

**(1993) 02 CAL CK 0024**

**Calcutta High Court**

**Case No:** Matter No. 348 of 1992

The West Bengal Govt.  
Pensioners Association and  
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Feb. 8, 1993

**Acts Referred:**

- Constitution of India, 1950 - Article 12, 14

**Citation:** 97 CWN 1173

**Hon'ble Judges:** Susanta Chatterji, J

**Bench:** Single Bench

**Advocate:** S.P. Majumdar and S.K. Halder, for the Appellant;Tulsi Maity, for the Respondent

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### **Judgement**

Susanta Chatterji, J.

The new writpetition has been filed praying, inter alia.

(a) A rule be issued calling upon the respondents and each of them their servants, agents and subordinates to show cause as to why-

(i) A writ of and/or in the nature of Mandamus should not be issued by quashing the in equal treatment between the employees/officers who retired before 1.1.1986 and who retired on and from 1.1.1986 prescribed in the memoranda being Annexures A. A1. A2. A3 and B hereof and treat the petitioners on the same footing irrespective of the date of retirement in respect of pension and other pensionary benefit

(ii) A writ of and/or in the nature of certiorari should not be issued calling upon the respondents to bring all the records and proceedings relating to the matter before this Hon"ble Court so that the same can to quasshed in the manner as indicated in clause (i) above to do conscionable Justice In the matter.

iii) Any other appropriate writ or writs should not be issued so that the inequality in treatment not be issued so that the inequality in treatment in allowing pension to the petitioners who retired prior to 1st January, 1986 would be made the same with those who retired or will retire on and from 1st January, 1986.

(b) In absence of showing cause or reasonable cause the rule that may be issued be made absolute.

(c) An order be passed directing the respondents and each of them, their servants, agents and/or subordinates to pay interest at the rate of 12% on the deferred pension amount which have been wrongfully withheld and not paid to the petitioners so far.

(d) An order be passed directing the respondents and each of them, their servants, agents and/or subordinates to grant and pay the same rate of pensions are being granted to the officers/employees who retired on and from 1st January 1986 pending the final disposal of the application.

(e) Ad interim order in term of prayer (d) above.

(f) Costs and incidentals to this application be directed to be paid by the respondents.

(g) Such further order be passed and/or direction to be given as may seem fit and proper to this Hon'ble Court.

It is stated in details that the petitioner No. 1 is a registered Association and the said Association was formed by the retired officials of the Government of West Bengal. The petitioners Nos. 2 and 3 are pension holders. It is stated in details that the members of the Association have been retired prior to 1.1.1986 and that are not being granted liberalised pension and/or equal pension with other retired officials of the respondent No. 1. There is a discrimination with those members who retired on and after 1.1.1986.

2. It is placed on record that the petitioners by a letter dated 22.4.1991 addressed to the Secretary, Finance Department and referring to a discussion held on 5 the March, 1991 between the secretary of the said Association and the said joint secretary sent a comparative chart showing the differences of the monthly pension of the Government employees who retired in 1971 or 1975 and who retired in 1981 and 1984. The petitioner mainly relied upon the decision the Hon'ble Supreme Court reported in [D.S. Nakara and Others Vs. Union of India \(UOI\)](#), It is submitted that the the acts done or caused to have been done by the respondents are irregular and illegal in not considering the claim of the petitioners and being aggrieved the petitioner have come to this Court seeking reliefs as indicated above on the grounds that the purported memoranda sought to be applied to the petitioner differently as to who retired prior to 1.1.1986 as against those who retired after 1.1.1986 is irregular and illegal. It is highlighted that the treatment of the

petitioner by the said memoranda's contrary to law and violative of the principle of equality as contained in the Constitution of India.

3. It is argued that the date of the requirement cannot be a criteria fixing different pension and the choice of the date for the purported behavior is arbitrary.

4. Attention of this Court has also been drawn to a decision reported in [Krishena Kumar and Others Vs. Union of India and others](#), where it has been found that the option given to the Railway employees covered by Provided Fund Scheme to switch over to the Pension Scheme with effect from the specified out off date could not be violative of Article 14 of the constitution. It was only required to be decided in 1987(2) SCR 165 that all the retirees formed a class. No further classification was permissible. In case of pension of the retirees who are alive the Government has continued obligation. If one is effected by norms, others may also be effected. In case of Provident Fund retirees etc. like having finally Grossed enshrinement on the date of retirement and received provident Fund benefits and there being denied obligation thereafter they could not be treated at par with the living pensioners. In each case of option the specified date were a definite nexus to the object sought to be achieved by giving off option. The option once exercised would be final. Options to be exercised from the specified date have been fixed in relation to the reason for giving option to only the employees who retired after the specified date and before and after the date of notification were made originals. This was effectuated above what was been stated by the successive pay commission. The corresponding retirement benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking out or leaving out the clause giving option could not arise.

5. This proposition has again been supported in another decision reported in [All India Reserve Bank Retired Officers Association and others Vs. Union of India and others](#), It has been found whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12. the choice of the cut off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touch-stone of Article 14. If the choice of the date results in the classification or division of members of a homogeneous group, it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. It has also been found that the concept of pension is well-known and has been clarified by Supreme Court time again. It is not a charity or bounty nor is it considered gratuitous payment solely dependant on the sweet win of the employer. It is earned for rendering long service: and is often described as deferred portion compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socioeconomic requirements of the constitution when the employer Is a State within

the meaning of Article 12 of the Constitution.

6. The grievance of the petitioner is mainly that the case of the petitioner has not been properly appreciated. There is an Affidavit in Opposition controverting the allegations of the petitioner. There is no specific averment to indicate as to why the petitioner's prayer should not be considered- It is however placed on record that the State Government has considered and tried to safeguard the interest of all sections of pensioners irrespective of their retirement and it will be reflected in the orders of 7231 F-7533F dated July 6, 1988. rationale of pension structure of 386 pensioners and also fixing the amount of minimum family pension etc. It is also placed on record that the State Government has very carefully and possibly tried to bring parity among all the pensioners irrespective of their date of retirement. It is not difficult to mention that an absolute party is vague and cannot be changed.

7. Having considered all the aspects of the matter, it appears that the grievance of the petitioner has not been considered by the respondent authority in view of the ratio of the judgment reported in the case of does not find any bar and/or impediment as to why the ratio of the said Supreme Court judgment is not applicable in the case of the petitioner.

8. For the aforesaid reasons the present writ petition is disposed of by directing the respondent State of West Bengal, the Secretary of the Finance Department to consider the claim of the petitioner in the light of the judgment of D. S. Nakara vs. Union of India as indicated above within a period of 3 months by giving a chance of hearing and by passing a speaking order and report as to compliance of this order within 3 weeks thereafter.

No order as to costs.

All parties to act on a signed copy of the ordering portion of the Judgment