

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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.....Petitioner

Versus

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.....Petitioner

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Date of decision 23.03.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. H.S.Dhindsa, Advocate for the petitioner
Mr. Gaurav Pathak, Advocate for UOI
Mr. R. Kartikaye, Advocate for
Punjab and Sind Bank

ANIL KSHETARPAL, J.

By this judgment, various civil writ petitions details whereof have been given on the heading of the judgment shall stand disposed of.

All these writ petitions have been filed by the retired employees of various Nationalized Banks who have retired before 01.11.2002. On 01.12.2020, with the consent of the learned counsel for the parties it was decided to treat CWP 31321-2019 (Gurcharan Singh Vs. Punjab & Sindh Bank) as a lead case and Learned counsels representing the parties in all the writ petitions were permitted to file

their comprehensive pleadings.

Hence, the facts are being noticed from CWP-31321-2019 (Gurucharan Singh Sidhu vs. UOI).

Through this writ petition, the petitioner has sought the following substantive reliefs:-

“(i) A writ in the nature of Certiorari for setting aside the reply to the notice dated 25.02.2019 (Annexure P-6) vide which the claim of the petitioner has been rejected erroneously.

(ii) It is further prayed to issue a writ in the nature of Mandamus for directing the respondent No.2 to release the upto date claim of the petitioner along with 18% interest per annum from the date it become due till the date of its actual payment.”

On careful reading of the pleadings, it is apparent that the petitioner has woven his case on the basis of an alleged unilateral letter dated 28.06.2005 circulated by the Indian Banks Association. The writ petitioner claims that on account of this unilateral letter the Dearness Allowance payable to the retirees who retired before 01.11.2002 has been unilaterally reduced. It is further claimed that such communication is not binding on the petitioner. It is also claimed that the aforesaid communication is against the Punjab & Sindh Bank (Employees') Pension regulations 1995 (hereafter referred to as Pension Regularions).

The writ petition has been contested by the Bank while taking various objections including the fact that the writ petition is liable

to be dismissed in view of a detailed judgment passed by the Hon'ble Supreme Court in **United Bank of India and others vs. United Bank of India Retirees' Welfare Association and others** (2018) 16 SCC 539. It is also pleaded that the letter issued by Indian Bank Association on 28.06.2005 is on the basis of a joint note dated 02.06.2005 which was signed on the same day when 8th bipartite settlement was signed, i.e. on 02.06.2005.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper books. On liberty being granted, learned counsels representing the petitioners (in all the writ petitions) as well as the Punjab & Sind Bank, have filed their written arguments.

A small reference to the background of the controversy shall be necessary. A memorandum of settlement was entered into on 29.10.1993 between the management of 58 Banks as represented by the Indian Banks' Association on the one hand and their workmen represented by the All India Bank Employees' Association on the other hand, wherein a provision was made to introduce pension scheme in the Banks for the workmen/employees in lieu of employers' contribution to the Provident Fund and that the pension scheme so agreed was to be brought on the pattern of the Reserve Bank of India. It was also agreed that dearness relief to the pensioners will be granted at such rates as may be determined from time to time in line with the Dearness Allowance formula in operation in the Reserve Bank of India. Thereafter, in the exercise of powers conferred under clause (f) of sub section 2 of Section

19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the various Nationalized Banks after consultation with the Reserve Bank of India and with previous sanction of the Central Government made pension regulations. With respect to Punjab and Sind Bank, the regulations are known as Punjab & Sind Bank (Employees') Pension Regulations, 1995. The Dearness Relief is provided under Regulation 37 which reads as under:-

“37. Dearness Relief

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

1. Dearness relief shall be allowed on full basic pension even after commutation.”

As noticed above, the dearness relief is to be calculated on the basic pension or the family pension or the invalid pension or on the compassionate allowance in accordance with the rates specified in Appendix II which divides the retirees into various categories according to the period during which they retired. In the present case, we are concerned with clause 3 of Appendix II which is extracted as under:-

