clear intendment of this Section cannot be enforced or be a shield in a Court of law.

(5) Therefore, in the light of the foregoing discussion, our answer to the question posed in the opening part of this judgment is in the negative as indicated above.

R.N.R.

(FULL BENCH)

Before : I. S. Tiwana, S. S. Sodhi & A. S. Nehra, JJ.

SHER SINGH GHUMAN (RETD.) AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 345 of 1990.

9th October, 1991.

Constitution of India, 1950—Art. 14—Panjab Agricultural Produce Markets Act, 1961—S. 43—Haryana State Agricultural Marketing Board and Market Committees' Employees Pension, Provident Fund and Gratuity Rules, 1989—Persons retiring prior to notification of 1989 rules are not entitled to the benefit of the said rules—1989 rules made prospective—Persons retiring prior to 1989 and those thereafter form a separate class—Provident Fund and Gratuity on the one hand and pension on the other are distinct concepts—The former is a one-time payment on retirement whereas pension is a continuing obligation—Prospectivity of the 1989 rules does not result in invidious discrimination—Fixation of date of enforcement of rules is not arbitrary.

Held, that pension is a term applied to periodic money payments to persons who retire at a certain age and usually continues to be paid for the rest of their lives, gratuity or provident fund is to be paid once at the time of retirement. Persons getting pension can be said to have a continuing right and the State a corresponding obligation to provide for such retirees but they cannot be equated with persons who are entitled to the payment of gratuity or provident fund which in the very nature of things have to be paid only once i.e. at the time of retirement. Therefore, in the instant case, there was no continuing right with the petitioner or continuing obligation on the part of the respondent-Board to provide anything for such retirees on the date the impugned rules came into force i.e. 24th of July, 1989.

(Para 5)

Held, that the date of enforcement of a particular statute or rule cannot in the very nature of things be helped and there is nothing shocking in it unless one can say that legislation can never be made prospective. The Court cannot possibly be carried away by the fact that an employee of the Board who retired even one day before the enforcement of the Rules in question cannot get the benefit of the same as the date of enforcement cannot be effaced by striking down any relevant provision. In all cases the law has to have prospective operation. Even if for argument sake the said date of enforcement is obliterated, the rules cannot automatically have a retrospective operation.

(Para 7)

(*Case referred by the Division Bench consisting of Hon'ble Mr. Justice A. P. Chowdhri and Hon'ble Mr. Justice I. S. Tiwana, dated 11th April, 1990 to a larger bench for settlement of the substantial question of law whether the prospective operation of the rules regarding pensionary benefits to the exclusion of persons already retired is* per se *violative of Article 14 of the Constitution as being discriminatory. The Full Bench consisting of Hon'ble Mr. Justice I. S. Tiwana, The Hon'ble Mr. Justice, S. S. Sodhi, and Hon'ble Mr. Justice A. S. Nehra, decided the case finally on 9th October, 1991.*

Civil Writ Petition under Article 226/227 of the Constitution of India praying that:—

(*i*) *that a writ in the nature of certiorari partially quashing the Notification dated July 24, 1989—Annexure 'P-2' to the extent it denies the petitioners the pensionary benefits who have retired before 24th July, 1989 from the Agricultural Marketing Board, Haryana, be issued;*

(*ii*) *that a writ in the nature of* mandamus *directing the Respondents to grant pensionary benefit to the petitioners in terms of Notification dated July 24, 1989—Annexure 'P—2' in the same manner as it is being given to those who have retired after July 24, 1989, be issued;*

(*iii*) *that a writ in the nature of* Mandamus *directing the Respondents to grant commutation pension to the petitioners, be issued;*

(*iv*) *that any other writ, order or direction which the petitioers may be found to be entitled to in law or equity, be issued;*

(*v*) *to produce complete record of the case;*

(*vi*) *requirement of Rule* 20(2) *of the writ Rules may kindly be dispensed with;*

(*vii*) *this Hon'ble Court may pass any other order which it may deem fit and fair in the circumstances of the case;*

(*viii*) cost of *this petition be awarded to the petitioners.*

Any other relief may also be granted which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

M. M. Kumar, Advocate with Pawan Kumar, Advocate, *for the Petitioner.*

S. C. Mohunta, A.G. Haryana, *for Respondent No.* 1 with J. V. Yadav, *DAG, Haryana.*

Ashutosh Mohunta, Advocate, *for Respondent No.* 2.

JUDGMENT

I. S. Tiwana, J.

Minor matter magnified in this petition relates to the interpretation and application of the ratio of the Supreme Court judgment in *Nakara's case* (A.I.R. 1983 S.C. 130), to the facts of this case in which a challenge has been laid to the *vires* of the Haryana State Agricultural Marketing Board and Market Committees, Employees Pension, Provident Fund and Gratuity Rules, 1989, on the ground that these make an invidious discrimination between the retirees from the service of the respondent-Marketing Board, that is, those who retired prior to the coming into force of these Rules (24th July, 1989) and those retiring later. These Rules have expressly been made prospective by laying down that these would apply to (i) those entering service of the Board on or after the coming into force of the Rules, and (ii) existing employees who opt for the Rules within three months. The petitioners concededly retired from the service of the Board during the years 1975 to 1987. It is again not a matter of dispute that at the time of their retirement the petitioners were governed by the Punjab State Agricultural Marketing Board and Market Committees' Employees Provident Fund and Gratuity Rules, 1965, and they have been granted all the benefits or dues payable to them at the time of their retirement. The presently impugned rules (copy annexure P-2) have been framed under section 4:3 of the Punjab Agricultural Produce Markets Act, 1961,

and these introduce a scheme for payment of pension to the employees of the Board. The petitioners impugn these Rules, as already indicated, on the solitary ground that these Rules leave out from their purview those employees who had retired prior to the coming into force of the Rules, that is, 24th July, 1989 and this is violative of the ratio of the abovenoted Supreme Court judgment, wherein it has been ruled :

> "With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary imputs, by introducing an arbitrary eligibility criteria, 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date', is violative of Article 14 of the Constitution."

The precise question considered by the Court was posed thus :

> "Is this class of pensioners further divisible for the purpose of 'entitlement' and 'payment' of pension into those who retired by certain date and those who retired after that date ?"

Besides this pronouncement, the petitioners' learned counsel has also sought reliance on the following judgments of this Court :—

(i) Annexure P-1 (*Kundan Singh and others* v. *The State of Punjab and another,* C.W.P. No. 3742 of 1984, decided on 22nd January, 1985);

(ii) L.P.A. No. 1352 of 1989 in C.W.P. No. 9586 of 1987 (*Khadi and Village Industries Commission* v. *Bhim Sen Vedalankar and others*), decided on 23rd March, 1990;

(iii) *Harbans Lal and others* v. *The State of Haryana and others,* 1986 (2) S.L.J. 290;

(iv) *V. P. Gautam* v. *Union of India,* 1983 (2) S.L.R. 346.

(v) *Shamsher Singh and others* v. *The State of Punjab and another,* 1988 (2) S.L.R. 408; and

(vi) *Raghbir Singh* v. *State of Haryana and others,* 1987 (4) S.L.R. 767 :—

in support of his stand.

(2) In fact, doubt expressed by the Motion Bench about the correctness of some of these judgments required the admission of this petition to be heard by a larger Bench. This is how the matter is before us.

(3) However, before examing the validity of the abovenoted judgments, it appears appropriate to have a complete dichotomy of the Supreme Court judgment in *Nakara's case.* The matter appears to have been rendered easy by some of the subsequent pronouncements of their Lordships of the Supreme Court wherein the ratio of the abovenoted judgment has completely been brought out and pronounced upon.

4. The first judgment in this regard probably was in *State Government Pensioners' Association and others* v. *State of Andhra Pradesh* (1), wherein a clear distinction between the pension payable on retirement and the gratuity payable on retirement was brought out. In this judgment, the following question came up for consideration of the Supreme Court :

> "Does that part of the provision which provides for payment of a larger amount of gratuity with prospective effect from the specified date offend Article 14 of the Constitution of India ?".

In other words, the matter examined was whether gratuity must be paid on the stepped up basis to all those who had retired before the date of the upward revision, with retrospective effect, even if the provision provided for prospective operation, in order not to offend Article 14 of the Constitution of India ? While refuting a similar

(1) 1986 3 S.C.C. 501.

argument as raised in the instant case in the light of the abovenoted pronouncement in *Nakara's case,* their Lordships of the Supreme Court expressed themselves in the following manner :—

> "In our opinion, the arrears relating to gratuity benefit computed according to the Revised Pension Rules of 1980 may not be paid to the pensioners that retired prior to April 1, 1978, because at the time of retirement, they are (were) governed by the then existing Rules and their gratuity was calculated on that basis. The same was paid. Since the revised scheme is operative from the date mentioned in the scheme, i.e., April 1, 1978, the continuing rights of the pensioners to receive pension and family pension must also be revised according to that scheme. But the same cannot be said with regard to gratuity, which was accrued and drawn. The reason why their Lordships of the Supreme Court in *Nakara case* refused to grant arrears to the pensioners that retired prior to the stipulated date would *ipso facto* apply for refusing to grant the revised gratuity, since that would amount to asking the State Government to pay arrears relating to gratuity after revising them according to the new scheme for those that retired prior to April 1, 1978, and that would amount to giving retrospective effect to the A.P. (Andhra Pradesh) Revised Pension Rules, 1980, which came into effect from October 29, 1979, and in the case of Part II of those Rules From April 1, 1978. The scheme is prospective and not retrospective."

