ORISSA HIGH COURT: CUTTACK

AFR **W.P(C) NO. 18559 OF 2015**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Bhuban Mohan Dash ..... Petitioner

-Versus-

State of Odisha & Ors. ..... Opp. Parties

For petitioner : M/s. S.K. Dash, A.K. Otta, A. Dhalsamanta, B.P. Dhal & S. Das, Advocates

For opp. parties : Mr. S. Nayak, Addl. Standing Counsel (O.Ps. No.1 & 2)

M/s.D.Mohapatra,M.Mohapatra, G.R. Mohapatra & D. Dash, Advocates (O.P. No.3)

P R E S E N T:

THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN

Date of Hearing: 20.11.2023 :: Date of Judgment: 04.12.2023

DR. B.R. SARANGI, ACJ. The petitioner, who was the employee of Cuttack Development Authority, has filed this writ petition to declare the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015

under Annexure-6 as *ultra vires* to the provisions contained in the Odisha Development Authorities Act, 1982 as well as Articles 14 and 16 of the Constitution of India; and further to direct the opposite party-authorities to declare that since the petitioner is an employee appointed prior to 01.01.2005, he is entitled to get pension, as has been granted to similarly situated State Government employees.

2. The factual matrix of the case, in brief, is that the erstwhile employees under the Greater Cuttack Improvement Trust were brought forward to Cuttack Development Authority by virtue of Section 128-2(a) of the Odisha Development Authorities Act, 1982 (for short "Act, 1982"). The Greater Cuttack Improvement Trust, in its resolution no.11/48, dated 08.02.1971 had adopted Odisha Service Code, which in terms regulated the retirement & pensionary benefits of its employees. Cuttack Development Authority subsequently also adopted other Rules of the Government of Odisha relating to service conditions of its employees. Even the employees of Greater Bhubaneswar Regional

Improvement Trust were treated as employees of Bhubaneswar Development Authority and became amenable to the Rules framed by the Government for its employees and adopted by the Authority. The petitioner, having joined prior to 01.01.2005, has been subjected to the schemes under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 notwithstanding the fact that the employees, who joined prior to 01.01.2005 under the State Government are getting the benefit under the Odisha Civil Services (Pension) Rules, 1992.

2.1. Under a mistake of fact or misconception, the Cuttack Development Authority was covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 from the year 1982. But the Authority, vide letter no.16498 dated 27.07.2001 and letter no.25137 dated 27.11.2001, approached the Regional Provident Fund Commissioner for exemption under Section 17 of the E.P.F. and M.P. Act, 1952 with an undertaking to constitute separate funds for pension and provident fund for its employees. The Regional

Provident Fund Commissioner, Odisha, vide letter dated 30.01.2002, intimated opposite party no.3 for production of certain documents for grant of exemption under Section 17 of the E.P.F. & M.P. Act, 1952. Opposite party no.3, by letter no. 15898 dated 19.06.2010, requested the Under Secretary to the Government in Housing and Urban Development Department, Odisha for approval of the draft Rules of the year, 1991 in terms of Section 83 of the Odisha Development Authorities Act, 1982. The E.P.F. and M.P. Act, 1952 is not applicable to the employees of the Cuttack Development Authority in view of the Section 16(c) of E.P.F. and M.P. Act, 1952.

2.2. Consequentially, a meeting was convened on 23.08.2010 under the Chairmanship of the Chief Secretary to the Government of Odisha, wherein Principal Secretaries to Government, Housing & Urban Development Department, Finance Department as well as Law Department were present. It was decided in the said meeting to initiate steps for formulation of the Rules regarding pensionary benefit of the employees of

the Development Authorities constituted under the Odisha Development Authorities Act, 1982, within a period of six months, keeping in view the new pension scheme of the State Government. Accordingly, an affidavit was filed in W.P.(C) No. 552 of 2010 through the Project Director-cum-Joint Secretary to Government in Housing and Urban Development Department. Further, in its 7th meeting held on 31.10.2013 headed by the Financial Advisor-cum-Additional Secretary to the Government, Housing and Urban Development Department, it was decided that the employees of Development Authorities shall get their pensionary benefit at par with the State Government employees, which is extracted below:

"The Committee recommended that :

(1) The employees of the Development Authorities shall get their pensionary benefits at par with the State Govt. employees.

(2) Pension burden shall be borne by the respective Development Authorities.

(3) Secretary, BDA, Bhubaneswar and Finance Member, BDA Suggested that at the time of financial crisis while implementing pension rules, Government shall come to the rescue of Development Authorities. This was discussed. But the proposal of BDA was not accepted.

(4) Pension fund shall be managed by the respective Development Authorities.

(5) The Authority should resolve to pay the pension to their staff at par with Govt. from their own source. There will not be any financial burden On the State Government.

(6) A common draft regulation for payment of pensionary benefits formulated by Town planning Authority Section and the same shall be communicated to all Development Authorities for placing the same in their respective authorities before vetting by Finance Department and Law XX Department.

xxx xxx xxx"

2.3. The Government of Odisha in Housing and Urban Development Department, without approving the draft Rules framed under Section 83 of the Odisha Development Authorities Act, 1982, issued another draft Rules in exercise of its purported authority for laying down general Rules for carrying out the purposes of the Act under Section 123 of the Odisha Development Authorities Act, 1982, vide notification dated 14.07.2015, inviting objections or suggestions from any person or authority within fifteen days from the date of publication of the same in the Orissa Gazette.

2.4. In response to same, more than 100 employees including Commissioner-cum-Secretary Government of Odisha, Housing and Urban

Development Department, sought withdrawal of the said draft Rules on various grounds and demanded immediate steps for approval of the Development Authority Employees' Pension Rules, which has remained pending with the Government since 1991 for approval in terms of Section 83(2) of the Odisha Development Authorities Act, 1982. Despite objection filed by the employees of the Cuttack Development Authority within the stipulated period, the same was not considered by the appropriate Government. Rather, vide notification dated 11.08.2015, in exercise of the purported authority under Section 123 read with Sub-section (1) of Section 83 of the Odisha Development Authorities Act. 1982, the Government of Odisha, Housing and Urban Development Department made the draft Rules absolute, by stating therein that it is promulgated with consent of Development Authorities, whereas no such consent was at all invited from the Development Authorities, as would be evident from the information received under the Right to Information Act, 2005. Hence, this writ petition.

3. Mr. S.K. Dash, learned counsel appearing for the petitioner vehemently contended that this Court in successive writ petitions observed regarding the statutory duty of the Development Authority to provide pension and provident fund to its employees. The Government of Odisha has utterly failed to make timely approval of the Draft Pension Rules, 1991. It is contended that in ***Bidyadhar Mishra V. State of Orissa***, 2007 (Supp.I) OLR 543 approving the earlier Judgment dated 29.10.1990 rendered in O.J C. No. 384 of 1990 in the case of ***Krupasindhu Barik v. State of Orissa and Ors***., this Court held that it has jurisdiction to issue necessary direction for implementation of the provisions, as the right to pension and the benefit of provident fund is statutory in nature. It is further contended that the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 have been made by opposite party No.1 without any authority, inasmuch as Section 83 of the Orissa Development Authorities Act, 1982 clearly vests such power with the Development

Authority to constitute the Fund. The anomalous situations thus created by the said Rules include total discrimination in the matter of those employed prior to 01.01.2005 under the State Government and those employed under the Development Authority. It is further contended that the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 presupposes that there are two different classes of employees under the Development Authority, those joining prior to 01.01.2015 to be brought under the Rules applicable for factory establishments and the rest are at par with Government employees. While Odisha Civil Services (Pension) Rules, 1992 were in vogue, so far as those employed under the State Government prior to 01.01.2005 were brought under the Rules in terms of Sub-rule (4) of Rule 3 inserted therein by way of amendment, and those who were employed under the Development Authority prior to 01.01.2005 were sought to be brought under the provisions of the Schemes constituted under the E.P.F. & M.P. Act, 1952. Consequentially, the petitioner would be getting a paltry

amount in terms of the E.P.F. and M.P. Act, 1952 in lieu of pension.

