



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No. 2274 of 2021 a/w connected matters.

Reserved on: 29.04.2024.

Pronounced on: 28.05.2024

1. CWP No. 2274 of 2021

Satya Devi

Versus

State of H. P. and others

...Petitioner

...Respondents

2. CWP No. 566 of 2023

Guddi Devi

Versus

State of H. P. and others

....Petitioner

.....Respondents

3. CWP No. 8978 of 2022

Nokh Ram

Versus

State of H. P and others

.....Petitioner

.....Respondents

4. CWP No. 750 of 2023

Amar Singh

Versus

State of H. P. and others

.....Petitioner

.....Respondents

5. CWP No. 1740 of 2023

Narvada Devi

Versus

State of H. P. and others

..... Petitioner

.....Respondents

6. CWP No. 2178 of 2023

Surji Devi

Versus

State of H. P. and others

.....Petitioner

.....Respondents

7. CWP No. 2922 of 2023

Chande Ram	Petitioner
Versus	
State of H. P. and others	Respondents

8. CWP No. 3054 of 2023

Rafi Mohd.	Petitioner
Versus	
State of H. P. and others	Respondents

9. CWP No. 4301 of 2023

Bangali Ram	Petitioner
Versus	
State of H. P. and others	Respondents

10. CWP No. 5050 of 2023

Darshana Devi	Petitioner
Versus	
State of H. P. and others	Respondents

11. CWP No. 5214 of 2023

Neeru Devi	Petitioner
Versus	
State of H. P. and others	Respondents

12. CWP No. 5218 of 2023

Savitri Devi	Petitioner
Versus	
State of H. P. and others	Respondents

13. CWP No. 6461 of 2023

Gurmail Chand	Petitioner
Versus	
State of H. P. and others	Respondents

14. CWP No. 6481 of 2023

Paramjeet Singh	Petitioner
Versus	
State of H. P. and others	Respondents

15. CWP No. 6507 of 2023**Som Singh****....Petitioner****Versus****State of H. P. and others****.....Respondents****16. CWP No. 6508 of 2023****Jeevan Kumar****....Petitioner****Versus****State of H. P. and others****.....Respondents****17. CWP No. 6731 of 2023****Ratto Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****18. CWP No. 10269 of 2023****Parvati Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****19. CWP No. 10320 of 2023****Sheela Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****20. CWP No. 10346 of 2023****Veena Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****21. CWP No. 10348 of 2023****Chanchala Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****22. CWP No. 6749 of 2023****Hemavati****....Petitioner****Versus****State of H. P. and others****.....Respondents**

23. CWP No. 6963 of 2023

Sajawar Ali
Versus
....Petitioner

State of H. P. and others
.....Respondents

24. CWP No. 9129 of 2023

Man Singh
Versus
....Petitioner

State of H. P. and others
.....Respondents

25. CWP No. 10860 of 2023

Ranvir Singh
Versus
....Petitioner

HPSEBL and others
.....Respondents

26. CWP No. 10998 of 2023

Arjun Singh
Versus
....Petitioner

State of H. P. and others
.....Respondents

27. CWP No. 247 of 2024

Satya Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

28. CWP No. 836 of 2024

Maya Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

29. CWP No. 838 of 2024

Jung Bahadur
Versus
....Petitioner

State of H. P. and others
.....Respondents

30. CWP No. 840 of 2024

Bimla Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

31. CWP No. 842 of 2024

Veena Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

32. CWP No. 843 of 2024

Vikram Singh
Versus
....Petitioner

State of H. P. and others
.....Respondents

33. CWP No. 847 of 2024

Sneh Lata
Versus
....Petitioner

State of H. P. and others
.....Respondents

34. CWP No. 1105 of 2024

Prem Lata
Versus
....Petitioner

State of H. P. and another
.....Respondents

35. CWP No. 1274 of 2024

Parvahi Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

36. CWP No. 1388 of 2024

Veena Devi
Versus
...Petitioner

State of H. P. and others
.....Respondents

37. CWP No. 1390 of 2024

Bina Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

38. CWP No. 1596 of 2024

Sita Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

39. CWP No. 1602 of 2024**Sulochana Devi****Versus****....Petitioner****State of H. P. and others****.....Respondents****40. CWP No. 1603 of 2024****Shahanaj****Versus****....Petitioner****State of H. P. and others****.....Respondents****41. CWP No. 6583 of 2023****Basanti Devi****Versus****....Petitioner****State of H. P. and others****.....Respondents****42. CWPOA No. 5460 of 2020****Kishori Lal****Versus****....Petitioner****HPSEBL and others****.....Respondents****43. CWPOA No. 6760 of 2020****Makhan Lal and others****Versus****....Petitioner****State of H. P. and others****.....Respondents****44. CWP No. 2590 of 2021****Bimla Devi****Versus****....Petitioner****State of H. P. and others****.....Respondents****45. CWP No. 7357 of 2021****Mehar Singh****Versus****....Petitioner****State of H. P. and others****.....Respondents****46. CWP No. 8137 of 2021****Bhim Singh****Versus****....Petitioner****State of H. P. and others****.....Respondents**

47. CWP No. 8371 of 2021**Bhillu Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents**

48. CWP No. 1684 of 2022**Pratap Singh****....Petitioner****Versus****State of H. P. and others****.....Respondents**

49. CWP No. 1843 of 2022**Sukha Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents**

50. CWP No. 3352 of 2022**Rajeev Kumar****....Petitioner****Versus****State of H. P. and others****.....Respondents**

51. CWP No. 6621 of 2022**Veena Kumari****....Petitioner****Versus****State of H. P. and others****.....Respondents**

52. CWP No. 8411 of 2022**Basant Kumar****....Petitioner****Versus****State of H. P. and others****.....Respondents**

53. CWP No. 8816 of 2022**Gain Singh****....Petitioner****Versus****State of H. P. and others****.....Respondents**

54. CWP No. 8917 of 2022**Jagdish Chand****....Petitioner****Versus****State of H. P. and others****.....Respondents**

55. CWP No. 245 of 2023**Nirmala Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****56. CWP No. 511 of 2023****Ravinder Kumar****....Petitioner****Versus****State of H. P. and others****.....Respondents****57. CWP No. 568 of 2023****Bimla Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****58. CWP No. 593 of 2023****Sunita Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****59. CWP No. 695 of 2023****Sheela Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents****60. CWP No. 2181 of 2023****Kamlesh Kumari****....Petitioner****Versus****State of H. P. and others****.....Respondents****61. CWP No. 2183 of 2023****Raj Kumari****....Petitioner****Versus****State of H. P. and others****.....Respondents****62. CWP No. 2195 of 2023****Ram Pyari****....Petitioner****Versus****State of H. P. and others****.....Respondents**

63. CWP No. 2212 of 2023**Devinder Singh****....Petitioner****Versus****State of H. P. and others****.....Respondents**

64. CWP No. 2233 of 2023**Beena Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents**

65. CWP No. 2361 of 2023**Krishan Dutt****....Petitioner****Versus****State of H. P. and others****.....Respondents**

66. CWP No. 2385 of 2023**Lal Chand****....Petitioner****Versus****State of H. P. and others****.....Respondents**

67. CWP No. 2400 of 2023**Bashla Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents**

68. CWP No. 2599 of 2023**Rajmal****....Petitioner****Versus****State of H. P. and others****.....Respondents**

69. CWP No. 2877 of 2023**Chhote Lal****....Petitioner****Versus****State of H. P. and others****.....Respondents**

70. CWP No. 3225 of 2023**Bimla Devi****....Petitioner****Versus****State of H. P. and others****.....Respondents**

71. CWP No. 3305 of 2023

Neelam Kumari
Versus
....Petitioner

State of H. P. and others
.....Respondents

72. CWP No. 3430 of 2023

Sarota Devi
Versus
....Petitioner

HPSEBL and another
.....Respondents

73. CWP No. 3511 of 2023

Sudershna Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

74. CWP No. 3883 of 2023

Suresh Bala
Versus
....Petitioner

State of H. P. and others
.....Respondents

75. CWP No. 4303 of 2023

Santosh Kumari
Versus
....Petitioner

State of H. P. and others
.....Respondents

76. CWP No. 4733 of 2023

Dhanwanti Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

77. CWP No. 5115 of 2023

Shiv Ram
Versus
....Petitioner

State of H. P. and others
.....Respondents

78. CWP No. 5724 of 2023

Ramkali
Versus
....Petitioner

State of H. P. and others
.....Respondents

79. CWP No. 6366 of 2023

Pritam Chand
Versus
....Petitioner

State of H. P. and others
.....Respondents

80. CWP No. 6586 of 2023

Chander Dutt
Versus
....Petitioner

State of H. P. and others
.....Respondents

81. CWP No. 6588 of 2023

Madan Lal
Versus
....Petitioner

State of H. P. and others
.....Respondents

82. CWP No. 6636 of 2023

Rajan Kumar
Versus
....Petitioner

State of H. P. and others
.....Respondents

83. CWP No. 6637 of 2023

Silmo Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

84. CWP No. 6600 of 2023

Sunita Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

85. CWPOA No. 5157 of 2020

Joginder Lal
Versus
....Petitioner

State of H. P. and others
.....Respondents

86. CWP No. 3359 of 2024

Lajya Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

87. CWP No. 3470 of 2024

Sunita DeviPetitioner

Versus

State of H. P. and othersRespondents

88. CWP No. 3474 of 2024

Kaunshla DeviPetitioner

Versus

State of H. P. and othersRespondents

89. CWP No. 3343 of 2024

Rashma DeviPetitioner

Versus

State of H. P. and othersRespondents

90. CWP No. 3345 of 2024

Santosh KumariPetitioner

Versus

State of H. P. and othersRespondents

91. CWP No. 3379 of 2024

MandharPetitioner

Versus

State of H. P. and othersRespondents

92. CWP No. 10865 of 2023

Binta DeviPetitioner

Versus

State of H. P. and othersRespondents

93. CWP No. 251 of 2024

Madan SinghPetitioner

Versus

State of H. P. and othersRespondents

94. CWP No. 266 of 2024

Shanto DeviPetitioner

Versus

State of H. P. and othersRespondents

95. CWP No. 837 of 2024

Chandra Devi

Versus

....Petitioner

State of H. P. and others

....Respondents

96. CWP No. 849 of 2024

Jattu Ram

Versus

....Petitioner

State of H. P. and others

....Respondents

97. CWP No. 1712 of 2024

Ram Nath

Versus

....Petitioner

State of H. P. and others

....Respondents

98. CWP No. 1713 of 2024

Ramesh Chand

Versus

....Petitioner

State of H. P. and others

....Respondents

99. CWP No. 1714 of 2024

Shyam Chand

Versus

....Petitioner

State of H. P. and others

....Respondents

100. CWP No. 1757 of 2024

Naresh Kumar

Versus

....Petitioner

State of H. P. and others

....Respondents

101. CWP No. 1764 of 2024

Sandla Devi

Versus

....Petitioner

State of H. P. and others

....Respondents

102. CWP No. 1765 of 2024

Swaran Singh

Versus

....Petitioner

State of H. P. and others

....Respondents

103. CWP No. 1787 of 2024

Ramesh Kumar
Versus
....Petitioner

State of H. P. and others
.....Respondents

104. CWP No. 1897 of 2024

Shyam Lal
Versus
....Petitioner

State of H. P. and others
.....Respondents

105. CWP No. 2005 of 2024

Het Ram
Versus
....Petitioner

State of H. P. and others
.....Respondents

106. CWP No. 2118 of 2024

Paramjeet Singh
Versus
....Petitioner

State of H. P. and others
.....Respondents

107. CWP No. 2119 of 2024

Karam Singh
Versus
....Petitioner

State of H. P. and others
.....Respondents

108. CWP No. 2124 of 2024

Lekh Ram
Versus
....Petitioner

State of H. P. and others
.....Respondents

109. CWP No. 2474 of 2024

Kaushlya Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

110. CWP No. 2476 of 2024

Kamla Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

111. CWP No. 2507 of 2024

Manorama Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

112. CWP No. 3061 of 2024

Suresh Kumar
Versus
....Petitioner

State of H. P. and others
.....Respondents

113. CWPOA No. 6577 of 2020

Nazroo Devi
Versus
....Petitioner

State of H. P. and others
.....Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

For the petitioner(s) : M/s. A. K. Gupta, Sangeeta Vasudeva, Jaidev Thakur, Adrash K. Vashista, Inder Sharma, P. P. Chauhan, Vasu Sood, Sanjay Jaswal, Sat Prakash, Anita Jalota, Manoj Jalota, Vijay Bir Singh, Divya Raj Singh, Karan Singh Parmar, Pradeep Kumar Sharma, Vijay Kumar Thakur, Kush Sharma, Atul Verma, Ajay Kumar Chauhan, Hemant Kumar Thakur, Naresh K. Sharma, R. S. Gautam, Mukul Sood, Parav Sharma, Nitish Kaith, Tanuj Thakur, Vir Bahadur Verma, Rahul Mahajan, Mohan Singh, Arun Rana, Ashwani K. Sharma, Pawan K. Sharma, Vandana Kumari, Vikas Rajput, Anupam A. Mehta, Vinay Mehta, Shaurya Sharma, Mehar Chand Thakur, Amit Kumar Dhumal, Archana Dutt, Rajni Devi, Ajay Kumar Sharma, Advocates for the respective petitioners.

For the respondents : Mr. Anup Rattan, Advocate General
with Mr. Rakesh Dhaulta, Additional
Advocate, General, for the respondents-State.

M/s. Rajpal Thakur, Anil Kumar God and L. N. Sharma, Advocates, for respective respondents.

M.S. Ramachandra Rao, Chief Justice.

The petitioners in this batch of Writ petitions are class-IV employees of the State Government of Himachal Pradesh.

2. The issue in this batch of Writ petitions relates to their age of superannuation.

The background facts and events

3. The Rule 56 of the Fundamental Rules deals with age of superannuation of Government employees.

Position in 1997

4. FR 56 (a) (b) and (e) as they existed in the year 1997 read as under:

“F.R. 56.

(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Note.- In this Clause, a workman means a highly skilled, skilled, semi-skilled, or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment.

(e) A Government servant in Class IV service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

....” (emphasis supplied)

5. Thus in 1997, the age of retirement of Class IV Government Employees was 60 years.

The amendment dt. 30.7.1998 to the F.R.56 by the State of Himachal Pradesh

6. F.R. 56(e) was deleted by the Central Government vide notification dt. 13.05.1998 whereby certain other amendments were also carried out in various clauses of F.R. 56.

7. The State of Himachal Pradesh however carried out its own amendment in F.R. 56 vide notification dated 30.07.1998.

8. F.R. 56(a), (c), (d) and (e) were amended as under:-

"(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

(c) A workman referred to in Clause (b) may be granted extension of service, under very special circumstances to be recorded in writing, after he attains the age of sixty years with the sanction of the appropriate authority.

(d) A Government servant to whom Clause (a) applies, other than a workman referred to Clause (b), may be granted extension of service after he attains the age of fifty-eight years with the sanction of the appropriate authority if such extension is in the public interest and the grounds therefor are recorded in writing:

Provided that no extension under this clause shall be granted beyond the age of sixty years except in very special circumstances:

Provided further that the appropriate authority shall have the right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent or a quasi-permanent Government servant, or, one month in the case of a temporary Government servant, or, pay and allowances in lieu of such notice.

(e) A Government servant in Class IV service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Class IV employee of the Secretariat Security Force who initially enters service on or after the 15th day of September, 1969, shall

retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years." (emphasis supplied)

9. So there was no change made in 1998 to the age of superannuation of Class IV Government Servants and it remained at 60 years.

The amendment dt. 10.5.2001 to FR No.56

10. In the year 2001, there was a further amendment made to FR 56.

11. In exercise of powers conferred by proviso to Article 309 of the Constitution of India, F.R. 56(b) and (e) were further amended by the State of Himachal Pradesh on 10.05.2001 as under:-

"Notification

In exercise of powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh is pleased to make following rules further to amend the Fundamental rules, in their application to the State of Himachal Pradesh, namely:-

1. Short title and commencement:-

- (1) *These Rules may be called Fundamental (in their application to the State of Himachal Pradesh) Amendment Rules, 2001.*
- (2) *These shall come into force from the date of publication in the Rajpatra Himachal Pradesh.*

Amendment of rule-56

2. *In Rule-56 of the Fundamental Rules-*

(a)

(b) *After proviso to clause (c) the following second proviso shall be inserted, namely:-*

"Provided further that a Class-IV Government servant appointed on or after the date of publication of this notification in Rajpatra Himachal Pradesh shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years."

...." (emphasis supplied)

12. The notification came into force from 11.05.2001, when it was published in the Gazette.

13. As per the above amendment, a Class-IV Government servant appointed *on or after* 10.05.2001 shall retire from service in the afternoon of the last day of the month in which he attains the age of 58 years. Prior to this amendment, their age of superannuation in terms of notification dt.30.7.1998 was 60 years.

14. A question arose as to what would be the age of superannuation of those, who were appointed/engaged on daily wage basis *prior* to 10.05.2001.

15. A clarification was issued in this regard by the Department of Personnel on 22.02.2010 as under:-

"No. PER (AP)-C-B(2)-1/2006-Vol. -VIII
Government of Himachal Pradesh,
Department of Personnel (AP-III)
Dated Shimla-171002

22nd February, 2010.

