Supreme Court of India
D.S. Nakara & Others vs Union Of India on 17 December, 1982
Equivalent citations: 1983 AIR 130, 1983 SCR (2) 165
Author: D Desai
Bench: Chandrachud, Y.V. ((Cj), Tulzapurkar, V.D., Desai, D.A., Reddy, O. Chinnappa (J), Islam, Baharul (J)

PETITIONER:
D.S. NAKARA & OTHERS

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT17/12/1982

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
CHANDRACHUD, Y.V. ((CJ)
TULZAPURKAR, V.D.
REDDY, O. CHINNAPPA (J)
ISLAM, BAHARUL (J)

CITATION:
1983 AIR 130 1983 SCR (2) 165
1983 SCC (1) 305 1982 SCALE (2)1213
CITATOR INFO :

R	1983 SC 937	(34)
R	1984 SC 121	(28)
R	1984 SC1064	(18)
R	1984 SC1247	(1)
RF	1984 SC1361	(19)
RF	1984 SC1560	(2)
F	1985 SC1196	(2,7)
D	1985 SC1367	(39,43)
RF	1986 SC 210	(19,20,22,26)
R	1986 SC 584	(1)
R	1986 SC1907	(1,2)
R	1987 SC 943	(8)
RF	1987 SC2359	(17)
D	1988 SC 501	(3,4,6,7)
RF	1988 SC 740	(13)
D	1988 SC1291	(9)
R	1988 SC1645	(8)
D	1989 SC 665	(7)
F	1989 SC2088	(7)
R	1990 SC 334	(104)
RF	1990 SC 883	(6)
E	1990 SC1760	(9)
RF	1990 SC1923	(3)

D	1990 SC2043	(2,7)
E	1991 SC1182	(6 TO 16,18,19,23)
RF	1991 SC1743	(1,2,4)
R	1992 SC 96	(11)
R	1992 SC 767	(2,4,TO 8,10)

ACT:

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.

HEADNOTE:

By a Memorandum dated May 25, 1979 (Exhibit P-1) the Government of India liberalised the formula for computation of pension in respect of employees governed by the Central Civil Services (Pension) Rules, 1972 and made it applicable to employees retiring on or after March 31, 1979. By another Memorandum issued on September 23, 1979 (Exhibit P-2) it extended the same, subject to certain limitations, to the Armed Forces' personnel retiring on or after April 1, 1979. Petitioners 1 and 2 who had retired in the year 1972 from the Central Civil Service and the Armed Forces' service respectively, and petitioner No. 3, a registered society espousing the cause of pensioners all over the country, challenged the validity of the above two memoranda in so far as the liberalisation in computation of pension had been made applicable only to those retiring on or after the date specified and the benefit of liberalisation had been denied to all those who had retired earlier.

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.

166

Counsel for respondents contended that a classification based on the date of retirement is valid for the purpose of granting pensionary 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; and that the third petitioner has no locus standi in the case.

Allowing the petitions,

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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. The doctrine of classification was evolved by the Court for the purpose of sustaining a legislation or State action designed to help weaker sections of the society. Legislative and executive action may accordingly be sustained by the court if the State satisfies the twin tests of reasonable

classification and the rational principle correlated to the object sought to be achieved. A discriminatory action is liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

[176 B, 178 D-E, 179 B-C, 177 C-D, 179 C-D, 176 E-F, 179 H, 180 A-C]

Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621; Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., [1959] S.C.R. 279; In re Special Courts Bill, [1979] 2 S.C.R, 476; E.P Royappa v. State of Tamil Nadu, [1974] 2 S.C.R. 348; Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors., [1981] 2 S.C.R. 79; Air India etc. v. Nargesh Meerza & Ors., [1982] 1 S.C.R. 438 and Ramana Dayaram Shetty v. International Airport Authority of India & Ors., [1979] 3 S.C.R. 1014, referred to.

167

In the instant case, looking to the goals for the attainment of which pension is paid and the welfare State proposed to be set up in the light of the Directive Principles of State Policy and Preamble to the Constitution it indisputable that pensioners for payment of pension from a class. When the State considered it necessary to liberalise the pension scheme in order to augment social security in old age to government servants it could not grant the benefits of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Art. 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda. [190 F-H, 194 A-C, 194 F-H]

(ii) Prior to the liberalisation of the formula for computation of pension average emoluments of the last 36 months' service of the employee provided the measure of pension. By the liberalised scheme, it is now reduced to average emoluments of the last 10 months' service. Pension would now be on the higher side on account of two fortuitous circumstances, namely, that the pay scales permit annual increments and usually there are promotions in the last one or two years of the employee's service. Coupled with it a slab system for computation has been introduced and the ceiling of pension has been raised. Pensioners who retired prior to the specified date would suffer triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling.

[191 A-D]

(iii) Both the impugned memoranda do not spell out the raison d'etre for liberalising the pension formula. In the affidavit in opposition it is stated that the liberalisation was decided by the government in view of the persistent demand of the employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the pre-liberalised scheme did not provide adequate protection in old age, and that a further liberalisation was necessary as a measure of economic security. The government also took note of the fact that continuous upward movement of the cost of living index and diminishing purchasing power of rupee necessitated upward revision of pension. When the government favourably responded to the demand it thereby ipso facto conceded that there was a larger available national cake, part of which could be utilised for providing higher security to retiring employees. With this underlying intendment of liberalisation, it cannot be asserted that it was good enough only for those who would retire subsequent to the specified date but not for those who had already retired. [191 F-G, 192 A, 191 H, 192 B]

2. If removal of arbitrariness can be brought about by severing the mischievous portion, the discriminatory part ought to be removed retaining the beneficial portion. [198 F]

In the instant case, the petitioners do not challenge, but seek the benefit of the liberalised pension scheme. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation. There is nothing

168

immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having an undesirable effect of dividing a homogeneous class and of introducing discrimination the same can be easily severed and set aside. It is therefore just and proper that the words introducing the arbitrary fortuitous circumstance which are vulnerable as denying equality be severed and struck down. In Exhibit P-1 the words:

> "That in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date.

and in Exhibit P-2, the words:

> "the new rates of pension are effective from Ist April 1979 and will be applicable to all service officers who became/become noneffective on or after that date"

are unconstitutional and are struck down with the specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative. Omitting the unconstitutional part

it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. [190A-C, 198 G, 198 E-F, 205 F-H, 209 F-H, 210 A-D]

D.R. Nim v. UNion of India, [1967] 2 S.C.R. 325; and Jaila Singh & Anr. v. State of Rajasthan & Ors., [1975] Supp. S.C.R. 428, relied on.

