IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice A.T.M. Afzal, Chief Justice
Mr. Justice Mustafa Kamal
Mr. Justice Latifur Rahman
Mr. Justice Mohammad Abdur Rouf
Mr. Justice Bimalendu Bikash Roy Choudhury.

CIVIL APPEAL NOS. 71 AND 50 OF 1993
WITH
CIVIL PETITION FOR LEAVE TO APPEAL NO.244 OF 1993
(From the judgment and order dated 28.2.93 & 1.3.93 passed by the High Court Division, Dhaka in Writ Petition No.330 of 1989)

C.A.71/93
Bangladesh Retired Government Employees' Welfare Association & ors. ..... Appellants

=Versus=

Bangladesh represented by the Secretary, Ministry of Finance and anr. ..... Respondents

C.A.50/93
Bangladesh represented by the Secretary, Ministry of Finance and anr. ..... Appellants

=Versus=

Bangladesh Retired Government Employees' Welfare Association represented by its President Mr. Kafiluddin Mahmood & ors. ..... Respondents

C.P.244/93
Bangladesh Retired Government Employees' Welfare Association & ors. ..... Petitioners

=Versus=

Bangladesh represented by the Secretary, Ministry of Finance and anr. ..... Respondents

C.A.71/93
For the Appellants :Syed Ishtiaq Ahmed, Senior Advocate,
(Mr. Mahmudul Islam, Senior Advocate

with him), instructed byMr.Md.Nawab Ali Advocate-on-Record.

For the Respondents :Mr. Abdul Wadud Bhuiyan, Additional Attorney General, instructed by Mr. Shamsul Haque Siddique, Advocate-on-Record.

C.A.50/93
For the Appellants :Mr. Abdul Wadud Bhuiyan, Additional Attorney General, instructed by Mr. Shamsul Haque Siddique, Advocate-on-Record.

For the Respondents :Syed Ishtiaq Ahmed, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record.

C.P.244/93
For the Petitioner :Syed Ishtiaq Ahmed, Senior Advocate, (Mr. Mahmudul Islam, Senior Advocate with him), instructed by Mr. Md. Nawab Ali, Advocate-on-Record.

For the Respondents :Not represented.

Date of hearing :5-5-97, 6-5-97, 7-5-97, 11-5-97, 12-5-97,13-5-97,14-5-97 & 19-5-97

J U D G M E N T

A.T.M. AFZAL, CJ.- In writ petition, No.330 of 1989,out of which these two certificated appeals and the leave petition arise,

the contention of the writ-petitioners, namely, the retired Govt. employees receiving pension, was that they formed a homogeneous class and were entitled to equal treatment qua pensioners irrespective of date of retirement and further to draw pension on the basis of presumptive (present) pay of the posts from which they retired. To be a little rhetorical, the first part of the game-plan (contention above)was devised in India and succeeded in the case of *D.S. Nakara Vs. Union of India*, AIR 1983 S.C. 130

(hereafter referred to as *Nakara's case*): the whole plan was pressed into service in Pakistan but had only peripheral success in the case of *I.A. Sharwani Vs. Govt. of Pakistan*, 1991 SCMR 1041, (hereafter referred to as *Sharwani's case*) and the High Court Division in the present case has followed the *ratio decidendi in Nakara's* case and allowed only the first part of the contention. The success was thus divided and both the writ-petitioners and the Govt. prayed for certificate under Article 103 (2) (a) of the Constitution which was granted.

Civil Appeal No.50 of 1993 has been filed by the Government and the writ-petitioners have filed Civil Appeal No.71 of 1993and C.P.L.A. No.244 of 1993, (which is barred by 32 days and no application has been filed for condonation of delay) against the impugned judgment of the High Court Division dated 1st March,1993 passed in the aforesaid writ petition.

In the writ petition petitioner No.1 is Bangladesh Retired Government Employees' Welfare Association and petitioner Nos.2and 3 are the President and Vice-President respectively of the said Association and are themselves retired employees of theGovernment of Bangladesh. Petitioner No.4 was the General Secretary of the Association who died during the pendency of the writ petition.

The writ-petitioners impugned Memo No.MF(Regn-1)3P-28/85/60 dated 10.8.85 (Annexure-C) so far as it was made applicable to pensioners retiring on or after 1.6.85 and Memo No.3(61)-Gop/87/730 dated 21.11.87 (Annexure-H) and further asked for a direction upon the respondents to remove the expression "in respect of pensioners retiring from service on or after 1st June,

1985" from the Memo, Annexure-C and to pay pension to all pensioners on the basis of presumptive (present) pay of the posts from which the pensioners retired.

The writ-petitioners' (appellants in C.A. No.71 of 1993)case in the writ petition as set out in their concise statement, inter alia, was that appellant No.1 is an Association of retired government employees of the Government of Bangladesh andappellant Nos.2 and 3, as already noticed, are office bearers of the said Association and are themselves retired government employees. Appellant No.2 joined the Civil Service of Pakistan on 16.10.1950 and retired on 3.3.1983 while acting as the Secretary to the Ministry of Finance of the Government of Bangladesh. Appellant No.3 joined the Police Service of Pakistan on 7.1.1952 andretired on 1.8.1983 while acting as Secretary to the Ministry of Defence of the Government of Bangladesh.

Pension paid to the retired government employees is not a bounty paid by the State, but is an essential term and condition of service and is paid on consideration of the State's obligation not to leave the citizens rendering service during the usefulspan of life to penury in their old age. The very purpose of pension is to enable the retired government employees to live free from want, with decency, independence and self-respect and at a standard equivalent to the pre-retirement level.

Pension for the civil government employees in the sub-continent was governed by Civil Service Regulations. The amount of pension depended upon the number of years of completed service

and was calculated on the basis of average emoluments drawnduring last 36 months of service before retirement.

With the passage of time, because of inflation, pension allowed was gradually becoming inadequate to keep the retired employees away from the penury and having regard to the purposeof pension and the obligation of the State, amendment in pension rules was made during the former Government of Pakistan days.

