

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.5525 OF 2012

BANK OF BARODA & ANR. . . . APPELLANT(S)

VS.

G. PALANI & ORS. . . . RESPONDENT(S)

WITH

C.A.NOS.6254/2012, 5611/2012, 3026-3253/2013, 3257-3262/2013, 11205-11340/2014, 11342-11435/2014, 9533-9646/2014, 8357/2014, 4711-4800/2014

AND

**C.A.NO.1880/2018 @ SLP(C)NO.23773/2012,
C.A.NOS.1881-1888/2018 @ SLP(C)NOS.20661-20668/2012,
C.A.NO.1890/2018 @ SLP(C)NO.24851/2012,
C.A.NOS.1892-1912/2018 @ SLP(C)NOS.23777-23797/2012,
C.A.NO.1918/2018 @ SLP(C)NO.23848/2012,
C.A.NOS.1919-2087/2018 @ SLP(C)NOS.15640-15808/2013 &
C.A.NOS.2088-2092/2018 @ SLP(C)NOS.31470-31474/2012**

O R D E R

- 1. Heard learned counsel for the parties.**
- 2. I.A.Nos.3, 4 & 5 of 2012 for intervention are permitted to be withdrawn, with liberty to avail appropriate remedy. Applications stand dismissed as withdrawn.**
- 3. Leave granted in all the special leave petitions.**

4. In these civil appeals, question arises with respect to the calculation of the pension on the basis of the definition of average emoluments given in Regulation 2(d) read with definition of the pay, as defined in Regulation 2(s) of the Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as, "the Regulations of 1995), of the concerned Banks.

5. The dispute is with respect to the employees who retired or died while in service on or after 1.4.1998 and before 31.10.2002. The Banks are governed by the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970 (hereinafter referred to as, "the Act of 1970"). The regulations have been framed in exercise of powers conferred under Section 19 of the Act of 1970.

6. We are concerned in the instant cases with the officer's class of the Banks. The provisions of the Industrial Disputes Act, 1947 are admittedly not applicable to them.

7. On 29.9.1995, the Board of Directors of the respective nationalized banks, in exercise of their powers under Section 19 of the Act of 1970, in consultation with Reserve Bank of India (RBI) and with prior sanction of Central Government, had notified in Gazette the aforesaid Regulations of 1995.

8. It appears that Indian Banks' Association was negotiating with the Officers' Association and a Joint Note had been entered into and was signed on 14.12.1999, with regard to periodical pay revision of the officers of the member Banks. Joint Note indicated the date of effect of scale of pay, dearness allowance and pension, as was agreed to be with effect from 1.4.1998. Thereafter, on 18.1.2003 amendment had been made in the definition of 'pay', as defined in Regulation 2(s) of the Regulations of 1995 and explanation thereof was added.

9. The dispute arose after the amendment had been made with respect to pension which would be payable to the Officers who have died or retired after 1.4.1998. Though, the definition of 'average emoluments', as defined in Regulation 2(d) of the Regulations of 1995, specified that the average of the pay drawn by the employee during the last ten months of his service in the Bank shall be taken as "Average Emoluments", so as to work out the pension under Regulation 35(2). Regulation 35(2) provided that the basis of the calculation to be 50% of average emoluments, as defined in Regulation 2(d). Regulation 38 of the Regulations 1995 provided the method of determination of the period of ten months for average emoluments. In the case of voluntary retirement/premature retirement, the Bank shall reckon the period of 'preceding' ten months for

the purpose of average emoluments, from the date on which the employee voluntarily retires or prematurely retires. By virtue of the explanation (c) that was added in Regulation 2(s) of the Regulations of 1995, it was provided that the pay shall be taken to mean the pay and emoluments that had been drawn before 1.4.1998 for the category of the officers, who have retired or died on or after 1.4.1998. The provisions contained in Regulations 2(d), 2(s)(c), 35, 37 and 38, are extracted hereunder:

"Regulation 2(d):

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

"Regulation 2(s)(c):

"2(s) "Pay" includes, -

(a)

(b)

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

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

ii) all other components of pay counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

iii) increment component of Fixed Personal Allowance; and

iv) dearness allowance thereon on the above calculated up to Index Number 1616 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960 = 100."

"Regulation 35:

35. Amount of Pension: -

(1) Basic pension and additional pension wherever applicable, shall be updated as per the formulae given in Appendix-I.

(2) In the case of an employee retiring in accordance with the provision of the Service Regulations or Settlement after completing a qualifying service of not less than thirty-three years the amount of basic pension shall be calculated at fifty per cent of the average emoluments.

(3) (a) Additional pension shall be fifty per cent of the average amount of the allowance drawn by an employee during the last ten months of his service;

(b) no dearness relief shall be paid on the amount of additional pension.

Explanation: - For the purpose of this sub-regulation "allowance" means allowance which are admissible to the extent counted for making contributions to the Provident Fund.

(4) Pension as computed being aggregate of sub-regulation (2) and (3) above shall be subject to the minimum pension as specified in these regulations.

(5) An employee who has commuted the admissible portion of his pension as per the provisions of Regulation 41 of these Regulations shall receive only the balance of pension, monthly.

(6) (a) In the case of an employee retiring before completing a qualifying service of thirty-three years, but after completing a qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under sub-regulations (2) and (3) and in no case the amount of pension shall be less than the amount of minimum pension specified in these regulations.

(b) Notwithstanding anything contained in these regulations, the amount of invalid pension shall not be less than the ordinary rate of family pension which would have been payable to his family in the event of his death while in service.

(7) The amount of pension finally determined under these regulations shall be expressed in whole rupee and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee."

"Regulation 37:

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.

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

"Regulation 38:

38. Determination of the period of ten months for average emoluments: -

(1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

(2) In the case of voluntary retirement or premature retirement, the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires or is premature retired by the Bank.

(3) In the case of dismissal or removal or compulsory retirement or termination of service, the period of the proceeding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank.

(4) If during the last ten months of the service, an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and equal period before the ten months shall be included.

Emphasis supplied"

10. Reading of Regulation 2(d) makes it clear that the average emoluments means the average pay drawn by the employee during last ten months of his service in the Bank. Thus, the person becomes entitled for computation of the salary drawn in the last ten months, along with its components, for computation of the pension and other benefits. The amended provision was added on 18.01.2003 by way of explanation (c) to Regulation 2(s) giving retrospective effect.

11. The High Court of Delhi had opined that once the benefit had been taken under the Joint Note of revision of the salary, *estoppel* is created against the officers to claim the pension as per the existing formulae, which prevailed before its amendment and amendment could have been made with retrospective effect. Thus, the Delhi High Court had dismissed the writ petition filed by the Officers' Association, against which an appeal had been preferred. The High Court of Madras and High Court of Karnataka have taken the contrary view. They have observed that Joint Note of 1999 could not have supplanted the existing rules/regulations. Pension was required to be determined under the existing Regulations. By amending the Regulation and adding the Explanation (c) in Regulation 2(s) in the month of January 2003 benefit that has accrued could not have taken away. Thus, we have two contrary views of the High Courts to adjudicate upon in the instant matters.

12. It was urged by learned counsel on behalf of the Banks that in view of the Joint Note that was prepared, parties were bound as the benefits were to be given as agreed to after revision of the pay in the method and manner, which was agreed to by the officers. Thus, there was *estoppel* created against the Officers to claim contrary to the Joint Note. They cannot claim/take one benefit out of the Joint Note and deny the other part of

the same. There is power to amend the Regulations with retrospective effect and it cannot be said that any accrued right has been taken away in view of the Joint note. Parties were aware of the situation, as such; the Joint Note that had been signed was binding and became enforceable. It was also the methodology adopted for industrial workers under conciliation agreement entered into under the provisions of the Industrial Disputes Act, 1947.

13. It was contended by Mr. B.B. Sawhney, learned senior counsel appearing on behalf of the respondents-Officers that accrued rights could not have been taken away. The definition of average emoluments in Regulation 2(d) has not been amended. The only amendment made is by way of insertion in the Explanation (c) to Regulation 2(s) of the Regulations of 1995. Regulations 35 and 38 have also not been amended. As such, the emoluments payable under the aforesaid Regulation for the preceding ten months have to be considered. The Explanation is ineffective to take away the rights conferred under the Regulation 2(d), read with Regulations 35 and 38 of the Regulations of 1995.

14. It was also contended on behalf of officers that pension is not a bounty. The right to receive pension under the prevailing formulae could not have been taken away with retrospective effect by amending the provisions

of the Regulations. The requisite amendments were not made in other provisions of the Regulations, which were necessary to take away the said rights. It was also contended that only for few years the said provision had been incorporated so as to deny the benefit from 1998 to 2002. Thereafter, by amending the Regulations in the year 2005 the benefit has again been restored and pension had been paid all throughout on the basis of emoluments, which were drawn in the preceding ten months from the date of retirement.

15. First we come to the rigour of the Regulations. The Regulations have statutory force, having been framed in exercise of the powers under Section 19(2)(f) of the Act of 1970 and are binding. They could not have been supplanted by any executive fiat or order or Joint Note, which has no statutory basis. The Joint Note of the officers also had no statutory force behind it and could not have obliterated any of the provisions of Act of 1970 or the existing Regulations. Thus, Joint Notes could, not have taken away the rights that were available under the Pension Regulations of 1995 to the Officer.

16. Now what is provided under the Regulations is that an employee is entitled to calculation of his pension, as provided in Regulations 38(1) and 38(2) in the case of voluntary retirement or pre-mature retirement, and the

period of the preceding 10 months for the purpose of emoluments shall be reckoned from the date on which the employee had been voluntarily retired or prematurely retired by the Bank. A plain and literal reading of the provisions contained in Regulation 38 makes it crystal clear that its emphasis is on the preceding 10 months. The average emoluments no doubt take into consideration the pay but by deeming fiction, by simply amending and adding Explanation (c) in Regulation 2(s) the mandate of Regulation 38(2) had not been taken away and even otherwise could not have been taken away that too with the retrospective effect, which provides pension to be worked out on the basis of average emoluments of preceding ten months. It is apparent that Regulations 38(1) and 38(2) have not been amended in any manner whatsoever. Thus, the provisions are in conflict to the Explanation (c) of Regulation 2(s) that had been added, which defined pay with retrospective effect. Apparently for the purpose of pension, the clear provisions in Regulations 38(1) & 38(2) have to be considered as preceding ten months 'from the date of retirement' and not as per the Explanation (c) to Regulation 2(s) what was drawn in the preceding ten months before 1.4.1998. The interpretation of regulation 38(2) as per deeming fiction of Regulation 2(s)(c) is wholly impermissible. That it is not permissible to add or subtract any word in a provision is a settled principle of statutory interpretation.

17. Similarly, the provisions contained in Regulation 35 also make an incumbent entitled for opting the pension on the basis of average emoluments. The average emoluments have to be calculated on the basis of the preceding ten months. Adding Explanation (c) to Regulation 2(s), as done, could have created no fictional basis in view of clear and unambiguous provisions in other provisions of the Regulations. Besides, the definition of the average emoluments in Regulation 2(d) itself makes it clear that it is average pay drawn "during the last ten months" of his service by an employee. It cannot mean pay drawn by the employee even before several years. Mentionably there is no amendment made in the aforesaid provision of Regulation 2(d) and the expression during the preceding last ten months before date of retirement is clearly culled out in Regulation 38(1) and 38(2). Thus, in our considered opinion, the view taken by the then Chief Justice Vikramajit Sen as he then was, at Karnataka High Court and by the High Court of Madras are appropriate and the view taken by the Delhi High Court cannot be said to be sustainable for the various other reasons too mentioned hereinafter.

18. It is settled proposition, that pension is not a bounty, as has been held by this Court in *Deokinandan Prasad vs. State of Bihar & Ors.* 1971 (2) SCC 330 = 1971

Supl. SCR 634, as under:

"...But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant....

....we are of the opinion that the right of the petitioner to receive pension is property under Act. 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Art.19(1)(f) and it is not saved by sub-article (5)of Art.19....."

19. In *Grid Corporation of Orissa & Ors. vs. Rasananda Das*, (2003) 10 SCC 297, this Court held as under:

"...The appellants having given better pay scales, as early in 1969, cannot reduce the pay scales when it comes to granting pensionary/ retiral benefits for the period between the age of 58 to 60 years. The argument advanced in this regard that although the employees are entitled to continue in service up to the age of 60 years but during the period of 58 to 60 years

...There cannot be two types of pay scales one for the purpose of continuing in service up to the age of retirement and the other for the period between 58 to 60 years. It must be kept in mind that pension is not a bounty but it is hard-earned benefit for long service, which cannot be taken away."

20. In *Bharat Petroleum (Erstwhile Burmah Shell) Management Staff vs. Bharat Petroleum Corporation Ltd. & Ors.*, (1988) 3 SCC 32 = 1988 (1) Supp. SCR 312, this Court has observed :

"Pension is no longer considered as a bounty and is has been held to be property. In

a welfare State as ours, rise in the pension of the retired personnel who are otherwise entitled to it is accepted by the State and the State has taken the liability....."

21. In *All India Reserve Bank Retired Officers Association & Ors. vs. Union of India & Ors.*, (1992) Suppl.1 664, this Court observed:

"5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socioeconomic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution."

22. In *U.P. Raghavendra Acharya & Ors. vs. State of Karnataka & Ors.*, (2006) 9 SCC 630, this Court has observed thus:

"Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is co-related and has a nexus with the salary payable to the employees as on the date of retirement.

....Such emoluments were to be reckoned only in terms of the statutory rules."

This Court in *Raghavendra Acharya* (Supra) further observed that number of times it has been held that executive instructions cannot take away the vested or

accrued right. If the incumbent became entitled to the benefits of the revised scale of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect, it would violate Articles 14 and 16 of the Constitution of India. This Court observed thus:

"28. The impugned orders furthermore is opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules, w.e.f. 1.1.1996, vested to the appellants in terms of Government notification read with Rule 296 of the Rules.

29. As the amount calculated on the basis of the revised scales of pay on and from 1.1.1996 to 31.3.1998 have not been paid to the appellants by the State of Karnataka as ex gratia, and in fact was paid by way of emoluments to which the appellants became entitled to in terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India."

23. Pension is a right and is not a bounty, and cannot be dealt with arbitrarily. In the instant cases the existing provisions could not have been amended with retrospective effect, taking away accrued rights on the basis of joint note which had no statutory backing.

24. The rights that have accrued cannot be taken away with retrospective effect, as laid down by this Court in *Chairman, Railway Board & Ors. vs. C.R. Rangadhamaiah & Ors.*, (1997) 6 SCC 623. This Court has dealt with the vested rights and whether they can be taken away by retrospective amendments. This Court observed:

"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon vs. Union of India*, (1968) 1 SCR 185; *B.S. Yadav Vs. State of Haryana*, (1980) Supp.SCC 524; and *State of Gujarat Vs. Raman Lal Keshav Lal Soni & Ors.*, (1983) 2 SCC 33.

25. In these cases we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in futuro. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

26. In *Deokinandan Prasad v. State of Bihar & Ors.*, [1971] Supp.) SCR 634, decided by a Constitution Bench it has been laid down :

"31.Pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that on the right to superannuation pension including its amount is a valuable right vesting in a government servant."

(emphasis supplied)

In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

27. In *D.S. Nakara & Ors. v. Union of India*, [1983] 2 SCR 165, this Court, after taking note of the decision in *Deokinandan Prasad (supra)*, has said :

"Pension to civil employees of the Government and the defence personnel as administered in India appears to be a compensation for service rendered in the past. However, as held in *Douge v. Board of Education*, 302 US 74, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living."

29.Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered."

28. It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See : *Indian Ex-services League & Ors. Etc. v. Union of India & Ors. Etc.*, [1991] 2 SCC 104.

29. Rule 2301 of the Indian Railway Establishment Code incorporates this principle. It lays down :

"A pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government."

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33. Apart from being violative of the rights then available under Articles 31(1) and 19(1) (f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement."

25. In this regard in *Indian Ex-services League & Ors. vs. Union of India*, (1991) 2 SCC 104, this Court has laid down thus :

"24. The learned Solicitor General has stated that the impugned GOs dated November 22, 1983 (Annexure I) and dated December 3, 1983 (Annexure II) issued by the Government of India (Ministry of Defence) in the present case are based on recomputation of pension of pre-April 1, 1979 retirees of Armed Forces according to the liberalised pension scheme consequent upon the decision in *D.S. Nakara Vs. Union of India*, (1983) 1 SCC 305. He also added that if any error in computation is pointed out in respect of any particular person or rank or otherwise, the same would be promptly corrected. On the above view taken by us, the prayer made in these writ petitions for quashing these orders has to be rejected. For the same reason, its corollary that the same amount of pension be paid to all pre-April 1, 1979 retirees of Armed

Forces as to post-April 1, 1979 retirees must also be rejected"

26. In *Secretary (Estt.) Railway Board & Anr. vs. D.Francis Paul & Ors.*, 1996 (10) SCC 134, on the aspect of retrospective provision, this Court has further observed thus :

"4. Relying upon this proviso by later amendment, it is contended that since no specific provision was made in the conditions of service at the time of appointment, the respondents are not entitled to the benefit of the rule. It is not in dispute that the rule came to be amended on 15.11.1976 long after their appointment. Under these circumstances, the amendment would be prospective. It is not in dispute that this amendment came to be made pursuant to recommendation made by the IIIrd Pay Commission and on acceptance thereof the rule came to be amended. Under these circumstances, the amendment cannot have retrospective effect in respect of the persons already in service but would be prospective; it would be applicable only to those candidates appointed after the date of the amendment introducing the proviso."

27. In *N.S. Giri Vs. Corporation of City of Mangalore & Ors.*, (1999) 4 SCC 697, also this Court has observed that even an Award made under the Industrial Disputes Act, 1947, cannot be inconsistent with the law laid by the legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced.

28. Thus joint note/agreement could not have been in derogation of the existing statutory Regulations and regulation 2(s)(c) could not have been given retrospective effect. It is also apparent from the decisions of this

Court in *P. Sadagopan Vs. Food Corporation of India*, (1997) 4 SCC 301, that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. In *Dr. Rajinder Singh Vs. State of Punjab & Ors.* (2001) 5 SCC 482, this Court had reiterated that the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In *K. Kuppusamy & Anr. Vs. State of Tamil Nadu*, (1998) 8 SCC 469, this Court has observed that statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies.

29. Thus, in our opinion, the Regulations which were in force till 2003, would apply with full force and as a matter of fact, the amendments made in it by addition of Explanation (c) in Regulation 2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the Regulations of 1995. Even otherwise, if it had the effect of amending the pay and perks 'average emoluments', as specified in Regulation 2(d), it could not

have operated retrospectively and taken away accrued rights. Otherwise also, it would have been arbitrary exercise of power. Besides, there was no binding statutory force of the so called Joint Note of the Officers' Association, as admittedly, to Officers' Association even the provisions of Industrial Disputes Act were not applicable and joint note had no statutory support, and it was not open to forgo the benefits available under the Regulations to those officers who have retired from 1.4.1998 till December 1999 and thereafter, and to deprive them of the benefits of the Regulations. Thus, by the Joint Note that has been relied upon, no *estoppel* said to have been created. There is no *estoppel* as against the enforcement of statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations framed under the Act of 1970. They could not have been tinkered with in an arbitrary manner, as has been laid down by this Court in *Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr.*, (1986) 3 SCC 156 & *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress*, (1991) Supp.1 SCC 600.

30. Reliance has been placed on the decision of this Court by learned counsel appearing for the Banks, on *Manojbhai N. Shah & Ors. vs. Union of India & Ors.*, (2015)

4 SCC 482, where the position was converse. Revision of pay was granted with retrospective effect to the eligible employees. Instant cases are not the cases of the revision of benefits being given with retrospective effect, but taking away of a right that had accrued with retrospective effect. Thus the decision in the aforesaid case has no application.

31. Similarly, the decision in *Union of India vs. P.N. Menon & Ors.*, (1994) 4 SCC 68, has been pressed into service in which this Court has laid down with respect to dearness allowance granted to a Government servant, who retired on or after 30.9.1977. It was claimed that the said benefit should be given retrospectively to all the employees irrespective of their date of superannuation. It was not the case of taking away of vested right or accrued right with retrospective amendment. Thus, the decision has no application.

32. Reliance has also been placed on the decision of this Court in *D.S. Nakara vs. Union of India*, (1983) 1 SCC 305. It was observed in the context of pension scheme that was non-contributory in character that the benefit, which was given under the scheme, was prospective. In all cases wherever they retire, they would be governed by the liberalized pension scheme, because the scheme was a scheme for payment of the pension governed by 1972 Rules.

The date of retirement would be the relevant date. The revised scheme would be operative from the date mentioned in the scheme. It was also not a case of taking away the benefit that had accrued with retrospective effect or taking away of the vested or accrued rights. Thus, the decision has no application, rather the spirit of the decision runs counter to and fails to buttress the submissions raised on behalf of the banks.

33. The only purpose of the addition of Explanation (c) to Regulation 2(s), was to take away the actual computation of the pension on the basis of the salary, which was drawn in the preceding ten months. Thus, we have no hesitation to strike it down being arbitrary and repugnant to other provisions/Regulations namely 2(d), 38(1)(2) and 35. The Explanation (c) to Regulation 2(s) is hereby struck down, as it could not have been enacted retrospectively to take away accrued rights. Even otherwise also it is held to be arbitrary and irrational. More so, in view of the fact that only by way of a temporary measure, that discrimination was created and the Explanation was deleted with effect from 1.5.2005.

34. Thus, we set aside the judgment rendered by the High Court of Delhi and affirm that of High Courts of Karnataka at Bangalore and the High Court of Madras. The appeals filed by the Banks are dismissed and the appeal filed by the Association is allowed. Resultantly, let the amount

which was due and payable be paid with 9% interest, be calculated and paid within four months from today.

35. All pending applications stand disposed of.

.....J.
[ARUN MISHRA]

.....J.
[AMITAVA ROY]

New Delhi;
13th February, 2018.

ITEM NO.104

COURT NO.10

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).5525/2012

BANK OF BARODA & ANR.

Appellant(s)

VERSUS

G. PALANI & ORS.

Respondent(s)

WITH

C.A.No.6254/2012 (XIV)

SLP(C)No.23773/2012 (IV-A)

C.A.No.5611/2012 (IV-A)

SLP(C)Nos.20661-20668/2012 (IV-A)

C.A.Nos.3026-3253/2013 (IV-A)

SLP(C)No.24851/2012 (IV-A)

SLP(C)Nos.23777-23797/2012 (IV-A)

SLP(C No.23848/2012 (IV-A)

SLP(C)Nos.15640-15808/2013 (IV-A)
(With appln.(s) for intervention/impleadment)

SLP(C)Nos.31470-31474/2012 (IV-A)

C.A.Nos.3257-3262/2013 (IV-A)

SLP(C)No.12038/2013 (IV-A)

SLP(C)No.12041/2013 (IV-A)

C.A.Nos.11205-11340/2014 (IV-A)
(With appln.(s) for bringing on record LRs. c/delay in filing
substitution, setting aside abatement and exemption from
filing O.T.)

C.A.Nos.11342-11435/2014 (IV-A)

C.A.Nos.9533-9649/2014 (IV-A)

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C.A.No.8357/2014 (IV-A)
C.A.Nos.4711-4800/2014 (IV-A)

Date : 13-02-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s)/Petitioner(s)/Applicant(s) :

Mr. Rajesh Kumar, Adv.
Mr. Gaurav Kumar Singh, Adv.
Mr. Anant Gautam, Adv.
Mr. Aakash Sehrawat, Adv.
Mr. V. Govinda Ramanan, Adv.
Mr. Soumu Palit, Adv.
For M/s. Mitter & Mitter Co., AOR

Mr. Adarsh B. Dial, Sr. Adv.
Mr. Rajiv Nanda, AOR
Ms. Ananya Datta Majumdar, Adv.
Mr. Sumati Anand, Adv.

Mr. Jagat Arora, Adv.
Mr. Rajat Arora, Adv.
Mr. Anuvrat Sharma, AOR

Mr. Aayush Agarwala, Adv.
Mr. Pramod B. Agarwala, AOR

Mr. Shanthakumar Mahale, Adv.
Mr. Rajesh Mahale, AOR
Mr. Amith J., Adv.

Mr. Manoj Swarup, Adv.
Mr. Mukul Kumar, Adv.
Ms. Mansi Jain, Adv.
For Mr. Rohit Kumar Singh, AOR

Mr. Romy Chacko, Adv.
Mr. Chandan Kumar Mandal, Adv.
Mr. S.C. Jaidwal, Adv.
Mr. Pulkit, Adv.

..3/-

.3.

For Respondent(s) :

**Mr. B.B. Sawhney, Sr. Adv.
Mr. Shashank Mishra, Adv.
Ms. Naresh Bakshi, AOR**

**Ms. Aparna Jha, AOR
Mr. S. Rajappa, AOR**

**Mr. Sanjay Kapur, AOR
Ms. Megha Karnwal, Adv.
Ms. Mansi Kapur, Adv.
Ms. Shubhra Kapur, Adv.**

**Mr. O.P. Gaggar, AOR
Mr. Aditya Gaggar, Adv.
Mr. Ajit Wagh, Adv.**

**Mr. M. Khairati, Adv.
Mr. Irshad Ahmad, AOR**

**Mr. Naveen R. Nath, AOR
Mr. Abhimanyu Verma, Adv.
Mrs. Lalit Mohini Bhat, Adv.**

**Mr. Shailesh Madiyal, AOR
Mr. Sudhanshu Prakash, Adv.**

**Mr. Mahesh Thakur, Adv.
Mrs. Vipasha Singh, Adv.
For Mr. E.C. Vidya Sagar, AOR**

**Mr. R.S. Hegde, Adv.
Mrs. Farhat Johan Rehmani, Adv.
Mr. Chandra Prakash, Adv.
Mr. Prashant Jain, Adv.
For Mr. Rajeev Singh, AOR**

**UPON hearing the counsel the Court made the following
O R D E R**

SLP(C)Nos.12038 & 12041/2013 :

List on 20.2.2018.

..4/-

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C.A.Nos.5525/2012, 6254/2012, 5611/2012, 3026-3253/2013, 3257-3262/2013, 11205-11340/2014, 11342-11435/2014, 9533-9646/2014, 8357/2014, 4711-4800/2014 & SLP(C)Nos.23773/2012, 20661-20668/2012, 24851/2012, 23777-23797/2012, 23848/2012, 15640-15808/2013 & 31470-31474/2012 :

I.A.Nos.3, 4 & 5 of 2012 for intervention are permitted to be withdrawn, with liberty to avail appropriate remedy. Applications stand dismissed as withdrawn.

Delay condoned.

Applications for substitution and setting aside abatement are allowed.

Leave granted in all the special leave petitions.

The appeals filed by the Banks are dismissed and the appeal filed by the Association is allowed in terms of the signed order.

(Sarita Purohit)
Court master

(Jagdish Chander)
Branch Officer

(Signed order is placed on the file)