

**SNIPPETS FROM JUDGEMENT DELIVERED IN WRIT PETITION NO. 5939 OF 1980 FILED BY D.S.NAKARA AND OTHERS AGAINST UNION OF INDIA – MAGNA CARTA FOR PENSIONERS**

Constitution of India, [Art. 14](#)-Central Civil Services (Pension) Rules, 1972 and Regulations governing pension for Armed Forces Personnel-Liberalisation in computation of pension effective from specified date-Divides pensioners so as to confer benefit on some while denying it to others- Classification arbitrary, devoid of rational nexus to object of liberalisation and violative of [Art. 14](#) Constitution of India, [Art 14](#)- Doctrine of severability-Severance may have effect of enlarging scope of legislation. Rules and Regulations governing grant of pension- Pension is a right-Deferred portion of compensation for service rendered-Also a social-welfare measure.

Counsel for petitioners contended that all pensioners entitled to receive pension under the relevant rules form a class irrespective of the dates of their retirement and there cannot be a mini-classification within this class; that the differential treatment accorded to those who had retired prior to the specified date is violative of [Art. 14](#) as the choice of specified date is wholly arbitrary and the classification based on the fortuitous circumstance of retirement before or subsequent to the specified date is invalid; and that the scheme of liberalisation in computation of pension must be uniformly enforced with regard to all pensioners.

Counsel for respondents contended that a classification based on the date of retirement is valid for the purpose of granting pension benefits; that the specified date is an integral part of the scheme of liberalisation and the Government would never have enforced the scheme devoid of the date; that the doctrine of severability cannot be invoked to sever the specified date from the scheme as it would have the effect of enlarging the class of pensioners covered by the scheme and when the legislature has expressly defined the class to which the legislation applies it would be outside the judicial function to enlarge the class; that there is not a single case where the court has included some category within the scope of provisions of a law to maintain its constitutionality; that since the scheme of liberalisation has financial implications, the Court cannot make it retroactive; that if more persons divided the available cake the residue falling to the share of each, especially to the share of those who are not before the court would become far less and therefore no relief could be given to the petitioners that pension is always correlated to the date of retirement and the court cannot change the date of retirement and impose fresh commutation benefit which may burden the exchequer to the tune of Rs. 233 crores;

HELD: [Article 14](#) strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. [Article 14](#) forbids class legislation but permits reasonable classification for the purpose of legislation. The classification must be founded on an intelligible differentia which distinguishes persons or things that

are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. In other words, there ought to be causal connection between the basis of classification and the object of the statute.

There is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. The pension scheme, including the liberalised scheme, is non-contributory in character. The payment of pension is a statutory liability undertaken by the Government. Whatever becomes due and payable on account of pension is recognised as an item of expenditure and is budgeted for every year. At any given point of time there is no fixed or pre-determined pension fund which is divided amongst eligible pensioners.

(i) Pension is a right; not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension.

ii) 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 for service rendered.

(iii) Pension also has a broader significance in that it is a social-welfare measure rendering socio-economic justice by providing economic security in old age to those who toiled ceaselessly in the hey-day of their life. [185 D- E, 186 B-C]

(iv) 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. The preamble to the Constitution envisages the establishment of a socialist republic. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. [Article 41](#) enjoins the State to secure public assistance in old age, sickness and disablement.

Every state action whenever taken must be directed and must be so interpreted as to take society one step towards the goal of establishing a socialist welfare society. While examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble provides a reliable yardstick to hold one way or the other.

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratis payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. (1) where in this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules.