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Dear Comrades, **15/11/2018**

100% DA neutralization to all Pensioners
The ratio of *Alt-arithmetic* that killed it

We are hearing *Alt-fact* in politics. Now we are witnessing similarly *Alt-arithmetic* in Indian Judiciary. Not long ago, we came across the stunning arithmetic of Karnataka High Court in a CBI's Disproportionate assets case that led to the acquittal of a former Chief Minister of Tamilnadu. A similar kind of arithmetic is on display in the Supreme Court's judgement in the 100% DA neutralization case of pensioners who retired from banks before 1/11/2002 i.e. those who retired before the 8th Bipartite Settlement period. It is unfortunate that the Supreme Court failed to pay attention to the basics of DA neutralization, that too when what the Court heard was a ***review*** of appeals from petitioners of IOB, Canara Bank etc and an ***appeal*** from the United Bank of India. It is tragic that the court refused to go into its erroneous arithmetic even when it heard the review by the pensioners of United Bank of India. It only reminds us of the famous quote of US Supreme Court **Justice Robert Jackson** on US Supreme Court – ***" We are not final because we are infallible, but we are infallible only because we are final."***

The irrationality of the ratio of this judgement has to be challenged. Madras High court's *ratio* was that pre-Nov-2002 pensioners do not form a class within a class but form a distinct separate class because they belong to different Bipartite settlements. The Supreme court gave an entirely different *ratio* that *it would **not be possible** to put both the sets of retirees (i.e Pre and post November,2002 retirees) on any common parameters* to arrive at the same conclusion like Madras High Court that **pre-Nov-2002 pensioners** do not form a class within a class but form a **distinct separate class**. The relevant part of SC judgement is reproduced below to understand the fallacy of this ratio –

> *If we adopt a flat rate of 0.24% as is being prayed for, the class of retirees who retired before 01.11.2002 will stand conferred better rate than those employees who retired after 01.11.2002. Nor can we apply a flat rate of 0.18% for them.* ***Each class is governed by distinct and different parameters.*** *These are all matters of policy making. The conferral of advantages of benefits on two different classes of retirees has a completely distinct formula and rates and* ***it would not be possible to have a synthesis on any count or to put both the sets of retirees on any common parameters. Both classes are distinct and do not form a homogenous group.*** *It would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected. It is not a case of creating a class within a class.***(Para-24)**

The above ratio suffers not from misapplication of law but from basic misunderstanding of fact and flawed conclusion out of it. In simple words, the court's arithmetic is lock, stock and barrel wrong that has resulted in travesty of justice. It is basic arithmetic of this judgement and not any question of law that needs to be legally challenged. Even it be Supreme court, it is bound to correct arithmetical error in its judgement.

It is also curious that Supreme court upheld Madras High court's ***ratio*** that *reliance of the pensioner petitioners on the resolutions/circulars issued by Reserve Bank of India doing away with tapering formula was misplaced* (Para25) but not discussed the ratio of the Calcutta High Court's ***ratio*** that the *Bipartite settlement under ID Act for introduction of pension providing for DA formula as obtaining in RBI from time to time was binding*. Further the judgement did not consider the arguments of the petitioners that the 8^{th} Bipartite settlement providing for introduction of 100% DA neutralization for the whole of basic pay in lieu of tapering formula effective from 1/5/2005 did not state anywhere the revised formula replacing the tapering formula would be applicable only to post Nov 2002 retirees.

UFBU should take cognizance of all the above especially that the pensioners lost their case not because it was constitutionally or statutorily invalid but because of ***Alt-arithmetic*** of the judiciary. UFBU should use their resources and moral conscience to bring justice to the pre-Nov, 2002 pensioners. It is all the more needed because the Supreme court itself pronounced that any stepping up of benefit for a section of employees is bound to inflate the figure of Rs.1288 crores per annum set apart under Bipartite settlement dated 02.06.2005 **though that by itself is not a ground that weighs with us.** It has to be widely discussed and disseminated. While the said cost weighed with Madras High court it did not with the Supreme court. Be that so, DA increase was never the component of load factor and so the said annual load of Rs.1288 crore does not include the cost due to DA increase.

