

CENTRAL ORGANISATION OF TAMIL NADU ELECTRICITY
EMPLOYEES

v.

TAMIL NADU ELECTRICITY BOARD

OCTOBER 21, 2005

[B.N. SRIKRISHNA AND C.K. THAKKER, JJ.]

Labour Laws:

Industrial Disputes Act, 1947: Sections 9A and 18—Settlement between employer-Electricity Board and its employees that revised pension scheme of State Government and any amendments thereon applicable to the pensioners of the Board—Effect of—Held: Settlement merely operates to exempt employer from giving notice under s. 9A—Board not barred from changing even those conditions of service that were not subject matter of Regulations, fresh settlement or award—Conditions of service settled by a binding settlement/award cannot be changed—Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960.

T.N. Electricity Board Liberalised Pension Regulations, 1960:

Regulations 9 and 3—Amendment made to Regulation 9—‘Expression’ Civil Service Regulations in Regulation 9 replaced by Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978—Permissibility of—Held: Decision taken by Board to amend its own pension Rules and bring it in line with State Government Rules, those applicable to Government servants was per se unexceptionable—However, it could not have been done by mere amendment in Regulation 9 but by amending the Regulations in accordance with law—Electricity (Supply) Act, 1948.

Regulation 7—Commutation of pension—Commutation percentage increased to 40% by Board Proceedings, without amending the Regulations—Thereafter, another Board Proceeding reducing it to 33 1/3 %—Permissibility of—Held: Grant of benefit by mere Board Proceeding could be validly altered by another Board Proceeding—Change in maximum permissible commutation of pension from 40% to 33 1/3% brought level of commutation to what was originally given by 1960 Regulations—Thus, not liable to be interfered with—

A *Electricity (Supply) Act, 1948.*

Regulation 3—Aspect with regard to qualifying period of service for pension and quantification of pension covered by 1960 Regulations—Board Proceedings enhanced qualifying service for pension from thirty years to thirty three years and made pension relatable to average emoluments drawn during

B *last ten month service instead of last drawn pay—Legality of—Held: Board Proceedings could not have brought adverse changes in quantification of pensions and the qualifying period of service for pension without amendment to 1960 Regulations—Hence, bad in law and illegal—Electricity (Supply) Act, 1948*

C *Judicial Process: If case can be decided on narrower grounding-statutory construction, constitutional grounds should be avoided—Practice and Procedure.*

D **The question which arose for consideration in these appeals was whether an establishment can modify pensions (and connected benefits) payable to employees without first changing the Regulations that govern those pensions.**

E **State Government constituted the Tamil Nadu Electricity Board in 1957. Thereafter, the Board brought into force “Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960 which dealt with the condition of service specifically pension and death-cum-retirement gratuity. At that time the Board had in its employment the erstwhile Tamil Nadu Government servants as well as employees directly recruited by it. They were governed by the Civil Service Regulations *inter alia* with regard to their pensionary benefits. Under Regulation 3 of the 1960 Regulations, the qualifying service for earning pension was thirty years. A Saving Clause was incorporated in Regulation 9 that no provision in the Civil Service Regulations to the extent of its inconsistency with any of the provisions of the 1960 Regulations would have any effect and that the provisions made in the Regulations would be in addition to and not in derogation of the provisions in the Civil Service Regulations as amended from time to time.**

G **The Board had its own Pension and Provident Fund Schemes. It passed a resolution that all the Regular Work Establishment Workmen retiring/expiring on or after 1.7.86 would be governed by the pension scheme of the Board. State Government replaced the then existent Civil**

H

Service Regulations with the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978. In 1995, the Board passed a resolution B.P. (FB) No. 7 which amended Regulation 9 of the 1960 Regulations and the expression "Civil Service Regulations" in Regulation 9 was replaced by "Tamil Nadu Pension Rules" and "Tamil Nadu Pension Rules, 1978" which were to take effect retrospectively. On 8.7.98, the Board and its workmen entered into a Settlement under section 18(1) of the Industrial Disputes Act, 1947. Clause 14 of the settlement provided that the settlement would be secured immediately on wage revision and on workload revision, after settlement of revisions of work norms. By Clause 17, the settlement was to be in force for a period of four years with effect from 1.12.96. Clause 15(iii) made the revised pension scheme of the Government and any amendments there on from time to time applicable to the pensioners of the Electricity Board. On 19.3.03, State Government issued G.O. No. 71 enhancing the maximum qualifying service for full pension to thirty-three years from thirty years and that pension would be determined on the basis of the average emoluments drawn during the last ten months of service rendered. By another G.O. State Government directed that the maximum limit for commutation of portion of pension by the pensioner would be 33 1/3% of pension only. Following the amendments made by the State Government to the Pension Rules, the Board passed Resolution B.P. (Ch) Nos. 64, 65 and 66 dated 31.3.03.

Different trade Unions of the employees of Tamil Nadu Electricity Board filed Writ Petition challenging these Resolutions. High Court held that the Settlement dated 8.7.98 provided for revised pension schemes of the Government to be applied to the Board's pensioners and hence, no prior notice under section 9A of the Industrial Disputes Act, 1947 was necessary; that Regulation 9 of the 1960 Regulations as amended provided for the adoption of the Pension Rules of the Government as amended from time to time; that the Board's Service Regulation No.17 did not provide for payment of pension and hence the qualifying service of 30 years could not be relied upon; that B.P. Nos. 64 and 66 are valid; and that B.P. No. 65 was illegal.

Partly allowing the appeals, the Court

HELD: 1. Clause 15(iii) of the Settlement dated 8.7.98 between the Board and its employees merely operates to exempt the employer-Board from giving a notice under Section 9A of the Industrial Disputes Act, 1947.

