

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5252-5255 OF 2018
(Arising out of SLP(Civil) Nos.7368-71 of 2017)

United Bank of India and others

..... Appellants

VERSUS

United Bank of India Retirees' Welfare
Association and others etc.

..... Respondents

JUDGMENT**Uday Umesh Lalit, J.**

Leave granted.

2. These appeals by special leave are directed against (i) the common Judgment and Final Order dated 26.09.2016 passed by the High Court at Calcutta in APO Nos.315 and 316 of 2015; and (ii) against the order dated

05.12.2016 passed by the High Court at Calcutta in RVWO Nos.57 and 58 of 2016 in aforementioned APO Nos.315 and 316 of 2015. By its Judgment and Orders under appeal, the High Court held that there was no justification for making a distinction between pre November, 2002 retirees and post November, 2002 retirees and the appellant must pay dearness relief to all pensioners at the same rate.

3. A Memorandum of Settlement dated 29.10.1993 was entered into between the managements of 58 banks as represented by the Indian Banks' Association on one hand and their workmen as represented by the All India Bank Employees' Association on the other. Said memorandum recited that the parties had agreed to introduce pension scheme in banks for the workmen/employees in lieu of employers' contribution to the provident fund and that the pension scheme so agreed was to be broadly on Central Government/Reserve Bank of India pattern. Paragraph 6 of the memorandum dealt with Dearness Allowance relief to the pensioners and it stipulated:

“Dearness relief to pensioners will be granted at such rates as may be determined from time to time in line with the Dearness Allowance formula in operation in Reserve Bank of India”

4. In exercise of powers conferred by Clause (f) of sub-Section (2) of Section 19 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Union Bank of India after consultation with the Reserve Bank of India and with the previous sanction of the Central Government made “Union Bank of India (Employees’) Pension Regulations, 1995 (hereinafter referred to as the “Pension Regulations”). Paragraph 2(d) defined “average emoluments” to be the average of pay drawn by an employee during last 10 months of service in the bank while Para 2(s) defined “pay”. Para 37 of the Pension Regulations was as under:

“Dearness Relief- (1) Dearness relief shall be granted on basic pension or family pension or invalid Pension or on compassionate allowance in accordance with the rates specified in Appendix II.”

Appendix II to the Pension Regulations dealt with Dearness Allowance on basic pension. It categorized employees as under:-

“(a) Those workmen who had retired on or after 01.01.1986 and before 01.11.1992 and those officers who had retired on or after 01.01.86 but before 01.07.1993.

(b) Those workmen who retired on or after 01.11.1992 and officers who retired on or after 01.07.1993 and

(c) Those employees who would retire on or after 01.04.1998.”

Different rates of Dearness Allowance relief as percentage of basic pension were prescribed in respect of aforesaid three categories in said appendix II as under:

“APPENDIX-II
(See Regulation 37)

Dearness relief on basic pension shall be as under:

(1) In the case of employees who were in the workmen cadre and who retired on or after the 1st day of January, 1986, but before the 1st day of November, 1992; and in the case of employees who were in the officers' cadre and who retired on or after the 1st day of January, 1986, but before the 1st day of July, 1993, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 600 points in the quarterly average of the all India Average Consumer Price Index for Industrial Workers in the series 1960 = 100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:-

Scale of basic pension (1)	The rate of dearness relief as a per month percentage of basic pension (2)
(i) Up to Rs.1250	0.67 per cent.
(ii) Rs.1251 to Rs. 2000	0.67 per cent of Rs.1250 plus 0.55 per cent of basic pension in excess of Rs.1250.
(iii) Rs.2001 to Rs.2130	0.67 per cent of Rs.1250 plus 0.55 per cent of the difference between Rs.2000 and Rs.1250 plus 0.33 per cent of basic pension in excess of Rs.2000.
(iv) Above Rs.2130	0.67 per cent of Rs.1250 plus 0.55

	per cent of the difference between Rs.2000 and Rs.1250 plus 0.33 per cent of the difference between Rs.2130 & Rs. 2000 plus 0.17 per cent of basic pension in excess of Rs.2130.
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(2) In the case of employees who are in workmen cadre and who retire on or after 1st day of November, 1992; and in the case of employees who are in the officers' cadre and who retire on or after 1st day of July, 1993, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 1148 points in the quarterly average of All India Average Consumer Price Index for Industrial workers in the series 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension Per month (1)	The rate of dearness relief as a per month percentage of basic pension (2)
(i) Up to Rs.2400	0.35 per cent.
(ii) Rs.2401 to Rs.3850	0.35 per cent of Rs.2400 plus 0.29 per cent of basic pension in excess of Rs.2400.
(iii) Rs.3851 to Rs.4100	0.35 per cent of Rs.2400 plus 0.29 per cent of the difference between Rs.3850 and Rs.2400 plus 0.17 per cent of basic pension in excess of Rs.3850.
(iv) Above Rs.4100	0.35 per cent of Rs.2400 plus 0.29 per cent of the difference between Rs.3850 and Rs.2400 plus 0.17 per cent of the difference between Rs.4100 & Rs. 3850 Plus 0.09 per cent of basic pension in excess of Rs.4100.

3. In the case of employees who retire on or after the 1st day of April, 1998, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 1616 points in the quarterly average of the All India Average Consumer Price Index for Industrial workers in the series 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension Per month (1)	The rate of dearness relief as a per month percentage of basic pension (2)
(i) Up to Rs.3380	0.25 per cent.
(ii) Rs. 3381 to Rs. 5420	0.25 per cent of Rs.3380 plus 0.21 per cent of basic pension in excess of Rs.3380.
(iii) Rs.5421 to Rs.5770	0.25 per cent of Rs.3380 plus 0.21 per cent of the difference between Rs.5420 and Rs.3380 plus 0.12 per cent of basic pension in excess of Rs.5420.
(iv) Above Rs.5770	0.25 per cent of Rs.3380 plus 0.21 per cent of the difference between Rs.5420 and Rs.3380 plus 0.12 per cent of the difference between Rs.5770 & Rs. 5420 Plus 0.06 per cent of basic pension in excess of Rs.5770.

5. On 02.06.2005 a Bipartite Settlement was arrived at between the managements of 50 banks, represented by the Indian Banks' Association on one hand and their workmen, represented by the All India Bank Employees' Association, National Federation of Bank Employees, Bank Employees'

Federation of India, Indian National Bank Employees' Federation and National Association of Bank Workers on the other. It was inter alia recited:

“(D) The AIBEA, NCBE, BEFI, INBEF and NOBW (hereafter jointly called the Unions) submitted their Charter of Demands on various dates between 10th June 2002 and 5th September 2002 for revision in wages and other service conditions of workmen to IBA and requested for negotiations on the same, with a view to arriving at an amicable settlement.

(E) Simultaneously, IBA also raised with the Unions, issues on behalf of the managements of banks concerned, to be discussed and settled with a view to improving efficiency of operations, customer service, utilisation of manpower, discipline and maintaining harmonious industrial relations.

(F) The parties initially agreed after negotiations that the total quantum of wage increase arising out of a Settlement to be signed in this regard shall be Rs.1,288 crores per annum including the cost of superannuation benefits and accordingly exchanged minutes on 23rd November 2004 at Mumbai. It is agreed that for the purpose of this settlement, the additional cost of pension be shared between the parties at the ratio as agreed and pension costed accordingly.”

Para 7 of the Settlement dealt with Dearness Allowance which was provided at following rates:

“1. (i) Subordinate Staff

0.18% of ‘pay’

(ii) Clerical Staff

(a) 0.18% of ‘pay’ upto Rs.9,650/- plus

(b) 0.15% of ‘pay’ above Rs.9,650/- and upto Rs.15,350/- plus

(c) 0.09% of 'pay' above Rs.15,350/- and upto Rs.16,350/-.

(d) 0.04% of 'pay' above Rs.16,350/-.

2. On and from 1st February, 2005, Dearness Allowance shall be payable at 0.18% of Pay."

Para 38 provided for implementation of various provisions of the Settlement and insofar as "Dearness Allowance- Single Slab Rate (0.18% of pay)", the date of implementation was stated to be 01.02.2005.

6. On 02.06.2005 itself, a Joint Note with caption, "Salary Revision for Officers–Conclusion of Discussions between the Indian Banks and the Officers' Association" was prepared. It recited, "The representatives of the Officers' Associations have also agreed that the existing service conditions be modified to the extent what has been stated in Annexure I." Annexure I to the Joint Note inter alia dealt with Dearness Allowance and the relevant paragraph of said Annexure I was to the following effect:

"2) Dearness Allowance

(a) For the period from 1st November 2002 to 31st January, 2005, Dearness Allowance shall be payable for every rise or fall of 4 points over 2288 points in the quarterly average of the All India Average Working Class Consumer Price Index (General) Base 1960=100 at the following rates:

- (i) 0.18% of 'pay' upto Rs.9,650/- plus

- (ii) 0.15% of 'pay' above Rs.9,650/- and upto Rs.15,350/- plus
- (iii) 0.09% of 'pay' above Rs.15,350/- and upto Rs.16,350/-.
- (iv) 0.04% of 'pay' above Rs.16,350/-.

(b) On and from 1st February, 2005, Dearness Allowance shall be payable for every rise or fall of 4 points over 2288 in the quarterly average of the All India Average Working Class Consumer Price Index (General) Base 1960=100 at 0.18 of Pay.”

7. The Bipartite Settlement dated 02.06.2005 was operational for a period of five years from 01.11.2002. Thereafter 9th Bipartite Settlement was arrived at between the parties on 27.04.2010 and was made operational for five years from 01.11.2007. Clause 7(2) of the 9th Bipartite Settlement was as under:-

“(i) On and from 1.05.2005, in the case of employees who retired during the period 1.04.1998 to 31.10.2002, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every four points over 1684 points in the quarterly average of the All India Average Consumer price Index for Industrial Workers in the series 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension Per month (1)	The rate of Dearness Relief payable as a percentage of Basic Pension 0.24 per cent (2)
(i) Up to Rs.3550	0.24 per cent.

(ii)	Rs.3551 to Rs. 5650	0.24 per cent of Rs.3550 plus 0.20 per cent of basic pension in excess of Rs.3550.
(iii)	Rs.5651 to Rs.6010	0.24 per cent of Rs.3550 plus 0.20 per cent of the difference between Rs.5650 and Rs.3550 plus 0.12 per cent of basic pension in excess of Rs.5650.
(iv)	Above Rs.6010	0.24 per cent of Rs.3550 plus 0.20 per cent of the difference between Rs.5650 and Rs.3550 plus 0.12 per cent of the difference between Rs.6010 & Rs. 5650 Plus 0.06 per cent of basic pension in excess of Rs.6010.

