

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 17.06.2013**

CORAM

THE HONOURABLE MR. R.K.AGRAWAL, THE ACTING CHIEF JUSTICE
AND

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.A.Nos.355 of 2013 and W.A.Nos.688 to 690 of 213
and M.P.Nos.1, 1, 1 of 2013

W.A.No.355 of 2013

1.Indian Overseas Bank
rep. by the Chairman & Managing Director,
Central Officer,
762, Anna Salai,
Chennai-600 002.

2.The Competent Authority
for Pension Regulations,
(General Manager)
Indian Overseas Bank,
Central Officer, 763, Anna Salai,
Chennai-600 002.

.. Appellants

Vs.

C.R.Chandrasekaran

.. Respondent

W.A.Nos.688 to 690 of 2013

1.Canara Bank
Rep. by the Chairman & Managing Director,
Head Office, 112, J.C. Road,
Bangalore-560 002.

2.The Competent Authority,
Canara Bank (Employees) Pension
Regulations, 1995,
Canara Bank,
head Office, 112, J.C.Road,
Bangalore-560 002.

.. Appellants

Vs.

1.A.B.Kasthurirangan
2.P.Dharnam
3.S.G.Balakrishna Rao
4.M.Sudarsan
5.E.K.Athmaraman
6.K.N.Ramesh

7.P.Srinivasan
8.N.Venkataraman
9.A.S.Krishnan
10.T.T.Raman
11.N.Venkataramani
12.S.Viswanthan
13.V.S.Krishnamurthy
14.M.V.Seshadri
15.R.Perumal
16.T.R.Thiagarajan
17.A.Rajasimhan
18.C.Renganathan
19.A.Ahmed Basha
20.A.Ramasamy
21.R.Kumbeswaran
22.Sivaramakrishnan .. Respondents in W.A.No.688/2013

23.N.Ramamurthy
24.T.S.Varadasubramani .. Respondents in W.A.No.689/2013

25.T.V.Alwan
26.V.Krishnan
27.M.Gnanbal
28.P.Shanmugasundaram
29.S.Nagarajan
30.R.Sampoorna Kameswaran
31.K.Padmanabhan .. Respondents in W.A.Nos.690/2013

Prayer in W.A.No.355 of 2013:- Writ Appeal filed under Clause 15 of the Letters Patent against the judgment dated 14.12.2012 passed in W.P.No.3198/2007 and pray that the same may be set aside.

Prayer in W.A.Nos.688 to 690 of 2013:- Writ Appeals filed under Clause 15 of the Letters Patent against the judgment dated 14.12.2012 passed in W.P.Nos.50000 to 50002 of 2006.

For Appellants

In W.A.No.355/2013 : Mr.N.G.R.Prasad
for Mr.K.Srinivasamurthy
In W.A.Nos.688 to 690/2013 : Mr.P.R.Raman
for Mr.C.Seethapathy

For Respondents

In W.A.No.355/2013 : Mr.C.R.Chandrasekaran
for Caveator (Party-in-Person)
In W.A.Nos.688 to 690/2013 : Mr.R.Viduthalai, Senior Counsel
for Mr.C.R.Chandrasekaran
for RR1 to 21 in W.A.688/2013

and for respondents in W.A.No.689
and 690/2013

COMMON JUDGMENT

In W.A.No.355/2013, order dated 14.12.2012 made in W.P.No.3198/2007, filed by Mr.C.R.Chandrasekaran, has been challenged. In W.A.Nos.688 to 690/2013, common order dated 14.12.2012 made in W.P.Nos.50000 to 50002 of 2006, has been challenged.

2. All the above said writ petitions were allowed by the learned Single Judge of this Court by a common order dated 14.12.2012. Hence all these writ appeals are disposed of together by this common judgment.

3. The facts leading to filing of the writ petitions, have been narrated in detail in the above said common order. Therefore, it is unnecessary to reiterate once again except stating the facts relevant for the purpose of disposal of these appeals.

4.The writ petitioner in W.P.No.3198/2007, namely,Mr.C.R.Chandrasekaran, in the affidavit filed in support of the writ petition, averred among other things that he retired from the services as an Officer of the Indian Overseas Bank on 31.01.1993, and in terms of Clause (1) of Regulation 37 of the Indian Overseas Bank (Employees') Pension Regulations, 1995, employees who retired on or after 01.01.1986 but before the 1st day of July 1993, have been granted basic pension or family pension or invalid pension or on compassionate allowance as enumerated in Appendix II of the above said Pension Regulations. The writ petitioner would further state that the salary payable to the serving officers/employees were again revised by way of Joint Note and for serving staff by the 8th Bipartite Settlement dated 02.06.2005, with effect from 01.11.2002. As per the Joint Note on the above said Settlement, merger of Dearness Allowance upto 2288 points in Consumer Price Index series 1960=100 with Basic Pay was effected and thereby 100% neutralization at 0.18% of Basic Pay was effected.

5. We may mention here that by Appendix-II of the Indian Overseas Bank (Employees') Pension Regulations, 1995, the Dearness Allowance payable to the eligible officers including the sole respondent in W.A.No.355 of 2012 was as follows:-

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 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 a every fall as the case may be, of every four 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 give below:-

Scale of basic pension per month	The rate of dearness relief as a percentage of basic pension
i) Up to Rs.1250	0.01
(ii) Rs.1251 to Rs.2000	0.67% of Rs.1250 plus 0.55 % of basic pension in excess of Rs.1250.
(iii) Rs.2001 to Rs.2130	0.67 % of Rs.1250 plus 0.55 % of the difference between Rs.2000 and Rs.1250 plus 0.33% of basic pension in excess of Rs.2000.
(iv) Above Rs.2130	0.67% of Rs.1250 plus 0.55 % of the difference between Rs.2000 and Rs.1250 plus 0.33 % of the difference between Rs.2130 and Rs.2000 plus 0.17% of basic pension in excess of Rs.2130.

