

M.Vijayakumar vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1445517

Court : Kerala

Decided On : Nov-22-2022

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar, Honourable Mr. Justice Mohammed Nias C.P.

Appeal No. : WA/131/2022

Appellant : M.Vijayakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. TUESDAY, THE 22ND DAY OF NOVEMBER 2022/1ST AGRAHAYANA, 1944 W.A.NO.131 OF 2022 AGAINST THE JUDGMENT DATED 14.12.2021 IN WP(C) 12062/2021 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 M.VIJAYAKUMAR (RETIRED DTO, KSRTC) AGED 68 YEARS, GENERAL SECRETARY, TRANSPORT RETIRED OFFICERS FORUM, T.748/11, S/O. V. MADHAVANPILLAI, VIGIS COTTAGE, ELAMDU P.O., ELAMADU- 691 533, TRIVANDRUM DISTRICT.

2 O.P.ANTONY, (RETIRED EXE. DIRECTOR, KSRTC) AGED 65 YEARS, VICE PRESIDENT, TRANSPORT RETIRED OFFICERS FORUM, T.748/11, S/O. PAUL, URUMBATH HOUSE, THAIKKATTUKARA P.O., ALWAYE -683 106. BY ADV.SRI.P.K.SURESH KUMAR (SR.) BY ADV.SRI.T.P.PRADEEP BY ADV.SRI.P.K.SATHEESH KUMAR BY ADV.SMT.MINIKUMARY M.V. RESPONDENTS/RESPONDENTS IN WP(C): 1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, TRANSPORT (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM - 695 001.

3 THE MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORATION, W.A.Nos.131 & 202 of 2022 :: 2 :: TRANSPORT BHAVAN, FORT P.O., 695023, THIRUVANANTHAPURAM. BY SRI.DEEPU THANKAN, SC, KSRTC BY SRI.BIJOY CHANDRAN, GOVERNMENT PLEADER THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.11.2022 ALONG WITH W.A.NO.202/2022, THE COURT ON 22.11.2022 DELIVERED THE FOLLOWING: W.A.Nos.131 & 202 of 2022 :: 3 ::

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. TUESDAY, THE 22ND DAY OF NOVEMBER 2022/1ST AGRAHAYANA, 1944 W.A.NO.202 OF 2022 AGAINST THE JUDGMENT DATED 14.12.2021 IN WP(C).NO.6411/2021 OF HIGH COURT OF KERALA

APPELLANT/2ND PETITIONER IN W.P.(C): A.V. FRANCIS, AGED 62 YEARS S/O. VARKEY, RESIDING AT ARACKATHAZHATH, UDAYAMPEROOR P.O., ERNAKULAM DISTRICT-682 307

(ASSISTANT DEPOT ENGINEER, RETIRED ON 31/05/2014 FROM ERNAKULAM DEPOT) BY ADV.SRI.K.P.JUSTINE (KARIPAT) BY ADV.SRI.A.JOSEPH GEORGE (AZHIKKAKATH) RESPONDENTS/RESPONDENTS AND 1ST PETITIONER: 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TRANSPORT (A) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695023. 2 KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, EAST FORT, THIRUVANANTHAPURAM-695023. 3 THE MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, EAST FORT, W.A.Nos.131 & 202 of 2022 :: 4 :: THIRUVANANTHAPURAM-695023. 4 K.P. KUNJAN, AGED 68 YEARS S/O. PADMANABHAN, RESIDING AT ILLIPPARAMBIL HOUSE, KARAPPUZHA P.O., KOTTAYAM DISTRICT-686003 (CHARGE-MAN, RETIRED ON 30/04/2007 FROM CHANGANACHERY).

BY SRI.DEEPU THANKAN, SC, KSRTC BY SRI.BIJOY CHANDRAN, GOVERNMENT PLEADER THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.11.2022 ALONG WITH W.A.NO.131/2022, THE COURT ON 22.11.2022 DELIVERED THE FOLLOWING: W.A.Nos.131 & 202 of 2022 :: 5 :: 'C.R.'

JUDGMENT

A.K. Jayasankaran Nambiar, J.

As both these Writ Appeals involve a common issue, they are taken up together for consideration and disposed by this common

judgment.

2. The appellants in the above Writ Appeal are retired

employees of the Kerala State Road Transport Corporation [KSRTC]. They are aggrieved by the alleged discrimination meted out to them in the matter of enhancement of Dearness Relief on their pensionary entitlements. Apparently, the State Government follows the practice of declaring Dearness Allowance/Dearness Relief [DA/DR] to its employees and pensioners immediately on the Central Government declaring DA/DR for its employees and pensioners. In 2017 also, a similar exercise was undertaken through G.O.(P).No.6/2017/Fin. dated 19.1.2017 by enhancing the rate of DA/DR payable to employees/pensioners from 9% to 12% with effect from 1.7.2016. The W.A.Nos.131 & 202 of 2022 :: 6 :: State Government employees and pensioners accordingly received enhanced DA and DR at the rates of 105% with effect from 1.7.2016, 109% with effect from 1.1.2017 and 112% with effect from 1.7.2017. As regards the employees and pensioners of KSRTC, the Government orders enhancing the rates of DA and DR do not automatically apply but have to be specifically made applicable through Government orders issued from time to time. The usual practice is that on a

Government order being issued, there would be a consequential order

passed by the KSRTC extending the benefit of the G.O. to its employees and pensioners.

3. In terms of Ext.P1 G.O. and Ext.P2 order of the KSRTC, the

enhancement of DA for employees of KSRTC followed the same pattern as the State Government employees, and accordingly, they were paid the enhanced DA @ 112% with effect from March, 2021. For the pensioners of KSRTC, however, the enhanced DR was paid only @ 109% with effect from March, 2021. The appellants herein therefore challenged the said G.O. and the orders of the KSRTC in the writ petitions inter alia contending that in offering differential rates of enhancement of DA/DR to the employees and pensioners of the KSRTC, the pensioners had been adversely discriminated against in W.A.Nos.131 & 202 of 2022 :: 7 :: the matter of sanctioning of DR. The learned Single Judge, who considered the writ petitions, dismissed the same on the finding that the employees and pensioners did not form a homogeneous group for the

disbursement of DA/DR, and hence, in view of the fact that they formed different categories, they could not allege discrimination. The learned Judge also found that the appellants were not equal to the serving employees, since, by the living standards, a retired employee had to spend less when compared to the serving employee.

4. We have heard Sri.P.K. Suresh Kumar, the learned senior

counsel, duly assisted by Sri.T.P. Pradeep, the learned counsel for the appellants, Sri.Deepu Thankan, the learned Standing Counsel for the respondent KSRTC as also Sri.Bijoy Chandran, the learned Government Pleader for the official respondents of the State.

5. Before us, it is the contention of the learned senior counsel

on behalf of the appellants that while it may be true that the KSRTC was not obliged to extend the benefit of enhanced DA/DR to its employees and pensioners based on the Government Orders issued in respect of the State Government employees and pensioners, once it was decided to implement the said Government Orders even in the W.A.Nos.131 & 202 of 2022 :: 8 :: KSRTC, there could not have been a discrimination meted out to pensioners. It is his further contention that a discrimination would be manifest when the object of the benefit extended otherwise applies equally to both categories of persons namely employees and pensioners. The contention, in other words, is that DA/DR being an allowance to remedy the malaise of inflation, had to be seen as affecting both categories of persons namely, employees and pensioners, equally, and when so viewed, restricting a portion of the benefit to pensioners alone would fly in the face of Article 14 of the Constitution of India. He places reliance on the judgment of this Court in Chandrasekhara Menon v. Union of India - [1998 (1) KLT 9] and the decision of the Supreme Court in Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and Others v. State of

