

[2013] 4 S.C.R. 883

KALLAKKURICHI TALUK RETIRED OFFICIAL
ASSOCIATION, TAMILNADU, ETC.

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v.

STATE OF TAMILNADU
(Civil Appeal Nos. 8848-8849 of 2012)

JANUARY 17, 2013

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[D.K. JAIN AND JAGDISH SINGH KHEHAR, JJ.]

Service Law:

Pension - Calculation of - Government order - While calculating pension, classified the employees retiring before and after 1.6.1988 - Lower component of 'dearness pay' was extended to the employees retiring after 1.6.1988 vis-à-vis the employees who retired prior thereto - Held: Such classification is arbitrary and discriminatory and is liable to be set aside as violative of Articles 14 and 16 of the Constitution - Constitution of India, 1950 - Articles 14 and 16 - Tamilnadu Pension Rules, 1976 - r.30.

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Constitution of India, 1950 - Articles 14 and 16 - Valid classification - A classification to be valid, must be based on just objective and differentiation must have reasonable nexus to the objective sought to be achieved - Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection offered under Art.14 and also discriminatory and violative of protection offered under Art.16 - Quantum of discrimination is irrelevant to a challenge based on a plea of arbitrariness.

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Words and Phrases - 'Dearness Pay' - Meaning of.

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The employees of the State Government who retired on or after 1.6.1988 challenged the Government Order dated 9.8.1989, whereby the pensionary benefits of an

A employee retired/retiring on or after 1.6.1988 were required to be computed by adding 'dearness allowance' to 'dearness pay' at a fixed percentage. By virtue of he said determination, the employees retiring on or after 1.6.1988 were at disadvantage as compared to the
B employees who had retired prior thereto. High Court allowed the petition holding that the order dated 9.8.1989 was unsustainable. Division Bench of High Court set aside the order of Single Judge. Hence the present appeals.

C Allowing the appeals, the Court

HELD: 1. The Constitution of India ensures to all, equality before the law and equal protection of the laws. These rights flow to an individual under Articles 14 and
D 16 of the Constitution. The extent of benefit or loss in such a determination is irrelevant and inconsequential. The extent to which a benefit or loss actually affects the person concerned, cannot ever be a valid justification for a court in either granting or denying the claim raised on
E these counts. The rejection of the claim of the appellants by the High Court, merely on account of the belief that the carry home pension for employees who would retire after 1.6.1988, would be trivially lower than those retiring prior thereto, amounts to bagging the issue pressed
F before the High Court. In the instant case, in a given situation, an employee retiring on or after 1.6.1988 could suffer a substantial loss, in comparison to an employee retiring before 1.6.1988. Therefore, the High Court erred while determining the issue projected before it. [Para 26]
G [910-B-F]

2. A valid classification is truly a valid discrimination. Article 16 of the Constitution permits a valid classification. A valid classification is based on a just objective. The result to be achieved by the just objective presupposes
H the choice of some for differential consideration/

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treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut-off date is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied. Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India. [Paras 27 and 30] [910-G-H; 911-A-C; 915-B]

3. 'Dearness allowance' is extended to employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life, to which an employee is accustomed. Likewise, the objective of 'dearness pay' is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. In the present context, 'dearness allowance' is paid to Government employees keeping in mind the All India Consumer Price Index. When a State Government chooses to treat 'dearness allowance' as 'dearness pay', the objective remains the same i.e., inflation in the market place is sought to be balanced for retired employees by giving them the benefit of 'dearness pay'. Since the component of inflation similarly affects all employees, and all pensioners (irrespective of the date of their entry

- A into service or retirement), it is not per se possible to accept different levels of 'dearness pay' to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the 'dearness allowance' to be extended to
- B serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the 'dearness pay' to be extended to retired employees. [Paras 27 and 28] [911-D-E, F-H; 912-A-C]
- C 4. In the instant case, the State Government has not disclosed any object which is desired to achieve by the cut-off date. Most importantly, the financial constraints of the State Government, were not described as the basis/
- D Government order dated 9.8.1989. No employee has a right to draw 'dearness allowance' as 'dearness pay' till such time as the State Government decides to treat 'dearness allowance' as 'dearness pay'. And therefore, the State Government has the right to choose whether or not
- E 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government not to treat any part of 'dearness allowance' as 'dearness pay'. In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State
- F Government has the right to choose how much of 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government to treat a fraction, or even the whole of 'dearness allowance' as 'dearness pay'. Based on Rule 30 of the Tamilnadu
- G Pension Rules, 1978, it is clear that the component of 'dearness pay' would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of 'dearness allowance' would be treated as
- H 'dearness pay', it cannot discriminate between one set of

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pensioners and another, while calculating the pension payable to them. Though a valid classification may justify such an action, but in the present case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment. Therefore, the instant classification made by the State Government in the impugned Government order dated 9.8.1989 placing employees who had retired after 1.6.1988 at a disadvantage, vis-à-vis the employees who retired prior thereto, by allowing them a lower component of 'dearness pay', is clearly arbitrary and discriminatory, and as such, is liable to be set aside, as violative of Articles 14 and 16 of the Constitution of India. [Paras 28, 29 and 31] [913-F-H; 914-A-E; 915-E-F]

Union of India vs. P.N. Menon (1994) 4 SCC 68; *State of Rajasthan vs. Amrit Lal Gandhi* (1997) 2 SCC 342: 1997 (1) SCR 121; *State of Punjab vs. Amar Nath Goel* (2005) 6 SCC 754: 2005 (2) Suppl. SCR 549 -distinguished.

Case Law Reference:

(1994) 4 SCC 68	distinguished	Para 32(i)
1997 (1) SCR 121	distinguished	Para 32(ii)
2005 (2) Suppl. SCR 549	distinguished	Para 32(iii)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8848-8849 of 2012.

From the Judgment & Order dated 17.12.2007 of the High Court of Judicature at Madras in W.A. Nos. 9 and 75 of 2007.

WITH

C.A. Nos. 8850-8852, 8853-8855, 8856, 8857, 8858, 8859, 8860, 8861-8863, 8864, 8865, 8866, 8868, 8869, 8871, 8872, 8873-8874, 8875, 8876, 8877-8878, 8879, 8880, 8881, 8882, 8883 & 8870 of 2012.

- A K. Ramamoorthy, A.K. Ganguly, V. Krishnamurthy, Dr. A. Francies Julian, Raju Ramachandran, S. Gurukrishna Kumar, AAG, N. Shoba, Sri Ram J. Thalopathy, V. Adhimoolam, V. Balaji, MSM. Asai Thambi, C. Kannan (for B.K. Pal), Hari Shankar K., V. Balachandran, S. Beno Bencigar (for M.A. Chinnasamy), P.R. Kovilan Poongkuntran, Geetha Kovilan, R.V. Kameshwaran, Gautam Narayan, Asmita Singh, Nikhil Nayyar, P.V. Yogeswaran, Danish Zubair Khan, Sumit Kumar, Syed burhanur Rahman, Madhur Panjwani, A. Prasanna Venkat (for B. Balaji), Subramonium Prasad for the appearing parties.

