

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No.26/2020

Reserved on 27.02.2025

Pronounced on 20.03.2025

...Appellant(s)

1.State of J&K through Commissioner/Secretary to Government, General Administration Department, Civil Secretariat, Srinagar/Jammu.

2. Commissioner/Secretary to Government, Tourism Department, Civil Secretariat, Srinagar/Jammu.

3.Sher-i-Kashmir International Conference Center (SKICC) through its Director, Cheshmashahi Srinagar.

Through: Mr. Abdul Rashid Malik, Sr. AAG with
Mr. Ilyas Nazir Laway, Government Advocate.

vs.

1. Khurshid Ahmad Naqeeb son of Kh Noor Ud Din Naqeeb resident of Brein Nishat Srinagar.

2. Accountant General, State of J&K Srinagar/Jammu

Through: Mr. R.A.Jan Sr. Advocate with ,
Ms Humaira Sajad, Advocate for R-1
Mr. Bikramdeep Singh AAG for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

J U D G M E N T

Sanjeev Kumar, J

1 This intra-Court appeal by the then State of Jammu and Kashmir (now UT of Jammu and Kashmir) and two others, including Sher-i-Kashmir International Conference Center ['SKICC'], arises out of an order and judgment dated 01.11.2019 passed by a learned Single Judge of

this Court [“the writ Court”] in SWP No. 809/2012 whereby the Writ Court has allowed the writ petition of respondent No.1 and, by way of a writ of mandamus, declared condition (a) in the Government Order No.216-TSM of 2014 dated 22-05-2014, impugned in the writ petition, restricting the benefit of Defined Pension Rules 2014 [‘Pension Rules of 2014’] only to the employees of appellant No.3 retiring on or after 01.01.2014, as *non-est* in law. The appellants are also directed to release all the retiral benefits, including gratuity etc., due and payable to the employees covered by the order dated 22.05.2014 (*supra*) in favour of respondent No.1 from the date of his superannuation, i.e., 31.05.2010. The writ Court has also held the respondent No.1 entitled to interest at the rate of 6% per annum.

2 Before we advert to the grounds of challenge urged by the learned counsel appearing for the appellants to assail the impugned judgment, we deem it necessary to set out a few facts which are germane to the disposal of the controversy raised in this appeal.

3 The case set up by the respondent No.1 in his writ petition, is that he was initially appointed as Manager Administration and Secretary, Convention Centre, Srinagar vide Government order No. 47-TSM of 1981 dated 04.06.1981. In the year 1998, he came to be appointed as Executive Director, SKICC, Srinagar, vide Government order No.13-TSM of 1988 DATED 05.02.1988. The post of Executive Director, SKICC came to be re-designated as Director SKICC vide Government order No. 135- TSM of 1988 dated 31.08.1988. It was further claimed by the respondent No.1 that, though Government Order 160-TSM of 1988 dated 28.09.1988 was categorical regarding the pay scale and the annual increments, the

respondent No. 1 was illegally and arbitrarily denied the benefits of annual increments during the period from September 2000 to June 2009. The respondent No.1 has, thus, claimed that an amount of Rs.3,25,080 is due and payable to him. As is further pleaded, the respondent No.1 was transferred and posted as Managing Director, J&K Tourism Development Corporation, vide Government order No. 1176-GAD dated 02.12.1996. He was also posted as Vice Chairman, J&K Lakes and Waterways Development Authority ['J&K LAWDA']. In the year 2002, the respondent No.1 was placed under suspension. However, upon representation, he was reinstated vide Government order dated 06.07.2004. Upon reinstatement, he was attached with General Administration Department and thereafter posted as Officer on Special Duty in the Tourism Department. On 31.05.2010, the respondent No.1 attained superannuation and retired from service.

