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CASE ANALYSIS: D.S. NAKARA VS. UNION OF INDIA, 1983 AIR 130

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ABSTRACT

This paper will analyze the case named D.S. Nakara Vs. UOI which was held in 1983 by the Supreme Court of India by Constitutional Bench consisting of 5 Judges including J.D.A. Desai, J.Y. V. Chandrachud, J.V.D. Tulzapurkar, J.O. Chinnappa Reddy, J. Baharul Islam. This paper will analyze how this case provides the information on Pensions that are provided after retirement from services. This analysis will include how Rights of pensioners were violated by some subsequent Memorandums that were issued by Government to Liberalize the pension scheme and to change the method of computation of pensions. It'll further include how these memorandums exclude certain individuals to avail the benefits and also how it's violative of Article 14 along with other Articles like Art.16 and 21. This paper will also include some of the issues that were raised in this case and will further critically analyze these issues. This paper will include how Doctrine of Severability is taken into account as per Article 13 to remove the unconstitutional part of the legislation. Then at last, this paper will critically analyze judgment whether decision given by the Court was justified or not for pensioners while protecting their rights and providing justice.

Keywords: *Pension, Art. 14, Art. 16, Art. 21, Doctrine of Severability*

Facts of Case

Parties

PETIYIONERS: *Petitioner 1 & 2* were retired pensioners of Central Government who retired just before the specified date on memorandums.

[1] Student, HNLU, Raipur

Petitioner 3 was employee under Society Registered as per Registration Act, 1860.

RESPONDENTS: Respondent include the *Government of India* (Union of India) who brought Legislations/Memorandum that excluded certain pensioners who retired prior to date from pension benefits contained in memorandums.

Facts

The Central government servants were ruled by ***"Central Civil Services (Pensions) Rules, 1972"*** under which they are provided pensions for their *past services* rendered under the government's post. As per this Act, computation of Pensions was determined by determining last *36 months of* services rendered by any government servants. Then on 25thMay, 1979 *Government of India* through *Ministry of Finance* issued ***Memorandum***[2] by which the formula for the computation of pensions was *Liberalized* and provided that the government servants who retire on or after 31st March, 1979 were eligible for liberalized pensions. Then government of India through *Ministry of Defense* issued another ***Memorandum***[3] on 28th September, 1979 that extended the Liberalized formula to the government servants of *Armed Forces* who were governed by the Act of 1972. This Memorandum provided that new rules provided will be applicable on the government servants who retire on or after 1st April, 1979.

This liberalized scheme of Pension provided *Slab System* for computing the pensions and also increased the *pension ceiling* from the earlier one and also included that, *emoluments* to be provided based on last *10 months services*. But the above memorandums excluded the government servants who retired prior or before such specified date, excluding them from availing pension benefits. Due to this, Petitioner 1 & 2 of Central Government and Petitioner 3 challenged these Memorandums in court. They filed Writ Petition in Supreme Court challenging their *Constitutionality* and contended that these Memorandums are *violative* of *Article 14*[4], provided that servants retired before such date were not made eligible under this liberalized scheme and provided that there was absence of Slab System and they were subjected to lower ceilings set as per Act of 1972[5].

[2] Memorandum No. F-19(3)-EV-79
[3] Memorandum no. B/40725/AG/PS4-C/1816/AD (Pension)/Services
[4] INDIA CONST. art.14
[5] Central Civil Services (Pensions) Rules, 1972

Issues Raised

1.Whether Government of India's action was justified while providing the above memorandums of 1979?

2.Whether these memorandums included the pensioners who retired prior to the specified?

3.Whether they were violative of Article 14 or not based on Reasonable Classification?

4.Whether it has a Retroactive effect or not and whether the Pensioner of prior date are entitled to liberalized pension scheme or not?

Judgement of Case

The Supreme Court of India held that the Memorandums issued by Government of India on 25th May, 1979 and 28th September, 1979 respectively were in total violation of Article 14 and upheld the contentions raised by Petitioners and provided decision in their favor. The court held that the respective memorandums and the date provided were *Discriminatory* and *Arbitrary* in nature as it only included the government servants who becomes ineffective and inoperative or retire on or after the specified date and they were only to be provided benefits of Liberalized scheme. The Court further held that it excluded the government servants who retired prior to such specified date which is violative of Article 14 and also amended the rules for the computation of pension.

The court further held that the classification done on the basis of specified date is discriminatory and arbitrary and was not based on ***reasonable classification*** and there was no *reasonable nexus* that Liberalized pension scheme were provided to achieve the objective. Further held that, there was no single *acceptable or persuasive reasons* for such division and classification doesn't stand on the **'*Twin Test*'**[6] of Article 14.

The Court further held that, the impugned part based on Arbitrariness and the Objectional portion of the memorandum were to be struck down by severing it, as reading in such manner would not render the legislation vague and unenforceable and unworkable, nor it render the memorandums provided as the legislations by the Court and held that the Constitutional portion have to be retained. The court further held that the Court could strike down the unconstitutional portion of Classification by striking down words of limitations.

[6] Held in State of West Bengal vs Anwar Ali Sarkar 1952 AIR 75

The court held that the memoranda weren't have ***Retroactive***[7] effect as they were not new schemes but is the revision of existing benefits. The court held that the government servants who retires prior to such date were to be provided emoluments based on the revised liberalized pension schemes and held that there is no question that servants who retired before such date have already availed the benefits and provided that they are entitled for pension based on fresh computation. It further struck down the *memoranda* of *28th September*, *1972* of being unconstitutional that the servants were eligible from the date of *Liberalized pension scheme* and they are entitled to pension irrespective of date.

Critical Analysis/Conclusion

Based on the above matter, it can be said that Court of Law was ***justified*** in providing the judgement in the favor of the Petitioners. It is because memorandums brought by Government of India respectively on 25th May and 28th September both in 1979 were violative of *Article 14*, as it was not based on Reasonable Classification. These memoranda have basically ***liberalized*** Pension scheme by government had made several changes like pension is provided to government servants based on ***Slab System***, then government through memorandum of 25th May, 1979 had also increased the ***Pension Ceiling*** that provided the increased amount to servants which is more than average amount provided to government servants prior to such date, then government also provided average ***Emoluments*** based on the last ***10 months*** services instead of 36 months that was also taken as for computation of pension before such memoranda.

Then government through the memorandum of 28th September, 1979 enhanced and extended these new schemes and services to servants of Armed Forces, again excluding the servants who were retired prior to such memorandum. One of the major drawbacks of these memorandums were that they were only applicable to the government servants who retire or become ineffective *on or after* 25th May and 28th September respectively and totally excluded the servants who retired before or prior to such date. It means the servants prior to such date were provided with lowered pension amount and average emoluments based on the services rendered of last 36 months and they were not eligible for the Slab System. It means the servants who retired prior to such dates were subjected to '***Triple Jeopardy***' which involves that these servants are provided Lower pension or average emoluments, Absence of Slab System and

[7] Jaila Singh vs State of Rajasthan (1976) 1 SCC 602

Lower Pension Ceiling which were in total contradiction of new and effective schemes provided for servants who retired after the date specified.

In the case of *Deokinandan Prasad vs. State of Bihar*[8], this case had interpreted the term 'Pensioners' as those who render the services who retire on superannuation or by any other mode. From this it can be implied that pensioners are those who have rendered services which may include government or private sector servants. Means the government servants ruled under Central Civil Services (Pensions) Rules, 1972 are entitled to avail the benefits under the subsequent memorandums providing Liberalized pension scheme.

Then in the case of *S.P. Gupta vs. UOI*[9], provided that ***Article 39 (d)*** has to be ensured means *Equal pay for Equal*[10] *services* have to be provided to all. It implies that the government servants retired prior to specified dates are to be provided equal pay equivalent to the servants who become ineffective on or after 25th May, 1979 or 28th September, 1979 as per Liberalized scheme as they have provided the same or equal services those of servants at later date. It further implies that *Article 14* ensuring equality is also provided by the court that the classification should be based on reasonable classification contending that the pensioners rights should not be violated. Means the servants who retire before the specified dates should be provided pensions based on Slab System and also should be provided average emoluments based on the services rendered based on last 10 months and must be based on increased Pension Ceilings.

Then in the case of *UOI vs. Parameshwaran Match Works*[11], provided that the classification based on the *specified date* then such classification should be made to achieve the objectives set and must be accepted as valid. It implies that the classification which was made based on the date specified was not reasonable and had not passed the ***'Twin Test'*** including *reasonableness* and *intelligible differentia,* means the Court was justified while striking down as the classification was *Artificial* and *Arbitrary.* Then in the case of *Maneka Gandhi vs UOI* and *Ajay Hasia vs Khalid Mujib*[12] provided that the *State* has onus to prove that the classification made by them is based on reasonableness and Intelligible Differentia ensuring

[8] (1971) 2 SCC 330
[9] 1981 Supp SCC 87
[10] Randhir Singh vs UOI 1982 AIR 879
[11] 1975 1 SCC 305
[12] (1981) 1 SCC 722

that Article 14 should not be violated, further implying that the Pensioners are entitled to avail benefits of new pension schemes based on fresh computation.

It further includes Article 15[13], 16[14]and 21[15] should not be violated. It implies that the Government servants were employees under Public Employment under Central Government and under Armed Forces as per *Article 16* and as per *Article 15* they should not be discriminated based on their gender, race, place of birth, sex and religion, etc. means they the servants who retired prior to such dates were also Public servants under government and they should be subjected to all benefits from Amendments made in Pension under the Memoranda as it'll ensure their *'Right to lead Dignified and Respectful life'* under *Article 21* and bringing them in equal footing with other servants who retire on or after the specified date in memoranda. From all the above analysis, it can be said that Court was justified providing that the government classification based on date were unconstitutional and struck down the unconstitutional part providing Liberalized Pension also to pensioners who retire before such dates protecting their Pension rights and that it should not be arbitrariness and unreasonableness.

[13] INDIA CONST. art.15
[14] INDIA CONST. art.16
[15] INDIA CONST. art.21