C The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. The Government of Tamil Nadu has been issuing executive order from time to time to determine the composition of allowances to be added to pay for quantifying wages for calculating pension. It is the case of the appellants, that the State Government followed a consistent practice of treating 'dearness allowance' as 'dearness pay' for the computation of pension and other retiral benefits. Illustratively, we are informed, that by a Government Order dated 11.3.1970 the State Government included 'dearness allowance' at the rate then prevalent, as a component of wages for calculating average emoluments for determining pension, for those who retired on or after 26.2.1970. The instant Government Order dated 11.3.1970 was applicable to employees who retired between 26.2.1970 and 1.10.1970.

2. One R. Narasimachar who had retired on 21.11.1969 was not extended the benefit of 'dearness allowance' drawn by him at the time of his retirement, while computing his pension. This denial was because the Government order dated 11.3.1970, extended the benefit referred to above only to such employees who had/would retire on or after 26.2.1970. Dissatisfied with the aforesaid denial, he filed Writ Petition no.1815 of 1986 contending, that his pension should have been calculated by taking into consideration 'dearness allowance'

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which was being drawn by him at the time of his retirement, as 'dearness pay'. A learned Single Judge of the High Court of Judicature at Madras (hereinafter referred to as, the High Court) allowed the aforesaid writ petition on 15.3.1990 by holding, that the State Government was not right in restricting the applicability of the Government Order dated 11.3.1970 only to employees who retired between 26.2.1970 and 1.10.1970. The learned Single Judge directed, that 'dearness allowance' which the appellant was drawing, at the time of his retirement, be treated as 'dearness pay' for calculating his pension. On 26.2.1991, the writ appeal filed by the State Government against the order dated 15.3.1990 (passed by the learned Single Judge allowing Writ Petition no.1815 of 1986), was dismissed.

3. Based on the aforesaid judgment dated 15.3.1990, which the State Government accepted, a clarificatory Government Order dated 4.12.1991, was issued. Under the Government Order dated 4.12.1991, even for employees who had retired prior to 1.12.1966, 'dearness allowance' actually drawn by them, at the time of their retirement, would be taken as 'dearness pay' for purposes of calculating pension. For employees retiring between 1.12.1966 and 25.2.1970, 'dearness allowance' upto the level obtaining in December, 1966 would be taken into consideration as 'dearness pay' for determining pension (and gratuity). It is therefore submitted, that 'dearness allowance' became a component of pension, for all employees who had retired upto 25.2.1970.

4. In order to place the sequence of facts in the correct perspective, it was further brought to our notice that the Government order dated 11.3.1970 was clarified by a subsequent letter dated 4.12.1991. As per the aforesaid order and letter, Government servants retiring from service on or after 26.2.1970, and upto 1.10.1970, 'dearness allowance' up to the level obtaining in December, 1966, was to be reckoned as 'dearness pay' for purposes of pension (and gratuity). Thereupon, through a subsequent Government order dated

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A 4.12.1991, directions were issued for extending the benefit contemplated by the Government order dated 11.3.1970 and the Government's letter dated 4.2.1991, even to those who had retired prior to 26.2.1970.

B 5. A Government order dated 4.12.1991 was then brought to our notice. It provided, that notional revised pension payable from 1.6.1988 would be encashable only with effect from 1.12.1991. It also provided, that those Government servants who had retired prior to 26.2.1970 but had died before 1.12.1991, would be ineligible for the benefits contemplated for retirees prior to 26.2.1970. However, if the concerned Government employee had died after 1.12.1991, the benefits contemplated for retirees prior to 26.2.1970 would be released to the legal heirs of such retirees. It is, therefore apparent, that for the benefits of the aforesaid Government order, the retirees under reference would be deprived of the actual monetary benefit payable to him, from the date of his or her retirement, till 30.11.1991 (as arrears of pension under the aforesaid Government orders were payable only with effect from 1.12.1991).

E 6. The aforesaid R. Narasimachar again assailed the Government order dated 4.12.1991, by contesting the determination of the State Government, in denying to him, the benefit of arrears from the date of his retirement (on F 21.11.1969) till 30.11.1991, by filing Writ Petition no. 4038 of 1992 before the High Court. The aforesaid Writ Petition was allowed by the High Court. The High Court held, that monetary benefits could not be denied for the period preceding 1.12.1991. In other words, retirees before 1.12.1991 were held G entitled to arrears from the date of their retirement till 30.11.1991. The cut off date (1.12.1991) for extending the benefit of arrears was accordingly set aside.

H 7. The judgment rendered by the High Court in Writ Petition no. 4038 of 1992 on 15.6.1993, quashing the action

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of the State Government in limiting payment of arrears, only with effect from 1.12.1991, was accepted by the State Government. The judgment of the High Court was given effect to, by a Government order dated 26.7.1993, whereby, the earlier Government order dated 4.12.1991 was modified. Under the Government order dated 26.7.1993, pensioners were held eligible for arrears of pension from the date of their actual retirement. The aforesaid benefit of arrears was also extended to legal heirs of such pensioners, who had died in the meantime.

8. Based on the factual position narrated in the foregoing paragraphs, it clearly emerges, that 'dearness allowance' was taken as 'dearness pay' for employees retiring from government service, at all times, without any interruption, for the computation of retiral benefits including pension. The aforesaid narration also reveals, that the component of 'dearness allowance' to be treated as 'dearness pay' for being taken into consideration for calculating pension, was determined by the State Government, through Government orders issued from time to time. The narration recorded hereinabove pertains to employees whose date of retirement preceded 1.10.1970.

9. The factual position being recorded hereinafter relates to the period after 1.10.1970.

10. On 6.2.1974, a Dearness Allowance Committee was constituted, to inter alia make recommendations, of allowances which should be treated as a component of wages, for calculating pension of retired/retiring employees. On 7.7.1974, the Dearness Allowance Committee inter alia recommended, that 'dearness allowance' be treated as 'dearness pay' in full, for computing retiral benefits including pension. Accepting the recommendations of the Dearness Allowance Committee, the Finance Department, issued a Government Order dated 6.2.1975 directing, that 'dearness allowance' actually being drawn by employees retiring on or after 1.2.1975 be treated as

A 'dearness pay' for calculating average pay (by taking not
consideration 10 months wages, prior to the date of retirement),
for calculating pension, (gratuity and travelling allowance). It
would be relevant to mention, that at the aforesaid juncture,
employees drawing pay upto Rs.299/-, were entitled to Rs.55/
B - as 'dearness allowance'; and those drawing pay at Rs.300/-
and above, were entitled to Rs.70/- as 'dearness allowance'.
Accordingly, by the Government Order dated 6.2.1975, the
State Government, determined the component of 'dearness
allowance' (Rs.55/- or Rs.70/-, as the case may be) to be taken
C into consideration, for calculating pension. The intention of the
instant Government Order was, that employees retiring on or
after 1.2.1975, should derive full benefit of, the merger of the
then existing 'dearness allowance' into wages, as 'dearness
pay' for computing pension. The Government order dated
D 6.2.1975 permitted employees retiring on or after 1.2.1975, an
addition of 'dearness allowance' actually being drawn by them,
(during the period of ten months, prior to the date of their
retirement), by treating the same as 'dearness pay', for
calculating average wages. The said average wage, would lead
E to the computation of pension actually payable.