3.1. It is further contended that prior to these Rules, the employees under the Development Authority were getting their pension under the Odisha Civil Services Pensions Rules, 1992 and it was decided that employees under the Development Authority are entitled to get their pension at par with the employees under the State Government. It is further contended that Rule-5 of the Odisha Development Authorities Rules, 1983 provides that posts under the Authority shall be classified into four categories and shall carry the same scale of pay as applicable to similar categories of posts in the State Government from time to time. Pension is one of the very important terms and conditions of employment which is earned by an employee by rendering requisite period of service and its receipt is one of the incidents of employment. Payment of pension is part of the consideration for the services rendered by the employee. Thereby, the benefit by way of pension and gratuity are in the nature of deferred

wages which are paid at the time of retirement or thereafter. Thus, opposite party no.1 has acted contrary to the objectives of the Act, inasmuch as it is not available to fathom that on the one hand each of the categories of employees under the Authority will receive the corresponding time scale of pay as that of their counterparts in the State Government from time to time, but will thoroughly be discriminated in the matter of disbursement of the dues for their past services. It is further contended that the Development Authority under the pervasive control of the State are not profiteering institutions and it will be absurd to suggest that financial constraints of such bodies will stand as a determinative factor for providing the salary or pension to the employees. Disparities in that regard will not be conducive, when ours is a welfare State and the employees work according to their duties. State cannot absolve its responsibilities altogether by shirking its responsibility that it is the Development Authority, who has to raise fund for the salary or pension to its employees and all such steps would certainly be

dubbed as arbitrary, illegal and unconstitutional. Thereby, the petitioner has filed this writ petition seeking to declare the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 as *ultra vires* to the provisions contained in the Odisha Development Authorities Act, 1982 as well as Articles 14 & 16 of the Constitution of India, more specifically confines to Clause-4(1) of the notification dated 11.08.2015.

3.2. To substantiate his contentions, learned counsel for the petitioner has relied upon the decisions in the cases of ***D.S. Nakara v. Union of India***, AIR 1983 SC 130; ***State of Sikkim v. Dorjee Tsfter-ing Bhatia and others***, AIR 1991 SC 1933; ***Union of India (UOI) and Anr. V. P.N. Natarajan and Ors.***, (2010) 12 SCC 405; ***Salabuddin Mohamed Yunus v. State of Andhra Pradesh***, AIR 1984 SC 1905; ***Pepsu Road Transport Corporation, Patiala v. Mangal Singh***, AIR 2011 SC 1974; ***State of H.P. and Ors v. Rajesh Chandra Sood and Ors***., AIR 2016 SC 5436; ***Air India Employees Self Contributory***

Superannuation Pension Scheme v. Kuriakose V. Cherian and others, AIR 2006 SC 3716; ***Bidyadhar Bhuyan v. State of Orissa and others***, 1995 (II) OLR 655; ***Shri Anand Dash and Seven others v. State of Orissa and others***, 2014 (Supp.-I) OLR 754; ***Cuttack Development Authority v. Regional Provident Fund Commissioner,*** 2009 (Supp.-II) OLR 447; ***Krupasindhu Barik v. State of Orissa and others***, vide O.J.C. No.768 of 1990 disposed of on 29.10.1990; ***Bidyadhar Mishra v. State of Orissa***, 2007 (Suppl-I) OLR 543; ***Employees' Provident Fund Organization v. M/s. Raipur Development Authority*** (Writ Petition (L) No. 2326 of 2010 disposed of on 05.12.2014) and ***Krishena Kumar v. Union of India***, AIR 1990 SC 1782.

4. Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-opposite parties contended that the matter is between the petitioner and the opposite party-Cuttack Development Authority and, as such, the relief sought against opposite party no.1 to the extent that opposite party-State is concerned, it is

contended that the provisions of Section 123 of the Odisha Development Authorities Act, 1982 empowers the State Government to make Rules after consultation with the Development Authority to carry out all or any of the purposes of the said Act. Some of the employees of the Development Authority had filed writ petitions before this Court for interference of State Govt. regarding formulation of pension rules for the employees of the Development Authority, as there was no such Rules. As such, this Court has passed orders with a direction to the State Govt. to make Rules to the said effect. In obedience to the orders of this Court, Finance Department and Law Department were consulted in the matter and it was decided to make uniform retirement benefit Rules for the employees of all the Development Authorities. Accordingly, in exercise of the powers conferred by Section 123 read with Sub-section (1) of Section 83 of the Odisha Development Authorities Act, 1982 (Act 14 of 1982) in due consultation with the Development Authorities, the Odisha Development Authorities (Retirement Benefit of

the Employees) Rules, 2015 have been framed. It is further contended that while formulating the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015, the Finance Department, Law Department and the Development Authorities were consulted. The objections & suggestions received in respect of the Draft Rules were duly considered. That apart, it was also considered that the employees of the Authorities can be classified into (a) Employees, who have been retired; (b) Employees employed prior to 01.01.2005 and continuing; and (c) Employees entered into services in the Development Authorities on or after 01.01.2005. Employees, who have already been retired from service of the Authorities are in receipt of Provident Fund (PF) and pension, as per Employees Pension Scheme, 1995, and they have availed the benefits under Employees Provident Fund (EPF) Scheme. Employees, who have been employed prior to 01.01.2005 and continuing shall get the benefits as provided in EPF scheme including P.F and Pension. The Government of Odisha have already introduced New

Pension Scheme for the employees w.e.f. 01.01.2005, which has been extended to the employees of all autonomous and local bodies. In the light of the above, the Odisha Development Authorities Conditions of Service (Retirement Benefit) Rules, 2015 were formulated under Section 123 of the Odisha Development Authorities Act, 1982. Thereby, no illegality or irregularity has been committed in framing the Rules, 2015 so as to cause interference of this Court at this stage.

5. Mr. D. Mohapatara, learned counsel appearing for the opposite party-Cuttack Development Authority contended that admittedly Cuttack Development Authority is a creature of the Odisha Development Authorities Act, 1982. Section 83 of the Odisha Development Authorities Act, 1982 specified the provisions to bring the P.F. and Pension Scheme by Government. The Government in exercise of powers conferred under the Act framed the Rules, 2015. It is further contended that since date of coverage of C.D.A. under the EPF & MP Act the contributions are deducted

and paid to the EPF Authority and, as such, there would be no impediment/prejudice caused to the employees in payment of EPF pension consequent upon implementation of the Rules. The Authority, being a creature under the statute, is bound by the provisions/rules framed by the Government and accordingly implemented the rules. It is further contended that though CDA prepared a draft Pension Rules, the same were not approved by the Government and pending decision of the Government the retired employees were extended provisional pension. After implementation of the Rules, 2015, the provisional benefits were discontinued, as they are covered under the existing Rules. Such discontinuance of the benefit was the subject-matter of challenge in W.P.(C) No.18558 of 2015 and the same was dismissed by a reasoned and well discussed judgment, with reference to various citations, which the petitioner being the appellant challenged in Writ Appeal No. 509 of 2016. It is further contended that so far as reference made to the decisions in ***Krupasindhu Barik*** and ***Bidyadhar***

Mishra (supra) are concerned, in ***Bidyadhar Mishra*** (supra) the case of ***Krupasindhu Barik*** (supra) has been referred to. But on perusal of the judgment in ***Krupasindhu Barik*** (supra), it would reveal that the finding is to the extent of entitlement of pension, but has not decided the manner, mode and scope of benefit of pension at par with the Government and the same is not the subject-matter of this writ petition so as to take into consideration to pass order in the present case. Therefore, the claim made by the petitioner cannot be sustained in the eye of law and accordingly, the writ petition is liable to be dismissed.