A It cannot be said that the Board could not have changed, by executive action, even those conditions of service that were not the subject matter of regulations, a settlement or an award. The submission that the conditions of service once settled can never be changed except by being substituted by a fresh settlement or award may be true with regard to conditions of service, which have been settled by a binding settlement/ award. With regard to matters which are in the realm of virgin territory, this may not be the rule. [423-C, A, C]

C 2.1. The decision taken by the Board to amend its own pension rules and bring it in line with those applicable to the Government servants was *per se* unexceptionable; however, this could not have been achieved by a mere amendment in Regulation 9 of the Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960. [425-E]

D 2.2. The purpose and purport of Regulation 9 was to ensure, firstly, that the State Government employees taken over in the service of the Board were not prejudiced with regard to their conditions of service, particularly pension and death-cum-retirement gratuity. Secondly, the saving clause ensures that with regard to matters which were not covered by the State Government rules but covered by the Board's Regulations, the benefit covered under the Board Regulations would be in addition to and not in derogation of what was already available in the Civil Service Regulations. [425-F, G]

F 2.3. It was open to the Board in exercise of its statutory powers under Section 79(c) of the Electricity (Supply) Act, 1948 to amend its pension regulations in such manner as to bring it precisely in line with the Tamil Nadu Government Rules with regard to pension and other benefits as applicable to the State Government employees. Instead of expressly amending the Regulations, the Board appears to have fallen back on Regulation 9, which was merely a saving clause intended to insulate the employees against erosion of their benefits granted in the provisions. The Board could not have straightaway imported wholesale the provisions of the pension rules applicable to the State Government employees via the vehicle of the saving clause, Regulation 9. The conditions of service pertaining to pension that were already the subject matter of the Regulations could not have been changed by the Board without amending the Regulations in accordance with law. [425-H; 426-A, B, C]

H 3. By Board Proceedings B.P.(Ch) No. 64 dated 31.3.03 the maximum

qualifying service for pension was increased from thirty years to thirty three years and the pension was made relatable to the average emoluments drawn during the last ten months service instead of the last drawn pay. These two aspects were the subject matters of the 1960 Regulations and, therefore, by a Board Proceeding, without amending the Regulations, they could not have been modified to the prejudice of the employees. Therefore B.P.(Ch) No. 64 dated 31.3.03 is bad in law and illegal inasmuch as it purports to bring about adverse changes in the quantification of pensions and the qualifying period of service for pensions. [426-E, F]

4. G.O. No. 74 dated 19.3.03 issued by the Government of Tamil Nadu decreased the maximum permissible commutation of pension from 40% to 33 1/3%. Regulation 7 as framed in 1960 permitted a maximum commutation of one-third. By a Board Proceeding B.P.(Ch) No. 208 dated 18.8.98, the commutation percentage was increased to 40%. By another Board Proceeding B.P. (Ch) No. 66 dated 31.3.03 this was reduced to 33 1/3%. What was granted by a Board Proceeding, without amending the Regulations, is sought to be taken away by another Board Proceeding with a view to following G.O.Ms. No. 74 dated 19.3.03 issued by the State Government in respect of its own employees. The change made by B.P.(Ch) No. 66 dated 31.3.03 actually brings the level of commutation to what was originally given by the 1960 Regulations. What was granted by a mere Board Proceeding could be validly altered by another Board Proceeding. Therefore, the reduction in the maximum permissible commutation of pension from 40% to 33 1/3% brought about by B.P.(Ch) No. 66 dated 31.03.03, without amendment of the 1960 Regulations is *not liable* to be interfered with without prejudice to the rights of the employees to raise an industrial dispute. [427-B, C, D, F]

5.1. Supreme Court must be parsimonious on the grounds on which it chooses to decide a particular case. If a case can be decided upon any ground other than constitutional grounds, such as by statutory construction or the like, this Court must do so. Despite the characteristic acuity with which the constitutional grounds were argued, they are not ripe for adjudication, as this court has been able to decide the matter on other narrower grounds. Therefore, on the issue of whether the Board can adversely modify the pensions payable *even after* following the prescribed procedure (i.e. after amending the applicable pension regulations) and whether such change would be violative of Article 14 or the *ratio* in *D.S Nakara* no opinion is expressed as it is not necessary. [428-F, G; 429-E]

A *D. S. Nakara and Ors. v. Union of India*, [1983] 1 SCC 305, referred to.

The Judicial Process: An Introductory Analysis of the Courts of The United States, England, and France by Henry J. Abraham, (3d ed. 1975) p.371, referred to.

B
 5.2. It cannot be said that if the matter is not decided on the broader constitutional ground argued, there would be multiplicity of litigation on the same issue. In fact, at the present stage the argument of multiplicity of litigation is only speculative since it cannot predict what future course the Board or the employees will adopt. Further, even if multiple litigations were a possibility that would not compel this Court to opine on every ground argued before it, especially those involving constitutional issues.

[428-C]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6449-6450 of 2005.

From the Judgment and Order dated 23.10.2003 of the Madras High Court in W.P. Nos. 11899 and 11900 of 2003.

WITH

E C.A. Nos. 6451-6452, 6453-6454, 6455-6456 and 6457-6458 of 2005.

Ms. Indra Jaising, Mrs. R. Vaigai, Ms. Anna Mathew and S.R. Setia for the Appellant in C.A. Nos. 6449-6450/2005.

F K.V. Vishwanathan, B. Raghunath, Abhijit Sengupta and K.V. Vijay Kumar for the Appellant in C.A. Nos. 6451-6452, 6453-6456 and 6457-58/2005.