After liberation of Bangladesh there has been serious inflation. To cope with such run-away inflation the Government of Bangladesh revised the pay scale in 1973. 1977 and 1985. In 1973 the pay of the Secretary of the Government was fixed atTk.3,000/- which was maintained in 1977 and this was increased to Tk.6000/- in 1985. In the case of Deputy Secretary, Special Pay ofTk.275/- to Tk.440/- was added to the pay scale of Tk.850 to 1650/-. In 1977 the pay scale of Deputy Secretary was revised to Tk.1850-2375/ and increased to Tk.3700-4824/- in 1985. Thus the pay was doubled in 1985.

The last amendment of the pension rules was made by Memo No.4F(Regn-1)3P-28/85/60 dated 10.8.85 (Annexure-C) whereby the pension table was revised raising maximum allowable pension to70% of the last pay drawn with a ceiling of Tk.4000/-.The benefit of this amendment has been made available only to those government employees retiring on or after 1st June, 1985.

The 1985 amendment of the pension rules made verysubstantial difference in the pension benefits between pensioners who retired before 1.6.1985 and those who retired on or after 1.6.1985. As a result,a retired employee in the highest position gets pension of

Tk.900/- per month and gratuity of Tk.1,62,000/- if he retired before 1.6.1985 while an employee in the same highest position retiring on or after 1.6.1985 gets Tk.2000/- per month as pension and Tk.3,60,000/- as gratuity. Similar is the difference in case of all other employees.

Retired government employees receiving pension form a homogeneous class and further classification of such a class on the basis of date of retirement introduces a differentia havingno relation to the object of payment of pension and revision of pension rules.Inflation and increased cost of living hit all the pensioners equally irrespective of their date of retirement andas such classification of the pensioners by the Memo (Annexure-C) between those who retired before 1.6.1985 and those who retiredon or after 1.6.1985 is invidious and arbitrary.

To cope with the run-away inflation the Government has from time to time increased the salary of Government employees so that the same post carries much higher pay today than it carried a few years before. This increase in pay was allowed not to give additional benefits to the government employees but to allow living wages to the government employees. As a result a government servant retiring few years before gets much lower pension than a government servant in the same post who retires today though both of them purchase necessities of life at thesame price and their requirements follow similar pattern. This happens because a government servant's pension is determined on the basis of the pay he drew at the time of retirement. When appellant No.2 retired as Secretary he was drawing a salary of Tk.3,000/- per

month and his pension is calculated at 60% of his last pay. On the other hand a government servant who retired as a Secretary after May, 1985 gets his pension calculated at 70% of his lastpay i.e. Tk.6,000/- per month though the necessity of appellant No.2 and the government servant retiring after June, 1985 is almostthe same or similar. Payment of pension on the basis of last pay drawn without taking into consideration the existing pay of the post which the pensioner was holding at the time of retirement introduces serious unfairness and hardship simply because of the fortuitous circumstance of his retirement at an earlier date.

The serious hardship of the pensioners who retired from service before June, 1985 can be seen if the cost of living index published by the Ministry of Finance in Bangladesh EconomicSurvey is taken into consideration. The increase in the scales of payof government employees has not kept pace with the increase in the price of commodities and services. There has, however, been some increase in the scales of pay of government employees which has given the government employees and the pensioners retiring after May 1985 some relief although inadequate.

If the purpose of payment of pension and the State's obligation in this regard are kept in view there can be no reason to differentiate between government employees on the basis ofdate of retirement and there is no reason why two persons retiringfrom the same post should receive different amounts of pension simply because one retired earlier and another retired later.

During the hearing of the writ petition the appellants filed an application for amendment of the writ petition and the said

prayer was allowed. After the amendment the prayer of the appellants stood as follows :

> "(a) A Rule Nisi be issued upon the respondents to show cause why the impugned Memo No.MF(Regn-I)3P-28/85/60 dated 10.8.85 (Annexure-C) so far as it is made applicable to pensioners retiring on or after 1.6.1985 and Memo No.3(61)-Gop/87/730 dated 21.11.1987 (Annexure-H) and Memorandum No.MF(IC)-11-14/74 (ANNEXURE-B) so far as it produces the effect of paying different amount of pension to the pensioners of the same post depending on the time of retirement shall not be declared to be without lawful authority and of no legal effect and why the respondents shall not be directed to remove the expression "In respect of pensioners retiring from service on or after 1st June, 1985" from the said Memo Annexure-C and to pay pension to all pensioners on the basis of presumptive (persent) pay of the post from which the pensioners retired".

The appellants claimed that all retired government employees receiving pension irrespective of their date of retirement are pensioners forming a homogeneous class and as such payment of different scales of pension to the pensioners retiring from the same post on the basis of the date of retirement was anirrational classification violative of the equality clause as enshrined in Article 27 of the Constitution.

In order to get remedy against such unjust classification resulting in discrimination against the appellants who hadretired before 1.6.85 the appellants moved various authorities of the

Government and ultimately the President of Bangladesh but to no avail. Hence, the petition.

Respondent No.1 in the writ petition, namely, Bangladesh represented by the Secretary, Ministry of Finance Division, Government of Bangladesh (appellant No.1 in Civil Appeal No.50 of 1993) contested the writ petition by filing an affidavit-in-opposition. The Government contested [illegible] of the writ petitioners as to the nature and scope of pension and stated that the State has no legal or contractual obligation to undertake the entire responsibility of bearing the expenses of maintaining the standard of living of [illegible] manner equal to the standard of living he enjoyed during pre-retirement period. It was, however, contended that the Government has every intention and wish to see that an employee retiring from service lives a decent standard of life and with this object in view, the Government provides the pensioners benefits within its limited financial resources. The respondent also contended that since the writ-petitioners were no longer in service they could not claim enhancement of their pension once fixed according to rules [illegible] enforcing any legalright and the Government has also no legal obligation to revise the pension of the pensioners with the revision of pay-scales of the Government employees in service. In spite of this legalposition, dealing with the revision of the rate of pension of the employees who retired or will retire on or after 1.6.85 the pensioners who had retired prior to 1.6.85 were also allowed substantialbenefits in the form of dearness allowance. It was also contended that classification of pensioners on the basis of the date of effectof