Tamil Nadu - [(2013) 2 SCC 772]. He also rely on the judgment

dated 3.7.2013 of a learned Single Judge in W.P.(C).No.13798 of 2012 [Ext.P3] and the judgment dated 9.2.2017 of a Division Bench of this Court in W.A.No.176 of 2014 [Ext.P4] that upheld Ext.P3 judgment, to contend that a differential treatment in the payment of DA/DR could not be meted out between employees and the pensioners once a decision has been taken to extend the benefit to the employees of the KSRTC. W.A.Nos.131 & 202 of 2022 :: 9 ::

6. Per contra, the submissions of Sri.Deepu Thankan, the

learned Standing Counsel for the respondent KSRTC and Sri.Bijoy Chandran, the learned Government Pleader appearing for the State, briefly stated, are that the differential rates of enhancement of DA/DR to employees and pensioners had to be seen as justified in the backdrop of the financial difficulties faced by the KSRTC especially in the matter of payment of salary and other emoluments to its employees. It is their case that the KSRTC is surviving only on account of the funds provided by the Government every month for the disbursement of salary and other emoluments to its employees, and if further amounts are directed to be paid to the pensioners, then it would seriously cripple the finances of the KSRTC. He places reliance on the judgments of the Supreme Court in *Chairman & MD, Kerala SRTC v. K.O. Varghese and Others* - [(2007) 8 SCC 231] and *State of Rajasthan and Another v. Amrit Lal Gandhi and Others* - [(1997) 2 SCC 342] to contend that the financial position of the employer can justify a differential treatment accorded to employees and pensioners.

7. We have considered the rival submissions and also gone

W.A.Nos.131 & 202 of 2022 :: 10 :: through the pleadings and the decisions cited on either side. On a consideration of the same, we are of the view that for the reasons to follow, the Writ Appeals must succeed. The main issue that arises for consideration in these matters is whether, after having taken a decision to extend the benefits of the order of the State Government declaring the enhancement of DA/DR to its employees and pensioners, to the KSRTC and its employees and pensioners, the State Government/KSRTC could effect a classification between the employees and pensioners of KSRTC for the purposes of granting the DA/DR at differential rates ? To answer the said issue, it would be apposite to go through

the decided case laws to understand the principles that are applied by courts while examining a plea of discrimination. In the decision in *Ram Krishna Dalmia v. Justice S.R. Tendolkar* - [1959 SCR 279], the Court enumerated the principles thus:

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish -

(a) that a law may be constitutional even though it relates to a single

individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; W.A.Nos.131 & 202 of 2022 :: 11 ::

(c) that it must be presumed that the legislature understands and correctly

appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may

take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part

of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. (at page 297, 298)

8. Similarly, in *Khandige Sham Bhat v. Agricultural I.T.O.* -

[AIR 1963 SC 591], a constitution bench of the Supreme Court, while upholding a classification effected between agriculturists in Travancore and Malabar Districts of Kerala, for the purposes of levy of agricultural income tax, observed as follows:

(7) Though a law *ex facie* appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinize the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appears to be similarly situate differently; but on investigation they may be found not to be similarly situated. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an

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advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine : vide *Purshottam Govindji v. B. N. Desai*, 1955-2 SCR 887: ((S) AIR 1956 SC

20) and K.T. Moopil Nair v. State of Kerala, 1961- 3 SCR 77 : (AIR 1961 SC 552). But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse element, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways.