S. Guru Krishna Kumar and S.R. Setia for the Appellant in C.A. Nos. 6455-6456/2005.

G K. Ramamoorthy, S. Vallinayagam and R. Ayyam Perumal for the Respondent.

The Judgment of the Court was delivered by

SRIKRISHNA, J. Leave granted in all the Special Leave Petitions.

H The issue of law to be decided in the present matter is: Whether an

establishment can modify pensions (and connected benefits) payable to employees without first changing the Regulations that govern those pensions? In other words, can pensions be changed (particularly, when the change is to the detriment of the employees concerned) without recourse to the proper procedure prescribed for changing them? A

This group of appeals by special leave raises the same issues of facts and law for a decision by this Court. Hence, they can all be dealt with by a common judgment. For the sake of convenience, the facts shall be mentioned from the appeal arising out of Special Leave Petition (Civil) Nos. 3759-3760/04. B

A Survey of the Facts C

These appeals have been filed by a registered Trade Union, which represents nearly 30,000 employees of the Tamil Nadu Electricity Board ("the Board"). Prior to 1.7.57, the State of Tamil Nadu was departmentally carrying on the work of distribution and supply of electric energy. On 1.7.57, the Board was constituted by the State Government under Chapter III of the Electricity (Supply) Act, 1948 ("the 1948 Act"). The employees of the Board consisted of two different classes: (i) Employees who were already employed by the State Government and were taken over into the service of the Board upon its constitution; and (ii) Employees directly recruited by the Board after its constitution. In exercise of its powers under Section 79(c) of the 1948 Act, the Board brought into force a set of regulations styled as the "Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960" ("1960 Regulations") with effect from 1.7.60. These Regulations dealt with the conditions of service specifically pension and death-cum-retirement gratuity. Under Regulation 3 of the 1960 Regulations, the qualifying service for earning pension was a period of thirty years. D

The 1960 Regulations also contained a Savings Clause incorporated in Regulation 9, which reads as under: E

9. *SAVING* F

- (i) No provision in the Civil Service Regulations shall, so far as it is inconsistent with any of the provisions of these regulations have any effect. G
- (ii) Save as otherwise provided in these regulations, the provisions in these regulations, shall be in addition to and not in derogation H

A of the provisions in the Civil Service Regulations as amended from time to time by the Government of Tamil Nadu.”

B The Board had its own Pension and Provident Fund Schemes, which, in the opinion of the State of Tamil Nadu, gave to the employees benefits which were on the whole not-less-favourable than the benefits provided under the Employees’ Provident Fund Act, 1952 or the Employees Provident Fund Scheme, 1952. Hence, the State Government by Government Order (“G.O.”) No. 988 (dated 13.7.70) exempted, under Section 17(1)(b) of the Employees’ Provident Fund Act, 1952, the establishment of the Board from the operation of all the provisions of the Employees’ Provident Fund Scheme, 1952 framed under the provisions of the Employees’ Provident Fund Act, 1952. The exemption was, however, subject to the conditions specified in the G.O. itself.

C Further, by Central Government notification dated 25.6.1986, exemption under Section 17(14) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, was granted from the operation of all the provisions of the Employees’ Family Pension Scheme, 1971 on the ground that the benefits in the nature of Family Pension under the Tamil Nadu Electricity Board Employees’ Family Pension Regulations, 1964 (“Family Pension Regulations, 1964”) were not-less-favourable than the benefits provided under the Employees Family Pension Scheme, 1971. While granting this exemption, a specific condition was imposed by clause (4) enumerated to the Schedule to the notification, which reads as under:

D
E
F “(4) No amendment to the provision of the said regulations shall be made without the prior approval of the Central Provident Fund Commissioner and there (sic) any amendment is likely to affect adversely the interest of the employees of the Board the Central Provident Fund Commissioner shall before giving his approval give reasonable opportunity to the employees to explain their view-point.”

G Similar exemption was granted by the Central Government (by another notification dated 25.6.86) from the provisions of the Employees’ Deposit Linked Insurance Scheme, 1976, on the same ground (i.e. that the Board’s Family Benefits Subsidiary Scheme provided no-less-favourable benefits to the employees), but again subject to a condition of a similar nature.

H On 26.6.86, after the workers made representations, the Board passed a resolution (numbered B.P.Ms (F.B.) No. 5) by which it ordered that all the

Regular Work Establishment Workmen retiring/ expiring on or after 1.7.86 would be governed by the pension scheme of the Board. On 17.2.95, the Board passed a resolution (No. B.P. (F.B.) No. 7) which amended Regulation 9 of the 1960 Regulations. In the proceedings of the Board it was pointed out that, since the formation of the Board on 1.7.57 till the Board's 1960 Regulations came into force, the employees of the Board were governed only by the Civil Service Regulations with respect to quantum of pension, death-cum-retirement gratuity etc. After the framing of the 1960 Regulations and the Family Pension Regulations, 1964, the provisions of the said Regulations which were not inconsistent with the Civil Service Regulations were followed. In addition, the provisions of the Civil Service Regulations, with respect to matters not specifically governed by the Board's regulations, were also applicable.

With a view to creating a complete Pension Code, the Tamil Nadu Government framed the Tamil Nadu Pension Rules (brought into force with effect from 18.7.76) and the Tamil Nadu Pension Rules, 1978 (brought into force with effect from 1.1.79). These Rules replaced the Civil Service Regulations, Madras Liberalised Pension Rules, 1960 and the Tamil Nadu Government Servants Family Pension Rules, 1964.