Union of India & Anr. v. M/s. Parameswaran Match Works etc., [1975] 2 S.C.R. 573; and D.C. Gouse & Co. etc. v. State of Kerala & Anr. etc., [1980] 1 S.C.R. 804, explained and distinguished.

Louisville Gas Co. v. Alabama Power Co., 240 U.S. 30 [1927], referred to.

(ii) The reading down of the impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable. The Court is not legislating in reading down the memoranda; when the Court strikes down the basis of classification as violative of Art. 14 it merely sets at naught the unconstitutional portion retaining the constitutional portion. There is no difficulty in implementing the scheme omitting the event happening after the specified date, retaining the more human formula for computation of pension. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. The Court is satisfied that the additional financial liability that may be imposed by bringing
169
in pensioners who retired prior to April 1, 1979 within the fold of the liberalised pension scheme is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme. The severance of the nefarious unconstitutional part does not adversely affect future pensioners and their presence in these petitions is irrelevant.

[204 G-H, 197 E-F, 206 B, 196 G, 208 G, 199 B]

(iii) To say that by its approach the Court is restructuring the liberalised pension scheme is to ignore the constitutional mandate. The Court is not conferring benefits by its approach; it is only removing the illegitimate classification and after its removal the law takes its own course. [206 D-E]

(iv) It is not correct to say that if the unconstitutional part is struck down the Parliament would not have enacted the measure. The executive, with parliamentary mandate, liberalised the pension scheme. It is implicit in the scheme that the need to grant a little

higher rate of pension to the pensioners was considered eminently just. One could have understood persons in the higher pay bracket being excluded from the benefit of the scheme because it would have meant that those in the higher pay bracket could fend for themselves. Such is not the exclusion. The exclusion is of a whole class of people who retired before a certain date. Parliament would not have hesitated to extend the benefit otherwise considered eminently just and this becomes clearly discernible from p.35 of the 9th Report of the Committee on Petitions (6th Lok Sabha), April 1979. [206 H, 207 A-E]

(v) Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of the classification, the resultant effect may be of enlarging the class. In such a situation the court can strike down the words of limitation in an enactment. That is what is called reading down the measure. There is no principle that severance limits the scope of legislation but can never enlarge it. [205 B-C]

Jaila Singh & Ors. v State of Rajasthan & Ors., [1975] Supp. S.C.R. 428 and Randhir Singh v. Union of India & Ors. [1982] 1 S.C.C. 618, relied on.

(vi) The absence of precedent does not deter the court. Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of time in history. If at that time it was rejected as being without a precedent, law as an instrument of social engineering would have long since been dead. [193 G, 193 C-D]

(vii) The court is not making the scheme of liberalisation retroactive by its approach. Retroactiveness is implicit in the theory of wages. When revised pay-scales are introduced from a certain date, all existing employees are brought on to the revised scales adopting a theory of fitments and increments for past service. The benefit of revised scales is not limited to those who enter service subsequent to the date fixed for introducing revised scales but is extended to all those in service prior to that date. Even in the case of the new retiral benefit of gratuity under the Payment of Gratuity Act, 1972, past service was taken into consideration. The scheme of liberalisation is not a new retiral benefit; it is
170
an upward revision of an existing benefit. Pension has correlation to average emoluments and the length of qualifying service and any liberalisation would pro tanto ber etroactive in the narrow sense of the term. Assuming the government had not prescribed the specified date and thereby provided that those retiring, pre and past the specified date, would all be governed by the liberalised pension scheme it would be both prospective and retroactive. Only 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. A statute is not properly called retroactive because a part of the requisites for its action is drawn from a time antecedent to its passing.

[195 H, 196 H, 196 G, 196 D, 196 B-D]

Craies on Statute Law, Sixth Edition, p. 387 referred to.

(viii) 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. [195 C-G]

(ix) The date of retirement of each employee remaining as it is, there is no question of fresh commutation of pension of the pensioners who retired prior to 31st March 1979 and have already availed of the benefit of commutation. It is not open to them to get that benefit at this late date because commutation has to be availed of within the specified time limit from the date of actual retirement. [206 C-D]

3. The discernible purpose underlying the pension scheme must inform the interpretative process and it should receive a liberal construction. [185 G-H]

(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. [186 A-B]

Deoki Nandan Prasad v.State of Bihar & Ors.,[1971] Supp. S.C.R. 634 and State of Punjab & Anr.v Iqbal Singh, [1976] 3 S.C.R. 360, referred to.

(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. [185 F]

(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

171

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. [190 E,187 F,189 A-B,189 H]

Randhir Singh v. Union of India & Ors., [1982] I S.C.C. 618 and Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1981] I S.C.R. 206, referred to.

4. Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. The locus standi of petitioner No. 3 which seeks to enforce rights that may be available to a large number of old, infirm retirees is unquestionable as it is a non-political, non-profit, voluntary organisation registered under the Societies Registration Act, 1860 and its members consist of public spirited citizens who have taken up the cause of ventilating legitimate public problems. [208 H, 209 A-C]

S.P.Gupta v. Union of India, [1981] Supp. S.C.C.87, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition Nos. 5939-41 of 1980.

Anil B. Divan, Mrs. Vineeta Sen Gupta and P.H.Parekh for the Petitioners L.N.Sinha,Attorney General, M.M. Abdul Khader, N. Nettar and Miss A. Subhashini for Union of India.

G.L. Sanghi and Randhir Jain for the interveners. S.R.Srivastava for the Intervener.

K.K. Gupta for the Intervener.

The Judgment of the Court was delivered by DESAI,J.With a slight variation to suit the context Woolesey's prayer : "had I served my God as reverently as I did my king, I would not have fallen on these days of penury" is chanted by petitioners in this group of petitions in the Shellian tune : 'I fall on the thorns of life I bleed.' Old age, ebbing mental and physical prowess, atrophy of both muscle and brain powers permeating these petitions, the petitioners in the fall of life yearn for equality of treatment which is being meted out to those who are soon going to join and swell their own ranks, Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services

(Pension) Rules, 1972 ('1972 Rules' for short) form a class as a whole ? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date ? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14 ? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.

Factual matrix has little relevance to the issues raised and canvassed at the hearing. Petitioners 1 and 2 are retired pensioners of the Central Government, the first being a civil servant and the second being a member of the service personnel of the Armed Forces. The third petitioner is a society registered under the Societies Registration Act, 1860, formed to ventilate the legitimate public problems and consistent with its objective it is espousing the cause of the pensioners all over the country. Its locus standi is in question but that is a different matter. The first petitioner retired in 1972 and on computation, his pension worked out at Rs. 675/- p.m. and along with the dearness relief granted from time to time, at the relevant time he was in receipt of monthly pension of Rs. 935/-. The second petitioner retired at or about that time and at the relevant time was in receipt of a pension plus dearness relief of Rs. 981/- p.m. Union of India has been revising and liberalising the pension rules from time to time. Some landmark changes may be noticed.

The First Central Pay Commission (1946-47) recommended that the age of retirement in future should be uniformly 58 years for all services and the scale of pension should be 1/80 of the emoluments for each year of service, subject to a limit of 35/80 with a ceiling of Rs. 8,000 per year for 35 years of service, which the Government of India while accepting the recommendation raised to Rs. 8,100 per year which would earn a monthly pension of Rs. 675 at the maximum. The Second Central Pay Commission (1957-58) re-affirmed that the age of superannuation should be 58 years for all classes of public servants but did not recommend any increase in the non- contributory retirement benefits and recommended that if in future any improvement is to be made, it was the considered view of the Commission that these benefits should be on a contributory basis. The Administrative Reforms Commission ('ARC' for short) set up by the Government of India in 1956 took note of the fact that the cost of living has shot up and correspondingly the possibility of savings has gone down and consequently the drop in wages on retirement is in reality much steeper than what the quantum of pension would indicate, and accordingly the ARC recommended that the quantum of pension admissible may be raised to 3/6 of the emoluments of the last three years of service as against the existing 3/8 and the ceiling should be raised from Rs. 675 p.m. to Rs. 1000 p.m. Before the Government could take its decision on the recommendations of the ARC, the Third Central Pay Commission was set up. One of the terms of reference of the Third Pay Commission was 'death-cum- retirement benefits of Central Government employees'. The Third Pay Commission did not examine the question of relief to pensioners because in its view unless the terms of reference were suitably amended it would not be within their jurisdiction to examine this question and on a reference by them, the Government of India decided not to amend the terms of reference. With regard to the future pensioners the Third Pay Commission while reiterating that the age of

superannuation should continue to be 58 years further recommended that no change in the existing formula for computing pension is considered necessary. The only important recommendation worth noticing is that the Commission recommended that the existing ceiling of maximum pension should be raised from Rs. 675 to Rs. 1,000 p.m. and the maximum of the gratuity should be raised from Rs. 24,000 to Rs. 30,000.

On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalised but made it applicable to Government servants who were in service on March 31, 1979 and retire from service on or after that date (specified date for short). The formula introduced a slab system for computation of pension. This liberalised pension formula was applicable to employees governed by the 1972 Rules retiring on or after the specified date. The pension for the service personnel which will include Army, Navy and Air Force staff is governed by the relevant regulations. By the Memorandum of the Ministry of Defence bearing No. B/40725/AG/PS4-C/1816/AD (Pension)/Services dated September 28, 1979, the liberalised pension formula introduced for the government servants governed by the 1972 rules was extended to the Armed Forces personnel subject to limitations set out in the memorandum with a condition that the new rules of pension would be effective from April 1, 1979, and may be applicable to all service officers who become/became non-effective on or after that date. (for short specified date).

The chronology of events herein narrated would bring to surface the contentions raised in these petitions. The liberalised pension formula shall be applicable prospectively to those who retired on or after March 31, 1979 in case of government servants covered by 1972 Rules and in respect of defence personnel those who became/become non-effective on or after April 1, 1979. Consequently those who retired prior to the specified date would not be entitled to the benefits of the liberalised pension formula.

Petitioners accordingly contend that this Court may consider the raison d'etre for payment of pension. If the Pension is paid for past satisfactory service rendered, and to avoid destitution in old age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary, would be according differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, would be violative of Art. 14. It was also contended that classification based on fortuitous circumstance of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle, would be equally violative of Art. 14.

Primary contention is that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners. The expression 'pensioner' is generally understood in contra-distinction to the one in service. Government servants in service, in other words, those who have not retired, are entitled to salary and other allowances. Those who retire and are designated as 'pensioners' are entitled to receive pension under the relevant rules. Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression 'pensioners'.

Is this class of pensioners further divisible for the purpose of 'entitlement' and 'payment' of pension into those who retired by certain date and those who retired after that date ? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual government servant happens to fall. In other words, all government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Art. 14 ?

The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in Maneka Gandhi v. Union of India(1) from which the following observation may be extracted:

> "..... what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits..... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that 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 (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.(1) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

After an exhaustive review of almost all decisions bearing on the question of Art. 14, this Court speaking through Chandrachud, C.J. in Re. Special Courts Bill (2) restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

> "3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.
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> 4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means 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.
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> 6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.
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> 7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

The other facet of Art. 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi's case in the earliest stages of evolution of the Constitutional law, Art. 14 came to be identified with the doctrine of classification because the view taken was that Art. 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in EP. Royappa v. State of Tamil Nadu(1), it was held that the basic principle which informs both Arts. 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

> "From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.
>
> Justice Iyer has in his inimitable style dissected Art.

