Supreme Court of India
V. Kasturi vs Managing Director, State Bank Of ... on 9 October, 1998
Author: S Majamudar
Bench: S.B. Majumdar, M Jagannadha Rao.

PETITIONER:
V. KASTURI

Vs.

RESPONDENT:
MANAGING DIRECTOR, STATE BANK OF INDIA, BOMBAY & ANR.

DATE OF JUDGMENT: 09/10/1998

BENCH:
S.B. MAJUMDAR, M JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT S.B. Majamudar, J.

Leave granted We have heard learned counsel for the parties finally in this appeal. The short question involved in this appeal is: whether the appellant - original writ petitioner before the High Court was entitled to get the benefit of pension scheme available to the State Bank employees under the State Bank of India Employees Pension Fund Rules (for short the Rules). The learned Single Judge of the High Court held that the appellant was so entitled. The Division Bench set aside the said decision and rejected the claim of the appellant. In order to highlight the grievance of the appellant in this appeal, it is necessary to note background skeletal facts. BACKGROUND SKELETAL FACTS:

The appellant joined the respondent State Bank of India as an officer on 22.10.1963. In the year 1979 the respondent Bank framed the pension scheme under Regulation 45 of the State Bank of India Officer (Determination of Terms and Conditions of Service) Order of 1979. The State Bank of India also had framed State Bank of India Employees Pension Fund Rules in exercise of powers conferred by Section 50 of the State Bank of India Act. The appellant became a member of the said

Fund as required of him while joining the service of the Bank. He resigned from the Bank service on 31St July, 1984. By that time he had completed 20 years and 9 months of pensionable service. At the time of his resignation which was treated as voluntary retirement, he was not entitled to get pension under the aforesaid Rules as the eligibility requirement for earning pension as per Rule 22(1)(c) of the said Rules was to the effect that the employee should have retired from Bank service after 25 years of pensionable service. However, on account of various representations from the Bank employees the said eligibility condition was relaxed with effect from 20th September, 1986 whereby the original clause (c) rule 22(1) was replaced by another clause (c) which provided that an employee retiring after completion of 20 years of pensionable service irrespective of the age could get benefit of the pension scheme by his request in writing. The appellant's contention before the respondent authorities was that though he had resigned on 31st July, 1984 as he had already completed 20 years of pensionable service by that time the benefit of the amended provision of Clause (c) of rule 22(1) of the Rules could be available to him at least prospectively from 20th September, 1986 i.e. from the date on which amended provision came into force. The said request was rejected by the respondent Bank authorities on the ground that the said amended provision which introduced anew pension scheme for covering the additional class of retiring employee on completion of 20 years of pensionable service, instead of earlier requirement of 25 years of pensionable service, could not retrospectively apply in the case of the appellant who had resigned and ceased to be a Bank employee more than two years prior to coming into force of this amended pension scheme. The appellant thereafter carried the matter by way of a writ in the High Court of Judicature at Madras. The learned Single Judge who heard the writ petition, following the Constitution Bench judgment of this Court in the case of D S Nakara & Ors. Vs. Union of India, 1983 (1) SCC 305, held that the appellant was entitled to the benefit of amended provision of rule 22(1)(c) from the date of coming into operation of the said provision as he was a member of the employees pension fund at the time when he ceased to be a Bank employee and he had already completed the requisite 20 years of pensionable service by that time. the Division Bench of the High Court in Writ Appeal moved by the respondent Bank took a contrary view and came to the conclusion that the amended provision of the rule introduced a new scheme for covering entirely a district class of erstwhile employees who had retired from Bank service and the said provision could not have any retrospective effect and could not cover the case of the appellant who had retired more than two years prior to the coming into force of the amended scheme of pension. That is how the appellant is before us in these proceedings.

RIVAL CONTENTIONS:

Learned counsel for the appellant, Shri N.G.R. Prasad, placing reliance on a number of decisions of this Court and especially the constitution Bench decision of this court in Nakara's case (Supra) vehemently contended that the appellant who had completed 20 years of pensionable service at the time be retired after his resignation, formed the very same class of Bank employees who retired after completing 20 years pensionable service and hence they had all to be treated uniformly; that pension was not a bounty but was a reward for meritorious past service and once the eligibility for earning the said pension after completion of 20 years of pensionable service became available to an employee, whether he retired at one point of time or other would not make any difference. All such employees formed the same class. Hence, it was not open to the respondent authorities to deny the appellant pensionary benefit only on the ground that when be retired in 1984 after his resignation,

even though he had completed 20 years of pensionable service by then, the then existing pension rules did not render him eligible to earn pension, when subsequently the said rules were relaxed for this very class of employees with effect from September, 1986. In this connection it was submitted that the appellant was not claiming any pension for the period from 1st August, 1984 till 19th September, 1986 but at least from the date of which the amended provision came into force as the appellant was alive by then he was entitled to proportionate pension at least from that date onwards to the extent of the pensionable service put in by him. The denial of the said benefit to the appellant was purely arbitrary and unreasonable and was not justified on the touchstone of Article 14 of the Constitution of India. He made it clear that he was not challenging the cut off date fixed by the respondent authorities while amending sub-clause (c) of Rule 22(1) of the pension rules. All that he submitted was that as the appellant falls in the same class of other Bank employees who had completed 20 years of pensionable service by the time of retirement the appellant was entitled to earn pension from 20th September, 1986 as he had survived on that date, his earlier retirement notwithstanding.