4 The respondent No.1 was not accorded the benefit of pension on the ground that, on the date of his retirement, SKICC was not a pensionable organization. However, vide Government order dated 22.05.2014 (supra), the appellant No.1 accorded sanction to the adoption of Pension Rules of 2014 by SKICC, as applicable to the State Government employees for the purpose of payment of pension, gratuity and other post-retiral benefits. However, the said Government Order restricted the benefit of Pension Rules of 2014 only to the employees of SKICC retiring on or after 01.01.2014. The respondent No.1 being aggrieved of his exclusion from the benefit of Pension Rules of 2014, filed SWP No. 809/2012. At the time of filing the writ petition, the Government Order dated 22.05.2014 (supra) had not yet come in existence and, therefore, the respondent No.1 initially prayed for a writ of mandamus directing the

appellants herein to release his withheld retiral benefits, including gratuity and leave salary, etc. However, during the pendency of the writ petition, Government order dated 22.05.2014 (supra) came to be issued, and as a result whereof, the respondent No.1 amended his writ petition and claimed the following reliefs:

“....(ii-a) Writ in the nature of mandamus or any other appropriate writ commanding the respondents in particular respondent No.1 to treat the condition (a) in the Government Order No. 216-TSM of 2014 dated 22.05.2014 restricting the benefit of the Defined Pension Rules, 2014 only to the employees retiring on or after 01.01.2014, non-est in law, be also issued in favour of the petitioner and against the respondents; and,

(ii-b) Writ in the nature of mandamus or any other appropriate writ commanding the respondents in particular respondent No.1 to admit forthwith all the employees of the respondent No.4 to the benefit of Defined Pension Rules adopted pursuant to the Cabinet Decision No. 76/06/2014 dated 21.05.2014 in respect of the employees of respondent No. 4 vide Government order No. 216-TSM of 2014 dated 22.05.2014 be also issued in favour of the petitioner and against the respondents”.

5 The writ petition was contested by the Government as well as the appellants herein. In the reply affidavit filed on behalf of General Administration Department (GAD), it was pleaded that the respondent No.1 was initially appointed in SKICC as Manager Administration on a consolidated salary and thereafter posted as Director, SKICC. The respondent No.1 was also transferred from SKICC to JKTDC retaining his lien in his parent organization. It was, thus, pleaded that the respondent No.1 belonged to SKICC and, therefore, his retiral benefits, if any, were to be

settled by the SKICC. In short, the claim of the respondent No.1 for post-retiral benefits was resisted by the GAD on the plea that the respondent No.1 was an employee of SKICC, a Society registered under the J&K Societies Registration Act and, therefore, his post-retiral benefits are required to be settled by the SKICC itself. The claim of the respondent No.1 that he was a Government employee and, therefore, entitled to post-retiral benefits on the analogy of Government employees serving in other Departments was strongly refuted.

6 In the reply affidavit filed by the Department of Tourism under whose administrative control the SKICC functions, it was pleaded that the respondent No.1 was initially appointed in SKICC in the year 1981 at a consolidated pay of Rs.1100 per month and vide Government order No. 42-TSM of 1983 dated 06.07.1983, the *ad hoc* engagement of the respondent No.1 at a consolidated salary was extended for a period of 18 months w.e.f 04.12.1981. Vide another order issued by the Government dated 20.02.1984, the *ad hoc* engagement of respondent No.1 at a consolidated pay of Rs.1100 per month was continued up to the end of March 1984. It was, thus, stated that while the respondent No.1 was performing his duties as Manager Administration, SKICC, on an *ad hoc* basis and on a consolidated pay, the Government, vide its order No. 166-GD of 1985 dated 16.01.1985, created a post of Director, Sher-i-Kashmir Convention Complex, for a period of two years at a consolidated salary of Rs.2400 per month. One Sh. Tariq Abdullah was appointed against the said post. In the year 1988, the appellants issued Government order No. 160-TSM of 1988 dated 28.09.1988 releasing the pay scale of Rs.1850-2300 in favour of respondent No.1 w.e.f 11.04.1986 and allowed him to work as

Director, SKICC. As was pleaded by the Department of Tourism, the respondent No.1 also remained Administrator, Kashmir Golf Club, and Managing Director, JKTDC, on deputation retaining his lien in his parent organization i.e, SKICC. The respondent No.1 was also posted as Vice Chairman, LAWDA in the year 2000 and was also directed to look after the affairs of International Golf Course in addition to his own duties. On the basis of aforesaid averments made in the reply affidavit, it was claimed by the Department of Tourism, that the respondent No.1, having been appointed in SKICC, remained an employee of SKICC.