14 as under:

> "The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-

errants of 'executive excesses'-if we may use current cliche-can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; be you ever so high, the law is above you."(2) Affirming and explaining this view, the Constitution Bench in Ajay Hasia etc. v. Khalid Mujib Sehravardi & others etc. (3) held that it must, therefore, now be taken to be well settled that what Art.14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14. After a review of large number of decisions bearing on the subject, in Air India etc. etc. v. Nargesh Meerza & Ors. etc etc. (1) the Court formulated propositions emerging from analysis and examination of earlier decisions. One such proposition held well established is that Art. 14 is certainly attracted where equals are treated differently without any reasonable basis.

Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differntia 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.

As a corrolary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved ? The thrust of Art. 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens

otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Art. 14. The court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succor. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.(1) when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

The basic contention as hereinbefore noticed is that the pensioners for the purpose of receiving pension form a class and there is no criterion on which classification of pensioners retiring prior to specified date and retiring subsequent to that date can provide a rational principle correlated to object, viz., object underlying payment of pensions. In reply to this contention set out in para 19 of the petition, Mr. S.N. Mathur, Director, Ministry of Finance in part 17 of his affidavit-in-opposition on behalf of the respondents has averred as under:

> "The contentions in part 18 and 19 that all pensioners form one class is not correct and the petitioners have not shown how they form one class. Classification of pensioners on the basis of their date of retirement is a valid classification for the purpose of pensionary benefits."

These averments would show at a glance that the State action is sought to be sustained on the doctrine of classification and the criterion on which the classification is sought to be sustained is the date of retirement of the Government servant which entitled him to pension. Thus according to the respondents, pensioners who retire from Central Government service and are governed by the relevant pension rules all do not form a class but pensioners who retire prior to a certain date and those who retire subsequent to a certain date form distinct and separate classes. It may be made clear that the date of retirement of each individual pensioner is not suggested as a criterion for classification as that would lead to an absurd result, because in that event every pensioner relevant to his date of retirement will form a class unto himself. What is suggested is that when a pension scheme undergoes a revision and is enforced effective form a certain date, the date so specified becomes a sort of a Rubicon and those who retire prior to that date form one class and those who retire on a subsequent date form a distinct and separate class and no one can cross the Rubicon. And the learned Attorney General contended that this differentiation is grounded on a rational principle and it has a direct correlation to the object sought to be achieved by liberalised pension formula.

The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised ? Is the employer, which expression will include even the State, bound to pay pension ? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service ?

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 gratituous 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) wherein 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. This view was reaffirmed in State of Punjab & Anr. v. Iqbal Singh (1).

There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo, was that when the employee was physically and mentally alert he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount. (see Retirement Systems for Public Employees by Bleakney, page 33.) As the present case is concerned with superannuation pension, a brief history of its initial introduction in early stages and continued existence till today may be illuminating. Superannuation is the most descriptive word of all but has become obsolescent because it seems ponderous. Its genesis can be traced to the first Act of Parliament (in U.K.) to be concerned with the provision of pensions

generally in public offices. It was passed in 1810. The Act which substantively devoted itself exclusively to the problem of superannuation pension was superannuation Act of 1834. These are landmarks in pension history because they attempted for the first time to establish a comprehensive and uniform scheme for all whom we may now call civil servants. Even before the 19th century, the problem of providing for public servants who are unable, through old age or incapacity, to continue working, has been recognised, but methods of dealing with the problem varied from society to society and even occasionally from department to department.

A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on 'considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development'. And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as "Northcote-Trevelyan Report". The Report was pungent in its criticism when it says that: "in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened; first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system" (see Gerald Rhodes, Public Sector Pensions, pp. 18-19).

This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.

Let us therefore examine what are the goals that pension scheme seeks to subserve ? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement ? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, 'that is funny, I could not before'. It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and 'pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms

primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed'. (see Social Security law by Prof. Harry Calvert, p. 1).

Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes),

(ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means or promoting general welfare (see Encyclopaedia Britannica, Vol. 17 p.575.) But these views have become otiose.

Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education(1) a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American

Jurisprudence 2d. 881).

From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Art. 309 and clause (5) of Art. 148 of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the state action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38 (1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art. 39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in Randhir Singh v. Union of India & Ors.(1) Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under :

> "Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence and the forward looking posture of this Court, the under-
>
> privileged also are clamouring for the rights and are seeking the intervention of the Court with touching faith and confidence in the Court. The Judges of the Court have a duty to redeem their Constitutional oath and do justice no less to the pavement dweller than to the guest of the Five Star Hotel."

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if 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. Art. 39 (e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and

that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Art. 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Art. 43 (3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.

Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression 'socialist' was intentionally introduced in the Preamble by the Constitution (Forty-Second Amendment) Act, 1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted :

> "The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time.....
>
> It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism.....to make the directive principles more comprehensive....."

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. 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. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to Ph. D. but the pursuit must be by those who have the necessary intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill-equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a Mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But there socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with

their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Art. 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power Legislative Executive and Judiciary-to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal.

To some extent this approach will find support in the judgment in Minerva Mills Ltd. & Ors. v. Union of India & Ors.(1). Speaking for the majority, Chandrachud, C.J. observed as under :

> "This is not mere semantics. The edifice of our Constitution is built upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice-social, economic and political. We, therefore, put Part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved."

At a later stage it was observed that the fundamental rights are not an end in themselves but are the means to an end, the end is specified in part IV. Bhagwati, J. in his minority judgment after extracting a portion of the speech of the then Prime Minister Jawahar Lal Nehru, while participating in a discussion on the Constitution (First Amendment) Bill, observed that the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and everyone, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the fundamental rights. It, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other.

