A ALL INDIA RESERVE BANK RETIRED OFFICERS ASSOCIATION AND ORS.

v.

UNION OF INDIA AND ANR.

DECEMBER 10, 1991

B

[A.M. AHMADI AND M.M. PUNCHHI, JJ.]

Reserve Bank of India Pension Regulations 1990: Regulations 3(3) and 31.

C *Reserve Bank—Introduction of Pension Scheme in substitution of C.P.F. Scheme—Classification of superannuated employees for the purposes of Pension Scheme—Grant of benefit of pension to employees retiring on and after 1st January, 1986—Denial of benefit to those retiring on or before 31st December, 1985 held valid.*

D *Difference between Liberalisation of an existing scheme and introduction of a new scheme explained—Held in case of a new scheme the employer can restrict the benefit to a class of retirees.*

Constitution of India, 1950: Article 14.

E *Equality—Reserve Bank—Introduction of Pension Scheme—Fixation of cut-off date for the purposes of conferring benefit of the scheme—Pension Scheme patterned on the Pension Scheme applicable to Central Government Employees—Rationale for fixing the cut-off date also same as in the case of scheme applicable to Central Government Employees—Held fixation of cut-off date is not arbitrary—Regulations 3(3) and 31 of the Reserve Bank of India*

F *Pension Regulations 1990 held not violative of Article 14.*

In exercise of the powers conferred by Section 58(2)(j) of the Reserve Bank of India Act, the Central Board of the Reserve Bank of India framed the Reserve Bank of India Pension Regulations, 1990. By the said Regulations a pension scheme was introduced in substitution of the existing

G **Contributory Provident Fund Scheme. Under the Regulations new entrants joining on and after 1st November, 1990 automatically became governed by the pension scheme: for them the CPF scheme did not exist. The in-service employee i.e. those employees who were actually in service at the date of introduction of the scheme were given an option to opt out of the pension scheme and continue to be governed by the CPF scheme.**

H **However, in respect of the superannuated employees a classification was**

made, under Regulations 3(3) and 31 of the Regulations, between those who retired on or before 31st December 1985 and those who retired on and after 1st January, 1986; to the latter the benefit of the pension was extended by option while to the former that benefit was denied altogether i.e. the Bank employees who retired from service between 1st January, 1986 and 1st November, 1990 could opt for the benefit of the pension scheme with effect from 1st November, 1990 provided they refunded the Bank's contribution to the provident fund together with interest received thereon and together with further interest calculated at 6 per cent per annum from the date of withdrawal till the date of repayment while the Bank employees who retired from service before 1st January 1986 were not eligible to opt for the newly introduced pension scheme.

The Petitioners, an Association of retired Bank employees and some of its members who retired from Bank's service on or before 31st December, 1985, filed a writ petition in this Court challenging the legality of the Regulations contending that Regulations 3(3) and 31 were violative of Article 14 of the Constitution because (a) both the groups namely those who retired on or before 31st December, 1985 and those who retired between 1st January 1986 and 31st October, 1990 belong to the same group of CPF Retirees yet the Regulations seek to divide them by placing an artificial cut-off date; (b) this artificial division and classification of a homogeneous class of retired employees is arbitrary and unreasonable since it is not based on any logic, but is based entirely on the whim and caprice of the Bank Authorities; (c) the cut-off date fixed under the Regulations has no relation to the object sought to be achieved by the introduction of the pension scheme in substitution of the extant CPF scheme.

On behalf of the respondent Bank it was contended that :-

(1) Pension being a reward for past service, revision of an existing benefit stands on a different footing than an altogether new retiral benefit and since the pension scheme introduced by the Bank was a totally new scheme introduced for the first time it was open to the Bank authorities to decide the date from which it should be brought into force and employees who should be covered thereunder; (2) the cut-off date was chosen as 1st January 1986 because (a) that was the date from which the pension scheme as revised by the Fourth Central Pay Commission was made applicable to Government employees; (b) under the Bank Rules the records concerning retired employees were maintained for a certain number of years only and if the benefit of the pension scheme was to be extended to all retired employees regardless of their date of retirement, the Bank would find it

A difficult to work out the actual benefit under the scheme admissible to each retirees.

