

(2022) 03 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 4735 Of 2020, Civil Miscellaneous No. 17062 Of 2020

Ifci Retirees Welfare Forum

APPELLANT

Vs

IFCI Limited And Others

RESPONDENT

Date of Decision : 04-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Industrial Finance Corporation Of India (Staff) Regulations, 1974 — Regulation 2, 2(6), 2(11), 3, 5, 29, 33, 56, 87

Citation : (2022) 03 DEL CK 0015

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : H.L. Tikku, Yashmeet Kaur, Dhruv Mehta, Amish Tandon, Ayush Beotra, Amish Tandon

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. This petition has been filed with the following prayers: -

"In view of the above facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Issue Writ of certiorari, order / directions in the nature thereof calling for the records from the Respondent No.1 leading to preparation of the Note dated February 28th/29th 2008 which led to change in the pension of the members of the Petitioner;

b) Issue any writ, order or direction thereby quashing the Note dated February 28th/29th 2008 (Annexure P 45) and further directing the Respondent No. 1 to restore the defraying the Dearness Allowance/Dearness Relief to the members of the Petitioner being retirees in the pay scales effective upto 31.10.2002 as per Dearness Allowance/Dearness Relief as fixed by Reserve Bank of India, Bi yearly,

on single slab basis.

c) issue any writ, order or direction directing the Respondent No.1 to release the arrears of DA on pension to the members of the Petitioners being retirees in the pay scales effective upto 31.10.2002 on single slab basis as per Dearness Allowance as fixed by Reserve Bank of India, Bi yearly, and continue to pay the pension and Dearness Allowance/Dearness Relief as fixed by Reserve Bank of India, Bi yearly, on single slab basis.

d) Issue any other writ, order or direction granting to the Petitioner all other necessary and consequential relief as are just and proper in the facts and circumstances of the case;

(e) award costs to the Petitioner."

2. The Petitioner herein is an association/society registered under the Societies Registration Act, 1860, representing the pensioners of IFCI Limited ('IFCI', for short and Respondent No. 1 herein) and has filed the present petition espousing the cause of its members, i.e., the pensioners of IFCI who are aggrieved due to the imposition of certain circulars of the Indian Banks Association ('IBA', for short) by the Respondent No.1 and the resultant discontinuation of the rates of Dearness Allowance/Dearness Relief ('DA/DR', hereinafter) that were applicable to them as per the earlier circulars of the Reserve Bank of India ('RBI', for short), depriving them of substantial benefits after 15 years of effecting the pension scheme from November 1, 1993.

3. It is the case of the Petitioner that the conditions of service including remuneration, allowances and post retirement benefits of the employees of IFCI are governed by the Industrial Finance Corporation of India (Staff) Regulations, 1974 ('Staff Regulations', hereinafter), which were adopted by the Board of Respondent No. 1 in terms of Section 8(1) of the Act of 1993 and are still in force. The said Staff Regulations stipulate that the employees of IFCI shall be eligible to certain allowances, including DA at the rates and subject to the conditions as applicable to the employees of RBI.

4. It is stated that the Industrial Development Bank of India ('IDBI', for short) was established in 1964 as a Statutory Corporation under the Industrial Development Bank of India Act, 1964 as a wholly owned subsidiary of the RBI and had always been following /adopting the salary structure and rates of DA and other staff matters as per the conditions as applicable to the employees of the RBI. Both IFCI and IDBI were set up as Development Financial Institutions ('DFIs', for short) and for many years both the institutions were jointly financing industrial projects. Subsequently, with the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003, it attained the status of a limited company viz., IDBI Ltd., and thereafter was renamed as IDBI Bank Ltd. After acquisition of 51% equity of IDBI Bank Ltd by Life Insurance Corporation of India ('LIC', for short), it has been categorized as a Private Sector Bank for regulatory purposes by the RBI. It is stated that IDBI did not have its own rates of DA/DR; rather it

always followed the RBI in the matters of administration, including salary structure, perquisites, superannuation and other staff benefits including rates and conditions, and these were then followed by the Respondent No. 1. Thus, in effect, Respondent No. 1 was following RBI's salary structure, rates and conditions. With the cessation of the erstwhile IDBI, Respondent No. 1 has been continuing to follow RBI's salary structure, rates and conditions in all staff matters.

5. In line with this policy, a Pension Scheme for the employees of IFCI was introduced in the year 1994 with retrospective effect from November 1, 1993, governed by IFCI (Pension) Regulation, 1993 ('Pension Regulations', hereinafter). It is stated that the only consideration before the Board of Directors of the Respondent No. 1 for introduction of the Pension Scheme for its employees was that it had always been following RBI/erstwhile IDBI in staff matters like salary structure, perquisites, medical, superannuation, other staff benefits etc. Paragraph 2 of the Board Memo bearing No. 262/94 dated July 22, 1994 placed before the Board reads as under: -

"2. In the matter of pay scales, allowances and other facilities, the Corporation has been generally following RBI/IDBI and the changes made in these matters, from time to time, are also adopted by the Corporation. Accordingly, it is now proposed to introduce a Pension Scheme in the Corporation on the lines of similar Scheme introduced in RBI/IDBI."

The Pension Scheme was approved by the Board on August 30, 1994 and was notified vide Administrative Circular bearing No. 15/94 dated October 20, 1994. The said Scheme was in substitution of the Contributory Provident Fund ('CPF', for short) Scheme and it was optional for the employees to either continue with the CPF availing employer's contribution at the rate of 10% of the basic pay plus DA, or surrender the employer's contribution along with interest and opt for Pension Scheme. The employees of the Respondent No. 1, including the members of the Petitioner who wished to opt for pension in lieu of CPF, surrendered employer's contribution of the Provident Fund and opted for pension. They had, in fact and by all means, opted for the scheme which was based on the similar schemes prevalent in RBI and the erstwhile IDBI. They were never offered the Pension Scheme of IBA or pension based on rates of IBA, and neither did they opt or agree for IBA Pension Scheme or pension based on rates of IBA.

6. It is once again highlighted that the Pension Scheme of the IDBI was mutatis mutandis as was prevailing in RBI and the Pension Scheme of the IFCI was mutatis mutandis as was prevailing in IDBI. Thus, in effect the Pension Scheme of IFCI including the rates of DA, at all times, was that of the RBI. In this regard, reliance has been placed upon the questions raised by a Member of Parliament and answered by the Minister of State for Finance, in the Lok Sabha on May 5, 2000 in respect of the Pension Scheme of IDBI, and on the notings made by the Respondent No. 1 dated April 16, 1999, April 19, 1999, February 14, 2000, March 12, 2001, August 20, 2001, February 18, 2002, August 25, 2003, May 5,

2004, July 14, 2004, February 11, 2005, August 22, 2005 and February 23, 2006. It is also stated that there is no periodical revision in the basic pension of the pensioners of the Respondent No.1 unlike periodical revision of pension of Government employees. Thus, only rates of DA/DR and revision in the rates of DA/DR take care of inflation though in a very limited manner.

7. That apart, it is contended that the Respondent No.1 introduced various Voluntary Retirement Schemes during the years 2000 to 2004 viz.

(i) The IFCI Voluntary Retirement Scheme in February 2000

(ii) The IFCI Voluntary Retirement Scheme for Officers, 2000-01 in December, 2000

(iii) The IFCI Voluntary Retirement Scheme, 2000-01 in January, 2001

(iv) The IFCI Voluntary Retirement Scheme - 2003 which was reintroduced in February, 2004

One of the benefits under all of these Schemes was that the optees would be entitled to pension as per the Pension Regulations. It is contended that the optees of the various Voluntary Retirement Schemes are at par with those pensioners who have retired on superannuation or voluntarily retired under the Staff Regulations. All the pensioners are uniformly covered under the definitions of "Date of Retirement" and "Retirement" as per Sub-Regulations (6) and (11) of Regulation (2) of the Pension Regulations.

8. It is submitted that the Respondent No. 1 also used to inform the pensioners about revisions in the rates of DA on a half yearly basis, as per the rates taken from the circulars of the RBI, through individual letters to the pensioners irrespective of whether they had superannuated or voluntarily retired under Staff Regulations or Voluntary Retirement Schemes. It is further stated that Respondent No. 1, vide letters dated March 7, 2006 addressed to pensioners namely:

(i) K.A. Sivaram who had retired on superannuation,

(ii) Nalini Hari who had sought voluntary retirement under Staff Regulations and

(iii) N.K. Handa who had sought retirement under Voluntary Retirement Scheme 2003, informed about the rates of DA for the half-year February-July, 2006. These were based on the rates of RBI. This was the last communication received by the pensioners regarding periodical changes in the rates of DR/DA. Thereafter, this practice was deliberately discontinued by the Respondent No.1.

9. It is averred that earlier, DA/DR was being paid to the serving employees as well as to the pensioners on slab rates, i.e., the rates of DA/DR would be higher for the lower amount of pay/pension and the rates would go conversely lower with the higher pay/pension. In 2005, while implementing revised pay scales with retrospective effect from November 1, 2002, the RBI decided to change the

method of calculation of DA rates for the serving employees to a single rate w.e.f. February 1, 2005 irrespective of the amount of pay/pension. The Respondent No.1 also followed suit by implementing the pay and allowances on the lines of RBI in 2006/2007, including single rate of DA for its serving employees from February 1, 2005.

10. Thereafter for its pensioners, the RBI, vide Circular bearing No. CO. HRDD No. 10139/21.01/2007-08 dated April 1, 2008 ('RBI Circular II', hereinafter) amended its earlier Circular dated February 1, 2008 ('RBI Circular I', hereinafter) and changed the method of calculation of DA/DR and shifted the method from multiple slab rate basis to single rate basis, meaning thereby that irrespective of the amount of the basic pension, a uniform rate of DA/DR would be applicable on pension/family pension in relation to the relevant pay-scale period. The RBI further modified their instructions vide Circular bearing No. CO. HRDD No. 6223/21.01./2009-2010 dated January 1, 2010 ('RBI Circular III', hereinafter) and single rate basis was made applicable to its pensioners who had retired in the pay scales effective up to the October 31, 2002, with retrospective effect i.e., from February 1, 2005.