It is necessary to understand the **Alt-arithmetic** of the judgement that robbed us of the Constitutional right to equality as members of the homogeneous class of pensioners that was upheld in the famous D.S.Nakara's case by the Constutional bench of 5 SC judges.

It is basic that while comparing two measures, not **merely the numbers** but also the concomitant **terms in which they are expressed** have to be reckoned. Mere comparison of numbers without regard to the terms of their expression is *a la* the proverbial *comparison of apples and oranges*. If one has to accept the arithmetic of this judgement, one who has clocked 1 **minute** is faster than one who has clocked 55 **seconds**, 70^0 **F** is hotter than 30^0 **C**, 20 **feet** is longer than 10 **metres**, 4**pounds** is heavier than 3 **kg**, a thing priced **Rs**.2 is costlier than the one priced **US$**1.

Would anyone have expected that an issue affecting thousands of senior and super senior citizen pensioners would have been dealt in such a cavalier fashion and without any attempt to understand the very prayer in the writ appeals/ review, leave alone the grounds of the prayer! Supreme court failed to reckon that what was prayed was 100% DA neutralization for the whole of pension instead of only for part of pension and hence the applicable DA rate that corresponds to 100% DA neutralization is 0.24% to those who retired under 7^{th} Bipartite settlement and 0.18% to those who retired under 8^{th} Bipartite settlement. In view of DA merger at 1684 points under 7^{th}Bipartite settlement and 2288points under 8^{th} Bipartite settlement, the corresponding 100% DA neutralization rate is 0.24% and 0.18% respectively. In other words, the pensioner getting DA rate of 0.24% will not get more DA benefit than those getting DA rate of 0.18% as erroneously held as under by the Supreme Court.

"If we adopt a flat rate of ***0.24%*** *as is being prayed for, the class of retirees who retired before 01.11.2002* ***will stand conferred better rate*** *than those employees who retired after 01.11.2002 "* (getting only flat rate of **0.18%)(Para 24***). "The tapering formula undoubtedly begins with 0.24% for the first segment of Rs.3550/- of basic pension and then progressively steps down and finally reaches the level of 0.06% where the basic pension is in excess of Rs.6010/-.The benefit which is sought to be conferred by the tapering formula lies* ***in the averaging*** *which comes to* ***near about the same quantum*** *as is given to the post 01.11.2002 retirees."*

Supreme Court thoroughly misunderstanding the DA formula concluded that a flat rate in place of tapering rate was conceded in the 8th Bipartite settlement but by lowering the rate of compensation in the bargain from the previous 0.24% to 0.18%, little realizing that 0.18% of 8thBipartitle settlement equals 0.24% of the 7th Bipartite settlement. Though Supreme court acknowledged that RBI extended flat 0.24% in lieu of tapering rates to the pensioners under 7thBipartite settlement it did not pause to ponder that if flat 0.24% is a better rate conferring greater benefit to pre November,2002 retirees, would RBI have extended it to its past retirees (Pre November 2002 pensioners) neglecting their current retirees (Post November,2002 retirees). *Supreme court ought to have seen that RBI extended* ***flat rate of 0.24% to pre November, 2002 retirees not to confer them a greater benefit but to confer them an identical benefit vis-à-vis post November, 2002 retirees. The identical benefit is 100% DA neutralization for the whole of pension.*** In the last settlement, LIC too extended this identical benefit of 100% DA neutralization to its past pensioners and so also the Government to its past pensioners.

We all know that DA is based on year 1960 price index of 100. A basic pay fixed in 1960 in relation to price index of 100 points has to be protected against price inflation. Price inflation exceeding the said 100 points eroding the real wages has been sought to be protected for every rise of 4 points. So the **DA slab** consists of 4 index points in relation to 1960 base of 100 price index points. Over a period, the DA points periodically get merged with basic pay of 1960. The periodicity of such merger in wage revisions occur presently every 5 years in banks, RBI and insurance companies. For basic pay fixed in 1960 having relation to price index of **100 points**, DA rate at 100% neutralization for every rise of **4 points over 100 basis points is 4%.** Now when the DA got merged at 1684 points under 7th Bipartite settlement, DA rate at 100% neutralization for 4 points rise over 1684 points expressed in percentage is 4*100/1684 = 0.24%. When DA got merged at 2288 points under 8th Bipartite settlement, DA rate at 100% neutralization for 4 points rise over 2288 points expressed in percentage is 4*100/2288 = 0.18%. So far 1960 base of 100 DA points, when you multiply it by 4% for 100% DA neutralization you get 4. So for 7th Bipartite multiplying 1684 by 0.24% and for 8th Bipartite multiplying 2288 by 0.18 will get 4. Therefore, be it 4% in 1960, 0.24% under 7th Bipartite settlement or 0.18% under 8th Bipartite, they all mean the same 100% neutralization of every 4 point rise to protect the real wages. **DA neutralization rates are 0.24% or 0.18%**because the Basic pay has been merged at different DA points under 7th and 8thBipartite settlements **but these two rates** confer identical 100% neutralization benefit and not **dissimilar** benefits. These two DA rates of **0.24% or 0.18%** are not dissimilar neutralization rates but are identical neutralization rates. So there was no lowering of DA rate from **0.24%** to **0.18%** but only ***application of corresponding 100% DA neutralization rate having regard to the*** **denominator which is the DA points that were merged with the basic pay in each settlement.**

But the Supreme court, without taking cognizance of the above, erroneously held that these DA neutralization rates were dissimilar having no common grounds for synthesis and presumed on its own without any pleading or advocacy by any party that a flat rate in place of tapering rate was allowed in the 8th Bipartite settlement by lowering the rate to 0.18% as an average rate between the highest 0.24% and the lowest 0.06% obtaining under the 7th Bipartite settlement. The conclusion of the SC that both pre and post November, 2002 pensioners would therefore be getting almost equal amount though under two different formulae (of one an **averaged lower flat rate of 0.18%** and the other a **tapering multi rates commencing with a higher rate 0.24%**) is faulty and false. Supreme court being the ultimate custodian of justice shall not allow a judgement remain without being recalled and revised when it is patently based on wrong arithmetic. For that to happen, let us widely debate and discuss this issue in all media and through all legal punditry and intellectuals including parliamentarians. Let UFBU also put their weight behind these efforts.

Let us not lose hope but march ahead!

Sd.-

(S.B.C.Karunakaran)
General Secretary

P.S. Full judgement is given in annexe and relevant portions of the Supreme Court judgement are extracted below:

Extract of Supreme court judgement

23. The parity that was sought in the petition was not so much regarding applicability of same rate of 0.18% but was in respect of "flat rate" idea. The illustrations given in para 30 of the writ petition that we have quoted hereinabove bring home the point. The calculation of dearness allowance of Rs.14274/- on basic pension of Rs.7880/- in the case of Santipriya Roy is in keeping with tapering formula as given in the Bipartite Settlement dated 27.04.2010. The tabular chart then proceeds to calculate full compensation on account of dearness allowance with slab rate of 0.24% on the entire basic pension of Rs.7880/- which figure comes to Rs.18912/-.

Thus the submission was that the dearness relief be computed on 0.24% for the entirety of basic pension and not just for the first slab upto Rs.3550/-. But such calculation completely disregards that rate which is a flat rate applicable in case of post 01.11.2002 retirees is not 0.24% for the entire amount of basic pension but at a different level of 0.18% and the threshold requirement of quarterly average of the Index is also different. If we were to simply borrow the same rate of 0.18% in the case of retirees prior to 01.11.2002, the concerned retirees may well be at a disadvantage. For instance, the basic pension of Rs.7880/- of said Santipriya Roy would yield a figure of Rs.14184/- with flat rate of 0.18%. It will not therefore be correct 37 to adopt and apply the same rate as is made applicable in case of post 01.11.2002 retirees. What is prayed for is also not the same rate but the same principle, namely, flat rate be made applicable to pre 01.11.2002 retirees as well but at a rate of 0.24%.

24. Would that be the correct approach? The tapering formula undoubtedly begins with 0.24% for the first segment of Rs.3550/- of basic pension and then progressively steps down and finally reaches the level of 0.06% where the basic pension is in excess of Rs.6010/-. What is devised by way of such tapering formula is higher rate at the lower levels of segments so that larger number of peoples would get maximum advantage and the rate thereafter keeps stepping down. Neither can we apply the rate of 0.18% which will then cause great harm and damage to the retirees nor can we adopt a flat rate of 0.24% for the entire amount of basic pension. The benefit which is sought to be conferred by the tapering formula lies in the averaging which comes to near about the same quantum as is given to the post 01.11.2002 retirees.

At this stage it is noteworthy that no illustration has been placed on record to submit that even with 0.18% dearness allowance those who retired after November 2002 walk away with substantially greater advantage as against pre November 2002 retirees. In 38 any case, this is not a matter where a section of employees merely on account of date of retirement are being differentiated. If we adopt a flat rate of 0.24% as is being prayed for, the class of retirees who retired before 01.11.2002 will stand conferred better rate than those employees who retired after 01.11.2002. Nor can we apply a flat rate of 0.18% for them. Each class is governed by distinct and different parameters. These are all matters of policy making. The conferral of advantages of benefits on two different classes of retirees has a completely distinct formula and rates and it would not be possible to have a synthesis on any count or to put both the sets of retirees on any common parameters. Both classes are distinct and do not form a homogenous group. It would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected. It is not a case of creating a class within a class.

25. In our view any attempt to tinker with either the formula or the rate would make the whole scheme unworkable as was cautioned by this Court in the case of P.N. Menon and Others (supra). As held in the case of Indian Ex-Services League and Others (supra) the decision of this Court in D.S. Nakara (supra) is one of limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement.

The reliance on the resolutions/circulars issued by Reserve Bank of India was also misplaced. It is true that the tapering formula was done away with by Reserve Bank of India but that by itself cannot entitle the retirees prior to 01.11.2002 either to be conferred the advantage at the same rate made applicable by Reserve Bank of India or at the flat rate of 0.24% as was sought to be projected. In our considered view, the assessment made by the Division Bench of the Madras High Court was absolutely correct.

The settlement has to be taken as a package deal and it would be impossible to hold certain parts good and acceptable while finding other parts to be bad. Moreover, the recitals D, E and F in the Bipartite settlement dated 02.06.2005 (quoted hereinabove) show that a package deal was entered into and Rs.1288 crores per annum towards all the benefits was set apart for the benefit of the employees. Any stepping up of benefit for a section of employees is bound to inflate the figure of Rs.1288 crores per annum though that by itself is not a ground that weighs with us. In our view both the categories of retirees, namely, pre November 2002 and post November, 2002 stand on different footing, the parameters which govern the computation of dearness relief are also on a different level. The decisions rendered by the Single Judge as well 40 as by the Division Bench of the High Court failed to appreciate these aspects and in our view, the said decisions are completely erroneous.

26. It may also be noted that the decision of the Division Bench of the Madras High Court having been confirmed by this Court, the matter stands concluded. As has been observed in paragraphs 32, 41 and 44 of Kunhayammed and Others v. State of Kerala and Another11, once leave to appeal had been granted and the appellate jurisdiction of this Court was invoked the order passed in appeal would attract the doctrine of merger. Be that as it may, we are satisfied that the Bipartite Settlement did not create any distinction which was inconsistent with the principles laid down by this Court.