(ii) In respect of retirees for the period 01.11.2002 to 30.04.2005 for whom pension has been revised w.e.f. 01.05.2005 based on definition of pay in terms of Clause 6 of the Bipartite Settlement dated 2nd June, 2005, dearness relief shall be payable w.e.f. 01.05.2005 for every rise or be recoverable for every fall as the case may be of every four points over 2288 points in the quarterly average of All India Average Consumer Price Index for Industrial Workers in the series 1960=100@0.18% of the basic pension.

(iii) In respect of employees who retire on or after 1.05.2005, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every four points over 2288 points in the quarterly average of All India Average Consumer price index for Industrial Workers in the series 1960=100, at the rate of 0.18 per cent of basic pension.

(iv) In respect of employees who retired or died while in service on or after 1.05.2005 Dearness Relief shall be payable at 0.18% of the basic pension or family pension or invalid pension or compassionate allowance as the case may be.

Dearness Relief in the above manner shall be paid for every rise or fall of 4 points over 2288 points in the quarterly average of the All India Average Consumer Price Index for industrial workers in the series 1960=100.

Note: The Dearness Relief as above shall be payable for the half year commencing from the 1st day of February and ending 31st day of July on the quarterly average of index figures published for the months October, November and December of the previous year and for the half year commencing from 1st day of August and ending with the 31st day of January on the quarterly average of the index figures published for the months of April, May and June of the same year.”

8. Thus, in case of employees who had retired during the period 01.04.1998 to 31.10.2002, dearness relief at the rate of 0.24% was awardable upto Rs.3550/- of basic pension per month and thereafter the percentage for amounts in excess of Rs.3550/- was successively at reduced rates. On the other hand, in case of employees who retired during the period 01.11.2002 to 30.04.2005 the percentage of 0.18% was without any such tapering formula. Further, comparison with Appendix II as originally forming part of the Pension Regulations shows that with respect to three categories of retirees the dearness relief was earlier computed on tapering formula. The idea of tapering formula under the Bipartite Settlement dated 27.04.2010 was retained with respect to pre November 2002 retirees while the dearness relief to post November 2002 retirees was to be at the flat rate of 0.18 %.

Please refer to the instructions contained in paragraphs 2 (ii), (iii) and (iv) of circular CO.HRDD.No.G.97/7704/17.06.05/2007-08 dated February 1, 2008 with regard to payment of Dearness Relief in respect of employees retired before November 1, 2002.

2. It has been decided that, with effect from March 1, 2008, in supersession of the above instructions, the Dearness Relief in respect of employees who retired/died in harness before November 1, 2002, may be paid as per the rates indicated below:

Pension/family pension based on	Rate of Dearness Relief for the period March 1, 2008 to July 31, 2008.
Payscale effective from November 1, 1997 (CPI = 1684)	82.32% of pension/family pension.
Payscale effective from November 1, 1992 (CPI = 1148)	166.95% of pension/family pension
Payscale effective from November 1, 1987 (CPI=600)	411.38% of pension/family pension

3. The instructions contained in the “Note” at the end of paragraphs 2(iii) of the abovementioned circular will stand modified to that extent. You are requested to recalculate the Dearness Relief and make payment accordingly.

Yours faithfully,

(A.K. Sarangi)
General Manager”

(B) CIRCULAR DATED 01.08.2008

“RESERVE BANK OF INDIA
www.rbi.org.in

CO.HRDD.No.G 46/1344/17.06.05/2008-2009

August 1, 2008
Shravana 10, 1929 (Saka)

The Principal Chief General Manager/
Regional Director/
Chief General Manager-in-Charge/
Chief General Manager/
General Manager (Officer-in-Charge),
Principal,
Reserve Bank of India

Dear Sir,

Payment of Dearness Allowance/Dearness Relief

Based on All-India Consumer Price Index numbers for Industrial Workers (base 1960 = 100) available for the quarter ended June 2008, rate of Dearness Allowance for the quarter August 2008 to October 2008 for employees in Classes I, III and IV, drawing pay in the scales of pay based on CPI = 2288, works out to 39.78% of pay, half of 79.56%.

2. The rates of Dearness Relief on Pension/Family Pension/Ex-Gratia, for the period August 2008 to January 2009, shall be worked out as under:

(i) On Pension based on the revised pay scales effective from November 1, 2002 – 39.78% of basic pension.

(ii) The rates of Dearness Relief in respect of employees who retired/died in harness before November 1, 2002:

Pension/family pension based on	Rate of Dearness Relief for the period August 2008 to January,
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	2009
Pay-scales effective from November 1, 1997 (CPI = 1684)	89.28% of pension/family pension
Pay-scales effective from November 1, 1992 (CPI = 1148)	177.10% of pension/family pension
Pay-scales effective from November 1, 1987 (CPI = 600)	430.81% of pension/family pension

3. You may please arrange to calculate and pay the Dearness Allowance on "Pay" Dearness Relief on Pension, Family Pension and Ex-Gratia amount, on the above basis, unless you receive instructions from Central Office contrary to above.