It has also been pointed out in the Board's Proceedings that the Board having followed the Civil Service Regulations, in addition to the 1960 Regulations and the Family Pension Regulations, 1964, had also been following the Tamil Nadu Pension Rules, and the Tamil Nadu Pension Rules, 1978 for settling the terminal benefits of the retiring employees of the Board. It was noted that the amendments made from time to time in the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 were also being followed by the Board in the light of the saving provisions contained in Regulation 9 of the 1960 Regulations. The Board, "having considered the matter carefully", decided that it was necessary to amend Regulation 9 of the 1960 Regulations "so as to follow the provisions of the Pension Rules of the Tamil Nadu Government". Towards this end, the Board decided to amend Regulation 9 by exercising its powers under Section 79(c) of the Electricity (Supply) Act, 1948. Regulation 9 was amended by substituting a new regulation as under:

"9 *SAVING*

- (i) No provision in the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978, shall, so far as it is inconsistent with any of the provisions of these regulations have any effect.

(ii) Save as otherwise provided in these regulations, the provisions in these regulations, shall be in addition to and not in derogation of the provisions in the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978, as amended from time to time by the Government of Tamil Nadu.”

These amendments were directed to take effect respectively from 18.7.76 and 1.1.79.

On 8.7.98, a Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act, 1947 was reached between the Board and its workmen. Although the settlement pertained to several conditions of service,¹ we propose to examine only the most relevant clauses.

Clause 14 of the settlement provides that a settlement under Section 12(3) of the Industrial Disputes Act, 1947 would be secured immediately on wage revision and on workload revision, after settlement of revisions of work norms. By Clause 17, the settlement was to be in force for a period of four years with effect from 1.12.96. Despite this period having expired, we are informed by the counsels on both sides that the settlement was not formally terminated under Section 19(2) of the Industrial Disputes Act, 1947. Clause 15 of the said settlement is of some importance and reads as under:

“15. IT IS ALSO AGREED THAT:

(i) The contract Labourers in thermal stations will be paid wages with effect from 1.4.1997 with reference to settlement dated 21.7.1997. With effect from 16.4.1998 according to the orders of the High Court in Writ Appeal No. 1373 of 1993 will be implemented.

(ii) The contract labourers employed on daily wages in Distribution, Generation and other Circles will be paid wages according to the PWD schedule of rates with effect from 1.7.1998.

(iii) *The revised pension scheme of the Government of Tamil Nadu and any amendments there on from time to time will be applied*

¹Clauses 1 to 13 in the Memorandum of Settlement covered the following topics: Revision of Scales of Pay; Fixation of Pay in the Revised Scale; Minimum Benefit; Service Weightage Dearness Allowance; House Rent Allowance; City Compensation Allowance; Allowances and Special Pays; Revised rates of House Rent Allowance; City Compensatory Allowance; Allowance and special pays; Payment of Arrears; Selection grade; Stagnation in promotion; Work norms and Staff Pattern etc.

to the pensioners of the Tamil Nadu Electricity Board.”

(Emphasis supplied)

While the conditions of service of the employees of the Board remained thus, G.O. No. 71 was issued by the Government of Tamil Nadu on 19.3.03, which purported to revise downwards various benefits accorded to Government Servants. This was on the ground that pension payments and other benefits had “reached a level far higher than any other State in India” and had, therefore, become “fiscally unsustainable”. Through the G.O., the State Government directed that the maximum Qualifying service be enhanced to thirty-three years from thirty years in order to become eligible for full pension by Government Servants after retirement. It also directed through the said G.O. that pension would be determined on the basis of the average emoluments drawn during the last ten months of service rendered only. These amendments were directed to become operative in respect of Government servants retiring on or after 1.4.03.

By another G.O. No. 74 dated 19.3.03, for identical reasons, the State Government directed that the maximum limit for commutation of portion of pension by the pensioner would be 33 1/3% of pension only. This order also took effect from 1.4.03.

Following the amendments made by the State Government to the Pension Rules, the Board by its Resolution B.P. (Ch) No. 64 (dated 31.3.03) brought about corresponding changes in the rules of pension applicable to its employees. This Board Proceeding is the crucial one and necessitates reproduction in its entirety.

“Tamil Nadu Electricity Board
Abstract

Pension—Qualifying Service for pension and calculation of pension
Revised orders—Issued.

SECRETARIAT BRANCH

(Per.) B.P.(Ch) No. 64

Dated : 31st March, 2003
Chitrabanu, Panguni 17,
Thiruvalluvar Aandu 2034
Read.

- A (1) (Per) B.P.(CH) No. 253 (SB) dated 23.9.96.
 (2) G.O. Ms. No. 71 Finance (Pension) Department,
 dated 19.3.2003.

PROCEEDINGS:

B In the B.P. first cited orders have been issued reducing the maximum qualifying service from 33 years to 30 years to become eligible for full pension by a Board employee after retirement. It has also been ordered therein that pension shall be determined based on 50% of average emoluments drawn during the last 10 months service rendered or 50% of pay last drawn (*sic*) Board employee, whichever is higher.

C 2. The Government have (*sic*) now issued orders in the Government Order second cited enhancing the maximum qualifying service to 33 years from 30 years to become eligible for full pension by the Government Servants after retirement. The Government have (*sic*) also ordered that Pension shall be determined based on the average emoluments drawn during the last 10 months of service rendered only.

D 3. The provisions in the Tamil Nadu Pension Rules, 1978 have been made applicable to the employees of the Tamil Nadu Electricity Board also by an amendment to Regulation 9 of Tamil Nadu Electricity Board Liberalised Pension Regulations 1960. It has, therefore, become necessary to adopt the orders relating to Government Pensioners to the pensioners of the Board. Adoption of Government orders in respect of pensionary benefits does not attract the issue of notice under Section 9A of Industrial Dispute Act, 1947.