From
The Secretary (Personnel) to the
Government of Himachal Pradesh.

To
1. All the F.C./Principal Secretaries/Secretaries to the Government of Himachal Pradesh, Shimla-171002.

2. All Divisional Commissioners in Himachal Pradesh.
3. All Heads of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.

Subject:- Age limit for disengagement of a daily wager.

Sir,

I am directed to say that consequent upon amendment in Rule-56 of the Fundamental Rules vide Government of Himachal Pradesh, Finance (Regulations) Department Notification No. Fin(C) A(3)-3/98 dated 10th May, 2001, the issue of fixing the age of disengagement of a daily wager in all the departments had also been engaging the attention of the Government for sometime past. After careful consideration, the Government has now decided that the people who are engaged on daily wages they will also be governed by the same set of age restriction of disengagement as is applicable to regular Government employees. As such, the Class-IV daily wager engaged prior to

2001 i.e. when said notification of limiting the age of Class-IV Employees was reduced from 60 to 58 years will cease to be in the employment at the age of 60 years and no daily wager deployed after the reduction of the age limit in 2001 will be retained after attaining the age of 58 years. Similarly, all Class-III and above employees if working on daily wage will cease to be employed at the age of 58 years. There should be no ambiguity in this matter and all departments are to follow this age restriction.

2. The policy regarding regularization of daily waged persons remain as circulated vide this office letter No. PER (AP)-C-B(2)-1/2006-Vol. -VII (Loose-2), dated 28.8.2009.

3. The above instructions may kindly be brought to the notice of all concerned for strict compliance.

Yours faithfully,

Sd/-

Deputy Secretary (Personnel) to the Government of Himachal Pradesh"
(emphasis supplied)

16. The Government thus clarified that a Class-IV daily wager engaged prior to 2001 amendment will continue to serve till the age of 60 years.

The judgment in Krishan Chand (dt.12.11.2009)

17. There was a challenge laid to Notification dt. 10.05.2001 reducing the age of superannuation of Class IV employees engaged on or after 10.5.2001 from 60 years to 58 years in ***Krishan Chand v. State of H.P and another***¹ before this High Court.

18. It was contended by the petitioners that action of the State in retiring the petitioners who were class-IV employees at the age of 58 years instead of 60 years was illegal and arbitrary. It was also contended that the petitioners were appointed before the issuance of notification dt. 10.05.2001, that this notification cannot destroy their vested rights to continue up to the age of 60 years on the basis of unamended Rule 56 (b) of the fundamental Rules.

¹ 2010(1) Shim.LC 351 (DB)

19. The State contended that though the petitioners were engaged on daily wage basis *before* the date of amendment i.e. 10.05.2001, since they were regularized/appointed *after* this date, the action of the State to retire them at the age of 58 years was legal and justified.

20. The Division Bench in **Krishan Chand** (1 Supra) upheld the said notification dt. 10.05.2001 stating that prescribing the retirement/superannuation age is a policy decision and the scope of judicial review in such matters was very limited.

21. The Division Bench relied upon the judgment of the Supreme Court in **K. Nagaraj and others vs. State of Andhara Pradesh and another**². It noted that in **K. Nagaraj** (2 supra), the Supreme Court had upheld the decision of State of Andhra Pradesh in reducing the age of retirement of their employees from 58 to 55 years.

22. The Division Bench noted that the Supreme Court in **K. Nagaraj** (2 Supra) had held that:

- (i) there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services;
- (ii) the Rules of retirement do not take away rights of person to his livelihood, and they limit his right to hold office to a stated number of years;

² AIR 1985 SC 551.

(iii) by and large, in matters of legislative policy, the Government of the day must be allowed a free, though fair, play ;

(iv) a common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting Claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the legislature, These claims involve considerations of varying vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case;

(v) in resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the legislature have to undertake; and

(vi) that the decision of the State Government to reduce age of superannuation would also not amount to “removal” from service.

23. The Division Bench also referred to the judgments of the Supreme Court in ***Central Bank of India and others v. Madan Chandra Brahma and another***³ and ***B. Bharat Kumar and others v. Osmania University and others***⁴.

24. The Division Bench in ***Krishan Chand*** (1 Supra) then concluded as under:

“12. The petitioners, as noticed above, have been regularized after the issuance of notification dated 10th May, 2001. A specific status has been given to them after their regularization. There is no force in the contention of the petitioners that their dates of appointment should relate back to the dates when they were engaged on daily wage basis. The dates of appointment of the petitioners for the purpose of retirement are to be determined/considered from the date of their regularization. Since the petitioners have been appointed/regularized after the amendment was carried out in Rule 56 of Fundamental Rules vide notification dated 10th May, 2001, their date of retirement will be 58 years and not 60 years, as claimed by them.

13...

14... The State Government in its own wisdom has taken a policy decision to carry out the amendment, as noticed above, by inserting proviso to Rule 56 (b) of the Fundamental Rules and proviso to clause (c). The age of retirement for the workman and also for the Class-IV Government servant appointed on or after the date of publication of the notification on 10th May, 2001 is on the last day of the month in which he attains the age of 58 years. This Court will not interfere with this policy decision. There is neither any arbitrariness nor illegality or unconstitutionality in the amendment carried out vide notification dated 10th May, 2001.....The notification is prospective and will cover all the employees alike, i.e., workman and Class IV employees, who have been recruited /appointed/regularized after 10th may, 2001. The term ‘appointed’ has been loosely worded in the amendment carried out vide notification dt.10th May 2001. We clarify that this term ‘appointed’ shall include

³(2007) 8 SCC 294

⁴(2007) 11 SCC 58.

regularization /recruitment by any mode known under service jurisprudence.”
(emphasis supplied)

25. Thus, the Division Bench of this Court had upheld the notification dt.10.05.2001 by holding that Class-IV Government servants appointed *on or after* the publication of the notification dt. 10.05.2001 would retire on the last day of the month in which they attained the age of 58 years and that there was no arbitrariness, illegality or unconstitutionality in the amendment carried out vide notification dt. 10.05.2001. The word ‘appointed’ in the notification dt.10.5.2001 was interpreted to cover cases of regularization/recruitment by any mode known under service jurisprudence.

This decision therefore did not give importance to initial date of engagement of the Class-IV employee and irrespective of the said date, and date of regularization/appointment /recruitment was made the basis to determine the age of superannuation of class IV Government servants.

The impugned amendment made on 21.2.2018

26. While things stood thus, the State realized that there was a vacuum about the superannuation age of daily wagers *engaged prior to* 10.5.2001 but regularized *after* 10.05.2001⁵ and to meet this situation, the impugned notification was issued on 21.02.2018 amending FR 56 (e) again. The said notification reads as under:

“Short title and commencement:-	(1) These rules may be called Fundamental (in their application to the State of Himachal Pradesh) First Amendment, Rules, 2018.
1.	(2) These rules shall come into force from the date of publication in the Rajpatra (e-Gazette), Himachal Pradesh.
Amendment of rule-56.	In rule-56 of the Fundamental Rules, after the second proviso to clause (e), the following third

⁵ Para 5(iv) in Baldev v. State of H.P ... 2022(2) Himachal Law Reporter 653

2. proviso shall be inserted, namely:-

“Provided further that a Class-IV Government servant appointed on part-time/daily wages basis prior to 10-05-2001 and regularized on or after 10-05-2001 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.”

27. The above amendment inserting 3rd proviso in F.R. 56(e) came into force with effect from the date of publication in the Gazette, i.e. on 22.02.2018.

28. The gist of the amendment is that with effect from 21.02.2018, Class-IV Government servants appointed on part-time/daily wage basis prior to 10.05.2001 and regularized on or after 10.05.2001, were to retire on attaining the age of 60 years.

29. So it was the date of first appointment/engagement, which was made the basis for continuation till the age of 60 years and not the date of regularization (unlike the notification dt.10.5.2001 which was interpreted by the High Court in **Krishna Chand** (1 supra) to make the date of regularization /recruitment as basis of applying the age of superannuation of 58 years).

30. A corrigendum was issued by the State on 10.06.2019 to the effect that for the word ‘appointed’ used in the notification dated 21.02.2018, the word ‘engaged’ shall be substituted.

31. So F.R. 56(e) as it stood on 22.02.2018 (with corrigendum) read as under:-

“(e) ...

Provided further that a Class-IV Government servant appointed on or after 10.05.2001 shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.

Provided further that with effect from 21.02.2018 a Class-IV Government servant engaged on part-time/ daily wages basis prior to 10-05-2001 and regularized on or after 10-05-2001 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years (2018 amendment)."