Learned senior counsel Shri Anil B. Divan for the respondent Bank authorities on the other hand submitted placing reliance on a number of decisions of this Court that thee Constitution Bench Judgment of this Court in Nakara's case (supra) did not apply to the facts of the present case as the appellant was not a pensioner within the scheme of the pension when he resigned from Bank job on 31st July, 1984. Consequently subsequent amendment of the rule after his retirement which extended the net of coverage of eligible pensioner could not apply to him as he was outside the said sweep of the amended provision when it came into force in September, 1986. That the appellant cannot be said to be forming the same class of eligible pensioners who had completed 20 years of pensionable service on 20th September, 1986. By his own violation he had opted out from the Bank service two years prior thereto. That the amended provision would apply only to those Bank employees who had completed 20 years of pensionable service by 20th September, 1986 when the amended provision applied. Consequently, the claim of the appellant was rightly rejected by the Division Bench of the High Court.

Point for consideration:

In view of the aforesaid rival contentions, the following solitary point arise for our consideration: (1)Whether the appellant was entitled to get the benefit of amended Rule 22(1) (c) of the Rules from 20th September, 1986 onwards?

We shall examine this solitary point for determination in the light of the rival contentions placed before us by learned counsel for the respective parties based on a number of decisions of this Court to which we will make reference at an appropriate place in the latter part of this judgment. The Pension Scheme before 20.09.1986:

---------- Before we proceed to examine the rival contentions centering round this point, it will be necessary to note the salient features of the pension scheme applicable to Bank

employees at the relevant time when the appellant resigned from Bank service on 31st July, 1984 and also the change brought about in the said scheme with effect from 20th September, 1986.

The respondent Bank, as noted earlier, in exercise of its powers conferred under Section 50 of the State Bank of India Act (23 of 1955), the Central Board of the State Bank of India, after consultation with the reserve Bank of India and with the previous sanction of the Central Government, framed regulations for providing for establishment and maintenance of pension fund for the benefit of its employees. The said pension fund was created in pursuance of clause (o) of sub-section (2) of Section 50 of the State Bank of India Act, 1955. The regulations so framed were styled as the 'State Bank of India Employees' Pension Fund Rules" which are being referred to by us in this judgment as "the Rules'. Rule 1 thereof provided for constitution of a fund called "THE STATE BANK OF INDIA EMPLOYEES' PENSION FUND". The said fund was deemed to have come into existence on 1st July, 1955. It is not in dispute between the parties that the appellant when he joined the Bank service became a member of the said fund. the term "Member" is defined in Rule 2 to mean:

"any person in the service of the Bank who has been admitted to the membership of the fund".

Rule 7 of the Rule provide that:

" every permanent employee in the service of the Bank who is entitled to pension benefits under the terms & conditions of his service shall become a member of the Fund from (a) the date from which he is confirmed in the service of the Bank or (b) the date from which he may be required to become a member of the Fund under the terms and conditions of his service."

It is not in dispute between the parties that the appellant being a confirmed permanent employee became a member of the said Fund and he continued to be so till the date of his resignation from the Bank service. Rule 3 of the Rules provide that:

"That trustees of the fund shall be the Director of the Bank for the time being and at every meeting of such trustees the Chairman of the Bank shall be the Chairman of the meeting and in his absence one of the Directors not being an executive officer shall be elected Chairman of the meeting." Rule 8 lays down the criteria for ruling out employees from membership of the pension fund, the excluded categories of employees are mentioned in sub-clauses (a) to (d) of Rule 8 who were not eligible to become members of the fund. The appellant did not fall in any of these excluded categories. He, therefore, by the thrust of rule 7 became a member of the pension fund. rule 9 sub-rule (1) lays down that: "Subject as hereinafter provided every employee shall, as from the date of his admission to the fund, contribute to the fund every month an amount equal to five per cent of his salary subject to a maximum provided therein".