7 In short, the stand of the Department of the Tourism, as can be culled out from the reply affidavit, is that the respondent No.1 retired as an employee of SKICC, a Society registered under the J&K Societies Registration Act, and that the employees of SKICC were not entitled to any pension in the year 2010 when the respondent No.1 attained superannuation.

8 The writ Court, having regard to the respective case set up by the parties and the rival contentions of the learned counsel representing both sides, came to the conclusion that the fixation of the cut-off date, i.e., 01.01.2014, in the Government Order dated 22.05.2014 (supra) restricting the benefit of pension only to the employees of SKICC retiring on or after 01.01.2014, was arbitrary and violative of Article 14 of the Constitution of India. The Writ Court, thus, concluded that the respondent No.1, though an employee of SKICC, was entitled to the benefit of Pension Rules of 2014 promulgated vide Government Order dated 22.05.2014 (supra). The writ Court, vide the judgment impugned, allowed the writ petition, declared condition (a) of the impugned Government order as *non-est* in law, and

directed the appellants herein to release all retiral benefits in favour of the respondent No.1 in terms of Government order dated 22.05.2014 w.e.f. his superannuation on 31.05.2010, along with interest @ 6 %. The appellants, being aggrieved, have called the impugned order and judgment in question before us in this appeal.

9 The impugned judgment is assailed by the appellants primarily on the following grounds:

(i) That the Writ Court has not properly appreciated the stand of the appellants taken in their reply affidavits;

(ii) That the respondent No.1 was all along an employee of SKICC, a Society registered under the Societies Registration Act and, therefore, the service conditions of the employees, including the respondent No.1, were regulated by the bye-laws of the society. It is urged that the writ Court did not appreciate the fact that the respondent No.1 was not holding any pensionable post at the time of his retirement and, therefore, was not entitled to any post-retiral benefits; and,

(iii) That the writ Court did not appreciate that the 'Defined Pension Rules', which introduced pension benefits for the SKICC employees for the first time, vide Government order dated 22.05.2014 (*supra*) restricted these benefits only to the employees retiring on or after 01.01.2014. Since the respondent No.1 had retired on 31.05.2010, as such he was not held entitled to any pensionary benefits.

10 *Per contra*, Mr. R.A Jan, learned senior counsel assisted by Ms. Humaira Sajad, would support the judgment of the writ Court on all fours. He submits that the fixation of cut-off date in the impugned

Government order for the purpose of giving the benefits of pension to the employees of SKICC is totally arbitrary having no nexus with the object sought to be achieved. Relying upon several judgments referred to by the Writ Court in the judgment impugned, Mr. Jan would argue that fixation of cut-off date of 01.01.2014 for releasing the retiral benefits in favour of SKICC employees has resulted in discrimination against the respondent No. 1, who stood retired on 31.05.2010. The writ Court has properly appreciated the legal position and has come to the rescue of the respondent No.1. He would, thus, urge this Court to uphold the judgment of the writ Court and dismiss the appeal of the appellants as being without any substance and merit. Additionally, Mr. Jan would also argue that, though the respondent No.1 had also raised the issue of his being a Government employee at the time of his retirement, yet the writ Court did not advert to that aspect, probably for the reason that it decided to grant relief to the respondent No.1 on other grounds.

