32. Krishena Kumar and Others Vs. Union of India and others,

33. The petitioners/appellants before the Supreme Court were retired Railway employees, who were covered by or had opted for the Railway Contributory Provident Fund Scheme. Prior to 1957 the sole package of retirement benefits in the Railways was under a PF Scheme comprised partly of the employees'' contribution and partly by a matching contribution by the employer. The existing scheme was replaced in 1957 by a pension scheme. Under the pension scheme a monthly pension was payable to an employee on retirement. Employees who entered Railway service on or after 1.4.1957 were covered by the pension scheme and not the PF Scheme. Employees in service on 1.4.1957 were given an option either to retain the PF benefit or to opt for the benefits under the pension scheme subject to a condition that the matching Railway contribution already made to the concerned employees PF account would revert to the railways on exercise of option. On successive occasions 12 notifications notifying options were issued, each such notification calling for options. A cut off date was prescribed which was anterior to the respective dates of notification. Employees who retired after such cut off/specified date and before the notification date were also made eligible for exercising option despite having retired meanwhile. While the benefits under the PF scheme were static, those under the pension schemes were progressively liberal to the benefit of retirees eligible and opting for the pension scheme, though initially the benefits under the two schemes were substantially similar. Inter alia the petitioners/appellants urged that had they known that the benefits under the pension scheme would subsequently become more beneficent, they would have opted for the said scheme instead of deciding to retain the benefits under the PF scheme. As regards the prescription of a cut off date it was urged that the Railways had issued the notification giving options to certain PF retirees after the respective cut off dates to opt for the pension scheme even subsequent to their retirement, but such options were not extended to others similarly situate.

34. After analysing the various options that were notified by the Railways, the Supreme Court held that ample opportunity was provided on successive occasions to choose between retention in the PF scheme or switch over to the pension scheme. On each occasion time was given not only to the persons in service on the date of notification but also to persons who were in service till the cut off date who had retired between the cut off date and the date of notification. The Supreme Court also concluded that the cut off dates were not the product of a arbitrary choice but had a nexus with the purpose for which the option was provided. Rejecting the plea of the petitioners/appellants for relief, based on the ratio in D.S. Nakara(1supra) the Supreme Court held that while in Nakara all pension retirees were treated as a

homogenous class, it was not declared that pension retirees and PF retirees constitute an indivisible homogenous class or that a classification between them would be hit by Art.14 of the Constitution. The court further held that the Railway Contribution Provident Fund is a fund. On the retirement of an employee the Government''s legal obligation under PF account ends. In the case of a pension scheme the obligation of the Government begins on such retirement. Further the rules governing PF and its contribution are distinct from those governing pension scheme. Thus the principles applicable to a pension scheme are not automatically applicable to a PF scheme or to employees governed by the respective schemes. The court categorically declared that the pension scheme and PF scheme are structurally different. Responding to the plea of the petitioners/appellants that the financial implication by extending the benefits under the pension scheme to them would not be substantial and would also be decreasing year after year as they constitute a limited number in a progressively declining group of former employees, the Supreme Court declined to issue any directions as in the absence of a legal entitlement no direction could be issued having regard to the separation of powers and functions under our Constitutional scheme.

35. Indian Ex-Services League and others Vs. Union of India, :

By an OM dated 25.5.1979 the Government of India liberalised the formula of computation of pension but restricted its applicability only to civil servants who were in service on 31.3.1979 and had retired on or after that date. The liberalised formula introduced a slab system, raised the ceiling and provided for a better formula for computation of pension. By a memo dated 28.9.1979 of the Ministry of Defence the benefits of the liberalised pension formula (under OM dt 25.5.1979) were extended to the members of the Armed Forces as a whole, but subject to conditions set out therein. One such condition was that the revised benefit would be effective from 1.4.1979 and will be applicable to all service officers who retired on or after 1.4.1979. As a result those who retired prior to the prescribed date were not entitled to the liberalised pension. The prescription of such cut off date was challenged in Nakara''s case. The Constitution Bench of the Supreme Court in Nakara held that the pensioners constitute a homogeneous class and the benefits of liberalisation of pension should be extended equally to all retirees irrespective of their date of retirement and could not be confined only to those who retired on or after the prescribed date. As a result of this ratio, the Supreme Court in Nakara struck down the relevant portion of the OM which confined the liberalised benefits to persons retiring on or after a specified date and extended the benefits to all retirees covered by the pension scheme. Relying upon the ratio in Nakara, the petitioners in this case contended that there should be one pension for one rank for all retirees of the Armed Forces and irrespective of their dates of retirement. The Supreme Court held that the memo dated 28.9.79 was an extension of the benefit of liberalised pension formula to members of the Armed Forces as was given to the civil servants by the OM dated 25.5.1979. Appendices ''A'', ''B'' and ''C'' to the memo dated 28.9.1979

merely indicates the computation of pension made for each rank according to the revised liberal formula, the rate being calculated on the basis of emoluments payable for those ranks on 1.4.1979. In the memo there was however no occasion for computation of revised pension for pre 1.4.1979 retirees. Following the Nakara principle when the benefits of the liberalised pension scheme are made applicable even to pre-1.4.79 retirees of the Armed Forces, computation according to the liberalised formula for pre-1.4.79 retirees is required to be made in the same manner as is done for post-1.4.79 retirees, and shown in Appendices ''A'', ''B'' and ''C'', to the memo dated 28.9.79.

36. The petitioners'' claim that all pre-1.4.79 retirees of the Armed Forces are entitled to the same amount of pension as shown in Appendices ''A'', ''B'' and ''C'' for each rank, was rejected by the Supreme Court. The Supreme Court pointed out that the facts in Nakara did not require a decision whether all retirees formed one class for all purposes, from which no further classification was permissible.

37. DHAN SINGH & Ors. Vs STATE OF HARYANA & Ors., (1991) Supp. II SCC 190:

The petitioners/appellants before the Supreme Court were, inter alia, persons who joined the Army before the proclamation of emergency which was declared w.e.f. 26.10.1962 and which continued up to 10.1.1968. The term of military employment though had expired during the period of emergency they were discharged after the emergency period. Under the provisions of the Punjab Government National Emergency (Concessions) Rules 1965 (for short ''the Rules'') they were entitled to certain benefits of prior military service on their reemployment. The Haryana Government however by a notification dated 9.8.1976 amended the definition of military service restricting such benefits only to ex-servicemen who joined the Army during emergency. The petitioners having joined the Army service prior to commencement of emergency were excluded from such beneficiary package by the amendment. By another notification dated 5.11.1976 the earlier notification dated 9.8.1976 was given retrospective effect from 1.11.1966. This was challenged. The Supreme Court rejecting the writ petitions and appeals concluded that persons who joined military service during the national emergency and others who had joined such service even prior to the declaration of emergency but continued during such emergency constitute two distinct class - the earlier class had chosen the Army career voluntarily while the later class responding to the call of the nation joined the armed services at a critical juncture under greater risk and potential sacrifices to higher studies, job opportunities and the like. The Haryana Government''s amendments were therefore up held as constituting a reasonable classification based on rational criteria adequately tailored to the objectives sought to be achieved by the Rules.