Sub-rule (2) thereof entitles the powers of the trustees at their discretion to suspend the operation of sub-rule (1) or reduce the percentage of the members' contribution at any time in the case of any class or category of employees and for such period as they shall think necessary and to reimpose the contribution should they consider it necessary but without retrospective effect. As per sub-rule (3) of rule 9:

"Each employee's contributions to the fund under sub-rule (1) shall be credited in the books of the fund to an account in his name and a statement of the account shall be supplied to him half-yearly". Sub-rule (5) of Rule 9 provided that:

"In the event of member retiring from the Bank's service, or in the event of a member dying, in each case before such member has qualified for a pension there shall be payable to him or, in the event of his death, to the persons and in the manner named in sub-rule (7) hereof, the amount of such member's own contributions with interest accused thereon". Amended Rule 10 days down that:

"The Bank will subscribe monthly to the fund a sum equal to ten per cent of the salary payable by the Bank in respect of all employees who are members of the fund. However, when an employee ceases to be in pensionable service in terms of Rule 20, no subscription will be made by the Bank for the period of such service. No amount subscribed by the Bank shall be credited to the individual account of any member".

By rule 13 the trustees were given powers to invest the moneys of the fund or any portion thereof in stock, funds and securities in which a trustee is authorized to invest trust money by any law for the time being in force. Rule 15 provided that:

"...the retirement of all other employees of the Bank shall be subject to the sanction of the Executive Committee or the Local Board concerned with employment...".

It also lay down that "....any officer or other employee who shall leave the service without sanction as required by this rule shall forfeit all claims upon the funds for pension".

Rule 17 lays down that:

"Pensions shall begin to accrue on the first day succeeding that of retirement and shall be payable monthly to the beneficiary personally or to his order...".

As per rule 18:

"Pensions shall in each case be debited to the member's account in the fund until the balance thereof is exhausted and thereafter to the general balance of the fund".

We may also in this connection refer to rule 26 which provides that:

"Every employee when joining the fund shall subscribe an agreement in the following form:- I hereby declare that I have read and understood the Rules of the State Bank of India Employees, Pension Fund and I hereby subscribe and agree to be bound by the said Rules.

Name in full.....

Date of Birth.....

Name of appointment..... Date of joining service..... The next relevant rule is rule 22 which is required to be extracted hereunder in the form in which it existed at the time when the appellant ceased to be a Bank employee on his resignation from Bank service on 31st July, 1984. Rule 22(1) sub-Rules (a) to (c) read as follows:

"22 (1) A member shall be entitled to a pension under these Rules on retiring from the Bank's service-

(a) after having completed twenty years' pensionable service provided that he has attained the age of fifty years;

(b) after having completed twenty years' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) after twenty-five years pensionable service." CHANGES IN THE SCHEME AFTER 20.09.1986:

---------- Sub-rule (2) of Rule 22 is not relevant for our present purpose. Rule 22 sub-rule (1)(c) underwent a change and the revised form thereof with effect from 20th September, 1986 read as under:

"(c) After having completed twenty years pensionable service, irrespective of the age, he shall have attained, at his request in writing.

(d) After twenty five years pensionable service. 22(3) A member who has been permitted to retire under clause 1(c) above shall be entitled to proportionate pension."

In other words, in clause (c), the period of twenty five years stood reduced to twenty years w.e.f. 20th September, 1986.

Now a mere look at the aforesaid relevant provisions of the rules shows that even though the appellant was a member of the pension Fund, when he ceased to be a Bank employee after 31st July, 1984 on his resignation from the Bank service, he was not entitled to pension as none of the conditions of rule 22(1) sub-Rules (a) to (c) then existing applied in his case. Even though he had completed 20 years of pensionable service at that time he had not attained the age of 50 years. He was only 44 years of age. Hence rule 22(1)(a) did not apply in his case. Rule 22(1)(b) also was out of picture for him as he had not retired because of any incapacity. He was in good health but for his own personal reasons he walked out of the Bank service at the age of 44 years. Then remains only clause (c) of Rule 22(1) as then existing which laid down that if a member of the fund who retired from bank service after 25 years of pensionable service could get entitlement for full pension to be charged on the said fund. Thus as rule 22(1) stood in those days when the appellant resigned from Bank service he was not eligible to earn any pension at all. Once that happened, he could invoke the benefit of only Rule 9 sub-rule (5) and claim the amount of his own contributions remaining to the credit of his account in the fund with the interest accrued thereon. It is not in dispute that he did

receive the said amount of his personal contribution with interest accrued thereon. As the situation then existed no further relief could have been given or was available to the appellant and he could not have claimed anymore amount from the fund. However, the appellant stakes his case for pension under the said scheme only on the basis of the amended rule 22(1) by insertion of a new sub-rule (c) with effect from 20th September, 1986. It is also not in dispute between the parties that the said amended sub-clause (c) became operative only from 20th September, 1986 and that it had no retrospective effect. The short question is whether the appellant could stake his claim for pension on the ground that he had completed 20 years of pensionable service by the time he ceased to be a Bank employee in 1984, when he had survived till the amended clause (c) rule 22(1) came into force.