E 4. Based on the orders of the Governments mentioned in para—2 above, the Tamil Nadu Electricity Board hereby directs that the maximum qualifying service be enhanced to 33 years from 30 years to become eligible for full pension by the Board employees after retirement.

F 5. The Board also directs that pension shall be determined based on the average emoluments drawn during the last 10 months of service rendered only.

G 6. These orders shall be applicable to Board employees retiring on or

after 1.4.2003.

7. The receipt of the Board Proceedings may be acknowledged in slip enclosed.

(By order of the Chairman)

(G. Gnanaselvam)
Secretary.

To

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.....”

By a similar worded Board Resolutions B.P. (Ch) No. 65 (dated 31.3.2003) and B.P. (Ch) No. 66 (dated 31.3.2003), commutation level for pension was substantially revised downwards.

The Proceedings in the High Court

The Appellant-Trade Union filed Writ Petition Nos. 11899, 11900 and 11902/2003 before the High Court of Judicature at Madras challenging these three orders (i.e. B.P. (Ch.) Nos.64-66) of the Board. It was contended by the Trade Union that the Board being a Statutory Board was not required to mechanically follow the G.O.s and, in any event, the action of the Board adversely affecting the pensions of employees was unfair, arbitrary and unconstitutional.

Around the same time, similar writ petitions (W.P. No. 11228/2003 etc.) were moved by Government servants (The Madras High Court Staff Association). These sought to impugn the changes brought about in their pensionary conditions by G.O. Nos. 71 to 74. A Division Bench of the High Court of Madras dismissed their Writ Petitions (through order dated 23.10.03). A survey of this judgment becomes necessary because it is heavily relied upon while disposing off the present impugned judgment.

The High Court in its order dated 23.10.03 held that the action of the Government in G.O. Nos. 71 to 74 was motivated by financial constraints and was, therefore, not arbitrary. It observed that the cut-off date of 1.4.03 for the revised pension package was not arbitrary since only the terminal benefits of future retirees were being affected and that no accrued rights were affected.

A Moreover, the High Court held that the Government could alter the service conditions of its employees in exercise of its powers under Article 309 of the Constitution of India. However, the High Court set aside G.O. Nos. 72 and 73 by which the State Government increased the discount rate of commutation of pension and curtailed the encashment of leave on retirement on the ground that these were accrued rights which could not be prejudicially affected by the Government.

C Now for the present impugned judgment. Following its own judgment in W.P. No. 11228/2003 (dated 23.10.03) etc., the High Court of Madras decided W.P. Nos. 11899, 11900 and 11902/2003 along with a batch of connected matters,² filed by a large number of employees through order dated 23.10.03 (“the impugned judgment”). The impugned judgment held *inter alia* as under:

D 1. That the Settlement (dated 8.7.98) between the Board and its employees provided for revised pension schemes of the Government to be applied to the Board’s pensioners and hence no prior notice under Section 9A of the Industrial Disputes Act, 1947 was necessary.

2. Regulation 9 of the 1960 Regulations as amended by B.P. No. 7 (dated 17.12.95), provided for the adoption of the Pension Rules of the Government as amended from time to time.

E 3. The Board’s Service Regulation No.17 did not provide for payment of pension and hence the qualifying service of 30 years mentioned therein could not be relied upon.

F 4. Since G.O.Ms Nos. 71 and 74 have been upheld for Government servants (vide Madras High Court order in W.P. No. 11228/2003 dated 23.10.03), B.P. Nos. 64 and 66, which rely upon them, are valid.

5. Since G.O. No. 73 enhancing the rate of commuted pension was set aside (vide Madras High Court order in W.P. No. 11228/03 dated 23.10.03), B.P. No. 65 based thereon was illegal.

G The Appellant-Trade Union is before this Court in appeal on behalf of the employees of Tamil Nadu Electricity Board to challenge the impugned judgment.

H ²The main matter being titled as: *Bhaarathiya Electricity Employees Federation and Ors. v. The Management Tamil Nadu Electricity Board and Ors.*, W.P.No. 10727/03 etc. (decided on 23.10.03).

The Facts in the Connected Special Leave Petitions

Civil Appeals arising out of S.L.P.(C) Nos. 4598-4599/04 are filed by the Tamil Nadu Electricity Board Accounts and Executive Staff Union on behalf of the Accounts and Executive staff who are aggrieved by the disposal of their Writ Petitions Nos. 11565 and 11567 of 2003 by common order of the High Court of Madras (dated 23.10.03 in W.P. 10727/03 etc).

Civil Appeals arising out of S.L.P.(C) Nos. 4750-4751/04 are filed by the Trade Union representing the Tamil Nadu Electricity Board Stores Union aggrieved by the dismissal of their Writ Petitions Nos. 11937 and 12372 of 2003 by common order of the High Court of Madras dated 23.10.03 in W.P. 10727/03 etc.

Civil Appeals arising out of S.L.P.(C) Nos. 16305-16306/04 are filed by the Tamil Nadu Electricity Workers Federation challenging the impugned common judgment in dismissing their Writ Petitions Nos. 12349 and 12351 of 2003 by common order of the High Court of Madras dated 23.10.03 in W.P. 10727/03 etc.

Civil Appeals arising out of S.L.P.(C) Nos. 8882-8883/04 are filed by the Tamil Nadu Electricity Board Workers Progressive Union challenging the impugned common judgment dated 23.10.03 in W.P. 10727/03 etc insofar as it dismisses their Writ Petitions Nos. 11935 and 12370 of 2003.