With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned Government servant actually retired from service.

Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a

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

If such be the goals of pension, if such be the welfare State which we propose to set up, if such be the goals of socialism and conceding that any welfare measure may consistent with economic capacity of the State be progressively augmented with wider width and a longer canvass yet when the economic means permit the augmentation, should some be left out for the sole reason that while in the formative years of the nascent State they contributed their mite but when the fruits of their labour led to the flowering of economic development and higher gross national produce bringing in larger revenue and therefore larger cake is available, they would be denied any share of it ? Indisputably, viewed from any angle pensioners for payment of pension form a class. Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the scheme. Earlier average emoluments of 36 months' service provided the measure of pension because the pension was related to the average emoluments during 36 months just preceding retirement. By the liberalised scheme it is now reduced to average emoluments of 10 months preceding the date. Any one in government service would appreciate at a glance that with an average of 10 months it would be on the higher side on account of the two fortuitous circumstances that the pay- scales, if one has not reached the maximum, permit annual increments and there are promotions in the last one or two years. With a view to giving a higher average the scheme was liberalised to provide for average emoluments with reference to last 10 months' service. Coupled with it, a slab system for computation is introduced and the ceiling is raised. This is liberalisation. Now, if the pensioners who retired prior to the specified date and had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement, naturally the average would be lower and they will be doubly hit because the slab system as now introduced was not available and the ceiling was at a lower level. Thus they suffer triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling.

What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised ? What necessitated liberalisation of the pension scheme ?

Both the impugned memoranda do not spell out the raison d'etre for liberalising the pension formula. In the affidavit in opposition by Shri S.N. Mathur, it has been stated that the liberalisation of pension of retiring Government servants was decided by the Government in view of the persistent demand of the Central Government employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the preliberalised pension scheme did not provide adequate protection in old age and that a further liberalisation was necessary as a measure of economic security. When Government favourably responded to the demand it thereby ipso facto

conceded that there was a larger available national cake part of which could be utilised for providing higher security to erstwhile government servants who would retire. The Government also took note of the fact that continuous upward movement of the cost of living index as a sequel of inflationary inputs and diminishing purchasing power of rupee necessitated upward revision of pension. If this be the underlying intendment of liberalisation of pension scheme, can any one be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date but those who had already retired did not suffer the pangs of rising prices and falling purchasing power of the rupee ? What is the sum total of picture ? Earlier the scheme was not that liberal keeping in view the definition of average emoluments and the absence of slab system and a lower ceiling. Those who rendered the same service earned less pension and are exposed to the vagary of rising prices consequent upon the inflationary inputs. If therefore, those who are to retire subsequent to the specified date would feel the pangs in their old age, of lack of adequate security, by what stretch of imagination the same can be denied to those who retired earlier with lower emoluments and yet are exposed to the vagaries of the rising prices and the falling purchasing power of the rupee. And the greater misfortune is that they are becoming older and older compared to those who would be retiring subsequent to the specified date. The Government was perfectly justified in liberalising the pension scheme. In fact it was overdue. But we find no justification for arbitrarily selecting the criteria for eligibility for the benefits of the scheme dividing the pensioners all of whom would be retirees but falling on one or the other side of the specified date.

Therefore, let us proceed to examine whether there was any rationale behind the eligibility qualification. The learned Attorney-General contended that the scheme is one whole and that the date is an integral part of the scheme and the Government would have never enforced the scheme devoid of the date and the date is not severable from the scheme as a whole. Contended the learned Attorney-General that the Court does not take upon itself the function of legislation for persons, things or situations omitted by the legislature. It was said that when the legislature has expressly defined the class with clarity and precision to which the legislation applies, it would be outside the judicial function to enlarge the class and to do so is not to interpret but to legislate which is the forbidden field. Alternatively it was also contended that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the Court examines whether the legislation must be invalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or elsewhere where the Court has included some category within the scope of provisions of a law to maintain its constitutionality.

The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio economic justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as an institution ushers in

socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal contention. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable parts of rule of law of which any civilised society is proud ? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations ? Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Over-emphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate.

If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension ? One retiring a day earlier will have to be subject to ceiling of Rs. 8,100 p a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000 p.a. and average emolument will be computed on the basis of last ten months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art. 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore the classification does not stand the test of Art.

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

The learned Attorney-General contended that the scheme is to be taken as a whole or rejected as a whole and the date from which it came into force is an integral and inseparable part of the scheme. The two sub-limbs of the submissions were that, (i) the Court cannot make a scheme having financial implications retroactive, and (ii) this Court cannot grant any relief to the pensioners who retired prior to a specified date because if more persons divide the available cake, the residue falling to the share of each especially to those who are likely to be benefited by the scheme will be comparatively smaller and as they are not before the Court, no relief can be given to the pensioners.

Let us clear one misconception. The pension scheme including the liberalised scheme available to the Government employees is non-contributory in character. It was not pointed out that there is something like a pension fund. It is recognised as an item of expenditure and it is budgeted and voted every year. At any given point of time there is no fixed or predetermined pension fund which is divided amongst eligible pensioners. There is no artificially created fund or reservoir from which pensioners draw pension within the limits of the fund, the share of each being extensive with the available 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. Therefore, there is no question of dividing the pension fund. Pension is a liability incurred and has to be provided for in the budget. Therefore, the argument of divisions of a cake, larger the number of sharers, smaller the share and absence of residue and therefore by augmentation of beneficiaries, pro rata share is likely to be affected and their absence making relief impermissible, is an argument born of desperation, and is without merits and must be rejected as untenable.

By our approach, are we making the scheme retroactive ? The answer is emphatically in the negative. Take a government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979 ? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier ? It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. (see Craies on Statute Law, sixth edition, p.

387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing

benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only ? Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.

