

Topic: Pension Under Article 41 And 43

Name of the case: DS Nakara v. UOI, AIR 1983 SC 130

Bench: Chief Justice Y.V. Chandrachud, Justice V.D. Tulzapurkar, Justice D.A. Desai, Justice O. Chinnappa Reddy, Justice Baharul Islam

Facts of the case: The petitioner contends that all pensioners entitled to receive pension under the relevant rules from 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 Article 14.

Judgment: The constitutional bench of Supreme Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice by providing security in the fall of life in physical and mental prowess is ebbing corresponding to the ageing process and, therefore, when it required to fall back upon savings.

Why scheme of pension making liberate provisions for those retiring after a specified date was held to be discriminatory vis-a-vis those residing earlier than the date? The Supreme Court invoked Article 14, 38(1), 39(d) and (e), 41 and 43(3), and even the word socialist in the preamble to the Constitution to reach this result. Since the advent of the Constitution, the state action is being directed towards attaining the goal of directive principles assure to set up a welfare state in India.

According to the court, the principal aim of a socialist state is to eliminate inequality in income, status and standard of life. The basic framework of socialism is to provide a decent standard of life to the working people and, is basically, to provide security from cradle to grave. This, among others on the economic side, envisages economic equality and equitable distribution of income. In the old age, socialism aim at providing an economic security to those who have rendered onto society what they were capable of doing when they were fully equipped with their mental and physical prowess.

Article 41 enjoys the state to ensure a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and enjoyable leisure, relieving the boredom and the humility of dependence in the old age. The court applied the liberal formula to all pensioners irrespective of the date of retirement, as distinction among business with reference specified date was held to be discriminatory.

Describing the nature of pension given to a government servant on retirement, the court emphasised on three features thereof: (1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of employer and it creates a vested right: (2) Pension is not an ex gratia (by virtue of grace) payment but it is a payment for the past service rendered; and

(3) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly work for the employer on an assurance that in their old age they would not be left in lurch.