(8)

(9)

(10) But it is said that the mode of ascertaining the average annual

income for the purpose of finding the rate is arbitrary and unreasonable and that discrimination is inherent in such a law adopting such arbitrary process. This argument is elaborated thus: The major income of the petitioner's family is from arecanut, pepper and coconut; the said crops are gathered between the months of November and March; the season for harvesting arecanut in Kasaragod Taluk is from November to March; the whole year's pepper and coconut are gathered between the months of January and March; therefore, the income from arecanut, pepper and coconut accrued to the petitioner between November, 1 1956 and March 31, 1957, is the income for the entire year; but under the proviso to S. 2A of the Act, the said income is treated as the income for 5 months only, with the result that 24 months' income is treated as 17 months' income; this is an arbitrary assumption underlying the provision; instead it should have taken 12/24th of the total income as the average annual income. This arbitrary method of fixing the average annual income involves the payment of higher rate of tax by the assesseees in Kasaragod Taluk as compared to the assesseees in other parts of the State. It is suggested that a more reasonable course would have been to tax the assesseees in the Madras area for the income that accrued to them during the 5 months by treating the said income as the income for the entire year

commencing from April 1, 1956, and ending on March 31, 1957, and that in that event not only their income for the said period could not have escaped taxation but it would have also avoided the unjust treatment meted out to them in the rate of tax. Prima facie there appears to be some plausibility in this argument; but a closer examination discloses that though the method suggested may have been better than the method actually adopted, the hardship in individual cases cannot in any event be avoided.

9. In *State of Gujarat & Another v. Shri Ambica Mills Ltd.*,

Ahmedabad, etc. - [(1974) 4 SCC 656], the Court dealt with classifications that are under-inclusive and held that in the context of W.A.Nos.131 & 202 of 2022 :: 13 :: economic legislations, a mere under-inclusion would not result in the death-knell of such laws on the anvil of Article 14 of the Constitution. The observations of the Court are at paragraphs 53 to 56, 66, 67 and 71, and are as follows:

53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox the Court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. [See Joseph Tussman and Jacobus T. Brodeur, *The Equal Protection of the Law*, 37 California Rev 341] .

54. A reasonable classification is one which includes all who are similarly

situated and none who are not. The question then is: what does the phrase similarly situated mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement

of some positive public good.

55. A classification is under-inclusive when all who are included in the class

are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under- inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would someday bring about his downfall employed such a classification.

56. The first question, therefore, is, whether the exclusion of establishments

carrying on business or trade and employing less than 50 persons makes the classification under-inclusive, when it is seen that all factories employing 10 or 20 persons, as the case may be, have been included and that the purpose of the law is to get in unpaid accumulations for the welfare of the labour. Since the classification does not include all who are similarly situated with respect

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to the purpose of the law, the classification might appear, at first blush, to be unreasonable. But the Court has recognised the very real difficulties under which legislatures operate - difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape - and it has refused to strike down indiscriminately all legislation embodying classificatory inequality here

under consideration. Mr. Justice Holmes, in urging tolerance of under-inclusive classifications, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. [Missouri, K&T Rly v. May [194 US 267, 269]] What, then, are the fair reasons for non-extension? What should a court do when it is faced with a law making an under-inclusive classification in areas relating to economic and tax matters? Should it, by its judgment, force the legislature to choose between inaction or perfection?

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66. That the legislation is directed to practical problems, that the economic

mechanism is highly sensitive and complex, that many problems are singular and contingent that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry, that exact wisdom and nice adaption of remedies cannot be required, that judgment is largely a prophecy based on meagre and uninterpreted experience, should stand as reminder that in this area the Court does not take the equal protection requirement in a pedagogic manner [See General Theory of Law and State, p. 161] .

67. In the utilities, tax and economic regulation cases, there are good reasons

for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. [See General Theory of Law and State, p. 161]

71. The Court must be aware of its own remoteness and lack of familiarity

with local problems. Classification is dependent on the peculiar needs and specific difficulties of the community. The needs and difficulties of the community are constituted out of facts and opinions beyond the easy ken of the Court [See General Theory of Law and State, p. 161] . It depends to a great extent upon an assessment of the local condition of these concerns which the legislature alone was competent to make.

