State Of Tamil Nadu vs Seshachalam on 18 September, 2007

Equivalent citations: AIR 2008 SUPREME COURT 647, 2007 (10) SCC 137, 2007 AIR SCW 7750, 2008 LAB. I. C. 394, 2008 (1) SERVLJ 413 SC, (2008) 1 SERVLJ 413, 2008 (3) LABLN 74, 2007 (4) ESC 583, 2007 (6) SERVLR 102, 2007 (11) SCALE 239, 2007 (4) SCT 472, (2007) 6 MAD LJ 738, (2007) 6 SUPREME 479

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Bench: S.B. Sinha, Harjit Singh Bedi

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           CASE NO.:
Appeal (civil)  1938 of 2007

PETITIONER:
State of Tamil Nadu

RESPONDENT:
Seshachalam

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
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CIVIL APPEAL NO.1938 OF 2007 [With CA Nos.1940, 1941, 1942, 1944, 1946, 1947, 1949, 1950, 1952,1954, 1955, 1957, 1958 and 1960 of 2007] J U D G M E N T S.B. Sinha, J.

1. These appeals involving identical questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. Respondents herein have been working in the Secretariat of the Government of Tamil Nadu. Each and every department in the Government Secretariat prior to 1961 had a separate unit for appointment, promotion etc. The State, however, amended the Special Rules in the year 1961 whereby all the departments in the Secretariat were made the "one unit" for the purpose of appointment and promotion. Appointments in the Secretariat at all entry level posts, i.e., Junior Assistants (subsequently re-designated as Assistants), Assistants (subsequently re-designated as Assistant Section Officers), Typist/Personal Clerks were to be made from the common list of candidates selected by the Tamil Nadu Public Service Commission. Promotion to different higher posts in different departments was also being made from amongst those employees. The Government of Tamil Nadu, however, by issuing G.O.Ms. No.1290 dated 05.06.1970 excluded the Finance and Law Departments from the "one unit" system. Whereas posts in the cadre of Assistants,

Assistant Section Officers, Typists/Personal Clerks continued to be filled up from the common list of candidates, but in Finance and Law Departments, further promotions were effected from amongst the employees allotted thereto only. Appointments to Finance Department, however, were made at random and probably in terms of the option exercised by any particular candidate. Many persons, who have, thus, been ranking higher were employed in "one unit" departments whereas some of the candidates ranking lower were employed under fortuitous circumstances in the Finance Department. The employees working in the Finance Department, therefore, obtained promotions much ahead of their peers or even seniors who were discharging their duties in other departments coming within the "one unit".

3. G.O.Ms. No.3288 (Public Services Department) was thereafter issued on 29.10.1971 specifying Finance and Law Departments as separate units from the level of Superintendent (Section Officer) and above. Admittedly, however, Rule 4 of the Special Rules of the Tamil Nadu Secretariat Service was amended in that behalf. The said policy, however, is said to have been implemented. Two employees, S. Kalaiselvan and S. Sivasubramanian, filed an Original Application before the Tamil Nadu Administrative Tribunal in the year 1990 claiming promotion and scale of pay at par with those who were working in the Finance Department and who were said to be juniors to them but had been promoted to higher posts in Finance Department. The said Original Application was allowed by the Tribunal by an order dated 16.4.1993 opining that there existed no guidelines to allot any employee to the Finance Department, vis-`-vis, other departments and, thus, the employees working in other departments could not have been deprived of the benefit of promotion. It was furthermore pointed out that even Rule 4 of the Special Rules for the Tamil Nadu Secretariat Service had not been amended by the said GOMs No.1290 dated 05.06.1970.

4. The Government of Tamil Nadu thereafter amended the Service Rules with retrospective effect from 05.06.1970 by issuing G.O.Ms. No.30 Personnel and Administrative Reforms (D) Department dated 28.1.1994. Upon issuance of the said Government Order, an application for review was filed but the same was dismissed by the Tribunal by an order dated 30.1.1995. The Government was thereafter advised to implement the order of the Tribunal by giving promotion to the concerned employees with retrospective effect from the date on which their juniors had been promoted as Assistant Section Officers in the Finance Department. Sanction was also accorded for creation of two supernumerary posts, namely, posts of Assistant Section Officers in the respective departments. Several representations thereafter were made by persons said to be similarly situated claiming promotion and parity in the scale of pay as compared to their counterparts in the Finance Department. A large number of Original Applications were also filed before the Tamil Nadu Administrative Tribunal. Upon consideration of various pros and cons, the Government of Tamil Nadu issued a GOM bearing No.126 dated 29.5.1998, relevant paragraphs whereof read as under :