Yours faithfully,

(Neeraj Nigam)
Deputy General Manager"

10. Since the benefit of grant of full compensation against price rise on dearness relief as was extended by Reserve Bank of India, was not extended to the retirees of United Bank of India who had retired prior to 01.11.2002, Respondent Nos.1 to 4 herein preferred Writ Petition No.507 of 2012 in the High Court at Calcutta. It was submitted that though Reserve Bank of India started giving full compensation against price rise on dearness relief to retirees prior to 01.11.2002 vide circulars dated 01.04.2008, 01.08.2008 and 01.07.2010, the Appellant Bank continued to make distinction in terms of

dearness relief on the basis of dates of retirement of the pensioners and that such action on part of appellant was clearly opposed to para 6 of the Settlement dated 29.10.1993. Submitting that the cut-off date fixed by Appellant Bank was in violation of Reserve Bank of India formula as well as was arbitrary and irrational, the respondent Nos.1 to 4 claimed full compensation against price rise on dearness relief. By way of example cases of respondent Nos.3 to 4 were presented in para 30 of the petition in support of the submission that the retirees prior to 01.11.2002 were getting prejudiced. Said para 30 of the petition is quoted here for ready reference.

“30. The loss being suffered every month by the petitioner Nos. 3 and 4 for denial of RBI dearness relief formula on pension is as follows:-

Santipriya Roy

Date of Retirement 30.09.2002

Basic Pension Rs.7880/-

Dearness Relief per slab on slab basis

Rs.3550/- x 0.24%	Rs.8,520/-
Next Rs.2100/- x 0.20 %	Rs.4,200/-
Next Rs.360/- x 0.12%	Rs.432/-
<u>Next Rs. 1870/- x 0.06%</u>	<u>Rs.1,122/-</u>
Rs.7880/-	Rs.14,274/-

Dearness Relief for full compensation against price rise

Rs.7880/- x 0.24%	Rs.18,912/-
Difference per slab Rs.18,912/- (-) Rs.14,274/- =Rs.4,638/-	
Total D.R. on Slab basis	Rs.14,274/- x 708 slab Rs.10,105.99
Total D.R. on 100%	Rs.18,912/- x 708 slab Rs.13,389.69

Difference = Rs.3,283.70	

Kalpataru Bhattachajee

Date of Retirement 31.10.2002

Basic Pension	Rs.5431/-
Dearness Relief per slab on slab basis	
Rs.3550/- x 0.24%	Rs.8,520/-
<u>Next Rs.1881/- x 0.20%</u>	<u>Rs.3,762/-</u>
Rs.5431/-	Rs.12,282/-

Dearness Relief per slab for full compensation against price rise.

Rs.5431/- x 0.24%	
Rs.13,034/-	
Difference per slab Rs.13,034/- (-) Rs.12,282/- =Rs.752/-	
Total D.R. on Slab basis	Rs.12,282/- x 708 slab Rs.8,695.65
Total D.R. on 100%	Rs.13,034/- x 708 slab Rs.9,228.07

Difference Rs.532.42”	

11. In the affidavit in reply filed on behalf of the appellants it was *inter alia* submitted that Pension Regulations having come into force in 1995 the settlement dated 29.10.1993 had no force and as such no benefit could be drawn on the basis of Regulations or Circulars issued by Reserve Bank of India. It was further submitted that the distinction in respect of retirees prior to 01.11.2002 was on the basis of a Bipartite Settlement dated 27.04.2010 and thus the genesis was stated to be in the agreement between the parties.

12. The aforesaid writ petition was allowed by Single Judge of the High Court vide judgment and order dated 04.03.2015. It was observed that there was nothing in Pension Regulations indicating that the Appellant Bank had abandoned its policy as spelt out in para 6 of the Settlement of 1993 to follow the rates of relief and formula adopted by Reserve Bank of India. Relying upon the decision of this Court in ***D.S. Nakara v. Union of India***¹, it was observed that the classification made in the instant case denying the benefit of full dearness relief to retirees prior to 01.11.2002 was arbitrary and irrational. The Single Judge however directed the Appellant Bank to take a reasoned decision with regard to grant of 100% dearness relief to retirees prior to 01.11.2002.

¹ (1983) 1 SCC 305

13. The Judgment and order passed by the Single Judge directing the appellant Bank to take fresh decision was questioned by the respondent Nos.1 to 4 by filing APO No.315 of 2015, while the appellant bank questioned the decision by filing APO No.316 of 2015, in so far as the findings rendered and directions issued by the Single Judge were concerned. Both these appeals were disposed of by the Division Bench on 26.09.2016. The Division Bench relied upon the decision of this Court in ***D.S. Nakara*** (supra) and in ***Kallakkurichi Taluk Retired Officials Association Tamil Nadu and others v. State of Tamil Nadu***² and observed as under:

“The effect of the joint note is that employees who retired before the cut-off date would get dearness relief at a lower rate than those who retired after that date. The dearness relief paid is relatable to the cost of living index and varies in direct proportion to the same. It must be borne in mind that dearness relief is an amount paid to the retirees to neutralise the astronomical rise in prices. The object of paying dearness relief is the same, irrespective of the date on which the employee retires. Inflation hits the employees who retire before the cut-off date as hard as it does those who retire later. Therefore the dearness relief cannot be different for two sets of retirees.”

