

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

PRESENT:

**The Hon'ble Justice Nishita Mhatre
And
The Hon'ble Justice Tapabrata Chakraborty**

**APO 315 of 2015
WP 507 of 2012**

**United Bank of India Retirees' Welfare Association & Ors.
...Appellants**

Vs.

United Bank of India & Ors.

...Respondents

with

**APO 316 of 2015
WP 507 of 2012**

United Bank of India & Ors.

...Appellants

Vs.

United Bank of India Retirees' Welfare Association & Ors.

...Respondents

For the Appellants in APO 315 of 2015
and Respondents in APO 316 of 2015

: Mr. Lakshmi Kumar Gupta
Mr. Swapan Kumar Dutta
Mr. Dipankar Dasgupta

For the Respondents in APO 315 of 2015
and Appellants in APO 316 of 2015

: Mr. R. N. Majumdar
Mr. Sourav Chakraborty

For Union of India

: Mr. Vipul Kundalia

Heard on : 22.08.2016

Judgment on : 26.09.2016

Nishita Mhatre, J.:

1. These appeals are directed against the decision of the learned Single Judge dated 4th March, 2015 in W.P. 507 of 2012. The Appeal

APO No.316 of 2015 has been filed by the United Bank of India (hereinafter referred to as “the Bank”) and APO No. 315 of 2015 has been preferred by the United Bank of India Retirees’ Welfare Association (hereinafter referred to as “the Association”).

2. The issue involved in the present appeals is whether an invidious classification can be made between employees, who retired before 1st November, 2002 and those who retired later from the Bank, with respect to payment of dearness relief with their pension.

3. The employees of the Bank are governed by the United Bank of India (Employees’) Pension Regulations, 1995 (hereinafter referred to as “the Pension Regulations”) which are statutory in nature. These Regulations came into effect in 1995 and prescribed the rates of pension which are payable to the employees of the Bank on retirement. Under Clause 6 of the Pension Regulations dearness relief was granted to pensioners at rates which were determined from time to time in tune with the dearness relief formula in operation in the Reserve Bank of India. The dearness relief was paid to the pensioners on the basis of the calculations set out in the Pension Regulations. The Reserve Bank of India issued a circular granting 100 per cent dearness relief to post-November, 2002 retirees, but no such relief was granted to the prior retirees. The appellant Bank thereafter, however, did not pay 100 per cent dearness relief to the pre-November, 2002 retirees. Circulars were issued by the Reserve Bank of India from time to time modifying the dearness relief payable to the pensioners of the Reserve Bank of India

and ultimately it was decided to extend the benefit of 100 per cent dearness relief to those who had retired pre-November, 2002 as well. However, on 28th June, 2005 pursuant to a Bipartite Settlement/joint note dated 2nd June, 2005 the terms and conditions for payment of dearness relief on basic pension were altered. The dearness relief to be paid to those who had retired between 1st April, 1998 and 31st October, 2002 was to be calculated on the basis of 4 points rise over 1684 points in the quarterly average of the All India Average Consumer Price Index for Industrial Workers in the series 1960=100. This calculation was to be made on a slab system; the rate of dearness relief as a percentage of basic pension being different for each slab. However, those employees who retired after 1st May, 2005 were entitled to dearness relief for 4 points rise over 2288 points of the CPI at the rate of 0.18 per cent of the basic pension. As a result, those who retired between 1st April, 1998 and 31st October, 2002 were paid less dearness relief than those who retired after that date. The neutralisation granted to the pre November 2002 retirees was less than 100 per cent on some of the slabs, whereas those who retired post November, 2002 were entitled to 100 per cent neutralisation of the cost of living index.

4. Being aggrieved by this invidious and arbitrary classification the Association filed a writ petition before this Court contending that there was no rational justification for the classification of the retirees into pre-2002 and post-2002 categories. It was pleaded that when the Pension Regulations did not create any such discrimination between the retirees, the Bank could not by means of circulars divide them into two

groups without any justifiable reason. The Association therefore sought the cancellation of the letter dated 22nd May, 2012 and for a direction against the Bank to pay all retirees pension under Regulation 37 of the Pension Regulations in accordance with law.

5. The learned Single Judge after hearing the parties found that the discrimination introduced by the Bank was arbitrary and without any rational justification. It was observed that the appellant Bank did not extend the same benefits to its employees as the Reserve Bank of India had granted to its employees and instead paid only those benefits which were due under the Bipartite Settlements/joint note. The submission of the Bank that, each bank was a separate entity and the service conditions of the employees in the Reserve Bank of India need not necessarily be same as those who were employed in other banks, was noted. The learned Judge accepted the submissions made on behalf of the Association that dearness relief should be paid to a pensioner which was in consonance with the dearness relief formula in operation in RBI as per Clause 6 of the Bipartite Settlement of 1993. The learned Judge observed that in view of the judgment of the Supreme Court in **D. S. Nakara & Ors vs. Union of India** reported in **AIR 1983 SC 130**, there could not be any arbitrary and irrational classification. It was observed that there was no intelligible difference between pre-1st November, 2002 retirees and those who retired thereafter; the artificial classification between the retirees was discriminatory. After observing that the Bank's action was clearly arbitrary and the pre-November, 2002 retirees were entitled to the same dearness relief as was granted to others, the

learned Judge directed the Board of the respondent Bank, in consultation with the Central Government and the Reserve Bank to take a reasoned decision in the light of the observations in the judgment regarding payment of 100 per cent dearness relief to pre-November, 2002 retirees of the Bank by 30th June, 2015.

6. Mr. R. N. Majumdar the learned Counsel appearing for the Bank has argued that the pension is payable under the Pension Regulations, 1995. He pointed out that these Regulations have been framed in exercise of the powers conferred under Clause (f) of Sub-Section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. He drew our attention to Chapter VI where the rate of pension has been stipulated. Regulation 37 speaks about dearness relief being due on the basic pension or family pension or invalid pension or on compassionate allowance in accordance with the rates specified in Appendix II of the Regulations. Dearness relief is also payable on full basic pension even after commutation of the pension. Appendix II has stipulated a slab system of payment of dearness relief dependent on the basic pension payable to an employee. Even under these Regulations he pointed out that there is a difference in rates payable to those who retired between 1st January, 1986 and 1st November, 1993. He submitted that by a Bipartite Settlement between their representatives of the Bank employees and the Indian Banks' Association it was decided to vary the rates of dearness relief. According to him, this modification has been

made after Bipartite Settlement arrived at between the parties under Section 2(s) read with Section 18(1) of the Industrial Disputes Act, 1947. He urged that no employee can change the rate agreed upon in the Bipartite Settlement which is set out in the joint note issued on 2nd June, 2005 by the parties. The learned Counsel submitted, therefore, that the Association of Retired employees had no locus to challenge the settlement between the Indian Banks Association and the unions representing the bank employees.

7. Mr. Majumdar could not really dispute the fact that there was no distinction between two sets of retired employees. Furthermore, he could not point out any justification for the same except by arguing that since it was decided and accepted by most of the banks in the country on the one hand and the unions and association representing the employees on the other, the retired employees could not question the same. The learned Counsel relied on the judgment in the case of ***M/s. Tata Engineering and Locomotive Co. Ltd. vs. Their Workmen*** reported in ***AIR 1981 SC 3163*** to fortify his submission that a microscopic minority of employees cannot question a settlement signed under Section 2(p) read with Section 18(1) of the Industrial Disputes Act. He also drew our attention to the decision of a learned Single Judge of this Court in ***Standard Chartered Grindlays Bank Retired Employees Association & Ors vs. Union of India & Ors*** reported in ***(2007) 2 CHN 66*** in support of his submission that retired employees are not workmen as defined under Section 2(s) of the Industrial

Disputes Act and therefore cannot raise any industrial dispute under the aforesaid Act.

8. It is trite that a settlement signed under Section 2(p) of the Industrial Disputes Act can bind only those who are party to the settlement. The members of the banking associations and the members of the unions who are signatories to such a settlement would be bound by it in the present case. The retired employees' association is admittedly not a party to the Bipartite Settlement which resulted in the joint note. Therefore, the Bipartite Settlement cannot contain provisions which would be to the detriment of retired employees. All the retired employees form a class by themselves *vis-a-vis* the employees who are working. The circulars or joint notes issued cannot bind the retired employees especially if they are adverse to their interest. By means of the joint note issued on 2nd June, 2005 the Bank has excluded the pre-2002 retirees from the benefits of the dearness relief payable to those who have retired after November, 2002. The aforesaid judgements therefore have no application to the facts in the present case.

9. As rightly argued by Mr. Lakshmi Kumar Gupta the learned Counsel appearing for the retired employees it is impermissible to make any classification between retirees depending on the date on which they retire. In the case of **D. S. Nakara** (supra) the Supreme Court observed that the Government was perfectly justified in introducing the pension scheme as it was long overdue but the Court found that there was no

justification for arbitrarily selecting two criteria for eligibility of the benefits of the scheme dividing the pensioners, all of whom would be on either side of the cut-off specified date. Mr. Gupta submitted that the observations in ***D. S. Nakara's*** case (supra) are applicable to the facts and circumstances in the present case. He has also drawn our attention to the judgment in ***Kallakurichi Taluk Retired Officials Association, Tamil Nadu & Ors and vs. State of Tamil Nadu*** reported in ***(2013) 2 SCC 772*** where the Supreme Court has frowned upon the State Government treating pensioners differently with respect to disbursement of dearness relief.