For supporting the aforesaid claim of the appellant, learned counsel for the appellant vehemently contended that all the Bank employees who had completed 20 years of meritorious pensionable service by the time of retirement or resignation from Bank service, would form one class and if that is so, the moment rule 22(1)(c) get amended the pension scheme which had already applied in the case of appellant being a member of the said scheme from the inception of his bank service can be said to be not a new scheme but it can be said to be conferment of an additional advantage available to all the members of the very same scheme and if all such pensioners similarly situated being members of the same class namely, employees retiring after having completed 20 years pensionable service, were treated differently on the specious plea that only those who retire after the cut-off date of 20th September, 1986 would get pension and not those who retired earlier though having completed 20 years of pensionable service, a clear case of hostile discrimination would result. Thee employees like the appellant who had retired earlier can be said to be arbitrarily being denied the benefit of the pension scheme which got further amended for the benefit of the very same class of employees. This action on the part of the Bank would therefore, remain violative of Article 14 of the constitution of India.

On a close look of the relevant provisions of the Rules in is not possible to agree with this contention. The appellant, in order to earn pension under rule 22(1) sub-clause (c) as amended in 1986 has to satisfy the following twin conditions:

i)At the time when the amended sub-clause (c) applied i.e. from 22nd September, 1986, he should be a member of the pension fund:

ii)He should have by then completed 20 years of pensionable service, and should have pout forward his requisition in writing for availing the benefit of the said provision.

Unless both these conditions are satisfied the amended clause (c) of rule 22(1) cannot apply in his case. We have to note that the service bio-data of the appellant contra indicates the applicability of those two conditions. He was not a member of the fund on 21st September, 1986. He had ceased to be a member of the fund on his retirement in 1984. As laid down in the definition of the term "member" the concerned employee should be in service of the Bank and he should have been admitted to the membership of the fund. So far as the admission into the membership of the fund is concerned, the appellant has not satisfied the requirement inasmuch as he was a member of the fund but the second requisition of the definition was not fulfilled by him in 1986 as he was not in

service of the Bank on 20th September, 1986 when clause 22(1)(c) as amended came into force. Consequently the first condition for applicability of the amended clause (c) of rule 22(1) did not apply to the facts of the present case. Consequently, the question of compliance of the second condition that he should have completed 20 years of pensionable service would pale into insignificance as even though he had completed 20 years of pensionable service when he ceased to be a Bank employee in 1984 he did not come within the the beneficial sweep of rule 22(1) clause (c) as amended, as he was not a member of the pension fund in 1986 as he had ceased to be a member of the fund after 31st July, 1984. He was, therefore, out of the sweep of the pension fund scheme on 20th September, 1986 when rule 22(1)(c) got amended. The very opening part of rule 22(1) lay down that a member should be entitled to pension under the Rules if he satisfies the conditions laid down in the said Rule but if he is not a member on the relevant date, the question of his being covered by any of the clauses of the said rule would not survive at all. Thus on the very scheme of the Rules and the amended provision of sub-rule (c) of rule 22(1) the appellant's case would fail and consequently he would not be entitled to claim any benefit from the aforesaid amended provision even prospectively from 20th September, 1986 as he was not at all covered by the said provision on that date. We may also note that the second requirement for the applicability of rule 22(1)(c) as amended in that after having completed 20 years of pensionable service the concerned member of the fund irrespective of age i.e. even being less than 50 years of age can invoke the benefit of the said provision by making a request in writing for getting propertionate pension. Even if such request is made it is in the hands of the Executive Committee of the Central Board of the Bank to accept such a request or not as seen from rule 15. Any officer who leaves the service without such sanction would forfeit all the claims under the fund for pension. Consequently occasion for an employee who is a member of the fund to make a request in writing to the Bank for getting the benefit of pension scheme as per rule 22(1)(c) as amended would arise provided such an employee has completed 20 years of pensionable service and has obtained the right under the amended sub-clause (c) of rule 22(1) to make his request in writing. Thus, even the second condition for applicability of rule 22(1) sub-clause (c) as amended would presuppose that the concerned member of the fund having completed 20 years of service must be in a position at the time of retirement to make his request in writing for getting the benefit of the said provision such an mentality would arise only on and from the date on which the said amended provision came into force. Meaning thereby those employees like the appellant who had ceased to be members prior to the said date and who might have completed 20 years of service in past will not be able to invoke the amended cause (c) rule 22(1) at any time after their earlier retirement. Thus even the second condition of giving a requisition in writing would not be available to such employees like the appellant. It is also axiomatic that when the appellant resigned on 31st July, 1984 at the age of 44 years there was no occasion for him to give any such written request for proportionate pension as in those days clause (c) in amended form was not available for being invoked by him. The second condition for applicability of the amended clause (c) of rule 22(1) must of necessity therefore, mean that only those employees who were even less than 50 years of age and who retired on and after 20th September, 1986 having then completed 20 years of pensionable service could invoke the said amended provision by requesting in writing. The appellant did not and could not comply with this second condition for invoking amended clause (c) of Rule 22(1).

We must also keep in view rule 26 of the pension Rules which clearly shows that when a person enters the Bank service, he becomes a member of the fund and agrees to be governed by the Rules of the scheme. He becomes the beneficiary of the trust fund if he satisfies all the requisite conditions of the pension fund. If he is not a beneficiary of the fund at the time when he retires, as it happened in the case of the appellant in 1984, no benefit under the said scheme of the fund would be available to him subsequently as he will be out of the class of beneficiaries. Consequently, no question of his being given any discriminatory treatment vis-a-vis other existing beneficiaries under the scheme of the fund that were already in Bank service as members of the fund on 20th September, 1986 when the beneficial provisions of the amended rule 22(1)(c) came into force, would at all survive for consideration.

For all these reasons, the solitary point for consideration has to be answered against the appellant. However, as learned counsel for the parties invited our attention to number of decisions of this Court in support of their respective cases, we deem it fit to refer to them and consider their sweep.

Learned counsel for the appellant, at the outset, invited our attention to the Constitution Bench decision of this Court in D.S.Nakara (supra). The Constitution Bench in the aforesaid case, speaking through D.A.Desai, J, had to consider the question of a cut-off date found in the pension scheme which was uniformly applicable to all the Central Government employees who had formed one class at the time of retirement and who were entitled to pension. The question was whether amount of pension which was computed for them in the light of available formula could have been further enhanced on the basis of a subsequent more beneficial formula and whether it could be denied only on the ground that they had retired prior to the date on which such enhanced computation of pension was made available to the pensioners. In the light of the aforesaid fact situation it was observed that all employees governed by the pension scheme and had become eligible to earn pension at the time of their retirement formed one class. It was held that such a cut off date for granting additional benefits to only some of the pensioners in the same class of employees could not be countenanced on the touchstone of Article 14 of the Constitution of India. In para 8 of the report it was noted that the:

"Primary contention is that the pensioners of the Central Government form a class for the purpose of pensionary benefits and there could not be miniclassification within the class designated as pensioners...."

A question was posed in para 9 of the report that can this class of pensioners further be divisible for the purpose of entitlement' and 'payment' of pension into those who retired by certain date and those who retired after that date. The aforesaid decision cannot be of any assistance to learned counsel for the appellant on the facts of the present case. In nakara's case admittedly all the Central Government servants were governed by pension scheme and were eligible to draw pension on retirement. They therefore, formed one class. In the facts of the present case, it is difficult to appreciate how the appellant can be said to be forming the same class of employees who came to be later on governed for the first time in 1986 by the pension scheme by being conferred the benefit of newly introduced pension eligibility as per amended clause (c) of rule 22(1). The new class of employees covered by it was consisting of all the then existing members of the fund who had

completed 20 years of pensionable service and who could be below the age of 50 years at the time of their retirement as the earlier restriction of age of 55 years as found in clause (a) of rule 22(1) was revised by re-enacting clause (c). It is also to be noted that earlier clause (a) gave retirees at the age of 50 years full pension. And clause (c) sought to give retirees below 50 years only proportionate pension for the first time after September, 1986. This new class of employees were for the first time made eligible to get the benefit of pension scheme under rule 22(1). Such pensionary benefit was not available to them prior to the amendment of clause (c) of rule 22(1). Hence, it was certainly a new pension scheme for them & not old wine in a new bottle. for such class of employees there was no question of any miniclassification as for the entire class of such employees for the first time the benefit of pension scheme was made available by the amendment. The decision of the Constitution Bench in Nakara's case therefore, cannot advance the case of learned counsel for the appellant. We may also mention that the ratio of Nakara's case was distinguished by two later Constitution Bench decisions of this Court. In the case of India Ex-Services League and Ors. Vs. Union of India & Ors. 1991(2) SCC 104, a later Constitution Bench, speaking through Verma, J, (as he then was) made the following pertinent observations in para 12 of the report:

"The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last ten months' salary instead of 36 months' salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not nearly to retirees subsequent to the date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more".

In yet another later Constitution Bench judgment of this Court in the case of Krishena Kumar etc. etc. Vs. Union of India & Ors. 1990 (4) SCC 207, K.N.Saikia, J., speaking for the Constitution Bench distinguished Nakara's case by holding that:

"In Nakara the Court treated the pension retirees only as a homogeneous class. It was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund....."

It has to be kept in view that in the present case we are concerned with the pension fund and so far as the pension fund is concerned Nakara's judgment by itself would not apply as clearly mentioned in the very same judgment in para 45 of the ruling in Nakara's case (supra). In para 45, it has been observed that:

"Let us clear one misconception. The pension scheme including the liberalised scheme available to the government employees in non-contributory in character. It was not pointed out that there is something like a pension fund..... The payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, 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....".