11. A new set of four slabs of pension viz. (i) up to Rs. 3550/-, (ii) from Rs. 3551/- to Rs. 5650/-, (iii) from Rs. 5651/- to Rs. 6013/- and (iv) above Rs. 6013/-, were introduced by the Respondent No. 1 for the pensioners who retired after November 1, 1997, on the basis of RBI Circular dated February 5, 2001. However, when the RBI dispensed with the very same slabs vide RBI Circulars II and III and adopted single rate DR system, Respondent No. 1 deliberately and with malafide did not adopt the aforesaid Circulars of RBI for payment of DR to the members of the petitioner. It is contended that therefore, the Respondent No. 1 not only erroneously failed to dispense with the slabs in line with RBI Circulars, but it also arbitrarily imposed certain IBA Circulars on the slabs copied from the RBI circular.

12. Further, it is submitted that the Respondent No.1 for the period between August 2008 and October 2013 introduced 'Cost to Company' ('CTC', for short) salary structure for its existing employees by giving an option to either opt for CTC pay structure, or to continue with the existing RBI pay scales. The Board of Directors of Respondent No. 1 at a meeting held on July 30, 2013 approved to revert back its pay structure, following the RBI Circulars in the matter of pay scales and other allowances including DA w.e.f. November 1, 2013. It is contended that thus, it is once again affirmed that the Respondent No. 1 followed RBI rates and conditions in regard to salary structure and allowances including DA.

13. Arrears on account of revision of pay scales from November 1, 2002 were paid to 34 former employees of Respondent No. 1 who had retired between November 1, 2002 and October 18, 2006, in November 2013 and subsequently, arrears on account of consequential enhancement in pension, along with DA/DR on the lines of RBI Circulars at single rate basis w.e.f. February 1, 2005 were

paid to them in April 2014. However, the aggrieved members of the Petitioner were left out and are being paid DA based on certain IBA Circulars.

14. It is averred that in short, the Respondent No.1 implemented revised pay scales and allowances of November 2002 in the year 2006/2007 for the serving employees, paid arrears of revised salary and consequential enhanced pension to 34 former employees who had died or retired between the November 1, 2002 and October 18, 2006 in November 2013 and April 2014 respectively and re-linked the salary structure and other staff facilities on the pattern of RBI as per its Circulars, both dated September 13, 2013.

15. It is contended that instead of continuing with the pattern of RBI already in force for more than five decades and the RBI Circulars II and III, the Respondent No.1 with malafide, changed the basis for calculation of DA based on the Circular dated February 1, 2008 issued by the IBA, without any notice/intimation to the Petitioner or its members. The reason behind the anomaly in the rate of calculation of DR came to light only when one of the pensioners, one Mr. JN Sharma (former Private Secretary Grade A, retired on October 31, 2000 on attaining the age of superannuation) vide letter dated April 20, 2014 inquired about the reason for the substantial variation in the amount of pension paid to him and to those who retired in the pay scales effective from November 1, 2002. In response thereof, Respondent No. 1 vide letter dated June 16, 2014 disclosed that DR was being paid to him in accordance with the Circular issued by the IBA.

16. It is stated that the said change was effected only on the basis of an internal note without any change in policy or any circular/order to the effect. There were no regulations in IFCI whereby different categories of pensioners were created on the basis of date of their retirement or different benchmarks were applied for calculation of the rates of DA.

17. In response to an RTI application filed by one Mr. Gulshan Chaudhary, Respondent No. 1 vide letter dated August 14, 2014 inter alia informed as under:-

“(e)Employees of IFCI who retired in the pay scales effective from November 01, 2002, are being paid Dearness Relief at a single rate w.e.f. 1st February, 2005, as per DA rate being paid by RBI to its pensioners.

(f) Employees of IFCI who retired between 1st Nov. 1987 and 31st Oct. 2002, are being paid DA on slab basis. IBA Circular is being followed for the same.”

It is also stated that the letter makes it clear that the Respondent No. 1 is not an ordinary member of the IBA; it is only an associate member.

18. The Petitioner on learning of the imposition the circulars of IBA for payment of DA, sought the restoration of applicability of the DA/DR rates of RBI on a single rate basis, vide letter dated October 17, 2014. It is stated that Respondent No. 1 in its reply dated November 10, 2014 did not offer any justification, reasoning or basis for changing the applicability of rates of DA from that of the

RBI to IBA. The Petitioner further averred that it followed up the matter with the Respondent No. 1 and its Non-Executive Directors on the Board of Directors, including the Nominee Directors appointed by Respondent No. 2, vide letter dated March 4, 2015, but the Respondent No. 1 vide its letter dated April 20, 2015 replied in a vague manner.

19. It is stated that the Petitioner approached Respondent No. 2 regarding the matter, who forwarded the grievance to the Respondent No. 1. However, the response of the Respondent No. 1, vide letter dated July 28, 2015 was contrary to the actual facts and was without any justification or reasoning. Para 2 (ii) of the said letter dated July 28, 2015, reads as under-

"Pension Scheme in IFCI is governed by IFCI's Pension Regulations which are modeled on the lines of Central Government, RBI and IDBI."

20. It is averred that the Respondent No. 1 has never followed Government Pension Scheme as it has never revised basic pension, family pension and commutation amount as has been done by the Government. It also is submitted that the Respondent No. 1 had wrongly stated in the said letter that the members of the Petitioner were seeking parity with the RBI for the period from November 2005 and that RBI was following IBA pattern. It is the case of the Petitioner that, up to the period of January, 2008, the members of the Petitioner were being paid DA as per rates of RBI along with others, and hence parity with RBI was already in existence and it was the Respondent No. 1 who unilaterally and with malafide altered the parity.

21. It is further submitted that the RBI being a banker to the Government and other banks, has the character of statutory, regulatory, autonomous body and issues its own circulars. Further, no justification was offered by the Respondent No. 1 as to why for the employees who had retired in the pay scales effective up to October 31, 2002, the DA rates of IBA were followed and for employees who retired in the pay scales effective from November 1, 2002, DA rates of RBI were followed. It is also submitted that the Respondent No. 1 wrongly stated that the pensioners never agitated the switch over of DA rates from RBI to IBA, when the change was not intimated to them. The said change came to light only when one of the employees, one Mr. VK Gupta, who had voluntarily retired in the pay scale applied from November 1, 2002 was paid revised pension and DA on the lines of RBI in April, 2014 and when the Respondent No. 1, in its response dated July 16, 2014 to Mr. JN Sharma's query dated April 20, 2014, disclosed for the first time that DA paid to him was as per the circulars of IBA.

22. The Petitioner, vide letter dated August 31, 2015, again sought restoration of the benchmark based on which DR was being calculated and paid till the imposition of IBA Circulars. On receiving no response, the Petitioner sent a reminder dated December 22, 2015. Another letter dated January 5, 2016 was sent by the Petitioner to Respondent No. 1, stating inter alia that the IBA circulars were not being applied to any of its staff members except the

pensioners who retired in the pay scales effective up to October 31, 2002. The Respondent No. 1 vide letter dated February 02, 2016 gave a perfunctory reply to the same.

23. That apart, it is submitted that one of the pensioners, one Mr. Nanak Chand, who retired from the service of the Respondent No. 1 on June 30, 2004, filed an RTI application seeking information inter alia, pertaining to the approval of Board of Directors for fixing the slabs and rates of DR and also the circulars of the Respondent No. 1, along with the file notings. The Respondent No. 1 vide its reply dated June 28, 2016 furnished vague, imprecise and incomplete information. The Respondent No. 1 also enclosed therewith a Circular dated January 30, 2016 issued by IBA applicable to its member banks which are parties to a bipartite settlement on pension and are covered by Bank Employees' Pension Regulations, 1995. It is stated that neither is the Respondent No. 1 a party to any such bipartite settlement nor is the Bank Employees Pension Regulations, 1995 applicable to IFCI, which has its own Pension Regulations approved by its Board of Directors on the lines of similar Regulations of the erstwhile IDBI and RBI.

24. It is submitted that as the National Human Right Commission ('NHRC', for short) had recognised retiral benefits as a human right, the Petitioner on June 20, 2016 filed a petition before the NHRC, New Delhi, being aggrieved by the discriminatory behavior of the Respondent No. 1 in continuing with rate of DA/DR of RBI for the serving employees and employees who had retired w.e.f. November 1, 2002 but applying IBA rates for the employees who had retired in the pay scales effective up to October 31, 2002. While the matter was pending before the NHRC, the Petitioner vide its letter dated March 8, 2017 again requested the Respondent No. 1 to grant DR at single rate as per RBI pattern irrespective of the date of retirement. The Respondent No. 1 vide its letter dated March 23, 2017 gave its submissions to the NHRC and tried to establish that IBA rates were given to the pensioners who had retired under Voluntary Retirement Schemes. The said statement, as per the Petitioner, is false and frivolous.

25. It is submitted that applicability of DR rates have always been similar for all retirees, whether having retired upon attaining the age of superannuation, as per Voluntary Retirement Schemes or as per voluntary retirement under Staff Regulations and continued to be same even when the Respondent No. 1 without any basis created two classes of employees; i.e., those who retired in the pay scales effective up to October 31, 2002 and those who retired in the pay scales effective after November 1, 2002. That apart, there was no agreement under the Voluntary Retirement Scheme that retirees under the Schemes will be paid DR as per IBA rates. The members of the Petitioner to whom DR is being defrayed at the rates of IBA include retirees under all three categories i.e., (i) retired upon attaining the age of superannuation, (ii) retired under Voluntary Retirement Scheme and (iii) voluntarily retired under the Staff Regulations. Further, under Voluntary Retirement Schemes it is specifically mentioned that pension optees

shall be paid pension under the Pension Regulations. The definitions 'Date of Retirement' and 'Retirement' under Regulation (2) of the Pension Regulations are uniformly applicable to all the aggrieved pensioners, including Voluntary Retirement Scheme optees. Thus, even under Voluntary Retirement Scheme, the pension is payable in a similar manner as to other pensioners under the Pension Regulations.