> "10. The Government accordingly direct that :-
>
> (i) the pay of the seniors in One Unit who have been recruited to the Tamil Nadu Secretariat Service on or before 28.1.1994, shall be stepped up on par with their juniors in the Finance unit by upgrading the posts held by them to the Scale of pay applicable to the juniors with immediate effect.

(ii) The stepping up of their pay on par with the juniors in the Finance Unit by upgrading the posts held by them to the scale of pay applicable to the junior ordered in sub-para (1) above is purely a person-oriented upgradation and no new posts will be created for this purpose.

(iii) The upgradation sanctioned for the seniors will lapse in the event of the retirement of the individuals concerned or their promotion to the upgraded post in their normal turn.

(iv) The pay of the other seniors in the One Unit in the same cadre will be stepped up on par with immediate juniors in the Finance Unit, with effect from the date of issue of this order.

(v) In respect of the Typists/Personal Clerks/Personal Assistants, in One Unit who have not relinquished their right for promotion as Assistant Section Officer, and are still awaiting their turn for promotion as Assistant Section Officer, their pay shall be upgraded to Assistant Section Officer scale on par with their immediate junior in the Finance Unit who got his promotion as Assistant Section Officer.

11. The benefits of upgradation of pay of the seniors on par with their juniors as per Commission's Seniority list ordered in sub-paras

(i) to (iv) of Para 10 above, shall also be extended to those seniors in the Finance Unit who were recruited before 28.1.1994 and or drawing less pay than their juniors in One Unit.

12. The upgradation ordered above is subject to the following terms and conditions :

(1) The upgradation ordered will involve only stepping up of pay of the senior on par with his junior in the upgraded scale of pay.

(2) It does not entitle him to any claim for arrears of pay.

XXX XXX XXX These orders shall come into force with effect from the date of issue of the orders.

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14. The Departments of Secretariat concerned shall issue necessary orders for upgradation of posts and for stepping-up of the pay of the Seniors in One Unit in the upgraded scales ordered in para 10 above, after obtaining necessary individual undertaking in the format enclosed from the seniors concerned to the effect that they accept the terms and conditions of this order."

5. The said Government Order further stipulated that undertaking should be given by the seniors getting upgradation of their pay with their juniors in the Finance Department in the format enclosed to the effect that they accept the terms and conditions thereto. Respondents before us, save and

except R. Ragothaman in CA No.1955 of 2007 indisputably had retired much prior to issuance of the said Government Order dated 29.5.1998. They also made representations before the appellant demanding fixation of their pay at par with their juniors in the Finance Department. As the said request was not acceded to, a large number of original applications were filed before the Tamil Nadu Administrative Tribunal. By a common judgment pronounced on 20.1.2004, the Tribunal dismissed the said applications opining that the same were barred by limitation. It was held that the applicants having retired long back and having filed applications between 1998 to 2003 and the promoters having retired as Under Secretaries, Deputy Secretaries and Joint Secretaries and in some cases as Additional Secretaries, they should have raised the dispute long back when their juniors had been given promotions in the Finance Department and as the original applications were filed after 20 years, the same could not be entertained.

6. Aggrieved by the said order of the Tribunal, respondents filed writ petitions before the High Court of Judicature at Madras. By reason of the impugned judgment dated 21.4.2006, a Division Bench of the High Court, inter alia, held that the cause of action for filing the original application arose only upon issuance of GOMS No.126 dated 29.5.1998 and in that view of the matter it cannot be said that the original applications filed by the respondents suffered from delay and latches and/or otherwise barred by limitation as GOMS No.126 applied also in respect of those who had retired before 29.5.1998. It was also opined that the respondents who had not been in service on or before 28.1.1994 came within the scope and ambit of the said GOMs. Although GOMs 126 provided for operation with prospective effect and by reason thereof past benefits were not made available, the same should be construed in consonance with the provisions contained in Article 14 of the Constitution of India, holding :