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10. In *V.C.Shukla v. State (Delhi Administration)* - [1980 (Suppl.) SCC 249], the Supreme Court elaborated on the issue as follows:

11. In a diverse society and a large democracy such as ours where the expanding needs of the nation change with the temper of the times, it is extremely difficult for any legislation to make laws applicable to all persons alike. Some amount of classification is, therefore, necessary to administer various spheres of the activities of the State. It is well settled that in applying Article 14 mathematical precision or nicety or perfect equanimity are not required. Similarity rather than identity of treatment is enough. The courts should not make a doctrinaire approach in construing Article 14 so as to destroy or frustrate any beneficial legislation. What Article 14 prohibits is hostile discrimination and not reasonable classification for the purpose of legislation. Furthermore, the legislature which is in the best position to understand the needs and requirements of the people must be given sufficient latitude for making selection or differentiation and so long as such a selection is not arbitrary and has a rational basis having regard to the object of the Act, Article 14 would not be attracted. That is why this Court has laid down that presumption is always in favour of the constitutionality of an enactment and the onus lies upon the person who attacks the statute to show that there has been an

infraction of the constitutional concept of equality. It has also been held that in order to sustain the presumption of constitutionality, the court is entitled to take into consideration matters of common knowledge, common report, the history of the times and all other facts which may be existing at the time of the legislation. Similarly, it cannot be presumed that the administration of a particular law would be done with an evil eye and an unequal hand. Finally, any person invoking Article 14 of the Constitution must show that there has been discrimination against a person who is similarly situated or equally circumstanced. In the case of *State of U.P. v. Deoman Upadhyaya* [AIR 1960 SC 1125 : 1961 (1) SCR 14 : 1961 (2) SCJ 334] Subba Rao, J., observed as follows:

No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well-nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress.

11. In *Venkateshwara Theatre v. State of A.P.* - [(1993) 3

SCC 677], where the legislature concerned had prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary, it was contended that the classification effected was not perfect, in that, there could not be a further classification amongst theatres falling in the same class on the basis of the location of the theatre in each local area. Rejecting the said contention, the Supreme Court found as follows at paragraphs 20 and 23:

20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase equality before the law contains the declaration of equality of the civil rights of all

persons within the territories of India. It is a basic principle of republicanism. The phrase equal protection of laws is adopted from the Fourteenth Amendment to the U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions, namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not

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23. Just as a difference in the treatment of persons similarly situate leads to

discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.

12. In Union of India and Others v. N.S. Rathnam and Sons

- [(2015) 10 SCC 681], while upholding the decision of a Division Bench of the High Court, which held that when the benefit of a concessional rate under the Customs Act is restored by a notification, there cannot be any discriminatory treatment to some persons who fall in the same category, it was observed as follows at paragraphs 13 and 14 of the said judgment:

13. It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality

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but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.

14. What follows from the above is that in order to pass the test of

permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.....

13. Applying these tests for reasonable classification, the

Supreme Court, in Pioneer Urban Land and Infrastructure Limited v. Union of India - [JT 2019 (8) SC 429] = [(2019) 8 SCC 416], rejected the challenge to the provisions under the Insolvency and Bankruptcy Code that treated real estate developers as financial debtors. The contention that treating real estate developers as financial debtors was discriminatory inasmuch as unequals were treated as equals, was repelled through the following reasoning:

40. It is impossible to say that classifying real estate developers is not founded upon an intelligible differentia which distinguishes them from other operational creditors, nor is it possible to say that such classification is palpably arbitrary having no rational relation to the objects of the Code. It was vehemently argued by learned counsel on behalf of the Petitioners that if at all real estate developers were to be brought within the clutches of the Code, being

