(2002) 08 GAU CK 0038

In the Gauhati High Court

Case No : WP (C) No. 62 of 2000 and Cont. case (C) No. 17 of 1999

Malin Kanta Paul APPELLANT

Vs

State of Tripura RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 55(A)

Citation : (2003) 2 GLR 617 : (2002) 3 GLT 218

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodha, for the Appellant; A.G., T.D. Majumder, Addl. GA and S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sarkar, J.—These two cases involve the same question of fact and law and therefore, these two petitions are disposed of by this common order.

2. In WP(C) 62/00, the petitioner who is a state Government pensioner, challenges the legality of the Notification of the Government of Tripura in the Finance Department No. 8(4)-Fin(G)79-II by which the earlier notification dated 2.7.1992 has been clarified. The petitioner prayed for quashing the said notification. The petitioner further prayed that the direction given by the High Court in its judgment dated. 22.4.1997 in Civ. Rule 259/95 be complied with by the state respondents. It is submitted that the petitioner retired from the post of Physical Instructor under the Education Department of the Government of Tripura on 1.1.1990. The State Government employees get their pension as per provision of the CCS (Pension) Rules, 1972 as adopted by the Government of Tripura in the Finance Deptt. by Notification dated 8.8.1978. The Dearness Allowance of the Government servants is at par with the Dearness Relief given to the State Government pensioners. The State Government has been issuing notification from time to time declaring the. enhancement in the rate of Dearness Allowance and Dearness Relief but the rate and periodicity of increase was not at

par with that of the Central Government Servants or pensioneries. The rate of Dearness Relief to the Tripura Government employees and pensioners as on 1.4.1995 were 42% behind the rate available to the Central Government pensioners. The Central Government revised the rate of Dearness Relief and Dearness Allowance every six months once in 1st January and again in 1st July as a matter of routine, but the State Government was irregular in enhancing the rate of Dearness Allowance and Dearness Relief to the State Government employees and pensioners. The Central Government made an amendment in the CCS (Pension) Rules by a notification dated 22.1.1991 by incorporating a new Rule 55(A) defining the Dearness Relief and its entitlement. The State Government adopted the aforesaid amendment of the Central Government which became a part of the Pension Rules applicable to the Tripura Government pensioners. The amendment was adopted by the State Government by a notification dated 2.7.1992. It is alleged that the even after the amendment of Rule 55(A), the State Government pensioners were not granted the Dearness Relief as available to the Central Government pensioners. It is further submitted that the even after incorporation of Rule 55(A) in the Pension Rules, Tripura Government did not allow the Dearness Relief to the pensioners at the Central Government rate and as a result, a writ petition was filed by the Government Pensioners Association, Tripura which was registered as Civ. Rule 2.59/95. The said case was decided on 22.4.1997 and the High Court directed the State Government to pay Dearness Relief to all the State Government pensioners as are available to the Central Government pensioners. In compliance of the direction of the Court in Civ. Rule 259/95, the State Government released further Dearness Relief to the State Government pensioners by a Notification dated 11.2.1998. However, it is alleged by the petitioner that Tripura Government has withdrawn the notification dated 2.7.1992 by which Rule 55(A) was incorporated by the impugned Notification dated 27.10.1998. It is submitted that by withdrawing the notification, the State Government has violated the order of the Court passed in Civ. Rule 259/95 dated 22.4.1997. In the meantime, a contempt application has been filed by the Government pensioners which has been registered as Contempt Case No. 17/99.

3. The petitioner challenges the Notification dated 27.10.1998 on the following grounds, namely :

(a) that the Notification is bad in law for taking away the accrued right of the petitioners in exercising the power of mile making authority. Such exercise of rule making power is on the face of it colourable and far exceeding the permissible limit of delegated legislation.

(b) that the Impugned Notification is ultra vires to the provisions of Article 309 of the Constitution which sought to give retrospective effect.

(c) that the impugned Notification was issued during the Contempt proceeding,

(d) that the impugned Notification was not published in the Official Gazette or other media for circulation and knowledge of the persons concerned.

(e) that the impugned Notification has taken away the right of the State Government pensioners to get Dearness Relief at par with the Central Government employees as per judgment dated 22.4.1997 passed in Civ. Rule 259/95.

It is, therefore, submitted that the impugned notification being ultra vires and bad in law has to be quashed. Accordingly, the petitioner has filed the present petition.

4. The state respondents have filed the counter affidavit wherein they have denied all the allegations made by the petitioner. It is submitted that it is the state policy to grant Dearness Allowance to the State Government employees at par with the Dearness Relief of the State Government pensioners. Dearness Allowance and Dearness Relief is declared by the State Government from time to time in order to neutralize the price rise. It is, however, stated that because of the constrain of revenue, the State Government were behind the Central Government rate of Dearness Allowance/Dearness Relief. It is further stated in the Counter-affidavit that CCS (Pension) Rules 1972 was adopted by the State Government and amendment made by the Central Government in the Pension Rules was also adopted by the State . Government by a notification dated 2.7.1992 by inserting Rule 55.(A) which provides for granting Relief against the price rise in the form of Dearness Relief. It is, however, stated by the Respondent Government that this amendment cannot in any way change the authority of the State Government to grant Dearness Allowance/Dearness Relief.

It is further stated that after adoption of the Central Government Rule in the CCS (Pension) Rules as adopted and applicable to the State Government employees and pensioners shall have to be read with modification as indicated in the Pension Rules. It is further stated that when the amendment made by the Central Government in the Pension Rules by inserting Rule 65(A) was adopted by the State Government the said Rule 55(A) shall have the application with the modification as . mentioned in the Pension Rules that is wherever the word "Central Government" occurred, the word "State Government" shall be substituted. It is stated that the State Government pensioners were under mis-conception that by the adoption of the aforesaid amendment, the State Government is legally bound to grant Dearness Relief to the State Government pensioners at the same rate as are given to the Central Government pensioners. It is, however, submitted by the State Government in the counter-affidavit that in Civ. Rule 259/95, the point could not be agitated before the Court properly and, thereby, the Court has directed the State Government to pay the State Government pensioners Dearness Relief at the same rate as are given to the Central Government pensioners. The Government, however, implemented the aforesaid direction of the High Court and granted 125% Dearness Relief to the State Government pensioners in accordance with the direction of the Court. It is stated in the counter-affidavit that the impugned notification dated 27.10.1998 was issued with a view, to clarify the provisions of Rule 55(A) as adopted by the Government of Tripura. Since there was a confusion in the earlier adoption order the matter has been clarified in the present impugned order and it has been clarified that the word "Central Government", the word "State Government" shall be substituted in Rule 55(A) of the Pension Rules. It is further submitted that the subject-matter "State pension" is relatable to entry 42 of the State List (List II) of the VII Schedule of the Constitution of India. Entry 42 deals with pension payable by State out of the consolidated fund of the State. It is further stated that Article 246(3) of the Constitution provides that the State Legislature has exclusive power to make a law with respect to any matter enumerated in the said list of the VII Schedule. Article 162 of the Constitution provides that the executive power of the State extends to the matters with respect to which the Legislature of the State has power to make laws. It is, therefore, evident that the executives have adopted the CCS (pension) Rules in relation to the State Government employees and State Government pensioners and subsequent amendment made by the Central Government in their Pension Rules has been adopted by the State Government. But such adoptions of new amendments are subject to the modification as mentioned An the Pension Rules adopted by the Central Government. It is further stated that while adopting the Central Government pension Rules it has been clearly specified that in the CCS (Pension) Rules the word "President" wherever occur the word "Governor" shall be substituted and for the word "Central Government" wherever occur, the word "State Government" shall be substituted and for the words "Central Services", the word "State Services" shall be substituted. It is further stated that the Central Government amended their pension Rules in 1991 by inserting Rule 55(A) which provides that the Relief against price rise may be granted to the pensioners and family pensioners in the form of Dearness Relief at such rate and subject to such condition as the Central Government may specify from time to time. The Central Government brought this amendment for Central Government pensioners and family pensioners who would get the Dearness Relief as the Central Government would specify from time to time. It is stated that the State Government has adopted the said amendment by notification dated 2.7.1992. With the adoption of the amendment, it has become a part of the original Rules as Rule 55(A) and the said new Rule will have application subject to the modification indicated in the table of the Pension Rules adopted by the State Govt. and as per the adoption with modification that the word "Central Government" shall have to be read as. "State Government". The effect of such an adoption is that the State Government pensioners and the family pensioners would get Dearness Relief at such rate and subject to such condition as the State Government may specify from time to time.