The instant cases

32. In CWP no. 2274 of 2021 and in some other cases which are being decided along with the said petition, this notification dt. 21.02.2018 is specifically under challenge.

33. In CWP no. 2274 of 2021 petitioner contended that she had been engaged as a water carrier on part time basis in the Education department in 2001 (no date given), that her service were brought on work charge establishment in 2012, that her services had been regularized in 2017 and she would have to retire on attaining age of superannuation of 58 years on 30.4.2021 (as her date of birth was 24.4.1963) , but others similarly situated who were inducted into service as part timers would retire at 60 years. She contended as under:

" 4.a. That the said action of the respondents and notification dt.21.2.2018 (Annexure P-5) is in violation of Article 14 of the Constitution of India because it creates a class between a same category of employees and there is no rationale behind the said classification. It is settled law of the land that the classification should be based on some rationale and there must be some rational and intelligible differentia and there must be some nexus between the said classification and the object sought to be achieved and all these things are missing in the notification and in the action of the respondent-State. The petitioner cannot be discriminated against on the basis of the date of entry into service when she is similarly situated and there is no rationale behind the action of the respondent-State in retiring the petitioner at the age of 58 years and those who inducted into service in the year 2001 at the age of 60 years, and the said classification/notification does not qualify the tests for differentiating between the same class of employees and the notification dated 21.2.2018 to the said extent is liable to be struck down."

34. A direction is sought in CWP.No.2274 of 2021 to set aside the notification dt. 21.02.2018 and allow the petitioners therein to be retired at the age of 60 years.

35. On 29.4.2021, a learned Single Judge of this Court referred to an order dt.24.4.2021 in CWP.No.2590 of 2021 passed by a Division Bench of this Court, wherein the notification dt.21.2.2018 had been stayed, and directed that the petitioner shall not be retired.

The stand of the State in CWP.N0.2274 of 2021

36. A reply has been filed in the said Writ petition on behalf of the State.

It is contended that the petitioner was engaged as Part time Water carrier on contract basis on 21.8.2002, that her services were later regularized as class-IV employee against an available vacancy purely on seniority basis in 2017. As such petitioner is governed by notification dt. 10.05.2001 and she has to retire on attaining age of 58 years. It is stated that she shall retire from the government service as per the instructions/rules in vogue at the relevant time and she cannot be granted the benefit of the notification dt.21.2.2018. It is further contended that the State Government has the power to amend the rules and the regulations governing its employees.

37. The reply filed by the State did not deal with the specific plea of petitioner mentioned above that the notification dt.21.2.2018 is violative of Art.14 of the Constitution of India as it discriminates among members of same class on basis of their date of engagement on daily wage basis, and that it has no nexus with the object behind increasing the age of superannuation to 60 years to persons engaged before 10.5.2001 and regularized thereafter.

38. So the State was asked to file an additional reply to the plea of the petitioner extracted supra.

39. The State then filed an **additional reply**.

40. In the additional reply reference is made at pg.3 to legislative intention behind the amendment made on 10.5.2001, but no rationale for making the amendment on 21.2.2018 is mentioned.

41. It is stated that it is the prerogative of the State to fix retirement age of its employees in exercise of power under Article 309 of the Constitution of India, and what should be the age of superannuation is a matter of policy, and it is not within the domain of the Court to legislate. According to the State, while doing broad justice to many, there may be some bruises caused to a few. It is stated that the petitioner was granted an interim order on basis of an order in CWP.No.2590/2021 which did not relate to age of superannuation, but dealt with commutation of fraction of pension.

42. It is contended that legislature is entitled to fix the cut of date and the same cannot be stuck down unless it is held arbitrary.

But there is no specific reply by the State to the pleadings of the Writ petitioner about violation of Art.14 of the Constitution of India inspite of an opportunity having been given to it.

The State had adopted this reply in the rest of the Writ petitions also where notification dt. 21.02.2018 has been challenged but where no replies had been filed.

CWPOA No.5157 of 2020

43. In some of the other cases such as CWPOA No.5157 of 2020, wherein the notification dt.21.2.2018 is specifically challenged, petitioner contended that the prescription of cut off date of 10.5.2001 as date of being appointed on daily wages or part time in the State Government departments is illegal and arbitrary, and has no nexus with the object sought to be achieved by allowing the age for Class IV employees to be enhanced. According to him, the impugned cut off date is creating two different classes on the basis of cut off date amongst one homogenous class of class-IV employees under the State Government, which is legally impermissible. It is stated that the object sought to be achieved by enhancing the retirement age from 58 years to 60 years is to enable lowly paid Class-IV employees to enjoy benefit of services for longer duration, but by imposing the condition of cut off date frustrates this object.

Though a reply is filed by the respondents therein, this above contention is not answered.

CWP.No.6583/2023

44. In CWP.No.6583/2023 the petitioner is seeking a direction to the respondents not to retire her at the age of 58 years and to continue her till she attains the age of superannuation of 60 years, without specifically challenging the notification dt.21.2.2018. There is a specific plea at para 2 (e) that similarly situated employees have to be given same treatment and petitioner also is similarly situated qua class IV employees who are being retired at the age of 60 years; and the State cannot discriminate between the

same category of employees and there is no rationale behind the said action. It is alleged that the State can frame a policy or legislate, but the same should be based on some rationale and the classification should be in accordance with Art.14 of the Constitution of India. It is also alleged that in the present matter there is no rationale behind the said discrimination between the same category of employees, and the action of the State is liable to be struck down. Reliance is placed on ***Union of India v. Atul Shukla***⁶ and it is stated that in the said decision, the Supreme Court had held that retirement age cannot be different on the ground of entry into service and other factors and there must be uniformity in the age of retirement amongst similarly situated employees.

45. Reply is filed by the State in the said Writ petition contending that it is the prerogative of the State Government to fix the retirement age of its employees in exercise of powers conferred by proviso to Art.309 of the Constitution of India and that there is no infirmity in the notification dt.21.2.2018; that legislature is entitled to fix a cut off date, and it cannot be struck down unless it is held arbitrary.

46. Reliance is placed on Full Bench decision in ***Baldev v. State of Himachal Pradesh***⁷ wherein it was held that retirement date of such of those employees who had been engaged on daily wage basis prior to 10.5.2001, but regularized after 10.5.2001 and have actually been retired prior to the issuance of notification dt.21.2.2018 at the age of 58 years, shall be deemed to be the date when they otherwise attained the age of 60 years.

47. As regards the plea of the petitioner in para 2 (e) of the Writ petition is concerned, it is stated that the said plea is wrong and hence denied. It is

⁶ (2014) 10 SCC 432

⁷ 2022(2) Himachal Law Reporter 653

stated that petitioner was appointed after 10.5.2001, therefore she cannot be said to be similarly situated employee to those who were engaged prior to 10.5.2001 and hence she has no right at all to continue in service till the age of 60 years. It is contended that the decision in **Atul Shukla** (6 Supra) is inapplicable.

In the reply filed in this CWP, we find no justification/rationale offered by respondents for the cut off date of 10.5.2001 fixed in the notification dt.21.2.2018 and it's nexus with age of retirement of employees.

CWP.NO.5050/2023

48. In CWP.NO.5050/2023, petitioner contended that though appointed after 10.5.2001, she is also similarly situated to those who were appointed prior to 10.5.2001 and regularized after 10.5.2001 as she was discharging the same and similar duties as those Class IV employees who had been appointed before 10.5.2001 and regularized after 10.5.2001 and that she is entitled to retire on attaining age of 60 years. Petitioner sought for striking off of the cut off date.

49. In the reply filed by the State, reliance is again placed on judgment in **Baldev** (7 Supra). It is contended that merely categorizing of persons engaged on different dates on the basis of applicability of Rules prevailing at the time of their engagement does not amount to arbitrariness, discrimination or unfairness in any manner and such categorization cannot be said to be one homogeneous as the amended rule/law will have to take effect from the date of its notification. Categorization on the basis of date of engagement cannot be termed discriminatory for the reason that the concept of seniority and promotion is also based on the same principle i.e, the date of appointment. Further, persons engaged on different dates are not alike for the

purpose of service benefits as they may be engaged under different service conditions and date of engagement is always vital in case of other service benefits. Therefore the plea of petitioner w.r.t. discrimination is not sustainable in the eyes of law.

This reply filed in this CWP by State atleast tries to meet the petitioners' plea of discrimination.

Other cases

50. In CWP.No.3343 of 2024, CWP.No.3345 of 2024, CWP.No.3359 of 2024 etc. petitioners prayed for quashing the notification dt.21.2.2018 to the extent it incorporates the words “*provided that a class IV Government servant appointed on pat time /daily wages basis prior to 10.5.2001*” , and to direct the respondents to continue the petitioner till she attains the age of 60 years.