That takes us to the last important contention of the learned Attorney General. It was urged that the date from which the scheme becomes operative is an integral part of the scheme and the doctrine of severability cannot be invoked. In other words, it was urged that date cannot be severed from the main object of the scheme because the Government would have never offered the scheme unless the date was an integral part of it. Undoubtedly when an upward revision is introduced, a date from which it becomes effective has to be provided. It is the event of retirement subsequent to the specified date which introduces discrimination in one otherwise homogeneous class of pensioners. This arbitrary selection of the happening of event subsequent to specified date denies equality of treatment to persons belonging to the same class, some preferred and some omitted. Is this eligibility qualification severable ?

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

But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the

specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after the date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case under Art. 14, the approach is not: 'either take it or leave it', the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge the liberalised pension scheme. They seek the benefit of it. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation and we find no difficulty in severing and quashing the same. This approach can be legitimised on the ground that every Government servant retires. State grants upward revision of pension undoubtedly from a date. Event has occurred revision has been earned. Date is merely to avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pensions will have to be paid from the actual date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of each pensioner. But effective from the specified date future pension of earlier retired Government servants can be computed and paid on the analogy of fitments in revised pay-scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains the beneficial portion. It does not adversely affect future pensioners and their presence in the petitions becomes irrelevant. But before we do so, we must look into the reasons assigned for eligibility criteria, namely, 'in service on the specified date and retiring after that date'. The only reason we could find in affidavit of Shri Mathur is the following statement in paragraph 5 :

> "The date of effect of the impugned orders has been selected on the basis of relevant and valid considerations."

We repeatedly posed a question: what are those relevant and valid considerations and waited for the answer in vain. We say so because in the written submissions filed on behalf of the Union of India, we find not a single valid or relevant consideration much less any consideration relevant to selection of eligibility criteria. The tenor is "we select the date and it is unquestionable; either take it or leave

it as a whole". The only submission was that the date is not severable and some submissions in support of it.

Having examined the matter on principle, let us turn to some precedents. In D.R. Nim v. Union of India(1) the appellant questioned his seniority which was to be determined in accordance with the provisions contained in Indian Police Service (Regulation of Seniority) Rules, 1954. These rules required first to ascertain the year of allotment of the person concerned for the determination of his seniority. In doing so, the Government of India directed that officers promoted to the Indian Police Service should be allowed the benefit of their continuous officiation with effect only from 19th May, 1951. The appellant challenged the order because the period of officiation from June 1947 to May 1951 was excluded for the purpose of fixation of his seniority. His grievance was that there was no rationale behind selecting this date. After taking into consideration affidavit in opposition, this Court held as under :

> "It would be noticed that the date, May 19, 1951, to begin with had nothing to do with the finalisation of the Gradation List of the Indian Police Service because it was a date which had reference to the finalisation of the Gradation List for the IAS. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in para 9 of the affidavit reproduced above. This date was apparently chosen for the IAS because on this date the Gradation List for all the earlier persons recruited to the service had been finalised and issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. BRL Iyengar, the learned counsel for the appellant, strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect. It further appears from the affidavit of Mr. D.K. Guha, Deputy Secretary to the Government of India, Ministry of Home Affairs, dated December 9, 1966 that "the Government of India have recently decided in consultation with the Ministry of Law that the Ministry of Home Affairs letter No. 2/32/51-AIS, dated the 25th August, 1955 will not be applicable to those SCS/SPS officers, who were appointed to IAS/IPS prior to the promulgation of IAS/IPS (Regulation of Seniority) Rules, 1954, and the date of the issue of the above letter if their earlier continuous officiation was approved by the Ministry of Home Affairs and Union Public Service Commission". It further appears that "in the case of Shri C.S. Prasad also, an IPS Officer of Bihar, a decision has been taken to give the benefit of full continuous officiation in senior posts and to revise his year of allotment accordingly." But, it is stated that "as Shri Nim was appointed to IPS on the 22nd October 1955, i.e. after the promulgation of IPS (Regulation of Seniority) Rules, 1954, and after the issue of letter dated 25.8.1955, his case does not fall even under this category". The above statement of the case of the Government further shows that the date, May 19, 1951 was an artificial and arbitrary date having nothing to do with the application of the first and the second provisos to Rule 3 (3). It appears to us that under the second proviso to Rule 3 (3) the period of officiation of a particular officer has to be considered and approved or disapproved by the Central Government in consultation with the Commission considering all the relevant facts.

> The Central Government cannot pick out a date from a hat-and that is what it seems to have done in this case-and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso."

The Court held that the Central Government cannot pick out a date from a hat and that is what it seems to have done in saying that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In case before us, the eligibility criteria for being eligible for liberalised pension scheme have been picked out from where it is difficult to gather and no rationale is discernible nor one was attempted at the hearing. The ratio of the decision would squarely apply to the facts of this case.

Similarly in Jaila Singh & Anr. v. State of Rajasthan & Ors.(1), this Court struck down as discriminatory the division of pre-1955 and post-1955 tenants for the purpose of allotment of land made by the Rules under the Rajasthan Colonisation Act, 1954 observing that the various provisions indicate that the pre-1955 and post-1955 tenants stand on the same footing and therefore do not form different classes and hence the division was held to be based on wholly irrelevant consideration. The court further observed that it is difficult to appreciate how it would make any difference from the point of view of allotment of land, whether a tenant has been in occupation for 16 years or 18 or 20 years and why differentiation should be made with reference to the date when Rajasthan Tenancy Act came into force. This division for the purpose of allotment of land with reference to certain date was considered both arbitrary and discriminatory on the ground that it was wholly unrelated to the objects sought to be achieved.

