Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.626-627 OF 2008

A.N. Sachdeva (dead) by LRs. & Ors. ... Appellants

Vs.

Maharshi Dayanand University, Rohtak & Anr. ... Respondents

J U D G M E N T

ARUN MISHRA, J.

1. The question involved in the present appeals is whether services rendered by the appellants in Kurukshetra University/Punjab University is qualifying service for the purpose of pension and can be added to the services rendered by them in the respondent no.1, i.e. Maharshi Dayanand University, Rohtak (hereinafter called "M.D. University").

2. The appellants are receiving pension after their retirement from M.D. University, however, it is confined to the services rendered by them in the same university. Deceased A.N. Sachdeva and Ram Parshad Saini were appointed in

Punjab University. R.K. Tuteja, petitioner no.3 and Prem Kumar were appointed as Lecturer and Clerk respectively. They were appointed without any break in M.D. University.

3. A.N. Sachdeva, since deceased was appointed as Steno-Typist in Punjab University on 7.8.1961, thereafter as Private Secretary to Vice-Chancellor in M.D. University on 1.5.1976, promoted as Deputy Registrar in August, 1988 and retired from the service of M.D. University on 31.12.2000.

Ram Prashad Saini after rendering services from 16.11.1962 to 14.1.1975 in Punjab University was appointed as Asistant in Kurukshetra University on 15.1.1975 and served till 11.5.1977 and on 12.5.1977 he was appointed in M.D. University and retired from service on 31.10.1999.

R.K. Tuteja was appointed as Lecturer in Kurukshetra University on 29.7.1964, served uninterruptedly till 20.8.1979 and was appointed on 21.8.1979 in the same capacity in M.D. University where he served till his retirement on 31.12.2001.

Prem Kumar Naveen was appointed Clerk in Kurukshetra University on 7.8.1961 and served till 6.10.1976 and next day on 7.10.1976 he was appointed in M.D. University. He retired on 28.2.2000.

4. The services of the said employees rendered by them in Punjab University/Kurukshetra University have not been counted as qualifying service

for the purpose of pension by the M.D. University. Hence, the writ petition was filed by them in the High Court after rejection of their representation. The appellants submitted that M.D. University had introduced pension scheme with effect from 1.4.1995. The appellants had opted for the same. A memorandum dated 24.12.2001 was issued by the Haryana Government for counting of service rendered by employees of Punjab University/Kurukshetra University/M.D. University as qualifying service for the purpose of pension.

5. Haryana Government issued a memorandum dated 7.1.2002 confining the policy issued by it for the persons who retired after 7.1.2002, however, Finance Department issued clarification dated 9.7.2003 that instructions contained in the memorandum dated 7.1.2002 are not applicable to the employees of the university because the pension schemes of the university are different. Before that a clarification had been issued by the Government of Haryana on 5.6.2002 mentioning that the employees of the Punjab University were subsequently allocated to Kurukshetra University, Rohtak and M.D. University, Rohtak before its formation used to be regional centre of Kurukshetra University. That being the situation, decision was taken to treat the services rendered in Punjab University/Kurukshetra University as qualifying service for the purpose of pension on retirement from M.D. University, Rohtak. It was also clarified that as regards the services rendered by the employees elsewhere such as Central

Government/ State Government/Autonomous Body, the same is not to be counted towards qualifying service for the purpose of pension.

6. The stand of the respondents is that the retiral benefits of the employees are governed by the provisions of M.D. University Pension Scheme, 1997 (hereinafter referred to as "Pension Scheme, 1997"). The past services could not have been treated as qualifying service for pension in view of Rule 4(vii) of the Pension Scheme, 1997 introduced with effect from 1.4.1995 in lieu of Contributory Provident Fund. Option was given to the employees to opt for the contributory provident scheme or for the pension scheme. In the pension scheme 1997 there is no provision for counting previous service rendered by the appellants in Punjab University/Kurukshetra University. Reliance had been placed on the clarification dated 5.6.2002 to contend that the employees who continued in the M.D. University on allocation/absorption with change of employer were entitled to count their services for the purpose of pension. As the appellants were directly appointed in the respondent university, they were not entitled to count the service qualifying for pension.