the enhanced rate of pension is a valid and rational classification and as such cannot be conceived to be violative of Article 27 of the Constitution. It was also contended that every legislative enactment and every governmental action,particularly, where the legislative enactment or the governmental action is a financial measure, a specific date has to be fixed for giving effect to such legislative enactment or governmental action and fixing such date, even if it results in classification insecuring benefit to a class or group of people while securing no such benefit to another class or group of people,cannot be deemed to be violative of the equality clause as enshrined in Article 27 of the Constitution. It was further contended that the impugned notification being Notification No.MF(Regn-1)3P-28/85/60 dated 10.8.85 being applicable to government servants who were in employment on 1.6.85 and retired on or after 1.6.85cannot be made applicable to those who had retired prior to 1.6.85 and hadceased to become government employees because the government employees who had retired prior to 1.6.85 form a class distinct from the government employees who were in service on 1.6.85 and retired thereafter. As such, according to the respondent, the government employees who retired from service prior to 1.6.85 cannot legally claim revision of their rates of pension once fixed according to rules. They are not, therefore, entitled to pension to be determined according to or on the basis of presumptive revisedpay as admissible to government employees from 1.6.85. The writ petition must, therefore, be dismissed.

The writ-petitioners filed affidavit-in-reply and respondent No.1 filed a supplementary affidavit-in-opposition.

At the hearing of the writ petition, respondent No.1 raiseda preliminary objection as to the *locus standi* of writ-petitioner No.1 Association on the ground that it was not a "person aggrieved" within the meaning of article 102(1)(2)(a) and further as to the maintainability of the writ petition itself in view of clause (2) of article 117 of the Constitution read with the provisions of the Administrative Tribunals Act, 1980.

Relying mainly upon the principles in *Nakara's* case and *Sharwani's* case and on the fact that the two pensioners (petitioners No.2 and 3) were themselves petitioners (which made the question of *locus standi* immaterial) the High Court Division rejected the objection to the *locus standi* of the Association.

The learned Additional Attorney General, appearing for the Government in the matters before us, fairly submitted that it was no longer possible to press the objection as to *locus standi* of the Association in view of the recent decision in the case of *Dr. Mohiuddin Farooque Vs. Bangladesh* 49 DLR (AD) 1 = 17 BLD (AD) (1997) 1.

The High Court Division also rejected the objection as to maintainability of the writ petition relying upon *Mujibur Rahman Vs. Government of Bangladesh* 44 DLR (AD) 111. The learned Additional Attorney General submitted that having regard to the prayer made in the writ petition and the impugned order passed by the High Court Division striking down part of the impugned Memo

he could not in fairness oppose the finding of the High Court Division on maintainability as well.

The body of the Government appeal before us is thus resolved to the extent as above. It may be noticed at this stage the subject matter of the writ-petitioners' appeal and leave petition so that it may be possible to identify the area of inquiry before us. It has been noticed that the writ petition succeeded in part. That part which did not succeed is the subject matter of their appeal and leave petition. What is that unsuccessful part ? It may be recalled that in their original prayer in the writ petition, besides impugning Memo dated 10.6.85 (Annexure-C) they prayed for a direction upon the Government to pay pension to all pensioners on the basis of presumptive (present) pay of the posts from which the pensioners retired. It seems that it was realized that the said direction could not be had unless the Memo dated 21 January, 1974 (Annexure-B) was impugned which, among other, provided that "the calculation of pension ..... should be made on the basis of emoluments which the govt. servant was receiving immediately before his retirement ....." Therefore by amendment of the prayer the said Memo (21.1.74) was also challenged "so far as it produces the effect of paying different amount of pension to the pensioners of the same post depending on the time of retirement".

It was argued in the High Court Division that thecalculation of pension on the basis of emoluments immediately before retirement has the effect of making discrimination in the rate of pension when the pay-scales of the government employees are

revised and enhanced and as such, according to them, all pensioners, irrespective of their dates of retirement, are entitled to receive pension calculated on the basis of the pay of the post or presumptive pay when pay scale is revised upwards.

The same argument was raised in *Sharwani's* case which was noticed as follows :

> The main grievance of the retired civil servants/pensioners, which has been canvassed at the Bar by Mr. Samdani is that the pensioners have not been given the benefit of the introduction of new National Pay Scales with effect from 1-3-1972 and thereafter its revision from time to time. According to him as the pension is to be computed on the basis of pay, any increase in pay scales enhances pension of those pensioners, whose pension is to be calculated on the basis of the revised pay scales. His further submission was that since the pension scheme enforced in Pakistan is salary related, any revision in the pay scales should also be made applicable to the pensioners as the reason for revision of pay scales is the rising cost of living and escalating inflationary tendencies in the economy and also decrease in the economic value of rupee, which reasons do not affect the serving civil servants alone, but affect more adversely the retired civil servants/the pensioners. It was also urged by him that providing certain date for qualifying for certain benefits under the pension scheme is arbitrary and discriminatory and is violative of Article 25 of the Constitution. According to him, all the civil servants who held equal rank and had equal length of service, should get the same amount of pension irrespective of their dates of retirement.

The Court was urged upon to break a new ground by linking revision of pension with the revision of pay scales. The Supreme Court of Pakistan, however, declined saying that a new ground ora new avenue can be explored on the basis of some legal principle and not merely on the ground what appears to be just and equitable. The Court found itself unable to hold that civil servants who have already retired and who will retire in future are to be treated as one class. It was held that reasonable classification will be that all the pensioners as a group are to be treated as one class and all serving civil servants as a group are to be treated as a separate class and in this view of the matter, if the pay scales of serving civil servants are revised, the civil servants, who have by then already retired cannot have any legitimate grievance to agitate for notional revision oftheir pay scales for re-computing their pension amounts for any purpose as the pension amount is to be computed as above CSR4 on thebasis of the pension rules in force on the date of retirement of acivil servant. The pension rules contain formula as to the method of computation of pension amount with reference to the salary drawn by him till the date of retirement and, therefore, there cannotbe uniformity in the amounts of pension among the civil servants despite having equal rank and equal length of service, if they retire not on one date but on different dates and in between such dates pay scales are revised.

The High Court Division in the case before us found in line with *Sharwani's* case that the principle set out in the Memo dated 21.1.74 of calculating pension on the basis of emoluments which a

government employee was receiving immediately before his retirement had the effect on the fate of pension of the retiree after upward revision of the scale of pay of the post which the retiree was holding ! fore his retirement were violative of the equality clause as enshrined in Article 27 of the Constitution. The High Court Division held :

> The principle of calculating pension on the basis of the last pay drawn which the government servant was receiving immediately before his retirement appears to us to be absolutely a rational principle and based on sound reasoning, because to conceive that for the purpose of calculating pension a pensioner retiring from a post prior to revision of the pay of the said post belongs to the same class as the pensioner retiring from that post after revision of the pay of the post is to conceive that the former's pay on retirement was the same as the revised pay or that he was in service at the date of revision of the pay scale, both of which are fiction. So, for the purpose of calculation of pension the classification of pensioners on the basis of the last pay drawn is a real and rational classification.

As to the inequity of the effect of calculating pension on the basis of the last emoluments drawn, it was observed :

> We have no doubt that the effect of calculating pension on the basis of the last emoluments drawn has resulted in grave inequity between government employees retiring from the same post as a result of upward revision of pay in view of the rising costs of living and depreciation of the value of currency. But, a legislative enactment or a governmental

> action cannot be knocked down as unconstitutional even if it results in inequity, is even shocking to the conscience and apparently unjust, unless such enactment or such action is violative of any provision of the Constitution in the former and the Constitution or any other law in the latter. As such, this inequity and unconscionable effect cannot be rectified by this Court by applying Article 27 of the Constitution. Probably, it is for the government to remove such inequity by implementing one of the Fundamental Principles of State Policy enshrined in Part II of the Constitution, particularly, Article 15(d) of the Constitution, so far as the case of the pensioners is concerned.

Syed Ishtiaq Ahmed, learned Counsel for the writ-petitioner-appellants, has not minced words submitting that it will be difficult for him to assail this part of the impugned judgment, that is, refusing to hold that Memo dated 21.1.74 providing for calculation of pension on the basis of emoluments which a pensioner was receiving immediately before his retirementoffended the equality clause (Article 27) and that the writ-petitionersare entitled to draw pension on the basis of pay of the posts they were holding consequent upon upward revision of the pay scalefrom time to time. As a matter of fact, Mr. Ahmed advanced no argument in support of his appeal and the leave petition and perhaps purposely not even cared to file a petition for condonation of delay in filing the leave petition. Therefore, the appeal and the leave petition of the writ petitioners cannot but be destined to doom.

The Govt. appeal alone thus remains for consideration. What that appeal is against ?

As regards Memos dated 10.8.85 (Annexure-C) and 5.7.89, the High Court Division relying mainly on *Nakara's* case held that the two Memos divided the pensioners with reference to a particular date, that is, those who had retired prior to 1.6.85 and those who retired subsequent to 1.6.85. This classification on the basis of the date of retirement has hardly any nexus with the object sought to be achieved by these two Memos, that is, making provision for sustenance of the retired Govt. employees in the face of rising cost of living. The classification of pensioners on the basis of the date of retirement has been arbitrary and, therefore, repugnant to the very concept of equality and equal protection of law as envisaged in article 27 of the Constitution. The offending portion whereby the Govt. employees who had retired prior to 1.6.85 were denied the benefit of enhanced rate of pension as provided in the said two Memos must, accordingly, be deemed to be unconstitutional as violative of article 27 and should be knocked down.

Finally the High Court Division made the Rule absolute in part and ordered as follows :

> The words occurring in the first paragraph of Notification No.Mf(Regn-1)3P-26/85/60 dated 10.8.85, "retiring from service on or after 1st June, 1985" are hereby struck down as unconstitutional being violative of Article 27 of the Constitution. It is hereby directed that the pension of all pensioners, irrespective of their date of retirement, be calculated according to the Pension Table as

Annexure-A to this notification and also according to Notification No.সম বিবি-১৩ বি ২৮/৮৫/৬১ dated 5.7.89. In order to remove all doubts it is also directed that with effect from 1.6.85 the pension of all pensioners retiring before 1.6.85 is at first to be calculated on the basis of the last pay drawn by them according to the rate as at Annexure-A to Notification No.MF(Regn-I)3P-28/85/60 dated 10.8.85 and Notification No. সম বিবি-১৩ বি ২৮/৮৫/৬১ dated 5.7.89 and then the actual amount surrendered by them at the time of commutation of their pension shall be excluded from the amount worked out according to the above calculation and their net pension shall be the balance payable with effect from the respective dates on which these two notifications were given effect to. The Dearness Allowance that had been allowed to the pensioners from time to time shall be payable in addition to the above net pension worked out according to the above calculation.

The respondents shall implement this judgment within 6 (six) months from date.

The matter for consideration in the Govt. appeal thus is whether the High Court Division was correct in holding that by making the Memo dated 10.8.85 applicable only "in respect of pensioners retiring from service on or after 1st June 1985", an arbitrary classification was made among the pensioners which was repugnant to the concept of equality before law as envisaged in article 27 of the Constitution and thus the offending portion of the Memowas liable to be struck down. It also falls to be considered whether the principle laid down in the facts of *Nakara's* case is applicable in the facts of the present case, that is, whether the

(4) For the removal of doubts, it is hereby declared that all rights or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

The first pension rules made were a part of the CivilService Regulations (CSR) before the enactment of the Govt. of India Act 1919. On the passing of this Act these rules were adopted under section 968 of the Act and made applicable to all Central Govt. servants including members of all-India services (*Chopra's Law relating to Government Servants* p.126).

The Government of India Act 1935 in section 247(1)(a) provided:

247.ÄÄ(1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shallÄÄ

(a) as respects pay, leave pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;

By section 276 rules made previously were given continuity "and shall be deemed to be rules made under the appropriate provisions of this Act".

Similar provisions were there in the then 1956 and 1962 Constitutions of Pakistan and the C.S.R. got recognition in our Constitution. "Law", article 152 says, means any Act, Ordinance, Order, rule ....." and article 149 provides that all existing laws shall continue to have effect subject to the provisions of the Constitution.

As regards persons serving in connection with the affairs of a Province, the Governor of the Province or some person authorised by him was competent to make rules determining the conditions of service (Sec.241, Govt. of India Act 1935).

Bangladesh Service Rules (BSR) have their origin in the rule-making power of the Governor.

In the preface to the first edition (1953) of BSR - Part I, regarding *source of the rules*, it has been stated that the rules in this part though formally made under section 241 of the Act are not intended to introduce any changes in the substance or effect of relevant existing rules. They are intended merely to reproduce, with adaptations where necessary the existing rules applying to officers under the rule-making power of theprovincial Government as they stand at the date of the present compilation.

Article 133 of the Constitution provides that Parliament may by law regulate the appointment and conditions of service of persons in the service of the Republic and further that the President also shall be competent to make rules for the above purpose until provision in that behalf is made by or under any law.

The C.S.R. and the B.S.R. being existing law which, among other, deal with payment of pension and the rule-making power being vested with the President under the Constitution, it is hardly possible to contend that the impugned-memo which is an amendment of the pension rules has got no legal force or that pension cannot be claimed as a statutory or legal right. C.S.R.4 clearly provides further that the Govt.(of Bangladesh)reserve to themselves the right of changing the rules in these regulations regarding pay and acting allowance and leave and pension, from time to time at their discretion, and of interpreting their meaning in case of dispute. An officer's claim to pay and allowances is regulated by the rules in force at the time in respect of which the pay and allowances are earned; to leave by the rules in force at the time the leave is applied for and granted; and to pension by the rules in force at the time whenthe officer resigns or is discharged from the service of Govt. So, there can be no manner of doubt that the rules relating topension are statutory rules which determine the rights of the pensioners on one hand and liability of the Govt. on the other.

As regards enforceability of pension rights, the matter is put beyond all doubts by providing in section 4 of the Administrative Tribunals Act,1980 that an Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic or of any statutory public authority in respect of the terms and conditions of his service including pension rights, ...

"Pension" has been defined in the Constitution itself and it indicates not only what is included therein but that it ispayable under law. The definition reads (Article 152) ÄÄ "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay or gratuity so payable by way of the return or any addition thereto of subscriptions to a provident fund.

From what has been stated above, it is clear that pension is not a bounty of or ex-gratia payment by the State as used to be considered once. It is paid as a condition of employment under legal provisions. A person accepts an employment under the Govt. on the clear stipulation on the part of the Govt. that he will be allowed a retirement benefit ÄÄ called pension ÄÄ after heretires from service. Payment of pension is therefore an obligation on the part of the State.

The social philosophy behind payment of pension seems to be the concern of the State/Society to care for the people in their old age who gave the best part of their lives in the service of the State and the society. Pension rules have been said to be part of the social security laws of a given society. In *Nakara's* case, the concept of pension has been very succinctly statedwhich is worth quoting :

> Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore,

one is required to fall back on savings. One such saving in kind is when you give your best in the hey day of life to your employer in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

Similar view was taken in Pakistan in *Sharwani's* case :

A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended inter alia in Pakistan to the widows and the dependent children of the deceased civil servants. The raison d'etre for pension seems to be inability to provide for oneself due to old-age. The right and extent to claim pension depends upon the terms of the relevant statute under which it has been granted.

Now turning to the main issue, it is necessary to reproduce here the impugned Memo dated 10.8.85 with the revised pension table Annexure-A and also the Memo dated 5.7.89 which was also found to be offending Article 27.

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF FINANCE

Finance Division

Regulation Section-I

MEMORANDUM

Memo No. MF(Regn-1)3P-28/85/60, dated the 10th August, 1985.

SUBJECT : Revised Rules for pension and retirement benefits.

The undersigned is directed to invite a reference to this Ministry's Memo No.MFP(FD) Regn-I/3P-22/82/147, dated 21st December, 1982 and Memo No.MFP(FD) Regn-I/3P-22/82/117, dated 1st August, 1983 and to state that the Government have been pleased to further amend the existing rules relating to pension of the Civil Government servants as follows :

"In respect of pensioners retiring from service on or after 1st June 1985, the pensions are to be calculated according to the revised pension table shown at Annexure 'Λ' to this Memorandum subject to a maximum of Tk.4000 per month".

2. The amendments contained in this Memorandum are effective from 1st of June, 1985 and shall be deemed to havehad effect from that date.

3. In any matter in respect of which no provision has been made in this Memorandum, the existing provisions of the rules and orders shall continue to apply until altered, replaced or amended.

4. Relevant rules shall be deemed to have been amended according to the extent of the provisions contained in this Memorandum.

Sd/-
(G. HOSSAIN)
Joint Secretary,
Finance Division.

Annexure "Λ" to Ministry of Finance
(Finance Division) Memo No.MF(Regn-I)
3P-28/85/60, dated the 10th August, 1985.

REVISED PENSION TABLE

Ordinary Pension

Completed years of qualifying service.	Scale of pension expressed as percentage of emoluments.
10	28%
11	31%
12	34%

13	36%
14	39%
15	42%
16	45%
17	48%
18	50%
19	53%
20	56%
21	59%
22	62%
23	64%
24	67%
25 and above	70%

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থ মন্ত্রণালয়
অর্থ বিভাগ
প্রবিধি শাখা - ১

নং অম/বিধি-১/৩পি-২৮/৮৫/৬১, তারিখ : ৫-৭-১৯৮৯ ইং
২১-৩-১৩৯৬ বাং

স্মারক পত্র

বিষয় : সরকারী কর্মকর্তা/কর্মচারীদের পেনশনের পরিমাণ এবং উহার হার নির্ধারণ প্রসঙ্গে ।