“(3) In the case of employees who retire on or after the 1st day of April, 1998, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 1616 points in the

quarterly average of All India Average Consumer Price Index for Industrial Workers in the series 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension per month (1)	The rate of dearness relief as a percentage of basic pension (2)
Upto Rs.3380	0.25 per cent
Rs.3381 to Rs.5420	0.25 percent of Rs.3380 plus 0.21 percent of basic pension in excess of Rs.3380
Rs.3381 to Rs.5420	0.25 per cent of Rs.3380 plus 0.21 percent of the difference between Rs.5420 and Rs.3380 plus 0.12 percent of basic pension in excess of Rs.5420
Above Rs.5770	0.25 per cent of Rs.3380 plus 0.21 percent of the difference between Rs.5420 and Rs.3380 plus 0.12 percent of the difference between Rs.5770 and Rs.5420 plus 0.06 percent of basic pension in excess of Rs.5770

At this stage, it is significant to note that various writ petitions were filed by the retired employees of nationalized banks in the High Courts at Calcutta as well as at Madras. The writ petitions filed before the High Court at Calcutta were allowed by Single Bench as well as by the Division Bench. Whereas judgement of learned Single Judge of Madras High Court allowing the writ petitions was reversed by the Division Bench in **Indian Overseas Bank represented by the Chairman and Managing Director vs. C.R.Chandrashekharan** 2013 SCC Online Mad 1768. Before the Division Bench, there were two

different sets of employees. One set of employees were those who retired from the services of the Bank on 31.01.1993 whereas second set of employees were those who retired before 01.11.2002 similar to the writ petitioners in these cases. In those writ petitions, challenge was to clause 2(b) of the joint note dated 02.06.2005 and clause 7 of the settlement of the same date. The Division Bench of Madras High Court while setting aside the judgment of the learned Single Judge held that the salary as well as the pension is based on bipartite settlements, which are arrived at after every 5 years. It was further held that in the Banks, the pension is paid out of a contributory fund maintained. Further, it was held that the pension under each bipartite settlement is a package and therefore, it is not possible to scan the settlement in bits and pieces and hold some part of it to be good and acceptable whereas the other part to be bad. The court further held that a settlement is arrived at in terms of a proviso to Industrial Disputes Act, 1947, and therefore, bind the parties and since the benefit of pension conferred on the employees is not on account of statutory rights but on account of a settlement, therefore, there is no substance in the writ petitions.

Special Leave Petition against the judgment passed by the Madras High Court in the afore-referred case, after grant of leave to appeal, was dismissed by the Hon'ble Supreme Court. Whereas the judgment passed by the High Court at Calcutta was reversed by the Supreme Court in United Bank of India (supra) by a detailed judgment. Before the Supreme Court the claim of retirees who retired prior to 01.11.2002 was also considered which would be clear from the careful

reading of para 13 of the judgment. Hon'ble Supreme Court concluded as under:-

“25. At the outset it must be stated that Appendix II to the Pension Regulations had categorised employees in three different segments and the dearness relief payable on basic pension in respect of employees in these three categories was on the basis of tapering formula which differed in each of the categories. In respect of those who were in the first category i.e. those who had retired earliest, the dearness relief was 0.67% on the first slab, namely, up to Rs 1250 of basic pension. The rate then tapered and finally was 0.17% of basic pension in excess of Rs 2130. At the same time in respect of retirees in the second category, the rate of dearness relief was 0.35% in respect of first slab namely, up to Rs 2400. Here also the dearness relief was on a tapering formula and finally was 0.09% of basic pension in excess of Rs 4100. The third category which was in respect of employees who retired after 1-4-1998, the rate was 0.25% for the first slab up to Rs 3380. Going by the tapering formula, the rate was 0.06% of the basic pension in excess of Rs 5770. If Clause 7(2) of the 9th Bipartite Settlement dated 27-4-2010 is compared with the last category of Appendix II of the Pension Regulations, there is hardly any change in respect of retirees during the period 1-4-1998 to 31-10-2002. Thus, whatever benefit was conferred and was enjoyable by the employees who retired before November 2002 was not taken away.

26. If both categories dealt with by 9th Bipartite Settlement dated 27-4-2010 are further compared, the

retirees prior to 1-11-2002 would be entitled to dearness relief on a tapering formula where the initial slab up to Rs 3550 is to be governed by quotient of 0.24%. The tapering formula then ends with 0.06% of basic pension in excess of Rs 6010. The starting point is at a level of 0.24% while the end point tapers to 0.06%. The maximum advantage is sought to be given to those who are getting basic pension at lower levels of slab who would get the dearness relief at 0.24%. As against this, the retirees after 1-11-2002 are to be given dearness relief at a flat rate of 0.18% of the basic pension. Theoretically, the starting level for the retirees prior to 1-11-2002 is at a higher level of 0.24% as against the retirees after 1-11-2002. It could possibly be said that for those who are with basic pension in the region of Rs 6000, on the basis of a tapering formula may well, in the ultimate analysis, average to the same level of 0.18%.

27. The parity that was sought in the petition was not so much regarding applicability of same rate of 0.18% but was in respect of “flat rate” idea. The illustrations given in Para 30 of the writ petition that we have quoted hereinabove bring home the point. The calculation of dearness allowance of Rs 14,274 on basic pension of Rs 7880 in the case of Santipriya Roy is in keeping with tapering formula as given in the Bipartite Settlement dated 27-4-2010. The tabular chart then proceeds to calculate full compensation on account of dearness allowance with slab rate of 0.24% on the entire basic pension of Rs 7880 which figure comes to Rs 18,912. Thus the submission was that the dearness relief be computed on 0.24% for the entirety of basic pension and not just for the first slab

up to Rs 3550. But such calculation completely disregards that rate which is a flat rate applicable in case of post-1-11-2002 retirees is not 0.24% for the entire amount of basic pension but at a different level of 0.18% and the threshold requirement of quarterly average of the index is also different. If we were to simply borrow the same rate of 0.18% in the case of retirees prior to 1-11-2002, the retirees concerned may well be at a disadvantage. For instance, the basic pension of Rs 7880 of said Santipriya Roy would yield a figure of Rs 14,184 with flat rate of 0.18%. It will not, therefore, be correct to adopt and apply the same rate as is made applicable in case of post-1-11-2002 retirees. What is prayed for is also not the same rate but the same principle, namely, flat rate be made applicable to pre-1-11-2002 retirees as well but at a rate of 0.24%.

28. Would that be the correct approach? The tapering formula undoubtedly begins with 0.24% for the first segment of Rs 3550 of basic pension and then progressively steps down and finally reaches the level of 0.06% where the basic pension is in excess of Rs 6010. What is devised by way of such tapering formula is higher rate at the lower levels of segments so that larger number of peoples would get maximum advantage and the rate thereafter keeps stepping down. Neither can we apply the rate of 0.18% which will then cause great harm and damage to the retirees nor can we adopt a flat rate of 0.24% for the entire amount of basic pension. The benefit which is sought to be conferred by the tapering formula lies in the averaging which comes to nearabout the same quantum as is given to the post-1-11-2002 retirees. At

this stage, it is noteworthy that no illustration has been placed on record to submit that even with 0.18% dearness allowance those who retired after November 2002 walk away with substantially greater advantage as against pre-November 2002 retirees. In any case, this is not a matter where a section of employees merely on account of date of retirement are being differentiated. If we adopt a flat rate of 0.24% as is being prayed for, the class of retirees who retired before 1-11-2002 will stand conferred better rate than those employees who retired after 1-11-2002. Nor can we apply a flat rate of 0.18% for them. Each class is governed by distinct and different parameters. These are all matters of policy-making. The conferral of advantages of benefits on two different classes of retirees has a completely distinct formula and rates and it would not be possible to have a synthesis on any count or to put both the sets of retirees on any common parameters. Both classes are distinct and do not form a homogeneous group. It would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected. It is not a case of creating a class within a class.

29. In our view, any attempt to tinker with either the formula or the rate would make the whole scheme unworkable as was cautioned by this Court in *P.N. Menon* [*Union of India v. P.N. Menon*, (1994) 4 SCC 68 : 1994 SCC (L&S) 860] . As held in *Indian Ex-Services League* [*Indian Ex-Services League v. Union of India*, (1991) 2 SCC 104 : 1991 SCC (L&S) 536] the decision of this Court in *D.S. Nakara* [*D.S. Nakara v. Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] is one of limited

application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. The reliance on the resolutions/circulars issued by Reserve Bank of India was also misplaced. It is true that the tapering formula was done away with by Reserve Bank of India but that by itself cannot entitle the retirees prior to 1-11-2002 either to be conferred the advantage at the same rate made applicable by Reserve Bank of India or at the flat rate of 0.24% as was sought to be projected.