38. State of West Bengal and Others Vs. Ratan Behari Dey and Others, :

In the Calcutta Municipal Corporation a pension scheme was in force prior to 1914. That was eschewed and a PF scheme introduced later. As the employees demanded reintroduction of the pension scheme, the Government appointed a Pay Commission in 1978 to examine the scheme. On examination of the report of the Commission "The Corporation of Calcutta Employees (Death-cum-Retirement) Benefits Regulation 1982" (for short ''the Regulation'') were framed and published and was given effect to from 1.4.1977. The regulation inter alia provided that every employee who retired on or after 1.4.1977 could exercise an option within a specified time to come under the pension scheme. Persons retiring after the publication of the regulation were however automatically governed by the regulation. The petitioners'' contention that all retired employees constitute one class and further classification on the basis of a cut off date of 1.4.1977, was arbitrary, was accepted by a learned single Judge of the Calcutta High Court, a conclusion which was also approved by a Division Bench of the said High Court dismissing the appeals preferred by the State and the Calcutta Municipal Corporation.

39. The Supreme Court allowed the civil appeals filed by the State Government and others and held that the State Government had acted reasonably in specifying the cut off date of 1.4.1977. Distinguishing Nakara the Supreme Court held that in the case on hand there was no prescription of an artificial date. Employees retiring on or before 1.4.77 and those retiring thereafter were governed by different sets of rules. The court further held that the employer has the power to revise the salaries, pay scales or even terminal benefits or pensionary benefits. The power to prescribe a date from which the revision of pay scales or terminal benefits/pensionary benefits shall take effect is a concomitant of such power. It was thus within the power of the Corporation to enforce a regulation either prospectively or with retrospective effect from such date as is specified. However the prescription of a date should answer the test of reasonableness having regard to all relevant facts and circumstances. If such reasonableness is broadly present, no curial interference is permissible, ruled the court.

40. State of Maharashtra Vs. Manubhai Pragaji Vashi and others, :

Public interest litigants sought (i) a direction to the Government of Maharastra to extend the grant-in-aid scheme to non-Government Law colleges in the State retrospectively from April 1982 or from the date of the filing of the writ petition and (ii) that the benefit of pension-cum-gratuity scheme introduced by the Government for all teaching and non-teaching staff in the colleges with faculties in Arts, Science, Commerce, Engineering and Medicine should be made applicable to the staff of non-Government Law colleges also. The Division Bench of the Bombay High Court allowed the writ petition directing extension of the grant-in-aid scheme to all Government recognised private Law colleges on the same criteria as such grants are given to other faculties w.e.f. 1.10.1982 to such staff exercising their option in

writing within four weeks from the Government''s declaration to implement the grant-in-aid scheme to non-Government Law colleges. Civil Appeals were therefore preferred by the State.

41. The Supreme Court held that the right to free legal aid and speedy trial are guaranteed fundamental rights u/Art. 21 of the Constitution. Art. 39A provides equal justice and free legal aid and enjoins the State to ensure that the operation of the legal system promotes justice. In order to enable the State to afford free legal aid and guaranteed speedy trial, a vast number of persons trained in law are essential and legal aid is required in many forms and at various stages for obtaining guidance and for resolving disputes in Courts, Tribunals or other authorities. This is possible only if adequate number of Law colleges with proper infrastructure including well equipped law teachers and staff are established to deal with situation in an appropriate manner. The court further held that paucity of funds can be no reason for discriminating and one facet of education cannot be selected or singled out for hostile and discriminatory treatment. Likes have been treated unlike without proper justification or reasoning and private Law colleges have been singled out for hostile discriminatory treatment in denying grant-in-aid while extending such benefit to non-Government colleges having faculties like Arts, Science, Commerce, Engineering and Medicine, ruled the Supreme Court. the Supreme Court also up held the conclusion of the Division Bench of the Bombay High Court that the non-affording of the benefit of pension-cum-gratuity scheme to the non-teaching staff in non-Government Law colleges while affording such benefit to similar staff of colleges having other faculties is discriminatory. While substantially up holding the ratio and conclusions of the High Court, the Supreme Court modified and substituted the directions issued by the High Court. The Government was directed to extend the grant-in-aid scheme to all Government recognised private Law colleges on the same criteria as such grants are given to other faculties like Arts, Science, Commerce, Engineering and Medicine, from the academic year 1995. The Government was also directed to make immediate and sincere attempts to restart the non-Government Law colleges which had closed down or are about to close down, for the purpose of extending grant-in-aid from the academic year 1995-96. The directions of the High Court for implementation of the pension-cum-gratuity scheme in favour of the staff of non-Government Law colleges w.e.f. 1.4.95 was reiterated.

42. Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc.,

43. Casual workmen employed in schemes of a permanent basis undertaken by the Forest Department of the Maharastra State and who had worked for 100 to 300 days in each year and continued as casual for 5 to 6 long years, approached the Industrial Court claiming that the Forest department was indulging in unfair labour practices and was continuing them as casuals or badlies for long years with the primary

object of depriving them of the status of permanent employees, which status would have entitled them to wages at a rate higher than the one fixed under the Minimum Wages Act. Inter alia the State had contended in defence, that grant of relief would cause huge financial strain on the State exchequer and the financial involvement would be in the order of about Rs. 300 crores.

44. The Supreme Court while up holding the decision of the Industrial Tribunal as confirmed by the High Court and applying the principle laid down in State of Haryana and others Vs. Piara Singh and others etc. etc., confirmed the relief granted by the Industrial Tribunal viz., a direction to the Government to make the workmen permanent with all benefits and of permanent worker including payment of wages etc., at rates for permanent workers. The plea of the State regarding financial strain was rejected as an argument in despair or in terrorem.

45. M.C. Dhingra Vs. Union of India and Others, :

The Central Government in the Department of Personal and Administrative Reforms issued a circular dated 31.3.1982 with the concurrence of State Governments whereunder a proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments would be shared by the Governments concerned, on a service share basis so that such employees are allowed the benefit of counting their qualified service both under the Central Government and State Governments for grant of pension by the Government from where they eventually retired. Under this scheme benefits are made available to those who had been retrenched from the service of the Central or State Governments and who have secured on their own, employment under the State or Central Government either with or without interruption between the date of retrenchment and for fresh appointment and those who while holding temporary posts under the Central or State Governments applied for a post under the Central or State Governments through proper channel with proper permission of the administrative authorities concerned. The above orders were specified to come into force prospectively from the date of issue i.e., 31.3.1982 and were applicable to all the Government servants retiring on or after the date of coming into force. The appellant before the Supreme Court while working in a State service since 31.1.1948 was selected as a Railway Magistrate and after serving as such, retired from such service prior to 31.3.1982. He sought the benefit of computing his previous service while calculating his pension. Such claim having been denied, he laid a claim before the Central Administrative Tribunal, New Delhi, which was rejected on the ground of delay. He therefore preferred an appeal to the Supreme Court.

46. The Supreme Court held that all persons who rendered temporary service prior to their joining the service of the Government of India had been given the benefit of fixation of pension by tagging temporary service and that the cut off date is arbitrary. Fixing the cut off date and denying benefits to those who retired prior to such cut off date is arbitrary, ruled the Supreme Court. Reliance for this conclusion

was placed by the Supreme Court on the decision in D.S. Nakara (1 supra) and R.L. Marwaha (3 supra).