26. Further information was sought by Mr. Nanak Chand vide an RTI application dated July 29, 2017. In response to the said RTI application, Respondent No. 1 confirmed vide letter dated August 30, 2017 that no HR/Admn/other policy circular exists in its records to show the need for switch over from RBI pattern to IBA pattern, process followed for the said switch-over, approval by the Board, options sought from the pensioners for the switch-over or the decision taken by the competent authority for such switch-over. It is stated that while the matter was still pending before the NHRC, the Petitioner further sent a request for restoration of the RBI pattern vide letter dated October 11, 2017.

27. It is submitted that the NHRC, vide Communication dated November 25 2017 and November 30, 2017 directed the Respondent No. 1 to address the grievances of the pensioners. Despite the direction, the Respondent No. 1 did not respond and hence the Petitioner again, vide letter dated February 10, 2018 reminded the Respondent No. 1 to restore the RBI patterned basis of calculation of DR and apply the same on single rate basis to the members of the Petitioner. It is further stated that Respondent No. 1 submitted a factual report dated September 11, 2018 to NHRC, wherein it was admitted that pensioners were being paid DR on the basis of RBI from the year 1993.

28. In addition to the repeated written requests, the Petitioner held a number of meetings with the Managing Director and Chief Executive Officer, the Executive Director and General Manager (Human Resources) of the Respondent No. 1 between March, 2017 and December, 2019. It is stated that in the meetings, the Petitioner was assured that the issue regarding payment of DA to the aggrieved pensioners would be resolved. In the meeting held on July 10, 2018, the Executive Director informed the representatives of the petitioner that:-

"discussion part is over, narrative part is over. Now we are seized with the issue as how to pay and when to pay".

29. The above statement has been brought on record in a number of representations made by the Petitioner to the Respondent No. 1 and the same has never been denied or rebutted by the Respondent No. 1 till date. The Petitioner, vide letter dated December 20, 2018, again reminded Respondent No. 1 about the assurances given from time to time and requested for restoration of the RBI patterned basis of calculation of DA and to apply the same on single rate basis to the members of the Petitioner.

30. That apart, it is averred that even as late as in the year 2019, pursuant to the approval of Respondent No. 2 dated 5th March, 2019, the RBI notified

revision in pension of its pensioners with effect from March, 2019. Respondent No. 1, vide its letter dated March 12, 2019, sought similar approval from the Respondent No. 2 solely on the ground that their pension scheme is based on the pension scheme of the RBI. According to the Petitioner, this reconfirms that the Respondent No. 1 has always followed and continues to follow the RBI in the matters of pension, salary structure, DA/DR, other allowances and perquisites.

31. The Petitioner, again vide letters dated April 2, 2019 and July 16, 2019 requested the Respondent No. 1 to restore the RBI pattern of calculation of DR and apply the same on single rate basis to the members of the Petitioner.

32. One of the members of the Petitioner, one Mr. GC Arora, vide letter dated October 28, 2019 sought information under RTI, on the regulations whereby various categories of pensioners were created based on their date of retirement and the subsequent application of different rates of DR to them. In response thereof vide letter dated December 3, 2019, the Respondent No. 1 admitted that there were no regulations whereby such categories were created and different rates of DR were applied to them. It was also admitted that these alleged categories were not created by the IFCI but were mentioned by IBA in its circulars. Also furnished in the said response were copies of the file noting dated February 28, 2008 whereby IBA rates of DA/DR was applied for the first time and IBA Circular dated February 1, 2008 which was applicable only to member banks who are parties to the Bipartite Settlement on Pension and covered by Bank Employees Pension Regulation, 1995. It is stated that the Respondent No. 1 is neither a party to the Bipartite Settlement nor is the Bank Employees Pension Regulations, 1995 applicable to the Respondent No. 1, who has its own Pension Regulations.

33. A perusal of the file noting dated February 28, 2008, would reveal that the Respondent No.1, for the first time, arbitrarily revised the rates of DR for the half-year February-July, 2008 on the basis of the circulars of IBA and continues to do so till date. The file noting starts with the words- "Rates of D.A. relief to pensioners are reviewed at half yearly intervals viz. February and August every year as per the rates obtained from RBI/IDBI." However, in the second sentence of the file noting, it has been recorded that "We have now received a copy of IBA circular approving revised DA relief". It is stated that therefore, changing the applicability of rates of DA from RBI pattern to IBA pattern is unwarranted and is devoid of justification, logic and reasoning. The file noting does not disclose the reason, rationale, need or rules/regulations under which IBA pattern was sought to be followed for payment of DA/DR. Further, according to the petitioner, the half-year mentioned in the file noting as August, 2007- January, 2008 is wrong as the correct half-year would be February-July, 2008, as the subject matter of the note is "Rate of Dearness Allowance/Relief to pensioners w.e.f. 01.02.2008".

34. It is averred that on further examination of the matter, the NHRC on November 15, 2019, held that the Petitioners herein were at liberty to approach the appropriate judicial Forum/Court for redressal of their grievances. It is stated

that in various communications to NHRC with copy to the petitioner, the Respondent No. 1 stated as under:-

"we are examining the financial implications of the request made by the pensioners and after evaluation having regard to the current financial position of IFCI, the matter will be placed before the Competent Authority".

35. It is submitted that apart from matters of administration including salary structure, perquisites, superannuation and other staff benefits, RBI patterns were also followed in providing conveyance expenses, residence furnishing expenses, residential telephone charges, meal coupons, book grant scheme and reimbursement of expenses incurred for education, newspapers/financial dailies and household help/cleaning, vide circulars dated April, 23, 2015, March 31, 2016, June 8, 2016, February 14, 2018 and December 31, 2018. It is the averment of the Petitioner that the Respondent No. 1 has not shown any legal justification which led to preparation of the file noting dated February 28, 2008.

36. It is also stated that the Petitioner met with the officials of the Ministry of Finance on October 29, 2019 and also with General Manager (HR) of the Respondent No. 1 on December 26, 2019 in which Deputy General Managers, IFCI were also present. Further, the Petitioner made representations dated November 19, 2019 and January 21, 2020 to the Respondent No. 1, but of no avail. The Petitioner sent a letter dated March 3, 2020 to rectify some typographic errors present in the letter dated January 21, 2020. The Respondent No. 1 failed to even acknowledge receipt of the said letters.

37. It is averred that such unilateral imposition of IBA circulars is causing loss to pensioners who are mostly senior citizens now. The Petitioner has attempted in the writ petition to demonstrate the impact of such loss by providing the example of the monetary loss incurred by one of the pensioners, Mr. Nanak Chand, who is also the President of the Petitioner/Society. He retired from the service of the Respondent No.1 on June 30, 2004 in the pay scale period of November 1, 1997 to October 31, 2002. It is stated that the discontinuation of RBI circulars and the imposition of IBA circulars resulted in a financial loss to him to the extent of ₹ 696/- per month for the half-year of February-July, 2008 and with every passing half-year, the loss continued to rise and the same stood at ₹2,639/- for the month of February, 2019. The loss would be lesser to those who are drawing lower pension and more to those who are drawing higher pension.

38. A counter affidavit has been filed on behalf of the Respondent No. 1/IFCI, wherein, at the outset it is stated that the service conditions of its employees are governed inter alia by Staff Regulations. It is pointed out that, however, aspects relating to pension and pensionary benefits are not dealt with by the same and are outside its scope and purview. Reference is made to Regulation 87 and Regulation 3 of the Staff Regulations to assert that its purview is limited to serving employees. It is stated that the aspect of pension and related benefits are governed by the Pension Regulations, and therefore, the reliance made by

the Petitioner on the provisions of Staff Regulations is misplaced insofar as it relates to DR or pension of retired employees.

39. It is stated that the Pension Regulations provide for exhaustive set of rules and regulations pertaining to the calculation and payment of pension, conditions of eligibility for pension etc. It also provided for constituting a Pension Fund under an irrevocable trust for the purpose of payment of pensions and accordingly Respondent No. 3 was constituted. Regulation 5 of the Pension Regulations states that regard may be given to the corresponding provisions of the pension regulations of RBI or IDBI, Civil Service regulations, liberalized pension rules, civil pension rules, or family pension scheme for central government employees or public sector banks, insofar as they can be adopted to the service in Respondent No. 1, subject to such exceptions and modifications as Respondent No. 1 may, from time to time determine. It is stated that the language of the said Regulation makes it clear that there is no obligation on part of the Respondent No. 1 to follow any other pension scheme or rules of any other organization. The Respondent No. 1 has in express terms, reserved for itself, the right to take a decision on the application of Pension Regulations. Further, it is stated that Regulation 29 of the Pension Regulations states that DR will be granted at such rates as may be determined by Respondent No. 1 from time to time. A formula for computation of DR is also provided in the said Regulation and in the Memorandum of Instructions for implementation of the pension scheme. Based on the aforementioned provisions, the following points are advanced:-

- (i) The computation of DR is based on All India Consumer Price Index (Base 1960-100) ('CPI', for short) and is calculated for every rise or fall of 4 points over 600 points of CPI;
- (ii) Since the basic pension for computation of DR at the relevant point of time had a slab structure, a specific rate of DR was computed for every slab;
- (iii) Rates of DR were subject to review every six months by the Respondent No. 1;
- (iv) Basic Pension is 50% of the basic pay/emoluments drawn by the retiree at the time of retirement.

40. It is contended that Respondent No. 1 has been following Pension Regulations for the payment of pensions to retirees who opted for the same till date, however the Petitioner by way of the instant petition, was seeking parity for its members who retired in the pay scales applicable till the year 2002 with retirees of another institution, i.e., the RBI, who vide RBI Circulars II and III, had retrospectively granted certain additional benefits to its retirees. It is stated that this parity is being sought in ignorance of the fact that Respondent No. 1 is in no way connected with the RBI in matters of pension. It is submitted that the petitioners cannot be permitted to seek parity/equality with the retirees of a third party independent organization.

41. It is submitted that until March 2008, the rates of DR for retirees of the Respondent No. 1 were the same as that of RBI/IDBI/IBA. The rates are further explained in a tabular representation annexed to the writ petition as Annexure R-4, wherein serial No. 3 of Table I shows that from the pay scales applicable from 2002 to 2007, for computing DA, all institutions including RBI, IDBI, PSUs, Banks and Respondent No. 1 did away with the concept of tapering. Table II and V depicts how there was no single rate system for computing DR for retirees retiring in the pay scales applicable until October 30, 2002, for any of the organizations/entities. This position remained until April 2008 when RBI issued RBI Circular II granting an additional benefit of single rate DR for all of its retirees in a retrospective manner regardless of the pay scales in which they retired. Table V demonstrates the effect of RBI Circulars II and III by juxtaposing the same with the existing position of Respondent No. 1 and other Banks/ Financial Institutions. It is also stated that the Respondent No. 1 used to revise the pay scales by issuance of administrative circulars which in turn provided the mechanisms for calculation of DA.

42. Insofar as the determination of rates of DA/DR is concerned, the following points are submitted in the counter affidavit:-

(a) The formula for determining the rate at which DR is to be calculated is linked to the CPI as per the Pension Regulations. The Respondent No. 1 has been applying the rates of DR for all its retirees on the basis of the same formula. The same formula was/is applied by other institutions like IDBI, RBI, NABARD etc.

(b) As per the Pension Regulations, DR is to be calculated by applying the rate on the basic pension of a particular retiree computed at the time of his retirement.

(c) The Pension Regulations do not obligate the Respondent No. 1 to mandatorily and compulsorily follow any particular organization or institution. It has granted autonomy to the respondent No. 1 in the matter of application of the regulation.

(d) Since the formula for arriving at the rates of DR in Pension Regulations is the same/identical to other institutions, the Respondent as a matter of practice, for the sake of convenience, was sourcing/obtaining the rates of DR from such institutions including the RBI and IDBI. It is stated that no benchmark or circulars of any particular organization was being followed.

(e) Since DA on basic pay followed slab structure for the pay scales effective up to November 1, 2002, corresponding slabs for basic pension came to be adopted as a natural consequence for employees retiring in the said pay scale effective up to November 1, 2002. It is further stated that single slab of basic pay for DA in the revised pay scales effective from November 1, 2002 was implemented by public sector banks, RBI, IDBI and IBA.

(f) After the introduction of single slab of DA to its serving employees under the pay scales effective from November 1, 2002, the single slab structure was also adopted for DR for the employees who retired in the same pay scale.

(g) However, after the implementation of the RBI Circulars II and III, the rates of DA/DR could not be practically sourced from the RBI for the members of the Petitioner who retired in the pay scales effective prior to November 1, 2002, since their pension was still based on multiple slabs, as opposite to the single slab system of DR of the RBI. It is pointed out at this juncture that the rates in the RBI Circular I were identical to the rates in the IBA Circulars from which the rates of DR were adopted by the Respondent No.1 on February 1, 2008.

43. It is contended that the reliance of the Petitioner on Memorandums dated July 22, 1994 and August 26, 1994 is misplaced, as the same are only 'Memorandums of Discussion' placed before the Board of Directors of the Respondent No. 1. It is stated that the Memorandums do not speak of any decision by the Respondent No. 1 to permanently link the then proposed Pension Regulations and pension scheme to that of any other institution, but on the contrary indicates its autonomy and independence with respect to the policy decisions regarding the Pension Regulations.

44. It is further stated that similarly, the Circular dated October 20, 1994 only notified the introduction of the pension scheme, but did not provide for any decision of the Board whereby the Respondent No. 1 was required to compulsorily follow IDBI with respect to any changes made in the future. Had the intention of the Respondent No. 1 been to adopt and follow the pension scheme of any other institution in totality and perpetuity, it would not have come up with its own Pension Regulations conferring autonomy to itself in matters relating to the application of the pension scheme and reviewing the rates of DR. It is further stated that even assuming the contentions of the Petitioners to be true, the institution mentioned in the said Circular. i.e., IDBI is now a part of IBA and follows IBA Circulars/Guidelines. It is stated that the pension regulations of the Respondent No. 1, RBI, IDBI, NABARD etc. formulated between 1990 and 1993 are similarly worded inasmuch as in all the regulations, a CPI based formula for computation of DR is followed. But it cannot be said that one regulation follows or is dependent on the other and the institutions cannot be mandated to follow every internal policy decision which another institution makes.

45. It is also submitted that the Respondent No. 1 has been following CPI based formula for all its employees including the members of the Petitioner and the said rates are being reviewed half yearly as per Regulation 29 of the Pension Regulations read with corresponding instructions.

46. That apart, it is contended that, obtaining the rates of DA/DR by virtue of the same CPI based formula from IBA/RBI/IDBI, and adopting the internal policy decisions of the RBI wherein the RBI decided to give additional benefits to some of its retirees by advancing a single rate of DR, are two separate and distinct issues. It is alleged that the Petitioner is trying to seek benefits which are available to retirees of the RBI by means of RBI's internal circulars. It is further stated that if a direction as sought by the Petitioner is granted, it would have disastrous effect on the Respondent No. 1, as demands would arise from all

quarters of its retirees seeking every benefits which the RBI has offered/would offer in the future, to their retirees, resulting in unwarranted financial loss to the Respondent No. 1 and consequently rendering its pension scheme unviable.

47. It is also submitted that the reliance placed by the Petitioner on the case of 34 formal employees of Respondent No. 1 who were paid arrears on account of revision of pay scales from November 1, 2002 is liable to be rejected on the principles of negative equality, for the following reasons:-

(a) The members of the Petitioner at Serial No. 55 to 190 of the list annexed to the Petition have retired under Voluntary Retirement Schemes of 2003 and 2004. On the other hand, the set of 34 formal employees with whom the Petitioner claims parity have all either superannuated or voluntarily retired otherwise. That apart, the said members at Serial No, 55-190 also retired in the pay scales applicable up to October 31, 2002, whereas the 34 former employees retired in the pay scales applicable from November 1, 2002. Under such circumstances, these two set of retirees cannot be said to form a homogenous class or be similarly situated.

(b) The members of the Petitioner at Serial No. 1 to 54 also retired in the pay scales applicable up to October 31, 2002, and 21 members therein retired under the Voluntary Retirement Schemes.

48. It is stated that employees retiring in different pay scales at different points of time cannot be considered as one class. Therefore, the members of the petitioner who retired in the pay scales effective up to November 1, 2002 cannot claim applicability of a single rate for DR as being applied to the employees who remain in the pay scales effective from November 1, 2002. Voluntary Retirement Scheme retirees constitute a separate class who, at the time of their retirement, were given benefits which are not given to the employees retiring in normal course. Neither are they eligible for anything that is not stated in the terms of the Scheme nor can they claim/demand the applicability of any subsequent change after opting for voluntary retirement. Therefore it cannot be said that Voluntary Retirement Scheme retirees are similarly situated to other retirees.

49. It is further submitted that the reliance placed by the petitioner on the file noting of the Respondent No. 1 dated February 28, 2008 is misplaced. The noting states that the rates of DA to pensioners are reviewed at half yearly intervals viz. February and August every year as per the rates obtained from the RBI/IDBI. It is stated that only the rates of DR were obtained from the RBI/IDBI; and not any policies or decisions. There is no issue of shifting from RBI/IDBI pattern to IBA pattern or adoption of any IBA Circulars with respect to pension. In any case, the rates of DR under the IBA circulars are identical to the DR rates mentioned in RBI Circular I, as the rates of DR in both the cases are computed on the basis of the same CPI formula. It is stated furthermore that the RBI Circulars II and III were not in existence at the time of issuance of the file noting.

50. That apart, it is stated that it is IDBI and not RBI that finds mention in the

Memorandums and Administrative Circulars, and the rates of DR were being obtained from the IDBI even after it was made into a bank in 2003. According to the Respondent No. 1, this indicates that it had not bound itself to any particular institution.

51. Further, it is submitted that no prior approval from the Board or Competent Authority is required inasmuch as no tangible change was effected by obtaining rates of DR from the IBA Circular. There was also no pre-requirement of obtaining any approval or consent of the retirees for this exercise.

52. Additionally, it is stated that the Respondent No. 1 vide Administrative Circular dated November 22, 2006 ('Revision Circular', hereinafter) implemented the revised pay scales of 2002 to 2007 with effect from April 1, 2006 for employees who were on the rolls of the Respondent No. 1 as on October 19, 2006. At this stage, during 2007-2008, the Petitioner made representations to the Rajya Sabha inter alia claiming the extension of the benefits of the revised pay scales along with the consequent pensionary benefits. It was principally the case of the Petitioner that the revised pay scales should have been made applicable to them, irrespective of the fact that they had retired before its introduction/implementation in 2006 and after opting for Voluntary Retirement Scheme.

53. The Rajya Sabha Committee on Petitions vide its 136th Report in July, 2009 inter alia initially made the following recommendation:

"5.15.....the Committee recommended that the Ministry of Finance may impress upon the Respondent No. 1

(through its nominee directors on the board of the Respondent No.1) to implement the revision of pay scale and pensionary benefits w.e.f. 01.11.2002 in favour of the retired employees including VRS optees who were in the payroll of IFCI LTD. as on 01.11.2002 but ceased to be in service thereafter on account of death, retirement on account of superannuation or VRS of 2003-2004."

The Board of the Respondent No. 1 considered the recommendation in its various meetings and on November 1, 2011 resolved that it is not practical or feasible to implement the revision of pay scale and pensionary benefits to Voluntary Retirement Scheme optees in view of the express terms and conditions of the Schemes and the legal position on the same. Thereafter, as the Committee of Petitions was not satisfied with the aforesaid resolution, it submitted its 144th Report dated December 19, 2012 whereby it reiterated the earlier recommendations. The said report was forwarded to the Respondent No. 1 by the Respondent No. 2 seeking its comments on the Report. The Respondent No. 1 submitted a reply dated February 21, 2013 wherein it was stated that the reason for fixation of April 1, 2006 as the date for implementation of the revised pay scales was the continuous losses which were being incurred by the Respondent No. 1. The said decision was based on the financial position of the Company inasmuch as losses mounted up to ₹4772 crores and it was only with effect from

2006/07 that the Company began making profits. It was also stated that the terms of Voluntary Retirement Scheme as opted by the employees explicitly stated that the same shall be in full and final settlement of all claims. Further, specific reference was made to paragraphs 9.4 and 9.12 of the the Schemes which categorically provided that no benefits of any pay revision would be available to the retirees therein. In any case the benefit under Voluntary Retirement Schemes were doubled from ₹7.5-8 lakhs in 2000-2001 to ₹15 lakhs in 2003-2004, granting a substantial enhanced compensation to the Voluntary Retirement Scheme optees.

54. Subsequently, the Respondent No. 2 vide letter dated May 27, 2013 agreed with the reply of the Respondent No. 1 and directed them to consider the revision of pay scales for the employees who superannuated/died after November 1, 2002. In the light of the said letter, the Respondent No. 1 vide Memorandum bearing No. 80/2013-14 dated July 24, 2013, identified 34 such employees who superannuated/voluntarily retired/expired during the relevant period and extended the benefit of revised pay scales. Consequently, the single rate system came to be applicable to the said 34 employees.

55. A rejoinder has been filed on behalf of the Petitioner wherein, apart from reiterating the contentions made in the writ petition, it is stated that the Pension Regulations do not distinguish between an employee who has retired on attaining age of superannuation or sought voluntary retirement under the Staff Regulations or opted for voluntary retirement under the various Voluntary Retirement Schemes introduced by the Respondent No. 1. All the Voluntary Retirement Schemes introduced between 2000 and 2004 provided that those who seek retirement under the Schemes would be entitled to pension as per the Pension Regulations. The relevant clause of the Scheme of 2003-04 is reproduced as under: -

"7.BENEFITS UNDER THE SCHEME - An employee, whose application for voluntary retirement is accepted, shall be entitled to the following:-

7.1 xxxxx

7.2 (i) Pension as per the IFCI Pension Regulations to those employees who have already opted for pension.

(ii) Pension as per the IFCI Pension Regulations to employees (in case they are not pension optees) who opt for VRS and seek pensionary benefits in lieu of contributory Provident Fund "

It is stated that therefore, the reference made by the Respondent No. 1 in the counter affidavit to Voluntary Retirement Scheme optees as if it is a special class, has no relevance insofar as pension is concerned.

56. It is further stated that neither Regulation 5 nor Regulation 29 of the Pension Regulations permit classification. The autonomy pleaded by the Respondent No. 1 in the counter affidavit cannot be exercised arbitrarily or capriciously. The

Petitioner is not seeking parity with RBI employees, but only restoration of DR on RBI rates as was being done up to January 2008, which was changed to IBA rates. The members of the Petitioner are seeking parity with other pensioners of the Respondent No. 1 who have retired in the pay scales w.e.f. November 1, 2002, to whom the Respondent No. 1 is defraying DR on RBI rates at single rate basis.

57. It is submitted that the fact that the Respondent No. 1 is functioning under the Government of India would in itself show that the Respondent No. 1 cannot arbitrarily fix/change the benchmark for calculating the rates of DR payable to its pensioners. It is also stated that the welfare measures mentioned by the Respondent No. 1 have neither any relevance nor any bearing on the fixation of DA/DR payable to pensioners.

58. It is submitted that grant of pension by the employer and receipt of pension by the retired employee is a part of the conditions of service of the employees and are governed by the Staff Regulations. Pension is a continuous stream of payment, without break or gap between active service and passive service. Pension is part of the remuneration which germinates from the pay itself and paid as deferred wage in the post retirement life of the pensioner. The remuneration comprises of two components - (i) salary and allowances during the period of active service and (ii) pension, along with DR, after retirement. The aggrieved pensioners were receiving salary and allowances on the pattern of RBI and their pension was also fixed on the RBI patterned salary. After retirement, they were getting DR as per RBI rates until the Respondent No. 1 discontinued the same and imposed the pattern of IBA. Further, the employees after retirement are eligible and entitled to same benchmark for payment of DR as has been incorporated in the Staff Regulations, particularly when no other benchmark has been prescribed in the Pension Regulations. Therefore, the ambit of Staff Regulations which govern the conditions of service, insofar as they relate to the payment of DR, extends to the serving as well as retired employees of the Respondent No. 1. Regulations Nos. 3 and 87 of the Staff Regulations have no relevance to the present proceedings, as the aggrieved pensioners have neither asked for the pay post retirement nor are they asking for any allowances attached to the pay.

59. It is submitted that the Pension Regulations cannot be read in isolation but need harmonious construction with other Regulations prevalent in the Organization. When a provision has not been expressly provided, reference to the nearest available Regulation is necessary. As the benchmark for payment of DA already existed in the Staff Regulations, a separate or specific benchmark was not thought to be incorporated in the Pension Regulations by the Respondent No. 1. It is stated that the facts would show that the Respondent No. 1 was following the RBI/ IDBI pattern in payment of DR, on the recommendation of the Whole Time Director of the Respondent No. 1, the DGM (HR) was authorized by the then Chairman, vide notings dated April 19, 1999 and April 21, 1999, to

obtain the rates of DA from erstwhile IDBI/RBI and apply the same for payment of DR to its pensioners.

60. It is also stated in the rejoinder that the members of the Petitioner have given up the employer's contribution to CPF to opt for the pension scheme which was based on the similar schemes of the RBI/IDBI.

61. The Petitioner has further drawn my attention to Regulation 5 and Regulation 29 of the Pension Regulations. It is submitted that in the matter of application of the Pension Regulations, Regulation 5 gives the choice to the Respondent No. 1 to have regard to the RBI Pension Regulations or IDBI Pension Regulations or Central Government Pension Rules. So far as PSUs are concerned, it does not lay down as to which regulation of which PSU Banks are to be regarded. It is stated that in the year 1993, no regulation of any PSU was in existence. The Regulation 29 of the Pension Regulations does not give power to Respondent No. 1 to adopt a particular Regulation for some employees who retired in the pay scales till October 31, 2002 and another Regulation for employees who retired in the pay scales from November 1, 2002. It is further contended that the IBA is a voluntary and unregistered association of banks. It is neither a Government entity nor a Regulatory Authority, and no circular of the IBA is applied by the Respondent No. 1 in any other staff matters. It is also the case of the Petitioner that there has never been any adoption of the circulars of IBA by the Respondent No. 1. Neither has any resolution adopting IBA Circulars been passed by the Board of Directors, nor has there been any departmental file as to how the IBA Circular was being adopted for a limited class of pensioners.

62. That apart, it is averred that the slabs and formula mentioned in the Memorandum of Instructions for implementation of pension scheme, are applicable only to those employees who retired prior to November 1, 1993. The slabs and formula in respect of those who retired after November 1, 1993 have neither been incorporated in the Pension Regulations nor circulated through any policy circular. If the contention that the pension is governed by the Pension Regulations and DR is paid as per formula given in the Memorandum of Instructions is accepted as correct, the said Memorandum would be applicable to all pensioners, irrespective as to whether they retired in the pay scales up to October 31, 2002 or in the pay scales from November 1, 2002 and DR would be payable as per slabs mentioned in the Pension Regulations to all pensioners.

63. It is stated that the Petitioner is not seeking to dispense with the CPI, but only to bring the aggrieved pensioners within the policy of the Respondent No. 1 to follow the RBI in matters of salary structure and pension scheme. Insofar as the reference made to NABARD in the counter affidavit is concerned, it is stated that even NABARD has followed the salary structure and pension scheme of the RBI and has adopted the circulars of RBI for switching over from slab based to single rate system of calculating DR to pensioners who retired up to October 31, 2002.

64. It is further contended that Respondent No. 1 has not placed on record any material, including any contrary discussions, resolutions or reasoning to show that any decision was taken contrary to the Memorandums of Discussion dated July 22, 1994 and August 26, 1994.

65. It is submitted that the file noting dated February 28, 2008 is only a brief narrative made without regard to the approval noting dated April 21, 1999, by the then Chairman, subsequent notings dated August 17, 2000 and February 26, 2002, precedents and policies being following by the Respondent No. 1 for over fifty years. Even the initiation of the review of periodical rates of DR could be undertaken only after receipt of the relevant circulars of RBI. The circulars of RBI were treated as the 'Papers under Consideration' from which the rates were copied on the noting and approved. The rates mentioned in the RBI circulars were mentioned in the noting for seeking approval of the Competent Authority. This system continued for about 15 years until when the Respondent No. 1 referred the circular of IBA for review of the rates of DR from February 2008.

66. That apart, had the Respondent No. 1 not discontinued the circulars of RBI in February, 2008, the RBI Circulars II and III would have formed part of the system for payment of DR to the aggrieved pensioners in line with the decision of RBI.