6. This Court heard Mr. S.K. Dash, learned counsel appearing for the petitioner; Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-opposite parties and Mr. D. Mohapatra, learned counsel appearing for opposite party-Cuttack Development Authority in hybrid mode. The pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. For a just and proper adjudication of the case, Sections 83 and 123 of the Odisha Development Authorities Act, 1982 are quoted hereunder:-

> *"83. Pension and provident fund. –*
>
> *(1) The Authority shall constitute for the benefits of its whole-time paid members and of its officers and other employees in such manner and subject to such conditions as may be prescribed by rules such pensions and provident funds as it may deem fit.*
>
> *(2) Where any such pension or provident fund has been constituted the State Government may declare that the provisions of the Provident Fund Act, 1925 (Act 19 of 1925) shall apply to such fund as if it were a Government provident fund.*
>
> *xxx xxx xxx*
>
> *123. Power of State Government to make rules. –*
>
> *(1) The State Government, after consultation with the Authority, may make rules to carry out all or any of the purposes of this Act and prescribe forms for any proceedings for which it considers that a form should be provided :*
>
> *Provided that consultation with the Authority shall not be necessary on the first occasion of the making of the rules under this section, but the State Government shall take into consideration any suggestion which the Authority may make in relation to the amendment of such rules after they are made.*
>
> *(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :*
>
> *xxx xxx xxx*
>
> *(xxxiii) the manner in and conditions subject to which the Authority shall constitute provident fund under Sub-section (1) of Section 83;*

xxx xxx xxx

(xxxviii) any other matter which has to be, or may be prescribed by rules."

8. Similarly, the Housing and Urban Development Department issued the notification dated 11.08.2015, which is extracted hereunder:-

"S.R.O No. 377/2015- Whereas, the draft of Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 was published as required by Section 125 of the Odisha Development Authorities Act, 1982 (Odisha Act, 14 of 1982) in an Extraordinary issue No.1079 dated the 14th July, 2015 of the Odisha Gazette issued under the Notification of the Government of Odisha in the Housing & Urban Development Department No.17740/HUD., dated the 14th July.2015 bearing S.R.O. No. 321/2015 inviting objections and suggestions from all persons likely to be affected thereby till the expiry of the period of 15 (fifteen) days from the date of publication of the said notification in the Odisha Gazette;

And, whereas, the objections and suggestions received in respect of the said draft during the period specified above have been duly considered by the State Government;

Now, therefore, in exercise of the powers conferred by Section 123 read with sub-section (1) of Section 83 of the Odisha Development Authorities Act, 1982 (Odisha Act 14, of 1982) in due consultation with the Development Authorities, the State Government do hereby make the following rules namely:

1. Short Title and Commencement.-
(1) These rules may be called the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015.
(2) They shall come into force from the date of their publication in the Odisha Gazette.

2. Application. They shall apply to the employees working under any Authority constituted under the Act.

3. Definition, -- (1) In these rules, unless the context, otherwise requires,
(a) 'Act' means the Odisha Development Authorities Act, 1982 (Odisha Act, 14 of 1982):
(b) 'Employees' means the employee appointed under the provisions of Act and the Rules made thereunder;
(c) 'Government' means the Government of Odisha.
(2) All other words and expressions used but not defined in these Rules shall have the same meaning as respectively assigned to them in the Act and Odisha Development Authorities Rules, 1983.
4. Provident Fund and Pension Schemes. - (1) Employees who have been employed in an Authority prior to 1st January, 2005 shall be covered under the provisions of the Employees Provident Fund Scheme, 1952 and Employee Pension Scheme, 1995 made under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
(2) Employees who have joined in an Authority on or after 1st January, 2005 shall be covered under the New Restructured Defined Contribution Pension Scheme administered by Pension Fund Regulatory and Development Authority.

[No.20268-13591500082014/HUD]
By Orders of the Governor
G. MATHIVATHANAN
Commissioner-cum-Secretary to Government"

9. This Court in successive writ petitions observed regarding the statutory duty of the Development Authorities is to provide pension and provident fund to its employees. The Government of

Odisha has utterly failed to make timely approval of the Draft Pension Rules, 1991.

10. In ***Bidyadhar Mishra v. State of Orissa***, 2007 (Suppl-I) OLR 543, approving the earlier judgment dated 29.10.1990 rendered in O.J C. No. 384 of 1990 in the case of ***Krupasindhu Barik v. State of Orissa and Ors,*** this Court held as follows:-

> *"8. Learned Counsel for the Petitioner drew my attention to the Judgment dated 29. 10. 1990 rendered in 0.J C. No. 384 of 1990 Krupasindhu Barik v., State of Orissa and Ors. in which this Court dealt with a similar question and held as follow:*
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> *"Payment of pension and making provision for provident fund are statutory duties of the Development Authority. The provisions are substantive and absolute. The framing of rules are merely procedural in nature so as to provide the manner in which and conditions under which the payment of pension is to be made and the provident fund is to be provided for. The right to pension and to the benefit of provident fund being statutory, the Court would undoubtedly have the jurisdiction to issue necessary direction for implementation of the provisions."*

11. Therefore, the petitioner seeks to hold that the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 under Annexure-6 to the writ petition is *ultra vires* to the provisions contained in

the Odisha Development Authorities Act, 1982 as well as Articles 14 and 16 of the Constitution of India and more particularly to hold that Rule 4 (1) of the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 is *ultra vires* to the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, which is not applicable to the employees of the Development Authority, as has already been held by this Court. It has been specifically urged that the applicability of Provident Fund and Pension Scheme under Rule 4 (1) of the Rules, 2015 specifically mentions that the employees who have been employed in an Authority prior to 1st January, 2005 shall be covered under the provisions of the Employees Provident Fund Scheme, 1952 and Employee Pension Scheme, 1995 made under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Therefore, Rule 4 (1) of the Rules, 2015, is without any authority, inasmuch as, Section 83 of the Odisha Development Authorities Act, 1982, which clearly vests such power with the Development Authority to

constitute the Fund, the anomalous situations thus created by the said Rules include total discrimination in the matter of those employed prior to 01.01.2005 under the State Government and those employed under the Development Authority. The Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 presupposes that there are two different classes of employees under the Development Authority, those joining prior to 01.01.2015, to be brought under the Rules applicable for factory establishments and the rests are at par with Government employees. While the Odisha Civil Services Pension Rules, 1992 were in vogue so far as those employed under the State Government prior to 01.01.2005 in terms of Sub-rule (4) of Rule 3 inserted therein by way of amendment, those who were employed under the Development Authorities prior to 01.01.2005 are sought to be brought under the provisions of the Schemes constituted under the EPF & MP Act, 1952. Therefore, it is vehemently urged that Rule 4 (1) is *ultra vires* to the provisions contained in the

Odisha Development Authorities Act, 1982 as well as Article 14 and 16 of the Constitution of India.

12. With regard to declaration of Rule 4 (1) of 2015 Rules as *ultra vires*, it is to be understood, what constitutes a provision to be declared as *ultra vires*.

13. In ***P.R. Aiyar, Advanced Law Lexicon***, Vol.4 (2005) 4796 and ***Encyclopedic Law Lexicon***, Vol. 4 (2009) 4838-4839 the expression *"ultra vires"* has been defined to mean beyond power or authority or lack of power. An act may be said to be "*ultra vires*" when it has been done by a person or a body of persons which is beyond his, its or their power, authority or jurisdiction.

14. ***Wade & Forsyth, Administrative Law*** (2009) states "*ultra vires*" relates to capacity, authority or power of a person to do an act. It is not necessary that an act to be "*ultra vires*" must also be illegal. The act may or may not be illegal. The essence of the doctrine of "*ultra vires*" is that an act has been done in excess of power possessed by a person.

15. ***D.D. Basu, Administrative Law*** (1993) 94 states that whenever any person or body of persons, exercising statutory authority, acts beyond the powers conferred upon him or them by statute, such act becomes *ultra vires* and, accordingly, void. In other words, substantive *ultra vires* means the delegated legislation goes beyond the scope of the authority conferred on it by the parent statute. Therefore, it is a fundamental principle of law that a public authority cannot act outside the powers, i.e. *ultra vires*, and it has been rightly described as "the central principle" and "foundation of large part of administrative law". Thereby, an act which is for any reason in excess of power is *ultra vires*.

16. ***Schwartz Administrative Law*** (1984) states as follows:

> *"If an agency acts within the statutory limits (intra vires), the action is valid; if it acts outside (ultra vires), it is invalid. No statute is needed to establish this; it is inherent in the constitutional position of agencies and courts".*

Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good

faith, reasonably, *intra vires* the power granted and on relevant consideration of material facts. All his decisions must be in harmony with the Constitution and other laws of the land.

17. In ***Daymond v. S.W. Water Authority***, (1976) 1 All E.R. 1039 (H.L.), it is held that in order to determine whether the subordinate legislation exceeds the power granted by the Legislature, the Court has to interpret the enabling statue.

The above view has also been taken in ***Hotel Industry Board v. Automobile Ltd.*** (1969) 2 All E.R. 582 ***H.L. and McEldowney v. Forde***, (1969) 2 All E.R. 1039.

18. In ***Durga Prasad v. Suptd.***, AIR 1966 S.C. 1209, the apex Court held that where the authority to make a Rule is conferred for exercising a particular power, the Court would not construe the Rule in such manner as to include a separate and independent power.

19. In ***U.S. v. Eaton***, (1892) 144 U.S. 677, it is held that subordinate law-making body cannot go beyond the policy laid down in the statue, so as to alter or amend the law.

The same view has also been taken in ***U.S. v. Grimand***, (1911) 220 U.S. 506.

20. In ***U.S. v. Two Hundred Barrels of Whiskey***, (1877) 95 U.S. 571, it is held that the purpose of subordinate legislation is to carry into effect the existing law and not to change it.

The same view has also been taken by the apex Court in ***Venkateswara v. Govt. of A.A.***, AIR 1966 SC 629.

21. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; “to doubt the constitutionality of a law is to resolve it in favour of its validity". Where validity of a statute is questioned and there are two interpretations, one of which will make the law valid and the other void,

the former must be preferred and the validity of the law upheld.

22. In ***Karnataka Bank Ltd. v. State of A.P.***, (2008) 2 SCC 254, the apex Court held in pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or un-wisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it. The parent act may be unconstitutional on several grounds, i.e. (i) excessive delegation; or (ii) breach of a Fundamental Right; or (iii) on any other ground such as, distribution of powers between the Centre and the State.

23. In ***Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat***, (2008) 5 SCC 33, the apex Court held that there is presumption in favour of constitutionality of statutes as well as delegated legislation and it is only when there is clear violation of constitutional provision (or of a parent statute, in the case of delegated

legislation) beyond reasonable doubt that the Court should declare it to be unconstitutional.

24. In ***Indian Express Newspapers v. Union of India***, (1985) 1 SCC641 : AIR 1986 SC 515, the apex Court held as follows:

> *"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary".*

25. In ***J.K. Industries Limited v. Union of India***, (2007) 13 SCC 673, relying upon the aforesaid judgment in the case of ***Indian Express Newspaper*** (supra), the apex Court held that, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions

or on the ground that it is so patently arbitrary that it cannot be said to be inconformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution. The apex Court also further held that a subordinate legislation may be struck down as arbitrary or contrary to the statute if it fails to take into account the vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. This can be done on the ground that the subordinate legislation does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19 of the Constitution.

It is also further clarified in the said judgment that where the validity of subordinate legislation is challenged, the question to be asked is whether the power given to the rule making authority is exercised for the purpose for which it is given. Before reaching the conclusion that the Rule is *intra vires*, the court has to examine the nature, object and the scheme of the legislation as a whole and in that context, the Court has

to consider, what is the area over which powers are given by the section under which the Rule Making Authority is to act. However, the Court has to start with the presumption that the impugned Rule is *intra vires*. This approach means that, the Rule has to be read down only to save it from being declared *ultra vires* if the court finds in a given case that the above presumption stands rebutted. The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, rule must be in accordance with the parent statute as it cannot travel beyond.

26. In ***State of Uttar Pradesh v. Renusagar***, AIR 1988 SC 1737: (1988) 4 SCC 59, the apex Court held that if the exercise of power is in the nature of subordinate legislation, the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled.

27. The doctrine of *"ultra vires"* has two aspects, (1) substantive *ultra vires* and (2) procedural *ultra vires*. In view of law laid down by the apex Court in Indian Express Newspapers (supra), it becomes clear that a

delegated legislation may be challenged on the ground of substantive *ultra vires* in the following circumstances:

> *"1.Where parent Act is unconstitutional;*
> *2.Where parent Act delegates essential legislative functions;*
> *3. Where delegated legislation is inconsistent with parent Act;*
> *4. Where delegated legislation is inconsistent with general law;*
> *5. Where delegated legislation is unconstitutional is unconstitutional;*
> *6. Where delegated legislation is arbitrary;*
> *7. Where delegated legislation is unreasonable;*
> *8. Where delegated legislation is mala fide;*
> *9. Where delegate further delegates (sub delegation);*
> *10. Where delegated legislation excludes judicial review; and*
> *11. Where delegated legislation operates retrospectively".*

28. In ***Indian Council of Legal Aid and Advice v. Bar Council of India***, AIR 1995 SC 691: (1995) 1 SCC 732, the apex Court held that to apply the doctrine of substantive *ultra vires*, the Court first interprets the relevant statutory provisions to determine the scope of delegation of power and then interprets the impugned delegated legislation and finally adjudge whether the same is within, or without, the statutory power conferred.

29. In ***Lohia Machines Ltd. v. Union of India***, AIR 1985 SC 421: (1985) 2 SCC 197, the apex Court

held that declaring delegated legislation *ultra vires* also becomes difficult because of judicial attitude. The judicial policy generally is to interpret the delegating provision rather broadly.

30. In ***Om Prakash v. State of U.P.***, (2004) 3 SCC 402 : AIR 2004 SC 1896, basing reliance on ***H.C. Suman v. Rehabilitation Ministry Employees' Cooperative Housing Building Society Ltd.*** (1991) 4 SCC 485 : AIR 1991 SC 2160, the apex Court held that Courts should be slow to interfere with byelaws made by public representative bodies unless they were manifestly partial and unequal in operation or unjust, mala fide or effect unjustified interference with liberty.

31. In ***Kunj Behari Lal Butail v. State of Himachal Pradesh***, AIR 2000 SC 1069 : (2000) 3 SCC 40, the apex Court held that often the rule-making power is conferred without specifying the purposes as such, but generally "for carrying out the purposes of the Act." This is a general delegation without laying down any guidelines. This power cannot be so exercised in such a way as to bring into existence substantive rights

or obligations or disabilities not contemplated by the parent Act itself.

32. In ***Laghu Udhyog Bharati v. Union of India*** (1999) 6 SCC 418, it was held by the apex Court that when the Act confers rule making power for carrying out purposes of the Act, rules cannot be so framed as not to carry out the purpose of the Act or be in conflict with the same. Legal effect of the formula is to confer a plenary power on the delegate to make rules subject to the overall requirement that the rules made ought to have a nexus with the purpose of the Act.