11. K. Venkataraman filed Writ Petition no. 8237 of 1995
before the High Court with a prayer that 'dearness allowance'
drawn by him for a period of ten months prior to the date of his
retirement (on 30.6.1974) be treated as 'dearness pay' for
F calculating his pension. The benefit sought, had been denied
because he had retired on 30.6.1974, whereas, the benefit of
the Government order dated 6.2.1975 was extended only to
such employees who had retired after 1.2.1975. The aforesaid
Writ Petition came to be transferred to the Tamil Nadu
G Administrative Tribunal (hereinafter referred to as, the
Administrative Tribunal). Before the Administrative Tribunal, the
Writ Petition was renumbered as T.A. 845 of 1991. The
Administrative Tribunal, by its order dated 1.4.1993, held that
K. Venkataraman was entitled to the benefits extended to other

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pensioners, irrespective of the fact that he had retired (on 30.6.1974 i.e., prior to the cut off date (1.2.1975). A

12. The State Government, accepted the decision of the Administrative Tribunal in K. Venkataraman's case (in T.A. no. 845 of 1991 decided on 1.4.1993), and implemented the same. B
For the aforesaid purpose, the Finance (Pension) Department issued a Government order dated 23.9.1993. Accordingly, K. Venkataraman's pension was recalculated by treating 'dearness allowance' actually drawn by him, during the ten months preceding the date of his retirement, as 'dearness pay'. C
It therefore emerges, that the manner of computing pension for retired and retiring employees were equated, in so far as the component of 'dearness allowance' is concerned.

13. We were told, that when one or the other Government order introduced a distinction in pensionary benefits, for computing pension, the same was equated through judicial intervention. Such judicial interventions were then adopted by the State Government, from time to time. This aspect of the matter, factual as well as legal, was not disputed by the learned counsel representing the respondents. This position continued till the adoption of the recommendations of the Fourth Tamil Nadu Pay Commission Report, details whereof, shall be narrated soon hereafter. D E

14. On 1.1.1979, the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as "the Pension Rules") came to be enforced. After the promulgation of the Pension Rules, pension of retiring government employees had to be determined in consonance with the said Rules. It is not in dispute, that pension to Government employees is now regulated under the Pension Rules. Under the Pension Rules, pension is calculated on the basis of an employee's emoluments/wages, immediately before his retirement. For this, reference may be made to Rule 30 of the Pension Rules, which is being extracted hereunder:- F G

"30. Emoluments-In the rules, unless the context otherwise H

A requires,--

(1) Emoluments means and include:-

- B (i) Pay, other than special pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity (including temporary capacity under emergency provisions) or to which he is entitled by reason of his position in a cadre:
- C (ii) special pay, dearness pay and personal pay; and
- D (iii) any other remuneration which may be specially cloused as emoluments by the Government."

(emphasis is ours)

E The emoluments/wages to be taken into consideration for computing pension is dependent on the allowances which are added to pay. The composition and component of the said allowances is determined by the State Government from time to time through Government orders. A perusal of Rule 30 of the Pension Rules reveals, that 'dearness pay' is a component of the wages to be taken into consideration for computing pension. And 'dearness pay' is a component of 'dearness allowance; which on a declaration by the State Government approves (through a Government order) for being taken into consideration for calculating pension.

G 15. In 1986, the Fourth Tamil Nadu Pay Commission gave its report. The Pay Commission recommended, that 'dearness allowance', prevalent at the end of three years (after the Pay Commission's recommendations), should be treated as 'dearness pay', in order to ensure a reasonable pension level.

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The Finance (Pension) Department having considered the recommendations made by the Pay Commission, issued a Government Order dated 30.4.1986, providing that 'dearness allowance' and 'additional dearness allowance' sanctioned upto 30.9.1987 would be treated as 'dearness pay' for calculating pension, in respect of those who retired (or died) on or after 1.10.1987. The concession of adding 'dearness pay' was extended to the period of 10 months for calculating average emoluments, for those who retired before or after 31.7.1987. But employees retiring on or after 1.10.1987 were entitled to add 'dearness allowance' sanctioned upto 1.10.1987 to their wages, for quantifying pension (family pension and death-cum-retirement gratuity). It is therefore apparent, that even after the acceptance of the recommendations of the Fourth Pay Commission report, 'dearness allowance' remained a component of wages. As such, 'dearness allowance' continued to be taken into consideration for computing pension of retiring government employees.

16. The Fifth Tamil Nadu Pay Commission submitted its report in 1989. The instant Pay Commission recommended, the following formula for calculating pension:

Basic Pay Per Month	Rate of Pension Per Month
(i) Not exceeding Rs.1,500	30 percent of basic pay subject to a minimum of Rs.375 p.m.
(ii) Exceeding Rs.1,500 but not exceeding Rs.3,000/-	20 per cent of basic pay subject to a minimum of Rs.450 p.m.
(iii) Exceeding Rs.3,000/-	15 per cent of basic pay subject to a minimum of Rs.600 and a maximum of Rs.1,250 p.m.

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A The Fifth Pay Commission also recommended different percentages of increase in pension for existing pensioners, who had retired prior to 1.6.1988. By a Government Order dated 9.8.1989 the Finance Department while accepting the recommendations of the Fifth Tamil Nadu Pay Commission
 B fixed a slab system, for adding 'dearness allowance' as 'dearness pay' for calculating pension. This decision of the State Government was to be implemented for employees retiring on or after 1.6.1988.

C 17. Original Application no. 1919 of 1991 was filed by Ambasamudaram, Taluk Pensioner Associations before the Administrative Tribunal. Likewise, a large number of other Original Applications (including OA no. 4952 of 1992, O.A. no. 2227 of 1992, O.A. no. 4265 of 1992, O.A. no. 4953 of 1992, OA no.2645 of 1994 and OA no.2646 of 1994) were filed
 D before the Administrative Tribunal. Through the aforesaid original applications, the petitioners/applicants assailed the Government Order dated 30.4.1986 (issued in furtherance of the recommendations made by the Fourth Tamil Nadu Pay Commission), as well as, the Government Order dated
 E 9.8.1989 (issued in furtherance of the recommendations made by the Fifty Tamil Nadu Pay Commission). All the aforesaid original applications were disposed of by the Administrative Tribunal vide a common order dated 6.5.1996. The operative part of the order passed by the Administrative Tribunal while
 F disposing of the aforementioned original applications is being extracted hereunder:

"OA 1919/91

G We set aside the G.O.Ms. No.810 (Finance and Pay Commission) Department dated 9.8.89 in so far as it affects the applicant's association and direct the respondent to extend the benefits of 60% increase in the pre-revised pension plus the Dearness Allowance at 608
 H points available to those who retired prior to 1.6.60 to

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those pensioners and family pensioners of cases of A
retirements or death occurring after 1.6.60.

OA 2227/92

We quash the G.O.Ms. No.371, Finance dated B
30.4.1986 and G.O.Ms.No.911; finance dated 4.12.1991
in so far as they have restricted their applicability to the
pensioners and family who retired prior to 1.10.1987 listed
in Appendix 1 and 2 and those who retired during the
period from 1.10.1987 to 31.5.1988 as listed in Appendix C
from the services of Government, local bodies and aided
educational institutions and direct the respondent to count
the DA and ADA as dearness pay for all ten months
preceding retirement for computing average emoluments
to fix their pensionary benefits including pension and value D
of commutation and also direct the respondent to pay the
arrears of pension, gratuity and value of commutation of
pension on such refixation computed from the date of
retirement or death as the case may be to the pensioners
and family pensioners.