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like operational debtors, at best they could have been brought in under this rubric and not as financial debtors. Here again, what is unique to real estate developers vis--vis operational debts, is the fact that, in

operational debts generally, when a person supplies goods and services, such person is the creditor and the person who has to pay for such goods and services is the debtor. In the case of real estate developers, the developer who is the supplier of the flat/apartment is the debtor inasmuch as the home buyer/allottee funds his own apartment by paying amounts in advance to the developer for construction of the building in which his apartment is to be found. Another vital difference between operational debts and allottees of real estate projects is that an operational creditor has no interest in or stake in the corporate debtor, unlike the case of an allottee of a real estate project, who is vitally concerned with the financial health of the corporate debtor, for otherwise, the real estate project may not be brought to fruition. Also, in such event, no compensation, nor refund together with interest, which is the other option, will be recoverable from the corporate debtor. One other important distinction is that in an operational debt, there is no consideration for the time value of money - the consideration of the debt is the goods or services that are either sold or availed of from the operational creditor. Payments made in advance for goods and services are not made to fund manufacture of such goods or provision of such services. Examples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis--vis advance payments made by allottees. In real estate projects, money is raised from the allottee, being raised against consideration for the time value of money. Even the total consideration agreed at a time when the flat/apartment is non-existent or incomplete, is significantly less than the price the buyer would have to pay for a ready/complete flat/apartment, and therefore, he gains the time value of money. Likewise, the developer who benefits from the amounts disbursed also gains from the time value of money. The fact that the allottee makes such payments in instalments which are co-terminus with phases of completion of the real estate project does not any the less make such payments as payments involving exchange, i.e. advances

paid only in order to obtain a flat/apartment. What is predominant, insofar as the real estate developer is concerned, is the fact that such instalment payments are used as a means of finance qua the real estate project. One other vital difference with operational debts is the fact that the documentary evidence for amounts being due and payable by the real estate developer is there in the form of the information provided by the real estate developer compulsorily under RERA. This information, like the information from information utilities under the Code, makes it easy for home buyers/allottees to approach the NCLT under Section 7 of the Code to trigger the Code on the real estate developers own information given on its webpage as to delay in construction, etc. It is these fundamental differences between the real estate developer and the supplier of goods and services that the legislature has focused upon and included real estate developers as financial debtors. This being the case, it is clear that there cannot be said to be any infraction of equal protection of the laws.

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14. With specific reference to the differential treatment in the

matter of grant of DA/DR, the Supreme Court in Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and Others v. State of Tamil Nadu - [(2013) 2 SCC 772] observed as follows at paragraphs 33 to 35 and 37:

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see *State of Kerala v. N.M. Thomas*) (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from

another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.

34. In the context of the instant appeals, it is necessary to understand

the overall objective of treating dearness allowance (or a part of it) as dearness pay. There can be no doubt, that dearness allowance is extended to employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life, to which an employee is accustomed. Likewise, the objective of dearness pay is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. Having understood the reason why the Government extends the benefit of dearness allowance and dearness pay, to its employees and pensioners respectively, we would venture to search for answers to the twin tests which must be satisfied, for making a valid classification (or a valid discrimination), in the present fact situation.

35. In the present context, it needs to be kept in mind, that dearness allowance is paid to Government employees keeping in mind the All India W.A.Nos.131 & 202 of 2022 :: 21 ::

Consumer Price Index. Inflation in the market place is sought to be balanced by paying dearness allowance to Government employees. When a State Government chooses to treat dearness allowance as dearness pay, the objective remains the same i.e., inflation in the market place is sought to be balanced for retired employees by giving them the

benefit of dearness pay. Since the component of inflation similarly affects all employees, and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of dearness pay to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the dearness allowance to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the dearness pay to be extended to retired employees. Truthfully, it may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. In the absence of any objective, projected in this case, the question of examining the reasonableness to the object sought to be achieved, simply does not arise. Our straying into this expressed realm of imagination, was occasioned by the fact, that the pleadings filed on behalf of the State Government, do not reveal any reason for the classification, which is subject matter of challenge in the instant appeal.