SUBMISSIONS:

67. Mr. HL Tiku, learned Senior Counsel appearing on behalf of the Petitioner would submit that the grievance of the Petitioner is against the Respondent No. 1, in not following the same benchmark/yardstick/methodology for calculation of DR in respect of its retirees/pensioners in that the Respondent No. 1 has illegally created classification between its retirees. One class of retirees/pensioners, i.e., the employees of Respondent No. 1 who retired in the pay scales effective between November 1, 1997 and October 31, 2002, are being paid DA on rates mentioned in the IBA Circular dated February 1, 2008 on a slab basis, while another class, i.e., the employees of Respondent No. 1 who retired in the pay scales effective from November 1, 2002 are being paid DR as per the rates followed by the RBI, at a single rate. It is the contention of Mr. Tiku that there is no reasoning, justification or criteria as to what is the basis of the Respondent No. 1 to classify the pensioners and discriminate amongst them. To buttress his argument, he has placed reliance on the Judgments of the Supreme Court in *D.S. Nakara & Ors. v. Union of India*, (1983) 1 SCC 305, *All Manipur Pensioners Association v. State of Manipur & Ors.*, (2020) 14 SCC 625, and the Judgment of a Division Bench of this Court in *Ex-Servicemen Welfare Union & Anr. v. Union of India & Ors.*, W.P.(C) 1335/2012, decided on January 29, 2016.

68. It is his case that the members of the Petitioner are not seeking equal pension with retirees post November 1, 2002, revision of basic pay or a higher pay scale, but only restoration of DA on RBI rates as was being done up to January 2008, which was changed to IBA rates. While in service, the aggrieved

pensioners were drawing salary on the pattern of the salary structure of RBI. On retirement, their pension was fixed on the RBI's patterned salary and they were being paid DR based on the rates circulated by RBI. Mr. Tiku stated that this was in consonance with five decade old policy of the Respondent No. 1 to follow RBI in the matters of pay, allowances and other staff matters and also in line with the condition of their service as mandated in the Staff Regulations, which provide that employees of the Respondent No. 1 would be paid DA as per rates and subject to the conditions as applicable to the employees of RBI. Briefly, on the date of their retirement, the aggrieved pensioners were being paid salary, including DA on the pattern of RBI and continued to receive DA/DR on pension on the same basis until the same was changed to IBA pattern from February, 2008.

69. He further submitted that the Board of Directors of the Respondent No. 1, at their meeting held on the August 30, 1994, approved introduction of a Pension Scheme for the employees of IFCI. While surrendering the employer's share in CPF, employees of the Respondent No. 1 including the pensioners herein, had opted for the Pension Scheme which was based on the similar scheme of the RBI/ erstwhile IDBI. The IDBI used to follow the pay, allowances and other benefits as prevalent in RBI and the Respondent No. 1 then followed the same. Therefore, the Respondent No. 1 has always followed RBI either directly or indirectly.

70. Further, Mr. Tiku would submit that all the retirees are entitled to pension as per the Pension Regulations without any discrimination. According to Clause 2 (11) of the Pension Regulations, 'retirement' means retirement in terms of Regulation 33 of the Staff Regulations and other instructions issued by the Corporation under settlement/award. Regulation 33 of the Staff Regulations provides for superannuation and also voluntary retirement as mode of retirement. Further, all the Voluntary Retirement Schemes introduced between 2000 and 2004 provided that those who seek retirement under such Schemes would be entitled to pension as per the Pension Regulations.

71. That apart, he submitted that till 2005, the pensioners, irrespective of the date of retirement were being paid DR on basic pension as per RBI circular on slab basis. The RBI introduced DR on single rate basis for its pensioners irrespective of any classification. The Respondent No. 1 also introduced DR on single rate basis for its pensioners but applied the same only to those pensioners who retired in the pay scale applicable from November 1, 2002. The Respondent No. 1 of its own switched from RBI circular to IBA circular w.e.f. February 2008, only in respect of the pensioners who had retired in pay scale prior to November 1, 2002. Mr. Tiku submitted that no policy decision was taken by the Board of Directors of the Respondent No. 1 and no reasons have been recorded for shifting the DR rates from RBI circular basis to IBA circular basis only in respect of the pensioners who had retired in pay scale effective up to October 31, 2002 and to apply the DR rates of RBI on single rate basis only in respect of the pensioners who had retired in pay scale effective from November 1, 2002. When

the Petitioner enquired about the circulars issued wherein policy decision was taken by the Board of Directors regarding the issue, the Respondent No. 1 confirmed that there was no HR/Admin circular whereby such decision was taken by the Board or otherwise. Mr. Tikku further stressed that the IFCI is not a regular member of the IBA, but only an associate member and it is also not a party to the bipartite settlement between members of IBA, i.e. banks and their employees. He would also submit that the application of the IBA circular is based only on the file noting dated February 28, 2008 made by an Assistant Manager and approved by two General Managers and a Chief General Manager. It is stated that the internal file note is not a policy decision applicable to all retirees but a mere non-speaking communication.

72. It is his submission that the Respondent No. 1, thus, accorded differential and discriminatory treatment to equals in the matter of payment of pension. This discriminatory treatment was silently introduced without any notice or indication, is tainted with malice and is in violation of Article 14 of the Constitution of India.

73. He would also submit that the present petition is not barred by limitation inasmuch as the Petitioner and its aggrieved members came to know of the discrimination resulting in deprivation of the difference in DA/DR only on July 16, 2014 when the Respondent No. 1 disclosed to Mr. JN Sharma, that DR was being paid to him in accordance with the circular issued by the IBA. Soon thereafter, the Petitioner took up the matter with the Respondent No. 1 through representations and subsequently on June 20, 2016, approached the NHRC. On November 15, 2019 the NHRC passed final order in the matter, holding that it cannot act as a Court to adjudicate service disputes and granted liberty to the Petitioner to approach appropriate judicial forum. Thereafter, the Petitioner filed this Writ Petition on July 27, 2020.

74. Reliance is placed by Mr. Tikku on the Judgment of the Supreme Court in Union of India and Ors. v. Tarsem Singh, (2008) 8 SCC 648, to contend that since wrong defrayment of the pension is a continuing wrong and injury, as such the cause of action is continuous.

75. He further submitted that insofar as arrears are concerned, the time spent before the NHRC be condoned as even interim directions were issued by the NHRC and if not, the Petitioner be paid arrears 3 years prior to the date of institution of the petition.

76. Mr. Dhruv Mehta, learned Senior Counsel appearing on behalf of the Respondent No. 1 submitted that the Respondent No. 1/IFCI is governed by its own pension regulations and the pension regulations, rules or mechanism of the RBI or any other organization are not applicable to it.

77. The Staff Regulations pertain to conditions of service of employees and not to pension, for which a special regulation exists, i.e., the Pension Regulations. It is his contention that as such, no pension regulations of any other organization could be mandatorily incorporated in IFCI's Pension Regulations, in view of

Regulation 5 of the Pension Regulations and the Division Bench Judgment of this Court in P.N. Shukla v. Union of India, LPA 886/2015 decided on October 5, 2016. He has also drawn my attention in this regard to the Judgment of the High Court of Punjab and Haryana in M.C. Singla v. Union of India, CWP 6233/2008 (O&M) decided on April 16, 2012, which was subsequently upheld in appeal by the Division Bench of the Court in judgment titled P.C. Jain v. Union of India, 2015 SCC OnLine P&H 16526. He further stated that Regulation 29 of the Pension Regulations and the instructions therein clearly reflect autonomy of the Respondent No. 1 in determination of rates of DR. It is also submitted that the Memorandums dated July 22, 1994 and August 26, 1994 only contain the discussions and deliberations on the introduction of the pension scheme on the lines similar to the scheme introduced in IDBI. They became inconsequential upon the introduction of the Pension Regulations in 1993. The said Pension Regulations which were ultimately introduced to govern the aspect of pension as well as DA/DR to retirees do not provide for any interlinking of RBI/IDBI and the Respondent No. 1.

78. That apart, Mr. Mehta would submit that the RBI chose to extend the benefits of single rate of DA/DR to all its employees/retirees irrespective of whether they the pay scale revision was applicable to them or not. However, in view of the legal position that the IFCI is not bound to follow the RBI, the Circulars I, II and III would have no bearing on the functioning and internal decisions of the Respondent No. 1. There is nothing in Memorandums, Administrative Circulars or the Pension Regulations which obligates the Respondent No. 1 to follow the internal policy decisions of any other institution. He also stated that it is trite law that in order to secure a writ of mandamus, it is necessary to show that the statute imposes a legal duty on the state and the petitioner has a legal right under the said statute to enforce the said duty. However, in the present case, there is neither a legal duty on Respondent No. 1 to follow RBI circulars/policies nor does there exist any corresponding legal right in favour of the Petitioner to seek adoption of such circulars/policies. He has referred to the Judgment of the Supreme Court in the case of Oriental Bank of Commerce v. Sunder Lal Jain & Anr., (2008) 2 SCC 280 in this regard.

79. It is further submitted that from a practical stand point, it is not possible for any organization to automatically extend all financial benefits or advantages which the RBI extends to its retirees. Such financial decisions are to be taken by every organization on the basis of their own financial strengths and reserves.

80. Inasmuch as the letter dated March 12, 2019 of the Respondent No. 1 to the Respondent No. 2 is concerned, Mr. Mehta submitted that the Respondent No. 1 being a Government of India Undertaking, sought permission of the Ministry of Finance, Government of India, to follow the RBI in matters of pension. This in itself is evidence that as on date of the letter, the Respondent No. 1 was not following the RBI in matters of pension. It is stated that no such permission had been granted by the Respondent No. 2 till date. Furthermore, it is submitted that

this Court may not interfere in any policy matter/decision of the Respondent No. 1.