(Government Gazette Notification No.9 dated 1st March, 2013)

However, in case of employees, who are in the Officers' cadre and who retired after 1st July, 1993, the dearness relief was payable under paragraph-2 of Appendix=II as follows:-

"In the case of employees, who were in workmen cadre, and who retired on or after the 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 a every fall, as the case may be, of every four points over 1148 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 give below:-

(Government Gazette Notification No.9 dated 1st March, 2013)

Scale of basic pension per month	The rate of dearness relief as a percentage of basic pension
i) Up to Rs.2400	0.00%
(ii) Rs.2401 to Rs.3850	0.35% of Rs.2400 plus 0.29 % of basic pension in excess of Rs.2400.
(iii) Rs.3851 to Rs.4100	0.35 % of Rs.2400 plus 0.29 % of the difference between Rs.3850 and Rs.2400 plus 0.17% of basic pension in excess of Rs.3850.
(iv) Above Rs.4100	0.35% of Rs.2400 plus 0.29 % of the difference between Rs.3850 and Rs.2400

plus 0.17 % of the difference between Rs.4100 and Rs.3850 plus 0.09% of basic pension in excess of Rs.4100.

6. In the 8th Bipartite Settlement signed on 2nd June, 2005 between the Indian Banks' Association and various Banks' Associations, excluding State Bank of India, the dearness relief on pension up till 01.05.2005 payable to the employees who retired during the period 01.04.1998 to 31.10.2002 was as follows:-

Dearness Relief on Pension

PART A

On and from 01.05.2005, in the case of employees who retired during the period 01.04.98 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 4 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	The rate of dearness relief as a percentage of basic pension
i) Up to Rs.3550	0.00
(ii) Rs.3551 to Rs.5650	0.24% of Rs.3550 plus 0.20 % of basic pension in excess of Rs.3550.
(iii) Rs.5651 to Rs.6010	0.24 % of Rs.3550 plus 0.20 % of the difference between Rs.5650 and Rs.3550 plus 0.12% of basic pension in excess of Rs.5650.
(iv) Above Rs.6010	0.24% of Rs.3550 plus 0.20 % of the difference between Rs.5650 and Rs.3550 plus 0.12 % of the difference between Rs.6010 and Rs.5650 plus 0.06% of basic pension in excess of Rs.6010.

7. In respect of employees, who have retired on or after 01.05.2005, the dearness relief was payable as follows:-

"In respect of employees who retire on or after 01.05.2005, dearness relief shall be payable for every rise or to be recoverable for every fall, as the case may be, of every 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, at the rate of 0.18% of basic pension.

Note:- In respect of retirees of the period 01.11.2002 to 30.04.2005, for whom pension will be revised w.e.f 01.05.2005, in terms of paragraph 4(1) of

this Circular, dearness relief shall be payable at 0.18% of basic pension w.e.f 01.05.2005."

8. According to the writ petitioner, employees/pensioners who retired between 01.11.2002 and 31.01.2005, Dearness Relief should have been calculated and paid on the same basis pending amendment to the above said Pension Regulations, in the following manner:

For basis pension (BP) upto Rs 4825	DR @ 0.18% of BP
For next slab of Rs.2850 of BP	DR @ 0.15% <input type="checkbox"/>
For next <input type="checkbox"/> Rs 500 of BP	DR @ 0.09% <input type="checkbox"/>
For further quantum of BP, if any	DR @ 0.04% <input type="checkbox"/>

9. The grievance expressed by the writ petitioner, is that the employees who retired on or after 01.02.2005, are being paid Dearness Relief at 0.18% for the entire basic pay, which works out to 100% neutralization after merger of Dearness Allowance at 2288 points of Consumer Price Index 1960 = 100, doing away with the tapering formula of calculating Dearness Relief on sliding down slab rates pending amendment to the Pension Regulations and the Indian Overseas Bank has extended the benefit of 100% neutralization on entire basic pension i.e., 0.18% to the employees who retired between 01.11.2002 and 31.01.2005, although it is not available to them in terms of para 2(b) of the Joint Note/Clause 7(2) of the 8th Bipartite Settlement dated 02.06.2005, but in respect of the petitioner, who retired on superannuation on 31.01.1993, the same benefit was not given and it clearly amounts to discrimination.

10. The writ petitioner would further submit that in this regard, he submitted a detailed representation with the Management of the Indian Overseas Bank requesting them to pay Dearness Relief at 0.18% on his entire pension with effect from 01.02.2006 and since no response was forthcoming, he has filed W.P.No.3198/2007 praying for issuance of a Writ of Mandamus directing the Management of the Indian Overseas Bank to pay the petitioner on and from 01.02.2005, 100% neutralization of Dearness Relief on entire basic pension, which is 0.67%.

11. The Management of the Indian Overseas Bank has filed a counter affidavit stating that the writ petitioner, namely, Mr.C.R.Chandrasekaran, joined the services of the Bank on 07.11.1955, and while working as an Officer in Middle Management Grade III, he retired from the services of the Bank on 31.01.1993, and subsequent to his retirement, a Memorandum of Settlement came into being between Indian Bank's Association (in short 'IBA') and the employees' representatives, wherein it has been agreed to introduce a Pension Scheme in lieu of employees' contribution to the Provident Fund. The writ petitioner in terms of the said Scheme, exercised his option for payment of pension and accordingly, pension is paid to him in terms of the Wage Settlement/Joint Note, which were in force at the relevant point of time and he is also being paid Dearness Relief on the salary and pension at the slab rates prevailing at that point of time.

12. The respondent/Management further contended that the Basic Pay and Dearness Relief of all the Bank employees are based on the Bipartite Settlement/Joint Note reached between the Management of the Bank and Employees' Union/Association and would further state that 8th Bipartite Settlement/Joint Note was entered on 02.06.2005, with effect from 31.10.2007 and in terms of the said Settlement/Joint Note, in respect of employees who retired between 01.11.2002 and 30.04.2005, pension was to be revised with effect from 01.05.2005 and the Dearness Relief was given at 0.18% of the basic pension with effect from 01.05.2005. The said relief was given for the reason that the classification would result in two classes of persons, who are governed by the same settlement, and a Circular dated 28.06.2005, was also issued stating that in respect of the employees who retired between 01.11.2002 and 30.04.2005, pension would be revised with effect from 01.05.2005 and Dearness Relief would be payable at 0.18% of the basic pension with effect from 01.05.2005.

13. The respondent/Management also took a stand that since the writ petitioner is not entitled for the relief sought for in the writ petition, as he is not governed by the 8th Bipartite Settlement, as he retired on 31.01.1993, and since the 8th Bipartite Settlement came into being subsequently, he cannot be paid Dearness Relief at 0.18% of the basic pension. Therefore, the respondent Management prayed for dismissal of the writ petition.

14. In W.P.Nos.50000 to 50002 of 2006, the employees/writ petitioners were employed in Canara Bank and they retired between 30.04.1998 to 31.07.2001 and like the writ petitioner in W.P.No.3198/2007, they have also made representations to the Management of the Canara Bank praying for payment of Dearness Relief at 0.18% on their entire basic pension with effect from 01.02.2005 and it was declined. The Management of the Canara Bank also filed a common counter affidavit in the above said writ petitions, taking the very same stand.

15. The writ petitioners in W.P.Nos.50000 to 50002 of 2006 filed respective Miscellaneous Petitions praying for amendment of the prayer viz., to call for the records and quash clause 2b of the Joint Note dated 02.06.2005, and Clause 7 of the Settlement dated 02.06.2005, insofar as not extending the benefit of the the Dearness Relief of 100% neutralization on the entire basic pension for those who retired earlier to 01.11.2002, and forbearing the respondent/Management of the Canara Bank from passing any amendment to pension Regulations, 1995, as per the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, excluding the petitioners who retired from service earlier to 01.11.2005, and for other consequential benefits and the same were ordered.

16. A Single Bench of this Court after analysis of the averments made in the affidavits filed in support of the writ petitions, and the counter affidavits filed by the Management of the Indian Overseas Bank and Canara Bank and further, taking into consideration the decisions rendered by the Hon'ble Supreme Court of India, more particularly, the decisions in D.S.Nakara v. Union of India [(1983) 1 SCC 305], V.Kasturi v. Managing

Director, State Bank of India [(1998) 8 SCC 30] and other decisions, found that the benefits would extend even to the employees who retired during the period between 01.04.1998 and 30.04.2005, and the Circular dated 28.06.2005, is very clear that the pension of the employees who retired subsequent to 01.04.1998, should be revised by taking Dearness Allowance at the slab rate of 0.18% of the basic pension. The learned Single Judge further found that the redefinition of pay for the purpose of pension cannot be treated as a new scheme and on facts, found that the writ petitioners have not opted for a particular scheme as there was only one scheme for the payment of pension and amendment came into being only for the purpose of redefinition of pay and it was in the nature of procedural amendment and consequently, they are also entitled to the benefits of the new formula of computation, without any claim for arrears.

17. The learned Single Judge further found that All India Overall Working Class Consumers Price Index remain the same not only for the employees who have retired subsequent to the 8th Bipartite Agreement/Joint Note, but also for the others like the writ petitioners, who have retired before the cut-off date in question, and that the Dearness Relief at 0.18% of the basic pension was introduced taking into account the All India Overall Working Class Consumers Price Index and the inflation and price increase also affects the retired employees irrespective of the date of retirement. The learned Single Judge for the above cited reasons, held that the benefits of such redefinition of pay for the purpose of pension should be given to all the pensioners without any distinction and that the petitioners have been subjected to discriminatory and hostile treatment by fixing an artificial and arbitrary cut-off date and thereby, allowed all the writ petitions and directed the Management of the Indian Overseas Bank and the Canara Bank to extend the benefits of 8th Bipartite Agreement/Joint Note, as given to the employees who have retired between 01.11.2002 and 31.10.2007, to the writ petitioners also within a period of three months from the date of receipt of a copy of the said common order.

18. Aggrieved by the same, the Management of the Indian Overseas Bank has filed W.A.No.355/2013 and the Management of the Canara Bank has filed W.A.Nos.688 to 690/2013.

19. Mr.N.G.R.Prasad, learned counsel appearing for the appellant in W.P.No.355/2013, and Mr.P.R.Raman, learned counsel appearing for the appellants in W.A.Nos.688 to 690/2013, vehemently contended that as per the Pension Regulations, which was notified in the year 1995, a distinction has been drawn in respect of employees who retired on or after 01.01.1996, and a different formula has also been introduced depending upon the merger of Dearness Allowance with Basic Pay. It is further contended that the benefits of 8th Bipartite Settlement/Joint Note were made applicable only to the employees who were in service as on 01.11.2002, because the earlier settlement, namely, 7th Bipartite Settlement expired on 31.10.2002, and as the respective writ petitioners have retired prior to the said Settlement/Joint Note, they are not entitled to the benefits of the same. It is also contended that since the writ petitioners and employees, who are

covered by the 8th Bipartite Settlement/Joint Note, retired at different points of time, the writ petitioners cannot claim the benefits extended to the above said employees on the ground that they are similarly placed and therefore, Article 14 of the Constitution has no application to their case at all. Lastly, it is contended that the Scheme is a Contributory Pension Scheme and if the impugned orders are given effect to, it would definitely cause huge financial burden as it is a recurring expenditure and it would be difficult for the Pension Trust to meet such huge commitment and therefore, prayed for setting aside the impugned common order passed in the above said writ petitions. The respective learned counsel appearing for the appellants also placed reliance upon the following judgments:

(i)Herbertsons Ltd., v. The Workmen of Herbertsons Ltd., and Others reported in AIR 1977 SC 322,

(ii)K.C.P. Limited v. Presiding Officer and Others reported in (1996) 10 SCC 446, and

(iii) State of W.B. and Another v. W.B. Govt. Pensioners' Associations and Others reported in (2002) 2 SCC 179.

20. Per contra, Mr.R.Viduthalai, learned Senior Counsel appearing for the respondents in W.A.Nos.688 to 690/2013 and Mr.C.R.Chandrasekaran, the respondent in W.A.No.355/2013, submitted that the main dispute is with regard to the Dearness Allowance and not with regard to the rate of pension and therefore, the grounds urged by the respective learned counsel appearing for the appellants, have no legs to stand. It is further submitted by the learned Senior Counsel appearing for the respondents, that the inflationary trend affects all the persons whether they are serving employees or pensioners, and taking into consideration this crucial and vital aspect, the learned Single Judge, on a thorough analysis of factual and legal aspects, found that the benefits of redefinition of pay for the purpose of pension should be given to all pensioners without any distinction and the said finding warrants no interference. The learned Senior Counsel appearing for the respondents, in support of the submissions, placed reliance upon the judgment of the Hon'ble Supreme Court of India in Kallakkurichi Taluk Retired Official Association v. State of T.N. [(2013) 2 SCC 772 = 2013-II-LLJ-9(SC)].

21. This Court paid its best attention to the rival submissions and also perused the materials available on record in the form of typed-set of documents and also the decisions cited before it.

22. It is useful and relevant to extract the Circular dated 28.06.2005, issued by the Personnel Department of Indian Banks' Association, which reads as follows:

"

Indian Banks' Association

PERSONNEL DEPARTMENT

No.CIR/PD/76/D/G2/2005-06/557
28th June, 2005

Designated officers of all banks which are parties to the 8th Bipartite Settlement dated 02.06.2005 and Joint Note dated 02.06.2005 on salary revision

Dear Sirs,

Calculation and payment of pension consequent upon the re-definition of 'pay' in Bipartite Settlement/Joint Note dated 02.06.2005

In terms of Clause 16 of the Bipartite Settlement dated 02.06.2005 relating to workmen and Paragraph 6 of the Joint Note dated 02.06.2005 relating officers, in respect of an officer or a workman employee (herein referred to as 'employee'), who is a member of the pension fund and retiring/retired from service or died while in service or otherwise ceased to be in employment (hereinafter commonly referred to as retired/retirement) on or after, 1.5.2005, 'pay' to be reckoned for the purpose of arriving at 'average emoluments' for calculating pension shall be the 'pay' drawn by him prior to his retirement/death. 'Pay' here will have the same meaning as in Clause 6 of the Bipartite Settlement dated 02.06.2005 and Note (2) below Paragraph 6 of the Joint Note dated 02.06.2005.

2. In view of the foregoing, in respect of an employee retiring/retired on or after 01.05.2005, for arriving at pension to be sanctioned, 'average emoluments' for the purpose shall be calculated reckoning actual 'pay' drawn in terms of the Bipartite Settlement/Joint Note dated 02.06.2005.

3. As a consequence of the re-definition of 'pay' for the purpose of pension as stated herein above and in view of the legal position obtaining in this regard, pension already sanctioned and being paid to retirees of the period 1st April 1998 to 31st October 2002 and of the period 1st November 2002 to 30th April 2005 is to be revised with reference to the new definition of pay as referred to in Paragraph 1 above and pension so revised paid to them with effect from 1st May 2005. On account of such revision of pension, no arrears of pension and/or difference in commuted value of pension is payable to the retirees of these periods.

4. Pension in respect of the retirees of the periods mentioned in paragraph (3) above, shall be revised as per procedure detailed herein below:

I. In respect of an employee who retired during the period from 1st November 2002 to 30th April 2005-

(a) If such retirement has taken place on or after 1st September 2003, i.e. after drawing 'pay' in the last 10 months of service in terms of Bipartite Settlement/Joint Note dated 02.06.2005, then 'average emoluments' for arriving at pension shall be calculated reckoning 'pay' as in Bipartite Settlement/Joint Note dated 02.06.2005.

(b) If such retirement has taken place on or after 1st November 2002 but on or after 31st August 2003 i.e. after drawing pay in the last 10 months of service, both in terms of Joint Note dated 14.12.99/Bipartite Settlement dated 27.03.2000 and Bipartite Settlement/Joint Note dated 02.06.05, then revision of pension shall be done as per example illustrated in Annexure-I of this circular.

II. In respect of an employee who retired during the period from 1st April 1998 to 31st October 2002-

(a) If such retirement had taken place on or after 01.09.98 in the case of a workman and 01.02.99 in the case of an officer i.e. after drawing pay in the last 10 months of service in terms of Bipartite Settlement dated 27.03.2000/Joint Note dated 14.12.99 then 'average emoluments' for arriving at pension may be calculated reckoning 'pay' as in Bipartite Settlement dated 27.03.2000/Joint Note dated 14.12.99.

(b) If such retirement has taken place during the period 01.11.97 to 31.08.98 in the case of workmen and during the period 01.04.98 to 31.01.99 in the case of officers i.e after drawing pay in the last 10 months of service, both in terms of the Bipartite Settlement dated 14.02.95/Joint Note dated 23.06.95 and Bipartite Settlement dated 27.03.2000/Joint Note dated 14.12.99, then revision of pension in such cases may be done as per example illustrated in Annexure-II to this circular.

(c) In the Bipartite Settlement dated 27.03.2000, revision in Special Pay, Graduation Pay and Personal Qualification Pay had taken place from 01.04.98 and of Fixed Personal Pay from 01.11.99. In cases falling under (a) and (b) above, if an employee during the last 10 months of service, had drawn the above components of 'pay' at rates obtaining prior to 01.04.98 or 01.11.99, as the case may be, then for the purpose of calculating average emoluments, the aggregate of such component of 'pay' with Dearness Allowance there on at CPI 1684 points may be reckoned.

5. Dearness Relief on basic pension computed as above shall be at rates as given in Annexure-III to this circular.

6. The ordinary rates of family pension shall be as given in Annexure-IV to this circular.

7. The amount of minimum pension shall be given in Annexure V to this circular.

8. Pending amendments to Bank Employees' Pension Regulations, 1995, bank may compute pension as above. Before, however, giving effect to the revised pension, a suitable undertaking may be obtained from the pensioners, as well as from family members/nominees, to enable the Pension Fund to make adjustments, if any, at a later date. □

23. A perusal of the above cited Circular would disclose that redefinition of pay for the purpose of calculating pension has been made applicable to the employees who retired up to 01.11.2002. It is also relevant to point out at this juncture, that the benefit of the same has been extended to the employees who retired between 01.04.1998 and 31.10.2002, and it is also made clear that in respect of the employees who retired subsequent to 01.04.1998, pension should be revised by taking into account the Dearness Relief at the slab rate of 0.18% of the basic pension.

24. The stand of the respondent Banks is that since there was distinction between two classes of persons who are governed by the same settlement, the benefits were extended to the employees who retired between 01.11.2002 and 30.04.2005. The learned Single Judge has also taken into consideration the judgment reported in (1997) 4 SCC 569 [State of Punjab vs. Justice S.S.Dewan (Retired Chief Justice) and Others] and formulated a question as to whether the change made to the mode of calculation of the last drawn pay for the purpose of fixing tax, would apply to the pensioners who retired earlier. The learned Single Judge found that earlier the writ petitioners prayed for the Dearness Relief at the slab rate of 0.18% of basic pension in terms of 8th Bipartite Settlement/Joint Note and hence the change from tapering rate to slab rate cannot be characterized as introduction of a new scheme and it was essentially a modification of the existing scheme.

25. It is further contended that a settlement arrived in terms of the provisions of the Industrial Disputes Act, 1947 would bind the parties and since the benefit of pension conferred on the respondents not on account of statutory right but only on account of the settlement, they are not entitled to the benefits of the 8th Bipartite Settlement/Joint Note.

26. The respective learned counsel appearing for the appellants also drawn the attention of this Court to the decisions rendered by the Hon'ble Supreme Court of India in *Herbertsons Ltd., v. The Workmen of Herbertsons Ltd., and Others* [AIR 1977 SC 322] and *K.C.P.Limited v. Presiding Officer and Others* [(1996) 10 SCC 446]. It is also submitted by the respective learned counsel appearing for the appellants that prescription of cut-off date for giving benefits cannot be considered as arbitrary and irrational.

27. In *Herbertsons Ltd., v. The Workmen of Herbertsons Ltd., and Others* [AIR 1977 SC 322], an issue arose before the Hon'ble Supreme Court of India as to whether the workers, as individuals, who do not come into picture, is to be made aware of the implication of the settlement entered into by the recognized Union with the Management and as to whether it is

binding on them also. The Hon'ble Supreme Court of India has considered the said issue and held as follows:

"21. Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well-being, there is always give and take. Having regard to the nature of the dispute, which was raised as back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. 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.

.....

25. There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that it is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

.....

27. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. 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. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair and unjust....."

28. In the subsequent decision in *K.C.P. Limited v. Presiding Officer and Others* [(1996) 10 SCC 446], the *Herbertsons* case (cited supra) was considered by the Hon'ble Supreme Court of India and it has been held as follows:

"24. In connection with the justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations takes place which have to be encouraged, particularly between labour and

employer in the interest of industrial peace and well-being, there is always give and take. 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. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. 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. The settlement has to be accepted or rejected as a whole.

25. It has to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of industrial democracy permeate the relations between the management on the one hand and the Union which resorts to collective bargaining on behalf of its members-workmen with the Management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquility pursuant to such settlement and which would avoid unnecessary social-strife and tribulation on the one hand and promote industrial and commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinised. Settlement of labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding to the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only on the parties to the settlement but even to the entire labour force working in the organisation concerned even though they may not be members of the Union which might have entered into settlement during conciliation proceedings. The difference between the settlement arrived at under the Act during conciliation proceedings by parties and the settlement arrived at otherwise than during conciliation proceedings has been succinctly brought out by the decision of this Court in *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corpn. Ltd.*, [(1991) 1 SCC 4] wherein Ahmadi.J. (as His Lordship then was) spoke for the Court to the following effect: (SCC Headnote p.5)

"Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings [Section 18(i)] and (ii) those arrived at

in the course of conciliation proceedings [Section 18(3)]. A settlement which belongs to the first category has limited application in mind it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

29. A perusal of the materials available on record reveal that Indian Overseas Bank (Employees') Pension Regulations, 1995, came into being for providing pension and it is useful and relevant to extract the following definitions:

"2.Definitions:-

In these regulations, unless the context otherwise requires,-

....

(d)"Average emoluments" means the average of the pay drawn by an employee during the last ten months of his service in the Bank;

(i) "Contribution" means any sum created by the Bank on behalf of employee to the Fund, but shall not include any sum credited as interest.

(n) "Employee" means any person employed in the service of the Bank, whether as a workman on full time work on permanent basis or on part-time work on permanent basis on scale wages or as an officer and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages; (GOVERNMENT GAZETTE Notification No.9 dated 1st March 2003)

(q) "Fund" means the Indian Overseas Bank (Employees') Pension Fund constituted under Regulation 5.

(s) "Pay" includes

(a) in relation to an workman who had either retired or died on or after the 1st day of January, 1986 but before the 1st day of November, 1992; and in relation to an officer who had either retired or died on or after the 1st day of January, 1986 but before the 1st day of July, 1993,-

(i)the basic pay including stagnation increments, if any and

(ii)all allowances counted for the purposes of making contribution to the Provident Fund and for the payment of dearness allowance;

(b) in relation to an workman who retired or died while in service on or after the 1st day of November, 1991; and in relation to an officer who retired or died while in service on or after 1st day of July, 1993,-

(i)the basic pay including stagnation increment, if any, and

(ii)all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

(iii)Increment component of Fixed Personal Allowance; and

(iv)Dearness Allowance calculated up to Index number 1148 points in the All India Average Consumer Price Index for Industrial workers in the series 1960=100 (vide GOVERNMENT GAZETTE Notification no.96 dated 24th May 2004)

(c) in relation to an employee who retired or died while in service on or after the 1st day of April, 1998,-

(i)the basic pay including stagnation increment, if any, and

(ii)all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

(iii)increment component of Fixed Personal Allowance; and

(iv)dearness allowance calculated upto Index number 1616 points in the All India Average Consumer Price Index for Industrial workers in the series 1960=100;

Explanation: For the purpose of this clause, basic pay, other components of pay and Fixed Personal Pay would mean the Basic Pay, other components of pay and Fixed Personal Allowance drawn by the employee in terms of scales of pay as applicable and the rates at which the other components of pay were payable prior to 01.11.1997 (in the case of workmen) and prior to 01.04.1998 (in the case of officers). (GOVERNMENT GAZETTE Notification no.9 dated 1st March 2003)

z(b) "Settlement" means memorandum of settlement agreed between the management of the Bank represented by the association authorised by them and workmen of such Bank represented by trade unions authorised by them.

30. Chapter II of the said Regulations deals with application and eligibility and it stipulated among other things that the employees have to exercise an option in writing within 120 days from the notified date i.e., 01.03.2003 to become member of the Fund and shall refund within 60 days after the expiry of the said period of 120 days specified in clause (b,) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund till the date of refund of the aforesaid amount to the Bank or till 01.04.1995, whichever is earlier.

31. A perusal of the terms of the 7th and 8th Bipartite Settlements/Joint Notes would reveal that the benefits of the 8th Bipartite Settlement/Joint Note were extended to the employees who were in service on 01.11.2002 and it was not extended to the employees who retired prior to the above said date.

32. In W.A.No.355/2013, the respondent, namely, Mr.C.R.Chandrasekaran retired from service on 31.01.1993 and the respondents in W.A.Nos.688 to 690/2013 retired from service between 30.04.1998 and 31.07.2001. As already held above in the above cited decisions that 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.

33. Though it is vehemently contended by the learned Senior Counsel appearing for the respondents that the employees who were retired prior to 01.11.2002 and who retired after the said date are discriminated unjustly and unreasonably viz-a-viz who retired on 01.11.2002 and it amount to unreasonable classification, this Court is of the view that they enjoyed the benefits of the 7th Bipartite Settlement/Joint Note and it is also the settled position of law that fixing of cut-off date for providing a particular benefit cannot be treated as arbitrary, unjust or unreasonable. Hence, the said submission lacks merit and substance.

34. In Union of India v. S.R.Dhingra and Others [(2008) 2 SCC 229], the Hon'ble Supreme Court of India has observed in Para 25 that it is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated and though they retired with the same rank, they are not of the same class or homogeneous group and hence, Article 14 of the Constitution of India has no application.

35. It is also pertinent to point out at this juncture that as per Annexure-II to the above said pension Regulations, different formula has been prescribed in respect of the employees who retired during different periods and the said formula is as per the pay structure on the basis of the respective Bipartite Settlement/Joint Note governing the service which is prevalent at the relevant point of time, namely, at the time of retirement.

36. It is vehemently contended by the learned Senior counsel appearing for the respondents that inflation affects the serving as also the retired employees equally and since the Dearness Allowance being paid to

the beneficiaries of the 8th Bipartite Settlement/Joint note at an higher rate, the respondents are also entitled to the same. The learned Senior Counsel appearing for the respondents in support of the said submission placed reliance on the judgment of the Hon'ble Supreme Court of India in Kallakkurichi Taluk Retired Official Association, Tamilnadu and Others v. State of Tamilnadu and Others [2013 II LLJ-9-(SC) = (2013) 2 SCC 772], which came to be delivered on 17.01.2013, wherein the validity of differential payment of Dearness Pay/Dearness Allowance came up for consideration. The facts of the above cited case would disclose that a dispute inter se arose between State Government and retired employees in respect of component of Dearness Allowance liable to be treated as Dearness Pay for the purpose of computing pension payable to the retired Government employees and as per the impugned Government Order dated 9.8.1989, pensionary benefits of an employee retired/retiring on or after 01.06.1988, were required to be computed by adding Dearness Allowance to Dearness Pay at a fixed percentage. According to the retired officials, whose Association is the Appellant in the above cited decision, employees retiring on or after 01.06.1988, would be at a disadvantage, as against the employees who had retired prior to 01.06.1988, and accordingly, they had challenged the Government Order by filing Original Application before the Tamilnadu Administrative Tribunal. The said Original Application came to be transferred to this Court on account of abolition of the Tribunal and it was renumbered as W.P.(T) No.32045/2005 and it was allowed on 20.04.2006, on the ground that the State Government in not extending the benefits to members of the appellant Association, had discriminated against them and that it did not confer the same benefits based on the component of Dearness Pay in respect of the employees who retired on or after 01.06.1988. The official respondents/State Government, aggrieved by the same, preferred a writ appeal in W.A.No.No.1002/2006 and it was allowed on 17.12.2007, and consequently, the writ petition came to be dismissed. Similar writ petitions filed by other retired employees, who are placed similar, were also taken up together with the above said writ appeal and the writ appeal was allowed and the writ petitions were dismissed by a common order and challenging the vires of the same, Civil Appeal Nos.8848 to 8883 of 2012 were filed before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, after taking into consideration the factual aspects and its earlier decisions, more particularly, the decision in Union of India v. P.N.Menon [(1994) 4 SCC 68], held as follows:

□27. At this juncture, it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, State of Kerala v. N.M.Thomas (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objectives sought to be achieved. Legally, the test for a valid classification may be summarized as, a

distinction based on a classification founded on an intelligible differentia, which has a rationale relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied. In the context of the instant appeals, it is necessary to understand the overall objective of treating "dearness allowance" (or a part of it) as "dearness pay". There can be no doubt, that 'dearness allowance' is extended to employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life, to which an employee is accustomed. Likewise, the objective of 'dearness pay' is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. Having understood the reason why the Government extends the benefit of 'dearness allowance' and 'dearness pay', to its employees and pensioners respectively, we would venture to search for answers to the twin tests which must be satisfied, for making a valid classification (or a valid discrimination), in the present fact situation.

28. In the present context, it needs to be kept in mind, that 'dearness allowance' is paid to Government employees keeping in mind the All India Consumer Price Index. Inflation in the market place is sought to be balanced by paying 'dearness allowance' to Government employees. When a State Government chooses to treat 'dearness allowance' as 'dearness pay', the objective remains that same i.e., inflation in the market place is sought to be balanced for retired employees by giving them the benefit of 'dearness pay'. Since the component of inflation similarly affects all employees, and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of 'dearness pay' to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the 'dearness allowance' to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the 'dearness pay' to be extended to retired employees. Truthfully, it may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. In the absence of any objective, projected in this case, the question of examining the reasonableness to the object sought to be achieved, simply does not arise. Our straying into this expressed realm of imagination, was occasioned by the fact, that the pleadings filed on behalf of the State Government, do not reveal any reason for the classification, which is subject matter of challenge in the instant appeal. The only position adopted in the pleadings filed before this Court for introducing a cut off date for differential treatment, is expressed in paragraph 4 of the counter affidavit, filed by the State of Tamil Nadu, which is being extracted herewith:

"With reference to the averments made in the Grounds of the Special Leave Petition, I submit that the fifth Pay Commission has revised pay and pension with effect from 1.6.1988. As per the recommendation of the above Pay Commission, the Government had issued orders for the revision of

pension and Family Pension with effect from 1.6.1988 in G.O.Ms.No.810, Finance (PC) Department, dated 9.8.1989. It is submitted that the fourth Tamil Nadu Pay Commission has recommended that at the end of the period of three years, the Dearness Allowance sanctioned upto that period could be treated as Dearness Pay. The Fourth Pay Commission revision was given with effect from 1.10.1984. Based on the above recommendation, the Government has issued orders in G.O.Ms.No.371, Finance, dated 30.4.1986, read with Government letter No.124414/Pension/86-1, dt. 11.2.1987, that the Dearness Allowance sanctioned upto 30.9.1987 shall be treated as Dearness Pay for the purpose of pensionary benefit in the case of the Govt. Servant retiring on or after 1.10.1987. The orders issued in G.O.Ms.No.371, Finance dated 30.4.1985 as amended in Government letter No.70707-A/Pension/86-1, dated 8.7.1986 read as follows:

"The Fourth Tamil Nadu Pay Commission have among other things recommended that at the end of a period of three years the Dearness Allowance sanctioned upto the period could be treated as Dearness Pay in order to ensure a reasonable pension level. The Government accept the recommendation of the Commission and direct that in the case of Government servant, who will be retiring on or after 1.10.1987, the Dearness Allowance sanctioned upto 1.10.1987 shall be reckoned as Dearness Pay for purpose of pension in the case of death of a Government servant occurring on or after 1.10.1987 while in service the Dearness Allowance sanctioned upto 1.10.1987 shall be treated as Dearness Pay for the purpose of computing Family Pension."

It is therefore, evident, that the State Government has not disclosed any object which is desired to achieve by the cut off date. Most importantly, the financial constraints of the State Government, were not described as the basis/reason for the classification made in the impugned Government order dated 9.8.1989.

29. The issue in hand needs to examine from another perspective as well. It must be clearly understood that no employee has a right to draw 'dearness allowance' as 'dearness pay' till such time as the State Government decides to treat 'dearness allowance' as 'dearness pay'. And therefore, the State Government has the right to choose whether or not 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government not to treat any part of 'dearness allowance' as 'dearness pay'. In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government to treat a fraction, or even the whole of 'dearness allowance' as 'dearness pay'. Based on Rule 30 of the Pension Rules, it is clear that the component of 'dearness pay' would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of 'dearness allowance' would be treated as 'dearness pay', it cannot discriminate between one set of pensioners' and another, while calculating the pension payable to them (for the reasons expressed in the

preceding paragraph). Of course, a valid classification may justify such an action. In this case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment."

Ultimately, the Hon'ble Supreme Court of India found that it is not possible to find a valid justification for the State Government to have classified pensioners who had retired after 01.06.1998, from those who had retired prior thereto, and 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. Citing the said reasons, the Hon'ble Supreme Court of India had allowed the Civil Appeals.

37. The facts of the above said case would disclose that the pension payable to the members of the above said Association is statutory in character and on the factual aspects, the Hon'ble Supreme Court of India held that there is no valid justification for the State Government to have classified pensioners who had retired after 01.06.1998, from those who had retired prior to the above said date, as inflation affects equally both persons. But 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.