51. In some of the other Writ petitions forming part of this batch, there is no specific challenge to the notification dt. 21.02.2018 in its entirety, but it has been prayed that the petitioners therein should not be made to retire at the age of 58 years and should be allowed to continue up to the age of 60 years (as in CWP No. 6583 of 2023).

52. Alternatively, it was pleaded in some of the Writ petitions such as CWP No. 1740 of 2023 to strike down the cut off date i.e. 10.05.2001 , the date with regard to part time/ daily wage basis appointment and it is asserted that it cannot be taken as a criteria for increasing the retirement age from 58 years to 60 years as mentioned in the notification dt. 21.02.2018.

53. We shall treat the above referred Writ Petitions as sample cases and deal with the pleas made therein as we deem it unnecessary to deal with

individual fact situations mentioned therein since pleas of parties appear to be common. Counsel for the respective parties reiterated the stand taken by them in their pleadings.

Consideration by the Court.

54. We have already noted the history relating to the age of superannuation revolving in the State of HP from 1998 to 2018.

55. For our purpose, it is sufficient if we start with the notification dt. 10.05.2001, which amended FR 56 insofar as class-IV employees are concerned, by mandating that they shall retire from service either on the last day of the month in which they attain the age of 58 years.

56. As pointed out above, this amendment effectively reduced the age of superannuation of class-IV employees from 60 years to 58 years and the validity of this notification has already been upheld in **Krishan Chand** (1 supra).

57. However, in view of the ambiguity allegedly recognized by the State Government as to what would be the superannuation age of the daily wagers engaged prior to 2001 but regularized after 10.05.2001, the notification dt. 21.02.2018 came to be issued amending FR 56 (e) yet again.

58. The impugned notification states that w.e.f. 21.02.2018, a class-IV Government servant engaged part time/daily wage basis *prior to* 10.05.2001 and regularized *on or after* 10.05.2001 would retire at the age of 60 years.

The decision in Baldev (7 Supra) is of no help to respondents

59. A Full Bench of this Court had been constituted to resolve the conflict between decisions of different Benches of the High Court regarding the

interpretation of Rule 56 of the Fundamental Rules vis-à-vis notification dt.10.5.2001 amending the FR in the State.

60. In **Bar Chand**⁸ it had been held that all those who had been appointed even if on daily waged service prior to 10.5.2001 would be entitled to continue upto age of 60 years. But in **Chuni Lal Beldar**⁹ another Division Bench had taken a view that only regularly appointed persons in Class IV prior to 10.5.2011 would continue upto 60 years, and not persons who entered regular service after 2001, though they were in daily waged service prior to 2001, and such persons ought to retire at age of 58 years only.

61. The impugned notification dt.21.2.2018 was applied by the Full Bench in **Baldev** (7 supra) and it was declared by the Full Bench that the date of regularization of the class-IV daily wagers whether prior to or after 10.05.2001, will make no difference to the age of continuing in service. *It is the date of engagement, which is the decisive factor.* If date of engagement/appointment is *prior to* 10.05.2001, the Class-IV employee will continue to serve till 60 years of age. In case, it is *later to* 10.05.2001, then restriction in age of superannuation of 58 years will apply. It held:

*“Inconsistency between **Bar Chand** and **Chuni Lal** now stands, not just resolved, but rather dissolved, in view of notification dated 21.02.2018 amending F.R. 56(e), issued by the State, which has now reinforced and reiterated what was held in **Bar Chand**'s case, i.e. date of regularization of a class IV daily wager whether prior or after 10.05.2001, will make no difference to the age of his continuing in service. It is the date of engagement, which is the decisive factor. If date of engagement/appointment is prior to 10.05.2001, the Class-IV employee will continue to serve till 60 years of age. In case, it is later than 10.05.2001, then restriction in age upto 58 years will apply.*

⁸ LPA No.196 of 2010 dt.21.10.2010 (DB)

⁹ L.P.A.NO.298 of 2011 dt.22.11.2011 (DB)

There cannot be any discrimination amongst similarly situated Class-IV employees belonging to one homogenous class. Therefore the retirement date, of such of those employees, who had been engaged on daily wage basis prior to 10.05.2001, but regularized after 10.05.2001 and have actually been retired prior to the issuance of notification dated 21.02.2018 at the age of 58 years, shall be deemed to be the date when they otherwise attained the age of 60 years. Since these employees have not actually worked beyond the age of 58 years, therefore, they will not be entitled to the actual monetary benefits of wages/salary etc. for the period of service from the date of their actual retirement till deemed dates of their retirement. However, they will be entitled to notional fixation of their pay for the period in question for working out their payable pension and payment of consequential arrears of pension accordingly”

62. A reading of the decision in **Baldev** (7 supra), however shows that the validity of the notification issued on 21.02.2018 qua Art.14 of the Constitution of India was not in issue in **Baldev** (7 supra), and the Full Bench had no occasion therefore to go in the said aspect of discrimination as pleaded in the instant cases. The Full Bench merely applied the notification dt. 21.02.2018 to decide the reference made to it.

63. Therefore, the reliance on the decision of **Baldev (7 Supra)** by the learned Advocate General to sustain notification dt. 21.02.2018 is misplaced.

Whether notification dt.21.2.2018 is valid in law

64. Admittedly the 10.05.2001 notification had fixed the age of superannuation of class-IV employees as 58 years, and the validity of the same had been upheld in **Krishan Chand** (1 supra).

65. **Krishan Chand** (1 supra) had held that reduction in the age of superannuation is a policy decision and there was no arbitrariness, illegality or unconstitutionality in the amendment carried out by the notification dt. 10.05.2001 in FR 56.

66. However, the questions which we have to consider in this batch of cases are:

“whether notification dt. 21.02.2018 which differentiates between the class-IV government servant on the basis of their initial engagement as regards their age of superannuation is constitutionally valid or not?”

And

“when all the petitioners who are class-IV employees have been regularized and all became part of a cadre of class-IV employees, i.e., their birthmarks get obliterated on entry into a common pool, can the State, on the basis of their date of engagement prior to 10.05.2001 or thereafter provide different dates of retirement?”

67. These issues have arisen only because of 21.02.2018 notification which made such a distinction.

68. It is settled law that Article 14 prohibits class legislation, but it does not prohibit reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupation or the like. What is necessary is there must be a nexus between the basis of classification and the object of the Act under consideration. In other words, the classification must not be arbitrary, must be rational, i.e. to say it must be not only be based on some qualities or characteristics which are to be found in all the persons grouped together and

not in others who are left out, but those qualities or characteristics must have a reasonable relation to the object of the legislation. The differentia which is basis of classification *and* the object of the Act are distinctive things, and what is necessary is that there must be nexus between them (*State of West Bengal vs. Anwar Ali Sarkar*¹⁰, *Ram Krishna Dalmia v. S.R. Tendolkar*¹¹ and *D.S. Nakara v. Union of India*¹²) .

The decision in D.S.Nakara

69. In *D.S. Nakara (12 Supra)* the Constitution Bench of the Supreme Court was considering the following questions:

- (a) whether pensioners are entitled to receive superannuation or retiring pension under the Central Civil Services (Pension Rules)1972 form a class as a whole ?
- (b) Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date?
- (c) Would differential treatment to pensioners related to the date of retirement *qua* the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14?

70. The Supreme Court noted that the petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government

¹⁰ AIR 1952 SC 75

¹¹ AIR 1985 SC 538

¹² (1983) 1 SCC 305

servant retired subject to the only condition that he was governed by the 1972 Rules.

71. The Court noted that average emoluments of 36 months' service provided the measure of pension because the pension was related to the average emoluments during 36 months just preceding retirement; that by the liberalized scheme, it is now reduced to average emoluments of 10 months preceding the date; any one in Government service would appreciate at a glance that with an average of 10 months, it would be on the higher side on account of the two fortuitous circumstances that the pay-scales, if one has not reached the maximum, permit annual increments and there are promotions in the last one or two years.

72. With a view to giving a higher average, the scheme was liberalised to provide for average emoluments with reference to last 10 months' service. Coupled with it, a slab system for computation is introduced and the ceiling is raised. This is liberalisation.

73. Now, if the pensioners who retired prior to the specified date had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement, naturally the average would be lower and they will be doubly hit because the slab system as now introduced was not available and the ceiling was at a lower level. Thus they suffer triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling.

74. The Supreme Court held that the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date is relevant. That poses the further question, why was the pension scheme liberalised. What necessitated liberalisation of the pension scheme. But the impugned

memorandum do not spell out the *raison d'être* for liberalising the pension formula.

75. It however, noted that the affidavit filed by the State that liberalisation of pension of retiring Government servants was decided by the Government in view of the persistent demand of the Central Government employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the pre-liberalised pension scheme did not provide adequate protection in old age and that a further liberalisation was felt necessary as a measure of economic security.

