

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.12.2012

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.50000 to 50002 of 2006  
9952, 14983, 6632 of 2007 and 3198 of 2007 &  
M.P.No.2/2010 (5 nos) in W.P.Nos.50000 to 50002/06,  
9952/07, 3198/07

- 1 A.B.KASTHURIRANGAN
- 2 P.DHANRAM
- 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.VISWANATHAN
- 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 ..PETITIONERS IN W.P.50000 OF 2006
23. N.RAMAMOORTHY
24. T.S.VARADASUBRAMANI ..PETITIONER IN W.P.50001 OF 2006
25. T.V.ALWAN
26. V.KRISHNAN
27. M.GNANAMBAL
28. P.SHANMUGASUNDARAM
29. S.NAGARAJAN
30. R.SAMPOORNA KAMESWARAN
31. K.PADMANABHAN ..PETITIONER IN W.P.50002 OF 2006
- 32 M. VEDANTHAM
- 33 A.M. SAMPATH

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- 34 P. RAMANY
- 35 S. RAMAKRISHNAN
- 36 R. RAGHAVAN
- 37 A. NARAYANA RAM
- 38 S. PALANIVELU
- 39 K. PATTABIRAMAN
- 40 V. GOVINDAN
- 41 S.R. VENKATESAN
- 42 V. SIVASANKAR BHAT
- 43 B.V. SATYANARAYANA RAO
- 44 GM.N. DOSS
- 45 T.S. KESAVA RAO

..PETITIONERS IN W.P.9952 OF 2007

- 46 G.SUNDARESAN
47. S.NAGARAJAN
- 48 A.V.NATARAJAN
- 49 V.NARAYANAN
- 50 C.PARTHASARATHY
- 51 T.R.SRINIVAS
- 52 RAMESH C.SHAH
- 53 K.V.I.KUPPERI
- 54 Y.MADHUSUDAN RAO
- 55 J.L.KRISHNA

56 BANK OF BARODA RETD OFFICERS

ASSOCIATION REP.BY ITS GENERAL SECRETARY

G11 SHIVAM FLATS RAJESH TOWER ROAD

OFF GOTRI ROAD BARODA 390021..PETITIONERS IN W.P.14983 OF 2007

57. R. Balakrishna Bhat
58. A. Malathi
59. K.V. Subramanian
60. N. Jayabalan
61. K. Kannappan
62. A. Padmanaban
63. Ramesh C. Shah
64. S. Srinivasan
65. S. Santhanam
66. M. Amaldas
67. V. Rajaram
68. S. Meenakshisundaram
69. S. Thirumalai
70. N. Krishnamurthy
71. V.S. Srinivasan
72. J. Seshan
73. P. Muralitharan
74. R. Srinivasaraghavan
75. G. Palani
76. T.S. Rangamani
77. R. Rajendra Babu

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78. S.Radhakrishnan  
79. P. Ramamurthy  
80. T.V. Srinivasan ..Petitioner in W.P.6632/2007  
81. C.R. Chandrasekarn ..Petitioner in W.P.3198/2007

Versus

1. Canara Bank, rep. by the  
Chairman & Managing of 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. ..Respondents 1&2 in W.P.No.50000  
to 50002/2006

3. Bank of Baroda, rep. by the  
Chairman & Managing Director,  
Central Office Baroda Corporate Centre,  
G-Block, C-26, Bandra Kurla Complex,  
Bandra (East), Mumbai.

4. The Competent Authority,  
and Assistant General Manager,  
Bank of Baroda (Employees) Pension  
Regulations, 1985,  
Bank of Baroda, Head Office,  
Baroda Home, Mandvi,  
Baroda 390 006. ..Respondents 1 and 2 in  
W.P.Nos.9952, 14983 and 6632/2007.

5. INDIAN OVERSEAS BANK  
REP BY THE CHAIRMAN AND MANAGING DIRECTOR  
CENTRAL OFFICE 762 ANNA SALAI CHENNAI 2.

6. THE COMPETENT AUTHORITY FOR  
PENSION REGULATIONS (GENERAL MANAGER)  
INDIAN OVERSEAS BANK CENTRAL OFFICE  
763 ANNA SALAI CHENNAI 2.  
RESPONDENTS 1 AND 2 IN  
W.P.NO.3198 OF 2007

W.P.Nos.50000 to 50002/2006, 9952/2007 and 3198/2007:

Petitions filed under Article 226 of the Constitution of India  
for the issuance of a Writ of Certiorarified Mandamus, (1)  
W.P.No.50000/2006 calling for the records pertaining to Clause 2b of

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Joint Note dated 02.06.2005/Clause 7 of the settlement dated 2.6.2005 and quash the same in so far as it not extending the benefit of the dearness relief of 100% neutralization on the entire basic pension for the Petitioners who retired earlier to 1.11.2002 and forbearing the Respondents 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 01.11.2002, from the benefit of dearness relief of 100% neutralization and direct the second respondent to pay the petitioners dearness relief at 0.24% of basic pension which is 100% neutralization for them as in the case of the pensioners who retired or retiring on or after 1.2.2010 with effect from 1.2.2005 with interest at a rate to be determined.  
(Prayer Amended as per order dated 15.10.2012 in MPS1,1,1,1,1/2010 in WPS 50000 to 50002/2006 & 3198/07 & 9952/07)

(2) W.P.No.50001/2006:- calling for the records pertaining to Clause 2b of Joint Note dated 02.06.2005 and quash the same in so far as it not extending the benefit of the dearness relief of 100% neutralization on the entire basic pension for the petitioner who retired earlier to 1.11.2002 and forbearing the Respondents from passing any amendment to Pension Regulations 1995, as per the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, excluding the petitioner who retired from service earlier 01.11.2002, from the benefit of dearness relief of 100% neutralization and direct the second respondent to pay the petitioners dearness relief of 0.67% of basic pension which is 100% neutralization for them as in the case of the pensioners who retired or retiring on or after 1.2.2010 with effect from 1.2.2005 with interest at a rate to be determined.  
(Prayer Amended as per order dated 15.10.2012 in MPS1,1,1,1,1/2010 in WPS 50000 to 50002/2006 & 3198/07 & 9952/07)

W.P.No.50002/2006:- calling for the records pertaining to Clause 2b of Joint Note dated 02.06.2005/Clause 7 of the settlement dated 2.6.2005 and quash the same in so far as it not extending the benefit of the dearness relief of 100% neutralization on the entire basic pension for the petitioners who retired earlier to 1.11.2002 and forbearing the Respondents from passing any amendment to Pension Regulations 1995, as per the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, excluding the petitioner who retired from service earlier 01.11.2002, from the benefit of dearness relief of 100% neutralization and direct the second respondent to pay the petitioners dearness relief of 0.35% of basic pension which is 100% neutralization for them as in the case of the pensioners who retired or retiring on or after 1.2.2010 with effect from 1.2.2005 with interest at a rate to be determined.  
(Prayer Amended as per order dated 15.10.2012 in MPS1,1,1,1,1/2010 in WPS 50000 to 50002/2006 & 3198/07 & 9952/07)

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W.P.No.9952/2007:- calling for the records pertaining to Clause 2b of Joint Note dated 02.06.2005 and quash the same in so far as it not extending the benefit of the dearness relief of 100% neutralization on the entire basic pension for the petitioner who retired earlier to 1.11.2002 and forbearing the Respondents 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 01.11.2002, from the benefit of dearness relief of 100% neutralization and direct the second respondent to pay the petitioners dearness relief of 0.35% of basic pension which is 100% neutralization for them as in the case of the pensioners who retired or retiring on or after 1.2.2010 with effect from 1.2.2005 with interest at a rate to be determined.  
(Prayer Amended as per order dated 15.10.2012 in MPS1,1,1,1,1/2010 in WPS 50000 to 50002/2006 & 3198/07 & 9952/07) and

W.P.No.3198/2007:- calling for the records pertaining to Clause 2b of Joint Note dated 02.06.2005 and quash the same in so far as it not extending the benefit of the dearness relief of 100% neutralization on the entire basic pension for the petitioner who retired earlier to 1.11.2002 and forbearing the Respondents from passing any amendment to Pension Regulations 1995, as per the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, excluding the petitioner who retired from service earlier 01.11.2002, from the benefit of dearness relief of 100% neutralization and direct the second respondent to pay the petitioners dearness relief of 0.67% of basic pension which is 100% neutralization for him as in the case of the pensioners who retired or retiring on or after 1.2.2010 with effect from 1.2.2005 with interest at a rate to be determined.  
(Prayer Amended as per order dated 15.10.2012 in MPS1,1,1,1,1/2010 in WPS 50000 to 50002/2006 & 3198/07 & 9952/07) respectively.

W.P.Nos.14983/2007 and 6632/2007:Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus

(1)W.P.No.14983/2007:to direct the respondents to ignore the rejection letters to the petitioners from the respondent bank and to direct the respondents to pay the petitioners Dearness Relief on the entire basic pension at 0.67% or 0.35% or 0.24% as the case may be which is 100% neutralization from 1.2.2005 with interest at a rate to be determined by this Hon'ble Court and

2.W.P.No.6632/2007:to ignore the rejection letters to the petitioners from the respondent bank and to direct the respondents to pay the petitioners Dearness Relief on their entire basic pension at 0.24% which is 100% neutralization from 1.2.2005 with interest at a rate to be determined by this Hon'ble court respectively.

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Appearance :-

Mr.R.Thiagarajan, Senior Counsel, for M/s.Aiyar and Dolia, for petitioners in W.P.Nos.9952, 6632 and 14983 of 2007

Mr.A.L.Somayaji, Senior Counsel for Mr.C.R.Chandrasekar, for M/s.Aiyar and Dolia, for petitioners in W.P.No.50000 to 50002 of 2006

Mr.C.R.Chandrasekaran, Petitioner in person in W.P.No.3198 of 2007

Mr.V.Bhiman, for M/s.Sampath Kumar Associates, for respondents 1 and 2 in W.P.No.9952 and 14983 of 2007.

Mr.P.V.Ramachandran, for respondents 1 and 2 in W.P.No.6632 of 2007

Mr.P.R.Raman, for R-1 in W.P.No.50000 to 50002 of 2006

Mr.N.G.R.Prasad, for respondents 1 and 2 in W.P.No.3198 of 2007  
No appearance for R2 in W.P.Nos.50000 to 50002 of 2006

COMMON ORDER

These writ petitions at the instance of the former employees of Indian Overseas Bank, Bank of Baroda and Canara Bank, seek the benefits of the revised pension scheme introduced by the concerned banks pursuant to the 8<sup>th</sup> Bipartite settlement/ Joint Note entered into between the employees Union and the banks through the Indian Banks Association.

2. Since the petitioners are having a common case, the facts as found in W.P.No.3198 of 2007 are taken to narrate the background facts.

The conspectus of facts :-  
W.P.No.3198 of 2007 :-

3. The petitioner joined the service of Indian Overseas bank on 7 November 1955. He was later promoted as Officer in Middle Management Cadre III. The petitioner retired from the service of the Bank on 31 January 1993. Subsequently, the Bank introduced a Pension Scheme in lieu of employees' contribution to the Provident Fund. The petitioner exercised his option and accordingly, he was granted pension in accordance with the Wage settlement/ joint note which were then in force. The petitioner is being paid Dearness Relief on the Salary and pension at the slab rates prevailing at that point of time. While so, the Bank entered into a settlement/Joint note with the employees Union on 2 June 2005. It was described as 8<sup>th</sup> Bipartite Agreement/ Joint Note. The said agreement made certain fundamental changes both in the matter of calculation of dearness

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allowance as well as pension. Dearness Relief was given at 0.18% of the basic pension with effect from 1 May 2005. The petitioner and others who have retired prior to 1 November 2002 were paid as per the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> bipartite settlements as applicable to them. For those who have retired between 1 November 2002 and 30 April 2005, pension was revised with effect from 1 May 2005 and Dearness Relief was paid at the rate of 0.18% of the basic pension with effect from 1 May 2005. However, the said benefit was not given to those who have retired prior to 1 November 2002. This is taken as an element of discrimination, which made the petitioner to file this writ petition.

4. The Deputy General Manager, Indian Overseas Bank filed a counter affidavit contesting the claim made by the petitioner. According to the Bank, 7<sup>th</sup> Bipartite Settlement/Joint Note was entered into on 27 March 2000, and it was effective from 1 November 1997, and expired on 31 October 2002. Thereafter, negotiations with regard to wage and other service conditions of the employees were held for the subsequent period with effect from 1 November 2002 and the 8th Bipartite Agreement/Joint Note was concluded on 2 June 2005. The said settlement was to be effective till 31 October 2007. Since there was no bipartite settlement between the period 1 November 2002 and 30 April 2005, the benefits of the 8th Bipartite Agreement / Joint Note were extended to those who have retired during this period. According to the Bank, payment of slab rate of 0.18% of dearness relief was introduced for the first time by way of 8th Bipartite Agreement/Joint Note. The pension and the dearness relief were given at such a rate because that had become part of their basic pay and dearness relief in terms of the bipartite settlement. Since the petitioner retired before the 8th Bipartite Agreement/Joint Note, he was not given the benefits of the new calculation of dearness allowance. The Bank further contended that employees covered up to the 7<sup>th</sup> Bipartite settlement are paid dearness relief at tapering rates and it was only for those employees who have retired subsequent to 1 November 2002, dearness relief at the rate of 0.18% of the basic pension was given. Accordingly, the Bank justified the denial of revised pension scheme to the petitioner.

5. The other petitioners were employees of Canara Bank and Bank of Baroda and they were also denied the benefits taking into account their date of retirement.

Submissions :-

6. Thiru.A.L.Somayaji, learned senior counsel for the petitioner in W.P.No.3198 of 2007 contended that the inclusion of a new scheme was not in the nature of an upward revision and as such, the Bank was not justified in restricting the new pension scheme to those who have retired subsequent to 1 November 2002. According to

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the learned senior counsel, the issue is covered by the judgment of Supreme Court in D.S.Nakara vs. Union of India [1983 (1) SCC 305]. The learned senior counsel has taken me through various settlements and the characterisation of pension as per the 8th Bipartite Agreement/Joint Note and contended that by adopting a different yardstick, the Bank has shown discrimination to the employees who have retired prior to 1 November 2002. According to the learned senior counsel, there was no rationale behind fixing the cut-off date and as such, the benefits of the 8th Bipartite Agreement/Joint Note and the revised pension scheme should be extended to the petitioner and other employees who have retired prior to 1 November 2002.

7. Thiru.R.Thiagarajan, learned senior counsel appearing for the petitioners in W.P.Nos.9952, 6632 and 14983 of 2007 contended that the Bank introduced the pension scheme pursuant to the memorandum of settlement entered into between the Indian Banks Association and the employees. The banks took a decision to introduce a pension scheme in lieu of the employees contribution to the provident fund. The scheme introduced originally underwent a substantial change subsequently. The petitioners being the beneficiaries of the scheme are entitled to the upward revision. The learned Senior counsel, by placing reliance on the judgment of Supreme Court in D.S.Nakara and V.Kasthuri vs. M.D. State Bank of India, Bombay [1998 (8) SCC 30], contended that the Supreme Court has time and again reiterated the legal position that there should be no discrimination in the matter of pension by taking into account the date of retirement. According to the learned senior counsel, there was no basis for fixing the cut off date. Therefore, the revised pension scheme, insofar as it restricts the benefits to the employees who have retired prior to 1 November 2002, requires to be set aside.

8. Mr.N.G.R. Prasad, learned counsel who led the arguments on behalf of the Banks, vehemently contended that the petitioners are not entitled to the benefits of the new pension scheme. According to the learned counsel, there were series of settlements entered into between the Indian Banks Association and the employees Union. The employees who have retired during the currency of a particular settlement got the pension fixed on the basis of such settlement. He would further contend that the 8th Bipartite Agreement/Joint Note modified the pay as well as pension structure. For the first time, dearness relief at the rate of 0.18% of the basic pension was introduced by the 8th Bipartite Agreement/ Joint Note. The petitioner in W.P.No.3198 of 2007 and the other employees who have retired prior to 1 November 2002 have been paid dearness relief at the slab rate as per the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> bipartite settlement, as applicable, and therefore, they are not entitled to the benefits of the dearness relief at the slab rate introduced by the 8th Bipartite

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Agreement/Joint Note. The learned counsel by placing reliance on the Judgment of Supreme Court in Action Committee South Eastern Railway Pensioners and Another vs. Union of India and others [1991 Supp (2) SCC 544] and Col.B.J.Akara (retd.) vs. Government of India and others [2006 (11) SCC 709], contended that in case the salary structure has underwent a basic change and the pension was fixed by taking into account the revised definition of salary, the benefits of such revision would not be given to the employees who have retired prior to the cut off date. In short, it is the contention of the learned counsel for Indian Overseas Bank that the pension was fixed taking into account the relevant bipartite settlement and as such, the revised bipartite settlement would be applicable only to those who have retired during the currency of the said settlement.

9. I have also heard Thiru.P.R.Ramachandran, learned counsel appearing for respondents 1 and 2 in W.P.No.6632 of 2007; Thiru.P.R.Raman, learned counsel appearing for 1<sup>st</sup> respondent in W.P.No.50000 to 50002 of 2006; and Thiru.V.Bhiman, learned counsel appearing for respondents 1 and 2 in W.P.No.9932 and 14983 of 2007. The learned counsels adopted the arguments of Thiru.N.G.R. Prasad and placed reliance on series of judgments of Supreme Court in support of their contention that the benefits of 8th Bipartite Agreement/ Joint Note would be given only to those who have retired during the currency of the said settlement.

Analysis - The Facts :-

10. The petitioners are all former employees of Indian Overseas Bank, Canara Bank and Bank of India. The Indian Banks Association arrived at a Memorandum of Understanding with the All India Bank Officers Federation and adopted a scheme for payment of pension to the Bank employees. The banks involved in these writ petitions viz., Indian Overseas Bank, Bank of India, Canara Bank were all governed by the settlement, by virtue of their membership in Indian Banks Association. The Memorandum of Understanding provided for introducing a pension scheme in the member banks in lieu of the Employees Contribution to the Provident Fund. The retired employees were given an option to join the pension scheme in the place of contributory provident fund. The petitioners who have retired prior to 1993 exercised their option for pension in lieu of Contributory Provident Fund. The other employees who have retired subsequent to the introduction of pension scheme were also covered by the said scheme. It is also a matter of record that there were several bipartite settlements / joint notes entered into between the employees associations and the banks. The 7<sup>th</sup> bipartite settlement/Joint Note entered into between the Indian Banks Association and the employees' Representatives expired on 31 October 2002. There was no settlement for the period from 1 November 2002 to 30 April 2005. The Indian Banks Association and the Employees' Association finally entered into a settlement called 8th Bipartite

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Agreement/Joint Note on 2 June 2005 and it was intended to be operative till 31 October 2007. Benefits of the 8th Bipartite Agreement/Joint Note was extended to the employees who have retired between the period 1 November 2002 and 30 April 2005.

11. The 8th Bipartite Agreement/Joint Note specified payment of dearness relief at the slab rate for the period from 1 November 2002 to 30 April 2005 and from 1 May 2005 to 31 October 2007 at the rate of 0.18% of the basic pension. The Indian Banks Association issued detailed guidelines to the banks to compute the pension pursuant to the amendment of the pension regulations of the concerned banks.

12. The petitioners were paid dearness relief on the salary and the pension at the slab rates prevailing as on the date on which they have retired from service. The petitioners now wanted the concerned banks to revise their pension in accordance with the slab rate introduced by the 8th Bipartite Agreement/Joint Note. The claim for revision of pension in accordance with the 8th Bipartite Agreement/Joint Note was disputed by the banks on the ground that the benefits of the latest settlement would be given only to the employees who were in service for the period from 1 November 2002 to 31 October 2007.

13. The core issue is whether the slab rates introduced by the 8th Bipartite Agreement/Joint Note for payment of dearness relief at the rate of 0.18% of the basic pension should be treated as an upward revision so as to give a right to the employees who have retired prior to the said settlement, to claim the benefits.

14. Before dealing with the merits or otherwise of the contentions raised on behalf of the petitioners and respondents, it is necessary to consider the law laid down by the Supreme Court right from D.S.Nakara.

Analysis - Law :

D.S.Nakara vs. Union of India [1983 (1) SCC 305] :-

15. The issue before the Supreme Court in D.S.Nakara was whether the date of retirement was relevant for eligibility, when a revised formula for computation of pension is ushered in and made effective from a specified date.

The Supreme Court opined that in case the claim is essentially a revision and not a new retiral benefit, the existing employees are all entitled to the benefits. Similarly, in case it was a new concept or a new retiral benefit, those who have already retired could not claim the benefits of such new scheme. The Supreme Court observed :-

"If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired

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subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory."

V. Kasturi v. Managing Director, State Bank of India, (1998) 8 SCC 30

16. The issue in V. Kasthuri relates to the cut-off date fixed by State Bank of India, for claiming the benefits of State Bank of India Employee's Pension Fund Rules. The learned Single Judge of the High Court by following the decision in D.S. Nakara, allowed the writ petition and ruled that the appellant before the Supreme Court was entitled to the benefits of the impugned provision of the pension rules from the date of coming into operation of the said provision as he was a member of the employees' pension fund at the time when he ceased to be a bank employee and that he had already completed the requisite 20 years of pensionable service by that time. The Division Bench, on appeal, took a contrary view and came to the conclusion that the amended provision of the Rule introduced a new scheme for covering entirely a distinct class of erstwhile employees who had retired from bank service and the said provision could not have any retrospective effect and could not cover the case of the appellant who had retired more than two years prior to the coming into force of the amended scheme of pension. The matter was taken to the Supreme Court. The Supreme Court found that all the employees in D.S. Nakara were governed by the existing scheme and were the recipients of retiral benefits. It was therefore a revision of the existing benefit that would in normal course should be made available to all such beneficiaries of existing retiral benefits. On facts, the Supreme Court found that the employees like the appellant who had retired prior to the amendment of Clause (c) of Rule 22(1) were not recipients of any existing pension and as such, they were out of pension scheme. The Supreme Court concurred with the views expressed by the Division Bench and dismissed the Civil Appeal.

State of Punjab vs. Justice S.S. Dewan (Retired Chief Justice) and others ::  
1997 (4) SCC 569

17. Mr. Justice S.S. Dewan, who was appointed as a Judge of the High Court from the Bench, retired as Chief Justice of Punjab and Haryana High Court on 31 December 1989 and on his retirement, he elected for computation of his pension under Part III of I Schedule

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to the High Court Judges (Conditions of Service) Act, 1954. The rules which applied to him were the Punjab Superior Judicial Service Rules, 1963. His pension was fixed in accordance with the said rules. Subsequently, on 20 February 1990, Rule 16 of the said rules was amended by the Governor of Punjab and it was provided that in the case of a direct recruit to the Punjab Superior Judicial Service, the actual period of practice at the Bar not exceeding 10 years shall be added to his service qualifying for superannuation pension and other retirement benefits. Mr. Justice S.S. Dewan, claimed that being a direct recruit to the Punjab Superior Judicial Service, he was entitled to addition of actual period of practice at the Bar not exceeding 10 years to his qualifying service on the basis of the amended rules and as such, his pension and other retirement benefits have to be refixed. The learned Single Judge of the High Court held that all retired Judges, irrespective of the date of retirement, constitute one class and the benefits available under the amended rule cannot be confined to the Judges who have retired after the amendment. The decision was affirmed by the Division Bench. While considering the Civil Appeal at the instance of the State of Punjab, the Supreme Court explained the ratio of D.S. Nakara.

8. Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In D.S. Nakara the change in the formula of determining average emoluments by reducing 36 months' service to 10 months' service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit.

18. The Supreme Court in Justice S.S. Dewan, made the position very clear that in case it is an upward revision of the existing pension scheme, the pensioners are all eligible to claim the benefits. However, when a new scheme is introduced with new retiral benefits, only those who retired after the said date alone would be entitled to the benefits.

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19. The issue raised by the petitioners therefore require to be decided on the basis of the legal position indicated by the Supreme Court.

20. The petitioners have opted for pension and accordingly, they have been given pension in accordance with the relevant scheme. The petitioners and other similarly placed pensioners were given Dearness Relief on the slab rates as per the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> bipartite settlement as applicable to them. It was only by the 8th Bipartite Agreement/Joint Note, substantial changes were made with respect to the dearness relief. The dearness relief at the slab rate of 0.18% of the basic pension was introduced by the 8th Bipartite Agreement/Joint Note. In case this modification is an upward revision, the petitioners are all entitled to the benefits. On the other hand, if it is made out that the scheme introduced by the 8th Bipartite Agreement/Joint Note was altogether a different pension scheme, the pensioners who have retired prior to 1 November 2002 are not entitled to claim the benefits. Therefore, everything would depend upon the nature of the scheme introduced by the 8th Bipartite Agreement/Joint Note.

21. The Indian Banks' Association, after signing the 8th Bipartite Agreement/Joint Note dated 2 June 2005, issued a circular dated 28 June 2005 to the designated officers of banks. The circular was issued for guiding the banks in the matter of calculation and payment of pension consequent upon the redefinition of pay. Clause No.3 of the circular reads thus :-

"As a consequence of the redefinition 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 1<sup>st</sup> April 1998 to 31<sup>st</sup> October 2002 and of the period 1<sup>st</sup> November 2002 to 30<sup>th</sup> April 2005 is to 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 1<sup>st</sup> 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."

22. Even though the banks have contended that the re definition of pay for the purpose of pension would be applicable only to the retirees up to 1 November 2002, the fact remains that the benefit was extended even to the employees who have retired during the period from 1 April 1998 to 31 October 2002. The circular is very clear that the pension of the employees who have retired subsequent to 1 April 1998 should be revised by taking the dearness relief at the slab rate (0.18%) of the basic pension. In case the benefits were given only to those employees who have retired subsequent to

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8th Bipartite Agreement/Joint Note, petitioners would not be justified in their demand. The benefits were extended to those who have retired during the period from 1 April 1998 to 31 October 2002 notwithstanding the fact that there was a valid bipartite agreement during the said period. The Banks have no valid reason for giving the benefits to some of the employees who have retired prior to the relevant date prescribed under the 8th Bipartite Agreement/Joint Note and to deny the benefits to others by fixing an artificial cut off date without any reasonable basis. Even though the Banks have explained that the benefit was restricted to employees who have retired from 1 May 2005, the fact remains that there are two classes of pensioners who are governed by the same settlement. It was only on the said ground and with a view to avoid discrimination, benefits were extended to the employees who have retired between the period 1 November 2002 to 30 April 2005. The very same rationale would apply to the case of the petitioners also.

23. The redefinition of pay for the purpose of pension cannot be treated as a new scheme. The pay as defined originally, underwent a change by the 8th Bipartite Agreement/Joint Note. Accordingly, the formula for determining pension was revised. The law laid down by the Supreme Court in D.S.Nakara was explained subsequently in Justice S.S.Dewan that change of formula should be treated as upward revision of existing pension scheme. The scheme as such, has not undergone a change. It was only the concept of pay which was redefined for the purpose of calculation of pension. This is not a case of erstwhile non-pensioners claiming the benefits of a new pension scheme. Here the issue is whether the change made to the mode of calculation of the last drawn pay for the purpose of fixing pension, would apply to the pensioners who have retired earlier. The petitioners are not claiming other benefits conferred on the employees by the 8th Bipartite Agreement/Joint Note. The employees covered up to 7<sup>th</sup> Bipartite Agreement were paid dearness relief on tapering rates. The 8th Bipartite Agreement/ Joint Note introduced dearness relief at the slab rate on 0.18% of the basic pension. The change from tapering rates to slab rate cannot be characterised as the introduction of a new scheme. It was essentially a modification of the existing scheme.

24. Mr.N.G.R.Prasad, learned counsel appearing on behalf of Indian Overseas Bank placed reliance on the judgment of Supreme Court in Action Committee South Eastern Railway Pensioners vs. Union of India and others [1991 Supp (2) SCC 544; Col.B.J.Akkara (retd.) vs. Government of India and Ors. [2006(11) SCC 709] in support of his contention that where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension

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received by the other group whose reckonable emoluments were higher. Let me now consider the ratio of those two decisions.

Action Committee South Eastern Railway Pensioners vs. Union of India and others [1991 Supp (2) SCC 544 :-

25. The petitioners in Action Committee, South Eastern Railway Pensioners, opted for pension and service gratuity/death cum retirement gratuity after merger of dearness pay. The Railway Board later issued an order dated 17 May 1985 to the effect that the entire dearness allowance and ad hoc dearness allowance in addition to dearness pay be treated as part of pay for the purpose of calculating pension and other retirement benefits in respect of railway servants who have retired on or after 31 March 1985. Members of the association before the Supreme Court were not entitled to those benefits as they retired prior to the cut off date. The Supreme Court found that the pension and gratuity were calculated in terms of options exercised by the concerned employees who have retired prior to 31 March 1985. By way of subsequent circular, the Railways granted the merger of entire dearness allowance as dearness pay to those employees who were on the rolls as on 31 March 1985. Taking into account the option exercised earlier, the Supreme Court held that the petitioners have no right to claim that their entire dearness allowance should also be merged as dearness pay and calculate the other retiral benefits like gratuity, commuted value of pension etc. on that basis. The Supreme Court also found that there was no material difference in the actual pension drawn by the petitioners and those who retired after 31 March 1985. The Supreme Court, while rejecting the contentions raised on behalf of the petitioners, opined that the petitioners on their own accord had opted for the choice given to them and as such, the principle enunciated in D.S.Nakara cannot be applied in their case.

26. The judgment in Action Committee, South Eastern Railway Pensioners has no application to the facts of the present case. The petitioners herein have not opted for a particular scheme. There was only one scheme for payment of pension. The scheme remain unchanged. It was only the basis of the calculation of pay, which underwent a change on account of the 8th Bipartite Agreement/Joint Note. It was essentially an upward modification of the existing scheme, otherwise known as "upward revision of pension". The employees of the bank irrespective of the retirement date, are entitled to claim the benefits of such upward revision.

Col.B.J.Akkara (retd.) vs. Government of India and Ors. [2006(11) SCC 709]

27. In Col.Akkara, it was found that the purpose of setting up pension was to ensure that all retirees of the same rank receive pension, which is not less than the prescribed minimum. One section contended that they were earlier enjoying a higher pension than

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others of the same rank and as such, such disparity should be continued, even after setting up. The Supreme Court opined that the object of setting up pension is to bring down parity and avoid disparity and the claim of petitioners that disparity should be continued cannot be accepted. The decision in Col.Akkara was made on a different set of facts. It is not the case of the petitioners herein that the disparity should be continued in the matter of payment of pension. It is their contention that they should also be given the benefits of the new calculation, to avoid disparity.

28. The Supreme Court in Col.Akkara, reiterated the principles relating to pension.

20. The principles relating to pension relevant to the issue are well settled. They are:

(a) In regard to pensioners forming a class, computation of pension cannot be by different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(b) But all retirees retiring with a particular rank do not form a single class for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where their average reckonable emoluments at the time of their retirement were different, in view of the difference in pay, or in view of different pay scales being in force.

(c) When two sets of employees of the same rank retire at different points of time, it is not discrimination if:

(i) when one set retired, there was no pension scheme and when the other set retired, a pension scheme was in force;

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(ii) when one set retired, a voluntary retirement scheme was in force and when the other set retired, such a scheme was not in force; or

(iii) when one set retired, a PF scheme was applicable and when the other set retired, a pension scheme was in force.

One set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the "same class" or "homogeneous group". The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment.

29. The writ petitioners have been enjoying the benefits of the pension scheme. The relevant pension scheme was subsequently amended only for the purpose of redefining the pay for the purpose of re-fixation of pension. The impugned scheme was in the nature of a procedural amendment and as such, the petitioners are also entitled to the benefits of the new formula of computation, without any claim for arrears.

30. The bank would be justified in its contention in case the petitioners were not eligible to claim pension. As stated above, the 8th Bipartite Agreement/ Joint Note has not evolved a new scheme. The existing scheme continued as such with slight modification with respect to the payment of dearness relief at the rate of 0.18% of the basic pension. The banks now wanted the pensioners to be classified into two categories without any material change introduced in the pension scheme. Even though re-definition of pay for the purpose of pension was introduced only by the 8th Bipartite Agreement/Joint Note, dated 2 June 2005, the benefits were extended even to those who have retired during the period 1 April 1998 to 30 April 2005. The classification therefore is nothing but artificial and arbitrary and it was not on the basis of any rationale principle. The banks, by restricting the benefits of the new definition of pay for the purpose of pension to the employees who have retired earlier, essentially, created a class within a class.

31. The All India Overall Working Class Consumers Price Index remain the same not only for the employees who have retired subsequent to 8th Bipartite Agreement/Joint Note but also for others like the petitioners, who have retired before the cut-off date in question. The dearness relief at 0.18% of the basic pension was

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introduced taking into account the All India Overall Working Class Consumers Price Index. The inflation and price increase are common to all the retired employees irrespective of the date of retirement. Therefore, the benefits of such redefinition of pay for the purpose of pension should be given to all the pensioners without any distinction. I do see considerable force in the submissions made on behalf of the petitioners that they have been subjected to a discriminatory and hostile treatment by fixing an artificial and arbitrary cut off date. Therefore, I am of the considered view that the petitioners are entitled to succeed.


Disposition :-

32. Since the pensioners formed a uniform class, the banks concerned in these writ petitions are directed to extend the benefits of 8th Bipartite Agreement /Joint Note, as given to the employees who have retired between 1 November 2002 to 31 October 2007, to the writ petitioners. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

33. In the upshot, I allow the writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Asst. Registrar.

/true copy/

  
Sub Asst. Registrar.

tar

To

1. THE CHAIRMAN & MANAGING OF DIRECTOR,  
CANARA BANK, 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.

3. THE CHAIRMAN & MANAGING DIRECTOR,  
BANK OF BARODA,  
CENTRAL OFFICE BARODA CORPORATE CENTRE,  
G-BLOCK, C-26, BANDRA KURLA COMPLEX,  
BANDRA (EAST), MUMBAI.

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4. THE COMPETENT AUTHORITY,  
AND ASSISTANT GENERAL MANAGER,  
BANK OF BARODA (EMPLOYEES) PENSION  
REGULATIONS, 1985,  
BANK OF BARODA, HEAD OFFICE,  
BARODA HOME, MANDVI,  
BARODA 390 006.

5. INDIAN OVERSEAS BANK  
REP BY THE CHAIRMAN AND MANAGING DIRECTOR  
CENTRAL OFFICE 762 ANNA SALAI CHENNAI 2.

6. THE COMPETENT AUTHORITY FOR  
PENSION REGULATIONS (GENERAL MANAGER)  
INDIAN OVERSEAS BANK CENTRAL OFFICE  
763 ANNA SALAI CHENNAI 2.

2 cc to M/s. Aiyar & Dolia, Advocate, Sr.No.76683  
2 cc to M/s. Sampath Kumar & Associates, Advocate, Sr.No.76712,76713  
3 cc to Mr.P.R.Raman, Advocate, Sr.No.76796, 76797 and 76802

1 cc to Mr.N.G.R.Prasad, Advocate, Sr.No.76409  
1 cc to Mr.P.V.Ramachandran, Advocate, Sr.No.76413  
1 cc to Mr.C.R.Chandrasekaran, Advocate, Sr.No.76531.

W.P.Nos.50000 to 50002 of 2006  
9952, 14983, 6632 of 2007  
and 3198 of 2007

GR (CO)

kk, pmk, sr, sra, tp, eu 18/12

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THE ASSISTANT ATTORNEY  
 AND ASSISTANT GENERAL MANAGER  
 BANK OF INDIA (EMPLOYEES) UNION  
 MADRAS, 1967  
 BANK OF INDIA, HEAD OFFICE  
 BANKING HOUSE, MADRAS  
 BANKING HOUSE, MADRAS

SECTION OFFICER BANK  
 REP. BY THE CHAIRMAN AND MEMBERS DIRECTOR  
 CENTRAL OFFICE FOR BANK SALARY CHANGES

THE GOVERNMENT'S AUTHORITY FOR  
 FINANCIAL REGULATIONS (GENERAL PROVISIONS)  
 FINANCIAL REGULATIONS (GENERAL PROVISIONS)  
 THE BANK SALARY CHANGES

1. Mr. A. V. R. Srinivasan, Advocate, Madras.  
 2. Mr. S. R. Srinivasan, Advocate, Madras.  
 3. Mr. S. R. Srinivasan, Advocate, Madras.  
 4. Mr. S. R. Srinivasan, Advocate, Madras.  
 5. Mr. S. R. Srinivasan, Advocate, Madras.

WP 3198/07

<b>HIGH COURT OF JUDICATURE</b>	
<b>MADRAS.</b>	
S.R. No. ....	76531
Carbon Copy application	
made.....	17/12/2004
Application Returned.....	200
Application Represented.....	200
Copy made ready.....	18/12/2004
Copy Delivered.....	20/12/2004
 Section Officer Current Section	