OA 4265/92 E

We quash the G.O.Ms.No.115, Finance dated
6.2.1975 and G.O.Ms.No.911 Finance dated 4.12.1991 in
respect of the applicant as far as it relates to classification
of pensioners and direct the respondent to extend the F
benefits of the impugned G.Os. to the affected pensioners
and family pensioners and pay the arrears of pension and
gratuity and the family pension computed on refixation of
their original pension or family pension from the date of
their retirement or the date of death of the Government G
servant as the case may be.

OA 4953/92

We quash G.O.Ms.No.371, Finance dated H

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A 30.4.1986 and G.O.Ms.No.911 Finance dated 4.11.86 in
respect of the applicant as far as they have restricted their
applicability to the pensioners and family pensioners' who
retired or died as the case may be prior to 1.10.87 and
after 1.4.78 and direct the respondent to allow the
B pensioners who retired during the period from 1.10.87 to
31.5.1988 to count the DA and ADA as dearness pay for
all the 10 months preceding retirement for computing
average emoluments and extend the benefits of the
C impugned GOS to them, and pay them the arrears of
pension, gratuity and value of commutation on such
refixation computed on and from the date of retirement or
death as the case may be to the affected pensioners and
family pensioners.

D OA No.2645/94

We direct the respondents to extend the benefit of
G.O.Ms.No.679, Finance (Pension) Department, dated
23.9.93 to the applicant also and revise his pension with
effect from 1.11.1974 taking into account the Dearness
E Allowance drawn by him from 9.1.1974 to 31.10.1974 and
pay him the arrears due to him consequent on the revision
from 1.11.1974.

OA No.2646/94

F We quash the letter No.88079/Pension/93-I, Finance
Department, dated 1.10.1993 and direct the respondent
to extend the benefit granted in G.O.Ms.No.115, Finance
dated 6.2.75 to those who retired during the period from
1.10.70 to 1.2.75 and pay them arrears of pension and
G DCRG from the dates of their retirement.

The applications are allowed. Taking into
consideration the fact that most of the applicants would
have died or most of them would have reached the age of
H more than 70, we direct the respondent to refix their

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pension and pay the arrears within two months from the date of receipt of this order or a copy thereof." **A**

18. The factual narration recorded hereinabove refers to the Government orders issued from to time, directing the component of 'dearness allowance', which was to be taken into consideration as 'dearness pay' for computation of pension; the outcome of the challenges raised to the aforesaid Government orders; and the eventual implementation thereof in the context of the implementation of the component of 'dearness pay' to be taken into consideration for calculating pension. Even though the exhaustive details of the same have been narrated above, it is necessary to record a summary thereof, so as to have a bird's eye view of the manner in which 'dearness pay' has been extended to retired Government employees from time to time. Accordingly, the aforesaid summary is being paraphrased below:- **B**
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(i) Government order dated 11.3.1970 included 'dearness allowance' as a component of wages for calculating pension for only such employees who retired between 26.2.1970 and 1.10.1970. By judicial intervention, the aforesaid Government order extending the benefit of treating 'dearness allowance' as 'dearness pay', was held to be applicable even to employees who had retired prior to 26.2.1970. The State Government accepted the aforesaid legal position and extended the same benefit of 'dearness allowance' by treating the same as 'dearness pay' to all pensioners equally. **E**
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(ii) Government order dated 6.2.1975 was issued to give effect to the recommendations made by the Dearness Allowance Committee to the effect, that 'dearness allowance' sanctioned with effect from 1.4.1974 (Rs.55/- for employees drawing pay upto Rs.599/-, and Rs.70/- for employees drawing pay upto Rs.600/- and above) would be treated as 'dearness pay' for employees retiring on or **G**

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- A after 1.2.1975 (by 'adding dearness allowance actually drawn by them during the ten months preceding their retirement. By judicial intervention, it was held that the aforesaid benefit would also extend to such employees who had retired during the period between 2.10.1970 and
- B 31.1.1975, and that, 'dearness allowance' sanctioned from time to time and actually drawn by the retiring employee would be treated as 'dearness pay' in case of those who retired during the period between 2.10.1970 and 31.1.1975 (for calculation of pension).
- C (iii) Government order dated 30.4.1986, while accepting the recommendation made by the Fourth Tamil Nadu Pay Commission, provided for certain pensionary benefits to employees who had retired between 1.10.1987 and 31.5.1988, by allowing them to count 'dearness allowance' and 'additional dearness allowance' as 'dearness pay'. The concession of 'dearness pay' was extended for the entire ten months for calculating average emoluments in case of
- D those who retired after 31.7.1987. By judicial intervention, it was held that the concession of adding 'dearness allowance' as 'dearness pay' would extend even to
- E employees who had retired (or died) prior to 1.10.1987. It was also held, that pensioners who had retired during the period between 1.10.1987 and 31.5.1988 would be entitled to count 'dearness allowance' and 'additional
- F dearness allowance' as 'dearness pay' (for all the ten months preceding their retirement) for computing average wages for calculating pension. The State Government accepted the aforesaid legal position and extended the aforesaid benefits equally to all pensioners.
- G (iv) Government order dated 9.8.1989, while accepting the recommendations made by the Fifth Tamil Nadu Pay Commission, introduced a slab system, for adding 'dearness allowance' as 'dearness pay' into the component
- H of wages for calculating pension. A distinction was made

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between employees retiring before and after 1.6.1988. By judicial intervention, the benefit of treating 'dearness allowance' as 'dearness pay' was extended to employees irrespective of the date of their retirement. **A**

(v) Government order dated 4.12.1991 provided, that arrears of pension based on recalculation of pension, by taking into consideration the component of 'dearness allowance' as 'dearness pay', would be released to pensioners with effect from 1.12.1991, even in cases where the concerned pensioner had retired with effect from a date preceding 1.12.1991. By judicial intervention, arrears of pension, based on recalculation of pension, were ordered to be released to retired employees, by taking into consideration the component of 'dearness allowance' as 'dearness pay' equally for all employees. The State Government accepted the aforesaid legal position and extended the said benefit to pensioners who had retired prior to 1.12.1991. **B**
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19. The aforesaid factual/legal position is a historical narration of the inclusion of 'dearness allowance' as 'dearness pay' from time to time for computation of pension. What emerges from this narration is, that all pensioners (past, present and future) were equally granted the benefit of 'dearness allowance' as 'dearness pay' for calculating pension. Whenever a class of pensioners was discriminated against, for computation of pension, on the basis of dearness allowance/ pay judicial intervention restored the equation. The equation was then given effect to by the State Government from time to time. Clearly, judicial intervention repeatedly erased the classifications created between pensioners, on the basis of 'dearness pay'. **E**
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20. The present controversy yet again presents a dispute, inter se, between the State Government and retired employees in respect of the component of 'dearness allowance' liable to be treated as 'dearness pay', for computing pension payable **H**

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A to retired Government employees. Even though the instant
controversy also arises out of Government order dated
9.8.1989, the same remained unsettled in the earlier rounds of
litigation (emerging out of the same Government order dated
9.8.1989), presumably because none of the retired employees
B fell within the classes of pensioners included in the present
litigation. The employees herein are those who retired on or
after 1.5.1988. By the impugned Government order dated
9.8.1989, pensionary benefits of an employee retired/retiring
on or after 1.6.1988 were required to be computed by adding
C 'dearness allowance' to 'dearness pay' at a fixed percentage.
By virtue of the aforesaid determination, employees retiring on
or after 1.6.1988 would be at a disadvantage, as against the
employees who had retired prior thereto.

21. The afore-stated challenge to the impugned
D Government order dated 9.8.1989 was raised before the
Administrative Tribunal through an Original Application (O.A. no.
5771 of 2001) by an Association of retired Government
employees. The aforesaid Original Application came to be
transferred to the High Court, wherein it was renumbered as
E Writ Petition (T) no. 32045 of 2005. A learned Single Judge of
the High Court allowed the aforesaid Writ Petition on 20.4.2006.
The learned Single Judge held, that the State Government, in
not extending benefits to members of the appellant Association,
had discriminated against them. The impugned Government
F order dated 9.8.1989, to the extent that it did not confer the
same benefits (based on the component of 'dearness
allowance' treated as 'dearness pay'), for employees who
retired on or after 1.6.1988, was held as unsustainable. Writ
Petition (T) no. 32045 of 2005 was accordingly allowed.

G 22. Dissatisfied with the order dated 20.4.2006 passed
by the learned Single Judge, allowing Writ Petition (T) no.
32045 of 2005, the State Government preferred a Writ Appeal
before a Division Bench of the High Court. The aforesaid Writ
H Appeal, alongwith writ petitions filed before the High Court on

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the same subject, were taken up for collective adjudication. By an order dated 17.12.2007, Writ Appeal no. 1002 of 2006 was allowed. The order dated 20.4.2006, passed by the learned Single Judge (allowing the claim of the employees who had retired on or after 1.6.1988), was set aside. All writ petitions filed by retired employees on the same subject matter which were taken up for disposal alongwith the Writ Appeal referred to above, were simultaneously dismissed. Through the instant Civil Appeals, different employees' associations, as also employees (singularly and collectively), have assailed the order passed on 17.12.2007 by the Division Bench of the High Court, allowing Writ Appeal no. 1002 of 2006 (and connected appeals); and dismissing the writ petitions preferred by employees (and employees' associations) taken up for collective disposal, alongwith the aforesaid Writ Appeal (no. 1002 of 2006).

23. During the course of hearing, learned counsel representing the appellants, first and foremost, vehemently contended, on the basis of the legal and the factual position noticed above, that the benefit of 'dearness allowance' as 'dearness pay' has always equally been extended to all the pensioners, irrespective of the date of their retirement. It was further contended, that as and when there was discrimination on the above subject, the same was suitably remedied by the State Government, by amending/modifying the earlier Government orders. It was submitted, that a similar discrimination emanating out of the same Government order dated 9.8.1989, pertaining to a set of employees differently classified, was corrected through judicial intervention (details already noticed above). During the aforesaid course of repeated adjudication, on the subject under consideration, the matter once came up to this Court, when Special Leave Petition (Civil) no. 23643 of 1996, filed before this Court by the State Government, was dismissed. Even a review petition filed before this Court, by the State Government thereafter, admittedly met the same fate. It was accordingly submitted, that

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A the same principle which was made applicable to different sections of pensioners, under the same Government order dated 9.8.1989, should be extended to the instant class of retired Government employees i.e., those who retired on or after 1.6.1988.

B 24. Besides the aforesaid legal premise, for assailing the impugned Government order dated 9.8.1989, learned counsel representing the appellants, invited our pointed attention to a compilation enclosed by the Retired Officers' Association (in Civil Appeal no. 8856 of 2012). The said compilation was
 C relied upon to demonstrate to us, the extent of discrimination caused to the appellants (who retired on or after 1.6.1988). For this reason various hypothetical situations were illustratively placed before us, for our consideration. In each such
 D hypothetical illustration, the appellants took into consideration the same number of years of service rendered, against the same post, wherein the pensioner had also retired at the same component of last pay drawn. Therefrom, it was sought to be established, that employees who had retired on or after
 E 1.6.1988 would be at a substantial disadvantage. Illustratively, for the adjudication of the present controversy, a hypothetical situation relating to an employee holding the post of Deputy Collector is being placed below:

		<u>'A'</u>
F	Cadre taken	: Deputy Collector
	Date of retirement	: 30.04.1988
	Net qualifying service	: 33 years
	Scale of Pay	: 1340-75-1715-90-2435
	Pay last drawn	: Rs. 2435/-
G	Average Emoluments	: Rs. 2435/-
	Original Pension fixed	: Rs. 1218/-
	Pension revised as per G.O. 449	: Rs. 1448/-
	Revision as per G.O. 810	
H	As on 01.06.1988	: Rs. 1622/-

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Pension as per G.O. 271	:	1622/-		A
Add: 50% increase	:	811/-		

Total Pension		2433/- (With effect from 1.6.1988)		
(Pension as on 1.1.1966)	:	2433/-		B
Add: 111%	:	2701/-		
Interim Relief-I		50/-		
Interim Relief-II	:	244/-		
40% Hike	:	974/-		

Total Pension	:	6402/- (With effect from 1.1.1996)		C
xxx	xxx	xxx	xxx	
		<u>'B'</u>		D
Cadre taken	:	<u>Deputy Collector</u>		
Date of retirement	:	30.06.1988		
Net qualifying service	:	33 years		
Scale of Pay	:	2200-75-2800-100-4000		
Average Emoluments	:	Rs. 2515/- +		E
Add: 13% as per G.O. 810	:	Rs. 327/-		
	:	Rs.2842/-		
Pension 50%	:	Rs.1421/-		F
As on 1.1.96:				
Pension	:	Rs.1421/-		
Add 148%	:	2104/-		
Interim relief-I	:	50/-		
Interim relief-II	:	143/-		G
40% Hike	:	569/-		

Total Pension		Rs.4287/- (With effect from 1.1.1996)		
xxx	xxx	xxx	xxx	H

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A		<u>'C'</u>	
	Cadre taken	:	Deputy Collector
	Date of retirement	:	30.06.1993
	Net qualifying service	:	33 years
B	10 months average emoluments	:	Rs.2725/-
	Add: 13% increase	:	Rs. 355/-
		:	Rs.3080/-
C	Pension fixed at 50%	:	Rs.1540/-
	Revised pension as on 1.1.1996	:	Rs.1540/-
	Add Dearness Allowance 148%	:	2280/-
D	Interim relief-I	:	50/-
	Interim relief-II	:	154/-
	40% Hike	:	616/-

	Total Pension		Rs.4640/- (With effect from 1.1.1996)

E After narrating the computations made in the illustrations referred to above, it was submitted that it clearly emerged, that a person who had retired as a Deputy Collector on 30.4.1988 (before 1.6.1988) would get pension of Rs.6,402/-; while a Deputy Collector, who retired on 30.6.1988, would get Rs.4,287/-; and a Deputy Collector who retired on 30.6.1993, would get Rs.4,640/- as pension, all of them having the same 33 years of qualifying service, as well as, a similar last pay prior to their retirement. What is important is, that the figures referred to above were accepted in the response sought by the High Court from the Accountant General, Tamil Nadu. In the response from the Accountant General, Tamil Nadu, the only mistake found was the amount of pension depicted as Rs.6,402/- for a Deputy Collector (who retired prior to 1.6.1988). According to the Accountant General, Tamil Nadu, on a correct analysis, the said figure would be Rs.6,808/-. It is therefore apparent, that

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in identical circumstances, a Deputy Collector retiring prior to 1.6.1988 would draw pension at the monthly rate of Rs.6,808/-, whereas, a Deputy Collector retiring thereafter on 30.6.1988, would get a monthly pension of Rs.4,287/-. This would show that a person who retired from the same cadre before the crucial date i.e., 1.6.1988, would get about Rs.2,500/- per month more than the one who had retired from the same cadre after the said date. The aforesaid illustration has been highlighted by us, in order to determine the correctness of the following inferences drawn by the Division Bench of the High Court, while passing the impugned order dated 17.12.2007:-

"Learned counsel for the parties circulated their respective calculations showing working sheet of pension as admissible to a class of employees, who retired prior to 1st June, 1988 in the unrevised scales of pay and those similarly situated and retired after 1st June, 1988 in the revised scales of pay. Charts are varying. While in the chart submitted by the State Government it has been shown that those who retired after 1st June, 1988 will be getting a little bit higher than those who retired prior to 1st June, 1988, the calculation submitted by individual parties shows that those who retired just prior to 1st June, 1988 may get a little higher emoluments than those who retired after 1st June, 1988. It is for the said reason, we also sought for opinion from the Accountant General, Tamil Nadu, who has submitted its calculation chart, as circulated between the parties and quoted hereunder:-

"As per instructions of the Hon'ble High Court of Madras in W.P. 11634 of 2002, the working sheets submitted by both the Government and the petitioners in WA 1002 of 2006 have been scrutinized and the following observations are made:-

A. Government Working Sheet:

A	Details of the case	As it is	As it should be
B	Designation: Tahsildar Date of Retirement: 31.5.1988 Scale of Pay: Rs.1160-50-1460-70-1950 Pay Rs.1880	Rs.1387	Rs.1573
C	Designation: Tahsildar Date of Retirement: after 1.6.1988 Scale of Pay: Rs.2000-60-2300-75-3200 Pay Rs.2300	Rs.1534	Rs.1534

1/579 revision is applied in this case, then the revised pension from 1.6.88 works out to Rs.2000 + 18% D.A.

B. Petitioner Working Sheet: Out of nine illustrations, five cases are found to be correct and in four cases, the correct calculations are given below:-

E	Details of the case	As it is	As it should be
F	Designation: Deputy Collector ('A') Date of Retirement: 30.4.1988 Scale of Pay: Rs.1340-75-1715-90-2435 Pay Rs.2435	Rs.2433 (from 1.6.88) Rs.6402 (from 1.1.96)	Rs.2589 (from 1.6.88) Rs.6808 (from 1.1.96)
G	Designation: Block Development Officer ('A') Date of Retirement: 31.1.1988 Scale of Pay: Rs.1045-45-1450-65-1675 Pay Rs.1515	Rs. 849 (from 1.2.88) Rs. 1427 (from 1.6.88) Rs. 4303 (from 1.1.96)	Rs. 947 (from 1.2.88) Rs. 4796 (from 1.1.96)
H	Designation: Secondary Grade Teacher ('A') (Sel. Grade)	Rs. 472 (from 1.1.88) Rs. 815	Rs. 513 (from 1.1.88) Rs. 890

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Date of Retirement: 31.12.1987 Scale of Pay: Rs. Pay Rs.820	(from 1.6.88) Rs. 2480 (from 1.1.96)	(from 1.6.88) Rs. 2790 (from 1.1.96)
Designation: Tahsildar Date of Retirement: 31.3.1990 Scale of Pay: Rs.1160-50-1460-70-1950 Pay Rs.2180 from 1.1.90	Rs.1232 (from 1.4.90) Rs. 3723 (from 1.1.96)	Rs. 1209 (from 1.4.90) Rs. 3654 (from 1.1.96)

It is certified that subject to the observations made supra the illustrative calculations are in order.

Branch Officer/Pension 30"

From the aforesaid chart it appears that those who retired prior to 1st June, 1988 or after 30th June, 1988 from similar post, they will get almost similar quantum of pension.

(emphasis is ours)

25. Learned counsel for the appellants pointed out, that the determination by the High Court to the effect, that employees who had retired prior to 1.6.1988 from a similar post, would "...get a little higher..." pensionary emoluments, than those who retired afterwards, was clearly preposterous. Learned counsel for the appellants, while referring to the illustration narrated above, also invited our attention to the affidavit dated 15.12.2011 (filed by the first respondent in Civil Appeal no.8856 of 2012), wherein the position canvassed at the behest of the appellants was considered. According to the acknowledged position, the first respondent (in the affidavit dated 15.12.2011), on proper calculations asserted, that in identical circumstances, a Deputy Collector retiring prior to 1.6.1988 would draw pension at a monthly rate of Rs.6,808/-, whereas, a Deputy Collector retiring after 30.6.1988 would get a monthly pension of Rs.4,287/-. This would show, that merely on account of the accident of retiring before or after 1.6.1988, one of the pensioners would draw pension at the rate of about Rs.2,500/- per month more than the other. We are satisfied, that the illustration referred to hereinabove, clearly negates the

A conclusion drawn by the Division Bench of the High Court in the impugned order dated 17.12.2007, to the effect, that retirees prior to 1.6.1988 from a similar post would "...get a little higher" pensionary emoluments.

B 26. We have given our thoughtful consideration to the
controversy in hand. First and foremost, it needs to be
understood that the quantum of discrimination, is irrelevant to
a challenge based on a plea of arbitrariness, under Article 14
of the Constitution of India. Article 14 of the Constitution of India
C ensures to all, equality before the law and equal protection of
the laws. The question is of arbitrariness and discrimination.
These rights flow to an individual under Articles 14 and 16 of
the Constitution of India. The extent of benefit or loss in such a
D determination is irrelevant and inconsequential. The extent to
which a benefit or loss actually affects the person concerned,
cannot ever be a valid justification for a court in either granting
or denying the claim raised on these counts. The rejection of
the claim of the appellants by the High Court, merely on account
of the belief that the carry home pension for employees who
would retire after 1.6.1988, would be trivially lower than those
E retiring prior thereto, amounts to bagging the issue pressed
before the High Court. The solitary instance referred to above,
which is not a matter of dispute even at the hands of the first
respondent, clearly demonstrates, that in a given situation, an
employee retiring on or after 1.6.1988 could suffer a substantial
F loss, in comparison to an employee retiring before 1.6.1988.
We are, therefore satisfied, that the High Court clearly erred
while determining the issue projected before it.

G 27. At this juncture it is also necessary to examine the
concept of valid classification. A valid classification is truly a
valid discrimination. Article 16 of the Constitution of India
permits a valid classification (see, *State of Kerala vs. N.M.
Thomas* (1976) 2 SCC 310). A valid classification is based
on a just objective. The result to be achieved by the just
objective presupposes, the choice of some for differential
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consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied. In the context of the instant appeals, it is necessary to understand the overall objective of treating "dearness allowance" (or a part of it) as "dearness pay". There can be no doubt, that 'dearness allowance' is extended to employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life, to which an employee is accustomed. Likewise, the objective of 'dearness pay' is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. Having understood the reason why the Government extends the benefit of 'dearness allowance' and 'dearness pay', to its employees and pensioners respectively, we would venture to search for answers to the twin tests which must be satisfied, for making a valid classification (or a valid discrimination), in the present fact situation.