76. When Government favourably responded to the demand it thereby *ipso facto* conceded that there was a larger available national cake part of which could be utilized for providing higher security to erstwhile Government servants who would retire. The Government also took note of the fact that continuous upward movement of the cost of living index as a sequel of inflationary inputs and diminishing purchasing power of rupee necessitated upward revision of pension.

77. If this be the underlying intendment of liberalization of pension scheme, can any one be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date, but those who had already retired did not suffer the pangs of rising prices and falling purchasing power of the rupee. Earlier the scheme was not that liberal keeping in view the definition of average emoluments and the absence of slab system and a lower ceiling. Those who rendered the same service earned less pension and are exposed to the vagary of rising prices consequent upon the inflationary inputs. If therefore, those who are to retire subsequent to the specified date would feel the pangs in their old age, of lack of

adequate security, by what stretch of imagination the same can be denied to those who retired earlier with lower emoluments and yet are exposed to the vagaries of the rising prices and the falling purchasing power of the rupee. And the greater misfortune is that they are becoming older and older compared to those who would be retiring subsequent to the specified date.

78. Thus the basis of above decision is that Article 14 provides that the classification should be based on some rationale, that there must be some rationale and intelligible differentia, and there must be some nexus between the said classification and the object sought to be achieved.

79. The said decision has also been reiterated in ***All Manipur Pensioner Association vs. State of Manipur and others***¹³.

The decision in ***B.Prabhakar Rao and others v. State of Andhra Pradesh and others***¹⁴

80. The Supreme Court had an occasion to consider a situation like one which has arisen in the instant case in ***B.Prabhakar Rao*** (14 supra).

81. In February, 1983 the Government of Andhra Pradesh decided to reduce the age of superannuation of it's employees from 58 to 55 years. In order to give effect to this , the Government amended Rule 56(a) of the Fundamental Rules and Rule 231 of the Hyderabad Civil Services Rules by substituting the figure '55' for the figure '58' and making a special provision that those who had already attained the age of 55 years and were continuing in service beyond that age on February 8, 1983 shall retire from service on the afternoon of February 28,1983. An Ordinance No.5 of 1983 was also issued by the Government. Several Writs were filed challenging the Ordinance in the Supreme Court and the High court of Andhra Pradesh.

¹³(2020) 14 SCC 625.

¹⁴ 1985 (Supp) SCC 432 = AIR 1986 SC 210

82. A 3 Judge Bench of the Supreme Court reserved orders on 27.7.1983 but the judgment came to be pronounced only on 18.1.1985 i.e., after 17 months. The Supreme Court judgment is reported in **K.Nagaraj** (2 Supra). The impugned provisions were upheld and all the Writs were dismissed.

83. But there were important developments which had occurred in these 17 months. There were agitations by affected employees and on 3.8.1983 there was an agreement entered into by the Govt. of A.P. and the Employees Association which stated *inter alia* that “*if the Supreme Court upholds the power of the Government to reduce the age of superannuation without referring to the provisions in the Ordinance and FR.2, the entire Ordinance will be scrapped and FR 2 will be restored.*”

84. The Andhra Pradesh legislature also passed the Andhra Pradesh Public Employment (regulation of Age of Superannuation) Act, 23 of 1984 making it applicable to all persons appointed to public services and posts in connection with the affairs of the State, all officers and other employees working in any local authority, whose salaries and allowances were paid out of the Consolidated Fund of the State, all persons appointed to the Secretariat staff of the Houses of the State Legislature : and all officers or employees whose conditions of service were regulated by rules framed under the proviso to Article 309 of the Constitution immediately before the commencement of this Act. Sub-section (3) of Section 1 stated “*clause (i) of Section 7 shall be deemed to have come into force on April 29, 1983 (sic 1969)*”. Section 3(1) and (2) were as follows:

“3. (1) Every government employee, not being a workman and not belonging to Last Grade Service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-five years.

(2) Every government employee not being a workman but belonging to the Last Grade Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.”

85. Explanation II(b) to Section 3 was to the following effect:

“(b) a government employee who attained the age of superannuation but who was allowed to continue to hold the post beyond that date, by virtue of a stay order of a court, shall be deemed to have ceased to hold the post and relieved of his charge from the date of the judgment dismissing his petition, irrespective of whether the charge of the post was handed over or not as prescribed in any rule or order of the Government for the time being in force.”

86. On August 23, 1984, the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act 23 of 1984 was amended by the promulgation of Andhra Pradesh Ordinance 24 of 1984 providing that in Section 3(1) of the Act and in Explanation II(a), the words “fifty-eight years” shall be substituted for the words “fifty-five years”. This was done to give effect to the agreement of August 3, 1983 and to fulfill the promise held out therein that the age of superannuation would be restored to 58 years. Clause 3(1) of the Ordinance is the much disputed provision and it has therefore, to be extracted in full. It is as follows:

“3(1) The provisions of this Ordinance shall not apply to persons who attained the age of superannuation in pursuance of the notifications issued in GOMs. No. 36, Finance and Planning (Finance Wing-FR I) Department, dated February 8, 1983, or in pursuance of the provisions of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as in force prior to the commencement of this Ordinance.”

87. Andhra Pradesh Ordinance 24 of 1984 was replaced by Act 3 of 1985. By Section 2 of the Amending Act, the words “fifty-five years” were substituted by the words “fifty-eight years” in Section 3(1) and Explanation II(a) of the principal Act. Section 4 of the Amending Act which is more or less on the same lines as clause 3(1) of the Ordinance said:

“4. (1) The provisions of Section 2 of this Act shall not apply to persons who attained the age of superannuation in pursuance of the notifications issued in GOMs. No. 36, Finance and Planning (Finance Wing-FR I) Department, dated February 8, 1983, or in pursuance of the provisions of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as in force prior to the commencement of this Act.”

88. Curiously no explanatory statement accompanying Ordinance 23 of 1984 was placed before the Supreme Court. The Statement of objects and reasons of Act 3 of 1985 merely said *“the Government considered it necessary to raise the age of superannuation from 55 to 58 years.”*

89. During the pendency of the Writ petitions in the Supreme Court, several employees of local authorities etc. obtained orders of stay from the High Court and were continuing in service on the dates when the Judgment of the Supreme Court was pronounced. After the pronouncement of the judgment of the Supreme Court, the authorities sought to give effect to the provisions of the Act and the Ordinance by seeking to throw them out on the ground that they had completed 55 years of age during the interregnum between February 28, 1983 and August 23, 1984. Some others who had completed 55 years between February 28, 1983 and August 23, 1984, but who had not completed 58 years sought re-entry notwithstanding the raising of the age of superannuation from 55 years to 58 years. Their re-entry was sought to be resisted on the basis of Clause 3(1) of the Ordinance and Section 4(1) of the Amending Act.

90. Those employees who were sought to be removed from service or who were denied re-entry into service on the ground that they had attained the age of 55 years between February 28, 1983 and August 23, 1984, had once again invoked the jurisdiction of the Supreme Court and sought appropriate Writs from the Supreme Court to continue or to reinstate and continue them in

service until they attain the age of 58 years. They are the petitioners in Writ Petitions 3203, 3413-3419, 3420-3426 etc., etc. of 1985.

91. The Supreme Court held that the object of Ordinance 23 of 1984 and Act 3 of 1985 was to undo the mischief or the harm that had been done by the lowering of the age of superannuation from 58 years to 55 years and to restore the previous position, and the object of Ordinance 23 of 1984 and Act 3 of 1985 was to undo the mischief or the harm that had been done by the lowering of the age of superannuation from 58 years to 55 years and to restore the previous position. It held:

“9. Here, the facts speak for themselves. Res ipsa loquitur. The history and the succession of events, the initial lowering of the age of the superannuation, the agitation consequent upon it and the agreement that followed the agitation clearly indicate that the object of Ordinance 23 of 1984 and Act 3 of 1985 was to undo the mischief or the harm that had been done by the lowering of the age of superannuation from 58 years to 55 years and to restore the previous position. Quite obviously, it was not a case of change of policy consequent on change of social circumstances. It was a case of a change of policy to set right immediately a recent wrong perpetrated by a well intentioned but perhaps ill-thought measure. It was not at all a case of reversal of policy because of changed circumstances. A reference to the note file which was made available to us by the learned Advocate-General of Andhra Pradesh at our instance shows that it was after a careful consideration of the representations made by the various services associations in regard to the restoration of the age of superannuation to 58 years that the Government resolved to restore the age of superannuation to 58 years...