It further observed as under:

“There is no dispute that the Bank Pension Regulations, 1995 have not been amended. These Regulations have been framed in consonance and under the powers conferred on the Bank

² (2013) 2 SCC 772

under the Banking Companies Act. They have a statutory force of law. Clause 6 of the Pension regulations mandates that the dearness relief will be paid to the employees of the member banks in consonance with that paid by the Reserve Bank of India to its employees. Therefore a joint note cannot take away the right of employees to that dearness relief.”

Holding the distinction between pre-November 2002 retirees and post-November 2002 retirees to be unreasonable, arbitrary and discriminatory the Division Bench directed the appellant to pay the dearness relief to all pensioners at the same rate. The direction was issued in following terms:

“Therefore, we direct the Bank to comply with Regulation 6 of the Pension Regulations and to pay pension to the pre-2002 retirees at the same rate as enjoyed by the post-2002 retirees, as has been paid to the retired employees of the Reserve Bank of India. The judgment of the learned Single Judge is modified to that extent.”

14. The appellant preferred Review Applications being RVWO Nos.57 and 58 of 2016 submitting that the decision dated 26.09.2016 required certain typographical changes. The Division Bench of the High Court vide its order dated 05.12.2016 effected changes as stated therein and disposed of the Review Applications.

15. The appellant bank being aggrieved, challenged the decisions dated 26.09.2016 and 05.12.2016 rendered by the Division Bench by filing these appeals by special leave on or about 07.02.2017. By that time, a decision rendered by Division Bench of Madras High Court in Writ Appeal Nos.355 of 2013 and allied matters on 17.06.2013 was affirmed by this Court by dismissing appeals arising therefrom on 01.02.2017.

16. At this stage it may be noted that Writ Petition Nos.50000-50002 of 2006 and allied writ petitions titled as A.B. Kasturirangan v. Canara Bank etc. were allowed by Single Judge of Madras High Court by judgment and order dated 14.12.2012. The challenge was to the non-grant of benefit of 100% neutralization of dearness relief to retirees prior to 01.11.2002 on lines similar to the challenge raised in the present matters. It was observed by the Single Judge that the Bipartite Settlement dated 02.06.2005 introduced dearness relief at the slab rate of 0.18% of the basic pension; that the change from tapering rate of slab rate was not an introduction of a new scheme but was a modification of the existing one. He further observed that the classification introduced by the bank was artificial and arbitrary and was not based on any rational principle and that the bank had virtually created class within a class. The matter was carried in appeal. While allowing the

appeals and setting aside the decision of the Single Judge, the Division

Bench observed as under:

“... the settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust and it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. It has been further held that unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust and the settlement has to be accepted or rejected as a whole.

.....

... in the case on hand, the respondents are not covered by the 8th Bipartite Settlement/Joint Note and they were covered by earlier Bipartite Settlement/Joint Note and they are not eligible to get the benefits payable to the persons who are covered by the 8th Bipartite Settlement/Joint Note as they were made applicable only to those employees who were in service on 01.11.2002. The payment of pension and other related benefits are covered by the earlier Settlement/Joint Note and hence, it is not open to the respondents to contend that the benefits in the form of Dearness Allowance at 0.18% is to be given to them. In the considered opinion of this Court, the respondents are not covered under the 8th Bipartite Settlement/Joint Note and hence, the above cited judgment has no application to the case on hand.”

This view was under challenge in Civil Appeal Nos.8420-8421 of 2013 and was affirmed by this Court on 01.02.2017.

17. The appellant in the present matters contended inter alia that the view taken by Division Bench of Madras High Court was already affirmed by this Court by dismissing the appeal therefrom on 01.02.2017; that the retirees prior to 01.11.2002 could not claim same benefit/parity at par with those who retired after 01.11.2002; that the dearness allowance payable to the pensioners was linked to the pay and pre 01.11.2002 retirees were being paid pension or dearness relief thereon as per service conditions applicable to them at the time of retirement; that the decision of this Court in ***D.S. Nakara*** (supra) would not be applicable in the present case and that the High Court was in error in relying upon para 6 of Settlement dated 29.10.1993 as said settlement had worked itself out. In its affidavit in reply the Retirees Association submitted inter alia that in the Bipartite Settlement dated 02.06.2005, 100% neutralization of dearness allowance was introduced for the first time by doing away with tapering rate of payment of dearness allowance and post 01.02.2005 dearness allowance was to be paid at a single slab rate of 0.18%. However, by subsequent Bipartite Settlement dated 27.04.2010 a distinction was made between pre and post 01.11.2002 retirees. The respondents submitted that the view taken by the High Court did not call for any interference.

18. In this appeal, we heard Mr. Dhruv Mehta, learned Senior Counsel for the appellant – Bank while the respondent namely Retirees Welfare Association was represented by Mr. V.K. Bali, learned Senior Counsel. Mr. A.S. Nambiar and Ms. V. Mohna, learned Senior Counsel appeared in IAs 51316 and 50769 respectively for interveners.

19. Before we deal with the controversy in the present matters, the law on the point as laid down by this Court may be adverted to:

A] In *D.S. Nakara & Others* (supra) the principal question which arose was, “is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date.”³The inquiry was limited to non-contributory superannuation or retirement pension paid by government to its erstwhile employee and for the purpose and object underlying it.⁴ In that case formula for computation of pension was liberalized vide office memorandum dated 25.05.1979 but the benefit was restricted to those government servants who were in service on 31.03.1979 and retired on or after that date. The challenge was to arbitrary division of a homogenous class by fixing the eligibility criteria unrelated to the purpose of revision. In that context the

³ Para 2 of *D.S. Nakara*

⁴ Para 21 of *D.S. Nakara*

observations of this Court in Para 42 are relevant. Said Para 42 was as under:

“42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs.8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs.12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this

arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.”

B] The principle laid down in *D.S. Nakara* (Supra) was explained in two decisions rendered by Constitution Benches of this Court in *Krishena Kumar v. Union of India and Others*⁵ and in *Indian Ex-Services League and Others v. Union of India and Others*⁶. Paragraphs 12 and 14 of the latter decision in *Indian Ex-Services League* (Supra) were as under:

“12. The liberalised pension scheme in the context of which the decision was rendered in *Nakara* provided for computation of pension according to a more liberal formula under which “average emoluments” were determined with reference to the last ten months’ salary instead of 36 months’ salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a

⁵ (1990) 4 SCC 207

⁶ (1991) 2 SCC 104

scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated 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 retired later'. This according to us is the decision in *Nakara* and no more.

14. *Nakara* decision came up for consideration before another Constitution Bench recently in *Krishena Kumar v. Union of India*. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in *Nakara* that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in *Nakara*, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read *Nakara* decision as one of 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 the reckonable emoluments for the purpose of computation of their pension be different.”

C] In *Union of India v. P.N. Menon and Others*⁷ the challenge to the cut off date and prayer for extension of similar relief of treating a portion of dearness allowance as pay for the purpose of retirement benefits was the subject matter. While accepting the appeal and negating the challenge raised by the concerned retirees, this Court in paragraphs 10 and 11 observed as under:

“10. The concept of ‘dearness pay’ was evolved in respect of employees in different pay ranges with different percentages of the dearness pay. Thereafter the pension and gratuity were worked out and an option was given to persons, who retired on or after 30-9-1977 but not later than 30-4-1979, to choose either of the two alternatives — (i) to have their pension and death-cum-retirement gratuity calculated on their pay excluding the element of dearness pay as indicated in paragraph 2 of the said office memorandum; or (ii) to have their pension and death-cum-retirement gratuity recalculated after taking into account the element of dearness pay. If the stand of the respondents is to be accepted that this scheme should have been made available, without there being a cut-off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, according to us, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index. Different institutions/departments have introduced the system of payment of dearness allowance at different stages to mitigate the hardship of their employees with the rise in the prices of the essential articles as a result of the inflation.

11. On behalf of the Union of India, it has been stated that in the aforesaid office memorandum dated 25-5-1979, 30-9-1977 was fixed as the cut-off date, with reference to the average cost of living index at 272, which fell on 30-9-1977. It has been

⁷ 1994 (4) SCC 68

further stated that those who were entitled to the benefits of the said office memorandum, were given option either to opt for the revised formula or retain the existing formula. Some of the persons entitled to the new formula opted to retain their existing position, because in their case the application of the new formula would have resulted either in the reduction of the total pension or the increase which would have been only marginal. It has been said that under the office memorandum aforesaid, dearness allowance with reference to average price index level at 272 was treated as dearness pay for the purpose of pension for those who retired after 30-9-1977. It has also been pointed out that pensioners, who retired on or after 30-9-1977 with the benefits of dearness pay, became entitled to less dearness relief, as compared to those who retired before 30-9-1977 or retired after 30-9-1977, but had opted not to get the benefit of the impugned office memorandum.”

D]. In *State of Punjab v. Justice S.S. Dewan (Retired Chief Justice) and Others*⁸ by way of an amendment, the years put in by a judicial officer as an advocate prior to his induction in judicial service were to be added for computing length of service for the purpose of pension. The question was whether the State was justified in limiting this relief to those who retired after 22.02.1990. The ratio of decision in *D.S. Nakara* (Supra) was distinguished on the ground that the benefit conferred was a new benefit and not an upward revision of the existing pension scheme. This Court found that it was not a case of liberalization of the existing scheme but introduction of a new retiral benefit and as such the State was justified in making a

⁸ (1997) 4 SCC 569

distinction between the sets of retirees and limiting the benefit to those who retired after the cut off date. The observations in paragraphs 6 and 7 quoted hereunder are relevant:

“6. The change brought about by the amendment is that whereas in respect of death-cum-retirement benefits members of the Punjab Superior Judicial Service were earlier governed by the All India Services (Death-cum-Retirement Benefits) Rules, now they are governed by the Punjab Civil Services Rules. Moreover, now in the case of a direct recruit to the Punjab Superior Judicial Service the actual period of practice at the Bar not exceeding 10 years has to be added to his service for the purpose of determining the qualifying service. Formerly, that is, prior to 22-2-1990, qualifying service of a member of the Punjab Superior Judicial Service was the length of service rendered by him as a member of the Punjab Superior Judicial Service and also as a Judge of the High Court, if he was elevated to that position before retirement. Even in case of a direct recruit to that Service his standing at the Bar was irrelevant but now that period has to be added for determining the qualifying service. Obviously, this enlargement of the period of qualifying service would lead to an increase in the quantum of pension. This has been regarded by the High Court and as contended by the respondent, liberalisation of the pension scheme. For that reason, it further held that benefit of a rule liberalising pension cannot be restricted to persons retiring subsequently that is after the date of such liberalisation otherwise it would amount to vicious discrimination violative of Article 14 of the Constitution. The High Court has also held that there is nothing in the language of the rule to suggest that the benefit conferred by it is confined to the persons retiring after 22-2-1990.

7. Therefore, what we have to consider is what is the nature of the change made by the amendment. Is it by way of upward revision of the existing pension scheme? Then obviously the

ratio of the decision in *D.S. Nakara* case would apply. If it is held to be a new retiral benefit or a new scheme then the benefit of it cannot be extended to those who retired earlier.”

E] In *Col. B.J. Akkara (Retd.) v. Government of India and Others*⁹ The principles to be considered in such matters were culled out in para 20 as under:

“20. The principles relating to pension relevant to the issue are well settled. They are:

(a) In regard to pensioners forming a class, computation of pension cannot be by different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(b) But all retirees retiring with a particular rank do not form a single class for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where

⁹ (2006) 11 SCC 709

their average reckonable emoluments at the time of their retirement were different, in view of the difference in pay, or in view of different pay scales being in force.

(c) When two sets of employees of the same rank retire at different points of time, it is not discrimination if:

(i) when one set retired, there was no pension scheme and when the other set retired, a pension scheme was in force;

(ii) when one set retired, a voluntary retirement scheme was in force and when the other set retired, such a scheme was not in force; or

(iii) when one set retired, a PF scheme was applicable and when the other set retired, a pension scheme was in force.

One set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the “same class” or “homogeneous group”. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment.”

F] In *Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Others v. State of Tamil Nadu*¹⁰ the effect of government orders as regards pension was that employees retiring on or after 01.06.1988 were at a disadvantage as against those who had retired before 01.06.1988. Paragraphs 38 and 39 of said decision are quoted hereunder:

¹⁰ (2013) 2 SCC 772

“38. The instant controversy should not be misunderstood as a determination of the total carry-home pension of an employee. All the government orders referred to above, deal with the quantum of “dearness allowance” to be treated as “dearness pay” for the calculation of pension. “Dearness pay” is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on “dearness pay”, rather than on the eventual carry-home pension. The relevance and purpose of treating “dearness allowance” as “dearness pay”, has been brought out in the foregoing paragraphs. Therefore, clearly, the object sought to be achieved by adding “dearness pay” to the wage of a retiree, while determining pension payable to him, is to remedy the adverse effects of inflation. The aforesaid object has to be necessarily kept in mind, while examining the present controversy. Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India.

39. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the appellants herein (who had retired after 1-6-1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1-6-1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of “dearness pay” to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government Order dated 9-8-1989 placing employees who had retired after 1-6-1988 at a disadvantage, vis-à-vis the employees who had retired prior thereto, by allowing them a lower component of “dearness pay”, is clearly arbitrary and discriminatory, and as such, is liable to be set aside as violative of Articles 14 and 16 of the Constitution of India.”

20. In the light of the principles laid down by this Court as aforesaid, let us now consider factual perspective in the present matters.

21. At the outset it must be stated that Appendix II to the Pension Regulations had categorized employees in three different segments and the dearness relief payable on basic pension in respect of employees in these three categories was on the basis of tapering formula which differed in each of the categories. In respect of those who were in the first category i.e. those who had retired earliest, the dearness relief was 0.67% on the first slab namely upto Rs.1250/- of basic pension. The rate then tapered and finally was 0.17% of basic pension in excess of Rs.2130/-. At the same time in respect of retirees in the second category, the rate of dearness relief was 0.35 per cent in respect of first slab namely upto Rs.2400/-. Here also the dearness relief was on a tapering formula and finally was 0.09% of basic pension in excess of Rs.4100/-. The third category which was in respect of employees who retired after 01.04.1998, the rate was 0.25% for the first slab upto Rs.3380/-. Going by the tapering formula, the rate was 0.06 per cent of the basic pension in excess of Rs.5770/-. If Clause 7(2) of the 9th Bipartite Settlement dated 27.04.2010 is compared with the last category of the

Appendix II of the Pension Regulations, there is hardly any change in respect of retirees during the period 01.04.1998 to 31.10.2002. Thus, whatever benefit was conferred and was enjoyable by the employees who retired before November 2002 was not taken away.

22. If both categories dealt with by 9th Bipartite Settlement dated 27.04.2010 are further compared, the retirees prior to 01.11.2002 would be entitled to dearness relief on a tapering formula where the initial slab upto Rs.3550/- is to be governed by quotient of 0.24%. The tapering formula then ends with 0.06% of basic pension in excess of Rs.6010/-. The starting point is at a level of 0.24% while the end point tapers to 0.06%. The maximum advantage is sought to be given to those who are getting basic pension at lower levels of slab who would get the dearness relief at 0.24%. As against this, the retirees after 01.11.2002 are to be given dearness relief at a flat rate of 0.18% of the basic pension. Theoretically, the starting level for the retirees prior to 01.11.2002 is at a higher level of 0.24% as against the retirees after 01.11.2002. It could possibly be said that for those who are with basic pension in the region of Rs.6000/-, on the basis of a tapering formula may well, in the ultimate analysis, average to the same level of 0.18%.