47. In Sasadhar Chakravarty and Another Vs. Union of India and Others, the Indian Oxygen Ltd., had set up a non-contributory superannuation pension fund known as the Indian Oxygen Ltd., Executive Staff Pension Fund. Under the applicable rules an employee was entitled to receive annuity under a policy purchased by the trustee of the Fund from the LIC. The petitioner contended that the scheme of such non-contributory approved superannuation fund should be modified to provide for disbursement of pension by the Fund itself or alternatively by a statutory body to be newly constituted under a new scheme. A Fund was constituted for the purpose of providing annuity to the beneficiaries and the trustees were required to accumulate the contributions in respect of each beneficiary and purchase an annuity from the LIC at the time of retirement or death of each employee or on his becoming incapacitated prior to retirement, as per Rule 89(2) of the Income Tax Rules 1962. In the circumstances when an employee retired, all accumulated contribution in respect of the employee concerned made by the employer to the pension fund of the trust was crystallised for the benefit of the employee. Negativing Chakravathy''s claim, the Supreme Court had held that the right of an employee to receive the annuity gets determined at the time when the annuity is purchased. Any subsequent improvements in a given pension fund scheme would not be available to those pensioners whose rights are already crystalised under the annuity scheme by which they are governed because the amounts contributed by the employer in respect of such persons are already withdrawn from the pension fund to purchase an annuity. Subsequent improvements in the pension fund would benefit only those employees whose moneys form a part of the pension fund, ruled the Supreme Court in Chakravarthy''s case.

48. Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, :

The respondent in the civil appeal before the Supreme Court was a member of the Military Nursing Service (Local). Under Army instruction No. 14 dated 12.3.1977 the terms and conditions of service for employment of Nursing Officers for local duties had been set out. In such Military Nursing Service (Local) the respondent served in the rank of Lieutenant which was the only rank in the service. The age of retirement is 55 years. The respondent was retired on attaining such age of superannuation, w.e.f. 30.11.1981. Under the Rules governing the service, provision was there for payment of gratuity but none for any pension. The appellant had appointed a study team to recommend improvements to the service conditions of the service including for pensionary benefits. Pursuant to the recommendations of the committee certain pensionary benefits were extended w.e.f 1.10.1983 to such of those persons who retired after 1.10.1983. The respondent contended that the denial of pensionary benefits to her, although she retired in 1981, was discriminatory and she should have been extended pensionary benefits in the same manner as those who had

retired after 1.10.1983. To support this contention the respondent relied on the decision of the Supreme Court in Nakara.

49. The Supreme Court concluded that choice of a date as a basis of classification cannot be dubbed as arbitrary unless it is capricious or whimsical. The ratio of Nakara was held inapplicable on the ground that Nakara dealt with a situation of an artificial cut off date whereby a distinction was made between retired employees governed by the same set of rules. The Supreme Court held that when a pension scheme is introduced from a given date and there exist two sets of employees governed by different sets of rules they cannot be treated as similarly situate. As the specified date was based on the recommendations of the report of a committee constituted for the purpose, the court held that the cut off date had a logical nexus with the decision to grant pensionary benefits and further held that fresh financial benefits which are conferred could be based on proper estimates of financial outlay requirement, if considering all relevant factors the pensionary benefit is given from a particular date, such action could not be considered as arbitrary or unreasonable. The Supreme Court accordingly allowed the appeal and reversed the judgment of the High Court of Assam.

50. V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another,

51. Kasturi joined the SBI as an Officer on 22.10.1963. He became a member of the Pension Fund under the SBI Employees Pension Fund Rules. After completing 20 years but short of 25 years of pensionable service he resigned on 31.7.1984. The resignation was treated as voluntary retirement and he was denied pension under Rule 22(1)(c) of the Rules. With effect from 20.9.1996 Rule 22(1)(c) was amended and substituted. As amended an employee retiring after 20 years of service was entitled to pension provided he had requested in writing for the benefit of pension.

52. The claimant/appellant before the Supreme Court contended that he formed part of the same class of bank employees who had retired after completing 20 years of pensionable service and cannot therefore be denied pension solely on the ground that at the time of his resignation the then rules did not render him eligible for pension. Since the rules were amended thereafter in 1986 for the very class of employees, he sought pension prospectively from 20.9.86. A learned single Judge of the Madras High Court where the claimant first laid his claim, allowed the writ petition. On appeal a Division Bench of the High Court reversed and rejected the claim. He therefore filed the civil appeal before the Supreme Court.

53. On behalf of the appellant Kasturi strong reliance was placed on D.S. Nakara (1 supra), Indian Ex-Services League (5 supra), M.C. Dingra (10 supra) and other authorities contending that all pensioners constitute one homogeneous class.

54. The Supreme Court on an analysis of a large number of precedents on pension cases and in particular the aspect of a cut-off/specified date, rejected the appeal of Kasturi. On the question where, in what circumstances and by what principle earlier

retirees are eligible to the benefit of revised pensionary benefits, the Supreme Court held that where the amendment to the pension rules enhance the pension or provide for a new formula for computation of pension, even the earlier retirees who at the time of retirement were eligible for pension and survive till the amendment, would be eligible for the benefit of such revised pension from the date it came into effect. Where however the amendment extended the benefit of pension scheme to a new class of pensioners, the earlier retirees who at the time of their retirement were not eligible for pension would not be entitled to the benefits under the amendment. Applying the principle to the facts of the appellant the court held that as on 20.9.1986 w.e.f. which date the SBI Employees Pension Fund Rules were amended reducing the minimum period of qualifying service for eligibility of a member of the pension fund from 25 years to 20 years, the appellant was not eligible for pension under the existing rules, prior to the amendment. Even prior to the amendment he had resigned after completing merely 20 years of service. Hence he was not entitled to claim the benefits under the amended rule even prospectively from the date of amendment as he was not covered by the said rule on the date of resignation and he had neither made nor could have made a written request for getting the benefit under the amended rule, a request that was required to be made under the Rules.

55. State of W.B. Vs. Monotosh Roy and Another, :

The respondent a member of the West Bengal Higher Judicial Service retired in February 1981. His pension was fixed in accordance with the extant rules at the maximum rate of Rs. 1225/-pm. Under the rules governing the respondent''s service and retirement benefits, the rules applicable to member of All India Service also apply to members of the West Bengal Higher Judicial Service. The respondent''s pension was accordingly fixed as above. The IAS (Pay) Rules 1954 were amended pursuant to the recommendation of the 4th Central Pay Commission, by a Government Order dated 13.3.1987. Consequential amendments were made in the All India Service (Death-cum-Retirement Benefits) Rules 1958, by a notification dated 22.5.87. By the 1987 amendment the pension of persons retiring after 1.1.1986 was to be calculated at 50% of the basic pay in the super time scale restructured under the amended IAS (Pay) Rules 1954 subject to a ceiling of pension at Rs. 4500/-pm for all categories of pensioners. In so far as persons who retired prior to 1.1.1986, the Union Government rationalised the pension structure by an office memorandum dated 16.4.87. In accordance with the instructions contained in the memo dated 16.4.87, the respondent''s pension was fixed at Rs. 2355/- pm. The respondent challenged the memo dated 16.4.87 in the Calcutta High Court and sought payment of pension at Rs. 3800/-pm on par with serving officers of his rank in the All India Service after deducting the amount already drawn and for payment of arrears. A learned single Judge dismissed the writ petition. The respondent appealed and succeeded. The State thereupon filed the civil appeal. The respondents placed reliance on the decision in Nakara.

56. The Supreme Court upheld the validity of the fixation of cut off date and relying on other decisions of the court, concluded that the liberalised pensionary provisions introduced after an employee''s retirement cannot be availed by an employee who had retired by then. The Supreme Court held that the principle in Nakara is inapplicable to the facts on hand where pensionary benefits had been fixed on the basis of the revised pay structure to such of those members who were in service as on 1.1.1986. The Division Bench of the Calcutta High Court while allowing the respondent''s appeal had up held the observations of the learned single Judge that the respondent could not claim the benefit of higher pay scale having retired from service long before the introduction of such pay scale nor could he claim a pension higher than the pay drawn by him. The Division Bench of the High Court had declared that the respondents were entitled to get the benefits of calculation of pension by merging the DA and other allowances along with the basic pay subsequently introduced. This result was arrived at by the Division Bench on a reasoning that there was a substantial fall in the value of a rupee during the 20 years since the respondent had retired. The Supreme Court characterised this reasoning of the High Court (Division Bench) as an usurpation of the functions of the Central Government and beyond the jurisdiction of the court. Consequently the appeal of the State was allowed.

57. Osmania University Teachers Association and Others Vs. State of Andhra Pradesh and Others, :

The writ petition was filed for a direction to the State and the Osmania University to fix pay scales of Readers and Professors appointed under the merit promotion scheme on par with Readers and Professors appointed under the regular advertised substantive post. The writ petition was dismissed and the petitioner''s appeal to a Division Bench of this court was allowed.

58. In allowing this appeal the Division Bench of this court held that qualifications, responsibilities and duties of the posts held by the petitioners either as Professors or Readers in terms of the merit promotion scheme are the same as that of the directly recruited teachers. Those promoted prior to 17.6.87 were granted the regular scale of pay. Denial of the benefits to those promoted Professors and Readers under the merit scheme subsequent to 17.6.87 was violative of provisions of Art. 14 r/w Art. 39(d) of the Constitution.

59. Subrata Sen and Others Vs. Union of India and Others,

60. The petitioners before the Supreme Court were employees of the Indian Oil Corporation Ltd., (Assam Oil Division - for short AOD), who retired prior to 1.12.1994. The AOD was formed by transfer of the undertaking of the Assam Oil Corporation Ltd., a subsidiary of M/s Burma Oil Company, which was nationalised w.e.f. 14.10.1981. The petitioners were transferred from the Assam Oil Co., Ltd., to the Indian Oil Corporation Ltd - AOD. Under the Assam Oil Company Staff Pension Fund

Scheme the petitioners were drawing pension in a sum equal to 40% of the average basic salary during the last 5 years of service immediately preceding the date of retirement. By a notification dated 10.3.97 of the Union Government, a revised pension formula was initiated in respect of IOC (AOD Officers) covered by the AOD Staff Pension Scheme. As per the revision, pension for officers retiring from December 1994 onwards is to be computed on the basis of 40% of the average of the last 10 months salary including average DA drawn by the officer over the last 10 months of his service; if and when pay revision takes place retrospectively the amount of pension to be adjusted accordingly but no DA to be paid on the pension. The petitioners challenged the cut-off date as discriminatory and that the classification of retirees between those who retired from December 1994 and those thereafter was unsustainable. They claimed entitlement to pension on the basis of the revised formula relying on the decision of the Supreme Court in Nakara (1 supra). Resisting the claims the Indian Oil Corporation contended that the petitioners were governed by the non-contributory pension scheme; under the Rules of the pension fund supporting the scheme, annuity is purchased by the trustees in respect of such members on their retirement/death from the LIC and pension is paid by the LIC. Right to receive annuity and the quantum gets crystallised at the time of purchase of annuity. It was also contended that improvement in the pension scheme in an approved pension fund is effected on the basis of the Fund''s financial position as determined by actuarial valuation on the basis of the current resources of the fund and the future contribution to be received by Fund only in respect of existing members. The petitioners, inter alia, relied on the earlier decision of the Supreme Court in V. Kasturi (14 supra), claiming that they are entitled to reliefs as they belong to the first category spelt out in V. Kasturi (14 supra). On behalf of Indian Oil Corporation it was contended that apart from the two categories of pensioners identified in Kasturi (14 supra) there is a 3rd category viz., where pension is paid from the Pension Fund Scheme and on the date of retirement the right to receive the pension amount is crystallised. The IOC contended that petitioners were entitled to pensionary benefits under the subsequent notification. For this contention the IOC inter alia placed reliance on an earlier decision of the Supreme Court in Sasadhar Chakravarty (11 supra).

61. Distinguishing the principle enunciated in Chakravarty''s case (12 supra) the Supreme Court partly allowed the writ petition and directed the IOC to give pensionary benefits to the petitioner on the basis of the notification dated 10.3.95 by deleting the words "retiring from December 1994 onwards" from the notification. The Supreme Court held that the right to get pension is different from getting annuity on the basis of accumulated contribution. The applicable rules in the case on hand provide that an employee mentioned in the specified category shall automatically be a member of the pension fund and is entitled to get pension on the date of retirement, the amount of pension being determined as per the rules. That rule having been modified the petitioners were entitled to the modified package,

explained the Supreme Court. Relying on its earlier decision in All India Reserve Bank Retired Officers Association vs Union of India, (1992) Supp.2 SCC 664 the Supreme Court concluded that what was notified by the notification dated 10.3.95 was not a new scheme but merely an upward revision of an existing scheme.

62. State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others,

63. Under the West Bengal Services (Revision of Pay and Allowances) Rules 1990 (The ROPA Rules 1990) pay scales of the State Government employees were revised w.e.f. 1.1.1986. The revision covered those employees who were in service on 1.1.1986, though they might have retired before the 1990 Rules were published. In so far as the retired employees were concerned their pay was to be revised notionally and a memo was issued on 25.4.90 giving them pensionary benefits calculated on the basis of such notionally revised scales of pay. The respondent-Association challenged the notification. Its members were all pre-1986 retirees, who claimed entitlement to the same benefits as post-1986 retirees. A learned single Judge of the Calcutta High Court disposed of the writ petition directing the Government to consider the claim of the Association in the light of the principles in Nakara (1 supra). After a due process of hearing the Finance Secretary to Government held that the Nakara decision directed mere parity in the principle of calculation of pension and not parity in the actual quantum of pension payable. As the State Government had adopted the same formula for computation of pension for all pensioners irrespective of the date of retirement, the Association had no case, held the Government and accordingly rejected the claim of the Association. Thereupon another writ petition was filed before the Calcutta High Court. The writ petition was transferred to the West Bengal Administrative Tribunal. The Tribunal rejected the application. The decision of the Tribunal was challenged before the Calcutta High Court. This writ petition was allowed in favour of the Association. It was held that the members of the respondent-Association were entitled to pensionary benefits on par with post-1986 retirees.

64. Allowing the appeal of the State Government, the Supreme Court held that the respondent-Association''s case is based upon a failure to distinguish between the pension scheme on the one hand and the revised pay scales on the other. Pension schemes are based on the West Bengal (Death-cum-Retirement) Rules 1971 (the 1971 Rules) which apply to all State Government employees. The 1971 Rules provide that a Government servant''s claim to pension is regulated by the rules in force at the time of the Government servant resigns or is discharged from service on retirement or otherwise. Rule 67 of the 1971 Rules deals with the amount of pension which is fixed on the emoluments which in terms of the definition of the word under Rule 7(1)(d) means "the pay as defined in Rule 5(28) of the 1971 Rules Part I, which the officer was receiving immediately before his retirement."