... We must therefore, proceed on the basis that the Chief Minister (Shri N.T. Rama Rao) did allege that when the Government took the decision to reduce the age of superannuation, he was, “misguided and misled” by his Finance Minister and the Chief Secretary. It may be a sorry confession to make on the part of a Chief Minister, especially when it was a momentous decision involving the lives and future of thousands of employees. One wonders how a decision concerning the lives and the future of civil servants, who all their lives in the past, had loyally served the Government, could have

been taken in such a hasty and haphazard fashion. One would expect such a decision to be taken after a full investigation into the multitudinous pros and cons, after collection of all pertinent data and after deep consideration of every aspect of the question. But there we have a statement attributed to the Chief Minister that he was “misled and misguided” by the Finance Minister and his Chief Secretary. Sorry confession, it may be, but a frank and courageous admission it was, exposing him to criticism. It does require a sturdy spirit to own a mistake.”(emphasis supplied)

92. The Supreme Court also noticed that the situation presented before it had never come before it previously.

“16. A situation such as the one before us had never presented itself to the Court previously.... But this is the first occasion — neither our researches nor those of the learned counsel have been able to trace another case of this kind — where the age of superannuation was first raised from 55 to 58 years, there was then a change of policy a few years later reducing the age of superannuation from 58 to 55 years and finally there was again, within a few months, a reversion to the higher age of superannuation of 58 years. ...”

93. It held that in **K. Nagaraj** (2 Supra), the Supreme Court had no occasion to consider the further step that had been taken i.e., once again raising the age of superannuation to 58 years and the *exclusion of a class of persons from its benefit*, and the said decision is clearly distinguishable.

It then held as under:

“18.it is altogether a different thing to say that the State while making a law raising the age of superannuation cannot make an unreasonable classification to exclude some government servants from the benefit of the increased age of superannuation. The classification must pass the dual test of being reasonable and related to the object of the legislation, besides not being arbitrary. It is not open to the State to make an arbitrary classification first by making the date dependent on an uncertain event, namely, the date of pronouncement of judgment by the Supreme Court and next by making a legislation excluding persons who had attained the age of 55 years before the legislation took effect though the legislation itself was designed to undo the wrong already done to the very Government employees.... ..It is true

that whenever a law is made or whenever an action is taken, it has to be with effect from a certain date but it does not necessarily follow that the choice of the date is not open to scrutiny at all. If the choice of the date is made burdensome to some of those, the wrong done to whom is sought to be rectified by the law, it would certainly be open to the court to examine the choice of the date to find out whether it has resulted in any discrimination.

19. We think that the one case which is really of assistance to us in this matter is the recent decision of the Constitution Bench in **D.S. Nakara v. Union of India(12 Supra)....**". (emphasis supplied)

94. The Supreme Court elaborately quoted from **D.S.Nakara** (12 supra) and applied the principles laid down therein.

95. It declared that almost immediately after the age of superannuation was reduced from 58 to 55 years, it was realized by the Government of Andhra Pradesh that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their employees; as the judgment was not pronounced for long, it became imperative for the Government to implement their decision of their own accord and so they passed Ordinance 24 of 1984 and Act 3 of 1985, amending Act 23 of 1984 by substituting 58 years for 55 years. While doing so, unfortunately again, *those that had suffered most by being compelled to retire between February 28, 1983 and August 23, 1984 were denied the benefit of the legislation by clause 3(1) of the Ordinance and Section 4(1) of Act 3 of 1985; if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because*

of the delay in taking the remedial action already decided upon. The Supreme Court said:

“ 20....The final situation that emerges is that almost immediately after the age of superannuation was reduced from 58 to 55 years, it was realised by the Government of Andhra Pradesh that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their employees. A decision was very soon taken to redress the wrong by reversing the decision but an unfortunate rider was added that they should wait till the pronouncement of the judgment of the Supreme Court, which was perhaps expected to be pronounced shortly. As the judgment was not pronounced for long, it became imperative for the Government to implement their decision of their own accord and so they passed Ordinance 24 of 1984 and Act 3 of 1985, amending Act 23 of 1984 by substituting 58 years for 55 years. While doing so, unfortunately again, those that had suffered most by being compelled to retire between February 28, 1983 and August 23, 1984 were denied the benefit of the legislation by clause 3(1) of the Ordinance and Section 4(1) of Act 3 of 1985. Now **if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon.** We do not doubt that the Judge's friend and counsellor, “the common man”, if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness etc. **Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory. The principle of Nakara⁵ clearly applies. The division of Government employees into two classes, those who had already attained the age of 55 on February 28, 1983 and those who attained the age of 55 between February 28, 1983 and August 23, 1984 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only.**

Legislations to remedy wrongs ought not to exclude from their purview a few of the wronged persons unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. We do not find that there is any such impossibility or detriment to the public interest involved in reinducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and sought to be remedied. As observed in *Nakara*⁵, the burden of establishing the reasonableness of a classification and its nexus with the object of the legislation is on the State. Though no calamitous consequences were mentioned in any of the counter-affidavits, one of the submissions strenuously urged before us by the learned Advocate-General of Andhra Pradesh and the several other counsel who followed him was the oft-repeated and now familiar argument of “administrative chaos”. It was said that there would be considerable chaos in the administration if those who had already retired are now directed to be reinducted into service. We are afraid we are unable to agree with this submission. Those that have stirred up a hornet’s nest cannot complain of being stung...” (emphasis supplied)

96. The Supreme Court then granted reliefs therein as under:

“23. Finally we come to the question of the relief to be granted. We find that Clause 3(1) of Ordinance 24 of 1984 and Section 4(1) of Act 3 of 1985 may easily be brought to conform to the requirements of Article 14 of the Constitution by striking down or omitting the naughty word “not” from those provisions. We may possibly achieve the same object by striking down the whole of clause 3(1) of the Ordinance and Section 4(1) of the Act but then the question may arise whether the rest of the Act would be sufficient to bring in those who have been excluded. We think that the safer course would be to strike down the offending word “not” from these provisions. That we have such power is clearly laid down in *Nakara* case⁶ where the Court directed the deletion of some words from the offending clause and directed it to be read without those words. To make matters clear and to put them beyond dispute, we give the following directions in exercise of our powers under Articles 32 and 142 of the Constitution:

“(1) All employees of the Government, public corporations and local authorities, who were retired from service on the ground that they had attained the age of 55 years by February 28, 1983 or between February 28, 1983 and August 23, 1984, shall be reinstated in service provided they would not be completing the age of 58 years on or before October 31, 1985.

(2) All employees who were compelled to retire on February 28, 1983 and between February 28, 1983 and August 23, 1984 and who are not eligible for

reinstatement under the first clause, shall be entitled to be paid compensation equal to the total emoluments which they would have received, had they been in service, until they attained the age of 58 years, less any amount they might have received *ex gratia* or by way of pension etc. or under the interim orders of this Court. They will be entitled to consequential retiral benefits.

(3) Such of the employees as have not been compelled to retire by virtue of orders of stay obtained from the High Court or the Administrative Tribunal, or who have actually been reinstated in service pursuant to interim orders of this Court, ⁴⁶⁶ shall be allowed to continue in service until they attain the higher age of superannuation.

(4) The reinduction of those employees that have been compelled to retire previously will put them back as regards their seniority in precisely the same position which they occupied before they were retired from service. They will be entitled to all further consequential benefits.

(5) The employees who were retired and who are reinducted will be entitled to be compensated for the period during which they were out of service in the same manner as mentioned in clause (2).

(6) In the matter of reinduction of employees who do not attain the age of 58 years on or before October 31, 1985, the Government may exercise an option not to reinduct them in the case of all or some or any of the employees, as the case may be, provided the employees are paid the compensation as in the case of those covered by (2) and (5).

(7) All interim orders are vacated and subject to these directions, the Government is free to revert persons promoted or appointed to the posts held by persons who were retired on having attained the age of 55 years by February 28, 1983 or between February 28, 1983 and August 23, 1984 to the posts which they held on February 28, 1983 or on the dates previous to their promotion or appointment provided that they need not be so reverted, if they would otherwise be entitled to be promoted or appointed even if the other employees had not been retired consequent on the lowering of the age of superannuation.

(8) The Government shall be free to create supernumerary posts wherever they consider it necessary so to do.

(9) All payment of compensation to be made and completed before December 31, 1985. If for any reason the Government finds itself unable to pay the entire amount at one time within the time fixed by us, the Government will be at liberty to pay the amount in not more than four instalments within the time stipulated by us. The Government will also have the liberty to apply to us for extension of time, if so advised. Where the employees are awarded compensation by the Government, such employees may apply to the concerned Income Tax Officer for relief under Section 89 of the Income Tax

Act read with Rule 21-A of the Income tax Rules and the Income Tax Officer concerned will grant the appropriate relief.”

97. In our considered opinion, this decision gives considerable guidance to us as to how to resolve the issues arising in this batch of cases.