81. Mr. Mehta has opposed the statement of the Petitioner that the Respondent No. 1 is shifting from RBI Circulars to IBA Circulars in matters of pension. He submitted that the Respondent No. 1 was only borrowing the rates of DR as per CPI from the RBI and/or other organizations. The rates of DR in Respondent No. 1 as well as organizations like the RBI, IDBI, NABARD, IBA etc. are calculated on the same formula. Various notings relied upon by the Petitioner show that the borrowing was not automatic; an approval had to be sought each time. This would further aid the contention of the Respondent No. 1 that it was never bound to mandatorily follow any circular/policy of the RBI.

82. It is his submission that a single rate of DA/DR granted to retirees of IFCI in the pay scales effective from November 1, 2002 is actually a consequence of the pay revision made by the Respondent No. 1 in 2006. The members of the Petitioner have neither sought nor are entitled to the said pay revision. The said pay revision for the period of November 1, 2002 to October 31, 2007 was implemented by the Respondent No. 1 w.e.f. April 1, 2006 for its existing employees vide the Revision Circular, which inter alia prescribed for its beneficiaries, a single rate of DA/DR. He has also admitted that as far as Respondent No. 1 is concerned, despite the pay revisions, the basic pension remains constant and the only dynamic component in pensionary benefits is DA/DR, the rates of which are calculated periodically. It is further stated that ordinarily, the pay revision of 2006 ought to have been given effect from November 1, 2002, however, it was made effective only from April 1, 2006 as the Respondent No. 1 was witnessing continuous losses for several years and the said date of April 1, 2006 coincided with its annual recording of accounts and net profits. It is stated by Mr. Mehta that financial constraint is a valid ground for selection/fixation of a cut-off date for implementation of a revision of pay. Reference in this regard is made to the Judgments of the Supreme Court in *State of Punjab v. Amar Nath Goyal*. (2005) 6 SCC 754, *Central Bank of India v. M. Sethumadhavan* (2017) 13 SCC 298 and *Chairman, KSRTC v. K.O. Varghese & Ors.*, (2007) 8 SCC 231. It is his submission that therefore, persons who retired after November 1, 2002 prior to the introduction of the Revision Circular, continue to be paid DA/DR on a slab basis. These persons include Voluntary Retirement Scheme optees as well as persons retiring under normal circumstances. Subsequently when the financial position of the Respondent No.1 improved, vide Board Resolution dated July 30, 2013, the benefits of the Revision Circular were extended to those retirees who retired in the period between November 1, 2002 and October 31, 2007 under normal circumstances. Voluntary Retirement Scheme optees were not given any benefit of the Revision Circular. In other words, single rate of DA/DR was introduced by the Revision Circular, and all employees of the Respondent No.1 who were beneficiaries therein, upon their retirement came to be paid DA/DR at single rate. All other employees who were not entitled to the benefits of the Revision Circular, including members of the

Petitioner herein, were paid DA/DR in a tapered manner and continued to be paid the DA/DR in the same manner ever since.

83. It is reiterated that the members of the Petitioner are retirees who retired before November 1, 2002 and therefore cannot seek any benefits given to persons who retired after November 1, 2002. It is settled that retirees retiring on the same rank but in different pay scales do not form the same class. Reliance in this regard has been placed on the Judgments of the Supreme Court in *Col. B.J. Akkara v. Government of India & Ors.*, (2006) 11 SCC 709 and *State of West Bengal & Ors. v. West Bengal Government Pensioners Association & Ors.*, (2002) 2 SCC 179. It is also submitted that, therefore, reliance is mis-placed by the Petitioner on *D.S. Nakara (supra)* to state that all pensioners of the Respondent No.1 from a single homogeneous class and they are being illegally divided into two classes by arbitrarily fixing a cut-off date.

84. That apart, it is stated that 157 of the 190 members of the Petitioner are Voluntary Retirement Scheme optees, who belong to a separate class who cannot seek parity with pensioners who retired under normal circumstances, as they are given exclusive special benefits and payouts. Voluntary Retirement Scheme qualifies to be a full and final settlement between the employer and employee. Reference is made to the Judgment of the Supreme Court in *Manojbhai N. Shah v. Union of India*, (2015) 4 SCC 482.

85. Mr. Mehta has also drawn my attention to a Judgment of the Division Bench of this Court in *P.P. Vaidya v. IFCI Ltd.*, LPA 786/2013, decided on May 6, 2014, wherein the clauses of the Voluntary Retirement Scheme of the Respondent No. 1/IFCI were interpreted, to contend that Voluntary Retirement Scheme optees are not entitled to pay revision and the benefits thereof.

86. That apart, he has referred to the Judgment in *Union of India v. Tarsem Singh (supra)* to submit that assuming the members of the Petitioner are entitled to defrayment of DA/DR at a single rate, the consequential relief of arrears would be restricted to a period of three years prior to the date of filing of this petition.

87. Having heard the learned counsel for the parties, and perused the record, the issue which arises for consideration is whether the members of the petitioner association who have retired in the pay scales applicable upto October 31, 2002, are entitled to be paid DR on the basis of single slab instead of multiple slabs, as has been granted by the RBI even to pre-2002 retirees.

88. The facts are not disputed, inasmuch as the members of the petitioner association have retired in the pay scales applicable between 1987 to 2002, and members of the petitioner and others, irrespective of their date of retirement, were being paid DR as was being done in RBI and the erstwhile IDBI. In the year 2005, RBI shifted to a single slab system of DA for its employees. The Respondent No.1 had also followed the same decision for its serving employees by implementing the pay allowance on the lines of RBI in 2006-07, including single rate of DA for its employees from February 01, 2005. Thereafter, RBI vide

its circular dated April 01, 2008 amended its earlier circular dated February 01, 2008 and changed the method of calculation of DA/DR and shifted the method from slab rate basis to single rate basis, meaning thereby irrespective of the amount of basic pension granted, a single rate of DA/DR was made applicable on pension / voluntary pension in relation to the relevant pay scales period. The RBI further modified its instructions dated January 01, 2010 and single rate basis was made applicable to its pensioners who had retired in the pay scales effective up to October 31, 2002 with retrospective effect from February 01, 2005.

89. In short, RBI dispensed with the multiple slab system vide circular of April 01, 2008 and also January 01, 2010 and adopted a single rate DA/DR system. The grievance of the petitioners is that the Respondent No.1 has not made applicable the circulars of RBI to the pensioners who retired before November, 2002.

90. The reasoning given by the Respondent No.1 is primarily that the revision of pay scales for the period from November 01, 2002 to October 31, 2007 was given effect from April 01, 2006 and the benefits thereof have been given to the employees who retired between November 01, 2002 and October 31, 2007 and subsequently arrears on account of consequential enhancement in pension along with DA/DR on the lines of RBI circular at single rate basis w.e.f. February 01, 2005 was paid to them in April 2014.

91. The first submission of Mr. Tikku is that as the Respondent No.1 is consciously giving benefit of the initial RBI circular with regard to multiple slabs to its retirees irrespective of any cut-off date, the benefits of the fresh circular of the RBI also need to be given to the retirees including the members of the petitioner herein and it should not have confined the benefit of DR on single rate w.e.f. November 01, 2002.

92. Per contra, the submission of Mr. Mehta is that the Respondent No.1 was only borrowing the rates of computing DA/DR from the RBI. The Respondent No.1 was following the RBI rates merely as a matter of convenience, and there is no obligation in law for the Respondent No.1 to strictly follow circulars as and when issued by the RBI. This submission of Mr. Mehta is appealing. In fact, he has relied upon the judgment of the Punjab and Haryana High Court in the case of M.C. Singla (supra) dated April 16, 2012. In the said case, the learned Single Judge was concerned with the issue of retirees in Punjab National Bank, who retired between January 01, 1986 and October 31, 2002, that there has been no update on their pension in the manner contemplated under the Punjab National Bank (Employees Pension Regulation 1995). This was pursuant to a settlement between the Bank employees and the management on October 29, 1993 wherein originally it was contemplated that the scheme would be applicable to all employees who had retired from November 01, 1993 but later through independent notification had been applied also to persons who had retired from January 01, 1986 onwards. The grievance of the petitioner therein was the regulation provided in the application of pension in the manner that the RBI and

Central Civil Services (Pension) Rules provided. But the scheme which had been introduced, has not been provided for periodical upgradation of pension with reference to the increase in scales of pay by virtue of various Pay Commission Recommendations. The claim of the petitioner therein was resisted by the Respondent including the Bank by contending that the RBI's scheme or the Central Civil Service (Pension) Scheme could not be applied, since the Bank had an independent scheme which was introduced in the year 1995 and the Bank Regulations which provided through Regulation 56 that in case of a doubt, the Central Civil Services Rules or the RBI Pension Rules would apply was only to be taken when there arose some problem regarding interpretation. The Bank also contended that the settlement which had been effected in the year 1993 that gave rise to the Regulation merely paved way for a negotiation for parties for creating a scheme that could take note of payment of pension, commutation of pension and upgradation on the lines that were in force in RBI and if the negotiations and talks did not yield to any specific provisions like the way the RBI Pension Regulations provided for, they cannot have any vested right to demand the pension regulations in the manner as applied, either for RBI employees or for civil servants.

93. The question that arose before the learned Single Judge is whether the ex-employees, who were governed by the Pension Regulations of 1995 of the Punjab National Bank, could seek the application of RBI Regulations or the Central Civil Services (Pension) Regulations by reference to the residuary clause in the Regulations of the year 1995.

94. The learned Single Judge was of the view that Regulations 56 itself cannot be a source for claiming a right at par with RBI employees or civil servants. He also held that the fact that the disparity in pension amounts that arose for the persons who retired on different dates at different scales, due to the fact that the increased pay scales were applicable only to persons who had retired after a particular date, cannot be said to be discriminatory. The petitioners therein had no legal right to canvass for, where they failed to negotiate and obtain the parity.