7. The Division Bench of the High Court by way of impugned order has dismissed the writ application on the ground that in view of Rule 4(vii) of the Pension Scheme 1997, services rendered by the appellants in Punjab University/Kurukshetra University cannot be counted. Reliance has also been placed on the memorandum dated 7.1.2002. As the appellants had retired

before 7.1.2002, they are not entitled to count the past service rendered by them in the aforesaid universities as qualifying service for pension in M.D. University. It has also been observed that pension scheme provides for constitution of corpus fund by transferring the university contribution alongwith interest. Even if memorandum dated 7.1.2002 is not applicable, as clarified by the Finance Department, appellants cannot get the benefit as they had retired prior to 7.1.2002.

8. It was submitted on behalf of the appellants that as per memorandum dated 24.12.2001 and its clarification dated 5.6.2002, the appellants are entitled to count the services rendered in Punjab University/Kurukshetra University as qualifying service for the purpose of pension. It is only the service rendered in other autonomous body etc. which is not to be counted towards the pensionary benefits. The appellants were receiving pension and liberalised pension scheme has to be applied to the employees who had retired earlier. It is not a new scheme, but an upward revision of existing benefits. It is not a case of new retiral benefits. Appellants have been discriminated *vis-a-vis* the other employees who had been absorbed/allocated in the services of M.D. University from Punjab University/Kurukshetra University, inasmuch as, their services rendered in these universities have been counted as qualifying service for the purpose of pension. Even the services of the employees who have rendered their services in some other university have also been counted towards

pensionable services. In one of such case of *Dr. Jahan Singh*, this Court did not intervene in the special leave petition which was dismissed. Even otherwise, the classification sought to be created by the respondents is not impermissible in view of Articles 14 and 16 and the services rendered by the appellants in Punjab University/Kurukshetra University deserve to be counted as qualifying service for the purpose of pension as has been done in the case of employees who have been absorbed/allocated to M.D. University.

9. Per contra, the respondents would contend that the admissible benefits under Pension Scheme, 1997 have already been extended to the appellants. In view of the clarification dated 5.6.2002, the services of the employees who had been allocated/absorbed could have been counted, not the past services of the employees who had been directly appointed in M.D. University, appellants stood retired before 7.1.2002 as such they were not entitled for benefit of counting of past services. The memorandum was not having retrospective effect. Even if, memorandum dated 7.1.2002 is not applicable, the appellants are not entitled for the benefit under the Pension Scheme, 1997. Other employees who have been given the benefit for counting their past services, namely, K.L. Pahuja, Yudhvir Singh Dahiya and Sunder Singh Dahiya had retired on 30.9.2003, 31.5.2002 and 31.10.2002 respectively whereas appellants stood retired before 7.1.2002. The decision in the case of *Dr. Jahan Singh* cannot be applied to the appellants as while dismissing the special leave

petition, this Court has left the question of law open. The employer's share of CPF has to be transferred to the pension fund. It was a case of a new scheme as such its benefits could not have been extended retrospectively. The appellants cannot claim equality and complain of discrimination.

10. It is not in dispute that the appellants had opted for pension under Pension Scheme, 1997. Para 4(vii) of the Pension Scheme, 1997 as has been relied upon by the respondents reads thus:-

> *"(vii) The period of service rendered by an employee in any State Govt. or Govt. aided Private College or in any University/autonomous body against aided post prior to joining in the University shall not count as qualifying service for pensionary benefits."*

However, it is not in dispute that vide memorandum dated 24.12.2001 issued by the Government of Haryana, the pension scheme was modified inasmuch as the State Government has agreed for counting the services of the employees of the Punjab University/Kurukshetra University on retirement from M.D. University as qualifying service. The memorandum dated 24.12.2001 is extracted hereunder:-

"From

Higher Education Commissioner,
Haryana Chandigarh.

