

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: October 25, 2017**
+ W.P.(C) 2765/2014
NARESH KUMAR KAPUR
..... Petitioner
Through: Not present.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Rajat Arora, Adv. for R3.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

“Wherefore it is prayed that this Hon’ble Court may be pleased to issue:

(a) a writ or an order in the nature of Mandamus directing the Respondent Bank to make payment of Dearness Allowance to the petitioner on quarterly basis along with interest on delayed payment of Dearness Allowance being made to the petitioner on half yearly basis rather on quarterly basis in the light of Serial No. 2 of Appendix – II of Regulation 37 of Syndicate Bank Employee’s Pension Regulations, 1995 as amended up to date and on the basis of which Respondent Bank allowed pension benefits including to those similarly placed officer employees who sought Voluntary Retirement like the petitioner and also directing the Respondents to

provide the copy of Syndicate Bank (Employees') Pension Regulation, 1995 as amended up to date to the petitioner.

(b) any other and further reliefs be allowed to the petitioner against the Respondents which this Hon'ble High Court deems fit and proper to grant under the circumstances of the case including the cost of this Writ Petition."

2. It is the case of the petitioner that he joined the services of the respondent Bank on April 1, 1980 as a Clerk. He got promotions from time to time and while working as Sr. Manager in the respondent no. 3 / Bank in terms of Regulation 19 of the Syndicate Bank (Officers') Regulations, 1979, he applied for voluntary retirement which was accepted by the Bank on August 22, 2009. Suffice to state, the petitioner was not granted pension under the Pension Regulations, which made the petitioner file a writ petition before this Court which was allowed in his favour and pursuant thereto, he was given the pensionary benefits.

3. The present petition has been filed by the petitioner on a limited ground, that Dearness Relief on pension is being paid at half yearly interval to the petitioner and similarly placed pensioners, whereas the employees working in the respondent Bank are being paid on quarterly basis. The petitioner who appeared in person on October 24, 2017 was heard at length and concluded so also Mr. Rajat Arora, learned counsel for the respondent Bank. The petitioner reiterated the averments made in the writ petition as his submissions during the arguments. He had drawn our attention to the Pension Regulations more specifically Regulation 37 and Appendix-II thereto to contend that Dearness Relief is being paid at half yearly basis. He had also drawn our attention to Page 112 of the paper book which depicts Dearness Allowance as being paid to the

workmen and the employees in the Bank. According to him they are being paid Dearness Allowance computed in view of rise in price index in the months of February, May, August and November whereas the pensioners are paid on computation made twice a year in the month of February and August respectively. According to him, this is discriminatory and violative of Article 14 of the Constitution of India as any rise in Price Index, effects the pensioners also.

4. In order to appreciate his arguments, it is necessary for us to reproduce some of the averments made in the writ petition in this regard. In Para 14 and 15, he has stated as under:

“14. That even though the variation in Dearness Allowance is being paid by Respondent Bank on Quarterly basis to Regular Existing employees of the Bank, the petitioner including the similarly placed retired pensioners employees are being paid variations in Dearness Allowance on Half-Yearly basis which results in financial loss to the petitioners on account of non-payment of variations in Dearness Allowance for the intervening quarters.

15. That as a matter of fact the Respondent Bank has paid the Pension and Dearness Allowance thereon for the quarter ended August, 2013 in September, 2013 and subsequently for the quarter ended February, 2014 in March, 2014 to the petitioner, but variation in Dearness Allowance has been paid after a gap of six months Whereas the regular existing employees of the Bank have been paid the variation in Dearness Allowance on Quarterly basis that is for the quarter ended April, 2013 in May, 2013, for the quarter ended July, 2013 in August, 2013, for the quarter ended October, 2013 in November, 2013 and for the quarter ended January, 2014 in February, 2014. This is clear case of discrimination in the matter of payment of Dearness Allowance to the Pensioners like the Petitioner herein as compared to the regular existing employee of Respondent Bank since the Dearness Allowance is paid to existing as well as to

retired employees to mitigate the variations in the cost of index over the previous wages settlement.

Moreover, the Regulation 37 of Syndicate bank (Employees') Pension Regulations, 1995 also provide that the Dearness relief on basic pension shall be payable on quarterly average basis."