95. Suffice to state the judgment of the learned Single Judge in M.C. Singla (supra) has been upheld by the Division Bench of the Punjab and Haryana High Court while considering a batch of related appeals, in P.C. Jain (supra) wherein the Division Bench has considered and discussed various decisions of the Supreme Court including D.S. Nakara (supra) and held as under:

"24. A perusal of Clause 12 of the settlement makes it abundantly clear that it only provides for further negotiations as regards "applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions etc." and cannot be read to provide for upgradation of pension. Similarly, Regulation 56 deals with a situation where a doubt arises in the matter of application of the pension scheme and mandates to clear that doubt by referring to the "corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of

Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.” No such doubt is shown to exist as could necessitate a reference to corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees. Thus Regulation 56 cannot be treated to confer certain benefits upon the appellants, which the Reserve Bank of India's Regulations or the Central Civil Services Pension Regulations provided for. Further, Clause 17 of the settlement provides that if there is difference of opinion with regard to interpretation of any of the provisions of the settlement, the matter can be taken up at the level of IBA and All India Bank Employees Association for discussion and settlement. Presumably this clause impelled the learned Single Judge to observe that it would be open for the appellants to make demand for parity if they are so advised and use their bargaining skills through their associations.

25. Ad finem, a word about minutes of meeting dated March 26, 1994 of the Small Committee on Pension whereby it is said to have been accepted that formula for updating pension should be on the lines of same given in Reserve Bank's Pension Scheme. Discussions held and agreements reached in this meeting, in our view, are nothing more than parleys preliminary to the final decision which came in the form of pension scheme of 1995. Therefore, the minutes cannot vest the appellants with a right to claim parity with employees of Reserve Bank of India.....”

(emphasis supplied)

96. That apart, even the Pension Regulations do not stipulate that the rates/ method of calculation of DR need to be sourced from any particular organization. It only contemplates that the rates of DR shall be computed as per CPI, and that the rates shall be reviewed at half-yearly intervals. So, it must be held that there is no obligation on part of Respondent No.1 to follow RBI circulars/rates with regard to the payment of DA/DR in the manner prescribed by RBI to its employees.

97. The aforesaid plea of the petitioner and Mr. Tiku that the respondent No.1 is not a Member of IBA for it to follow the IBA circular, is untenable for the reason that the respondent No.1 being an employer is within its right to adopt and follow any methodology with regard to calculation of rates of DR. Even the plea of Mr. Tiku that the DR is being paid pursuant to a decision taken through an office noting, is also untenable as long as the noting has been approved by the Competent Authority and the process is not in violation of any of the statutory Regulations. It is not the case of Mr. Tiku that the process of calculation of rates of DR on slab basis is in violation of any statutory provision.

98. Having said that, there is no dispute that in 2013, the benefit of single slab system was given to the persons who have retired from November 01, 2002.

This cut-off date is based on the revision in pay scales, which had been effected in the Respondent No.1 organisation initially w.e.f. from April 01, 2006 and then extended back to November 01, 2002. There is no dispute that insofar as the members of the petitioner who have retired before November 01, 2002 are concerned, different pay scales are being applied.

99. Even the learned Single Judge in M.C. Singla (supra) has held that the disparity in paying amount that arise due to the increase in pay scales applicable to persons who had retired after a particular date, cannot be said to be discriminatory. Even on that ground, the petitioners cannot plead discrimination qua retirees post October 31, 2002.

100. Insofar as the reliance placed by Mr. Tiku in support of his submissions on the judgment in D.S. Nakara & Ors. (supra) and All Manipur Pensioners Association (supra) is concerned, the same is unmerited. There exists a valid justification for the Respondent No. 1 to confine the benefits of single slab of DR to those who retired after October 31, 2002. In that context, the cut-off date is not out of hat and as such not arbitrary, unjust or unfair. This reasoning can also be found in the judgment of the Division Bench of Punjab and Haryana High Court in P.C. Jain (supra), in the paragraphs reproduced below:-

"15. It is evident from a reading of the judgment in D.S. Nakara (supra) that the Hon'ble Supreme Court mandated parity as regards the formula for computation of pension and the judgment does not lay down a rule that the pension of all retirees must be updated so as to bring it on par with the employees retiring on later dates.

16. Principles laid down in D.S. Nakara (supra) have been defined and their limits restated by the Hon'ble Supreme Court by several pronouncements.

17. Krishena Kumar v. Union of India, (1990) 4 SCC 207, is a decision of the Constitution Bench in which it is held that the notification setting a cut off date for exercising an option to either be covered by the Provident Fund scheme or the pension scheme could not be struck down by applying the ratio of D.S. Nakara. The reasons for distinguishing D.S. Nakara were broadly two fold, namely, that the fixation of the cut off date was based on a rational principle and that the persons covered by the Provident Fund Scheme and those covered by the Pension Scheme did not form a homogeneous class so that the basis for applying Article 14 of the Constitution of India between the two groups was not there. This decision highlights the fact that a cut off date of granting service benefits may not necessarily tantamount to a violation of Article 14 of the Constitution of India and would be upheld by the Courts if there is some reasonable explanation in support of that date.

xxx xxx xxx

21. In view of the above, it has been rightly observed by the learned Single Judge that different mode of computation of pension is impermissible but there

could be sufficient constraining factors like the financial outlay, availability of resources etc. for making certain benefits to be effective from a particular date only, which cannot be made available to all pensioners, who had retired before that date. Appellants, in our considered view, cannot question the fixation of cut off date for applicability of the Pension Regulations as the Hon'ble Supreme Court in the case of *Government of Andhra Pradesh v. N. Subbarayudu*, 2008 (4) SCALE 117 has held that Courts should, normally, not interfere with cut off dates as they are policy decision which fall within the domain of the executive authority. The relevant observations of the Supreme Court in the aforesaid judgment are reproduced hereinbelow:

"4. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab v. Amar Nath Goyal*: (2005) III LLJ 759 SC).

5. No doubt in *D.S. Nakara v. Union of India*: (1983) I LLJ 104 SC this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara's Case* (supra), as observed in para 29 of the decision of this Court in *State of Punjab v. Amar Nath Goyal* (supra).

6. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

7. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide *State of Bihar v. Ramjee Prasad*: [1990] 2 SCR 468, *Union of Indian v. Sudhir Kumar Jaiswal*: (1995) I LLJ 1773 SC, *Ramrao v. All India Backward Class Bank Employees Welfare Association*: (2004) ILLJ 1061 SC, *University Grants Commission v. Sadhana Chaudhary*: (1997) II LLJ 272 SC, It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

8. As has been held by this Court in *Divisional Manager, Aravali Golf Club v. Chander Hass*: 2007 (14) SCALE 1 and in *Government of Andhra Pradesh v. Smt. P. Laxmi Devi*: AIR 2008 SC 1640 the Court must maintain judicial restraint in matters relating to the legislative or executive domain.”

(emphasis supplied)

Even in the case of *Col. B.J. Akkara (supra)*, the Supreme Court while dealing with an issue whether employees who retired in the same rank but on different points of time would constitute one homogeneous group, has held as under:

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;

(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."

(emphasis supplied)

Hence, the decision with regard to imposition of the cut-off date cannot be interfered with.

101. Even the submission of Mr. Tiku that the retirees pre-November 1, 2002 and post-October 31, 2002, form a homogenous class and cannot be discriminated against, is also unmerited for the reasons already stated above and also in view of the judgment of the Punjab and Haryana High Court in M.C. Singla (supra).

102. That apart, the stand of the Respondents as narrated in paragraph 82 above, is that the Respondent No.1 has been incurring continuous losses in income for several years and it is only when the financial position improved, the Board vide its resolution dated July 30, 2013 decided to extend the benefit of the pay revision to the retirees, who retired between November 01, 2002 and October 31, 2007 under normal circumstances. The date of April 01, 2006 from which the same was given effect, coincided with the annual recording of accounts/net profits of the Respondent No. 1.

103. There is another aspect which has been highlighted by Mr. Mehta that out of the 190 members of the petitioner that are before this Court, 157 members had taken voluntary retirement under the voluntary retirement schemes. Mr. Mehta submitted that these 157 members have been accorded full and final settlement during the time of their retirement, and therefore cannot claim the application of pay revision and any subsequent benefits. He is justified in relying upon the judgment in the case of Manojbhai N. Shah (supra) wherein the Supreme Court has held as under:

"32. We do not agree with the submission made on behalf of the employees that action of the employers in not giving pay rise to the employees in pursuance of the notification is discriminatory in nature. The employees who retired under the Scheme form a separate class of employees who were given many benefits, which are not given to the employees retiring in normal course. If they all form a separate class, by no stretch of imagination can it be said that all those who retired under the Scheme and those who retired in normal course, are similarly situated. Thus, in our opinion, there is no violation of Article 14 of the Constitution of India in the instant case.

33. Similarly, there is no violation of the principle of equal pay for equal work. True, that those who retired under the Scheme did the same work which was being done by those who retired in normal course, but one cannot forget the fact

that those who retired under the Scheme got substantially higher retirement benefits. In the circumstances, we do not accept the said submission also.”

104. Similarly, the Division Bench in P.P. Vaidya (supra) has held that from the clauses of voluntary retirement schemes of the Respondent No.1 as interpreted, it is clear that the optees of such voluntary retirement schemes are not entitled to receive pay revision and benefits thereof. The relevant paragraphs are reproduced as under:

“24.8 The appellants’ claim is also barred by Clause 9.12 of the VR Scheme which provides that there will be no revision of the VRS amount on account of pay revision or any other account in future.....”

105. In view of my discussion above, I do not find any merit in the case of the petitioner and the writ petition is dismissed. No costs.

CM No. 17062/2020

Dismissed as infructuous.