To

The Vice-Chancellor,
M.D. University
Rohtak.

Memo No.18/41-2001 UNP (1)

Dated : Chandigarh the 24.12.2001

Sub: Implementation of Pension Scheme in M.D.U. Rohtak.

The State Govt. has considered and agreed for counting of service rendered by the employees of the University in Punjab University/Kurukshetra University/M.D. University as qualifying service for the purpose of pension subject to the following terms and conditions :

1. The service rendered by the said employees in these institutions is without any break and is continuous.

2. That the employer's share of the CPF in respect of these employees has been transferred to the pension fund even with respect to the service rendered in Punjab University/Kurukshetra University as required under the pension rules of the University. Further, that all other requirement of the pension rules are fulfilled in respect of these employees. Kindly take necessary action accordingly.

Sd/- Deputy Director, College-I,
For Higher Education Commissioner,
Haryana, Chandigarh".

Another memorandum dated 7.1.2002 was issued by the Government of Haryana on the basis of which certain incorporation was made in the Pension Scheme 1997. However, later on, the Finance Department on 9.7.2003 has

clarified that memorandum dated 7.1.2002 is not applicable to the employees of the University.

11. Yet another memorandum dated 5.6.2002 has been referred to with respect to the counting of the services of the Punjab University/Kurukshetra University into M.D. University as qualifying service for the purpose of pension. Same is extracted hereunder :-

"From

Higher Education Commissioner, Haryana,
Chandigarh.

To

Registrar,

1. Kurukshetra University, Kurukshetra.
2. Maharshi Dayanand University, Rohtak.

Memo No.18/44-2001 UNP (1)

Dated : Chandigarh, the 6.6.2002

Subject: Clarification regarding counting of previous service/foreign service towards Pension.

Kindly refer to the subject noted above.

(i) The advice issued vide letter No.18/44-2001 UNP (1) dated 24.12.2001 was in respect of service rendered by the employees of Maharshi Dayanand University, Rohtak in Kurukshetra University, Kurukshetra and Punjab University. It is as well as known that initially, it was Kurukshetra University, Kurukshetra and what constitutes Maharshi Dayanand University, Rohtak now was a regional centre of Kurukshetra University, Kurukshetra earlier. Similarly the employees also has rendered service in the Punjab

University and were subsequently allocated to Kurukshetra University, Rohtak. That being the situation the advice was with regard to that service which the employees had rendered initially in the Punjab University followed by Maharshi Dayanand University, Rohtak. This pattern follows in the same manner as the employees of the joining Punjab were allocated to Haryana Govt. at the time of the creation of the Haryana State. Hence the service rendered by these employees who continued to remain in suit but there was a change of employer on account of division of jurisdiction after a period of time. In their case, the previous service rendered was agreed to be countable for the purpose of pension in Maharshi Dayanand University, Rohtak.

(ii) To the extent the employees of Kurukshetra University, Kurukshetra fall in the same category, their service may also be counted for the purpose of pension at the time of retirement from Kurukshetra University, Kurukshetra subject to fulfillment of the conditions mentioned in letter dated 24.12.2001 (copy enclosed) in respect of Maharshi Dayanand University, Rohtak.

(iii) As regards service rendered by the employees elsewhere such as Central Govt./State Govt./Autonomous Body, the same is not countable for the purpose of pensionary benefits as there is no provision to this effect in the pension scheme of Kurukshetra University, Kurukshetra. In case the Kurukshetra University, Kurukshetra is keen to count such service for pensionary benefits, they should be advised to first consider amendment in their pension scheme for which a separate self-contained proposal should be submitted for approval of the State Govt.

It is, therefore requested that the cases may be decided accordingly.