11 Having heard learned counsel for the parties and perused the material on record, it is necessary for us to understand the manner in which respondent No.1 came to be appointed in the SKICC, which at the relevant point of time, was under the Department of Tourism. Several Government orders issued on the subject need to be noticed herein-below:

- (i) Vide Government order No. 1292-GD of 1981 dated 19.05.1981, a post of Administrative Officer in the pay scale of Rs.750-1350 was created for Convention Complex;
- (ii) Vide Government order No. 47-TSM of 1981 dated 04.06.1981, the post of Administrative Officer was re-designated as Manager Administration and Secretary. Pending clearance from the Finance Department, the respondent No.1 was appointed to the said post for a period

of six months in the first instance on a consolidated salary of Rs.1100 per month. Obviously, the engagement of respondent No.1 as Manager Administration and Secretary in SKICC by the Government was without conducting any selection process in conformity with Articles 14 and 16 of the Constitution of India . The said Government order does not refer to the educational qualification and experience, if any, possessed by respondent No.1 for holding the post;

(iii) Vide Government order No. 545-GD of 1982 dated 26.02.1982 sanction was accorded to the deputation of respondent No.1 to proceed to Japan for six months for a fellowship programme.

(iv) Vide Government order No. 161-TSM dated 24.11.1982, the respondent No.1 was asked to take over additional charge of the Project Director during latter's visit to Pakistan.

(v) Vide Government order No. 42-TSM of 1983 dated 06.07.1983, ex-post facto sanction was accorded to the extension in the temporary appointment of respondent No.1 as Administration Manager/Secretary of Convention Complex on an *ad hoc* basis on a consolidated pay of Rs.1100 per month for a period of 18 months w.e.f 04.12.1981.

(vi) Vide government order No. 727-GD dated 17.05.1983, sanction was accorded to the deputation of respondent No.1 to Philippine Convention Bureau and thereafter in the year 1984 to Kyoto (Japan). Vide Government order No. 23-TSM dated 20.02.1984, another extension was accorded to the *ad hoc* appointment of respondent No.1 up to the end of March 1984.

12 It seems that while the respondent No.1 was continuing as Manager Administration/Secretary SKICC on an *ad hoc* basis, he came to be given the charge of General Manger, SKICC. However, no such order posting the respondent No.1 as General Manager is placed on record by respondent No.1, nor the same is traceable in the official record produced by the learned counsel appearing for the appellants.

13 Vide Government order No. 13-TSM of 1988 dated 05.02.1988, sanction was accorded to the conversion of SKICC into a registered society under the J&K Societies Registration Act. The said Government order further provided that the Society will be controlled and run by a Board of Governors to be nominated by the Governor, whereas the executive functions whereof would be carried out by the Executive Director. By virtue of the aforesaid order itself, the respondent No.1, who at the relevant point of time, was functioning as General Manager of SKICC, was allowed to work against the post of Executive Director which post was later re-designated as Director SKICC vide Government order dated 31.08.1988 (supra). While the respondent No.1 was holding the post of Director SKICC, the appellants vide Government order No. 160-TSM of 1988 dated 28.09.1988 released the regular pay scale of Rs.1850-2300, in favour of respondent No.1 with starting salary of Rs.2000 w.e.f 11.04.1986, with annual increments from time to time. From 05.03.1988, the respondent No.1 was placed in the revised pay scale of Rs.3300-5050. The respondent No.1 was also granted pay scale of Rs.700-1350 w.e.f 04.12.1981 to 15.04.1986, along with arrears. While holding the post of Director, SKICC, the respondent No.1, as narrated above, came to be posted as Managing Director, JKTDC and Vice Chairman LAWDA Srinagar on deputation basis retaining his lien in SKICC. On 31.05.2010, the respondent No.1 retired on superannuation while holding the post of Director SKICC, but while being attached with the GAD after his reinstatement from suspension.