65. The Supreme Court held that unless there was a change in the emoluments as defined in the 1971 Rules pension will continue to be pegged to the pay drawn by the employee immediately before his retirement. In so far as pre-1986 retirees are concerned there was no change in the emoluments as defined in the 1971 Rules, by the ROPA Rules 1990. The definition of the word emoluments in the 1971 Rules was not amended. Therefore pension continued to be calculated on the basis of the emoluments as defined in 1971 Rules viz., the last pay drawn immediately prior to the retirement. Reasons were recorded by the 3rd Pay Commission for choosing 1.1.1986 as the cut-off date. On such analysis the Supreme Court allowed the appeal holding that for the period 1.1.1986 to 31.12.1995 as the definition of emoluments was not amended (in the 1971 Rules) and pension continued to be calculated on the basis of the unrevised emoluments of the pre-1986 pensioners, no parity in the amount of pension could be granted.

66. A Division Bench of this court by the judgment dated 10.09.2003 in W.P. No. 20755 of 2002 and batch, set aside the orders of the State of A.P. in G.O. Ms. Nos. 156, 157 and 158, dated 16.9.99 and in G.O. Ms. No. 206 dated 23.12.99. It declared that Government employees who had retired between 1.7.98 and 31.3.99 are entitled for computation of revised gratuity on the basis of their notional pay drawn, for higher ceiling limit in respect of gratuity as also for computation of pension and are also entitled to leave encashment benefit on the basis of notional pay during the relevant period. Appropriate directions to effectuate the above declarations were also issued. The State Government Pensioners'' Association, Hyderabad and individual petitioners had approached the A.P. Administrative Tribunal assailing the G.Os, which denied them certain benefits. Consequent on the report of the Pay Revision Commission (PRC) dated 21.7.99 the Government discussed the recommendation in the report with the recognised body of employees and thereafter accepted the recommendations and also enhanced certain benefits beyond those recommended by the PRC. Consequently G.O. (P) No. 114 dated 11.8.99 was issued with regard to pay and allowances of the serving employees and with regard to pension and pensionary benefits G.O. Ms. Nos. 156, 157 and 158 dated 16.9.99 were issued. Para9 of G.O. (P). No. 114 stated that persons who had retired between 1.7.98 and 31.3.99 shall also be eligible for revised pay scales 1999 and that the notional pay fixed in the Revised Pay Scales 1999 in accordance with the orders in G.O. (P). No. 114, would in such cases, count towards pensionary benefits. The orders in G.O. (P) No. 156 and G.O. Ms. Nos 157 and 158 however restricted the benefit to pensioners by enabling mere notional revision of pension where the date of retirement was after 1.7.98 up to 1.4.99,while allowing monetary benefits from 1.4.99. Difference on retirement gratuity and computation was however disallowed in the pension notionally fixed as above and the pensioners were not entitled to compute any portion of the pension on the difference in pension admissible as per the above orders. In respect of the revised maximum limit of retirement gratuity also, the orders in G.O. Ms. No. 157 allowed this benefit

excluding arrears thereon, to employees retired after 1.4.99. G.O. Ms. No. 158 permitted the enhanced computation of pension to post-1.4.99 retirees or those who had died on or after the said date. As a consequence retirement benefits were computed only on the basis of actual pay drawn and not on the notional pay w.e.f. 1.4.98. To reinforce this exclusion orders were issued in G.O. Ms. 206 deleting paragraph-9 of G.O. (P) No. 114 and substituting the same. By the substitution, persons who retired between 1.7.98 and 31.3.99 were eligible for RPS 1999, but the notional pay fixed in RPS 1999 was to count towards pension only notionally and the monetary benefits of the revised pension were allowed with effect only from 1.4.99.

67. The Division Bench of this court while allowing the employees'' claims held that the as the Government had agreed to implement the recommendations (of the PRC) which include recommendations relating to pensionary benefits w.e.f. 1.7.98 with monetary benefit from 1.4.99, which agreement found utterance in paragraph-9 of G.O. 114, denial of the same by the issuance of the subsequent G.Os, was unsustainable. As it was legally recognised that though de facto payment is not effected, it is recognised that the pay of the employee was fixed with reference to RPS 1999 and an employee was deemed to have drawn the revised pay, he was therefore entitled to revision in the pension on the basis of such notional fixation. Denial of the benefit of such notional fixation of pay while computing the pension, was arbitrary, ruled this court. It further held that once an employee is deemed to have drawn the pay fixed under RPS 1999, even if he had not actually drawn it, it should be interpreted as if he had drawn the same and he would be entitled to computation of pensionary benefits on that basis. Once the RPS 1999 was given effect to from 1.7.98, pension has to be fixed on the basis of the deemed pay and notional benefits were required to be computed and released on the basis of such deemed pay. The benefit of increased gratuity and computation of pension are beneficial provisions conceived in the interests of Government employee and therefore these packages should be interpreted in a manner as to advance the cause of these benefits, ruled this court. The claim for computation of revised gratuity on the basis of the deemed or notional pay was also allowed on the same reasoning, as also the calculation of leave encashment benefit.

68. State Bank of India Vs. L. Kannaiah and Others,

69. Persons, who served as Sepoys in the Indian Army, later joined the service of the State Bank of India (for short ''the Bank'') as Security Guards. They joined the Bank service during the years 1955 to 1962. By the time of joining the Bank service, they were aged between 37 and 38 years. After putting in a service of 22 to 24 years in the Bank, they retired from the service at the age of 60 years. They filed a writ petition in the Madras High Court for a direction to the Bank to admit them to the benefit of Pension Fund and for payment of pension, which was denied to them on the ground that they exceeded the age limit of 35 years as on 01-01-1965. The prescription of age limit of 35 years and the cut off date 01-01-1965 for admission to

the benefits of the Pension Fund and pension, were questioned in the writ petition. The writ petition was dismissed. They preferred an appeal. A Division Bench of the Madras High Court allowed the appeal in part directing the Bank to admit some of the appellants to the Pension Fund with effect from April 1983. The State Bank of India Employees'' Pension Fund (for short ''the Pension Fund'') came into force on 01-07-1955. The State Bank Employees'' Pension Fund Rules (for short ''the Rules) were made to govern the establishment and maintenance of the Pension Fund. Under the Rules, inter alia, an employee is not eligible to become a member of the Pension Fund, if he is below 21 years or over 35 years of age. The entry age limit of 21 years was reduced to 18 years and upper age limit increased to 38 years by way of amendments made during the pendency of the writ petition. While initially the class of ex-servicemen were excluded from admission to the Pension Fund, they were later included to participate in the benefits, by a Staff Circular dated 08-04-1974. As per the Circular, they were entitled to be admitted to the benefits of the Pension Fund with effect from 01-01-1965 or from the date of confirmation, whichever is later, if they were not the over age of 35 years.

70. As the dates of their confirmation were earlier to 01-01-1965, to be eligible, they should not have exceeded the age of 35 yeas as on 01-01-1965. The petitioners were, therefore, ineligible for the benefits of the Pension Fund.

71. In considering the civil appeal, inter alia preferred by the Bank, the Supreme Court held that as a new benefit had been conferred on the ex-servicemen, the cut off date could be fixed for extending this new benefit without offending the principles declared in Nakara''s case. There could be, however, no arbitrariness or irrationality in fixing such date. The Supreme Court further held that though minimum qualifying service being the essential consideration, there is no reason why ex-servicemen, who from the date of their confirmation had put in more than 24 years of service, should not be included and no reason was forthcoming in the counter affidavit of the Bank for choosing the date. When it was decided to extend the pensionary benefits to ex-servicemen, the denial of benefits to some of the serving employees should be based on rational and intelligible criteria. Such a view taken by the Division Bench of the Madras High Court warrants no interference, ruled the Supreme Court.

72. The Government of Tamil Nadu and Others Vs. M. Ananchu Asari and Others,

73. Whether the cut off date fixed by the Tamil Nadu Government for entitlement to pension of erstwhile Transport Department employees, who were later on absorbed in the Transport Corporations is valid, fell for consideration. A Division Bench of the Madras High Court held that the prescription of the cut off date was invalid and directed fixation of a cut off date afresh in the light of its observations, while allowing the claims of employees. Originally, the writ petitioners were employed in the State Transport Department. The Government decided to form separate transport Corporations to take over the operation and management of public

transport in certain districts. The Corporations formed came into existence in 1973 and 1974 and the assets and liabilities of the department were transferred on certain terms to the newly formed government companies. The employees of the department were deputed to work in the Corporations. Government orders were issued making the new Corporations responsible for meeting all the establishment charges and making pension and leave salary contributions to the Government in respect of such deputed employees who were in pensionable service. The writ petitioners were not eligible for pension while in Government service in view of non-fulfilment of the qualifying service requirement. The service in the Corporations was per se not pensionable. In order to extend pension benefits to government servants permanently absorbed in public sector undertakings on the basis of options, the State Government issued orders from time to time. As far as the Transport Corporations were concerned, the relevant dates for considering the entitlement of employees who were earlier in government service was fixed as 01-05-1975 and the Government order required fresh options to be obtained from the Government servants working in various Corporations, on the basis of such Government Order. The Government order inter alia specifed that the terminal benefits of erstwhile State Transport Department employees working in various Transport Corporations should be settled as per the orders issued in G.O. Ms. No. 378 (FR II) dated 18-04-1975 subject to certain procedural modifications set out therein and that the pension/gratuity earned by an employee while in government service, prior to such absorption, be protected as was done in G.O. Ms. No. 378. The cut off date (01-05-1975) stipulated in G.O. Ms. No. 1028 dated 23-09-1985 would disentitle the writ petitioners to get the pensionary benefits. During the pendency of the writ appeals in the Madras High Court, the Government issued another order modifying the cut off date as 15-09-1975 for permanent absorption in the respective transport Corporations and directed that pensionary benefits should be granted to those who have completed 10 years of qualifying government service as on 15-09-1975, so however that no arrears of pension be given to employees benefited by the revised date, for the period prior to 01-01-1986. Even if the revised date were applied, the petitioners would derive no benefit. A learned single Judge of the Madras High Court declared the cut off date fixed in G.O. Ms. No. 1028 as illegal and left it to the government to fix a fresh cut off date duly considering the service of the writ petitioners. Another learned single Judge declared the cut off dates (01-05-1975/14-09-1975) as illegal and arbitrary while indicating in the judgement that the date on which the options were finally called for i.e., 26-08-1992 would be the appropriate date for determining the eligibility for pension. On appeal by the State, a Division Bench confirmed the two judgements of the learned single Judges and concurred with the view that the fixation of cut off date be with reference to the options exercised in 1982.

74. On appeal by the State, the Supreme Court held that the fixation of cut off date cannot be arbitrary or whimsical. The Apex Court held that the process of

absorption could not be said to have been completed in the year 1975. On an analysis of the factual situation, it was concluded that as fresh options were provided even by G.O. Ms. No. 284 in the year 1982, it cannot be said that the process of absorption was concluded in the year 1975 itself. In view of such factual circumstances, the fixation of cut off date as 01-05-1975 was arbitrary and such conclusion of the High Court was impeccable, held the Supreme Court. Accordingly, while dismissing the appeals of the State, the Supreme Court directed that 01-04-1982 shall be adopted as cut off date and directed the State to take steps to extend the pensionary benefits to the eligible employees on such basis.

75. Dr. R.N. Rajanna Vs. State of Karnataka and Another,

76. The appellant before the Supreme Court joined the service of the State Government on 17.12.1963 in the Animal Husbandry Department. His services were lent to the Agricultural Dairy Finance Corporation during 1971-77 and thereafter during 3.8.78 to 8.4.81 to the Karnataka Dairy Development Corporation for appointment as OSD on foreign service basis. While on such deputation he took voluntary retirement on 8.4.81, while substantively holding the post of Dy. Director, Animal Husbandry, on deputation. His pension was initially fixed at Rs. 630/-pm which was revised to Rs. 755/- pm, by an order dated 20.11.1991. He claimed benefits under the orders of the State Government dated 14.12.1983, 20.3.86 and 19.1.94 for pension @ 50% of the emoluments drawn at the time of retirement contending that having been retired prior to 1.12.1985 he was entitled to fixation of pension in terms of the Government order dated 19.1.1994. His claim was rejected by the State Government. He approached the Administrative Tribunal. His claim was rejected. The writ petition filed by him against the Tribunal''s judgment before the Karnataka High Court was also rejected. In the Civil Appeal before the Supreme Court he reiterated his claim relying on Nakara decision (1 supra).

77. The Supreme Court held that though the word retirement may generically comprehend almost all retirements, when used in the context of superannuation or retirement by way of superannuation, it has a restricted meaning viz., discharge from a post on account of attaining the age fixed for such retirement uniformly for all or for a particular class or category of service holders. The claim of the appellant before the Supreme Court for computing his deputation allowance also for arriving at the quantum of pension was also rejected by the Supreme Court. in view of the provisions of Rule 296 of the Karnataka Civil Service Rules whereunder allowance drawn from a source other than consolidated fund of the State would not constitute emoluments for determining the quantum of pension. The Supreme Court held that the Government Order dated 19.1.94 was not intended to govern the claims of all pensioners but was limited only to those who had been granted the relief by the Tribunal in a specific case, subject to final orders to be passed by the Supreme Court in those cases. The liberalised pension scheme was therefore held inapplicable to the appellant before it.

78. At first blush, the various precedents relied on by the respective parties and the other precedents on the aspect - when does a specified date or a cut-off date prescribed for applicability of pensionary benefits - new or revised, falls foul of the equality doctrine (Articles 14 and 16 of the Constitution), appear to be conflicting and contradictory. In such troubled moments of precedents analysis Lord Halsbury''s enduring statement of precedents afford guidance. At the beginning of a famous passage in his judgment in Quinn vs Leatham, (1901) AC 495 Lord Halsbury said:

"Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law to govern and are qualified by the particular facts of the case in which such expressions are to be found."

He continued:

"The case is only an authority for what it actually decides. I entirely deny that it can be quoted for a preposition that might seem to flow logically from it."