5. In spite of the aforesaid legal position the State Government pensioners filed Civ. Rule 259/95 claiming D. A. at par with the Central Government employees and since the matter could not be explained by the Government to the Court properly and the point has not been agitated seriously by the State Government

the Court also directed the State Government to grant the State Government pensioners at the same rate as are available to the Central Government pensioners, it is, however, stated it that since Rules have been clarified and amended by the impugned Notification the State Government pensioners cannot claim nearness Relief at the rate as are given to the Central Government pensioners. It is further stated that in complying with the direction of the High Court in the said case, an anomaly was first created between the State Government employees and the State Government pensioners. The State Government pensioners had to be paid 125% Dearness Relief although the State Government employees could not be paid 125% Dearness Allowance because of financial crunch of the Government. To remove the anomaly, the Government is state policy have decided to clarify the notification so that there may not be any confusion in the mind of the Court that the Rule was adopted subject to the modification mentioned in the table of the, Principle Rules. It is further submitted that impugned notification was given retrospective effect, but it was made clear that the payments made in pursuance of the Hon''ble High Court''s orders passed in Civ. Rule 259/95 shall not be required to be refunded by the State Government pensioners. After clarifying the adoption notification of Rule 55(A) of the CCS (pension) Rules by the impugned Notification the State Government pensioners cannot claim Dearness Relief at the rate applicable to the Central Government pensioners and after clarification of the Notification, the judgment has to be complied with as per clarified Rules. It is further stated that in Contempt petition 32/97, the High Court passed an order on 4.11.1998 clarifying that the Government is bound to pay nearness Relief in accordance with the judgment dated 22.4.1997 passed in Civ. Rule 259/95 unless the relevant Rules were amended in the meanwhile. Before passing the order in the Contempt case No. 32/97 on 4.11.1998, the impugned notification was issued by the Government clarifying the authority of the State Government to declare Dearness Relief from time to time. Therefore, it is submitted that the adoption of Rule 55(A) has been clarified by the Government by the impugned notification in exercise of its executive powers under Article 309 of the Constitution as well as per observation made by the Hon''ble High Court in its Order dated 4.11.1998 in Contempt Petition 32/97. It is, accordingly, submitted by the State Government that there is no merit in the writ petition and it should be dismissed.

6. The Contempt Case 17/99 has been filed by Tripura Government pensioners for drawing contempt proceeding against the respondents for committing deliberate disobedience of the direction passed by the Hon''ble High Court on 22.4.1997 in Civ. Rule 259 of 1995 and also for deliberate disobedience of the order passed by this Court on 4.11.1998 in Contempt petition No. 32/97. It is stated that the petitioner has filed Civ. Rule 259/95 claiming Dearness Relief at par with the Central Government pensioners and the Court vide judgment dated 22.4.1997 directed the State Government to pay Dearness Relief at par with the Central Govt. pensioners. However, the judgment was not being implemented by the State Government because of filing an appeal against the decision of the

learned Single Judge and even after disposal of the appeal, the Appellate Court extended the period for payment of arrear of Dearness Relief, but even then, the respondents were deliberately violating the order of this Hon''ble Court by not paying the Dearness Relief to the State Government pensioners at par with the Central Government pensioners. Thereafter, contempt petition was filed which has been registered as Contempt case 32/97 and this Court by an order dated 4.11.1998 directed the State Government to pay Dearness Relief to the State Government pensioners at the rate applicable to the Central Government pensioners as the judgment passed in Civ. Rule 259/95 has attained finality; However, a rider was given stating that the respondents Government were under legal obligation to pay Dearness Relief to the State Government pensioners unless the relevant rules were amended in the meanwhile. After passing the aforesaid order on 4.11.1998, the State Government clarified the notification by which the Central Government amendment regarding payment of Dearness Relief was adopted by the State Government. The said notification was issued by the State Government on 27..10.1998. Thereafter, the petitioners filed the present contempt application against the respondents for violating the Court''s order. The Contempt application was disposed of by this Court vide judgment and order dated 14.12.1999 dropping the contempt. The said contempt was dropped on the ground that a legal disability has been created by clarifying the Notification dated 27.10.1998 and therefore, the respondents cannot be held to have violated the order of the Court and there is no wilful disobedience on the part of the respondents in not complying with the direction passed in Civ. Rule 259/95 and Contempt petition 32/97. Thereafter, having felt aggrieved by the judgment and order a Review Petition was filed and this Court by an order dated 11.8.2000 recalled the judgment and order passed by this Court on 14.12.1999 and directed for re-hearing of the contempt petition. In the meantime, W.P.(C) 62/00 has been filed by another Government pensioner and both these two cases were directed to be heard analogously.

7. Having felt aggrieved by the order of this Court dated U.S.2000 in the Review Petition, the respondents filed SLP before the Supreme Court. However, the said SLP was withdrawn by the respondents It was intimated to the Apex Court by the learned Counsel of the respondents-petitioners that the respondents may raise their contention before the High Court when the propose contempt action will be considered. In view of the submission of the learned Counsel, SLP was allowed to be withdrawn by the Apex Court. Thereafter, the matter has come up for hearing.

8. Both the respondents have filed separate counter-affidavit. The Principal Secretary, Government of Tripura, Respondent 1 Sri Shashi Prakash has stated in his counter-affidavit that the respondents has complied with the direction of the High Court by issuing notification dated 11.2.1998 from the Finance Department. It is, however, stated by the respondent that other directions could not be complied with by the respondents in view of the clarification/notification made by the State Government by a notification dated 27.10.1998. It is submitted that the State Government has adopted CCS (Pension) Rules, 1972 with certain

modification and the modifications have been indicated in the adoption notification dated 8.8.1978. It is submitted that the modification that has to be made in the CCS (Pension) Rules 1972 in its application to the State Government pensioners, the said rule will have the application with the following modification as indicated in the table. From, the notification dated 8.8.1978, in the table, it has been stated that for the word "President", the word "Governor" shall be substituted, for the words "Central Services" the words "State Services" shall be substituted and for the words "Central Government", the words "State Government" shall be substituted and some other modifications have also been indicated in the table. So, the respondent, therefore, submitted that while adopting the amendment made by the Central Government in the Pension Rules, the Government was under impression that the said amendment will have force with the modification indicated in the table of the notification dated 8.8.1978. However, the State Government pensioners claimed Dearness Relief on the basis of the amendment adopted by the State Government by notification dated 2.7.1992. It is further stated that when the amendment of Rule 55A of the CCS (Pension) Rules was adopted by the State Government authority was under the impression that the said rule will also have application subject to the modification indicated in the table of the notification dated 8.8.1978. Therefore, the State Government was under impression that the State Government pensioners are entitled to Dearness Relief as and when declared by the State Government.

9. In Civ. Rule 259/95 there were two directions ; one - general direction for payment of Dearness Relief to the State Government Pensioners at par with the Central Government pensioners, two - the direction of in respect of payment of arrear Dearness Relief at 42%. It is, therefore, submitted in the counter-affidavit that after complying of the specific direction of this Court to pay 42% arrear Dearness Relief, the State Government has issued notification on 27.10.1998 amending and clarifying the relevant provisions particularly Rule 55A of the Pension Rules without affecting Dearness Relief already granted to the pensioners at the Central rate as per direction of the Court. It is further stated in the concluding part of the said notification, that it has been clarified that the State Government pensioners shall continue to get Dearness Relief at such rate and under such condition as the State Government may order from time to time as in case of State Government employees. It is further stated that in view of the clarification of the amendment made regarding Rule 55A of the Pension Rules, the State Government pensioners cannot claim Dearness Relief at par with the Central Government pensioners. It is further stated that having regard to the finance condition of the State, the State Government has amended/clarified the Rule 55A and it Is within competence of the Executive to clarity and amend the Rules. The respondent consequently submitted that after amendment/ clarification of Rule 55A, the petitioners - State-Government pensioners have no right to claim Dearness Relief at par with the Central Government pensioners at Central Government rate and, as such, there is no violation of the direction of the Court. It is further stated that in contempt petition 32/ 97, this court vide order

dated 4.11.1998 observed that the respondents are under legal obligation to pay Dearness Relief to the State Government pensioners at the Central rate unless relevant Rules were amended in the meanwhile. It is submitted that this order was passed by this Court on 4.11.1998, but before that the Government has clarified/amended Rule 55A and, therefore, there is no wilful violation, of the Court''s order by the respondents.