33. In ***Kerala Samsthana Chethu Thozhilali Union v. State of Kerala,*** (2006) 4 SCC 327 : AIR 2006 SC 3480, the apex Court considered the Court's power and held when such a power is given, the Court seeks to ascertain the purpose of the enactment and then to ascertain whether the rules framed further that purpose. A rule may be held as *ultra vires* if it has no nexus with the purpose of the parent Act or if it scuttles the same.

34. The efficacy of judicial control of delegated legislation is very much dependant on how broad is the statutory formula conferring power of delegated legislation on the delegate. Usually, the application of the *ultra vires* rule becomes very difficult in practice because of three main reasons;

> *(1) Powers are usually delegated in broad language;*
>
> *(2) Generally speaking, the courts interpret the enabling provision rather broadly;*
>
> *(3) The courts adopt a deferential, rather than a critical, attitude towards delegated legislation and, thus, lean towards upholding the same.*

35. In ***Goodricke Group Ltd. V. State of West Bengal***, 1995 Supp (1) SCC 707, the apex Court held that "entries in the Seventh Schedule to the Constitution are legislative heads or fields of legislation. The legislature derives its power from Article 246 of the Constitution and not from the respective entries. The language of the respective entries, therefore, should be given widest meaning. It is well-recognized that where there are three lists containing a large number of entries, there is bound to be some overlapping among

them. In such a situation, the rule of "pith and substance" has to be applied to determine the competence of the legislature. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it".

36. In ***Jilubhai Nanbhai v. State of Gujarat***, 1995 Supp (1) SCC 596: AIR 1995 SC 142, the apex Court held as follows:

> *"It must be remembered that we are interpreting the Constitution and when the Court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant list".*
>
> *(emphasis supplied)*

37. In State of A.P. v McDowell, AIR 1996 SC 1627 : (1996) 3 SCC 709, the apex Court held that the law made by the Central or State Legislation can be struck down only on the following grounds;

> *"(a) the legislative competence of the Legislature in question; or*
>
> *(b) violation of any fundamental right; or*

(c) violation of any other constitutional provision. Similar view has also been taken by the apex Court in the case of State of Kerala v, Peoples Union for Civil Liberties, (2009) 8 SCC 46."

38. On examination of the aforesaid provisions with the provisions of Rule 4(1) of the Rules, 2015 and the provisions contained under the Odisha Development Authority Rules, 1983, it is made clear that Rule 5 provides that posts under the Authority shall be classified into four categories and shall carry the same scale of pay, as applicable to similar categories of posts in the State Government from time to time. Therefore, pension is one of the very important terms and conditions of employment which is earned by an employee by rendering requisite period of service and its receipt is one of the incidents of employment. The payment of pension is part of the consideration for the services rendered by the employee. In a sense, the benefit by way of pension and gratuity are in the nature of deferred wages which are paid at the time of retirement or thereafter. The meaning of pension has been considered by the apex Court time again laying emphasis that an employee is entitled to get under law.

39. In ***Salabuddin Mohamed Yunus v. State of Andhra Pradesh***, AIR 1984 SC 1905, the apex Court held that the payment of pension does not depend upon the discretion of the State but is governed by the rules made in that behalf and a Government servant coming within such rule is entitled to claim pension.

40. The concept of 'pension' is now well known and has been clarified by the apex Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution.

41. Rule-33 (3) of the Odisha Service Code prescribes "Pension", which reads as under:-

> *"(3) Pension & Gratuities:- In case of employees who have retired on or after 1.7.86, the dearness pay shall count as emoluments for pension and gratuity in terms of Rule 73 of the Orissa Pension Rules 1977. The doses of temporary increase totaling to 8% of the pension subject to minimum of Rs.25/- and maximum of Rs.80/- will not however be admissible in these cases. These pensioners shall be entitled to further dose of temporary increase as may be declared effective after 1.1.86 from time to time. If however, the pension admissible without taking into account the dearness pay but the adhoc increase in pension is more favourable that the benefit under this order the individual can be granted the former. The dearness pay will also count as pay for the purpose of Family Pension Scheme, as amended from time to time."*

42. Rule-(2)(p) of Odisha Civil Services (Pension) Rules, 1992 reads as under:-

> *"(p) "Pension" includes gratuity except where the term pension is used in contradiction to gratuity."*

43. Taking into account the broad meaning of "pension", as mentioned above, pension is nothing but a periodical payment of money for past service.

44. In ***D.S. Nakara v. Union of India, (1983) 1 SCC 322***, the apex Court held as follows:-

> *"Pension" is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment but it is a payment for the past service rendered; and it is social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on*

> *as assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical raison d'etre for pensions is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution."*

45. In ***Poornamal v. Union of India***, AIR 1985 SC 1196 : (1985) 3 SCC 345, the apex Court referring to the judgment in ***Deakinandan Prasad v. State of Bihar***, AIR 1971 SC 1409, held that "Pension" is not merely a statutory right but it is the fulfillment of a constitutional promise, inasmuch as it partakes the character of public assistance in case of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment.

46. In ***Kerala State Road Transport Corporation v. K.O. Varghese***, AIR 2003 SC 3966, it has been held that the title 'pension' includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or

suffered loss or injury in the public service, or to their representative; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions. Pension means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the secretary of State is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing with retirement benefits and, except in the case of such a lump sum which had been paid to the employee.

In the aforesaid judgment the word 'pension' has also been analyzed, which reads as under:-

> *"On analysis of the word 'pension' three things emerge; (i) that the pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is social welfare measure rendering socio-economic justice to those who in the 'hey days' of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a*

> *certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon additional condition of impeccable behavior even subsequent to retirement. Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied. Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and quantum of pension."*

47. In ***V. Sukumaran v. State of Kerala***, ***(2020) 8 SCC 106***, it has been held that pension is succor for post retirement period, which is not a bounty payable at will, but social welfare measure as post-retirement entitlement to maintain dignity of employee.

48. In ***Col. B.J. Akkara v. Govt. of India***, (2006) 11 SCC 709, the apex Court held that the pay of an employee does not remain static. This is almost an universal rule in public services. An employee starts with a particular pay (commonly known as initial pay); then journeys through periodical increases (commonly known as increments) to reach the highest point that he is entitled to (commonly known as the ceiling). This is what a pay scale signifies. A 'pay scale' has basically three elements. The first is the minimum pay or initial

pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increases (increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to as 'basic pay' of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per the principle of fitment (formula) provided in the rules governing the revision of pay so that the basic pay in the old scale is converted in to a "basic pay" in the revised pay scale.

49. In ***Gurupal Tuli v. State of Punjab***, 1984 (Supp) SCC 716 : AIR 1984 SC 1901, the apex Court held that to be entitled to draw a particular pay scale the employee must fulfill the eligibility conditions whether by way of qualification or otherwise.

50. In ***State of Kerala v. Padmanabhan Nair***, AIR 1985 SC 356, the apex Court observed that pension and gratuity are no longer any bounty to be distributed

by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

51. In ***Vasant Gangaramsa Chandan v. State of Maharashtra***, (1996) 10 SCC 148, the apex Court held that pension is not bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied.

52. In ***State of Punjab v. Justice S.S. Dewan***, (1997) 4 SCC 569, the apex Court held that conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and quantum of pension. The same view has also been reiterated in ***Dr. Uma Agarwal v. State of U.P.***, AIR 1999 SC 1212.

53. In ***Kerala State Road Transport Corporation v. K.O. Varghese***, (2003) 12 SCC 293, referring to *corpus juris secundum*, it is stated that the title 'pension' includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representative; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pension.