38. In *Krishena Kumar v. Union of India* [(1990) 4 SCC 207], a Constitution Bench of the Hon'ble Supreme Court of India has considered *D.S.Nakara v. Union of India* [(1983) 1 SCC 305] and held that the notification setting a cut-off date for exercising an option to either be covered by the Provident Fund Scheme or the Pension Scheme could not be struck down by applying the ratio of Nakara case (cited supra), as the fixation of cut-off date was based on a rationale principle and that the persons covered by the Provident Fund Scheme and those covered by the Pension Scheme did not form a homogeneous class so that the basis for applying Article 14 between the two groups was not there.

39. In a subsequent decision in *Union of India v. P.N.Menon* [(1994) 4 SCC 68], the said legal position has been reiterated.

40. The above said decisions were considered by the Hon'ble Supreme Court of India in a subsequent decision in *State of W.B. and Another v. W.B. Govt. Pensioners' Associations and Others* [(2002) 2 SCC 179] and it has been held as follows:

"22.Nakara decision [(1983) 1 SCC 305] did not direct the payment of an equal amount of pension to all pensioners. This is clear from the following passage where the Court discusses the financial impact of the formula on the resources of the Government: (SCC p.334, para 49)

"In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period of averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation."

23. This was affirmed in *Indian Ex-Services League v. Union of India* [(1991) 2 SCC 104]. In that case, the petitioner claimed that the pre-April 1979 retirees of the armed forces were entitled to the same amount of pension for each rank. The prayers were substantially the same as those made by the respondent Association before us. The claim for the same amount of pension to be paid to all pre-April 1979 retirees of the armed forces as to the post-April 1979 retirees was rejected holding, inter alia: (SCC p.114, para 14)

"...Nakara decision (is) 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."

24. Again in *K.L.Rathee v. Union of India* [(1997) 6 SCC 7] the case of the petitioner was that following Nakara case he had to be given the same amount of pension as other employees of his rank irrespective of the date of retirement. The Court noted that Nakara did not strike down the definition of "emoluments" and held that : (SCC pp.10 & 11, paras 8 & 10)

"Nakara case does not lay down that the same amount of pension must be paid to all persons retiring from government service irrespective of the date of retirement.... Even if pension is calculated on the basis of the same formula the basis of calculation has to be the average of the last ten months' emoluments. This principle of adopting last ten months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. This was all that was laid down in Nakara case. It, however, did not lay down that the quantum of emoluments drawn during the last ten months of service of each government employee must be taken to be the same for this purpose... The emoluments have to be calculated according to the government rules in force at the time of retirement of the employee."

41. In the case on hand, as held above, the respondents are not coming within the ambit of 8th Bipartite Settlement/Joint Note as it has been extended/applied only to the employees who were in service on 01.11.2002 and admittedly, the respondents in these appeals retired long prior to the said date and consequently, it is not open to them to contend that they should be given same rate of Dearness Relief as that of the persons who are covered by the 8th Bipartite Settlement/Joint Note. There cannot be any discrimination for the reason that the respondents in these appeals and the persons who are covered by the 8th Bipartite Settlement/Joint Note belong to different class, as they are covered by earlier Bipartite Settlements. As rightly contended by the respective learned counsel appearing for the appellants that the employees who are covered by Bipartite Settlement, prior to 8th Bipartite Settlement, are paid Dearness Allowance at tapering rates and as per the 8th Bipartite Settlement, dates fixed for payment of Dearness Allowance at 0.18% of the basic pension as on 01.05.2005 in respect of the persons who were in service on 01.11.2002 and those employees who retired between 01.11.2002 and 30.04.2005. In such view of the matter, it cannot be said that the respondents are subjected to differential treatment.

42. The appellants also pleaded financial burden on account of upholding of the claim made by the respondents/writ petitioners and this Court finds considerable force in the said submission also. The respondent in W.A.No.355/2013 prayed for appropriate direction to direct the appellants herein to pay Dearness Allowance on his entire basic pension at 0.67% which is 100% neutralization from 01.02.2005 with interest at the rate to be determined by this Court and the respondents/writ petitioners in W.A/Nos.688 to 690/2013 prayed for quashing Clause 2b of Joint Note dated 02.06.2005 and Clause 7 of the Settlement dated 02.06.2005 and quashing the same insofar as it not extending the benefit of the Dearness Relief of 100% neutralization on the entire basic pension as in the case of the petitioners who retired or retiring on or after 01.02.2005. The said relief granted to the respondents/writ petitioners would definitely result in huge financial burden to the appellants/Public Sector Banks and as per Regulation 5 of the Pension Regulations, the Banks shall constitute a Fund and it shall be a contributor to the said Fund so as to enable the Trustees to make due payments to beneficiaries covered under the Regulations. From the 8th Bipartite Settlement entered into between the Indian Banks' Association and the various Banks' Associations, we find that the parties had agreed, after negotiations, that the total quantum of wage increase arising out of settlement to be signed in this regard shall be Rs.1,288 crores per annum including the cost of superannuation benefits. It was further 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. Thus we find force in the submission made by the learned counsel for the appellants that, by virtue of the orders allowing the writ petitions, the appellants have to contribute more to the said Fund and it would definitely cause financial burden not only on the Banks but the employees who have to share it at the ratio agreed. The learned Single Judge has not taken into consideration the factual and legal aspects in proper

perspective and therefore, the impugned common order allowing the writ petitions warrants interference.

43. In the result, these Writ Appeals are allowed and the impugned common order dated 14.12.2012 made in W.P.No.3198/2007 and W.P.Nos.50000 to 50002/2006 is hereby set aside. Consequently, the writ petitions are dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

[R.K.A., A.C.J.] [M.S.N., J.]

17.06.2013

Index : Yes

Internet : Yes

jvm

THE HON'BLE ACTING CHIEF JUSTICE, J.,
AND
M.SATHYANARAYANAN, J.

jvm

Common Judgment in
W.A.Nos.355 of 2013 and
W.A.Nos.688 to 690 of 213
and M.P.Nos.1, 1, 1 of 2013

17.06.2013

True Extract