28. In the present context, it needs to be kept in mind, that 'dearness allowance' is paid to Government employees keeping in mind the All India Consumer Price Index. Inflation in the market place is sought to be balanced by paying 'dearness allowance' to Government employees. When a State Government chooses to treat 'dearness allowance' as 'dearness pay', the objective remains the same i.e., inflation in the market place is sought to be balanced for retired employees

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A by giving them the benefit of 'dearness pay'. Since the
component of inflation similarly affects all employees, and all
pensioners (irrespective of the date of their entry into service
or retirement), it is not per se possible to accept different levels
of 'dearness pay' to remedy the malady of inflation. Just like
B the date of entry into service (for serving employees) would be
wholly irrelevant to determine the 'dearness allowance' to be
extended to serving employees, because the same has no
relevance to the object sought to be achieved. Likewise, the
date of retirement (for pensioners) would be wholly irrelevant
C to determine the 'dearness pay' to be extended to retired
employees. Truthfully, it may be difficult to imagine a valid basis
of classification for remedying the malaise of inflation. In the
absence of any objective, projected in this case, the question
of examining the reasonableness to the object sought to be
D achieved, simply does not arise. Our straying into this
expressed realm of imagination, was occasioned by the fact,
that the pleadings filed on behalf of the State Government, do
not reveal any reason for the classification, which is subject
matter of challenge in the instant appeal. The only position
E adopted in the pleadings filed before this Court for introducing
a cut off date for differential treatment, is expressed in
paragraph 4 of the counter affidavit, filed by the State of Tamil
Nadu, which is being extracted herewith:-

F "With reference to the averments made in the Grounds of
the Special Leave Petition, I submit that the fifth Pay
Commission has revised pay and pension with effect from
1.6.1988. As per the recommendation of the above Pay
Commission, the Government had issued orders for the
revision of pension and Family Pension with effect from
G 1.6.1988 in G.O.Ms. No. 810. Finance (PC) Department,
dated 9.8.1989. It is submitted that the fourth Tamil Nadu
Pay Commission has recommended that at the end of the
period of three years, the Dearness Allowance sanctioned
upto that period could be treated as Dearness Pay. The
H Fourth Pay Commission revision was given with effect

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from 1.10.1984. Based on the above recommendation, the Government has issued orders in G.O.Ms. No.371, Finance, dated 30.4.1986, read with Government letter No.124414/Pension/86-1, dt. 11.2.1987, that the Dearness Allowance sanctioned upto 30.9.1987 shall be treated as Dearness Pay for the purpose of pensionary benefit in the case of the Govt. Servant retiring on or after 1.10.1987. The orders issued in G.O.Ms. 371, Finance dated 30.4.1985 as amended in Government letter No.70707-A/Pension /86-1, dated 8.7. 1986 read as follows:-

"The Fourth Tamil Nadu Pay Commission have among other things recommended that at the end of a period of three years the Dearness Allowance sanctioned upto the period could be treated as Dearness Pay in order to ensure a reasonable pension level. The Government accept the recommendation of the Commission and direct that in the case of Government servant, who will be retiring on or after 1.10.1987, the Dearness Allowance sanctioned upto 1.10.1987 shall be reckoned as Dearness Pay for purpose of pension in the case of death of a Government servant occurring on or after 1.10.1987 while in service the Dearness Allowance sanctioned upto 1.10.1987 shall be treated as Dearness Pay for the purpose of computing Family Pension."

It is therefore, evident, that the State Government has not disclosed any object which is desired to achieve by the cut off date. Most importantly, the financial constraints of the State Government, were not described as the basis/reason for the classification made in the imputngned Government order dated 9.8.1989.

29. The issue in hand needs to examine from another perspective as well. It must be clearly understood, that no

A employee has a right to draw 'dearness allowance' as 'dearness pay' till such time as the State Government decides to treat 'dearness allowance' as 'dearness pay'. And therefore, the State Government has the right to choose whether or not 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government not to treat any part of 'dearness allowance' as 'dearness pay'. In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government to treat a fraction, or even the whole of 'dearness allowance' as 'dearness pay'. Based on Rule 30 of the Pension Rules, it is clear that the component of 'dearness pay' would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of 'dearness allowance' would be treated as 'dearness pay', it cannot discriminate between one set of pensioners and another, while calculating the pension payable to them (for the reasons expressed in the preceding paragraph). Of course, a valid classification may justify such an action. In this case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment.

F 30. The instant controversy should not be misunderstood as a determination of the total carry home pension of an employee. All the Government orders referred to above, deal with the quantum of 'dearness allowance' to be treated as 'dearness pay' for the calculation of pension. 'Dearness pay' is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on 'dearness pay', rather than on the eventual carry home pension. The relevance and purpose of treating 'dearness allowance' as 'dearness pay', has been brought out in the foregoing

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paragraphs. Therefore, clearly, the object sought to be achieved by adding 'dearness pay' to the wage of a retiree, while determining pension payable to him, is to remedy the adverse effects of inflation. The aforesaid object has to be necessarily kept in mind, while examining the present controversy. Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India.

31. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the appellants herein (who had retired after 1.6.1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1.6.1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of 'dearness pay' to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government order dated 9.8.1989 placing employees who had retired after 1.6.1988 at a disadvantage, vis-à-vis the employees who retired prior thereto, by allowing them a lower component of 'dearness pay', is clearly arbitrary and discriminatory, and as such, is liable to be set aside, as violative of Articles 14 and 16 of the Constitution of India.

32. It is also imperative for us to take into consideration, a few judgments rendered by this Court, which were brought to our notice by the learned counsel representing the State Government. Reliance was placed on three judgments to substantiate the submissions advanced on behalf of the respondents.

(i) First of all, reliance was placed on the decision rendered by this Court in *Union of India Vs. P.N. Menon*,

A (1994) 4 SCC 68. Facts in the first cited judgment reveal, that
a recommendation was made by the Third Pay Commission
to the State Government, suggesting review of the existing
wage position, based on unprecedented inflation. The State
Government was asked (by the Third Pay Commission) to take
B a decision on whether the dearness allowance scheme should
be extended further; or in the alternative pay-scales themselves
should be revised. This suggestion of the Third Pay
Commission was based on the fact, that the price level index
had arisen above the 12 monthly average to 272. Having
C considered the matter, the State Government decided to extend
the dearness allowance scheme. It simultaneously issued an
Office Memorandum, (hereinafter referred to as 'O.M.') whereby,
a portion of 'dearness allowance' was to be treated as pay for
computation of retiral benefits. The benefit of the aforesaid
D O.M. was extended only to those employees who had/would
retire on or after 30.9.1977. The aforesaid O.M, also
contemplated, that persons who had/would retire on or after
30.9.1977 but not later than 30.04.1979 would be allowed to
exercise an option, to choose one out of the two alternatives.
E They could either seek the benefit of death-cum-retirement
gratuity by excluding the element of 'dearness allowance',
alternatively, they could seek the same, by including the element
of 'dearness allowance'. The issue which came up for
adjudication before this Court was, whether the aforesaid O.M.
was sustainable in law, as it did not extend equal benefits to
F all retirees, irrespective of the dates of their retirement. All
the respondents had retired before 30.9.1997. While determining
the aforesaid issue, this Court took into consideration inter alia
the fact that the decision to merge a part of 'dearness
allowance' with pay, was taken with reference to the price index
G level. This decision was taken on the recommendations of the
Third Pay Commission. In the aforesaid view of the matter, and
specially because, an option was given to employees who had
retired between 30.09.1977 and 30.04.1979, to get their
pension and (death-cum-retirement gratuity) calculated, by
H including or excluding the element on dearness pay, this Court

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ruled, that the State Government had adopted measures ensuring similar benefits to all. And that, there was no intention to create a class within a class. This Court felt that the classification, had a reasonable nexus with the price level index at 272, on 30.09.1977. This according to this Court was just and valid. The factual position, that needs to be highlighted, in so far as the first cited judgment i.e. in *P.N. Menon's* case (supra) is that, the respondent employees had never been in receipt of dearness pay, when they retired from service, and therefore, the O.M. in question could not have been applied to them. This is how this Court examined the matter in the cited case. This Court also noticed, that prior to the O.M. in question, the pension scheme was contributory, and only with effect from 22.9.1977, the pension scheme was made non contributory. Since the respondent employees in the first cited case, were not in service at the time of introducing the same, they were held not eligible for the said benefit.

(ii) Next, learned counsel relied upon the judgment in *State of Rajasthan Vs. Amrit Lal Gandhi*, (1997) 2 SCC 342. The facts, in the second cited judgment were, that originally teachers of the Jodhpur University were governed by contributory provident fund rules. There was no pension scheme applicable to them. In 1983, a committee constituted by the University Grants Commission, recommended the introduction of pension-cum- gratuity for university and college teachers. Thereupon, the Senate and Syndicate of the Jodhpur University resolved to introduce a pension scheme for university teachers. The resolution of the Syndicate and Senate also provided, that options would be sought from existing teachers, so as to enable them, to choose whether they should be governed by the contributory provident fund rules, or would like to accept the benefits under the pension scheme. As the recommendation of the Syndicate and the Senate, of the Jodhpur University had financial implications, approval of the State Government was imperative. On examining the recommendations, the State Government decided to introduce the pension scheme with

- A effect from 1.1.1990. Based thereon, the Syndicate and the Senate passed a concurring resolution expressing, that the pension scheme would become operational with effect from 1.1.1990. Based thereon, those teachers who were in the service of the Jodhpur University on or after 1.1.1990, were
- B required to submit their options. The question which arose for consideration in the second cited judgment was, whether employees who had retired before 1.1.1990, had a similar right to claim pension, as was being extended to employees, who had/would retire on or after 1.1.1990. The High Court partly
- C accepted the plea of the retirees by holding, that the pension scheme should be extended to employees who had retired on or after 1.1.1986. This Court did not approve the decision rendered by the High Court. This Court noticed, that the approval of the resolutions of the Syndicate and Senate of the Jodhpur University had been accorded by the State
- D Government after the State Legislature had passed the University Pension Rules, and the General Provident Fund Rules. This Court also noticed, that the State Government in its affidavit had taken an express stand, that the introduction of the pension scheme was economically viable only with effect
- E from 1.1.1990. In other words, the State Government could bear the financial burden of the pension scheme, only if it was introduced with effect from 1.1.1990. Based on the aforesaid position adopted by the State Government, this Court concluded, that the determination of the State Government in
- F introducing the pension scheme for employees, who had retired with effect from 1.1.1990 had not been fixed arbitrarily or without any valid reason/basis. This Court accordingly, set aside the judgment rendered by the High Court.
- G (iii) Finally, learned counsel placed reliance on the judgment rendered by this Court in *State of Punjab Vs. Amar Nath Goel*, (2005) 6 SCC 754. In the third cited case, employees both of the Central Government, as also, of the State Governments of Punjab and Himachal Pradesh, who had
- H retired prior to 1.4.1995 sought death cum-retirement gratuity,

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up to the increased limit of Rs. 2.5 lakhs. The claim raised by the employees was rejected in some cases, whereas in some other cases the Central Administrative Tribunal and the High Court took the view, that the benefit of increased quantum of death-cum-retirement gratuity, should be extended to employees, who had retired between 1.7.1993 and 31.3.1995 as well. Having examined the aforesaid controversy, this Court arrived at the conclusion, that the decision of the Central Government and State Governments to limit the benefit only to employees, who had retired (or died) on or after 1.4.1995, was based on a concrete determination of financial implications, as such, it was held that the cut off date (1.4.1995) was neither arbitrary nor irrational, as alleged. Consequently, the plea advanced at the hands of the employees assailing the cut off date as arbitrary, and by alleging that it was not based on any rational criteria, was rejected.

33. We have considered the submissions urged at the hands of the learned counsel for the respondent, based on the judgments cited at the bar. In our view, none of the judgments relied upon is relevant to the present controversy.

(i) In so far as *P.N. Menon's* case (supra) is concerned, having examined the controversy. this Court arrived at the conclusion, that the State Government adopted measures which would ensure, similar benefits to all. This court also expressed the view, that there was no intention of the State Government, to create any class within a class. The price level index at 272 on 30.9.1977 was the determining factor for the State Government's decision. It was accordingly concluded, that there was a valid and reasonable nexus to the object sought to be achieved. But most importantly this Court felt, that the decision of the State Government in not extending benefits to the respondents was based on the fact, that they were not in receipt of the any 'dearness pay' at the time of their retirement. Moreover, since the family pension scheme was contributory when the respondents had retired, the respondents could not

A justifiably seek the benefits, which were available only to the
retirees after the pension scheme was made non contributory.
There is, therefore no co-relation of the first cited judgment with
the controversy in hand.

B (ii) In *Amrit Lal Gandhi's* case (supra) pension was
introduced for the first time for university teachers based on
resolutions passed by the Syndicate and the Senate of the
Jodhpur University. The same were approved by the State
C Government with effect from 1.1.1990. The instant controversy
is, therefore, not between one set of pensioners alleging
discriminatory treatment, as against another set of pensioners.
There were no pensioners, to begin with. Retirees were entitled
to provident fund under the existing Provident Fund Scheme.
The question of discrimination of one set of pensioners from
D another set of pensioners, therefore, did not arise in the second
cited judgment. Financial viability was, as such, a relevant issue.
The State Government adopted the stance, that the introduction
of the pension scheme was financially viable only if the scheme
was introduced with effect from 1.1.1990. The cut off date clearly
E disclosed a classification founded on an intelligible differentia,
which had a rational relationship with the object sought to be
achieved. There is therefore, in our view, no correlation of the
second cited judgment with the controversy in hand.

F (iii) In so far as the third cited judgment is concerned, this
Court in *Amrit Lal Gandhi's* case (supra) examined an issue
where, the increased death-cum-retirement gratuity could only
be claimed by employees, who had retired after the cut off date
(1.4.1995). Death-cum-retirement gratuity is a one time benefit,
whereas, pension enures to retired employees for the entire
G length of their lives. Pension is therefore a continuing benefit.
Death-cum-retirement gratuity, is a one time benefit, disbursed
in accordance with to the rules prevalent at the time (of
retirement). Herein also, the issue under consideration was not
different measures for computing, a continuing retiral benefit,
H based on any cut off date. We are therefore of the view, that

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the instant judgment is also not relevant for the adjudication of the controversy in hand. A

In view of the above, we are satisfied, that none of judgments relied upon by the learned counsel for the respondents, have any bearing to controversy in hand. B

34. The instant appeals are accordingly allowed. The impugned order dated 17.12.2007 passed by the High Court is hereby set aside. The impugned Government Order dated 9.8.1989, to the extent that it extends to employees who retire on or after 1.6.1988, a lower component of 'dearness pay', as against those who had retired prior to 1.6.1988, is set aside, being violative of Articles 14 and 16 of the Constitution of India. C

K.K.T.

Appeals allowed.