23. The parity that was sought in the petition was not so much regarding applicability of same rate of 0.18% but was in respect of “flat rate” idea. The illustrations given in para 30 of the writ petition that we have quoted hereinabove bring home the point. The calculation of dearness allowance of Rs.14274/- on basic pension of Rs.7880/- in the case of Santipriya Roy is in keeping with tapering formula as given in the Bipartite Settlement dated 27.04.2010. The tabular chart then proceeds to calculate full compensation on account of dearness allowance with slab rate of 0.24% on the entire basic pension of Rs.7880/- which figure comes to Rs.18912/-. Thus the submission was that the dearness relief be computed on 0.24% for the entirety of basic pension and not just for the first slab upto Rs.3550/-. But such calculation completely disregards that rate which is a flat rate applicable in case of post 01.11.2002 retirees is not 0.24% for the entire amount of basic pension but at a different level of 0.18% and the threshold requirement of quarterly average of the Index is also different. If we were to simply borrow the same rate of 0.18% in the case of retirees prior to 01.11.2002, the concerned retirees may well be at a disadvantage. For instance, the basic pension of Rs.7880/- of said Santipriya Roy would yield a figure of Rs.14184/- with flat rate of 0.18%. It will not therefore be correct

to adopt and apply the same rate as is made applicable in case of post 01.11.2002 retirees. What is prayed for is also not the same rate but the same principle, namely, flat rate be made applicable to pre 01.11.2002 retirees as well but at a rate of 0.24%.

24. Would that be the correct approach? The tapering formula undoubtedly begins with 0.24% for the first segment of Rs.3550/- of basic pension and then progressively steps down and finally reaches the level of 0.06% where the basic pension is in excess of Rs.6010/-. What is devised by way of such tapering formula is higher rate at the lower levels of segments so that larger number of peoples would get maximum advantage and the rate thereafter keeps stepping down. Neither can we apply the rate of 0.18% which will then cause great harm and damage to the retirees nor can we adopt a flat rate of 0.24% for the entire amount of basic pension. The benefit which is sought to be conferred by the tapering formula lies in the averaging which comes to near about the same quantum as is given to the post 01.11.2002 retirees. At this stage it is noteworthy that no illustration has been placed on record to submit that even with 0.18% dearness allowance those who retired after November 2002 walk away with substantially greater advantage as against pre November 2002 retirees. In

any case, this is not a matter where a section of employees merely on account of date of retirement are being differentiated. If we adopt a flat rate of 0.24% as is being prayed for, the class of retirees who retired before 01.11.2002 will stand conferred better rate than those employees who retired after 01.11.2002. Nor can we apply a flat rate of 0.18% for them. Each class is governed by distinct and different parameters. These are all matters of policy making. The conferral of advantages of benefits on two different classes of retirees has a completely distinct formula and rates and it would not be possible to have a synthesis on any count or to put both the sets of retirees on any common parameters. Both classes are distinct and do not form a homogenous group. It would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected. It is not a case of creating a class within a class.

25. In our view any attempt to tinker with either the formula or the rate would make the whole scheme unworkable as was cautioned by this Court in the case of *P.N. Menon and Others* (supra). As held in the case of *Indian Ex-Services League and Others* (supra) the decision of this Court in *D.S. Nakara* (supra) is one of limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the

retirees or a demand for an identical amount of pension irrespective of the date of retirement. The reliance on the resolutions/circulars issued by Reserve Bank of India was also misplaced. It is true that the tapering formula was done away with by Reserve Bank of India but that by itself cannot entitle the retirees prior to 01.11.2002 either to be conferred the advantage at the same rate made applicable by Reserve Bank of India or at the flat rate of 0.24% as was sought to be projected.

In our considered view, the assessment made by the Division Bench of the Madras High Court was absolutely correct. The settlement has to be taken as a package deal and it would be impossible to hold certain parts good and acceptable while finding other parts to be bad. Moreover, the recitals D, E and F in the Bipartite settlement dated 02.06.2005 (quoted hereinabove) show that a package deal was entered into and Rs.1288 crores per annum towards all the benefits was set apart for the benefit of the employees. Any stepping up of benefit for a section of employees is bound to inflate the figure of Rs.1288 crores per annum though that by itself is not a ground that weighs with us. In our view both the categories of retirees, namely, pre November 2002 and post November, 2002 stand on different footing, the parameters which govern the computation of dearness relief are also on a different level. The decisions rendered by the Single Judge as well

as by the Division Bench of the High Court failed to appreciate these aspects and in our view, the said decisions are completely erroneous.

26. It may also be noted that the decision of the Division Bench of the Madras High Court having been confirmed by this Court, the matter stands concluded. As has been observed in paragraphs 32, 41 and 44 of *Kunhayammed and Others v. State of Kerala and Another*¹¹, once leave to appeal had been granted and the appellate jurisdiction of this Court was invoked the order passed in appeal would attract the doctrine of merger. Be that as it may, we are satisfied that the Bipartite Settlement did not create any distinction which was inconsistent with the principles laid down by this Court.

27. We therefore allow these appeals, set aside the judgments and orders passed in the appeals and dismiss Writ Petition No.507 of 2012 preferred by respondent Nos.1 to 4 herein. No order as to costs.

.....J.
(Adarsh Kumar Goel)

¹¹(2000) 6 SCC 359

.....J.
(Uday Umesh Lalit)

New Delhi,
May 16, 2018