Dismissing the petition, this Court,

HELD : 1. Whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12 B of the Constitution, 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 classification or division of members of a homogeneous group it would be open to the court to insist that it be shown that the C classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touch-stone of Article 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution. [269-H, 270 A-B]

D *D.S. Nakara & Ors.* v. *Union of India*, [1983] 3 S.C.R.165; *B.Prabhakar Rao & Ors.* v. *State of Andhra Pradesh*, [1985] Suppl. 2 SCR 573, referred to.

1.1 The justification for fixing the cut-off date as 1st January, 1986 is that the newly introduced pension scheme is modelled on the lines of a E similar scheme applicable to Central Government employes. The proposal to have a scheme similar to the one applicable to Central Government employees in lieu of the existing CPF scheme was mooted by the in-service Bank employees some time in 1986 and on the Central Government according sanction, it was brought into effect from 1st November, 1990. F That is why it was made applicable to those who retired in the meantime on or after 1st January, 1986. The underlying reason is to operate the scheme on the pattern of the scheme governing Central Government employees and to extend the benefit to those Bank employees who had demanded the same. [272 D-E]

G The rationale for fixing the cut-off date as 1st January, 1986 was the same as in the case of Central Government employees based on the recommendation of the Fourth Pay Commission. Therefore, there is no substance in the allegation that the cut-off date had been arbitrarily fixed by the Bank Authorities or the Central Government while giving its approval or that it is devoid of rational consideration and is wholly whimsical. In H fixing the cut-off date the respondents had not acted *mala fide* with a view

to deprive those who had retired on or before 31st December, 1985 of the benefit of the pension scheme but it was not practicable to extend the benefit to such retires. [272 F-G]

2. Pension is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of 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. [265 E-F]

2.1 However, there is a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. [271 D-E]

But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact—situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc. [271 E-F]

2.2 Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision or liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. [271 A-C]

A But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the B extent of applicability of the scheme. [271 C-D]

D.S.Nakara & Ors. v. *Union of India*, [1983] 3 SCR 165, relied on.

Indian Ex-Services League & Ors. v. *Union of India*, JT (1991) 1 SC 243, cited.

C 2.3 The scheme introduced by the Regulations is a totally new one which was not in existence prior to its introduction with effect from 1st November, 1990. The employees of the Reserve Bank who had retired prior to that date were governed by the CPF scheme and had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them i.e. the retiral D benefits admissible to them under the extant Rules of the Bank had been paid to them. Therefore they had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. [270 D, G]

E 3. In the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and F the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme since they receive the lump-sum payment which they are at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. [271 F-H, 272-A]

G *Krishena Kumar & Ors.* v. *Union of India & Ors.*, [1990] 4 SCC 207, reiterated.

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 10 of 1991.

(Under Article 32 of the Constitution of India).

H P.P. Rao, A.K. Ganguli, S. Mandal and Indranil Ghosh for the Petitioners.

Kapil Silbal, H.S.Parihar and K.S. Parihar for the Respondents. A

The Judgment of the Court was delivered by

AHMADI J. In exercise of powers conferred by clause (j) of Sub-section (2) of Section 58 of the Reserve Bank of India Act, 1934 (Act II of 1934) (hereinafter called 'the Act'), the Central Board of the Reserve Bank of India with the prior approval of the Central Government framed Regulations known as the Reserve Bank of India Pension Regulations, 1930 (hereinafter called 'the Regulations'). By the said Regulations brought into force with effect from 1st November, 1990 a pension scheme was introduced in substitution of the existing Contributory Provident Fund Scheme (hereinafter alluded to as the 'CPF Scheme'). The newly introduced pension scheme was made applicable to all employees entering Bank service on or after 1st November, 1990; for them the CPF scheme did not exist. The in-service employees i.e. those employees who were actually in service at the date of introduction of the scheme were given an option to opt out of the pension scheme and continue to be governed by the CPF scheme. The third category is of those who retired from Bank's service between 1st January, 1986 and 1st November 1990. Regulation 3(3) which deals with the applicability of the scheme to the said category of retired employees reads as under: B C D

> "3(3)- Employees who were in service as on 1st January 1986 (excluding those on leave preparatory to retirement) and had retired before 1st November, 1990, provided they exercise option to be governed by these Regulations and refund within such period as may be specified, the Bank's contribution to provident fund including interest received by them from the Bank together with simple interest at six percent per annum from the date of withdrawal till the date of repayment. Pension shall be payable to them in accordance with Regulation 31." E F

Regulation 31 reads as under :

> "31-Employees who have retired from the Bank's service on or after 1st January, 1986 and before 1st November, 1990 shall be eligible for pension from 1st November, 1990 or after expiry of leave preparatory to retirement subject to Regulation 22. The payment of pension shall be subject to their refunding Bank's contribution to provident fund including interest received by them from the bank, together with simple interest at the rate of six percent per annum from the date of withdrawal till the date of repayment. Such employees will be permitted to commute their G H

pension also with effect from 1st November, 1990, after due medical examination."

It, therefore, appears on a conjoint reading of Regulation 3(3) and Regulation 31 that Bank employees who retired from service between 1st January, 1986 and 1st November, 1990 could opt for the benefit of the pension scheme with effect from 1st November, 1990 provided they refunded the Bank's contribution to the provident fund together with interest received thereon and together with further interest calculated at 6 percent per annum from the date of withdrawal till the date of repayment. Bank employees who retired from service before 1st January, 1986 were not eligible to opt for the newly introduced pension scheme.

Petitioner No.1 is an Association of retired Bank employees and petitioners Nos. 2 to 7 are its members who retired from the Bank's service on or before 31st December, 1985. They are not entitled to opt for the pension-plan under the aforesaid Regulations. They contend that the cut-off date fixed under Regulations 3(3) and 31 extracted earlier is wholly artificial and has no relation to the object sought to be achieved by the introduction of the pension-plan in substitution of the extant CPF scheme. They contend that Article 14 of the Constitution forbids class legislation and the Bank Authorities have by drawing an artificial classification between those who retired on or before 31st December, 1985 and those who retired 24 hours later i.e. on or after 1st January, 1986 have violated the letter and spirit of the said article of the Constitution. Although Article 14 permits reasonable classification, that classification must satisfy the twin test of the same being founded on an intelligible criteria which distinguishes persons or things which are grouped together from those left out and the said differentia must be shown to have a rational nexus to the object sought to be achieved by the relevant Rules or Regulations. The petitioners, therefore, contend that while the pension scheme introduced under the Regulations is a welcome step consistent with the constitutional philosophy discernible from the Preamble and Articles 38,39, 41 and 43 of Part IV of the Constitution, the artificial division of a homogeneous class of retired employees between those who retired prior to 1st January, 1986 and those who retired on or after that date is wholly arbitrary and unreasonable and is liable to be struck down as violative of Article 14 of the Constitution as explained by this Court in *D.S.Nakara & Ors.* v. *Union of India*, [1983] 3 SCR 165. The petitioners contend that it is settled law that pension is neither a bounty nor a gratuitous payment dependent wholly on the sweet will or grace of the employer but is a right to which an employee is entitled on superannuation under the relevant Rules and is a welfare measure intended to render socioeconomic justice, a concept enshrined in the Preamble and Part IV of the constitution. To deny benefit of the pension scheme merely because a group of employees superannuated on or before 31 st December, 1985 is clearly abhor-

rent to the constitutional philosophy enshrined in Articles 14, 19, 21 and 300 A of the Constitution. The petitioners, therefore contend that the obnoxious part of Regulations 3(3) and 31 which limit the benefit of the pension-plan to only those employees who retired from service on or after 1st January, 1986 should be struck down and instead the same should be liberalised and extended to all retired Bank employees regardless of the date of their retirement provided they opt for the scheme and are ready and willing to abide by the condition of refunding the Bank's contribution to the CPF scheme together with interest, if any, received by them and with further simple interest at 6 per cent per annum from the date of withdrawal of the said amount till repayment. In other words the petitioners contend that the pension scheme should be made available to all employees who retired from Bank's service before 1st November, 1990 provided they opt for the pension scheme. They contend that if the benefit of the pension scheme is extended to those who retired before 1st November, 1990 about 2,000 such employees will benefit therefrom and not all of them will opt for the same and hence the financial implication of the extention of the scheme to such employees will be marginal.

On behalf of the respondents, respondent No.2 has entered a counter on behalf of the management and he contends that the cut-off date was chosen as 1st January, 1986 for diverse reasons, one of them being that the newly introduced pension scheme was patterned on the pension scheme applicable to Central Government Employees as revised by the Fourth Central Pay Commission with effect from 1st January, 1986. This date was decided upon after considerable thought having regard to the fact that the proposal for a pension scheme in lieu of the CPF scheme was revived sometime in 1986 after it was initially turned down. Besides, it was considered appropriate that retired employees who had drawn their package of superannuation benefits many years earlier and had the benefit of use of those funds over prolonged periods need not now be given the option to move over to a totally different retiral plan bearing no relationship whatsoever with the then existing wage-structure. The respondents, therefore, contend that the cut-off date was chosen as 1st January, 1986 principally because that was the date from which the pension scheme as revised by the Fourth Central Pay Commission was made applicable to Government employees. It was further contended that it was felt undesirable to relate back the scheme to a date prior to 1st January, 1986 as that would cause considerable difficulties regarding calculation etc., of the pension payable to old employees for want of availability of relevant records. The respondents, therefore, contend that the submission that the pension scheme introduced by the Regulations is violative of Articles 14, 19 and 21 of the Constitution is wholly misplaced as this is a totally new scheme introduced for the first time and it is open to the Bank Authorities to decide the date from which it should be brought in force and the employees who should be covered thereunder. The respondents, therefore, contend that the writ petition is without merits and

A deserves to be dismissed with costs.

Before we proceed to deal with the main contention based on the decision of this Court in *Nakara's* case it would be advantageous to notice the fact that employees of the Reserve Bank of India were, prior to the introduction of the pension scheme, enjoying superannuation benefits comprising (i) CPF, and (ii) gratuity. Representatives of the employees and officers' staff had been clamouring for the introduction of a pension scheme as a third retiral benefit since quite some time. To consider the demand the Bank had constituted a Study Group in October, 1979 under the Chairmanship of Shri W. S. Tambe, retired Executive Director of the Bank with representatives of the recognised Unions/Associations representing different classes of Bank employees as members. The Study Group submitted its report in 1981. It would appear therefrom that the members held divergent view points. However, in paragraph 3.24 of the report they recommended equalisation of superannuation benefits in the Reserve Bank of India with those available to Central Government employees by introducing pension at 25% of last pay drawn. On the question of the date from which the said recommendation should be made effective the members were divided in their opinion. One view expressed was that since the latest wage settlements for overwhelming majority of employees were made operative from 1st September, 1978 and since the appointment of the Study Group was made pursuant thereto, its recommendation should be made effective from 1st September, 1978. The other view was that since the Study Group was constituted in October, 1979 and the said period fell within the Bank's accounting year from July, 1979 to June, 1980, it would not be reasonable to give effect to the recommendation from a date prior to 1st July, 1979. The Study Group was, therefore, no unanimous in respect of the date from which its recommendation should be made effective. It appears from the letter of the Joint Secretary of the Staff Officer's Association dated 20th March, 1981 that the draft of the report was approved by him. The subsequent letter of March 1, 1982 discloses that the recommendations made by the Study Group were not approved by the Government of India in the Ministry of Finance. In paragraph 7 of that letter after objecting to the manner in which the recommendations of the study Group had been brushed aside it was stated as under:

> "All the same we are inclined to consider the alternative in constructive manner if we are informed of the basis and the manner of the applicability of the Government Pension Scheme."

It would thus appear from the above that after the proposal for the introduction of a third retiral benefit as recommended by the Study Group was negatived, the alternative proposal for introductions of pension scheme on the lines of the Government Pension Scheme was mooted. Subsequently, by the Circular of June 15, 1982 the Association informed its members about the

rejection by the Central Government of the recommendation made by the Study Group. This is how the demand for the introduction of a third retiral benefit ended. Thereafter in the beginning of 1986 a large section of employees of the Bank belonging to various classes represented that the Bank should at least work out a pension scheme as an alternative to and in lieu of the existing CPF Scheme. Taking into account the general feeling of a large section of the Bank employees a fresh review was undertaken and in 1987 informal discussions took place with the officers of the Central Government. The Central Government ultimately towards the end of 1989 agreed to the Bank introducing a pension scheme patterned on Government Pension Scheme as revised by the Fourth Central Pay Commission with effect from 1st January , 1986 in lieu of the CPF scheme. Accordingly, the Bank Authorities took a decision to introduce a pension scheme in substitution of the extant CPF scheme and ultimately framed the Regulations referred to above. Thus, 1st January, 1986 was selected as a cut-off date having regard to the fact that the Government Pension Scheme as revised by the Fourth Central Pay Commission was brought into force with effect from that date. This, in brief, is the background in which Regulations 3(3) and 31 came to be formulated.

The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of 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. All the Bank employees who had retired prior to 1st November, 1990 were governed by the CPF scheme. However, by the introduction of the pension scheme under the Regulations those employees who retired on or after 1st January, 1986 have been given an option to switch over to the pension scheme provided they refund the employer's contribution to the CPF scheme together with interest thereon and further agree to pay interest at six per cent per annum from the date of receipt of the fund amount on superannuation till the repayment thereof. The grievance of the petitioners is that all employees who were governed by the CPF scheme on the date of their superannuation constituted a homogeneous class and the pension scheme introduced under the Regulations seeks to divide them between those who retired on or before 31st December, 1985 and those who retired on and after 1st January, 1986; to the latter the benefit of the pension scheme is extended by option while to the former that benefit is denied altogether. This artificial division between members belonging to the same group, contend the petitioners, is a flagrant violation of Article 14 of the Constitution as held in *Nakara's* case.

A In order to appreciate the contention urged by Mr. Rao on behalf of the petitioners it is necessary to understand the thrust of the ratio laid down in *Nakara's* case. That case arose out of a Memorandum dated May 25, 1979 issued by the Government of India liberalising the formula for computation of pension in respect of the employees governed by the Central Civil Services (Pension) Rules, 1972. This liberalised scheme was made applicable to B employees retiring on or after March 31, 1979. By a subsequent Memorandum dated September 23, 1979 the benefit was extended to members of the Armed Forces retiring on or after April 1, 1979. The petitioners who had retired in the year 1972 from the Central Civil Services and Armed Forces challenged the validity of the aforesaid Memoranda insofar as the liberalisation was limited to those retiring on or after the specified date thereby denying the benefit of C liberalisation to all those who had retired prior to the specified date. The challenge was based principally on Article 14 of the Constitution on the ground that the specified dates fixed under the Memoranda for the two classes of employees were wholly arbitrary, unreasonable and unfair and the classification was not based on an intelligible differentia nor did it bear any rational nexus to the object sought to be achieved. It was, therefore, contended that the D offending part of the Memoranda fixing an artificial cut-off date ought to be severed retaining the beneficial portion so that all retired employees regardless of the date of their retirement would be entitled to the benefit of the liberalised scheme. This Court after stating the scope, content and thrust of Article 14 of the Constitution came to the conclusion that both the impugned Memoranda did not spell out the *raison d'etre* for restricting the application of the E liberalised pension formula. It found no rational principle for granting the liberalised benefits only to those who retired subsequent to the specified dates, and denying the same to those who retired prior thereto. This Court felt that if the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who rehired earlier cannot be worst F of than those who superannuated on or after the specified dates. This classification of pensioners into two, namely, those who retired prior to the specified dates and those who retired subsequent thereto, was not found to be based on any rational principle and was, therefore, held to be discriminatory and arbitrary and violative of Article 14 of the Constitution. After taking that view this Court severed the offensive part of the Memoranda and made the liberal- G ised formula applicable to all existing pensioners regardless of the date of their retirement as also to future pensioners. Counsel for the petitioners, therefore, emphasised that the ratio of *Nakara's* case applies on all fours to the petitioners and hence the artificial classification of those who retired on or before 31st December, 1985 and those who retired thereafter strikes at the very concept of equality enshrined in Article 14 of the Constitution inasmuch as the said H classification is wholly unreasonable, unfair and arbitrary since it is not based

on any logic but is based entirely on the whim and caprice of the Bank Authorities. A

On the other hand counsel for the respondents submitted that the employees of the Bank who retired before 1st November, 1990 were governed by CPF scheme. The pension scheme was introduced for the first time with effect from 1st November, 1990. By virtue of Regulations 3(3) and 31, the benefit of the pension scheme was extended to those Bank employees who had retired on and after 1st January, 1986 as the proposal for the introduction of such a pension scheme patterned on the scheme governing the Central Government employees was mooted and taken up for consideration in 1986 and also because the pension scheme admissible to Government employees had undergone a change pursuant to the recommendations of the Fourth Central Pay Commission with effect from that date i.e. 1st January, 1986. Counsel further submitted that the cut-off date was selected as 1st January, 1986 having regard to the fact that under the Rules of the Bank, records concerning retired employees are maintained for a certain number of years only and if the benefit of the pension scheme was to be extended to all retired employees regardless of their date of retirement, the Bank would find it difficult to work out the actual benefit under the scheme admissible to each retiree. It was for this reason that the Bank took a conscious decision to extend the benefit of the pension scheme to those who retired on or after 1st January, 1986. He further contended that since the pension scheme was being introduced for the first time it was open to the Bank Authorities to select the date for its application and the petitioners have no right to contend that they are entitled to the benefit of the scheme. Counsel further submitted that if the Court comes to the conclusion that the cut-off date of 1st January, 1986 is arbitrarily fixed and has no nexus to the object sought to be achieved, only that part of the regulation would be violative of Article 14 of the Constitution but that would not entitle the petitioners who retired on or before 31st December, 1985 to claim the benefit of the newly introduced pension scheme. In this behalf he too relied on the observations in *Nakara's* case found at page 196 which read as under : B C D E F

> "...the pension scheme will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. *And beware that it is not a new scheme, it is only a revision of the existing scheme. It is not a new retiral benefit, it is an upward revision of an existing benefit. If it was a wholly new concept a new retiral benefit one could have appreciated an argument that those who had already retired could not expect it.*" G
>
> (Emphasis supplied) H

A Counsel therefore urged that pension being a reward for past service, revision of an existing benefit stands on a different footing than an altogether new retiral benefit. In his submission, therefore, the decision in *Nakara's* case cannot apply to the fact-situation of the present case since what the petitioners are claiming is entitlement not to an existing scheme but an altogether new scheme. He further submitted that in a subsequent decision in *Krishena Kumar* B *& Ors.* v. *Union of India & Ors.*, [1990] 4 SCC 207 a Constitution Bench of this Court had an occasion to consider the ratio of *Nakara's* case and it came to the conclusion that a pension scheme and a Provident Fund Scheme being structurally different, those belonging to the latter scheme cannot claim to come over to the former scheme as of right on the plea that the cut-off date fixed under the scheme violated Article 14 of the Constitution. That was a case C of certain retired Railway employees who were claiming to come over to the pension scheme on the plea that the subsequent notifications issued from time to time extending the cut-off date introduced a division of the homogeneous group of provident fund retirees between those who can come over to the pension scheme and those who are denied that benefit. The 12th Notification dated May 8, 1987 fixed the cut-off date as January 1, 1986. Under that D notification all CPF beneficiaries who were in service on January 1, 1986 were taken to have come over to the pension scheme unless they specifically opted out with a view to retaining the benefits under the CPF scheme. This cut-off date was fixed as the pay-scales were revised in September, 1986 and March, 1987 effective from January 1, 1986 following the recommendations of the Fourth Central Pay Commission. On account of this upward revision in pay- E scales another pension option was given to Railway employees who were in service on January 1, 1986. Thus, those who had retired prior to that specified date were not entitled to the benefit of the pension scheme. The question which this Court was required to consider was whether this specified date offended Article 14 of the Constitution. This Court in paragraph 34 of the judgment F repelled the contention based on Article 14 read with the ratio in *Nakara's* case as fallacious in view of the fact that while in the case of pension retirees who were alive the Government had a continuing obligation while in the case of provident fund retirees each one's right had finally crystalised on the date of retirement and there was no continuing obligation thereafter to be treated at par with pension retirees. Counsel for the respondents, therefore, contended that in G view of this subsequent Constitution Bench judgment explaining *Nakara's* case and the application of Article 14 in such situations, the claim of the petitioners to be entitled as of right to switch over to the pension scheme is thoroughly unsustainable. Reliance was also placed on the decision of this Court in *Indian Ex-Services League & Ors.*, v. *Union of India*, JT (1991) 1 SC 243 which was a case of retired Ex-servicemen who were claiming relief of H "one rank one pension" placing reliance on the ratio in *Nakara's* case. This

Court negatived their claim also. A

From what we have stated above it becomes clear that the demand of Bank employees for introduction of a pension scheme as a third retiral benefit as recommended by the Study Group in its report submitted in 1981 was rejected by the Central Government some time in 1982. Thereafter a fresh demand was made for the introduction of a pension scheme in substitution of B the CPF scheme on the pattern of the pension scheme admissible to Central Government employees. This proposal met with the approval of the Central Government and accordingly the Bank introduced the Regulations incorporating the same. Under the Regulations new entrants joining on and after 1st November, 1990 automatically become governed by the pension scheme; for them the CPF scheme has no existence. Those employees who were in the C employment of the Bank prior to 1st November, 1990 were given an option to switch over to the pension scheme subject to the conditions stated earlier. An option was also given to those employees who had retired between 1st January, 1986 and coming into force of the Regulations to come over to the pension scheme, provided they were willing to refund the employer's contribution under their CPF scheme with interest thereon and with further interest at 6 D percent per annum from the date of receipt of the provident fund amount till the date of repayment. It will thus be seen that the pension scheme introduced under the Regulations is patterned on the pension scheme governing the Central Government employees which was brought into effect from 1st January, 1986 on the recommendations of the Fourth Central Pay Commission found in Chapter X of the report, vide paragraph 10.19 of that chapter. There E is, however, no doubt that by fixing the cut-off date Bank employees who superannuated on or before 31st December, 1985 are denied the benefit of the pension scheme. The contention of the petitioners that both the groups, namely, those who retired on or before 31st December, 1985 and those who retired between 1st January, 1986 and 31st October, 1990 belong to the same group of CPF retirees and yet the Regulations seek to divide them by placing an F artificial cut-off date under Regulations 3(3) and 31 of the Regulations. It is, therefore, contended that this artificial division of a homogeneous group not based on any logic or rational and having no nexus to the object to be achieved clearly offends the equality clause contained in Article 14. There is no doubt that whenever any rule or regulation having statutory flavour is made by an G authority which is a State within the meaning of Article 12 of the Constitution, 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 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 H

A intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution. This is quite clear from the ratio of *Nakara's* judgment as the decision of this Court in *B.* B *Prabhakar Rao & Ors.* v. *State of Andhra Pradesh* [1985] Supp. 2 SCR 573. We have, therefore, to consider the limited question whether the classification introduced by clauses 3(3) and 31 of the Regulations is inconsistent with Article 14 of the Constitution as alleged by the petitioners.

The scheme introduced by the Regulations is a totally new one. It was not C in existence prior to its introduction with effect from 1st November, 1990. The employees of the Reserve Bank who had retired prior to that date were admittedly governed by the CPF scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the D extant Rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. The Bank employees were, however, clamouring for a pension scheme, firstly on a restricted basis as a third retiral benefit and later in lieu of the CPF scheme. The Central Government had not approved of a pension scheme, as a third retiral benefit. After that proposal was spurned it appears that the employees of the Bank E demanded a pension scheme on the pattern of the scheme available to Central Government employees in lieu of the CPF Scheme. This was approved by the Central Government and consequently it was introduced with effect from 1st November, 1990 under the Regulations. There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new F pension scheme since they had already retired and had collected their retiral benefits from the employer. But the moot question is whether it was open to the employer to grant the benefit of the pension scheme to one group of CPF retirees who had retired from Bank service on or after 1st January, 1986 and deny the same to all those who had retired on or before 31st December, 1985. G Is this division of CPF retirees discriminatory and violative of Article 14 of the Constitution?

Nakara's judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the H benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must

show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in *Nakara's* case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in *Nakara's* case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in *Krishena's* case (supra).

A B C D E F G H

A Besides it has been pointed out by the Bank Authorities that under their manual, service details pertaining to an employee who has retired are maintained for five years and thereafter they are destroyed and, therefore, the cut-off date was fixed as 1st January, 1986. This is clearly brought out in paragraph 3 of Deepak Bankal's affidavit. Secondly, this Court had, during the pendency of the writ petition, asked both sides to prepare statements showing the B financial implications if the cut-off date is removed and the scheme is applied to all retirees. Both sides experience difficulty for want of service records and whatever calculations were made from scanty service records available with them, were disputed. This justifies the reason for not extending the benefit to those who had retired before five years or more.

C Lastly, the justification for fixing the cut-off date as 1st January, 1986 is that the newly introduced pension scheme is modelled on the lines of a similar scheme applicable to Central Government employees. The proposal to have a scheme similar to the one applicable to Central Government employees in lieu of the existing CPF scheme was mooted by the in-service Bank employees some time in 1986 and on the Central Government according sanction, it was brought into effect from 1st November, 1990. That is why it was made D applicable to those who retired in the meantime on or after 1st January, 1986. The underlying reason is to operate the scheme on the pattern of the scheme governing Central Government employees and to extend the benefit to those Bank employees who had demanded the same.

For the above reasons we do not find any substance in the allegation that E the cut-off date had been arbitrarily fixed by the Bank Authorities or the Central Government while giving its approval or that it is devoid of rational consideration and is wholly whimsical. In fixing the cut-off date the respondents had not acted *malafide* with a view to deprive those who had retired on or before 31st December, 1985 of the benefit of the pension scheme but for reasons stated above it was not practicable to extend the benefit to such retirees. F The rationale for fixing the cut-off date as 1st January, 1986 was the same as in the case of Central government employees based on the recommendation of the Fourth Central Pay Commission.

We, therefore, do not see any merit in this petition and dismiss the same with no order as to costs.

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T.N.A. Petition dismissed.