Again, in a latter case *Union of India* v. *All India Services Pensioners Association and another* (2), their Lordships, while observing in the context of *Nakara's case,* that pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement, explained the matter further by giving illustration:—

> "Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay-scale structure, cannot invoke Art. 14 in order to claim the higher pay scale

(2) (1988) (1) S.L.R. 353.

brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Art. 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystalized on the date of retirement on the basis of the salary drawn by them on the date of retirement. And it was already paid to them on that footing. The transaction is completed and close. There is no scope for upward or downward revision in the context upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf."

Similarly, distinction between provident fund retirees and pension retirees was also upheld by the Supreme Court in *Krishena Kumar and others* v. *Union of India* (3), after examining the ratio of *Nakara's case* with the observations that these retirees constituted different classes and "it was never held in *Nakara* that pension retirees and P.F. retirees formed a homogenous class, even though pension retirees alone did constitute a homogenous class within which any further classification for the purpose of a liberalised pension scheme was impermissible." It was further highlighted that:—

"in *Nakara*, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible."

This rationale or process of reasoning was again approved by the Supreme Court in *Indian Ex-Services League and others* v. *Union of India* (4), while rejecting the theory of 'one rank' one pension' for

(3) (1990) 4 S.C.C. 207.

(4) 1991 (1) S.L.R. 745.

all retirees of the Armed Forces irrespective of their date of retirement. The Court after examining *Nakara's case* observed that the said decision was one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

(5) In the light of all these authoritative pronouncements it can, therefore, be safely concluded that what was held by the Constitution Bench in *Nakara's case* was that the benefit of liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees, irrespective of their date of retirement and those benefits cannot be confined only to the person who retired on or after the specified date because for the purpose of grant of benefits of liberalisation in pension all retirees constituted one class irrespective of their dates of retirement, but it cannot be and is not true in the case of retirees who at the time of their retirement were entitled to provident fund or/and gratuity only. It was in the context of this rationale that the only relief granted in *Nakara's case* was to strike down that portion of the memoranda by which the benefit of liberalised pension scheme was confined only to persons retiring on or after the specified date, with the result that the benefit was extended to all retirees irrespective of their date of retirement. Once this position emerging from the decision in *Nakara's* case is borne in mind, the fallacy in the petitioners' contention in this petition becomes obvious and their claim based only on that case is untenable. The petitioners concededly retired from the service of the Board much earlier to the coming into force of the impugned Rules on 24th July, 1989 and at that time they were only entitled to the payment of provident fund and gratuity in terms of the 1965 Rules which were duly paid to them. Thus, concept of gratuity and provident fund being different from pension cannot easily be ignored in the light of *Nakara's case*. While pension is a term applied to periodic money payments to persons who retire at a certain age considered age of disability and usually continues to be paid for the rest of their natural life, the gratuity or provident fund is to be paid once at the time of retirement. Persons getting pension can be said to have a continuing right and the State a corresponding obligation to provide for such retirees but they cannot be equated with persons who are entitled to the payment of gratuity or provident fund which in

the very nature of things has to be paid once only, that is, at the time of retirement. Therefore, in the instant case there was no continuing right with the petitioners or a continuing obligation on the part of the respondent-Board to provide anything for such retirees on the date the impugned Rules came into force, that is, 24th July, 1989.

(6) In the light of the abovenoted analysis of *Nakara's* judgment, we find it wholly unnecessary to make a detailed reference to the rest of the judgments relied upon by the learned counsel for the petitioners. In some of these cases, the abovenoted analysis of *Nakara's case* or the distinction between liability to pay pension and gratuity or provident fund was not taken notice of therefore, the said judgments to that extent obviously do not lay down good law and stand over-ruled to that extent.

(7) For the sake of record it may be mentioned here that at one stage Mr. Kumar, the learned counsel for the petitioners, even chose to urge that fixation of 24th July, 1989, as the date of enforcement of the impugned Rules is wholly arbitrary and the respondent-Board has made no effort to disclose any rationale or justification for the fixation of that date. We found it wholly difficult to appreciate the argument. The date of enforcement of a particular statute or rule cannot in the very nature of things be helped and there is nothing shocking in it unless one can say that legislation can never be made prospective. The Court cannot possibly be carried away by the fact that an employee of the Board who retired even one day before the enforcement of the Rules in question cannot get the benefit of the same as the date of enforcement cannot be effaced by striking down any relevant provision. In all cases the law has to have prospective operation. Even if for argument sake the said date of enforcement is obliterated, the rules cannot automatically have a retrospective operation. Therefore, we have no hesitation in repelling this stand of the learned counsel.

(8) For the reasons given above, we find no merit in this petition and dismiss the same but with no order as to costs. Since at the very outset of the hearing of the case, the learned counsel for the parties had agreed that this decision of ours in this petition would govern the fate of two other similar writ petitions (Nos. 2419 and 7853 of 1990), in which identical contentions of fact and law have been raised, we dismiss the same too but with no order as to costs.

R.N.R.

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