79. It is apparent from the precedents analysed herein above, that the entitlement to pensionary benefits is not in the nature of an expectation of grace or charity. It is a right enforceable at law. But this is so only when the employer and where such employer is a State - the legislative or executive branch of it, declares the grant of pensionary benefits or revision of such benefits. Such declarations, when by the State constitute the product of its policy choices - choices having a deeply impregnated economic component. The judiciary is required to recognise that such economic policy choices of the State are the distillate of a variety of complex and competing demands on the finite resources of the State. Amongst the multitude of social demands, the State is consecrated the decision making power and authority to prioritise areas for allocation of its limited resources. Such fiscal choices by the State do not normally have an adjudicative disposition except where in the classification of persons or classes of persons identified for inclusion or exclusion to the benefits of a policy choice, the State clearly violates a binding edict of the meta-law - the Constitution. The benefit of any doubt in this area must clearly go in favour of the choices made by the State.

80. The petitioners themselves admit that the State Government employees and non-teaching employees, not governed by the UGC scales of pay have always been treated distinctly and differently from the petitioners (UGC pay scale drawing teachers). It is also admitted that the UGC scale holders and State scale holders had always been treated differently and the distinction had been rigidly maintained continuously in matters of pay, pension revision and DA/DR rates, extent of pay or pension benefits and further that there was no overlapping or identity of treatment between these two classes (see Paras 4 and 5 of W.P. No. 13680/01).

81. There is also considerable evidence to support the conclusion that the teachers drawing UGC scales of pay and other employees who were drawing the State scales of pay have always been treated distinctly. In G.O. Ms. No. 75, dated 7.3.1990 the State Government sanctioned consolidated pension to pensioners retired in the pre-revised scales of pay 1986, had sanctioned DR and ordered enhancement of minimum pension. The benefits under this G.O. were excluded, inter alia, to those employees who had been drawing pay in the revised pay scales 1986/revised UGC scales of 1986. Another consolidation of pension to pensioners retired prior to 1.1.1993 was ordered in G.O. (P) No. 239 dated 4.6.1993. The consolidation of pay was ordered to come into force w.e.f. 1.1.1993. The benefits under this G.O. was excluded to those who had been drawing pay, inter alia, in the revised UGC scales of 1986. In G.O. (P) No. 203 dated 2.9.1994 relief by way of increase in the basic pension by 10% was granted to pre 1.7.1992 pensioners. These benefits were however excluded, inter alia, to recipients of the revised UGC scales of pay 1986. In G.O. (P) No. 156 dated 16.9.1999 enhancement of minimum pension was sanctioned to pensioners who had retired in the pre-revised pay scales 1999. These benefits were excluded, inter alia, to those drawing pay in the revised UGC/ICAR/AICTE pay scales of 1986/1996. It is therefore also established that the petitioners constitute a distinct and separate class from those employees and pensioners drawing the State''s scales of pay.

82. Till 1986 PRC, the pay structure and percentage of DA adopted by the State and Central Governments were substantially similar. Thereafter while the State Government revised the pay scales in 1993 and 1999 the Central Government revised them only in 1996. A difference thus arose between the rates of DA/DR allowed by the State Government vis-�-vis as allowed by the Central Government. The Central Government while revising the pay scales to its employees w.e.f 1.1.1996 had merged the DA existing as on the date and consolidated the pensions of Central Government pensioners by merging the DR percentage existing as on that date. In addition it inputted into the consolidation of pension, two interim reliefs and the fitment weightage @ 40% of the existing pension/family pension.

83. The State PRC 1999 made no recommendations in respect of pensioners drawing UGC pensions. The State Government nevertheless examined the aspect as to consolidation of pensions for this class and for the first time decided to consolidate the pension of UGC pensioners with a view to bring both these distinct classes (UGC scale pensioners and State scale pensioners) onto a common platform and to extended to them the same DR on their pension. On an informed decision consistent with their perceived priorities and availability of financial resources, the State Government decided that UGC pensions should be consolidated by merging the DR existing as on 1.7.1998 since for the purpose of consolidation of the State Government pensioners also the DR existing as on 1.7.1998 was taken into account. The impugned G.O. (P) No. 95 dated 1.8.2000 is the product of such decision of the State. As the pension liability including for the petitioners'' class is wholly met by the

State and is reimbursable neither by the Union or the UGC, the State Government evolved the impugned package.

84. By an interim direction dated 25.3.2003 in W.P. No. 13680 of 2001 this court called upon the State Government to constitute a committee involving various specified departments of the State to consider the grievances of the pre 1.1.1996 pensioners who while in service were drawing UGC scales of pay. The committee was constituted in G.O. Ms. No. 301, dated 24.4.2003. After a comprehensive consideration of the grievances and the views of the State Government, the committee in its report did not recommend grant of monetary benefit to the pre 1.1.1996 UGC pensioners from a date earlier than 1.7.2000. As regards sanction of DR on par with the DA paid to serving UGC teachers, the Committee recommended that the State Government may examine the issue. While making this latter recommendation the committee noted the stand of the State Government that the UGC pensioners are now equated with the State pensioners and as on 23.6.2003 the State pensioners also had not been granted three instalments of DR on par with DA to the serving State Government employees in view of the considerable burden on the State''s finances. The State had further contended before the committee that another instalment is due from 1.1.2003. The State also contended before the committee on this aspect that the sanction of DR to the UGC pensioners on par with the DA to the serving UGC teachers could not be granted.

85. The State Government considered the recommendations of the committee and issued orders in G.O. Ms. No. 389 dated 19.7.2003. With regard to the claim of pre 1.1.1996 UGC pensioners (for grant of monetary benefit - consequent on the consolidation, from 1.1.1996 instead of 1.7.2000), the State Government in its order in G.O. Ms. No. 389 at Paragraph 24 recorded that the Government had examined the grievance in detail and after taking into account the financial commitment of the State Government had fixed the cut-off date as 1.7.2000 for monetary benefits. It recorded that prior to the implementation of the 1992 Pension Rules, which were similar to the 1980 Pension Rules, the UGC pensioners were getting very moderate pensions. On account of bringing them to the platform of the 1992 Pension Rules, the UGC pensioners were getting a much higher quantum of pension with corresponding increase in the burden on the State Government. This factor along with the fact that any further expenditure on UGC pensioners would cast an unviable burden on the State''s finances, determined the stand of the State Government to grant the monetary benefit from 1.7.2000. For the same reasons as had been urged before the committee the State Government has also declined to accede to the plea for sanction of DR on par with DA for serving UGC teachers (G.O. Ms. No. 389 dated 19.7.2003).

86. The 5th Central Pay Commission, to whom pensionary matters were referred for the first time, had recommended consolidation of pension observing -

"The most controversial subject in the field of pensioners has been the glaring disparity between persons of equivalent rank and status, drawing vastly unequal pensions if they had retired at different points of time. The inequality among the Civilian pensioners has continued over the decades with scant relief to the older Senior citizens. We have attempted a major thrust by suggesting complete parity between past and present pensioners while recommending a modified parity between pre-1996 and post-1996 pensioners. This formula will ensure total equity between persons retired before 1986 and those who retired later. It also gives all pensioners, at least a minimum pension, appurtenant to the post 1996 revised pay scale of the post they held on retirement."