It becomes therefore, obvious that nakara's judgement cannot be effectively pressed in service by learned counsel for the appellant on the facts of the present case. It is also to be kept in view that in the present case we are also concerned with pension fund while in Nakara's observations is out of the sweep of that decision. Our attention was then invited by learned counsel for the appellant to two later decisions of this Court. In the case of All India reserve Bank retired Officers Association & Ors. Vs. Union of India & Anr., 1992 Supp. (1) SCC 664, A.M. Ahmadi, J (as he then was), spoke for the Division Bench of two learned Judges. The case before this Court in the aforesaid decision was whether the cut-off date fixed for bringing into force the pension scheme which earlier did not exist for the Bank employees could be said to be discriminatory from any angle. The Court while distinguishing Nakara's ratio held that:

"Employees of the Reserve Bank of India were, prior to the introduction of the pension scheme, enjoying superannuation benefits comprising (i) CPF and (ii) gratuity.....".

The pension scheme was being introduced for the first time from the cut-off date. In these circumstances, the employees who had retired earlier when pension scheme was not available could not make effective grievance in connection with those of a few other categories who retire latter when pension scheme had already come into force. Ahmadi, J., speaking for the Court in the aforesaid decision highlighted the observations in Nakara's case found at page 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 retrial benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retrial benefit, one could have appreciated an argument that those who had already retired could not expect it." The portion mentioned in Nakara's case clearly indicated that all the employees in Nakara's case were governed by the existing scheme and were the recipients of retrial benefits. It was an upward revision of the existing benefit that would in normal course be made available to all such beneficiaries of existing retrial benefits. On the facts of the present case, as seen earlier, employees like the appellant who had retired prior to the amendment of clause (c) of rule 22(1) were not recipients of any existing benefit of pension. They were in fact out of the pension scheme whatsoever being employees who had not completed 50 years of age even though they had

completed 20 years pensionable service. For such employees there was no retrial benefit till appropriate amendment of clause (c) of rule 22(1). Consequently, the amended clause (c) must be held to be conferring a new retrial benefit and not enhancing the existing benefit for such employees. The aforesaid decision of this Court in the All India Reserve Bank Retired Officers Association case (supra) therefore, also could not be effectively distinguished by learned counsel for the appellant on the ground that in that case there was no pension scheme while in this case there was an existing pension scheme. He then invited our attention to a decision of this Court in State of Punjab Vs. Justice S.S Dewan (Retired Chief Justice) & Ors. 1997(4) SCC 569. In that case a three Judge Bench of this Court, speaking through Nanavati, J., had to examine the question whether the pension scheme as amended on 22.2.1990 available to introduction of a new retrial benefit or it only liberalised an existing retrial benefit. In that case the question of computation of pension of judicial officers governed by pension scheme came up for consideration. Before an amendment of the said scheme on 22.2.1990, the retiring judicial officer was not entitled for computation of his pension to club the period of practice at the bar before joining the judiciary with judicial service thereafter. But by the amendment dated 22.2.90 the period of practice at the bar up to 10 years was thereafter permitted to be treated as part of qualifying service for computation of pension of judicial officers. This amendment was considered to be conferring a new retrial benefit and was not held to be a liberalisation of an existing benefit. The ratio of Nakara's decision was distinguished for coming to the aforesaid conclusion. It was held that:

"Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The Formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. D.S.Nakara case involved the change of formula for determining average emoluments and it was treated as liberalisation or upward revision of the existing pension scheme. On parity of reasoning it can be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service, then it would assume a different character. The it is not liberalisation of the existing scheme but introduction of a new retrial benefit".

The aforesaid observations which were strongly relied upon by learned counsel for the appellant cannot be of any real assistance to him Reason is obvious. If an employee is already covered by an existing scheme and the main determinative factor for computation of his pension, at the time of his retirement, undergoes any modification with respect to the other determinative factor, namely, qualifying service then such a modification can be treated as elongation of the already accrued retirral benefit. On the facts of the present case, the said observations cannot be of any avail to the learned counsel for the appellant for the simple reason that when the appellant retired in 1984, no right had accrued to him to get pension from the fund as per rule 22(1)(c) as existing then. He was not a pensioner at all when he retired. Consequently, any subsequent amendment in the said pension scheme by which a new class of pensioners was brought in cannot be said to be enhancement of a prior existing retrial benefit already earned by the concerned employee. Effort made by learned counsel for the appellant by submitting that in the present case the question is of in

service experience and hence observations in the aforesaid case help him cannot be of any avail as apart from the question of the consideration of in service experience only or clubbing it with pre-service experience, the first requirement for earning the said benefit of clubbing would be to postulate that the concerned employee becomes a pensioner at the time of his retirement. If he was to a pensioner then he is out of the arena of contest for getting any enhanced rate of pension subsequently. For him there is no retiring pension at all. Hence the further question of enhancing the said rates in further does not survive for him.