14 From the above sequence of events, the following undisputed facts emerge:

(i) That respondent No.1 was never appointed on a substantive basis in SKICC, either a Government department or later a registered society. The initial engagement of respondent No.1 as Manager Administration/Secretary in the year 1981 was purely on *ad hoc* basis and on a consolidated salary of Rs.1100 per month. The post held by the respondent No.1 was never filled up on a substantive basis by following any regular selection process or otherwise. There is nothing on record of the petition as also in the official record that the services of respondent No.1 were ever regularized against any substantive post. From the official record, it is also not discernible as to what was the educational qualification of respondent No.1. The only document which we found on record is a Diploma of Matriculation Examination, Session 1966, on the basis whereof, we can presume that at the time of his engagement as Manager Administration/Secretary in SKICC, the respondent No.1 was possessing the qualification of Matriculation;

(ii) That there are certain orders on record, which demonstrate that *ad hoc* engagement of respondent No.1 was extended from time to time. The respondent No.1 was also deputed for short-duration training programs outside India, even though he was not holding any substantive post in the Government. Perhaps, this was the state of affairs during those years when 'might is right' was the rule of law and the political dispensation was functioning in an autocratic manner, picking up their blue eyed persons for manning the high positions in the Government. Be that as it may, by the dint of his proximity with the political bosses ruling the roost at that point of time, respondent No.1 rose to the position of General Manager, SKICC; and

(iii) In the year 1988, when SKICC which was a part of Tourism Department was converted into a Society registered under the Societies Registration Act, respondent No.1 was

appointed as its first Executive Director, later re-designated as Director. This is how the respondent No.1 rose to the position of Director SKICC from his *ad hoc* appointment as Manager Administration/Secretary without even becoming the permanent employee of the Government or SKICC.

15 As is apparent from the Government order dated 28.09.1988 (supra), all of a sudden and without there being any justification, pay scale of Rs.1850-2300 came to be released in favour of respondent No.1, that too, retrospectively. It is this Government order which is strongly relied upon by Mr. Jan to contend that, w.e.f 04.12.1981, the services of the respondent No.1 came to be confirmed with the release of a regular pay scale, firstly against the post of Manager Administration and thereafter as Director SKICC. Although the Government order dated 28.09.1988 (supra) cannot be construed as regularizing the services of respondent No.1, that too, with retrospective effect, yet even if we were to assume that the said Government order confirms the services of the respondent No.1, it would mean that from 04.12.1981 to 05.02.1988, the respondent No.1 could be treated as a Government employee. However, with the SKICC being converted into a Society vide Government order No. 13-TSM of 19688 dated 05.02.1988 and with the simultaneous posting of respondent No.1 as Executive Director SKICC, he ceased to be a Government employee and became an employee of the Society.

16 From the above narration, it is quite evident that the respondent No.1 did retire while holding the post of Director in SKICC, a Society registered under the Societies Registration Act. It is also beyond any pale of discussion that on 31.05.2010, when the respondent No.1 attained superannuation as an employee of the SKICC, he was not holding a

pensionable post. The pensionary benefits in favour of employees of the SKICC came to be sanctioned by the Government in terms of Government order dated 22.05.2014 (supra), impugned in the writ petition, with a cut-off date of 01.01.2014. This position has been accepted by the writ Court. The Writ Court has clearly proceeded on the assumption that respondent No.1 retired as a employee of the Society and, therefore, in terms of Government order impugned in the writ petition, he was not entitled to pensionary benefits for the reason that he stood retired on 31.05.2010. The writ Court has, however, declared the cut-off date mentioned in the impugned Government order as arbitrary and *ultra vires* the Constitution. That being the clear position emerging from the reading of impugned judgment, our duty is now circumscribed to determine only as to whether the cut-off date of 01.01.2014, mentioned in the impugned Government order for grant of benefits under the Defined Pension Rules, is arbitrary and *ultra vires* the Constitution. The writ Court has, however, held that the respondent No.1, having served the appellants in different capacities over a period of time, cannot be denied the retiral benefits, which, as per the writ Court, is a right available to an employee flowing from Article 31(1) of the Constitution of India. The writ Court has found the classification between the employees of the Society retiring prior to 01.01.2014 and the employees of SKICC retiring on and after 01.01.2014 to be arbitrary and discriminatory in nature. It is on this premise, the writ Court has allowed the writ petition filed by respondent No.1.