54. Further, referring to ***Halsbury's Law of England 4th Edn. Reissue, Vol.16***, in the very same judgment in Kerala State Road Transport Corporation (supra), the apex Court held as follows:

> *"'Pension' means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the secretary of state is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing with retirement benefits and, except in the case of such a lump sum which had been paid to the employee."*

55. Considering the meaning attached to the word 'pension', as stated above, and on analysis of the same, three things emerge; (i) that the pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is social welfare measure rendering social economic justice to those who in the "heydays" of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon additional condition of impeccable behaviour even subsequent to retirement.

56. In ***U.P. Raghavendra Acharya v. State of Karnataka***, (2006) 9 SCC 630, the apex Court held that 'pension' is treated to be a deferred salary. It is not a bounty. It is akin to right of property. It is correlated and

has a nexus with the salary payable to the employees as on date of retirement.

57. Similar view has also been taken by this Court in the case of ***Sujata Mohanty v Berhampur University & others***, 2021 (II) OLR 362, in which one of us (Dr. B.R. Sarangi, ACJ) was the member.

58. In view of the law laid down by the apex Court, as discussed above, a right has been accrued in favour of the employees of the Cuttack Development Authority to get pension and provident fund in conformity with the provisions contained under Section 83 of the Odisha Development Authorities Act, 1982 and for that under Section 123 of the Odisha Development Authorities Act, 1982 Act, the State Government has been vested with the power to make Rules.

59. In the Constitution Bench decision in the case of ***Chairman, Railway Board and others v. C. R. Rangadhamaiah and others***, A.I.R. 1997 SC 3828, the apex Court was considering the amendment brought into Rule-2544 of the Indian Railway Establishment

Court, Vol. II (Fifth Reprint) which was given retrospective effect. The said Rule was amended by Notification No. G.S.R. 1143 (E) with effect from 1st January, 1973 and by Notification No. G.S.R. 1144 (E), the amendment was made with effect from 1st April, 1979. The apex Court, in paragraph - 20 of the said judgment held as follows:-

> *"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectively as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively".*

Again in paragraph 24 of the said judgment in the case of ***Chairman, Railway Board and others*** (supra), it was held thus :-

> *"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that*

> *such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (AIR 1967 SC 1889) (supra); B.S. Yadav (AIR 1981 SC 561) (supra) and Raman Lal Keshav Lal Soni (AIR 1984 SC 161) (supra)".*

60. Ultimately, it was held by the apex Court that the impugned amendments in so far as they have been given retrospective operation are violative of the rights guaranteed under Articles 14 & 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments have the effect of reducing the amount of pension that has become payable to the employees, who had already retired from service on the date of issuance of the notifications as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

61. The aforesaid Constitution Bench decision, therefore, has emphasized with regard to the right of an employee, which has accrued in his favour on the date he retired and such right cannot be taken away by

amending the Rules retrospectively prior to his retirement.

62. In the case of ***State of Madhya Pradesh and others v. Yogendra Shrivastava***, (2010) 12 SCC 538, the apex Court was considering the amendment brought to Madhya Pradesh Employees' State Insurance Service (Gazetted) Recruitment Rules, 1981 by Notification dated 20.05.2003 giving it a retrospective effect from 14.10.1982. By the said amendment, the earlier provision in the Rule prescribing payment of None Practicing Allowance @ 25% of pay was amended to the effect that "NPA at such rates as may be fixed by the State Government from time to time by the orders issued in this behalf" in place of words "NPA @ 25% of the pay" wherever they occurred in the Rules.

63. On considering the said question, the apex Court, in paragraph 15 of the said judgment in the case of ***State of Madhya Pradesh*** (supra) held as follows :-

> *15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the*

> *Rules with retrospective effect. (See N.C. Singhal v. Armed Forces Medical Services ; K.C. Arora v. State of Haryana and T.R. Kapur v. State of Haryana). Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to the non-practicing allowance @ 25% of their pay up to 20-5-2003."*

64. In a large number of cases, the apex Court has categorically laid down that the right of an employee, which accrued in his favour on the date of appointment, cannot be taken away by the amending provisions of the Rules concerning the service with retrospective effect. An employee, while entering into service, is subjected to the condition of service as on the date, when he joins. Any right given to such employee under the provision of any Act or Rules governing the employment, if taken away by amending such Rules with retrospective effect, the same would amount to violating the Rules under Articles 14 & 16 of the Constitution.

65. Eligibility for liberalized pension scheme of 'being in service on specified date and retiring

subsequent to that date' in impugned memoranda, violates Article 14 of the Constitution and is unconstitutional and is to be struck down.

66. In ***D.S. Nakara v. Union of India***, AIR 1983 SC 130, the apex Court held as follows:-

> *49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after the date" excluding the date for commencement of revision are words of limitation introducing the*

mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

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

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

and in Exhibit P-2, the words:

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

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972

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

67. In the case of ***State of Sikkim v. Dorjee Tsfter-ing Bhatia and others***, AIR 1991 SC 1933, the apex Court at paragraph-15 of the judgment held as follows:-

"The executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature. It is settled law that any order, instruction, direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions, is without jurisdiction and is a nullity. But in this case we are faced with a peculiar situation. The Rules, though enforced, remained unworkable for about five years. The Public Service Commission, which was the authority to implement the Rules, was not in existence during the said period. There is nothing on the record to show as to why the Public Service Commission was not constituted during all those five years. In the absence of any material to the contrary we assume that there Were justifiable reasons for the delay in constituting the Commission. The executive power of the State being divided amongst various function-arise under Article 166(3) of the Constitution of India there is possibility of lack of co-ordination amongst various limbs of the Government working within their respective spheres of allocation. The object of regulating the recruitment and conditions of Service by statutory provisions is to rule out arbitrariness,

provide consistency and crystilise the rights of employees concerned. The statutory provision's which are unworkable and inoperative cannot achieve these objectives. Such provisions are non-est till made operation- al. It is the operative statutory provisions which have the effect of ousting executive power of the State from the same field. When in a peculiar situation, as in the present ease, the statutory provisions could not be operated there was no bar for the State Government to act in exercise of its executive power. The impugned notification to hold special selection 'was issued almost four years after the enforcement of the Rules. It was done to remove stagnation and to afford an opportunity to the eligible persons to enter the service. In our view the State Government was justified in issuing the impugned notification in exercise of its executive power and the High Court fell into error in quashing the same."

68. In ***Union of India (UOI) and Anr. V. P.N. Natarajan and Ors.***, (2010) 12 SCC 405, the apex court observed as follows:-

11. We have considered the respective submissions and carefully scrutinized the records. Although, neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the Respondents could not be revised to their disadvantage without giving them action oriented notice and opportunity of hearing. By virtue of the option exercised by them under Section 12A(4)(b) and Consequential action taken by the competent authority to fix their pension etc., the private Respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without Complying with one of the basic rules of natural justice that no one shall be condemned

> *unheard. The rule of audi alteram partem has been treated fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void--State of Orissa v. Dr. Binapani Dei (Misa) MANU/SC/0332/1967: A.I.R. 1967 S.C. and Ors. 1269 and Sayeedur Rehman v. State of Bihar and Ors. MANU/SC/0053/1972: (1973)3 S.C.C. 333.*
>
> *12. It is not in dispute that before directing revision of the pension etc., payable to the private Respondents, the Central Government did not give them action oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the Respondents Was nullity."*

69. In ***Salabuddin Mohamed Yunus v. State of A.P.***, AIR 1984 SC 1905, the Appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution, the Appellant continued in the service of that State till he retired from service on 21.01.1956. The Appellant claimed that he was entitled to be paid the salary of a High Court Judge from 01.10.1947 and also claimed that he was entitled to receive pension of Rs. 1000 a month in the Government of India currency, being the maximum

pension admissible under the rules. The said claim of the Appellant was negatived by the Government. He filed a writ petition in the High Court of Andhra Pradesh. During the pendency of the said writ petition, the relevant Rule was amended by notification dated 03.02.1971 with retrospective effect from 01.10.1954 and the expression "Rs. 1000 a month" in Clause (b) of Sub-rule (1) of Rule 299 substituted by the expression "Rs. 857. 15 a month". This amendment was made in exercise of the power conferred by the proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1) (f) of the Constitution.