As against this the learned Attorney-General invited our attention to Union of India & Anr. v. M/s Parameswaran Match Works etc.(2) By a notification dated July 21, 1967, benefit of a concessional rate of duty was made available if a manufacturer of matches made a declaration that the total clearance of matches from a factory would not exceed 75 million during a financial year. As framed the notification extended the benefit to manufacturers with higher capacity to avail of the concessional rate of duty by filing a declaration as visualised in the proviso to the notification by restricting their clearance to 75 million matches. This notification was amended on September 4, 1967 with a view to giving bona fide small manufacturers, whose total clearance was not estimated to be in excess of 75 million matches, the benefit of concessional rate of duty prescribed under notification dated July 21, 1967. The respondent in the case applied for a licence for manufacturing matches on September 5, 1967, that is, a day after the date on which amended notification was issued and filed a declaration that the estimated manufacture for the financial year would not exceed 75 million matches, but this was rejected. In a writ petition filed by the respondent, the High Court held that the classification was unreasonable inasmuch as the fixation of the date for making a declaration had no nexus with the object of the Act. In the appeal by the Union of India, this Court held that the concessional rate of duty was intended for small bona fide units who were in the field when the notification dated September 4, 1967 was issued. The concessional rate of duty was not intended to benefit the large units which had split up into smaller units to earn the concession. With reference to selection of the date this Court observed as under :

> "The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

In reaching this conclusion the Court relied on Louisville Gas Co. v. Alabama Power Co. (1) This decision is not an authority for the proposition that whenever a date is chosen, or an eligibility criteria which divides a class, the purpose of choice unrelated to the objects sought to be achieved must be accepted as valid. In fact it is made clear in the decision itself that even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical, the choice of the legislature may be accepted. Therefore, the choice of the date cannot be wholly divorced from the objects sought to be achieved by the impugned action. In other words, if the choice is shown to be thoroughly arbitrary and introduces discrimination violative of Art. 14, the date can be struck down. What facts influenced the Court's decision in that case for upholding the choice of the date are worth- recalling. The Court held that the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if, by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty. This was the weighty consideration which prompted the court to uphold the date.

The learned Attorney General next referred to D.C. Gouse and Co. etc. v. State of Kerala & Anr. etc. (1) This Court while repelling the contention that the choice of April 1, 1973 as the date of imposition of the building tax is discriminatory with reference to Art. 14 of the Constitution, approved the ratio in the case of M/s. Parameswaran Match Works etc. supra. Even while reaching this conclusion the Court observed that it is not shown how it could be said that the date (April 1, 1973) for the levy of the tax was wide of the reasonable mark. What appealed to the Court was that earlier an attempt was made to impose the building tax with effect from March 2, 1961 under the Kerala Building Tax Act, 1961 but the Act was finally struck down as unconstitutional by this Court as per its decision dated August 13, 1968. While delivering the budget speech, at the time of introduction of the 1970-71 budget, the intention to introduce a fresh Bill for the levy of tax was made clear. The Bill was published in June 73 in which it was made clear that the Act would be brought into force from April 1, 1970. After recalling the various stages through which the Bill passed before being enacted as Act, this Court held that the choice of date April 1, 1973 was not wide of the reasonable mark. The decision proceeds on the facts of the case. But the principle that when a certain date or eligibility criteria is selected with reference to legislative or executive measure which has the pernicious tendency of dividing an otherwise homogeneous class and the choice of beneficiaries of the legislative/executive action becomes selective, the division or classification made by choice of date or eligibility criteria must have some relation to the objects sought to be achieved. And apart from the first test that the division must be referable to some rational principle, if the choice of the date or classification is wholly unrelated to the objects sought to be achieved, it cannot be upheld on the specious plea that was the choice of the Legislature.

Now if the choice of date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalised pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interprets keeping in view the underlying intention and the object, the impugned measure seeks to subserve ? Even though it is not possible to oversimplify the issue, let us read the impugned memoranda deleting the unconstitutional part. Omitting it, the memoranda will read like this :

> "At present, pension is calculated at the rate of 1/80th of average emoluments for each completed year of service and is subject to a maximum of 33/80 of average emoluments and is further restricted to a monetary limit of Rs. 1,000/- per month. The President is, now, pleased to decide that with effect from 31st March, 1979 the amount of pension shall be determined in accordance with the following slabs."

If from the impugned memoranda the event of being in service and retiring subsequent to specified date is severed, all pensioners would be governed by the liberalised pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable.

In reading down the memoranda, is this Court legislating ? Of course 'not'. When we delete basis of classification as violative of Art. 14, we merely set at naught the unconstitutional portion retaining the constitutional portion.

We may now deal with the last submission of the learned Attorney General on the point. Said the learned Attorney- General that principle of severability cannot be applied to augment the class and to adopt his words 'severance always cuts down the scope, never enlarges it'. We are not sure whether there is any principle which inhibits the Court from striking down an unconstitutional part of a legislative action which may have the tendency to enlarge the width and coverage of the measure. Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the Court can strike down the words of limitation in an enactment. That is what is called reading down the measure. We know of no principle that 'severance' limits the scope of legislation and can never enlarge it. To refer to the Jaila Singh's case (supra), when for the benefit of allotment of land the artificial division between pre-1955 and post-1955 tenant was struck down by this Court, the class of beneficiaries was enlarged and the cake in the form of available land was a fixed quantum and its distribution amongst the larger class would protanto reduce the quantum to each beneficiary included in the class. Similarly when this Court in Randhir Singh's case (supra) held that the principle of 'equal pay for equal work' may be properly applied to cases of unequal pay based on no classification or irrational classification it enlarged the class of beneficiaries. Therefore, the principle of 'severance' for taking out the unconstitutional provision from an otherwise constitutional measure has been well recognised. It

would be just and proper that the provision in the memoranda while retaining the date for its implementation, but providing 'that in respect of Government servants who were in service on the 31st March, 1979 but retiring from service in or after that date' can be legally and validly severed and must be struck down. The date is retained without qualification as the effective date for implementation of scheme, it being made abundantly clear that in respect of all pensioners governed by 1972 Rules, the pension of each may be recomputed as on April 1, 1979 and future payments be made in accordance with fresh computation under the liberalised pension scheme as enacted in the impugned memoranda. No arrears for the period prior to 31st March, 1979 in accordance with revised computation need be paid.