Sd/- 5.6.02
Deputy Director Colleges-I,
For Higher Education Commissioner,
Haryana, Chandigarh."

12. It is apparent from the memorandum dated 24.12.2001 that the first requirement to count the services rendered in Punjab University/Kurukshetra University/M.D. University by the appellants were without break and continuous. It is also not in dispute that after rendering the services in Punjab University/Kurukshetra University, the aforesaid employees had been directly appointed on the very next day in M.D. University. Earlier, the employees of Punjab University were allocated to Kurukshetra University and it is not in dispute that present M.D. University used to be the regional centre of Kurukshetra University prior to its establishment as full-fledged University.

13. Second requirement of the memorandum dated 24.12.2001 is that the employer's share of the CPF has to be transferred to the pension fund with respect to services rendered in Punjab University/Kurukshetra University. The appellants had expressed their willingness in their representation to fulfil the aforesaid requirement of the memorandum dated 24.12.2001 including all other requirements of the pension scheme.

14. The question which arises for consideration is whether it is a case of upward revision of existing benefits or a new scheme floated by the respondents, while issuing the memorandum dated 24.12.2001.

The appellants have placed reliance on a Constitution Bench decision of this Court in *D.S. Nakara & Ors. v. Union of India* [1983 (1) SCC 305] in which this Court has laid down that reasonable classification is permissible. The

classification must be founded on an intelligible differentia and that must have a rational relation to the object sought to be achieved. This Court has laid down that even though the scheme is prospective, the benefit of liberalised pension scheme should be applied equally to all and they are required to be paid the upward revision commencing from the specified date. No arrears would be payable. This Court has laid down thus:-

> ***"29.*** *Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.*
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> *x x x x x*
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> ***42.*** *If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such*

classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled.

Therefore, the classification does not stand the test of Article 14.

43. *Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?*

x x x x x

48. *It was very seriously contended, remove the event correlated to date and examine whether the scheme is workable. We find no difficulty in implementing the scheme omitting the event happening after the specified date retaining the more humane formula for computation of pension. It would apply to all existing pensioners and future pensioners. In the case of existing pensioners, the pension will have to be recomputed by applying the rule of average emoluments as set out in Rule 34 and introducing the slab system and the amount worked out within the floor and the ceiling.*

49. *But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule*

> *34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on March 31, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed".*

15. In *M.C. Dhingra v. Union of India & Ors*. [1996 (7) SCC 564], the question arose with respect to the counting of the previous service for grant of pension. The circular dated 31.3.1982 which came up for consideration provided the benefit thereof only to the persons retiring on or after the date of issuance of circular was held to be arbitrary. This Court has laid down thus:-

> ***"4.*** *It is seen that though the appellant had retired on 1-2-1973, since the question of tagging the previous service rendered in the State Government on temporary basis and the similar cases are pending, the Government had taken a decision on 31-3-1982 to tag the previous service for computation of the pension. Learned counsel appearing for the respondents contended that clause 4 of the abovesaid circular is one of the conditions which prescribes that it would be applicable to the government servants who retired from that date, namely, 31-3-1982. Since the appellant had retired on 1-2-1973, he is not eligible. We find no force in the contention. All the persons who rendered temporary service prior to their joining the Government of India Service have been given the benefit of fixation of the pension payable by tagging the temporary service. The cut-off date is arbitrary violating Article 14 of the*

> *Constitution of India. Having grouped all the similarly circumstanced employees, fixing the cut-off date and giving benefit to those who retired thereafter is obviously arbitrary. In similar circumstances, following the ratio in D.S. Nakara v. Union of India [1983 (1) SCC 305], this Court held in the case of R.L. Marwaha v. Union of India [1987 (4) SCC 31 that such a restriction is arbitrary violating Article 14. On the facts and circumstances, we find that the restriction imposed in clause 4 of the circular is violative of Article 14. It is, therefore, unconstitutional. However, the appellant will be entitled to the pro rata pension from March 1982".*