Relying upon the decision in ***Deokinandan Prasad v. State of Bihar and others***, [1971] Supp. S.C.R. 636, the apex Court observed as follows :-

> *The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the Appellant when he retired from service. By making a retrospective amendment to the said Rule 299 (1) (b) more than fifteen years after that right had accrued to him, what was done was to take away the Appellant's right to receive pension according A to the rules in force at the date of his retirement*

or in any event to curtail and abridge that right. To that extent, the said amendment was void.

70. In ***Pepsu Road Transport Corporation, Patiala v. Mangal Singh***, AIR 2011 SC 1974, the apex Court held as follows:-

"48. The concept of pension has also been considered in Corpus Juris Secundum, Vol. 70, at pg. 423 as thus:

> *"A pension is a periodical allowance of money granted by the government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants, and it presupposes the continued life of the recipient."*

71. In ***State of H.P. and Ors v. Rajesh Chandra Sood and Ors***., AIR 2016 SC 5436, the apex Court at paragraph-48 of the said judgment held as follows:-

"48. Having given our thoughtful consideration to the aforesaid submission, we are of the view, that such of the employees who had exercised their option to be governed by 'the 1999 Scheme', came to be regulated by the said scheme, immediately on their having submitted their option. In addition to the above, all such employees who did not exercise any option (whether to be governed, by the Employees' Provident Funds Scheme, 1995, or by 'the 1999 Scheme'), would automatically be deemed to have opted for 'the 1999 Scheme'. All new entrants would naturally be governed by 'the 1999 Scheme'. All those who had moved from the provident fund scheme to the pension

scheme, would be deemed to have consciously, foregone all their rights under the Employees' Provident Funds Scheme, 1995. It is of significance, that all the concerned employees by moving to 'the 1999 Scheme', accepted, that the employer's contribution to their provident fund account (and the accrued interest thereon, upto 31.3.1999), should be transferred to the corpus, out of which their pensionary claims, under 'the 1999 Scheme' would be met. It is therefore not possible for us to accept, that the concerned employees would be governed by 'the 1999 Scheme' only from the date on which they attained the age of superannuation, and that too - subject to the condition that they fulfilled the prescribed qualifying service, entitling them to claim pension. Every fresh entrant has the statutory protection under the Provident Fund Act. All fresh entrants after the introduction of 'the 1999 Scheme', were extended the benefits of 'the 1999 Scheme', because of the exemption granted by competent authority under the Provident Fund Act. They too, therefore possessed similar rights as the optees.

49. With effect from 1.4.1999, the employees who had opted for 'the 1999 Scheme' (or, who were deemed to have opted for the same) were no longer governed by the provisions of the Provident Fund Act (under which they had statutory protection, for the payment of provident fund). Consequent upon an exemption having been granted to the concerned corporate bodies by the competent authority under the Provident Fund Act, the Employees Provident Funds Scheme, 1995, was replaced, by 'the 1999 Scheme'. All direct entrants after 1.4.1999, were also entitled to the rights and privileges of 'the 1999 Scheme'. We are therefore of the considered view, that the submissions advanced on behalf of the State of Himachal Pradesh premised on the assertion, that no vested right accrued to the employees of the concerned corporate bodies, on the date when 'the 1999 Scheme' became operational (with effect from 1.4.1999), or to the direct entrants who entered service thereafter, cannot be accepted. In this behalf it would also be

> *relevant to emphasize, that as soon as the concerned employees came to be governed by 'the 1999 Scheme', a contingent right came to be vested in them. The said contingent right created a right in the employees to claim pension, at the time of their retirement. Undoubtedly, the aforesaid contingent right would crystalise only upon the fulfillment of the postulated conditions, expressed on behalf of the appellants (on having rendered, the postulated qualifying service). However, once such a contingent right was created, every employee in whom the said right was created, could not be prevented or forestalled, from fulfilling the postulated conditions, to claim pension. Any action pre-empting the right to pension, emerging out of the conscious option exercised by the employees, to be governed by 'the 1999 Scheme' (or to the direct entrants after the introduction of 'the 1999 Scheme'), most definitely did vest a right in the respondent-employees."*

72. In ***Air India Employees Self Contributory Superannuation Pension Scheme v. Kuriakose V. Cherian and others***, AIR 2006 SC 3716, the apex Court held that amendment could not be applied to the employees who had retired before the date of amendment and such employees would continue to receive pensionary benefits as before, namely, the benefits which existed at the time of amendment. it has been held as follows:-

> *"xxx 9. The High Court by the impugned judgment held that the impugned amendment to the Trust Deed to the extent it applies in future is legal and valid but the amendment cannot apply to the employees who have retired*

before the date of amendment and such employees shall continue to receive pensionary benefits as before, namely, the benefits which existed at the time of amendment.

Xxx xxx xxx

58. In our opinion, the view of the High Court is unassailable. In the result, all appeals are dismissed."

73. In ***Bidyadhar Bhuyan v. State of Orissa and others***, 1995 (II) OLR 655, this Court at paragraph-46 of the judgment observed as follows:-

"46. *Paragraph 2.3 of the resolution is regarding pensionary benefits. It is indicated that pensionary and other retirement benefits admissible to State Government servants shall be admissible to such employees for the period of their service under Government with effect from 7-6-1994. The remaining aided service shall be governed by the Orissa Aided Educational Institution Employees Retirement Benefit Rules, 1981. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division or retirement pre and post a certain date? The Supreme Court has considered these questions in the case of D.S. Nakara v. Union of India, AIR 1983 SC 130. The Supreme Court in the said case has observed that the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nanden Prasad v. State of Bihar, AIR 1971 SC 1409, wherein the Supreme Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It*

was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was re-affirmed in State of Punjab v. Iqbal Singh, AIR 1976 SC 667. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry in the instant case is as to whether by the decision of Government to take-over management of the aided schools, the erstwhile empolyees, namely, the teaching and non-teaching staff are affected. The better or beneficial scheme to get larger pension should not be curtailed by virtue of the impugned resolution, and in particular by paragraph 2.3 thereof. The artificial two limbs made in the said clause are not appreciated by this Court. In the first limb it is provided that pensionary and other retirement benefits admissible to State Government servants shall be admissible to such employees for the period of their service under Government with effect from 7-6-1994. The second limb is that the remaining aided service shall be governed by the Orissa Aided Educational Institutions' Employees Retirement Benefit Rules, 1981. By implementation of such provisions there will be various anomalies and the inconsistencies have been demonstrated by the petitioners in making a graphic chart how a person having shorter period of service after the take-over will be prejudiced and the persons having longer period of service after the takeover will have a different answer. By introduction of a new scheme, the consistent policy and scheme available to the erstwhile employees to get larger pensionary benefits should not be in jeooardy. Considering this aspect fully, we are of the view that the State Government has not properly applied its mind while providing for the pensionary, benefits in paragraph 2.3 of the impugned resolution. The State Government will have to consider the detailed advantages and disadvantages of the erstwhile employees,

namely, the teaching and non-teaching staff of the aided schools, their scheme for pensionary benefits, the impact of the Government scheme for pension as in the case of Government employees if made applicable to them and their eligibility criteria, their period of service to get the larger amount of pension and various other factors should also be taken notice of and a proper scheme has to be framed for pension. Until such scheme is framed, the petitioners, namely, the teaching and non-teaching staff of the erstwhile aided schools will get their pensionary benefits under the prevailing rules applicable to them. On this limited aspect, the provisions of paragraph 2.3 cannot be sustained. This paragraph is found to be irrelevant, inconsistent and irrational and is thus struck down."