এই মর্মে জানান যাইতেছে যে, অর্থ বিভাগের ১০-৮-১৯৮৫ ইং তারিখের এম,এস/এফ,ডি/রেগ,-১/৩পি-২৮/৮৫/৬০ সংখ্যক স্মারক আংশিক সংশোধন করতঃ পেনশনের সর্বোচ্চ পরিমাণ ৪০০০ টাকার স্থলে ৫০০০ টাকায় নির্ধারণে এবং একই স্মারকের Annexure "A" এর আংশিক সংশোধন করতঃ ২৫ বছর বা তদূর্ধ পেনশেনযোগ্য চাকুরী সমাপ্তির পর অবসর গ্রহণকারীর প্রাপ্য পেনশনের পরিমাণ "Emoluments" এর ৭০% হইতে ৮০% এ উন্নীত করণে সরকার সিদ্ধান্ত গ্রহণ করিয়াছেন ।

২। এই আদেশ ১-৭-১৯৮৯ ইং তারিখ হইতে কার্যকর বলিয়া গণ্য হইবে ।

৩। এই স্মারকপত্রে যে সংশোধনের উল্লেখ করা হইয়াছে, সংশ্লিষ্ট বিধি অনুরূপভাবে সংশোধিত হইয়াছে বলিয়া গণ্য হইবে ।

স্বাক্ষর/-
(আতাউল করিম)
যুগ্ম-সচিব ।

By the impugned Memo dated 10.8.85 existing rules relating to pension was amended to provide for -

1) a revised pension table shown at Annexure "A" for calculating pensions,

2) a ceiling of Tk.4000/- per month

and making it applicable in respect of pensioners retiring from service on or after 1st June, 1985. By Memo dated 5.7.89, the Memo dated 10.8.85 was partly amended and the ceiling of pension was raised to Tk.5000/-and the aforesaid table was partly amended by enhancing the percentage of scale of pension from 70% to 80%on completion of 25 years or more of qualifying service.It was made effective from 1.7.89. The benefit under this Memo was available naturally only to those who retired on or after 1st June, 1985.

It will be seen that the revised pension table was a vastly beneficial one compared to the new pension table which was in force immediately before and was introduced by Memo dated 21.1.1974. The ceiling was fixed at Tk.4000/- which again was a big enhancement compared to Tk.1800/- per month which was inforce as per Memo No.MFP(FD)Regn.-1/3P-22/82 dated 1.8.83. The ceiling shot up to Tk.4000/- and then to Tk.5000/- as if overnight evidently because the modified new scales of pay was introduced from 1.6.85 by the Services (Pay and Allowances) Order, 1985under which pay was enhanced for Grade I service from Tk.3000/- to Tk.6000/-. It seems the pensioners of the day before (1.6.85) were naturally flabbergasted at the sea change in the pensionary benefits and they rallied round from then on, went to Advisers, Ministers and Presidents pointing out the disparity and their deprivation because of the cut off date (1.6.85) for eligibility of the higher rates of pension and having been unsatisfied with

the authority's response of small ad-hoc increments and dearness allowance only, turned towards the Court and picked up *Nakara* on the way. As already noticed, they, however, laid a much bigger claim than *Nakara* in their writ petition but succeeded only upto *Nakara* in the High Court Division.

Sympathetic as we are with the righteousness of the cause of the old pensioners, we very much wished we could agree with the impugned judgment of the High Court Division. We shall presently try to show, however, that we found ourselves unable to followthe *Nakara* principle in the facts of the case before us. Indeed the Indian Supreme Court itself in some subsequent cases steeredclear of the *Nakara* case and upheld the cutting off date as reasonable and legitimate upon finding that the petitioners who were claiming a benefit on the Nakara principle were not equally circumstanced or that a new scheme was being introduced beginning from a specified date.

The learned Additional Attorney General, among other, submitted that all the pensioners cannot be treated as one class or a homogenous group because the employees retire on different dates and those who have retired on a particular date are not similarly circumstanced with those who have not retired on that date. Therefore, there are various groups of pensioners who are to be treated on the basis of applicability of relevant Memo/Orders as were in force on the dates of their retirement providing for grant of pension and this is not violative of Article 27 of the Constitution. The learned Additional Attorney General submitted that the Memo dated 10.8.85 having been made

applicable to government servants who were in employment on 31.5.85 and retired on or after 1.6.85 cannot be made applicable to those who had retired prior to 1.6.85 because the government servants who had retired prior to 1.6.85 formed a class distinct from government servants who were in service on 31.5.85 and retired on or after 1.6.85.

The fundamental right of all citizens as to equality before law and equal protection of law is guaranteed by article 27 ofour Constitution which corresponds with article 14 of the Indian Constitution and article 25 of the Constitution of Pakistan. This article has been interpretated in very many cases by the superior Courts of these countries including Bangladesh. One of the broad principles which has been enunciated and accepted on all handsand which is the basis of the decision in *Nakara's* case is that an enactment providing for classification of persons or things for its application in order to claim immunity from repugnancy to article 27, the classification must be founded on an intelligible differentia which distinguishes persons or things that aregrouped together from those that are left out of the group and that that differentia must have a rational relation to the object sought to be achieved by the enactment in question. In *Nakara's* case andin the case before us the cutting off date (1.6.85) was found to be unreasonable and arbitrary having no nexus with the object sought to be achieved by the impugned Memo/rule.

There is another broad principle with regard to the interpretation of the equality clause which is again accepted on all hands and that is, equality before the law means that amongst

equals the law should be equal and should be equally administered and that like should be treated alike (*Jennings, Law of the Constitution*,p.94).The guiding principle of the article is that all persons and things similarly circumstanced shall betreated alike both in privileges conferred and liabilities imposed(*Kamala Gained (Smt) V. State of Punjab* 1990 Supp. SCC 600).*Shukla* in his book 'Constitution of India' says at P.38 "as a matter of fact all persons are not alike or equal in all respect. Application of the same laws uniformly to all of them will therefore be inconsistent with the principle of equality. To avoid that situation laws must distinguish between those who are equals and to whom they must apply and those who are differentand to whom they should not apply.