The decision in Atul Shukla (6 supra)

98. These principles were again considered by the Supreme Court in ***Atul Shukla*** (6 supra).

99. In that case, certain orders had been passed by the Armed Forces Tribunal, Principle Bench at New Delhi whereby the Tribunal had allowed the petitions filed by respondent (Atul Sukla and others) holding them entitled to continue in service up to the age of 57 years in the case of officers serving in the ground duty branch and 54 years in the case of those serving in the flying branch of the Indian Air Force.

100. The Union of India questioned the said order before the Supreme Court and the Supreme Court had to consider whether the respondents, who at the relevant point of time held the rank of Group Captain (Time Scale) in the Indian Air Force were entitled to continue in service upto 54 and 57 years depending upon whether they were serving in the flying or ground duty branch of the force.

101. There was a classification of officers serving in the Air Force holding the same rank but governed by different standards for purposes of their superannuation which was assailed by the respondents who were Group Captain (Time Scale) in petitions filed by them before the Armed Forces Tribunal, Principal Bench, New Delhi.

102. The grievance made by them was that Group Captains in the Air Force constituted one class regardless whether they were promoted to that rank by time scale or on *inter se* merit; that they were discharging the same kind of duties as were being performed by Group Captains (Select); they were wearing the same ranks and drawing the same emoluments and other allowances and were regulated by the same conditions of services in all other respects; and classifying officers who were similarly situate on the basis of the method of appointment to the rank of Group Captain when everything else was the same, was violative of Articles 14 and 16 of the Constitution.

103. The Union of India contested the said petitions on the ground that both respondents held the same rank as Group Captains (Time Scale) and were similar in all other respects including emoluments and other conditions of service and although they were treated to be equivalent to Group Captain (Select), yet the nature of duties and the operational employability of officers promoted to Group Captain (Select) rank was better in comparison to those holding the rank of Group Captain (Time Scale). The rank of Group Captain (Time Scale) was, according to the appellant, a new rank created under Government Order dated 12th March, 2005 (*supra*) subject to the condition that the retirement age of Group Captain (Time Scale) would remain the same as was applicable to Wing Commanders retiring in that branch. The objective behind creating the rank of Group Captain (Time Scale) was to provide continued motivation even to such officers as may not have made it to the rank of Group Captain (Select).

104. The Tribunal agreed with the contention of the respondents and held that classification of Group Captains (Time Scale) and Group Captains (Select) into two categories was not constitutionally permissible. It recorded

the finding that Group Captains (Time Scale) wear the same rank and get the same salary, grade pay and draw the same benefits as Group Captains (Select). The posting of Group Captains (Time Scale) against posts earlier manned by Wing Commanders was, according to the Tribunal, an administrative matter which did not justify the classification made by the Government for purpose of prescribing a different retirement age for the two categories. It therefore, held that Group captain (Time scale) cannot be made to retire at the age of 54 years and other Group captain (Select) at the age of 57 years and there is no rational basis for the distinction sought to be made.

105. The Supreme Court agreed with the decision of the Armed Forces Tribunal. After reiterating settled principle that Article 14 prohibits class legislation and not reasonable classification and that classification would pass the test of Article 14 of the Constitution only if there is an intelligible differentia between those grouped together and others who are kept out of the group; and there must exist a nexus between the differentia and the object of the legislation; and that the said principle has been reiterated in several cases by it, it held that *birthmark of an officer who is a part of the cadre of Group Captains cannot provide an intelligible differentia for the classification to be held valid on the touchstone of Articles 14 and 16 of the Constitution.*

106. It referred to its judgment in **Col. A.S. Iyer & Ors. V. Bala Subramanyan & Ors.**¹⁵ wherein Supreme Court had rejected the argument to justify a classification based on the birthmarks of the members of a cadre. In **Col. A.S. Iyer & Ors** (15 supra) it had been held that the birthmarks of public servants are obliterated on entry into a common pool; that our country does not believe in official casteism or blue blood as assuring preferential

¹⁵ (1980) 1 SCC 634

treatment in the future career; that the basic assumption for the application of this principle is that the *various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service.*

107. The Supreme Court in *Atul Shukla* (6 Supra) held:

“31. The principles stated in the above decisions lend considerable support to the view that classification of Group Captains (Select) and Group Captains (Time Scale) in two groups for purposes of prescribing different retirement ages, is offensive to the provisions of Articles 14 and 16 of the Constitution of India. These appeals must, on that basis alone, fail and be dismissed.....”

Finding

108. Like in the decision in ***B.Prabhakar Rao*** (14 supra), in the instant case too, after the age of superannuation was reduced from 60 to 58 years vide notification dt.10.5.2001 , it appears that the State Government realised that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their employees. It therefore sought to reverse the said decision in the notification dt.21.2.2018 by again increasing the age of superannuation to 60 years, but while doing so, it gave such benefit only to such of class-IV employees who had been engaged on part time /daily wage basis *prior* to 10.5.2001 and regularized on or after 10.5.2001. It excluded the employees who had been engaged on part time /daily wage basis / appointed *after* 10.5.2001 and is insisting that they retire on attaining the age of 58 years.

109. It has overlooked the fact that all the petitioners are class-IV employees and once their services are regularized their birthmarks would get

obliterated, i.e. the date of their initial engagement or the date of regularization would stand obliterated on entering into a common pool of class-IV employees. They all get fused into or integrated as one common service. Merely because the dates of engagement/ regularization/ recruitment are different, there cannot be discrimination with regard to their age of superannuation.

110. The learned Advocate General was unable to highlight any rationale or logic to distinguish between class-IV employees engaged *prior to* 10.05.2001 and those engaged *after* 10.05.2001 *qua* their age of superannuation.

111. It is not the case of the State that those who are appointed *prior to* 10.05.2001 possessed some superior quality over and above that which was possessed by those appointed *after* 2001, in order to justify prescribing different ages of superannuation to those different groups.

112. No explanatory statement to the notification dt.21.2.22018 has been filed by the respondents giving the logic behind the decision to exclude the class IV employees engaged *after* 10.5.2001 and regularized after the said date from the benefit of higher age of superannuation. Not even an attempt was made to provide the “objects and reasons” for the said decision by producing the files relating to the taking of such decision.

113. As stated above, the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and that that differentia must have a rational relation to the objects sought to be achieved by the notification dt.21.2.2018. The State has not sought to indicate the differentia or the nexus between differentia of those engaged before 10.05.2001 and the object

sought to be achieved. It has not sought to justify that differentia has rational relationship to the object sought to be achieved by the notification.

114. For the aforesaid reasons, we disagree with the contention of the respondents that categorizing of persons engaged on different dates on the basis of applicability of Rules prevailing at the time of their engagement *qua* their age of superannuation does not amount to arbitrariness, discrimination or unfairness in any manner. The comparison made by the respondent with concepts of fixation of seniority and promotion that they are fixed on date of appointment is wholly inappropriate. We also disagree with the plea of respondents that persons engaged on different dates are not alike for the purpose of service benefits.

115. We agree with the contentions of petitioners that the object sought to be achieved by enhancing the retirement age from 58 years to 60 years is to enable lowly paid Class-IV employees to enjoy benefit of services for longer duration, but imposition of the cut off date frustrates this object.

116. Therefore, we are of the considered opinion that distinction sought to be made in the impugned notification dt.21.2.2018 between class-IV employees engaged prior to 10.05.2001 and those engaged after 10.05.2001 does not stand judicial scrutiny and touch stone of Article 14 of the Constitution of India, and the cut off date of 10.5.2001 in the notification dt.21.2.2018, is arbitrary.

117. We therefore hold that that there ought to be same age of superannuation prescribed for all class -IV employees i.e 60 years.

118. Therefore, for all the aforesaid reasons we strike down the words “*appointed on part time/daily wage basis prior to 10.5.2001 and*

regularized on or after 10.5.2001” in the notification dt. 21.02.2018 and declare that all class-IV Government servants irrespective of their initial date of engagement or the date of their regularization would retire on the last day of the month in which they attain the age of their superannuation of 60 years.

119. All the Writ Petitions are allowed to the extent indicated above. Such of the petitioners/ Class IV Government servants who had retired from service prior to attaining age of superannuation of 60 years, shall be reinstated by the respondents if they have not crossed the age of 60 years as on date. Others who will not be able to be reinstated now on ground that they have already attained the age of 60 years, shall be paid compensation equal to the total emoluments which they would have received had they been in service until they attained the age of 60 years, less any amount they might have received by way of pension., etc. They will also be entitled to consequential retiral benefits. These shall be paid within 3 months from today. Those who are continuing in service by virtue of interim orders passed by this Court shall continue in service till they attain the age of 60 years. No costs.

120. Pending miscellaneous application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

May 28, 2024.

(cmThakur)