16. In *State of Punjab v. Justice S.S. Dewan (Retd.) & Ors*. [1997 (4) SCC 569], this Court held that benefit extended was new one. However, this Court has observed thus:-

> ***"7.** Therefore, what we have to consider is what is the nature of the change made by the amendment. Is it by way of upward revision of the existing pension scheme? Then obviously the ratio of the decision in D.S. Nakara case [1983 (1) SCC 305] would apply. If it is held to be a new retiral benefit or a new scheme then the benefit of it cannot be extended to those who retired earlier".*

17. In *State of Rajasthan & Anr. v. Prem Raj* [1997 (10) SCC 317], this Court rejected the submission that decision in *D.S. Nakara* (supra) has given a complete go-by. This Court has laid down thus:-

> ***"12.** In State of W.B. v. Ratan Behari Dey [1993 (4) SCC 62], this Court considered the question whether in providing a pension scheme the State could fix up a particular date and make it applicable to those who retired on or after that date. The Court distinguished Nakara case [1983 (1) SCC 305] by holding that in Nakara case an*

artificial date had been specified classifying the retirees governed by the same rules and similarly situated into two different classes depriving one such class of the benefit of the liberalised pension rules and that was held to be bad. Following the decision of the Court in Krishena Kumar case [1990 (4) SCC 207] it was held that the State can specify a date with effect from which the Regulations framed or amended conferring the pensionary benefits shall come into force but the only condition is that the State cannot pick a date out of its hat and the date has to be prescribed in a reasonable manner having regard to all the facts and circumstances.

***13.** In State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti [1995 (2) SCC 117] the provisions contained in Rule 268-H of Rajasthan Service Rules came up for consideration as to whether the aforesaid provisions restructuring the rights of government servants in service on 29-2-1964 can be held to be violative of Article 14. The Court applied the principle in Krishena Kumar case and Indian Ex-Services League case [1991 (2) SCC 104] and held that the fixation of 29-2-1964 as the cut-off date with effect from which the new liberalised pension scheme in Chapter XXIII-A was introduced cannot be said to be arbitrary or violative of Article 14 of the Constitution. As has been stated earlier for deciding the present controversy it is not necessary for us to further delve into the question as to the extent to which the decision of this Court in Nakara case has been followed or explained. But suffice it to say that the contention of Mr Gupta, the learned counsel for the appellant, that the decision of this Court in Nakara case——has been given a complete go-by cannot be sustained".*

18. In *Dhan Raj & Ors. v. State of J&K & Ors*. [1998 (4) SCC 30], this Court considered the case where the appellants who had retired from the services of Corporation prior to 9.6.1981 claimed to be entitled to pensionary benefits by virtue of G.O. dated 3.10.1986. The contention of the State that the benefit

could not be extended to the appellants was rejected. The relevant portion is extracted hereunder:-

> ***"14.*** *Even otherwise, we do not find any justifiable criteria for the State Government to draw the line between those who retired earlier and those who retired after 9-6-1981. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organisations for more than 20 years. In fact, the appellants have served with the Government for more than 30 to 40 years. The person serving for such a long period earns his legitimate expectation. It is not something which he seeks with a begging bowl. It is inappropriate for a State Government to take up a stand to get its own order to be held illegal, by giving restrictive interpretation to deny benefit to its own employees who had worked for such a long period. In fact, in the Constitution Bench decision of this Court in D.S. Nakara v. Union of India [1983 (1) SCC 305] this Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14. Even otherwise, while considering the question of grant of pensionary benefits the State has to act to reach the constitutional goal of setting up a socialist State as stated and the assurance as given in the Directive Principles of State Policy. A pension is a part and parcel of that goal, which secures to a person serving with the State after retirement of his livelihood. To deny such a right to such a person, without any sound reasoning or any justifiable differentia would be against the spirit of the Constitution. We find in the present case the stand taken by the State Government to be contrary to the said spirit. In the aforesaid D.S. Nakara this Court has very clearly recorded the following:*
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> > *"36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of*