Learned counsel for the appellant then invited our attention to a decision of this Court in Dhanraj & Ors. Vs. State of J & K & Ors. 1998(4) SCC 30. In the said case the question for consideration before the Bench of two learned Judges of this Court was as to whether the employees of erstwhile State of Jammu & Kashmir who were later on absorbed by Jammu & Kashmir State Road Transport Corporation were entitled to pensionary benefits in terms of GO dated 3.10.86 when they retired from the service of the Corporation prior to 9.6.81. Relying on the strength of the said Govt. Order it was held by this Court that all erstwhile State employees would form one class and were entitled to get the benefit of the Govt. Order dated 3.10.86 even though they might have retired prior to 9.6.81 which was the date on which Article 177 of J & K Civil Services Regulations was rendered in the peculiar circumstances of its own case and is based on the clear wordings of the Govt. Order dated 3.10.86 by which it was mandate to give uniform treatment to all the retirees from Corporation who were earlier State Govt. servants. They formed one and same class. It is in the light of the aforesaid fact situation examined by this Court in that Judgment that we have to appreciate the reasoning found in para 14 of the report on which strong reliance was placed by learned counsel for the appellant. It has been observed therein that even otherwise there was no justifiable criteria for the State Government to draw the line between those who retired earlier and those who retired after 9.6.81. 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. These observations are to be appreciated in the light of the facts examined by this Court in this decision. The State of Jammu & Kashmir was dealing with the very same class of employees who were all ex-employees of the State Govt. who had subsequently been absorbed by the Corporation and thereafter had retired. As all of them formed the same class, the same treatment was required to be given to them in connection with the pensionary benefits made available by the State Govt. The said decision cannot be of any avail to learned counsel for the appellant as in the present case the question is whether any uniform treatment can be given to non-pensioners like the appellant as is given to the pensioners who retired after the amendment of Rule 22(1)(c) which came into force from 20th September, 1986. The next decision on which reliance was placed by learned counsel for the appellant is in the case of R.L.Marwaha Vs. Union of India & Ors. 1987(4) SCC 31. In this case a Bench of two learned Judges of this Court speaking through E.S.Venkataramaiah, J., (as he then was) had to consider the question whether the ex-government servants who were holding pensionable posts when absorbed by autonomous bodies could be treated differently while granting benefit of counting their period of government service as part of qualifying service for computing pension when they retired from the autonomous body. It was held on the facts of this case that the benefit of Govt. Order should be extended to all pensioners who had rendered service earlier in the Central Government and extra benefits given to the pensioners from the date of the OM could not be denied to those pensioners who had retired prior to the corning into operation of the said OM. The

aforesaid decision clearly indicates that once all the ex-government servants who were pensioners formed the same class, then if extra benefit has to be given to these pensioners by subsequent Om then all such pensioners who were alive and available to receive the benefit of the Om prospectively could not be denied the same only on the ground that some of them had retired earlier to the OM and others retired thereafter. this decision also proceeds on the admitted factual position that all the erstwhile government servants were pensioners and were forming the same class and hence the were entitled to equal treatment when at the time of coming into operation of the Govt. Order they were available to receive the benefit of the said Govt. Order. the ratio of the decision of the Constitution Bench in Nakara's case would squarely get attracted to the fact situation examined by this court in the aforesaid case but it cannot be of any avail to the appellant who was not included in the very same class of pensioners who had retired from Bank service. In the case of T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of expenditure, New Delhi & Ors. 1993(2) SCC 174, on which reliance was placed by learned counsel for the appellant, the fact situation was almost similar to the one which was examined by this Court in R.L.Marwaha case (supra). In that case also the ex-Central Govt. servants were already having pensionary benefits and were subsequently absorbed into public undertakings. The question was whether any restriction on the applicability of the revised pensionary benefits to the very same class of employees from a given date could be sustained as fair and reasonable. In this connection it was held by Kuldip Singh, J, speaking for the Division Bench of two Judges of this Court that:

"The object of bringing into existence the revised terms and conditions in the memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum, would be defeating the very object and purpose of the revised defeating the very object and purpose of the revised memorandum and contrary to fair play and justice".

Thus, the aforesaid decision shows that once all the ex-government servants were forming the same class of pensioners having already earned pensionary benefits, whenever additional pensionary benefits were to be made available to the same class it should be made available to all the members forming the same class whether they had retired earlier to 16th June, 1967 or subsequent thereto. This judgment also falls in line with the ratio of the decision in Nakara's case which on the facts of the present case, as noted earlier, cannot be pressed in service by the appellant. learned counsel for the appellant then invited our attention to a Judgment of two Judge Bench of this Court in M.C.Dhingra Vs. Union of India & Ors. 1996(7) SCC 564. This Court in the said decision examined a similar fact situation as was found in T. S. Thiruvengadam case (supra). In that case an employee who was serving in the State service was subsequently selected as an employee of the Ministry in the Central government service. The question was whether while computing the quantum of pension to be payable to him his earlier service in the State could be clubbed or not. The Circular issued by the Central Government conferring the benefit of such State service to only retirees after the date of issuance of the circular, and not to the appellant before this Court who had retired earlier to the issuance of this circular, was held to be discriminatory if so interpreted. It was held that as the appellant was already fanning a part of the same class of pensioners additional benefit for computation of pension on the basis of the subsequent circular could not be denied to him as such

denial would be arbitrary and fall foul on the touchstone of Article 14 of the Constitution of India. The ratio of Nakara's case (supra) was pressed in service for coming to the said conclusion. It becomes at once clear that the decision in the aforesaid case was rendered in the light of the fact situation wherein the appellant was already a pensioner who had retired from service and when he had survived during the time the said beneficial circular came into force, he had to be given the said benefit even though he had retired prior to the date of the circular otherwise equals would be treated in-equally. As already seen earlier such is not the fact situation in the present case.

We may now turn to two decisions of this Court which have a direct bearing on the result of these proceedings. In the case of Commander, Head Quarter, Calcutta & Ors. vs. Capt. Biplabendra Chanda, 1997(1)SCC 208, a two Judge Bench of this Court had to examine the new/revised Rules which had reduced the requisite minimum qualifying service for earning pension while considering the case of a person who had retired earlier and was ineligible to get pension under the Rules in force then. This Court held that he could not be given eligibility for pension by victual of the amended Rule. In the said case, the Bench examined the fact situation wherein the claimant was a Commissioned Officer. He retired on 18.5.1982. On the date of his retirement only 2/3rd of pre-commissioned service was allowed to be counted towards qualifying service for earning pensionary benefits. The pension Rules were amended with effect from 1.1.1986 and the full commissioned service was directed to be taken into account for working out the qualifying service. While the High Court allowed the writ petition based on Nakara's case (supra) this Court held that Nakara's case has no application as the claimant was ineligible for grant of pension because on the date of his retirement he did not possess the qualifying service as per the Rules then existing. It becomes obvious, therefore, that when the person earlier retiring from service is not eligible to get pension as per the Rules, then if by subsequent prospective amendment of the Rules such class of persons are brought within the sweep of pension provisions, these provisions have to be treated as a new scheme of pension which cannot apply to those employees who retired prior to the advent of such a new pension scheme. The fact situation in the present case is almost parallel. We do not see any reason why the ratio of the said decision cannot be applied to the present case.

Shri Divan, learned senior counsel for the respondent also invited our attention to another decision of this Court in Govt. of T.N. & Anr. Vs. K.Jayaraman 1997 (9) SCC 606, wherein a Bench of two Judges of this Court presided over by K.Ramaswamy, J, had to examine a similar question. In that case the respondent at the time of his retirement was not eligible to get the benefit of pension scheme. The pension Rules were subsequently amended after his retirement and as he had survived after the amendment of these pension Rules he put forward his claim for pension at least from that date. The Central Administrative Tribunal, Madras accepted this request of the respondent. While up-turning the decision of the Tribunal, this Court held that:

" As per the pre-existing Rules, the government servant was required to put in 30 years of qualifying service for pensionary benefits. The Rules came to be amended by GOMs No. 1537 which came to be effective from 13-11-1972. It was stated therein that the Government, may by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, after he has attained the age of fifty years or after he has compeleted twenty-five years of qualifying service retire any government servant. Any government servant who has attained the age of 50 years

or who has completed 25 years of qualifying service may also likewise retire from service by giving notice of not less than three months in writing to the appropriate authority. This rule has come into force, as stated earlier, w.e.f. 13-11-1972...."

It was held that the respondent who had voluntarily retired prior thereto was not entitled to the benefit of the said rule. The fact situation in the present case also in parallel to the one examined by this Court in the aforesaid decision. We may also lastly refer to a decision of two Judge Bench of this Court in Union of India & Ors. vs. Lieut (Mrs.) E.Lacts, 1997(7) SCC 334. Sujata Manohar, J, in that case examined liberalised pension scheme by which the group of employees who were earlier not covered by the pension scheme were conferred benefit from a given date. As the respondent before the Court had already retired prior to that date, he was held not entitled to benefits of liberalised pension scheme. It was held that such a respondent could not claim of discriminatory treatment in the grant of pension because there was no provision for grant of pension in the terms and conditions of her appointment which she had herself accepted. The appellant's case also falls in the same category of cases which were examined in the aforesaid decision by this Court. This decision also, therefore, goes in favour of the respondent and against the appellant.

It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly get projected. Category I

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by 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's case (supra) would cover this category of cases.

Category II:

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by

the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. the decisions of this Court covering such second category of cases are: Commander, Head Quarter, Calcutta & Ors. Vs. Capt. Biplabendra Chanda, 1997(1) SCC 208 (supra 606 (supra) and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit.

The appellant falls in the second category of cases, Consequently, no fault can be found with the judgment of the Division Bench of the High Court non-suiting the appellant. In the result, this appeal fails and is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

[S.B.MAJMUDAR] [M.JAGANNADHA RAO] NEW DELHI.

October 9, 1998.