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THE CLASSIFICATION BETWEEN OLD PENSION SCHEME AND NATIONAL PENSION SYSTEM EMPLOYEES: AN ARTICLE 14 ANALYSIS WITH SPECIAL REFERENCE TO TAMIL NADU

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ABSTRACT

The shift from a defined-benefit pension architecture to a defined-contribution model for government employees recruited on or after 1 January 2004 has produced two classes of similarly placed public servants performing identical duties but receiving materially different retirement protections. This paper examines whether the date-of-joining classification underlying the Contributory Pension Scheme, later renamed the National Pension System, withstands scrutiny under Article 14 of the Constitution of India. It surveys the limited judicial intervention that has occurred so far, which has corrected isolated administrative anomalies in the application of the cut-off rather than questioning the legitimacy of the classification itself, and situates the analysis within the specific trajectory of Tamil Nadu, the first State to adopt the scheme and, in January 2026, the first to attempt a structural remedy through the Tamil Nadu Assured Pension Scheme. The paper argues that a rule tying lifelong retirement security to the happenstance of an appointment date, rather than to the nature or duration of service rendered, fails the rational nexus requirement developed in the equality jurisprudence of the Supreme Court, and it advances the position that the appropriate remedy is not a binary choice between a monthly pension and an employee-funded provident fund, but the concurrent entitlement to

both, on the model already available to employees governed by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

1. INTRODUCTION

Until the close of 2003, government employees in India, whether at the Union or State level, were governed by a defined-benefit pension architecture under which a retiring employee received a guaranteed monthly sum, ordinarily fixed at half of the last salary drawn. This entitlement was treated by the Supreme Court not as a matter of executive grace but as a right flowing from the constitutional guarantee against arbitrary State action, most notably in the landmark holding in D.S. Nakara v. Union of India, where the Court struck down a classification among pensioners based on the date of retirement as unconstitutional. With effect from 1 January 2004 for Union employees, and from 1 April 2003 for Tamil Nadu, a materially different scheme was introduced. Newly recruited employees would no longer receive a guaranteed pension; instead, both the employee and the government would make monthly contributions to an individual account, the eventual retirement benefit depending on accumulated contributions and investment returns.

This paper is concerned with the legal status of the resulting classification. Two employees performing identical duties in the same department, differing only in the date on which they happened to join service, now retire into starkly different circumstances: one with a guaranteed monthly pension for life, the other with a lump sum resembling a provident fund payout, subject to market performance and without any guarantee of a recurring income. The central submission advanced in this paper is that such a rule, resting solely on the accident of an appointment date, does not bear a rational nexus to the object that pension law is meant to serve, namely the provision of a measure of security to a person who has rendered a working lifetime of service to the State.

2. THE CONSTITUTIONAL FRAMEWORK: ARTICLE 14 AND THE DOCTRINE OF REASONABLE CLASSIFICATION

Article 14 of the Constitution guarantees to every person equality before the law and the equal protection of the laws. The Supreme Court has long accepted that this guarantee does not prohibit classification as such, but requires that any classification rest upon an intelligible differentia and that the differentia bear a rational relation to the object sought to be achieved by the law in question. This two-fold test was articulated in State of West Bengal v. Anwar Ali

Sarkar, where a special procedure applicable to an ill-defined class of cases was struck down for want of a rational connection between the classification and its stated object.

The doctrine was substantially widened in E.P. Royappa v. State of Tamil Nadu, where the Court moved beyond the mechanical classification test to hold that arbitrariness is itself antithetical to equality, so that State action which is unreasonable or arbitrary, even where it does not fit neatly into the classical differentia-and-nexus framework, is liable to be struck down under Article 14. This arbitrariness strand was carried forward in Maneka Gandhi v. Union of India, and has since been repeatedly applied to service and pension matters, on the reasoning that a pensioner's entitlements, once earned through service, cannot be whittled down by an executive classification that does not serve any rational public purpose.

It is against this framework that the date-of-joining classification between Old Pension Scheme and National Pension System employees must be tested. The relevant question is not merely whether the two classes of employees are administratively distinguishable, which they plainly are, but whether that distinction bears any rational relation to the object of pension legislation, which is to secure a retiring employee against want in old age in recognition of a lifetime of service rendered to the State.