In this context the last submission of the learned Attorney General was that as the pension is always correlated to the date of retirement, the Court cannot change the date of retirement, and impose fresh commutation benefit. We are doing nothing of this kind. The apprehension is wholly unfounded. The date of retirement of each employee remains as it is. The average emoluments have to be worked out keeping in view the emoluments drawn by him before retirement but in accordance with the principles of the liberalised pension scheme. The two features which make the liberalised pension scheme more attractive is the redefining of average emoluments in Rule 34, and introduction of slab system simultaneously raising the ceiling. Within these parameters, the pension will have to be recomputed with effect from the date from which the liberalised pension scheme came into force i.e. March 31, 1979. There is no question of fresh commutation of pension of the pensioners who retired prior to 31st March, 1979 and have already availed of the benefit of commutation. It is not open to them to get that benefit at this late date because commutation has to be availed of within specified time limit from the date of actual retirement. May be some marginal retirees may earn the benefit. That is inevitable. To say that by our approach we are restructuring the liberalised pension scheme, is to ignore the constitutional mandate. Similarly, the court is not conferring benefits by this approach, the court only removes the illegitimate classification and after its removal the law takes its own course.

But in this context the learned Attorney submitted the following quotation which appears to have been extracted from a decision of American Court, citation of which was not available. The quotation may be extracted from the written submission. It reads as under:

> "It remains to enquire whether this plea that Congress would have enacted the legislation and the Act being limited to employees engaged in commerce within the district of Columbia and the Territory. If we are satisfied that it would not or that the matter is in such doubt that we are unable to say what Congress would have done omitting the unconstitutional features then the statute must fail."

We entertain no such apprehension. The Executive with parliamentary mandate liberalised the pension scheme. It is implicit in liberalising the scheme that the deed to grant little higher rate of pension to the pensioners was considered eminently just. One could have understood persons in the higher pay bracket being excluded from the benefits of the scheme because it would have meant that those in higher pay bracket could fend for themselves. Such is not the exclusion. The exclusion is of a whole class of people who retire before a certain date. Parliament would not have hesitated to

extend the benefit otherwise considered eminently just, and this becomes clearly discernible from page 35 of 9th Report of Committee on Petitions (Sixth Lok Sabha) April, 1976. While examining their representation for better pensionary benefit, the Committee concluded as under:

> "The Committee are of the view that Government owe a moral responsibility to provide adequate relief to its retired employees including pre 1.1.1973 pensioners, whose actual value of pensions has been eroded by the phenomenal rise in the prices of essential commodities. In view of the present economic conditions in India and constant rise in the cost of living due to inflation, it is all the more important even from purely humanitarian considerations if not from the stand point of fairness and justice, to protect the actual value of their meagre pensions to enable the pensioners to live in their declining years with dignity and in reasonable comfort."

Therefore, we are not inclined to share the apprehension voiced by the learned Attorney that if we strike down the unconstitutional part, the parliament would not have enacted the measure. Our approach may have a parliamentary flavour to sensitive noses.

The financial implication in such matters has some relevance. However in this connection, we want to steer clear of a misconception. There is no pension fund as it is found either in contributory pension schemes administered in foreign countries or as in Insurance-linked pensions. Non-contributory pensions under 1972 rules is a State obligation. It is an item of expenditure voted year to pear depending upon the number of pensioners and the estimated expenditure. Now when the liberalised pension scheme was introduced, we would justifiably assume that the Government servants would retire from the next day of the coming into operation of the scheme and the burden will have to be computed as imposed by the liberalised scheme. Further Government has been granting since nearly a decade temporary increases from time to time to pensioners. Therefore, the difference will be marginal.

Further, let it not be forgotten that the old pensioners are on the way out and their number is fast decreasing. While examining the financial implication, this Court is only concerned with the additional liability that may be imposed by bringing in pensioners who retired prior to April 1, 1979 within the fold of liberalised pension scheme but effective subsequent to the specified date. That it is a dwindling number is indisputable. And again the large bulk comprises pensioners from lower echelons of service such as Peons, L.D.C., U.D.C., Assistant etc. In a chart submitted to us, the Union of India has worked out the pension to the pensioners who have retired prior to the specified date and the comparative advantage, if they are brought within the purview of the liberalised pension scheme. The difference upto the level of Assistant or even Section Officer is marginal keeping in view that the old pensioners are getting temporary increases. Amongst the higher officers, there will be some difference because the ceiling is raised and that would introduce the difference. It is however necessary to refer to one figure relied upon by respondents. It was said that if pensioners who retired prior to 31st March, 1979 are brought within the purview of the liberalised pension scheme, Rs. 233 crores would be required for fresh commutation. The apparent fallacy in the submission is that if the benefit of commutation is already availed of, it cannot and need not be reopened. And availability of other benefits is hardly a relevant factor because pension is admissible

to all retirees. The figures submitted are thus neither frightening nor the liability is supposed to be staggering which would deflect us from going to the logical end of constitutional mandate. Even according to the most liberal estimate, the average yearly increase is worked out to be Rs. 51 crores but that assumes that every pensioner has survived till date and will continue to survive. Therefore, we are satisfied that the increased liability consequent upon this judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme.

Locus standi of third petitioner was questioned. Petitioner No. 3 is a Society registered under the Societies Registration Act of 1860. It is a non-political non-profit and voluntary organisation. Its members consist of public spirited citizens who have taken up the cause of ventilating legitimate public problems. This Society received a large number of representations from old pensioners, individually unable to undertake the journey through labyrinths of legal judicial process, costly and protracted, and. therefore, approached petitioner No. 3 which espoused their cause Objects for which the third petitioner-Society was formed were not questioned. The majority decision of this Court in S.P. Gupta v. Union of India(1) rules that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Third petitioner seeks to enforce rights that may be available to a large number of old infirm retirees. Therefore, its locus standi is unquestionable. But it is a point of academic important because locus standi of petitioners Nos. 1 and 2 was never questioned.

That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-I and P-2, violates Art. 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Exhibit P-1, the words:

> "that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date"

and in Exhibit P-2, the words:

> "the new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non-effective on or after that date."

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.

H.L.C. Petition allowed.