5. On the other hand, Mr. Rajat Arora, learned counsel appearing for the respondent Bank would submit that the respondents are strictly adhering to the Regulation 37 read with Appendix-II of the Pension Regulations, which according to him, stipulates, the Dearness Relief shall be payable half yearly commencing from the 1st day of February and ending on the 31st day of July on the computation made on the basis of the quarterly average of index figures published for the months of October, November and December of the previous year and commencing from 1st day of August and ending on the 31st day of January, on the basis of quarterly average of index figures published in the months of April, May and June of the same year. He states, criterion to pay Dearness Relief is inbuilt in the Regulation read with the Appendix-II. The action of the respondent No.3 Bank paying Dearness Relief on half yearly basis cannot be contested. He states, petitioner being a pensioner cannot seek parity with the working employees in the Bank. They stand on a different footing. He would rely on the following judgments in support of his contentions:

- 1. *Action Committee South Eastern Railway Pensioners v. Union of India 1992 SCC (L&S) 222***
- 2. *Hari Ram Gupta v. Thro' LR Kasturi Devi AIR 1998 SC 2483***
- 3. *Tamil Nadu Electricity Board v. R. Veeraswamy AIR 1999 SC 1768***

4. ***Sudhir Kumar Consul v. Allahabad Bank (2011) 3 SCC 486.***

5. ***State of West Bengal and Anr. V. West Bengal Government Pensioners Association and Ors.***

6. We may, state here as noted above, we have heard the petitioner and Mr. Arora on October 24, 2017. The matter was adjourned for today only to enable the petitioner and the learned counsel for the respondent No. 3 Bank produce judgments in support of their respective contentions. Today when the matter was called, on the first round, petitioner was not present. The matter was passed over, but even at 4.25 PM, the petitioner is not present. Mr. Arora has handed over copies of judgments he wish to rely upon.

7. Having heard the petitioner (yesterday, i.e., October 24, 2017) and Mr. Rajat Arora, learned counsel for the respondent no.3 / Bank, we are of the view that the only issue raised by the petitioner is that the pensioners are being paid Dearness Relief on half yearly basis computed on quarterly average of the index figures published for three months as against quarterly in the case of working employees. There is no dispute the said stipulation is laid down in the Pension Regulations itself which governs the grant of pensionary benefits to the employees who retired from the respondent no.3 / Bank. We reproduce the relevant Regulation 37 and the relevant Para of Appendix – II as under:

“37. Dearness Relief –

(1) Dearness relief shall be granted on the basic pension or family pension or invalid pension or on compassionate allowance in accordance with the rates specified in Appendix – II

(2) Dearness relief shall be allowed on full basic pension even after commutation.

Appendix II

1. xxxx xxxx xxxx xxxx

2. In respect of employees who retire on or after the 1st day of November, 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 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 as per month	The rate of dearness relief as a percentage of basic pension
(ii) Upto Rs.2400/-	0.35%
(ii)Rs.2401 to Rs.3850	0.35% of Rs.2400 plus 0.29% of basic pension in excess of Rs.2400/-
(iii)Rs.3851to 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

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

(4) In the case of family pension, invalid pension and compassionate allowance, dearness relief shall be payable in accordance with the rates mentioned above.

(5) Dearness relief will be allowed on full basic pension ever after commutation.

(6) Dearness relief is not payable on additional pension.

Dearness relief on basic pension shall be as under:-

(1) In the case of employees who retired on or after the 1st day of January, 1986, but before the 1st day of November, 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 All India Average Consumer Price Index for Industrial Workers in the series of 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:-

<i>Scale of basic pension per month</i>	<i>The rate of dearness relief as a percentage of basic pension.</i>

<i>(i) upto Rs.1250/-</i>	<i>0.67 per cent</i>
<i>(ii) Rs.1251 to Rs.2000</i>	<i>0.67 percent of Rs.1250 plus 0.55 per cent of basic pension in excess of Rs.1250/</i>
<i>(iii)Rs.2001 to Rs.2130</i>	<i>0.67 per cent 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.</i>
<i>(iv) above Rs.2130</i>	<i>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 and Rs.2000 plus 0.17 per cent of basic pension in excess of Rs.2130.</i>