74. In the case of ***Shri Anand Dash and Seven others v. State of Orissa and others***, 2014 (Supp.-I) OLR 754, the apex Court held as follows:-

"16. In the case at hand, as already stated above, all the petitioners joined in their due assignment on 02.04.2005 by which date, the amended Rules were not existing. The said amended Rules, which were introduced by Notification dated 31.08.2007 and 17.09.2005 there could not have been given retrospective effect by stating that they will come into operation from 01.01.2005, which is prior to the date, when the petitioners joined in their new assignments.

17. We are, therefore, of the considered view that the said amendments brought to the General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 will not apply to the petitioners, who will be governed by the said Rules as it existed on the date of their joining in service.

We also find that the opposite parties - State has discriminated the petitioners by

> *allowing the benefits under the old Pension Rules and General Provident Fund (Orissa) Rules in the case of 13 regularly recruited OES officers, though they have been appointed on 14.02.2005 and joined the Government much after 01.01.2005. The said action on the part of the State also amounts to discrimination violating Articles 14 & 16 of the Constitution of India.*
>
> *18. We, therefore, quash the impugned orders by which the representations of the petitioners were rejected arbitrarily inasmuch as without assigning any reason in support of such rejection and direct that the petitioners will be governed by the provisions of the old General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 as it stood prior to the amendments brought into the same and will be entitled to all the benefits, which were provided thereunder prior to such amendments. The amendments brought into the above two Rules, will have prospective effect from the date, such amendments were notified."*

75. The aforesaid decision of this Court formed the subject matter of Special Leave Petition (C) Nos. 35462-35464 of 2014 before the Apex Court, which stood dismissed by order dated 09.03.2018 with an observation that there exist no cogent reason to entertain the petitions/appeal and that the judgment impugned does not warrant any interference.

76. In the case of ***Cuttack Development Authority v. Regional Provident Fund***

Commissioner, 2009 (Supp.-II) OLR 447, this Court held as follows.

> *"10. Addressing to the question as to whether the C.D.A. is exempted from the application of the provisions of the Act, 1952, a bare reading of Section 16 (1) (c), as quoted above, clearly establishes that the C.D.A. having been constituted/established under the O.D.A. Act and its employees having been made entitled to the benefit of old age pension in accordance with the resolution of the C.D.A. referred to above, the said establishment of the C.D.A. is clearly exempted from the application of the provisions of the Act, 1952."*

77. In the case of ***Krupasindhu Barik v. State of Orissa and others***, vide O.J.C. No.768 of 1990 disposed of on 29.10.1990, this Court held as follows:-

> *"5. xxx Payment of pension and making provision for provident fund are statutory duties of the Development Authority. The provisions are substantive and absolute. The framing of rules are merely procedural in nature so as to provide the manner in which and conditions under which the payment of pension is to be made and the provident fund is to be provided for. The right to pension and to the benefit of provident fund being statutory, the Court would undoubtedly have the jurisdiction to issue necessary direction for implementation of the provisions."*

78. In ***Bidyadhar Mishra v. State of Orissa and others***, 2007 (Supp.-1) OLR 543, this Court held as follows:-

> *"8. Learned counsel for the petitioner drew my attention to the judgment dated 29.10.1990*

rendered in O.J.C. No.768 of 1990 (Krupasindhu Barik Vs. State of Orissa and others) in which this Court dealt with a similar question and held as follow: -

"xxx Payment of pension and making provision for provident fund are statutory duties of the Development Authority. The provisions are substantive and absolute. The framing of rules are merely procedural in nature so as to provide the manner in which and conditions under which the payment of pension is to be made and the provident fund is to be provided for. The right to pension and to the benefit of provident fund being statutory, the Court would undoubtedly have the jurisdiction to issue necessary direction for implementation of the provisions. xxx"

79. In ***Employees' Provident Fund Organization v. M/s. Raipur Development Authority*** (Writ Petition (L) No. 2326 of 2010 disposed of on 05.12.2014), the High Court of Chhattisgarh observed as follows:-

"27. Thus, on the basis of aforesaid analysis, it is held that the employees of the RDA are entitled for the benefit of Contributory Provident Fund under the M.P. Contributory Provident Fund Rules, 1955 by virtue of Rule 27 of the Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987.

28. Accordingly, the respondent-RDA is fulfilling both the requirements for exemption under Section 16 (1)(c) of the EPF Act, 1952 and, therefore, provision of the EPF Act, 1952 would not be applicable to the respondent herein. Thus, it is held that EPF Appellate Tribunal, New Delhi has not committed any illegality in holding that respondent-RDA is exempted from the operation of the EPF Act, 1952 and

absolutely justified in granting the appeal filed by respondent authority by setting aside the order passed by the Assistant Regional Provident Fund Commissioner holding the EPF Act applicable to the respondent/RDA."

The aforesaid judgment was challenged in Writ Appeal No. 162 of 2015, which stood dismissed vide order dated 30.03.2015.

80. In ***Krishena Kumar v. Union of India***, AIR 1990 SC 1782, the apex Court held as follows:-

"30. In Nakara it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly ob- served that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal

position the rights of each individual P.F. retiree finally crystallized on his retirement where after no continuing obligation remained while on the other hand, as regards Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It cannot, there- fore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be the same as that towards the pension retirees An imaginary definition of obligation to include all the Government retirees in a class was 'not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible.

> *31. The next argument of the petitioners is that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art. 14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of P.F. retirees each one's rights having finally crystallized on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefitted by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise.*

81. In view of the discussions, as above, the Odisha Development Authorities (Retirement Benefit of the Employees) Rules, 2015 under Annexure-6 to the writ petition is hereby declared *ultra vires* to the

provisions contained in the Odisha Development Authorities Act, 1982 as well as Articles 14 & 16 of the Constitution of India, 1950 and as a logical corollary, the following consequences ensue:

i. Employees working under any Development Authority constituted under the Odisha Development Authorities Act, 1982, who are in receipt of the pensionary benefit at par with their counterparts in State Government cannot be affected by any subsequent Rule; and

ii. In the light of the judgment in the case of **Shri Ananda Dash** (supra), the employees, who had joined in service prior to 17.09.2005, i.e, the date of notification of the amendment in Sub-Rule (4) of Rule (3) of the Odisha Civil Services (Pension) Rules, 1992, are to get their retiral benefits at par with their counter parts in the Government inasmuch as they cannot be equated with the employees

working in an industry or factory establishment in view of the ratio of the decision of the co-ordinate Bench in the case of ***Cuttack Development Authority Vs. Regional Provident Fund Commissioner*** (Supra) and ***Employees Provident Fund Organization Vs. Raipur Development Authority*** (Supra); and

iii. Employees working under any Development Authority, who have joined after 17.09.2005, would be entitled to the benefits under the new structured defined contribution pension scheme as applicable to their counterparts in the State Government in terms of the Odisha Civil Services (Pension) Rules, 1992.

Accordingly, it is held that the petitioner, being an employee appointed prior to 01.01.2005, is entitled to get pension, as is being availed by the similarly situated employees under the State Government. Let the retrial

benefits be disbursed in favour of the petitioner, who is stated to have been retired on superannuation during the pendency of the writ petition, in accordance with law, within a period of the three months from the date of receipt of the copy of judgment."

82. The writ petition is thus allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

M.S. RAMAN, J. I agree.

(M.S. RAMAN)
JUDGE

Orissa High Court, Cuttack
The 4th December, 2023, Alok/Arun