3. THE JUDICIAL RESPONSE: CORRECTING THE EDGES, LEAVING THE CORE UNTOUCHED

Litigation on this question has, to date, proceeded on a narrower footing than a direct challenge to the classification itself. The recurring fact pattern concerns employees whose recruitment process, commencing with an advertisement issued before the cut-off date, concluded only after it, placing them under the National Pension System despite having effectively entered the recruitment stream under the old regime.

In the matter concerning Dr Davinder Singh Brar before the Delhi High Court, the recruitment advertisement had been issued in May 2003, yet the selection process concluded only in February 2004, after the cut-off date. The government sought to justify denial of Old Pension Scheme coverage on this ground. The Court declined to accept the distinction, holding that the delay in concluding the selection process could not be attributed to the petitioner, and that the government's own administrative guidance did not recognise any such distinction as a basis for denying coverage. Old Pension Scheme benefits were accordingly directed to be extended. A materially similar outcome was reached in the matter of Shyam Kumar Choudhary, which was

carried in review to the Supreme Court and ultimately dismissed, leaving the High Court's direction intact. The Allahabad High Court reached a comparable conclusion in respect of teaching and non-teaching staff of the Uttar Pradesh Basic Education Department, holding that employees appointed before the department's own cut-off date could not be denied Old Pension Scheme benefits merely because grant-in-aid to their institutions was sanctioned later.

A particularly instructive Tamil Nadu illustration is the decision of the Madras High Court in M. Sheik Abdul Kadhar v. Principal Secretary to Government. The petitioners in that case were employees who had originally worked in the Census Department and were retrenched in 1991. Following prolonged litigation, including an order of the Central Administrative Tribunal dated 8 April 1996 and its affirmance by the Supreme Court in a civil appeal decided on 28 September 1999, the State government framed a scheme to absorb these retrenched employees into government service, but the petitioners were in fact appointed only on 21 July 2004, well after the 1 April 2003 cut-off for the contributory pension scheme in Tamil Nadu. The government resisted treating them as covered by the old pension rules on the ground that their actual date of appointment fell after the cut-off. Relying on an earlier Division Bench-affirmed ruling involving similarly placed employees, the Madras High Court held that the delay in appointment was attributable not to the petitioners but to the government's own reluctance in complying with the Supreme Court's directions, and directed that the petitioners' service be counted from 1996, the date of the original tribunal order, for pensionary purposes under the Tamil Nadu Pension Rules. This decision demonstrates that Tamil Nadu courts, applying the same underlying logic as the Delhi and Allahabad cases, have been willing to look behind the bare appointment date to the actual cause of delay, again correcting an individual anomaly without disturbing the classification itself.

These decisions are instructive for two reasons. First, they confirm that courts have been prepared to intervene where the application of the cut-off produces results untethered even to the government's own stated eligibility criteria, indicating judicial discomfort with the manner in which the classification has, at times, been administered. Second, and more significantly for the purposes of this paper, none of these decisions questions the legitimacy of the classification as such. The relief granted in each case was individual correction within the framework of the cut-off, not a declaration that the cut-off itself offends Article 14. The classification between Old Pension Scheme and National Pension System employees, considered as a general rule, therefore remains judicially untested at the level of principle, even as its administration at the margins has repeatedly required correction.

This gap is significant. If administrative delay of a few months, entirely outside an employee's control, is sufficient to strip that employee of lifelong defined-benefit protection, this suggests that the differentia chosen, namely the date on which the appointment process happens to conclude, does not track any characteristic of the employee or the service rendered that could rationally justify differential retirement treatment. The very fact that courts have had to repeatedly rescue individual employees from the arbitrary edges of the cut-off is evidence that the cut-off, as a rule, rests on an administratively convenient marker rather than a principled basis connected to the object of pension law.

4. THE TAMIL NADU TRAJECTORY: FROM FIRST ADOPTER TO THE ASSURED PENSION SCHEME

Tamil Nadu holds a distinctive place in this history, having been the first State to implement the Contributory Pension Scheme for its newly appointed employees, with effect from the financial year 2003-04. Successive employee associations in the State pressed for restoration of the old scheme over the following two decades, contending that the funds contributed since 2003 by both employees and the government were more than sufficient to sustain a guaranteed pension for the affected workforce, and that the arrangement had left several lakh employees without the security available to their seniors performing the same categories of work.

In January 2026, the State government announced the Tamil Nadu Assured Pension Scheme, described as a hybrid model intended to restore the substantive benefit of the old scheme, namely a guaranteed pension equal to fifty per cent of the last drawn salary, while formally retaining the contributory architecture introduced in 2003. The scheme extends to employees who retired under the earlier contributory arrangement without having received any pension, providing them a special compassionate pension, and enhances the retirement gratuity ceiling. The State government has committed a substantial initial allocation together with a recurring annual contribution to bridge the gap between accumulated employee contributions and the guaranteed fifty per cent benefit.

The introduction of the Tamil Nadu Assured Pension Scheme is significant for the argument advanced in this paper in two respects. On one view, it may be read as an implicit legislative and executive concession that the original classification produced an inequitable outcome requiring correction, since the State has now moved to restore substantially the same guaranteed pension benefit to employees who were previously excluded from it purely on account of their date of joining. On another view, however, the scheme addresses only the question of a guaranteed

monthly pension, and does not, on the material presently available, appear to preserve for the employee any separate entitlement corresponding to a provident fund built from the employee's own monthly contributions during service. If the scheme substitutes the contributory corpus entirely into the calculation of the guaranteed pension rather than treating the two as distinct and cumulative entitlements, then the equity concern identified in this paper, namely that an employee who has contributed a portion of salary every month for decades ought to receive both a guaranteed pension and the standalone benefit of that accumulated contribution, remains only partially addressed.

5. THE CASE FOR CONCURRENT ENTITLEMENT: PENSION AND PROVIDENT FUND TOGETHER

The position advanced in this paper is that the appropriate remedy for employees who joined government service after the 2003-04 cut-off is not a restoration of the old scheme in substitution for the contributory arrangement, but the concurrent availability of both a guaranteed monthly pension and a provident fund built from the employee's own monthly deductions, made available as a separate lump sum at retirement. Three grounds support this position.

First, an analogy may usefully be drawn to the structure applicable to private sector employees under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. That statute contemplates two distinct components: contributions to the Employees' Provident Fund, which constitute a corpus payable to the employee, and a separate diversion of a portion of contributions to the Employees' Pension Scheme, 1995, which provides a monthly pension on retirement. The two are not treated as mutually exclusive alternatives but as cumulative components of a single retirement architecture, as reflected in the continuing litigation over the removal of the salary ceiling for pensionable salary under the Employees' Pension Scheme, culminating in review proceedings before the Supreme Court following the Kerala High Court's 2018 judgment. If a dual structure of this kind is considered appropriate and workable for the organised private sector, there is no principled reason why government employees, whose service conditions are ordinarily treated as entitled to no lesser protection, should be confined to only one of the two components.

Second, treating the monthly employee contribution as fully consumed within the calculation of a restored guaranteed pension, without any separate accounting for it as a provident fund corpus, effectively converts what was, throughout the employee's working life, presented as a

savings contribution into a financing mechanism for the pension guarantee alone. An employee whose salary is reduced every month over a full career on the understanding that the deduction builds a personal retirement corpus has a legitimate expectation, sounding in the nature of a property interest recognised under Article 300-A of the Constitution, that the corpus itself will be available at retirement independently of whatever pension arrangement the State separately chooses to guarantee.

Third, from the standpoint of Article 14 itself, a scheme that gives National Pension System employees only a guaranteed pension, calculated by consuming their own contributed corpus, while Old Pension Scheme employees received both an unfunded guaranteed pension and, in many services, a separate gratuity and provident-fund-like retirement benefit, would simply relocate the original inequity rather than remove it. The object of any curative legislation in this field must be to place both classes of employees, doing the same work for the same employer, on a substantially equal footing as to the totality of retirement protection, and not merely to equalise the pension component while leaving the contribution component unaddressed.

6. CONCLUSION

The classification between employees governed by the Old Pension Scheme and those governed by the National Pension System has, for over two decades, rested on the date on which an employee happened to join service, a factor bearing no rational relation to the character or duration of service rendered. Judicial intervention to date has corrected individual anomalies at the margins of this classification without addressing its underlying legitimacy, leaving the core question substantially open. Tamil Nadu's introduction of the Assured Pension Scheme in January 2026 represents a significant policy shift and an implicit acknowledgment of the inequity, but risks resolving only the pension component of the grievance while leaving unaddressed the employee's independent claim to the provident fund corpus built from decades of personal contribution. A durable and constitutionally sound resolution, consistent with the equality guarantee under Article 14 and the property protection under Article 300-A, requires that employees be entitled concurrently to both a guaranteed monthly pension and the standalone benefit of their own contributed provident fund, on the model already familiar from the private sector retirement architecture under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

7. SUGGESTIONS

- The Union and State Governments should amend the National Pension System framework to permit a bifurcation of the employee's monthly contribution into two separate legal components, on the model of the Employees' Provident Fund and Employees' Pension Scheme, so that a guaranteed monthly pension and a standalone provident fund corpus become concurrent, not substitutable, entitlements.
- The Tamil Nadu Assured Pension Scheme should be clarified, by rule or executive instruction, to state expressly whether the employee's own contributed corpus is preserved as a separate retirement benefit in addition to the guaranteed fifty per cent pension, so that the scheme does not silently absorb the contribution component into the pension guarantee.
- A uniform, government-wide policy should be issued clarifying that recruitment processes commencing before a pension cut-off date will govern eligibility by reference to the date of advertisement or vacancy, not the date of final selection, so that employees are not made to bear the consequences of administrative delay.
- Given the absence of a decision testing the classification itself, a suitably placed employee or employees' association should consider mounting a direct constitutional challenge to the date-of-joining classification under Article 14, rather than confining litigation to individual cut-off anomalies, so that the Supreme Court has the opportunity to pronounce on the validity of the classification as such.
- Future empirical research should compare the actual retirement corpus realised by National Pension System retirees against the pension that would have accrued under the Old Pension Scheme, across representative salary bands, to quantify the extent of the disparity and strengthen the evidentiary basis for legislative reform.
- Pension Fund Regulatory and Development Authority oversight of State-level contributory schemes should be strengthened, including mandatory public disclosure of fund allocation and returns, so that employees can assess whether their contributions are being prudently invested.

REFERENCES

Constitution of India, art. 14.

Constitution of India, art. 300-A.

D.S. Nakara v. Union of India, (1983) 1 SCC 305.

State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Davinder Singh Brar v. Union of India, W.P.(C) No. 756/2020, Delhi High Court, order dated 28 January 2020.

Shyam Kumar Choudhary v. Union of India, W.P.(C) No. 1358/2017, Delhi High Court, order dated 9 April 2019; Special Leave to Appeal (C) Nos. 23568/2019 and 31539/2019, dismissed; Review Petition (C) No. 21889/2020, dismissed 24 November 2020.

U.P. Senior Basic Shiksha Sangh v. State of U.P., Allahabad High Court, order dated 16 June 2021.

M. Sheik Abdul Kadhar v. Principal Secretary to Government, W.P. No. 26122 of 2021, Madras High Court, order dated 15 February 2024.

Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Employees' Pension Scheme, 1995, framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Regional Provident Fund Commissioner v. R.C. Gupta, review proceedings arising from Kerala High Court judgment of 2018 on removal of the pensionable salary ceiling under the Employees' Pension Scheme, 1995; Supreme Court order dated 1 February 2019, review allowed 2019.

Government of Tamil Nadu, Finance Department, Frequently Asked Questions on the Contributory Pension Scheme.

Government of Tamil Nadu, announcement of the Tamil Nadu Assured Pension Scheme, 3 January 2026.

Ministry of Finance, Department of Economic Affairs, Notification dated 22 December 2003, introducing the National Pension System for Union Government employees with effect from 1 January 2004.