8. Further there is no dispute that the payment of Dearness Allowance to the working employees is not regulated by the Pension Regulations but under some other Regulations. So, a pensioner cannot seek parity with the working employees. In the affidavit filed by the respondent Bank, the stand is in Para (C) and Para (H) which we reproduced as under:

“C. That the deponent states that in terms of the settlement signed at the Industry level, the member Banks had brought the Pension Regulations, 1995. The respondent No.3 had also brought out the

Syndicate Bank (Employees) Pension Regulations, 1995, the same were notified on 29-9-1995. The provisions of the Regulations are matter on record. The petitioner is seeking relief which is against the provision of Regulation 37 of the Syndicate Bank (Employees) Pension Regulations, 1995 which are statutory in nature. It is stated that such Regulations had been framed in almost in all the Nationalized Banks after various discussions / settlements with the employees Unions and under the provision of Banking Companies (Acquisition and Transfer of Undertaking) Act, such statutory regulations so long as they are in existence and the petitioner is getting pension under the same, i.e., enjoying the benefits under such Regulation after his voluntary retirement would not be entitled to question the same under the present proceedings. The petition may thus be rejected on this ground also.

H. The class of existing employees and retired employees to which the petitioner belongs are in two different classes and a reasonable nexus has been established to calculate the DA on the payments made to them. There is no contradiction to the principle of equality / a reasonable classification between the retirees employees and the regular existing employees of the Respondent Bank. The rules / regulations governing the payment of DA to retired employees and regular existing employees are different and the basic of DA to such employees is different and the basic of DA to such employees is different and, therefore, it cannot be alleged that there is discrimination between the two sets of employees. Equality can only be claimed among equals.”

9. That apart, the Dearness Allowance / Dearness Relief are paid to compensate for the rise in price index. It is not the case of the petitioner, Dearness Relief is not being paid / granted at all to him. It is a decision taken after due consultations, which surely suggests, the Dearness Relief computed half yearly would suffice the rise in Price Index as far as pensioners are concerned, who are drawing pension on retirement.

10. It is a settled position of law that a pensioner and a working employee are class apart, and no parity exists, as held by the Supreme Court in the case of ***Confederation of Ex-Servicemen of India and Ors. v. Union of India and Ors. AIR 2006 SC 2945***. In this case, the Supreme Court was concerned with the claim of the petitioners seeking a direction against the respondent to recognize the right of full and free medicare of ex-serviceman, their families and dependents treating such right as fundamental right. It is the contention of the petitioners that such facilities are provided to serving personnel and as such must be extended to ex-serviceman on account of reasonable explanation and considering the services rendered. The respondent had opposed the petition on the ground that the serving employees constitute a different class altogether and comparison with retired employees is not well-founded. The Supreme Court in Para 20 of the said judgment has held as under:

“In our considered opinion, classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees, it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution. To us, two categories of employees are different. They form different classes and cannot be said to be similarly situated. There is, therefore, no violation of Article 14 if they are treated differently.”

11. In so far as the judgments relied upon by Mr. Arora are concerned, the Supreme Court in Para in Para 12 of ***Action Committee South Eastern Railway Pensioners (supra)*** was concerned with two sets of pensioners inasmuch as those who retired before March 31, 1985 and those, thereafter. The Supreme Court held that both the classes of

pensioners are separate class. Suffice to state the judgment has no relevance in the facts of this case.

12. In *Hari Ram Gupta (supra)*, similar is the conclusion of the Supreme Court. In other words, the Supreme Court was concerned with two classes of retirees, which is not case herein. Hence the Judgment has no relevance. Similar is the position in the case of *Tamil Nadu Electricity Board (supra)*. The said judgment also has no relevance in the facts of this case. In so far as the *Sudhir Kumar Consul (supra)* is concerned, the Supreme Court held that differential treatment of two sets of officers appointed prior to notified date would not offend Article 14 of the Constitution of India. In the said case, the Supreme Court was concerned with certain employees were given the benefits of pension on retirement after a particular date, which the Supreme Court held is justified. The said judgment has no relevance.

13. In any case, noting the judgment in the case of *Confederation of Ex-Servicemen of India and Ors. (supra)*, and the Pension Regulations, we do not see any merit in the petition. The petition is dismissed.

V. KAMESWAR RAO, J

G.S.SISTANI, J

OCTOBER 25, 2017/jg