10. In the case of ***State of Bihar & Ors vs. Bihar Pensioners Samaj*** reported in ***(2006) 5 SCC 65*** the Supreme Court held that though fixing of a cut-off date for granting benefits was well within the powers of the Government, reasons for the same must not be arbitrary and have to be based on a rational consideration.

11. Mr. Gupta then urged that pension or any component thereof is property and can be forfeited only by following the due process of law. He urged that it is now well-settled that pension is property as understood under Article 300A of the Constitution of India. Therefore, the right to property cannot be taken away without due process of law in consonance of Article 300A of the Constitution of India. The learned Counsel submitted by relying on this judgment that the joint note cannot constitute "law" as understood in Article 300A and therefore, the

joint note which discriminates between retirees cannot have the force of law.

12. Pension is not a bounty or a bonanza for an employee, without cavil. It is a measure of social welfare and is paid to a retired employee for his meritorious service with the employer. In fact it is a deferred wage which is paid to the employee as observed by the Supreme Court in paragraph 25 in ***U.P. Raghavendra Acharya & ors vs State of Karnataka & ors*** reported in **(2006) 9 SCC 630**. Thus it would matter little if the employee retires on one day or the other. Pension has to be paid at the same rate to all employees, depending of course on the length of service and the last drawn salary. It is the property of an employee in terms of Article 300A. An employee cannot be deprived of his rightful claim to pension except in accordance with law. The joint note cannot be construed as “law” as it cannot govern the pension payable to retirees who were not in service when it was issued.

13. In ***Kallakurichi Taluk Retired Officials Association***, (supra) the Court was of the view that a valid classification would amount to a valid discrimination which is permitted only in terms of Articles 14 and 16 of the Constitution of India. The classification must necessarily adhere to two tests: (i) the distinguishing rationale has to be based on a just objective and (ii) the rationale must have a reasonable nexus to the objective sought to be achieved. The Court further observed that whenever a cut-off date is fixed to categorise one set of pensioners for favourable consideration over others, the twin tests aforesaid for valid

classification must necessarily be satisfied. Our attention has not been drawn with respect to the satisfaction of the aforesaid two tests. There is no rationale for the classification made between the retired employees depending on the date on which they retired. A just objective for such classification is not evident. Furthermore, there is no evidence of any objective sought to be achieved by distinguishing one set of retirees from another.

14. 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. The twin tests mentioned in ***Kallakkurichi Taluk Retired Officials Association***, (supra) are not satisfied in this case with the introduction of the joint note. We have not been able to decipher a just objective for the classification made amongst the retirees. No justifiable reasons for the differentiation have been brought to our notice. Therefore it is obvious that the classification is invidious and discriminatory.

15. After considering the conspectus of judgments cited at the Bar and on assessing the rival contentions, it is apparent that the only basis for the classification is the joint note issued on 2nd June, 2005. There does not appear to be any objective sought to be achieved by the classification of retired employees on the basis of their date of retirement. The retirees of post-November, 2002 have been granted dearness relief which allows for 100 per cent neutralisation. However, those who have retired between 1st April, 1998 and 31st October, 2002 have been denied this relief. Even those who have retired after 1st November, 2002 and till 30th April, 2005 have been granted dearness relief at 0.18 per cent of the basic pension.

16. 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 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. Furthermore, when the post-2002 retirees have been granted the benefit of pension at a certain rate, there is no reasonable and logical object for which the classification has been introduced to divide the retiree community.

17. In our opinion, therefore, the observations of the learned Single Judge with respect to the invidious classification introduced by the Bank are correct. As a consequence, the learned Single Judge ought to have directed the Bank to pay the dearness relief to all pensioners at the same rate, rather than directing the RBI to pass appropriate orders.

18. We find that the distinction, between the pre-November, 2002 retirees and post-November, 2002 retirees, is unreasonable, arbitrary and discriminatory. There is no justification for the same. Though each bank which is a member of the Indian Banks Association has a separate identity, the mandate of the Pension Regulations which have a statutory force of law, cannot be altered by a joint note. 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.

19. The appeal filed by the Bank is dismissed. The appeal filed by the Retired Employees' Association is allowed.

20. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.

(Tapabrata Chakraborty, J.)

(Nishita Mhatre, J.)

Later:

Mr. R. N. Majumdar, learned Counsel appearing for the appellants in APO 316 of 2015, seeks a stay of this judgment. We are not inclined to grant this relief for the reasons mentioned in the judgment. Stay is refused.

(Tapabrata Chakraborty, J.)

(Nishita Mhatre, J.)