87. Pursuant to the Central Government''s acceptance of the recommendations of the 5th Central Pay Commission, the pension/family pension of all pre-1996 pensioners/family pensioners was revised w.e.f. 1.1.1996. There was a consolidation w.e.f. 1.1.1996 by adding therein (i) the existing pension/family pension; (ii) DR up to CPI 1510 @ 148%, 111% and 96% of the basic pension as admissible vide the orders dated 20.3.1996; (iii) Interim Relief-1; (iv) Interim Relief-2 and (v) fitment weightage @ 40% of the existing pension/family pension. These benefits were available to the pensioners of the Central Government.

88. In G.O. Ms. No. 565 dated 25.12.1997 the State Government issued the terms of reference of a PRC for the State including matters relating to pensions. The PRC submitted its report to the State Government on 21.7.1999. The recommendations of the 1999 PRC were accepted by the State in G.O. (P) No. 114, dated 11.8.1999 and orders were issued revising pay scales of State Government employees pursuant to the 1999 PRC that the benefits available w.e.f. 1.7.1998 with monetary benefit from 1.4.1999. In G.O. (P) No. 156 dated 16.9.1999 the benefits under the 1999 PRC were extended by the State to those pensioners who retired or died while in service before 1.7.1998 and also to those who retired or died while in service after the said date, but had opted for the pre-revised (1993) scales. In this G.O., dearness relief as on 1.7.1998 was ordered to be merged and to be known as the revised consolidated pension. The revised consolidated pension was ordered to come into force w.e.f. 1.7.1998 with monetary benefit payable w.e.f. 1.4.1999.

89. While consolidating the pension for the pre-1.1.1996 retired teachers, who, while in service, were drawing UGC scales of pay, the State Government appears to have drawn the date 1.7.1998 from G.O.P No. 156 dated 16.9.1999 (in so far as taking 1.7.98 as the date on which the DR sanctioned in paragraph-6 of G.O. Ms. No. 280 dated 8.12.1993 was to be added for the purpose of consolidation) while drawing consolidation formula from the pension package granted by the Central Government pursuant to the 5th Central Pay Commission''s recommendations and consequent orders of the Central Government. The fixing of the date 1.7.2000 for effectuation of the consolidation package in the impugned G.O. (P) No. 95, dated 1.8.2000, was the product of the State informed and considered decision having

regard to its financial ability.

90. As the petitioners as UGC scales drawing teachers never constituted one class with teachers drawing State scales of pay and as never prior to the impugned G.O. (P) No. 95 were their pensions consolidated or treated on par with the pensions payable to teachers drawing State scales of pay or State pensioners, the benefits under G.O. (P) No. 95 does not conceptually constitute a revision of an earlier consolidation of pension for them. The consolidation is the first of its kind in so far as this class of pensioners is concerned. G.O.P No. 95 is also a first time exercise to bring the pre-1996 UGC pensioners on to a common platform along with State pensioners. In such circumstances, the validity of the fixing of the date 1.7.2000 as the cut-off date w.e.f. which the consolidation benefit would be available to them or the fixing of 1.7.98 as on which date the DR as it stood is to be reckoned for consolidation purpose, will have to be considered.

91. The choice of a specified date or a cut-off date has been held to be not per se arbitrary. It has also been held that the choice of a date rests with the State and that such choice must however be reasonable in the context of the applicable facts - vide Rajpal Sharma (2 supra); Krishena Kumar (4 supra); Indian Ex-Services League (5 supra); Dhan Singh (6 supra); Ratan Behari (7 supra); Lieut (Mrs) E. Iacats (12 supra); V. Kasturi (13 supra); Monotosh Roy (14 supra) and Dr. R.N. Rajanna (21 supra).

92. An unbroken succession of pensioners while litigating for pensionary benefits are seen to rely on the observations in Nakara (1 supra) to claim that all pensioners constitute one homogenous class for the purpose of pensionary benefits. A Constitution Bench of the Supreme Court in Indian Ex-Services League (5 supra) on a critical analysis of its earlier Nakara decision held that the Nakara decision has to be read as of limited application and its ambit could not be enlarged to cover all claims of pensioners or as applicable to a demand for an identical amount of pension to every retiree of same rank regardless of date of retirement even if the emoluments reckonable for the purpose of computation of their pensions are different and that Nakara itself pointed out that if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some later. The claim for one pension for one rank was rejected in Indian Ex-Services League (5 supra).

93. On behalf of the petitioners it was additionally contended that as they constitute a diminishing class of pensioners the financial obligation on the State, if the reliefs claimed by them were granted, is not too great and would successively go down in the years to come and that relief should be granted for this reason. In Krishena Kumar (4 supra) a Constitution Bench of the Supreme Court reiterated the established principle that on account of division of functions between the three great coequal branches of the State under the Constitution, the courts would not issue any directions having financial implications as an expression of its own policy preferences, unless the grant of relief having financial implications clearly falls

within an established legal right of the claimants to such relief. Following this principle, as this court must of necessity follow, no mandamus could be issued even if, as the petitioners contend, the financial implications of the relief are not considerable.

94. In V. Kasturi (13 supra) after a painstaking and critical analysis of a large number of precedents in the area, the Supreme Court culled out two categories of circumstances/cases for testing the validity of a cut-off date/specified date for extending the benefits of pension or revised pension, as under:

"Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

Category II

23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, and Government of Tamil Nadu and another Vs. K. Jayaraman, and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such

additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit."

95. As found by the Supreme Court in Kasturi (13 supra), the petitioners herein too fall under the 2nd category identified by the Supreme Court. Though the petitioners were eligible for pension even prior to the impugned G.O. (P) No. 95, the consolidation of their pension was a fresh exercise under G.O. (P) No. 95. It is not a case of revision of an existing consolidation. The benefits of the consolidation were made available to all the teachers who were drawing UGC scales of pay and to UGC pensioners for the first time in G.O. (P) No. 95. The petitioners therefore have to be charecterised as a new class of pensioners in the context of the benefits of the consolidated pension. The award of monetary benefits of the consolidation from 1.7.2000 to this class of pensioners is therefore not comparable to any other pensioners who could be charecterised as falling within the same class of pensioners as the petitioners. The specification of the date in G.O. (P) No. 95 is the product of the informed decision of the State having regard to its financial resources and in consideration of the fact that the UGC pensioners had earlier got the benefit of being brought into the fold of the 1992 Pension Rules. The consolidation exercise was the result of a perception by the State that the UGC pensioners and State pensioners should be brought onto a common platform by the consolidation exercise.

96. The pension liability of the petitioners is on the State and not on the Central Government. Neither the 1996 Central PRC recommendations nor the consequent orders of the Central Government passed in respect of the Central Government pensioners including IAS and IPS pensioners are appropriate parameters of reference qua the State pensioners including the UGC pensioners (petitioners'' class). The revenue generating potentialities of the Central and the State Governments are also dissimilar. The State Governments under our federal constitutional scheme are free to formulate their own fiscal policy choices and to prioritise areas for allocation of their resources independent of the choices of the Central Government, except where under the constitution''s explicit provisions a uniform policy is mandated. Pension policy is not an area where uniformity between the federal and component Governments is mandated by the Constitution. The petitioners'' contentions in this regard are misconceived and do not commend acceptance by this court.

97. This court is unable to discern any irrationality, hostile discrimination, perversity or arbitrariness in the decision of the State qua the impugned orders.

98. On the above analysis the writ petitions must fail and are accordingly dismissed. No order as to costs.