IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 7942 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer .. Petitioner

Versus

Satyaprakash Kisan Ghongade .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND

WRIT PETITION NO. 7958 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer .. Petitioner

Versus

Keshavrao Ramrao Ambhore .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND

WRIT PETITION NO. 7947 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer .. Petitioner

Versus

Atmaram Ramji Bhalerao .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND

WRIT PETITION NO. 9064 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer .. Petitioner

Versus

Pradeep Ganpatrao Girdhari .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7946 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Namdeo Kondaji Bhise and another .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7951 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Baliram Nagoji Tamile and another .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7970 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Bhagwan Parasram Gantode and others .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7969 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner

Versus

Taterao Vyankatrao Aher .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7955 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner

Versus

Anil Ramrao Choudhary .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7968 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner

Versus

Baburao Namdeo Parde .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 9057 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner

Versus

Shaikh Usman Shaikh Rustum .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 9058 OF 2022

Parbhani District Central Co-operative

Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Sopan Sitaramji Kolhe .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 9056 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Shivaji Sitaram Khiste .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7967 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Kisan Rangnathrao Zade .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7966 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Dattarao Kondibarao Gavhane
Died through L.Rs.
Sulochanabai Kondiba Gavhane .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND

WRIT PETITION NO. 7944 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Sahebrao Rambhau Khodake and others .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7943 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Bhimrao Vithalrao Jamdade
Died through L.Rs.
Vaijnatabai Bhimrao jamdade .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7952 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Vitthal Punjajirao Deshmukh
and another .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7953 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Narayan Gulabrao Nayak and others .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7960 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Prabhakar Sakharam Patingrao .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND
WRIT PETITION NO. 7959 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Mohan Keshavrao Solanke and others .. Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND
WRIT PETITION NO. 7957 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Sharad Apparao Mogal .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND
WRIT PETITION NO. 7956 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Ramakant Santram Rachatwar .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Amol G. Vasmatkar, Advocate for the Respondent.

AND
WRIT PETITION NO. 7954 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Laxman Ambaji Waghmare and another	..	Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7965 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Abdul Wahab Abdul Gani	..	Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND
WRIT PETITION NO. 7964 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Tukaram Kondiba Tarade	..	Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri S. B. Munde, Advocate for the Respondent.

AND
WRIT PETITION NO. 7963 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Fulaji Rustumrao Magar	..	Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7962 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Tukaram Tulaji Bangar through L.Rs. Ratnamai Tukaram Bangar	..	Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.

AND
WRIT PETITION NO. 7961 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Pandit Shankarrao Potpallewar	..	Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7950 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		
Laxman Tikaram Gavale and another	..	Respondents

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondents.

AND
WRIT PETITION NO. 7949 OF 2022

Parbhani District Central Co-operative Bank Limited through its Chief Executive Officer	..	Petitioner
Versus		

Keshav Sheshrao Gawali .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7948 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Shivaji Keshavrao Nilkanthe .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Yuvraj R. Barhate, Advocate for the Respondent.

AND
WRIT PETITION NO. 7945 OF 2022

Parbhani District Central Co-operative
Bank Limited through its
Chief Executive Officer .. Petitioner
Versus
Bhujang Munjaji Phad .. Respondent

Shri Rajaram B. Muley, Advocate for the Petitioner.
Shri Sachin Munde, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.
DATE : 05TH DECEMBER, 2022.

FINAL ORDER :

. These petitions challenge various judgments and orders passed by the Industrial Court, Jalna in various complaints (ULP) filed by the respondents, by which the Industrial Court has directed the petitioner to pay arrears of dearness allowance to the respondents with effect from February 2000 along with interest at the rate of 6%.

2. It must be observed at the outset that similar orders passed by the Industrial Court were subject matter of challenge

in several writ petitions filed before this Court by very same petitioner and by order dated 30th April, 2019 in Writ Petition No. 7027 of 2018 with other connected writ petition, this Court has dismissed those petitions. Since the order dated 30th April, 2019 is not too lengthy, it would be appropriate to reproduce it in entirety as under :

> 1. In all these identical Writ Petitions, the petitioner is a Cooperative Bank and all the respondents are identically placed workmen, who had preferred ULP Complaints before the Industrial Court, either individually or in groups.
>
> 2. These ULP Complaints were filed in 2015 under Section 28(1) read with items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). All these original complainants had raised demands as regards the unpaid dearness allowance, that was admittedly frozen by the petitioner / Bank vide resolution dated 28.2.2000. By the impugned identical judgments, all these complaints have been partly allowed. Considering that there was a recurring cause of action and as these complainants had sought the payment of the arrears after they retired on attaining the age of superannuation, that the Industrial Court has granted 6% p.a. interest for two years on the arrears of D.A. to be calculated only from the date of the filing of the complaints.
>
> 3. Shri Deshmukh, Shri Yadav and Shri Ghute, learned Advocates appearing on behalf of the petitioner / Bank in these cases, have strenuously criticized the impugned judgment. Their submissions can be summarized as under :-
>
> > (a) The Bank resolved to freeze the payment of dearness allowance in 2010 and the said resolution was never challenged by any of the complainants.
> >
> > (b) All these complaints have been filed after reaching the age of superannuation and therefore, were rendered untenable.
> >
> > (c) No application for seeking condonation of delay was filed and as such, the Industrial Court had no jurisdiction to entertain these complaints.
> >
> > (d) The Bank was in a weak economical condition and could not pay the dearness allowance regularly.

(e) On 14.8.2010, the Bank resolved to pay the dearness allowance at a particular rate in view of the decision taken by the Executive Committee.

(f) Thereafter, the dearness allowance was paid to these workers.

(g) Even if the delay is to be considered, which is of about 14 to 15 years, the complaints could have been considered upto 3 years from the day on which they were lodged or upto the date of superannuation of these employees.

(h) Nabard had issued directions to the management to restrict their maintenance costs at 2% when it was already at 2.69%.

4. The learned Advocates appearing for the identically placed respondents submit as under :-

(a) These workers did not have any bargaining power and could not have demanded the payment of D.A. for the fear of retaliatory action.

(b) Intermittently the Bank paid them certain portions of the D.A.

(c) With the hope that one day they would get all the arrears of their D.A., that these employees waited and in fact, the Bank did start paying paltry amounts as D.A. pursuant to their resolution dated14.8.2010.

(d) When they realized that the Bank was not inclined to clear off all the D.A. dues and as they had superannuated from employment, they gathered courage to approach the Industrial Court.

(e) Due to their superannuation, the fear of retaliatory action diminished and hence they approached the Industrial Court.

(f) A notice of change under Section 9A of the Industrial Disputes Act was not issued by the management, to freeze the payment of D.A.

(g) There was no power vested in the management under any law or under any settlement or agreement.

(h) Catena of judgments were cited with reference to a recurring cause of action, which convinced the Industrial Court that the complaints could be entertained.

5. In my view, it is well settled that nonpayment of components like the D.A. or special allowance or incentives, are recurring causes of action, unlike an order of termination or dismissal or retrenchment or suspension etc. It appears from the record that the Bank resolved not to pay the D.A. by resolution dated 28.2.2000. By resolution dated 14.8.2010, they lifted the bar and started paying the D.A., which naturally created hope in the minds of these workmen. It is quite obvious that being hopeful, they waited for such payments to be made and when they realized that these payments were effected only from 14.8.2010 and the earlier unpaid D.A. amounts were not being paid, that they had approached the Industrial Court.

6. The law on a continuous cause of action / recurring cause of action is well settled in the following judgments :-

(a) Maharashtra State Coop. Cotton Growers Marketing Federation Ltd. and others Vs. Maharashtra State Coop. Cotton Growers Marketing Federation Emp. Union and others (1992 I CLR 350),

(b) Akhil Maharashtra Kamgar Union Vs. Warden and Co. Ltd. (1996 I CLR 212),

(c) Warden and Co. (India) Ltd. Bombay Vs. Akhil Maharashtra Kamgar Union, Thane (2001 II CLR 350), and

(d) Kamani Tubes Ltd. Vs. Kamani Employees Union and another)1987 Mh.L.J.861)

7. It cannot be overlooked that the Industrial Court has considered the submissions of the Bank and has refused to grant interest on the unpaid difference amount from the date this could be said to have become payable till the date the complaints were registered. For a period of almost 15 years, the Industrial Court has deprived these employees of the interest component.

8. It is crystallized law that any salary / wage emolument cannot be abruptly withdrawn, from the wage package of a workman. The D.A. constitutes an integral part of the minimum rates of wages prescribed in a scheduled employment. In the absence of any service condition or an agreement, settlement or award permitting the employer to change the service conditions, no employer can do so without a notice of change under Section 9A of the ID Act. Moreover, payment of D.A. cannot be stopped, when it is an integral component of a wage structure.

> 9. I find that the Industrial Court has passed an equitable order, which cannot be termed as being grossly unjust to the petitioner / Bank. These employees were working in the Class IV category and even small amounts of dues mean a lot to such workers. So also, the Bank did not adduce any evidence to indicate that the resolution dated 28.2.2000, freezing the D.A., was served upon each of these workers, so as to make them aware about the decision of the Bank. Notwithstanding this position, it is noteworthy that freezing of a D.A. as understood in service jurisprudence is an act of an employer, who freezes a particular amount as being a D.A. payable. It is unheard of in service jurisprudence that an employer can refuse to pay D.A. under the spacious plea of freezing the D.A.
>
> 10. Considering the above and since I find that the Industrial Court has taken a pragmatic view, I do not find any reason to cause aninterference in the impugned judgment, merely because a different view could have been taken.
>
> 11. These petitions being devoid of merits are, therefore, dismissed.
>
> 12. Learned Advocates for the workmen pray for leave to withdraw the amounts deposited by the Bank in this Court. It is further submitted by the learned Advocates that this Court has directed the Bank to deposit a lump sum and neither the Bank, nor the workers have applied their mind to the exact arrears payable to them. In some matters, no amounts have been deposited. Learned Advocates for the Bank contend that the said amounts may not be permitted to be withdrawn for a period of atleast four weeks.
>
> 13. In view of the above, the Bank is permitted to tender a proper calculation of the arrears payable to each of these workmen, on/or before 19.6.2019 and serve copies of the same on the learned Advocates for the workmen. Such calculations shall be placed before this Court in these disposed off writ petitions on 21.6.2019. Liberty to the workmen to calculate their dues is granted and orders on withdrawal of amounts shall, therefore, be passed after considering such calculations. Needless to state, in order to do justice and balance the equities, the petitioner / Bank shall deposit the admissible amounts on the above stated dates.

3. Petitioner challenged the order dated 30th April, 2019 passed by this Court by filing series of Special Leave Petitions before the Supreme Court and by order dated 09.12.2019 in

Special Leave to Appeal (C) No. 1949 of 2019 with other connected matters, the Supreme Court was pleased to dismiss the same by passing following order.

> We are not inclined to interfere with the impugned order(s).
>
> However, with respect to the facility of installments, liberty is granted to the petitioner(s) to apply to the High Court and also for the purpose of calculation.
>
> In case, a proper application is filed, within three weeks, the High Court to consider the same and may grant reasonable time to the Bank to pay in installments considering the huge arrears to be paid.
>
> No coercive action in contempt petition be taken before the decision is made on the application to be filed.
>
> The special leave petitions are, accordingly, disposed of.
>
> Pending application(s), if any, shall stand disposed of.

4. In pursuance of the liberty granted by the Supreme Court, the petitioner filed civil applications before this Court for grant of reasonable time to make payments in installments. On those civil applications, this Court was pleased to pass following order on 29th July, 2019 :

> 1. All these Civil Applications, are filed, in pursuance to the liberty granted by the Hon'ble Apex Court in SLP No. 19409/2019 in which by order dated 09.12.2019, while declining to interfere with the impugned order, however with respect to the facility of instalments, liberty was granted to apply to the High Court and also for the purpose of calculation.
>
> 2. Mr. Bhalerao, learned counsel for respondent No.25 submits, that the amount due and payable is approximately Rs. 2,96,80,505/, which is disputed by Mr. Deshmukh. He requests for three instalments for the payment of this amount. On a query made by the Court as to what would be the amount, which would be deposited within next two days, Mr. Deshmukh, on instructions submits, that an amount of Rs. 1 (One)

> Crore, would be deposited by 2 nd of August, 2021. The applicant is, therefore, directed to deposit the amount of Rs. 1 (One) Crore, by 2nd of August, 2021.
>
> 3. List all the applications for further consideration on 3rd of August, 2021.

5. It is quite perplexing that despite the issue being settled upto the Apex Court, the petitioner has continued challenging similar orders passed by the Industrial Court by filing present petitions. In some of the petitions, this Court while issuing notices was pleased to issue following directions by its order dated 28th July, 2022.

> 5. Considering the bonafides of the petitioner, interim relief in terms of prayer clause 'B', subject to the payment of the entire amount of arrears of Dearness Allowance in the following manner:-
>
> i) 30% of the arrears to be paid within three weeks.
> ii) 30% arrears to be paid thereafter within three weeks.
> Iii) Balance 40% of the arrears to be paid thereafter within three weeks.

6. It appears that in pursuance of that order various amounts are deposited by the petitioner-bank in this Court. Some of the respondents have filed civil applications seeking leave of this Court for withdrawal of the deposited amounts. Instead of deciding those civil applications, I have proceeded to hear the main writ petitions.

7. Ordinarily, since the issue involved in the present case is fully settled upto the Apex Court, the present petitions ought to have been straightway dismissed. However, Mr. Muley, learned counsel appearing for the petitioner-bank has made strenuous submissions before me to urge that there are differentiating factors between the cases in which orders have been passed by

this court and by the Apex Court and the present cases. On that count I have proceeded to hear Mr. Muley.

8. First submission of Mr. Muley is that the resolution dated 28.02.2000 by which a decision was taken to freeze the dearness allowance was never challenged before the Industrial Court. He further submits that despite the resolution not being challenged, the Industrial Court has erred in declaring the decision contained in resolution dated 28.02.2000 as unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (hereinafter referred as to the “MRTU and PULP Act”).

9. I have gone through the grounds of challenge in the petitions and find that this ground of absence of challenge of resolution dated 28.02.2000 is not included in the memo of petitions. The petitioner-bank has failed to produce some record/ copy of complaint to verify prayers made therein. Without production of copy of complaint and without raising a ground of absence of challenge to the resolution dated 28.02.2000 in the petitions, this point is sought to be casually argued before me, which cannot be countenanced. Even, if, absence of a ground in the petition is to be momentarily ignored, the objection itself is hyper technical in nature. The entire controversy before the Industrial Court was about validity of the decision of the petitioner bank to freeze the dearness allowance and the Industrial Court has correctly gone into that issue and decided the same. The objection, therefore, needs summary rejection. Even otherwise the issue of non challenge to the resolution has

been specifically dealt with by this Court while passing order dated 30th April, 2019 and the same is considered and deemed to have been repealed.

10. The next ground of challenge of Mr. Muley is about the delay in raising the issue. He relies upon the provisions of the Section 28(i) of the MRTU and PULP Act to contend that the time limit for filing such complaint is only 90 days, whereas, the complaints were filed raising issue of freezing of the dearness allowance in various years ranging from 2014 to 2017. He would submit that the complaints were not supported by applications for condonation of delay. The issue of delay has been considered by this Court in its order dated 30th April, 2019 by holding that non payment of dearness allowance or special allowance or incentive are recurring causes of action. Since the issue of delay is already decided by this Court and special leave petitions filed against that order are dismissed by the Supreme Court, the same issue cannot be re-agitated by the petitioner-bank in the present petitions.

11. Next submission of Mr. Muley is that petitioner-bank was in financial difficulties and NABARD had directed it to curtail overheads, which was the basis for taking decision to freeze the dearness allowance. This issue was also raised before this Court while passing order dated 30th April, 2019 and cannot be reagitated.