17 Having considered the impugned judgment in light of the submissions made by learned counsel appearing on both sides as also the written arguments submitted by learned counsel for respondent No.1, it is

seen that SKICC, which was earlier run by the Government, came to be converted into a Society registered under the Societies Registration Act. Obviously, its employees were governed by its bye-laws. Although the bye-laws have not been brought to our notice, yet from the minutes of 17th meeting of the Board of Governors of SKICC, held on 11.04.2021, it transpires that the bye-laws of the SKICC did contain a provision stating that the employees of the Convention Centre shall be entitled to pension and other retiral benefits. However, it took the Corporation almost 16 years to implement this provision. There is no dispute with regard to the fact that even in the year 2010, when the respondent No.1 retired on superannuation, the matter with regard to grant of pension to the employees of Society was under consideration at different levels. However, the exercise undertaken by the appellants to grant pensionary benefits to the employees of the SKICC reached fruition only in the 2014 when the impugned Government order was issued by the Government framing Redefined Pension Rules for the benefit of employees of the SKICC. The Government having regard to various aspects decided to give the benefits of pension only to the employees retiring on and after 01.01.2014.

18 It is true that the pension or post retiral benefits payable to an employee on superannuation, is not a bounty to be granted by the employer but is a right vested in the employee, provided he holds a pensionable post under the employer. It is not mandatory for the employer to make a provision for payment of pension in the rules governing the service conditions of its employees. The employer may, in its wisdom, opt to compensate his employee on superannuation by making a provision for payment of GPF/CPF, gratuity, or other fixed sums. It is only where the

rules governing the service condition of an employee envisage grant of pension upon superannuation, the employer cannot arbitrarily and without any authority of law withhold the same. It is only in this context, the Hon'ble Supreme Court, in its umpteen judgments, held that the right to receive pension is a vested right of an employee and the same cannot be withheld by the employer by way of an executive fiat. The mandate of judgments passed by the Supreme Court on this aspect, which have been elaborately referred to by the Writ Court, do not lay down a thumb rule that all employees, irrespective of the rules governing their service conditions, are entitled to pension and other retiral benefits. Rather, these judgments unequivocally clarify that it is only in the cases where the rules governing the service conditions of an employee envisage the pensionary benefits on superannuation, the same cannot be denied or withheld by the employer without any justifiable reasons. The legal position adumbrated in the judgment of the Supreme Court in **Deokinandan Prasad vs. State of Bihar, AIR 1971 SC 1409** has not been appreciated by the writ Court in right perspective. With regard to right to pension for an employee in the absence of service rules envisaging the benefit of pension, has already been discussed by a Division Bench of this Court in **State and others vs. Hamidullah Andrabi and others**, (LPA No. 10/2019 and other connected matters, decided on 11.11.2021, the relevant extract whereof is reproduced hereunder:

“Right to pension is not a fundamental right guaranteed by any Article of Part III of the Constitution of India. It is a mere condition of service. Whether or not an employee of the Government or a Statutory Corporation is entitled to pension, is determined by the terms and conditions of his employment. These terms and conditions may be contractual

or statutory in nature. No employee of the Government or of any Public or Private Corporation can claim retirement pension de hors the rules and regulations governing conditions of his service”.

19 This brings us to the core question which arises for determination in this appeal: whether the cut-off date of 01.01.2014, mentioned in the impugned Government order, is arbitrary and *ultra vires* the Constitution. In **D.S.Nakara and others vs. UOI, AIR 1983 SC 130**, the Supreme Court, in para (42) of the judgment, has summed up the principle of law in the following manner:

“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 Article 14”

20 The judgment aforesaid essentially deals with the classification of pensioners in two classes for the purpose of granting revised pension and, therefore, is rendered in a different context. In the instant case, the cut-off date has been fixed for the purpose of giving the benefit of pension for the first time to the employees of the Society. Prior to the promulgation of impugned Government order, the services of SKICC were not pensionable

and, therefore, the employees, who retired prior to 01.01.2014, did not receive any pension. It needs to be appreciated that the fixation of cut-off date, in all cases, to some extent, would be somewhat arbitrary, but that alone would not be sufficient to render it violative of the equality doctrine enshrined under Article 14 of the Constitution.

21. In **National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sansthan**, (2011) 3 SCC 238, the Supreme Court has clearly held that the cut-off date would not be declared illegal unless 'it is shown to be capricious or whimsical in the circumstances'. The Supreme Court has held that a reasonable degree of latitude is required to be provided to the law-makers and, therefore, when a cut-off date is fixed for the purpose of extending a benefit, it should not ordinarily be interfered with by the judiciary. This was very aptly observed by the Supreme Court in the case of **State of Bihar and ors vs Ramjee Prasad and ors**, (1990) 3 SCC 368, the relevant extract whereof is reproduced hereunder:

"As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The same view was reiterated in Dr. Sushma Sharma v. State of Rajasthan (1985) Supp. SCC 45, University Grants Commission v. Sadhana Chaudhary (1996) 10 SCC 536, Ramrao v. All India Backward 32 Class Bank Employees Welfare Association (2004) 2 SCC 76 and State of Punjab v. Amar Nath Goyal (2005) 6 SCC 754".

22 In **Union Of India vs S. R. Dhingra and Others**, (2008) 2 SCC 229, the Supreme Court clarified the legal position on the point in paragraph 25, which reads as under:

“It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment (vide Col B.J. Akkara (Retd) vs. Govt of India, (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union of India (1991) 2 SCC 104, V. Kasturi vs. Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662)”.

23 When we examine the case on hand in light of the legal position elaborately explained hereinabove, we clearly find that the employees of the Society, including respondent No.1, who retired prior to 01.01.2014, and the employees of SKICC, who retired or would retire on or after the aforesaid date do not form a single homogeneous class. The employer is well within its right to validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuing an existing scheme. Simply because both sets of employees, i.e those who retired from SKICC prior to 01.01.2014 and those who retired thereafter, are retired employees of SKICC, is not a reason good enough to place them in the same class or homogeneous group. Therefore, Article 14 would have no application. As is

held by the Supreme Court in **S.R Dingra's case** (supra), what is discriminatory is the introduction of a benefit retrospectively or prospectively by fixing a cut-off date arbitrarily, thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment. While considering a similar question as is posed before us, the Supreme Court, in the case of **Amar Nath Goyal** (supra) held that a policy decision to restrict the benefit to persons after a particular cut-off date on the basis of financial implications for implementation of such a decision ought not to be considered discriminatory.

24 In the instant case, though the grant of pension to the employees of the Society was mulled long back, but the same reached fruition only in the year 2014. The Government, which exercises administrative control over SKICC, took a policy decision to extend the benefit of pension to the employees of the Society who retired on or after 01.01.2014. The employees of the Society who stood retired at a time when they were not holding any pensionable post and those who retired after the cut-off date when the Government order impugned applied Redefined Pension Rules, form two different classes.

25 Viewed thus, we are of the considered opinion that the cut-off date fixed in the impugned Government order of 2014, envisaging the benefit of pension in terms of the Defined Pension Rules of 2014 for the employees retiring on or after 01.01.2014, is neither arbitrary, nor discriminatory. The respondent No.1, who is amongst the employees who retired before 01.01.2014 form a class different from the employees who have retired or would retire after 01.01.2014, and therefore, Article 14 is not attracted.

26 For the foregoing reasons, we find merit in this appeal, and the same is, accordingly, allowed. Consequently, the writ petition filed by the respondent No.1 is dismissed, and the impugned judgment passed by the writ Court is set aside.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
20 .03.2025.
Sanjeev

whether judgment is reportable: Yes