> "There is no specific clause in G.O.Ms. No.126 excluding the applicability of this G.O. to the persons who had retired before 29.5.1998. The G.O. itself recites that the Government wanted to provide a solution to the long standing problem and had decided to take a sympathetic view to effect lasting and equitable solution to the long standing issue so as to redress the grievances of the seniors in the One Unit by upgrading the pay of the seniors in One Unit on par with their immediate juniors in the Finance Unit.
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> Keeping in view the explicit intention of the Government, it is apparent that the G.O. had been issued as a beneficial measure and the provisions in such G.O. are to be liberally construed so as to benefit the employees for whose benefit the G.O. was avowedly issued. It is not disputed that the petitioners were in service on and before 28.1.1994 and therefore, they fall within the scope and ambit of the impugned G.O. Once they are covered under the said G.O., the benefit of the said G.O. will flow automatically."

It was further held that the said Government Order applied not only to the existing staff but also to the retired employees and as such a beneficial interpretation to the said Government Order should be given as the said provisions have to be read in consonance with Article 14 of the Constitution of India.

7. Mr. M.S. Ganesh, learned senior counsel appearing on behalf of the appellants, would submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that :

(i) no explanation was offered by the respondents for not preferring there claim petitions prior to or immediately after the announcement of the order dated 16.04.1993;

(ii) the High Court committed serious error in interfering with the finding of fact arrived at by the Tribunal;

(iii) doctrine of legitimate expectation does not postulate conferment of any right which has been lost for any reason whatsoever; and

(iv) as in terms of Articles 14 and 16(1) of the Constitution, no employee has any fundamental right of promotion, upgradation, allocation of any particular department or to receive any benefit after superannuation the impugned judgment is unsustainable.

8. Mr. Venkataramani, Dr. A.E. Chelliah, senior counsel appearing on behalf of respondents and caveator-in-person on the other hand contended that :

(i) from the perusal of the order of Tribunal dated 16.04.1993, it would appear that observations made therein were not confined only to the two employees who had filed the original application but covered the cases of all others similarly situated;

(ii) having regard to the fact that the State was required to respond comprehensively to the said observations and that the review application filed by the State in view of the said order has been dismissed, before issuing the GOMs No.126 dated 29.5.1998, the State must be held to have considered the ground realities as also the plight of those employees who had suffered discrimination, irrespective of the fact as to whether they were in service or had retired.

(iii) GOMs No.126 dated 29.5.1998 must be given effect to for stepping up the scale of pay of the employees to bring them at par with their juniors in the Finance Department with the object of treating all the employees equally;

(iv) no new right having been created by GOMs No.126 dated 29.5.1998, any mini classification or micro classification would offend Article 14 of the Constitution of India as there was no rational object behind the same and it is not possible to segregate the cases of the employees in service vis-`-vis the retired employees.

9. The employees of the Finance and Law Departments were being treated differently from a long time. The respondents herein never questioned the purported different treatment meted out to them

by the State either by making representations or by filing any application before the Central Administrative Tribunal. Only two of the employees did. Their applications were allowed, inter alia, on the premise that posting of employees in the Finance and Law Departments took place by way of fortuitous circumstances and were not supported by any rationality. The State, we have noticed hereinbefore, amended the Rules with retrospective effect. The said Rule is still in force. Validity of the said Rule has not been questioned by the respondents. Different treatments meted out to the employees of the Finance and Law Departments vis-`-vis other department is now covered by Rules, but despite the same, the State intended to assuage the feelings of the employees by issuance of the said GOMs No.126 dated 29.5.1998. The said notification was issued upon considering various factors including pendency of a large number of matters before the Administrative Tribunal on the said issue. The State intended to lay down a policy for providing financial benefits with prospective effect. Various pros and cons therefor were examined. Avenues available to the State were taken to into consideration. Only thereafter it was directed :

> "The Government, after careful consideration of all these points and also the related issues involved, have decided to take a sympathetic view and attempt a lasting and equitable solution to this long standing issue, so as to redress the grievances of the seniors in the One Unit, by upgrading the pay of the seniors in One Unit on par with their immediate juniors in the Finance Unit."

10. It is one thing to say that the State had come up with a policy decision which is beneficial to all the employees irrespective of the fact as to whether they had reached the age of superannuation or not, the only criteria being that they were recruited to the Tamil Nadu Secretariat Service on or before 28.1.1994 but it is another thing to say that the claim petitions filed by the responders were based on the success of their colleagues before the Administrative Tribunal in the year 1994. The employees working in the Finance Department had been promoted long back. We have noticed hereinbefore that some of them retired as Additional Secretaries whereas the respondents retired as merely Assistants. Presumably, promotions to the employees of the Finance Department were given systematically over a long period of time but no such grievance was made nor any application was filed before the appropriate forum. Such grievance, in our opinion, should have been raised or proper application before the Tribunal should have been filed long long back. It was in the aforementioned situation, the Tribunal was of the opinion that their applications were barred by limitation. Assuming that the cause of action for filing such applications arose in view of the observations made by the Tribunal in its order dated 16.4.1993 passed in Original Application No.166 of 1990, but then in terms of the Act and the Rules, the respondents were required to file a proper application within a period of one year only. It is borne out from the records that, in fact, 62 such applications were already pending when GOMs No.126 was issued.

11. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or latches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of

the High Court that GOMs No.126 dated 29.5.1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute. {See State of Himachal Pradesh & Anr. v. Kailash Chand Mahajan & Ors. [1992 Supp.(2) SCC 351]}.

12. We may notice that in Government of West Bengal v. Tarun K. Roy & Ors. [(2004) 1 SCC 347], this Court held :

> "The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided but one way or the other, even the matter had been considered by this Court in Debdas Kumar (supra). The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

See also Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr. [2006 (12) SCALE 347] and New Delhi Municipal Council v. Pan Singh & Ors. [2007 (4) SCALE 204].

Only because a cut off date has been fixed, the same per se cannot be said to be arbitrary as some date is required to be fixed for that purpose. Recently, this Court in K.S. Krishnaswamy etc. v. Union of India & Anr. [2006 (12) SCALE 307] held :

> "Nakara's case (supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut- off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara's case (supra) are not available in the facts of the present case. In other words, the facts in Nakara's case are clearly distinguishable."

13. In Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors. [(2005) 1 SCC 625], a Division Bench of this Court, as regards applicability of doctrine of promissory estoppel, opined :

> "In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court.
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> 20. In Shrijee Sales Coporation and Anr. v. Union of India (1997 (3) SCC 398) it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in Pawan Alloys and Casting Pvt. Ltd. Meerut etc. etc. v. P.P. State Electricity Board and Ors. (AIR 1997 SC 3810) and in Sales Tax officer and Anr. v. Shree Durga Oil Mills and Anr. (1998 (1) SCC 573) and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the government felt that it was necessary to do so in public interest."

{See also Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors. [(2007) 5 SCC 447]

14. Interpretation of GOMS No.126 would, no doubt, depend upon the backdrop of the events in which it was made but it is trite that the intention of the maker of the policy must be drawn from the language used therein. For the said purpose, the entire document should be read in its entirety. Original Application No.166 of 1990 was filed by two serving employees. The State could in obedience to the Tribunal's order create two supplementary posts and promote them thereto so as to treat them at par with their juniors working in the Finance Department. The Notification envisages a personal pay by way of stepping up of pay. It was given the prospective effect. No arrear of pay was to be paid. The upgradation sanctioned was to lapse in the event of retirement of the individuals or

their promotion to the upgraded post. The said upgradation were to be subject to the terms and conditions contained in clause 12 of the said order, a reading whereof would clearly, in our opinion, lead to only one conclusion that it was meant to be applied to the existing employees. By reason thereof, on upgradation, the seniors were required to continue to perform the duties attached to the existing post till they get their normal promotion to the next higher category. Upgradation of their posts was further dependant on the fact as to whether they had been promoted in their normal course only. It was meant to be a one time affair. In respect of some categories of employees, the question of upgradation was deferred as specified in paragraph 12(6).

15. It would, in our opinion, therefore, be incorrect to construe that the notification applied to all who had been recruited to the Tamil Nadu Secretariat Service on or before 28.1.1994. Additional benefits have been accorded by reason of the said notification. A person who fulfills the conditions, thus, would be entitled to the benefits provided for therein. Those who had not fulfilled the same could not claim any benefit thereunder. For the said purpose, the Court, in our view, should not give a strained or extended meaning thereto. While construing such a notification, the financial impact thereof is also required to be taken into consideration. {See State of A.P. & Anr. v. A.P. Pensioners' Association & Ors. [(2005) 13 SCC 161] and Union of India & Anr. v. Manik Lal Banerjee [(2006) 9 SCC 643]}.

16. Reliance placed by the learned counsel on R.L. Marwaha v. Union of India & Ors. [(1987) 4 SCC 31] is misplaced. This Court in the said decision was considering validity of a subordinate legislation whereby retrospective effect was granted. It was not a case where pensionary benefit was granted to a class of employees. The benefit was meant to be accorded to the existing employees only.

17. Reliance has been placed by Mr. Venkataramani on the following passage of The State of West Bengal v. Anwar Ali Sarkar [(1952) 3 SCR 284] :

> "The learned Attorney-General, appearing in support of these appeals, however, contends that while a reasonable classification of the kind mentioned above may be a test of the validity of a particular piece of legislation, it may not be the only test which will cover all cases and that there may be other tests also. In answer to the query of the Court he formulates an alternative test in the following words : If there is in fact inequality of treatment and such inequality is not made with a special intention of prejudicing any particular person or persons but is made in the general interest of administration, there is no infringement of article 14. It is at once obvious that, according to the test thus formulated, the validity of State action, legislative or executive, is made entirely dependent on the state of mind of the authority. This test will permit even flagrantly discriminatory State action on the specious plea of good faith and of the subjective view of the executive authority as to the existence of a supposed general interest of administration. This test, if accepted, will amount to adding at the end of article 14 the words "except in good faith and in the general interest of administration." This is clearly not permissible for the Court to do. Further, it is obvious that the addition of these words will, in the language of Brewer, J., in Gulf, Colorado and Santa Fe Railway Co. v. W. H. Ellis (165 U.S. 150), make the

> protecting clause a mere rope of sand, in no manner restraining State action. I am not, therefore, prepared to accept the proposition propounded by the learned Attorney-General, unsupported as it is by any judicial decision, as a sound test for determining the validity of State action."

This Court therein was dealing with the provisions of the West Bengal Special Courts Act. The said decision, in our opinion, has no application with the facts and circumstances of this case, particularly, when in the said decision itself, it has been pointed out that Article 14 does not insist that every piece of legislation must have universal application and it does not take away from the State the power to classify person for the purpose of legislation.

18. As to what, therefore, is necessary for this purpose is that classification must be rational and in order to pass the test : (1) the classification must be founded on an intelligible differentia and (2) the differentia must have a rational relation to the object sought to be achieved by the Act.

19. Equally misplaced is the decision of this Court in The State of Jammu & Kashmir v. Shri Triloki Nath Khosa & Ors. [(1974) 1 SCC 19], wherein this Court, inter alia, held that educational qualification can be held to be a criteria for valid classification for different scales of pay. Justice V.R. Krishna Iyer, held :

> "The social meaning of Articles 14 to 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent-but not snobbish and uncommitted-cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Articles 14 to 16 and the Courts jurisdiction awakens to dadden such manoeuvres. The soul of Article 16 is the promotion of the common man's capabilities, over-powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Articles 14 and 16 by the theory of classified equality which at its worst degenerates into class domination."

20. Reference has also been made by Mr. Venkataramani to a decision of this Court in U.P. Raghavendra Acharya & Ors. v. State of Karnataka & Ors. [2006 (6) SCALE 23] wherein it was held that pension is not a bounty and it is a deferred salary. This Court is not concerned herein with such a situation. In the said decision, this Court was concerned with a case where an employee retiring on a particular date was to receive 50% of the pension on the enhanced salary. In the fact situation obtaining therein that as the revision of pay and consequent revision in pension had come into force and by reason of a notification, the modality of computing the pension was required to be determined, those who had fulfilled the conditions laid down therein were held to be entitled to the benefits provided for thereunder holding that the concerned employees had a vested right therein.

21. For the reasons aforementioned, we regret to express our inability to agree with the view of the High Court. The impugned order of the High Court is, therefore, set aside. The appeals are allowed. In the facts and circumstances of the case, however, there shall be no orders as to costs.