12. The next objection of Mr. Muley is that the Industrial Court has erred in giving direction to the petitioner-bank to calculate the arrears of dearness allowance with effect from

February 2000, which job ought to have been done by the Tribunal itself. This objection is again totally misplaced. I do not find any reason why the Tribunal should have undertaken onerous task of calculating the exact amount of arrears of dearness allowance, when the petitioner-bank can easily do the same in respect of its own employees. The objection therefore deserves summary rejection.

13. Next ground of challenge of Mr. Muley is that decision of freezing dearness allowance does not amount to change of service conditions and, therefore, the same is not hit by the provisions of Section 9A of the Industrial Disputes Act, 1947. This submission is premised on the footing that payment of dearness allowance as such was not discontinued, but only increase therein was frozen. This aspect is considered by the Industrial Tribunal in para Nos. 16 to 18 of its judgment and order dated 01.01.2020, which reads thus :

> (16) It is an undisputed fact that when the respondent-bank took the decision to freeze Dearness Allowance (DA), none of the employees including the complainant was issued any notice of the proposed decision. Undisputedly, the Dearness Allowance (DA) forms an integral component of wage structure, as per definition of the term 'wages' under Section 2(vi) of Payment of Wages Act. Under Schedule-IV of the I. D. Act, r/w. Section 9A, there are 11 Items under the head Conditions of Service for change of which notice is to be given. The first Item therein is 'wages', including the period and mode of payment. Section 9A of the Industrial Disputes Act lays down as under :-
>
> (17) **"9A. Notice of change :- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--**
>
> > (a) without giving to the workmen likely to be affected by such change a notice in the prescribed

> manner of the nature of the change proposed to be effected; or
>
> (b) within twenty one days of giving such notice:
>
> Provided that ....".
>
> (18) Thus, upon going through the provisions of Section 9A of the Act, and reading it together with Item 1 of Schedule IV thereof, it is very apparent that the employer has to give a notice of change to the employees, whenever it proposes a change in their wages or wage structure. The aforesaid provision of Section 9-A is mandatory in nature and non - compliance thereof would certainly vitiate any action on the part of the employer to change the wages or wage structure, which in the present case, there has been noncompliance of mandatory provision of Section 9A r/w. Item 1 of Schedule - IV of the I.D. Act, 1947, in effecting the change in wage structure, i.e. Dearness Allowance (DA).

14. Furthermore, this Court has also dealt with the issue in para No. 9 of its order which is culled out hereinabove. The petitioner-bank cannot be permitted to reagitate those issues once again.

15. Thus, none of the submissions made by Mr. Muley are tenable. Most of these submissions have already been considered by this Court in previous set of litigation between some of the parties and SLP's filed challenging order of this Court have already been dismissed. Petitioner-bank has implemented the orders passed in similar set of employees by paying them the arrears of dearness allowance in three installments. In a case of **K. C. Sharma Vs. Union of India** reported in ***(1997) 6 SCC 721***, the Constitution Bench of the Supreme Court has held that benefit of order of the Court is required to be extended to the similarly placed employees by condoning delay. It is held in para No. 6 of the judgment as under :

> "Having regarding to the facts and circumstances of the case,

> we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 199 is condoned and the said application is allowed. The appellants would be entitled to the same relief in matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs."

16. In the result, I do not find any justifiable reason to take a different view than the one taken by this Court in its order dated 30th April, 2019. Writ petitions are thus devoid of merits and are dismissed. There shall be no order as to costs.

17. The petitioner-bank has already deposited arrears of dearness allowance (DA) in this court in some of the cases. The petitioner shall supply a copy of breakup of entire amount deposited in this Court indicating the exact amount due and payable to each of the respondent. As such all the respondents whose names reflect in such break-up statement shall be entitled to withdraw the deposited amount with accrued interest. In respect of those respondents for whom the amount of arrears of D. A. is not deposited in this Court, the petitioner-bank to pay the same directly to those respondents in three installment of 30% within a period of three (03) weeks from today, 30% in next three (03) weeks thereafter and balance 40% in next three (03) weeks thereafter.

[SANDEEP V. MARNE, J.]

bsb/Dec. 22