The Contentions

Ms. Indira Jaising, learned Senior Counsel for the appellant-employees, who led the arguments on behalf of the appellants, raised several contentions, arguing on construction of the regulations and the settlement, and on constitutional grounds.

Ms. Jaising's contention on the construction of the Regulation was that the Board had reduced the pensionary benefits through executive orders without amending 1960 Regulations, an action which Ms. Jaising contends is *ultra vires* the powers of the Board.

Turning to the Settlement (dated 8.7.98) between the Board and its employees, she urged that Clause 15(iii) did not have the effect of rendering the amendments to the pension scheme of the State Government employees automatically applicable to the employees of the Board. Consequently, Ms.

A Jaising contended that the only method by which the Board could have adversely affected the pension regulations applicable to its employees was by the process of formal amendment of its regulations, which admittedly has not been done.

B She further contended that Clause 15(iii) of the Settlement could not be treated as a waiver of the “fundamental rights” of the employees as there was no conscious agreement discernible in the Settlement to reduce the pensionary benefits. In her submission, the High Court erred in interpreting Regulation 9(ii) of the 1960 Regulations as amended.

C Ms. Jaising made two broad submissions on Constitutional grounds to question the action of the Board. Her first broad contention was with regard to the legal nature of pensions. Relying on several authorities of this Court, she contended that pension is an accrued right, which could not be taken away, that too by a mere executive action such as a resolution of the Respondent-Board. She also contended that pension is in the nature of
D property and it cannot be taken away except by procedure established by law as provided under Article 300A consistent with Article 14 of the Constitution of India.

E Ms. Jaising’s second broad contention was that the action of the Board was “unreasonable” and hence violative of Article 14. Relying upon a judgment of this Court in *D. S. Nakara and Ors. v. Union of India*,³ (“*Nakara*”) she contended that the revision of the formula of the rate of pension in the existing scheme makes an invidious distinction between those retired before or after the cut-off date resulting in unequal treatment being meted out to the two groups.

F Mr. Ramamoorthy, learned Senior Counsel appearing for the Board attempted to sustain the impugned judgment by advancing the reasoning of the High Court.

Principle of Waiver and the Settlement

G In our view, Clause 15(iii) of the Settlement (dated 8.7.98) merely mollifies the rigour of requirement of advance notice of 15 days under Section 9A of the Industrial Disputes Act, 1947. Ms. Jaising contended that the conditions of service once settled can never be changed except by being substituted by

H ³[1983] 1 S.C.C. 305.

a fresh settlement or award. This may be true with regard to conditions of service, which have been settled by a binding settlement/ award. With regard to matters which are in the realm of virgin territory, we are afraid that this may not be the rule. In fact, we called upon Ms. Jaising to show as to which provision of the Industrial Disputes Act, other than Section 9A, prohibits the change by an employer of a condition of service that it was not brought about by a settlement or award. No such provision was cited before us.

We are, hence, unable to accept the contention of Ms. Jaising that the Board could not have changed, by executive action, even those conditions of service that were not the subject matter of regulations, a settlement or an award. In our judgment, Clause 15(iii) of the Settlement merely operates to exempt the employer (the Board) from giving a notice under Section 9A of the Industrial Disputes Act, 1947.

It was not pleaded by the Board before the High Court, nor was it so held by the High Court in the impugned judgment, that there was any waiver of rights generally by reason of the said clause in the said Settlement. Neither we are inclined to accept such an argument, nor did the learned counsel for the Board advance any such argument before us. The argument with reference to the principle of waiver is, therefore, wholly irrelevant and need not detain us. This takes us to the interpretation of Regulation 9 of the 1960 Regulations and its true import.

The 1960 Pension Regulations

This case really turns on the interpretation of the pension regulations, particularly Regulation 9 of the 1960 Regulations. In considering the import of Regulation 9 of the 1960 Regulations (amended on 17.2.95) a historical overview is crucial. After the constitution of the Board in the year 1957, a set of employees, erstwhile State Government's servants were taken over in the employment of the Board. They were governed by the Civil Service Regulations *inter alia* with regard to their pensionary benefits.

Thus, when the 1960 Regulations were brought into force on 1.7.60, the Board had in its employment the erstwhile Tamil Nadu Government servants as well as employees directly recruited by it. A saving clause was necessary in order to ensure that the erstwhile Tamil Nadu Government servants (who were taken over into the service of the Board) were not adversely affected by framing of the Regulations. Consequently, a Saving Clause was introduced, vide Regulation 9.

A This saving clause (as it stood before the amendment of 17.2.95) was in two parts. Clause (i) ensured that no provision in the Civil Service Regulations to the extent of its inconsistency with any of the provisions of the 1960 Regulations would have any effect. This was obviously intended to ensure that whatever better benefits were available to the employees of the Board would be protected even if the Civil Service Regulations were inconsistent with the Board's Regulations.

B Clause (ii) specifically provided that the provisions made in the Regulations would be in addition to and not in derogation of the provisions in the Civil Service Regulations as amended from time to time by the Government of Tamil Nadu. The import of this clause was that, except as otherwise provided in the 1960 Regulations, with regard to matters not covered by the Civil Service Regulations, the 1960 Regulations would have to be read additionally and not so as to derogate from the Civil Service Regulations. In other words, the intention declared by clause (ii) is that the persons covered by the Civil Service Regulations would be entitled to the benefits thereunder and also to the benefits flowing from the 1960 Regulations.