30. In our considered view, the assessment made by the Division Bench of the Madras High Court was absolutely correct. The settlement has to be taken as a package deal and it would be impossible to hold certain parts good and acceptable while finding other parts to be bad. Moreover, the recitals D, E and F in the Bipartite Settlement dated 2-6-2005 (quoted in para 6 hereinabove) show that a package deal was entered into and Rs 1288 crores p.a. towards all the benefits was set apart for the benefit of the employees. Any stepping up of benefit for a section of employees is bound to inflate the figure of Rs 1288 crores p.a. though that by itself is not a ground that weighs with us. In our view, both the categories of retirees, namely, pre-November 2002 and post-November 2002 stand on different footing, the parameters which govern the computation of dearness relief are also on a different level. The decisions rendered by the Single Judge as well as by the Division Bench of the High Court failed to appreciate these aspects and in our view, the said decisions are

completely erroneous.”

Still further, it may be noted here that before the Supreme Court as well as the Madras High Court, the letter issued by Indian Banks Association on 28.06.2005 was considered and held to be based upon a joint note dated 02.06.2005. In fact, in CWP 31321-2019 (lead case) the aforesaid letter is annexed as Annexure P-5. On careful reading thereof, it is apparent that the 8th bipartite settlement was arrived at and signed on 02.06.2005 and a joint note of the same date was also signed. The Indian Bankers’ Association has only circulated the joint note through the communicated dated 28.6.2005. The relevant part of the joint note dealing with dearness allowance is in Annexure 3, which is extracted as under:-

“Dearness Relief on Pension

Part A

On and from 1.5.2005, in the case of employees who retired during the period 1.4.98 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 quaterly average of the 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:-

Scale of basic pension per month	The rate of dearness relief as a percentage of basic pension
Upto Rs.3,550	0.24 per cent
Rs.3,551 to Rs.5,650	0.24 percent of Rs.3,550 plus 0.20 percent of basic pension in excess of Rs.3,550

Rs.5,651 to Rs.6,010	0.24 per cent of Rs.3,550 plus 0.20 percent of the difference between Rs.5.650 and Rs.3,550 plus 0.12 percent of basic pension in excess of Rs.5,650
Above Rs.6,010	0.24 per cent of Rs.3,550 plus 0.20 percent of the difference between Rs.5,650 and Rs.3,550 plus 0.12 percent of the difference between Rs.6,010 and Rs.5,650 plus 0.06 percent of basic pension in excess of Rs.6,010

Part B

In respect of employees who retire on or after 1.5.2005, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 2288 points in the quaterly average of the All India Average Consumer Price Index for Industrial Workers in the series 1960= 100, at the rate of 0.18 per cent of basic pension.

Note:- In respect of retirees of the period 1.11.2002 to 30.4.2005, for whom pension will be revised w.e.f 1.5.2005 in terms of Paragraph 4(1) of this circular, dearness relief shall be payable at 0.18 per cent of basic pension w.e.f 1.5.2005.”

Keeping in view the aforesaid facts, now this Court proceeds to analyze the arguments of the learned counsel for the parties. As noticed above, the tapering formula adopted by the Bank with effect from 1.05.2005 is based upon a joint note signed by the Management and the Employees' Association. Therefore, it is not a unilateral letter. Still further, it is also apparent from the reading of the judgment passed by the Division Bench of the Madras High Court as well as the Supreme

Court that the retirees have been given a package on the basis of the settlement arrived at and they cannot be allowed to partially challenge the same. Still further, it is also clear that the challenge to the aforesaid clause has already been rejected by the Hon'ble Supreme Court. Matter with regard to rate at which dearness allowance is payable to the retirees before 1.11.2002 has already been decided by the Supreme Court in Indian Overseas Bank (supra).

Still further, the argument that the dearness allowance is to be paid only on the basis of old regulation of 1995 has also been repelled.

Keeping in view the aforesaid facts, this Bench does not find that the writ petition as prayed for by the petitioners can be issued. Hence, all the writ petitions are dismissed.

23.03.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE