

WP NO. 507 of 2012

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side**

**United Bank of India Retirees' Welfare Association and Others
Vs.
United Bank of India and Others**

Appearance

Mr. S.K. Dutta., Mr. D. Dasgupta....for petitioners

**Mr. R. N. Majumdar, Mr. S. Chakraborty,
Mr. S. Bhattacharjee, Mr. Goutam
Chakraborty.....for respondents**

Judgement On: - 04th March, 2015

I.P. MUKERJI, J.

The retired employees of the United Bank of India have formed an association called the United Bank of India Retirees' Welfare Association. This association has affiliated itself to an All India Association of similarly placed employees known as the All India Bank Retirees' Association. The second writ petitioner is the general secretary of the association in Kolkata having its office at 20, Hemanta Basu Sarani, 4th Floor, Kolkata- 700001. The third and fourth writ petitioners are former employees of the United Bank of India. Both of them retired prior to 1st November, 2002. They and the association, for the pre 2002 retirees of the respondent bank claim 100% dearness relief to tackle the difficult financial situation caused by price rise over the years.

A Memorandum of Settlement was entered into on 29th October, 1993. Fifty eight banks were involved. It was between the management and the workers

of the banks, represented by IBA and AIBEA respectively. Paragraph-6 of the Settlement provided that “dearness relief would be granted to pensioners at such rates as may be determined from time to time in line with the dearness allowance formula in operation in RBI.” In furtherance of this Settlement the Pension Regulations of 1995 were adopted by the bank. Appendix-2 to the regulations provided for the rates, and computation of payment of dearness relief based upon quarterly average of the All India Price Index for the industrial workers being followed by the Reserve Bank of India. Full compensation against price rise was not provided by these provisions for dearness relief. The Reserve Bank of India was not providing full compensation against price rise, as dearness relief.

We are not concerned here with the details of the calculation of dearness relief. They have been provided in the petition.

Now by a circular dated 20th February, 2006 the Reserve Bank of India, started giving full compensation against price rise, in the shape of dearness relief to employees who retired post 1st November, 2002, as would appear from clause 14.1 of the instructions of 2009 for implementation of their Pension Regulations, 1990.

The Reserve Bank of India issued a circular dated 1st April, 2008 with effect from 1st March, 2008. This circular provided for payment of compensation in the form of dearness relief to those employees who retired before 1st November, 2002. This was for the reason that it was felt that those who

retired before 1st November, 2002 were getting insufficient dearness relief. The Reserve Bank of India by a subsequent circular dated 1st January, 2010 extended payment of dearness relief to pre November, 2002 retirees' from February, 2005.

The interesting question which is raised in the writ application is this: The respondent-bank has applied the full dearness relief policy of the Reserve Bank of India but had restricted their application to those employees who had retired on and after November 2002. The basis of classification of employees for payment of dearness relief is most arbitrary, it is alleged. There is no rational justification for this classification. One, who retires on 31st October, 2002 gets nothing, one who retires a day or two later gets everything.

This case has been built up on very interesting premises by Mr. Dutta learned Advocate appearing for the petitioner.

He showed me clause-6 of the 1993 settlement. It reads as follows:-

“6. Dearness relief to pensioners will be granted as such rates as may be determined from time to time in line with the dearness allowance formula in operation in RBI.”

The respondent-bank had introduced the United Bank of India (Employees) Pension Regulations, 1995, after the 1993 regulations. However, it continued to pay dearness relief to its employees from 1995 to 2007 on the formula evolved by the Reserve Bank of India. It should be noted that at this period of time the dearness relief, which was paid by the Reserve Bank of

India, did not recompense a retired employee fully against rising prices. So, it was to be taken, by that the bank continued to follow the procedure of paying dearness allowance in accordance with clause-6 of the said memorandum of 1993.

Now, comes the most interesting part of the case. The Reserve Bank of India made the said circular dated 20th February, 2006. By this circular it granted 100% dearness relief to its post 1st November, 2002 retirees' but did not grant any relief to the pre November 2002 retirees'. The United Bank of India, followed this Reserve Bank of India circular and did not pay 100% dearness allowance to the pre November retirees'. By its circular dated 1st April, 2008 the Reserve Bank of India decided to give this benefit to its pre November 2002 retirees' with effect from 1st March, 2008. This was followed by another circular by dated 1st January, 2010, extending the benefit from February, 2005.

Now, the position is that the Reserve Bank of India, by virtue of its above policy and circular is providing 100% dearness relief to its pre November 2002 employees whereas the United Bank of India since 2008 has stopped the following the Reserve Bank of India policy regarding payment of dearness allowance to the pre November, 2002 retirees' and is providing only partial dearness relief to those employees.

Furthermore, the Respondent-bank extended full dearness relief to post 1st November, 2002 retirees' as will appear from their statements in paragraph- 3(i) (ii) (iii) (iv) of the Affidavit-in-opposition:

“3(i) On and from 1.5.2005, in the case of employees who retired during the period 1.4.1998 to 31.10.2002, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 1684 points in the quarterly average of the All India Average Consumer price Index for Industrial Workers in the series 1960=100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

<u>Scale of Basic Pension Per month</u>	<u>The rate of Dearness Relief payable as a percentage of Basic Pension</u>
<i>Upto Rs. 3550</i>	<i>0.24 per cent</i>
<i>(ii) Rs. 3551 to Rs. 5650</i>	<i>0.24 per cent of Rs. 3550 plus 0.20 per cent of the basic pension in excess of Rs.3550</i>
<i>(iii) Rs. 5651 to Rs. 6010</i>	<i>0.24 per cent of Rs. 3550 plus 0.20 per cent of the difference between Rs. 5650 and Rs. 3550 plus 0.12 per cent of basic pension in excess of Rs. 5650</i>
<i>(iv) Above Rs. 6010</i>	<i>0.24 per cent of Rs. 3550 plus 0.20 per cent of the difference between Rs. 5650 and Rs. 3550 plus 0.12 per cent difference between Rs. 6010 and Rs. 5650 plus 0.60 per cent of basic pension in excess of Rs. 6010.</i>

(ii) In respect of retirees for the period 1.11.2002 to 30.4.2005 for whom pension has been revised w.e.f. 1.5.2005 based on definition of pay in terms of Clause 6 of the Bipartite Settlement dated 2nd June 2005, dearness relief shall be payable w.e.f 1,5,2005 for every rise or be recoverable for every fall as the case may be of every four points over 2288 points in the quarterly average of All India Average Consumer Price Index for Industrial Workers in the series 1960=100 @ 0.18% of the basic pension.

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

(iv) In respect of employees who retired or died while in service on or after 1.05.2005 Dearness Relief shall be payable at 0.18% of the basic pension or family pension or invalid pension or compassionate allowance as the case may be. Dearness Relief in the above manner shall be paid for every rise or fall of 4 points over 2288 points in the

quarterly average of the All India Average Consumer Price Index for industrial workers in the series 1960=100.

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

Consequent upon wage revision as per 9th Bipartite Settlement as aforesaid and Joint Note dated 27th April, 2010 Indian Banks’ Association by a circular bearing No. CIR/HR & IR/ G2/90/665/2010-11/714 dated 2nd July, 2010 being Annexure “R-3” to the A.O announced Revision in Pension of Employees who retired on or after 1.11.2007 subject to the terms and conditions as contained therein.

It is further stated that dearness relief is being accorded to the petitioners on the basis of All India Consumer Price Index numbers for Industrial Workers (Base 1960=100) from time to time in the Banks who are parties to the Bipartite Settlement on pension. This fact would be evident from the Circulars bearing No. CIR/HR & IR/D/G2/2011-12/4982 dated 1st February, 2012 and No. CIR/HR & IR/D/G2/2012-2013/6371 dated 1st August, 2012 issued by Indian Banks’ Association being collectively Annexure “R-4” to the A.O.

It has been categorically mentioned in the letter dated 22nd May, 2012 of the respondent Bank being Annexure “P-7” to the writ petition that pension benefit of retired bank employees is an outcome of agreed conclusions reached between the Indian Banks’ Association on behalf of the Management of the Banks listed in the Schedules and the affiliated major Bank Employees’ Associations/Unions. It is denied in particular that the said letter dated 22nd May, 2012 was issued in violation of Regulation-37 of the Pension Regulations as alleged or at all.

It is submitted that the petitioners do not have any legal right so as to call for issuance of a writ a mandamus or any other writs and as such the petitioners are not entitled to any relief or remedy.”

Mr. Majumdar, learned Advocate appearing for the respondent-bank states with great emphasise that each bank is a separate entity. He says that it is true that in banking matters, the Reserve Bank of India guides and controls the other banks of India. But each bank has its own service conditions, its own agreement between the management, its associations, unions and so on. The petitioners cannot argue that the United Bank of India can be compelled to pay dearness relief in accordance with the formula followed by the Reserve Bank of India.

He cited an unreported decision of the division bench of the Delhi High Court in *All India Retired Bank Employees Association and Ors. Vs.*

Union of India and Ors decided on 30th March, 2012. That judgment, he said was rendered on similar facts, and followed the principles laid down in the case of *DS Nakara & Ors. Vs. Union of India* reported in *1983 (1) SCC 305*.

Mr. Majumdar contended that the United Bank of India had made a rational classification by omitting to grant dearness relief to the employees, who had retired prior to November, 2002.

There is some merit in the submission of Mr. Dutta that the 1995 regulations could not be taken as a body of rules derogating from the principles accepted by the parties in the 1993 memorandum with regard to dearness relief. In Clause-6 of the 1993 memorandum it was that the dearness relief would be granted to pensioners at rates and in consonance with the dearness allowance formula “*in operation in RBI*”. The foreword to the 1995 regulations was written by the General Manager (personnel) on 19th October, 1995. He wrote that the regulations of 1995 had been adopted by the Board of Directors having obtained prior approval of the Government of India and the Reserve Bank of India under Section 19(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It was gazetted on 29th September, 1995. The foreword went on to state that the regulations superseded all other circulars and instructions.

Mr. Dutta is absolutely right when he says that a foreword is not a part of the regulations. It is like a foreword to a book. It is a piece of introduction to the regulations by a senior officer of the bank.

Whether or not the regulations were in supersession of all existing circulars and instructions are to be understood on a reading of and making an interpretation of the Regulations.

In my opinion, the recitals to the regulations cite the powers under which they are enacted, i.e. under powers conferred by Clause (f) of Section 19 (2) of the Banking Companies (Acquisitions and Transfer of Undertakings) Act, 1970. Hence, it is a statutory instrument. They were made by the bank in consultation with the Reserve Bank of India, upon taking prior permission of the Central Government. In the body of the regulations there is no provision that it is in supersession of all circulars, instructions etc. In this matter I am not called upon to adjudicate as to whether the regulations are in supersession of earlier circulars, notifications, memorandum etc. I am only called upon to come to a finding whether the stipulation in Clause-6 of the 1993 memorandum that the rate of calculation of the dearness allowance would follow the formula of the Reserve Bank of India in this behalf had been superseded or not. These regulations to my mind are a piece of subordinate legislation. The provisions regarding dearness relief, in these regulations are provided in regulations 37. The rates are in appendix-ii. Admittedly these rates provided only partial compensation against price rise and are not fully compensatory. It appears that the Reserve Bank of India was also not

granting 100% neutralization or full compensation by dearness relief at that point of time.

There is nothing in the 1995 regulations which will lead the Court to the belief that the respondent-bank had abandoned its policy as spelt out in the 1993 Memorandum to follow the rates of dearness relief granted by the Reserve Bank of India.

By its circular dated 20th February, 2006 the Reserve Bank of India granted 100% neutralization in dearness relief to post 1st November, 2002 retirees'. By a circular of 1st April, 2008 the Reserve Bank of India decided to grant this benefit to pre November, 2002 retirees' with effect from 1st March, 2008. It issued another circular of 1st January, 2010 reiterating that 100% neutralization in dearness relief had been extended to pre November- 2002 retirees' with effect from February, 2005. The United Bank of India continued to pay partial compensation. The respondent-bank is paying full compensation against price rise only to retirees' after 1st November, 2002.

In fact the case of *DS Nakara & Ors. Vs. Union of India* reported in **1983 (1) SCC 305** relied on in the unreported judgment of the Delhi High Court answers the issue involved in this case. In that case the employees who were in service on and after 1st April, 1979 derived benefit from a liberalized pension formula. The Supreme Court through Mr. Justice Desai remarked that fixing an arbitrary date to grant or to deny pension to the employees was irrational. There was nothing to support the decision to award this extra

pension to the employees who retired after 1st April, 1979 and denied to those who retired say on 31st March, 1979. The highest Court made it absolutely clear that pension was not an item of charity granted by an employer to an employee but is a reward for his post or service. Any decision to increase or decrease pension should be made apply judiciously. Exactly similar is the situation here. Employees, who retired on and after 1st November, 2002 would get full dearness relief whereas a person who retired just the day before would not get so.

In my opinion, the classification made in this case just as in the case of **DS Nakara**, is arbitrary and highly irrational. There is no intelligible difference between the pre 1st November, 2002 and post 1st November, 2002 retirees'. The artificial classification is discriminatory of one class of retired employees.

The Reserve Bank of India has a very large role in the control of nationalized banks like United Bank of India. The directors of the latter are appointed in consultation with the Reserve Bank of India. The functions including framing of rules and regulations relating to service are to be discharged in consultation with the said central bank.

Being under the control of the Reserve Bank of India it was incumbent on the first respondent No.1 to follow its policy with regard to payment of dearness relief because regulations of the Reserve Bank of India in this behalf had been accepted by the respondent-bank in the 1993 regulations and

the 1995 regulations did not expressly repeal that principle. The respondent-bank has all the more reason to follow the above circulars of the Reserve Bank of India because it had decided to grant full compensation to the pre November 1, 2002 employees. Standing on this premise the bank could not have denied dearness relief to pre 1st November, 2002 retirees’.

It is only enough that this Court knows that from 1st February, 2005, the respondent-bank started making dearness relief payment to those employees who had retired after 1st November, 2002, ignoring those who retired prior to that date.

Now, if the respondent-bank had been providing a uniform dearness relief payment below the full compensation level to all categories of employees, then this Court would have been inclined to think that it was a policy matter of the bank and would have declined to interfere with such policy matters, in accordance with well-settled principles. But once the bank chooses to bestow the benefit of full compensation on a certain category of employees, that is to say, those who retired after 1st November, 2002, then the bank became guilty of making an artificial and unreasonable classification between employees who retired before 1st November, 2002 and those who retired thereafter. This is arbitrary and discriminatory. This is clearly impermissible and against the dicta of the Supreme Court laid down in the case of *DS Nakara & Ors. Vs. Union of India* reported in *1983 (1) SCC 305*.

“The classification has to be based, as is well settled, on some rational principle and rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it

necessary to liberalize the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization 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. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs. 8100 p.a and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000 p.a and average emolument will be computed on the basis of last 10 months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalizing the pension scheme. In fact this arbitrary division has not only no nexus to the liberalized pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated in as much as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14."

Payment of dearness relief is a policy decision. This Court cannot rewrite by an order the policy of the respondent-bank. But this Court is entitled to make observations on an existing Policy or rule. This Court does observe that the policy and service conditions of the respondent bank for payment of dearness relief to its post November, 2002 retirees is arbitrary and discriminatory of the pre November, 2002 class of retirees. This Court makes a declaration to this effect.

Since the Court cannot rewrite a policy or make the rules of service and since the members of the writ petitioner association are not parties and only

two pre 2002 employees are parties, I am not quashing or setting aside the existing policy and circulars of the respondent bank for payment of dearness relief.

I direct the Board of the respondent bank in consultation with the Central government and the Reserve Bank of India to take a reasoned decision, in the light of the above observations and findings regarding payment of 100% dearness relief to the pre November-2002 retirees' of the respondent bank by 30th June, 2015.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I.P. MUKERJI, J.)