D In 1995, however, the Board proposed to amend Regulation 9 as it stood. The preamble portion in the Board Proceedings (B.P. (FB) No. 7 dated 17.2.95) clearly sets forth the reasons, which motivated the Board to amend Regulation 9. This became necessary, because in the period after the 1960 regulations were first operative, the State Government had replaced the then existent Civil Service Regulations with the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978. Correspondingly, by the 1995 amendment, the expression "Civil Service Regulations" in Regulation 9 was replaced by "Tamil Nadu Pension Rules" and "Tamil Nadu Pension Rules, 1978". Regulation 9(ii) was also amended on the same lines. However, there were no other changes either formal or substantive in Regulation 9. The amended Regulation 9 took effect from the dates on which the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 were brought into force (i.e. 18.7.76 and 1.1.79 respectively).

E In our view, the amended Regulation 9 only makes explicit with reference to the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 what was already provided for in the unamended Regulation 9, which referred to the Civil Service Regulations. A reading of the Board Proceeding (B.P. (FB) No. 7 dated 17.2.95) makes it clear that since the formation of the Board on 1.7.57 till the 1960 Regulations came into force, the employees of the Board

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were governed only by the provisions of the Civil Service Regulations inter alia with respect to quantum of pension, death-cum-retirement gratuity. After the Board framed its 1960 Regulations and the Family Pension Regulations, 1964, the provisions of these Regulations, which were not inconsistent with the Civil Service Regulations, were followed "in addition to the provisions of the Civil Service Regulations with respect to matters not specifically governed by the Board's Regulations."

The said Board Proceedings also make it clear that once the Civil Service Regulations were replaced by the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978, those were followed for settling the terminal benefits of retiring employees of the Board. Similarly, according to the Board Proceedings, the amendments made from time to time in the aforesaid Rules of the State Government were also being applied to the retiring employees of the Board "in the light of the saving provision contained in Regulation 9 of the 1960 Regulations." As we have previously discussed, the Board Proceedings indicate that the 1995 amendment to Regulation 9 was only intended to take into account the State Government's action of replacing the Civil Service Regulations with the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978.

The real question before us is: whether the Board could have followed the State Government's pension amendments by merely changing Regulation 9. It appears to us that the decision taken by the Board to amend its own pension rules and bring it in line with those applicable to the Government's servants was *per se* unexceptionable; however, this could not have been achieved by a mere amendment in Regulation 9 as seems to have prevailed in the opinion of the Board.

Ms. Jaising is right in her contention that the purpose and purport of Regulation 9 was to ensure, firstly, that the State Government employees taken over in the service of the Board were not prejudiced with regard to their conditions of service, particularly pension and death-cum-retirement gratuity. Secondly, the saving clause ensures that with regard to matters which were not covered by the State Government rules but covered by the Board's Regulations, the benefit covered under the Board Regulations would be in addition to and not in derogation of what was already available in the Civil Service Regulations. It was open to the Board in exercise of its statutory powers under Section 79(c) of the Electricity (Supply) Act, 1948 to amend its pension regulations in such manner as to bring it precisely in line with the

A Tamil Nadu Government Rules with regard to pension and other benefits as applicable to the State Government employees. Instead of expressly amending the Regulations, the Board appears to have fallen back on Regulation 9, which was merely a saving clause intended to insulate the employees against erosion of their benefits granted in the provisions.

B Whether such an amendment could have been successfully challenged on its substantive merits is not a question with which we are concerned. We are only concerned with whether the Board could have straightaway imported wholesale the provisions of the pension rules applicable to the State Government employees *via* the vehicle of the saving clause, Regulation 9. Our answer to this issue is clearly in the negative because such a possibility is evidently absent in the text of the said Regulation. For this reason, we are of the view that the conditions of service pertaining to pension that were already the subject matter of the Regulations could not have been changed by the Board without amending the Regulations in accordance with law.

D *Quantifying and Qualifying for Pensions*

E As under Regulation 3 of the 1960 Regulations, the qualifying service for full pension was initially prescribed as thirty years. It was only by Board Proceedings B.P.(Ch) No. 64 (dated 31.3.03) that the maximum qualifying service for pension was increased from thirty years to thirty-three years. By the same Board's Proceedings, the pension was made relatable to the average emoluments drawn during the last ten months service instead of the last drawn pay. These two aspects were the subject matters of the 1960 Regulations and, therefore, by a Board Proceeding, without amending the Regulations, they could not have been modified to the prejudice of the employees. B.P.(Ch) No. 64 (dated 31.3.03) is, therefore, bad in law and illegal inasmuch as it purports to bring about adverse changes in the quantification of pensions and the qualifying period of service for pensions.

Commutation of Pension

G We need to, however, draw a distinction between two different situations which have arisen, namely: (i) an attempt by the Board to withdraw certain benefits granted by a decision of the Board (without amending the applicable regulations) by another Board decision, (ii) the other situation is where a benefit granted under the 1960 Regulations was sought to be taken away by a Board's decision (without amending the applicable regulations). As have H seen in the previous situations discussed, the latter is clearly impermissible.