37. The issue in hand needs to examine from another perspective as

well. It must be clearly understood, that no employee has a right to draw dearness allowance as dearness pay till such time as the State Government decides to treat dearness allowance as dearness pay. And therefore, the State Government has the right to choose whether or not dearness allowance should be treated as dearness pay. As such, it is open to the State Government not to treat any part of dearness allowance as dearness pay. In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of dearness allowance should be treated as dearness pay. As such, it is open to the State Government to treat a fraction, or even the whole of dearness allowance as dearness pay. Based on Rule 30 of the Pension Rules, it is clear that the component of dearness pay would be added to emoluments of an

employee for calculating pension. In a situation where the State Government has chosen, that a particular component of dearness allowance would be treated as dearness pay, it cannot discriminate between one set of pensioners and another, while calculating the pension payable to them (for the reasons expressed in the preceding paragraph). Of course, a valid classification may justify such an action. In this case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment.

15. The principles that can be gleaned from the aforesaid

W.A.Nos.131 & 202 of 2022 :: 22 :: decision, when applied in the context of the cases before us, compel us to hold that the action of the State and the KSRTC in restricting the benefit of enhancement of DR to the pensioners of KSRTC to 109% with effect from March, 2021 while extending the benefit of enhanced DA to its employees @ 112% with effect from March, 2021, is to be seen as discriminatory and violative of Article 14 of our Constitution. It cannot be disputed that a valid classification must be justified vis-a- vis the object that is sought to be achieved through the measure that is adopted by the Government. In the cases before us, the object of extending an enhanced rate of DA/DR was essentially to balance the effects of ongoing inflation so as to ensure that the inflation does not interfere with the enjoyment of life to which an employee/pensioner is accustomed. Through the payment of the allowances in question, the objective aforesaid was to be attained, both in respect of employees as well as the pensioners. A restriction of the enhanced benefit to employees alone to the exclusion of pensioners on the specious plea of reasonable classification, appears to us to be violative of the equality clause enshrined in our Constitution. As already noticed, while it was open to the State Government/KSRTC to take into account the possible financial burden that would be fastened on them through the grant of enhanced DA/DR, while deciding whether or not to grant the said W.A.Nos.131 & 202 of 2022 :: 23 :: benefit to the employees/pensioners of KSRTC, once they decided to extend the benefit to the said employees/pensioners, there could not be discrimination between them in the course of implementation of the decision. It is trite that the

question as to whether a classification is reasonable or not must necessarily be tested against the object sought to be achieved for which the classification is held. In the instant cases, and vis-a-vis the particular object that was sought to be achieved through the grant of enhanced DA/DR, we feel that a classification between employees and pensioners was not justified. Thus, we find ourselves unable to sustain the impugned judgment of the learned Single Judge. We set aside the same, and allow the Writ Appeals and the Writ Petitions, with consequential reliefs to the appellants herein. The Writ Appeals are allowed. Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE Sd/- MOHAMMED NIAS C.P. JUDGE prp/ W.A.Nos.131 & 202 of 2022 :: 24 :: APPENDIX OF W.A.NO.131/2022 RESPONDENTS ANNEXURES: Annexure R1(a) True Copy of the letter No TRANS-A3/54/2021- TRANS dated 03/04/2021 Annexure R1(b) True Copy of the G.O(Rt) No 170/2021/TRANS dated 31/05/2021 //TRUE COPY// P.S. TO JUDGE W.A.Nos.131 & 202 of 2022 :: 25 :: APPENDIX OF W.A.NO.202/2022 PETITIONER'S ANNEXURES: Annexure A1 TRUE COPY OF THE ORDER NO. A/4/2021-E II (B) DATED 25/10/2021 ISSUED BY THE GOVERNMENT OF INDIA. Annexure A2 TRUE COPY OF THE ORDER NO.25/2021/FIN DATED KERALA. Annexure A3 TRUE COPY OF THE RELEVANT PAGES OF THE 2012 PAY REVISION AGREEMENT APPROVED BY GO(P) NO. //TRUE COPY// P.S. TO JUDGE

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