> *setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.""*

19. This Court in *Union of India & Ors. v. K.G. Radhakrishna Panickar & Ors*. [1998 (5 SCC 111] again considered the question of classification and differential treatment. It was held that conferment of new benefit from a particular date cannot be held to be violative of Article 14. The benefit in question was held to be a new benefit conferred on the casual labour. This Court held that :-

> ***12.*** *In its judgment dated 8-2-1991 the Tribunal has held that exclusion of period of service rendered as Project Casual Labour before they were regularly absorbed prior to 1-1-1981 results in such employees being discriminated against as compared to Project Casual Labour who were employed subsequently and whose service as Project Casual Labour prior to absorption is counted for the purpose of qualifying service. The said finding of the Tribunal is based on the decision of this Court in D.S. Nakara [1983 (1) SCC 305]. In this regard, it may be stated that the Tribunal was in error in invoking the principle laid down in D.S. Nakara–in the present case. The decision in D.S. Nakara has been considered by this Court in subsequent decisions and it has been laid down that the principle laid down in D.S. Nakara can have application*

only in those cases where there is discrimination in the matter of existing benefit between similar set of employees and the said principle has no application where a new benefit is being conferred with effect from a particular date. In such a case the conferment of the benefit with effect from a particular date cannot be held to be violative of Article 14 of the Constitution on the basis that such a benefit has been conferred on certain categories of employees on the basis of a particular date. (See: Krishena Kumar v. Union of India [1990 (4) SCC 207]; State of W.B. v. Ratan Behari Dey [1993 (4) SCC 62] and State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti [1995 (2) SCC 117]) In the present case, the benefit of counting of service prior to regular employment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated 14-10-1980 since Open Line Casual Labour could be treated as temporary on completion of six months' period of continuous service which period was subsequently reduced to 120 days under para 2501(b)(i) of the Manual. As regards Project Casual Labour this benefit of being treated as temporary became available only with effect from 1-1-1981 under the scheme which was accepted by this Court in Inder Pal Yadav [1985 (2) SCC 648]. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14-10-1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav. We are, therefore, unable to uphold the judgment of the Tribunal dated 8-2-1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/ temporary posts prior to 1-1-1981 should be counted for the purpose of retiral benefits and the said judgment as well as the judgment in which the said judgment has been followed have to be set aside. The judgments in which the Tribunal has taken a contrary view have to be affirmed.

20. In *V. Kasturi v. Managing Director, State Bank of India & Anr*. [1998 (8) SCC 30], this Court considered the prospective amendment and the question whether earlier retirees were eligible for benefit of such amendment. It was held that where the amendment enhanced the pension or provided for a new formula of pension even the earlier retirees who at the time of retirement were eligible for pension and survived till the amendment would be eligible for the benefit from the date it came into effect, however, where the amendment extended the benefit of the pension scheme to a new class of persons, the earlier retirees at the time of retirement who were not eligible for pension cannot get the benefit of amendment. This Court has laid down thus:-

> ***"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 [1983 (1) SCC 305] would cover this category of cases".*

21. In *Subrata Sen & Ors. v. Union of India & Ors*. [2001 (8) SCC 71], this Court has laid down thus:-

> ***"18.*** *Further, in All India Reserve Bank Retired Officers Assn. v. Union of India [1992 supp. (1) SCC 664], Ahmadi, J. (as he then was), speaking for the Court in the aforesaid decision highlighted the observations in Nakara case [1983 (1) SCC 305] found at SCC p. 333 para 46 to the following effect:*
> *"... the pension 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 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."*
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> *The Court further observed:*
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> *"It must be realised that in the case of an employee governed by the CPF (Contributory Provident Fund) 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 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 case [1990 (4) SCC 207]".

22. In *John Vallamattom & Anr. v. Union of India* [2003 (6) SCC 611], this Court considered the decision in *D.S. Nakara* (supra) and has observed thus:-

> ***"62.*** *Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first part of Article 14 of the Constitution of India is a declaration of equality of civil rights for all purposes within the territory of India and basic principles of republicanism and there will be no discrimination. The guarantee of equal protection embraces the entire realm of "State action". It would extend not only when an individual is discriminated against in the matter of exercise of his right or in the matter of imposing liabilities upon him, but also in the matter of granting privileges etc. In all these cases, the principle is the same, namely, that there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. In my view, all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed. The classification should not be arbitrary; it should be reasonable and it must be based on qualities and characteristics and not any other who are left out, and those qualities or characteristics must have reasonable relations to the object of the legislation.*
>
> *x x x x x*
>
> ***64.*** *It has also been observed in the above judgment that in the very nature of things, the society being composed of unequals, a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged and in the absence of the doctrine of classification such*

legislation is likely to flounder on the bedrock of equality enshrined in Article 14 of the Constitution".

23. In *State Bank of India v. L. Kannaiah & Ors*. [2003 (10) SCC 499], this Court considered fixation of cut-off date for applicability of pension scheme. Minimum service was prescribed 20 years and cut-off date for such induction was fixed as 1.1.1965. This Court held minimum qualifying service being the essential consideration. There is no rationale to exclude employees confirmed earlier who have put in more than 20 years of service. This Court has laid down thus:-

> ***"6.*** *Para 5 of the circular stipulated that the age-limit (viz. not being over 35 years) for admission to Pension Fund shall continue. Thus the pensioned ex-service personnel were admitted to pensionary benefits with effect from 1-1-1965 subject to the restriction of the age-limit of 35 years (which was later on enhanced to 38 years) on that date. As the date of confirmation of the respondents was much earlier to 1-1-1965, the crucial date for admission to the Pension Fund would be 1-1-1965. On that date, the confirmed employee of the Bank should not have exceeded 35 years of age. That is the combined effect of Staff Circular No. 18 dated 8-4-1974 read with the Pension Fund Rules referred to supra. The reason for prescribing the maximum age-limit of 35 or 38, as the case may be, for the purpose of induction into Pension Fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rationale or discernible basis for fixing the cut-off date as 1-1-1965, notwithstanding their earlier confirmation in bank service. True, a new benefit has been conferred on the ex-servicemen and therefore, a cut-off date could be fixed for extending this new benefit, without offending the ratio of*

> *the decision in D.S. Nakara v. Union of India [1983 (1) SCC 305] but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view".*

24. In *Union of India & Anr. v. SPS Vains* [2008 (9) SCC 125], decision of this Court in *D.S. Nakara* has been followed. It was held that there could not be disparity of pension within the same rank. It was held thus:-

> ***"29.*** *The Constitution Bench (in D.S. Nakara [1983 (1) SCC 305]) has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.*
>
> ***30.*** *However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara case. The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of*

> *the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension"* .

25. In *K.J.S. Buttar v. Union of India & Anr*. [2011 (11) SCC 429], this Court considered the question when some new retiral benefits were introduced and measurement to calculate disability was changed pursuant to recommendation made by the 5th Pay Commission and same was implemented with effect from 1.1.1996. The appellant was denied retiral benefits on account of his retirement in 1979. This Court held the treatment to be discriminatory and laid down that restriction of benefit to only officers who were invalided out of service after 1.1.1996 is violative of Article 14 of the Constitution and hence illegal. In the case of liberalisation of existing scheme all pensioners are to be treated equally. The appellant was entitled to all retiral benefits with effect from 1.1.1996. This Court has laid down thus:-

> ***"11.*** *In our opinion the appellant was entitled to the benefit of Para 7.2 of the Instructions dated 31-1-2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75%, and it makes no difference whether he was invalided from service before or after 1-1-1996. Hence the appellant was entitled to the said benefits with arrears from 1-1-1996, and interest at 8% per annum on the same.*

> ***12.*** *It may be mentioned that the Government of India, Ministry of Defence had been granting war injury pension to pre-1996 retirees also in terms of Para 10.1 of the Ministry's Letter No. 1(5)/87/D(Pen-Ser) dated 30-10-1987 (p. 59, Para 8). The mode of calculation, however, was changed by the Notification dated 31-1-2001 which was restricted to post-1996 retirees. The appellant, therefore, was entitled to the war injury pension even prior to 1-1-1996 and especially in view of the Instructions dated 31-1-2001 issued by the Government of India. The said instruction was initially for persons retiring after 1-1-1996 but later on by virtue of the subsequent Notifications dated 16-5-2001 it was extended to pre-1996 retirees also on rationalisation of the scheme".*

26. Reliance has been placed by the respondents on a decision in *State of Punjab & Anr. v. J.L. Gupta & Ors.* [2000 (3) SCC 736] in which this Court referring to the decision in *State of Punjab & Ors. v. Boota Singh & Anr.* [2000 (3) SCC 733] held that when financial implication is there, the benefit conferred by notification dated 9.7.1985 can be claimed by those who retired after the date of stipulation in the notification and those who have retired prior to the date of stipulation, as the notifications are governed by different rules. It was a case of pensionary benefits, i.e., pension, gratuity/DCRG, internal gratuity. Hence, the decision is clearly distinguishable. Moreover, in the instant case, employees are governed by same set of rules.

27. Considering the principles enunciated under Articles 14 and 16 of the Constitution, and that the benefit is not an *ex gratia* payment but a payment in recognition of past service, in our opinion, discrimination could not have been

made between those employees who have been absorbed/allocated are entitled to count their services as qualifying service for the purpose of pension and not those who have been appointed directly. Fact remains that all these employees have served in Punjab University/Kurukshetra University/MD. University without any break. M.D. University, prior to its establishment, was the regional centre of Kurukshetra University. Expectation had arisen to compute the period of service rendered in Punjab University/Kurukshetra University which cannot be unreasonably deprived of. Merely because a person has been appointed and others have been absorbed/allocated makes no difference as to the service rendered. Even otherwise, it is a case of upward revision of benefit and the classification which is sought to be created by the aforesaid method of not extending benefit to persons appointed directly and by fixing cut-off date cannot be said to be intelligible one; same is discriminatory and thus, the appellants would be entitled for the benefit from the date decision has been taken on 24.12.2001 to compute the previous service rendered in Punjab University/Kurukshetra University as qualifying service. In other words, they would be entitled for the benefit prospectively from the date of issuance of memorandum dated 24.12.2001. The employees have expressed their willingness to deposit/adjustment of the employer's contribution of CPF as required in the memorandum dated 24.12.2001.

28. In yet another case of *M.D. University v. Dr. Jahan*, this Court did not interfere in the decision of the High Court of Punjab and Haryana at Chandigarh on 26.5.2009 in LPA No.27 of 2006, however, the question of law was kept open. Hence, we have examined the case on merits and found the case of the appellants on better footing as compared to Dr. Jahan and even otherwise the appellants are entitled for the benefit.

29. In view of aforesaid discussion, the appellants are entitled for the benefit of counting the services rendered in Punjab University/Kurukshetra University as qualifying service for the purpose of pension subject to fulfilment of the conditions specified in the memorandum dated 24.12.2001 etc. and in case the amount payable by the appellants towards contributory provident fund is less than the amount payable to them as pension, it would be adjusted by the respondents without insisting for its refund from the amount payable to the appellants. Let the exercise be completed within a period of three months from today.

30. The appeals are allowed, impugned judgment is set aside. We leave the parties to bear their own costs.

.....J.
(M.Y. Eqbal)

New Delhi;
August 10, 2015.

.....J.
(Arun Mishra)