We, however, need to consider the former issue. A

A change brought about by the Board that has also been impugned is with regard to the decrease in the maximum permissible commutation of pension from 40% to 33 1/3% by following G.O. No. 74 (dated 19.3.03) issued by the Government of Tamil Nadu. As far as this change is concerned, it would appear that Regulation 7 as framed in 1960 permitted a maximum commutation of one-third. By a Board Proceeding B.P.(Ch) No. 208 (dated 18.8.98), the commutation percentage was increased to 40%. This has now been reduced to 33 1/3% by another Board Proceeding B.P. (Ch) No. 66 (dated 31.3.03). In other words, what was granted by a Board Proceeding, without amending the Regulations, is sought to be taken away by another Board Proceeding with a view to following G.O.Ms. No. 74 (dated 19.3.03) issued by the State Government in respect of its own employees. As far as this change is concerned, the argument of not following the proper procedure (i.e. amending the Regulations) does not apply. In fact, the change made by B.P.(Ch) No. 66 (dated 31.3.03) actually brings the level of commutation to what was originally given by the 1960 Regulations. In our view, what was granted by a mere Board Proceeding could be validly altered by another Board Proceeding. Therefore, the challenge to the change in the commutation percentage brought about by B.P.(Ch) No. 66 fails by the same token. B
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Ms. Jaising further contended that, with regard to the reduction in the percentage of maximum commutation of pension, the employees who were covered by the provisions of the Industrial Disputes Act, 1947 would be entitled to raise an industrial dispute, and have it adjudicated according to law. She also submitted that, if this Court were to hold against the employees on the point of commutation of pension, some time may be permitted to the employees to raise an industrial dispute with regard to the change. Considering that the change is likely to have an impact on a large number of employees of the Board, we are inclined to give reasonable time to the employees to raise an industrial dispute before the change impacts them. E
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The Constitutional Grounds

Turning to Ms. Jaising's first argument on constitutional grounds, it appears to us that even if pension is "property", all that Article 300A provides is that: "No person shall be deprived of his property save by authority of law." Thus, if deprivation of the pensionary benefits was by "authority of law" then nothing survives in this contention. We have already examined in depth whether the Board has acted with the "authority of law" i.e. whether G
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A it has followed the prescribed procedure in bringing about the changes in the pensionary benefits, and we have held accordingly. Thus, this contention need not be examined any further.

B As to Ms. Jaising's contention that the Board's actions violate Article 14 of the Constitution and the *ratio* in *Nakara*, we would have had to pursue this contention *only* if we had not been able to decide the case on narrow interpretational grounds as we have already done. Ms. Jaising, however, contended that if we did not decide on the broader constitutional ground argued by her there would be multiplicity of litigation on the same issue. We do not agree. In fact, at the present stage the argument of multiplicity of

C litigation is only speculative since we cannot predict what future course the Board or the employees will adopt. Further, even if multiple litigations were a possibility that should not compel us to opine on every ground argued before us, especially those involving constitutional issues. In this context, we are reminded of a famous exchange in the U.S. Supreme Court between Justice Frankfurter and the Counsel:⁴

D "..."Mr. Arnold pleaded with the Court that he would not like to win the case on the narrow procedural, statutory ground to which a majority of the members of the bench was evidently inclining. Responded Mr. Justice Frankfurter: "The question is not whether you want to win the case on that ground or not. This Court reaches constitutional issues last, not first." He might well have quoted Mr. Justice Brandeis's famous assertion that the "...most important thing we do is not doing."

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F This is precisely the principle, which we intend to adopt. This Court must be parsimonious on the grounds on which it chooses to decide a particular case. If a case can be decided upon any ground other than constitutional grounds, such as by statutory construction or the like, this Court must do so. Despite the characteristic acuity with which Ms. Jaising argued the constitutional grounds, in our opinion, they are not ripe for adjudication, as we have been able to decide the matter on other narrower

G grounds. Where a paring knife suffices, a battle axe is precluded.

⁴See Henry J. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, And France* (3d ed. 1975) at p.371 where this exchanges is mentioned in its entirety.

The Final Conclusions

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In the result we hold as under:

1. The change brought about in the qualifying service for full pension by increasing it from thirty years to thirty-three years by B.P.(Ch) No. 64 (dated 31.3.03) is liable to be interfered with as it has been done without amendment to the 1960 Regulations. B
2. The change brought about by B.P.(Ch) No. 64 (dated 31.3.03) linking the pension to the average emoluments of the last ten months before retirement without amendment of the 1960 Regulations is bad in law. C
3. The reduction in the maximum permissible commutation of pension from 40% to 33 1/3% brought about by B.P.(Ch) No. 66 (dated 31.03.03), without amendment of the 1960 Regulations is not *liable* to be interfered with. D
4. On the issue of whether the Board can adversely modify the pensions payable *even after* following the prescribed procedure (i.e. after amending the applicable pension regulations) and whether such change would be violative of Article 14 or the *ratio* in *Nakara* we express no opinion whatsoever, as it is unnecessary in the light of our findings above. E

We, therefore, partly allow the appeals and interfere with the impugned judgment of the High Court insofar as issues one and two are concerned and set aside the action of the Board on the aforesaid issues. This shall be without prejudice to the powers of the Board to bring about the changes after proper amendment of the 1960 Regulations and also without prejudice to the rights of the employees to challenge such amendments on any permissible ground (including on the grounds we have chosen not to express our opinions upon). F

The impugned High Court judgment, insofar as it upholds the reduction of the maximum permissible commutation from 40% to 33 1/3% is not interfered with without prejudice to the rights of the employees to raise an industrial dispute. G

We are informed that during the pendency of the writ petitions before H

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A the High Court there was a stay operating in favour of the employees as a result of which service conditions that were under challenge were not permitted to be amended. There was also an interim stay of Board Proceedings Nos. 64 and 66 (dated 31.3.03) granted by this Court on 8.3.04 which has continued till today. In the circumstances, we extend the stay in respect of Board Proceeding B.P.(Ch) No. 66 (dated 31.3.2003) for a period of eight weeks to enable the employees to raise an industrial dispute for adjudication, if so advised.

The appeals are allowed in the aforesaid terms. No costs.

N.J.

Appeals allowed.