Chief Justice Muhammad Munir in his book 'Constitution ofthe Islamic Republic of Pakistan' at P.406 expressed the same principle in the following terms :

Equal protection of laws has been interpretated as meaning that in similar circumstances the same law will apply, that two sets of circumstances shall not have different legal effects unless the difference of circumstances between the two sets is sufficient, in reason, to justify difference in effect or that if a law applies to one set of circumstances and does not apply to another, the difference between the two sets shall be material enough to support the discrimination.

It will be seen that in *Nakara's* case the pensioners whocame to Court to compiain about discrimination were governed by the same rules namely the Central Civil Services (Pension) Rules,

1972. Their basic contention was that they formed a homogenous class and they could not be discriminated against with reference to a fortuitous date for applicability of a beneficial measure relating to pension. Facts of that case, briefly, are that on May 25, 1979 Government of India, Ministry of Finance, issued an office Memorandum whereby the formula for computation of pension was liberalised but made it applicable only to civil servants who were in service on March 31, 1979 and retired from service on or after that date. The liberalised pension formula introduced a slab system, raised the ceiling and provided for a better average of emoluments for computation of pension and the liberalised scheme was made applicable to employees governed by the aforesaid Rules of 1972 retiring on or after the specified date. The question posed in that case was : Do pensioners entitled to receive superannuation or retiring pension under the said Rulesof 1972 form a class as a whole ? It was a primary contention ofthe petitioners that the pensioners of the Central Government formeda class for the purpose of pensionary benefits and there could not be a mini-classification within the class designated aspensioners on the basis of a cut off date for eligibility to entitlement of the liberalised scheme of pension. The Court found the classification to be wholly arbitrary and accordingly struck down the offending portion from the impugned Memo so as to make the liberalised scheme of pension available to pensioners who retired before March 31, 1979.

In the case before us there is no assertion by the writ-petitioners that all the pensioners were being governed by the

same rules as in *Nakara's* case and the impugned Memo dated10.8.85 made an improvement in computation of pension only under the same rules applicable to all pensioners irrespective of their dates of retirement. As already noticed, the revision of the pensiontable was the main subject of the amended rules. The question for consideration will be whether all the pensioners were subject to computation of their pension under a uniform pension table before 1.6.85 irrespective of their dates of retirement and further whether they were enjoying uniform pensionary benefits in order that they may be considered as a homogenous class attracting the application of the equality clause under Article 27 of the Constitution.

We have had the benefit of assistance of two veryexperienced retired Secretaries, one of them being the President of the Retired Government Employees' Welfare Association who was himself a Finance Secretary and the other a former Cabinet Division Secretary, who were present in Court during the hearing of the appeals and supplied copies of various rules and orders relating to pension and the historical background upto the present day development relating thereto. The summary of the rates ofpension as supplied to us shows :

ORDERS ON RATES OF PENSION

GROSS PENSION

12.6.54.	Concept of gratuity and family pension introduced. (3568F dated 12.6.54)
Prior to 1.7.66	50% of average pay on completion of 25 years or above.

From 1.7.66	50% of average pay on completion of 25 years of service and 60% of average pay on completion of 30 years of service maximum pension being Taka 1000/-p.m. (F/IU-12/66/93 dated 2.9.66)
From 1.7.74	60% of average pay on completion of 25 years of service. (MF(IC)-11-14/74 dated 21.1.74).
From 1.7.77	Ceiling of pension raised to 1500/-p.m. (MF(ID)-1-2/77/656 dated 20.12.77).
From 1.7.82	60% of average pay on completion of 25 years of service. Minimum pension Taka 100/- p.m. Maximum pension Taka 1800/- per month. (MFP(FD)Regn-1/3P-22/82-147dated 21.12.82 and MFP(FD) Regn-1/3P-22/82-117 dated 1.8.83)
From 1.6.85	70% of average pay on completion of 25 years of service the maximum pension being Taka 4000/- p.m. (MF(Regn I)3P-28/85/60 dated 10.8.85)
From 1.7.89	80% of average pay on completion of 25 years of service the maximum pension being Taka 5000/- p.m. (অম(পিপি-১) ৩ পি - ২৮/৮৫/১০৯ তাং ৪-১১-৮৯ এবং অম/পিপি - ১/৩পি - ২৮/৮৫/৯১ তাং ৫-৭-৮৯
From 1.7.91	Maximum pension raised to Taka 8200/- p.m. (অম/অপি (প্রপিপি) ৩ পি - ২৮/৮৫/২০ (১০০০) তাং ৪-১২-৯১
NET PENSION	50% of gross pension.For surrender of balance of the pension, gratuity payable at varying rates.

It appears that a new pension table for calculation of pension was annexed to the Memo dated 2nd September 1966 whichwas made effective from 1st July, 1966. The new pension table, however, was revised by Memo dated 21 January, 1974 as atAnnexure "A" thereto.It was provided in that Memo that the calculation of pension according to the scale shown in column 2 of the pension

table should be made on the basis of emoluments which the Government servant was receiving immediately before hisretirement and if he proceeds on L.P.R. on the basis of emoluments which he was receiving immediately before proceeding on L.P.R. The orders under the Memo were made applicable to Government servants who retired from service on or after the 1st of July, 1974. It was clearly provided that the revised pension table would not applyto those Government servants who may have retired before that date i.e., 1st July, 1974. Thus the pension retirees before 1st of July, 1974 could not make any claim on the pension table whichwas revised by Memo dated 21.1.74. There was thus no uniform table for calculation of pension for all the pension retirees as on 1.6.85. The existing pensioners who retired on or after 1st July 1973 and who were not brought on to the national scale of pay introduced from that date and to whom the revised orders under Memo dated 21.1.74 did not apply were allowed an increase in the amount of their pension from 1st January, 1974 at a certain rate mentioned in the Memo dated 21.1.74. All the pensioners, therefore, were not getting equal benefits under equal rules.

The concept of gratuity and family pension was introduced from 12.6.54 with options. On the recommendation of the pay and the Service Commission relating to pension and death-cum-retirement benefits of civil Government servants the President gave some decisions by Memo No.MF(ID)-1-2/77/856 dated 20th December, 1977 which were made effective from 1st July, 1977 and the pensioners who retired from government servants prior to 1st July, 1977 were given some other benefits as in para 4 of the

Memo. The said Memo was again amended by Memo No.MFF(FD)Regn-1/3P-22/82-147 dated 21st December, 1982 and the decisions contained in the said Memo were made effective from 1st July,1982 in respect of pensioners retiring from service on or after1.7.82. The pension was to be calculated according to the pension table (Annexure "A") which was in force without any upper limit. The said Memo was again amended by another Memo dated 1.8.83providing for a maximum of Tk.1800/- per month. It will be seen that all the existing pensioners as on 1.6.85 were not being governed either by the same pension table for the purpose of calculationof pension nor by the same rules relating to entitlement to pension. Rules have been made, modified and amended from time to time giving better and better benefits with cut off dates thereby eroding the so-called homogeneousness of the pensioners as a class.

Even otherwise there is an unreality in the assumption that all pensioners irrespective of their dates of retirement form a homogeneous class because their obligations and needs as pensioners are the same. A person who retired 10 or 20 years before does not stand on the same footing with a person who retires after 10 or 20 years because of the difference in advantages of time enjoyed by each of them and having regard to the needs and requirements of the respective retirees as on the date of retirement. The obligations and needs of a person who is in service today and will retire from tomorrow cannot be the same with that of the person who retired 10 or 20 years before. From the fifth report of the Central Pay Commission of India it is

found that although the third CPC conceded the demand of pensioners for protecting their pension from erosion on accountof possibility of increase in the cost of living it, however, didnot accept the suggestion that the relief to the pensioners should be allowed at the same rate as was applicable to the serving employees, as the family and other responsibilities of apensioner were not considered to be of the same order as of a serving employee.

In *Krishena Kumar Vs. Union of India* AIR 1990 SC 1782, the Court held that the option given to the Railway employees covered by Provident Fund scheme to switch over to the pension schemewith effect from a specified cut-off date was not violative of article 14. It was observed that in *Nakara* the Court treated the pension retirees only as a homogeneous class. The P.F. retirees were not in mind.It was never held in that case that pension retirees and the P.F. retirees formed a homogeneous class. The Suprome Court observed with reference to *Nakara* that"the doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons in support of it, especially when they contain "propositions wider than the case itself required".

In *Indian Ex-Services League Vs. Union of India* AIR 1991 SC 1182 it was observed that *Nakara's* case has limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank

irrespective of the date of retirement, even though thereckonable emoluments for the purpose of computation of their pension be different. It was observed that what was decided in *Nakara* was that if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some later.

In another case, *Union of India Vs. P.N. Menon* AIR 1994 SC 2221 the Supreme Court overruled a decision of the High Court based on the decision in *Nakara* observing that whenever the Govt. frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, whichcan be held to be reasonable and rational in the light of article 14 of the Constitution, need not be held to be invalid.

We are making a difference with *Nakara* in that there the pensioners were being governed by the common Rules of 1972 and only in the matter of computation of pension a liberal formulawas introduced from a specified date. In the present case it hasbeen noticed that all the pensioners were not recipients of common pensionary benefits under common Rules; from different dates different kinds of benefits were made effective which were not common to all; more importantly, the pension table which was revised by the impugned Memo was not common to all pensioners. That being the position, they are not being equal, not equally circumstanced, they cannot complain of discrimination in the

event of an upward escalation of the pension table from a particular date.

In *Sharwani's* case calculation of pension was allowed from 1.7.86 on last pay drawn instead of average pay during last 13/36 months and it was made applicable to pensioners retiring after 30.6.86 (p.1075). It was not held violative of Article 25 upon a different view of classification.

Nobody would, however, dispute that the pensioners both past and present are equally exposed to the vagaries of continuously rising prices, the falling value of the Taka consequent upon inflationary inputs and socio-economic Justice demands that morally it is desirable to treat them at par at least for the purpose of calculation of pension on the basis of emolumentswhich they were each receiving immediately before retirement. But the impugned memo does not say so. For the Court to say so would legally amount to legislation by enlarging the circumference of the obligation and converting a moral obligation into a legal obligation. There is a distinction between law and morality and there are limits which separate morals from legislation. *Bentham* in his theory of Legislation, Chapter XII, page 60 said :

> "Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his

relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. there are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumference."

The learned Additional Attorney General argued that the direction given by the High Court Division to make the impugned memo applicable to all the pensioners irrespective of their dates of retirement amounts to legislation because it enlarges theclass of pensioners to whom the benefit is extended which is a legislative function.

He also submitted that it is for the Govt. to decide having regard to its resources and constraints as to how much can be afforded to the already retired pensioners while enhancing thepay scale for the serving employees and benefit for the prospective pensioners keeping in view the socio-economic Justice principle. He pointed out that by Memos dated 7.9.85 and 21.7.86 the Govt. increased the rate of pension for the pensioners who retired before 1.6.1985 by 10% over the then existing net pension andmade them effective from 1.6.1985 and 1.7.1986 respectively. He also submitted that the money required to meet the expenditure for payment of pension to retired Govt. servants is granted by Parliament by enacting necessary Appropriation Act.The direction

given by the High Court Division for recomputing pension from 1.6.65 for an indefinite number of persons without consideringthe financial involvement of the Govt., he submitted, was stupefying both for the Govt. and the Parliament.The Court could not impose such an uncharted burden without examining the relevant facts as to budgetary allocations and the enhanced resources that will be required for implementing the direction beginning from 1.6.1985.

We think the questions raised by the learned Additional Attorney General are of substance. Since we have already taken the view that for the reasons the impugned Memo does not offend the equality clause as found by the High Court Division, it is not necessary to dilate further on the said questions. The judgment of the High Court Division under appeal, therefore, cannot be sustained.

In the result, civil appeal No.50 of 1993 is allowed and civil appeal No.71 of 1993 is dismissed. Both without cost. CPLA No.244 of 1993 which is otherwise time-barred is dismissed.

C.J.

J.

J.

J.

J.

The 29th May, 1997.
/iua/