10. First, I will discuss the claim of the petitioner in WP(C)62/00. The petitioner is a Government pensioners and claims Dearness Relief at Central rate like Central Government pensioners, Mr. D.K. Biswas, learned counsel for the petitioner submits that Central Government amended CCS (Pension) Rules by notification dated 22.1.1991 incorporating Rule 55A where Dearness Relief has been defined regarding entitlement of Dearness Relief. The State Government adopted the amended Rule 55A by notification dated 2.7.1992. Central Government notification and the notification adopting the Central rule has been annexed as Annexure - 3 series. It is submitted by Mr. Biswas that even after adopting Rule 55A, the State Government pensioners were not given Dearness Relief in the same rate as the Central Government pensioners. It is further submitted by Mr. Biswas that after adoption of the Rule 55A, the State Government is under obligation to pay Dearness Relief to the State Government pensioners at such rate and subject to such condition as the Central Government may specify from time to time. It is submitted that even though Central Government enhanced the rate of Dearness relief to the Central Government pensioners, but the State Government were not increasing the Dearness relief of the State Government pensioners. Mr. Biswas accordingly submits that after adoption of Rule 55A, the State Government is under obligation to pay Dearness relief to the State Government pensioners at the same rate as are paid to the Central Government pensioners. It is further submitted by Mr. Biswas that since the State Government pensioners were not given Dearness relief at the same rate of the Central Government pensioners, Tripura Government Pensioners Association filed a writ petition which has been registered Civ. Rule 259/95 and that case was decided on 22.4.1997 and the learned Single Judge has directed the State Government to pay Dearness relief to the State Government pensioners at the same rate as are given to the Central Government pensioners. Mr. Biswas accordingly submits that according to Rule 55A of the Pension Rules as adopted by the State Government by notification dated 2.7.1992 and in accordance with the judgment passed in Civ. Rule 259/95, which was affirmed in W. A. 330/97 (W. A. 10/00 (Agt), the State Government is under obligation to pay Dearness relief to the petitioner at the same rate as are allowed to the Central Government pensioners.

11. From the argument of Mr. Biswas, it appears that the petitioner claims Dearness relief at the Central rate on the basis of Rule 55A of the Pension Rules as adopted by the State Government and also in pursuance of the judgment passed by this Court on 22.4.1997 in Civ. Rule 259/95. Therefore, question arises whether with the adoption of the Rule 55A of the Pension Rules, the

petitioner becomes automatic entitled to Dearness Relief at the rate of Central Government pensioners and whether according to the judgment passed by this Court on 22.4.1997 in Civ. Rule 259/95 which was affirmed by the Division Bench in W. A. 330/97 (W. A. 10/00), petitioner is entitled to nearness relief at Central rate.

12. For deciding these issues, it is necessary to refer the amendment Rules. It is an admitted fact that Tripura Government did not frame any separate of Rules for regularising the pension of State Government pensioners. The State Government adopted CCS (Pension) Rule 1972 by notification dated 8.8.1978 with certain general and special modification and Central Rules wore adopted with modification to be applied to the State Government pensioners. The Central Government in the Ministry of Personnel, P. G. & Pensions (Department of Pensions and PW) by notification dated 22.1.1991 amended the CCS (Pension) Rules, By the aforesaid amendment the Central Government made certain modification in various provisions of Rules and a new Rule as Rule 55A has been incorporated which runs as follows :

"55 A. DEARNESS RELIEF ON PENSION/FAMILY PENSION

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates, and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a corporation/company/body/bank under them in India or abroad including permanent absorption corporation/ company/body/bank, he shall not be eligible to draw Dearness relief on pension/family pension during the period of such re-employment.

(iii) The Central Government employees who get permanently absorbed in terms of rule 37 are opt for lump-sum-payment in lieu of pro-rata monthly pension in terms of rule 37, shall not be eligible for dearness relief."

13. The State Government in the Finance Deptt. by notification dated 22.7.1992 adopted the amendment made by the Central Government in their pension Rules.

14. Mr. B.R. Bhattacharjee, learned Advocate General, Tripura submits that when the State Government has adopted the amendment made by the Central Government by notification dated 22.1.1991, the said amendment were not incorporated in Tripura Pension Rules and it is necessary to read the Rule in its application to Tripura Government pensioners with the modification as shown in the table while adopting the CCS (Pension) Rules by Notification dated 8.8.1978. In this connection, it is necessary to re-produce the notification of the Government dated 8.8.1978 by which the Central Civil Services (Pension) Rules, 1972 have been adopted by the State Government with certain general and special modification. For the purpose of this case, it would be sufficient to indicate the general modification made in the CCS (Pension) Rules in its

application to the Tripura Government pensioners. The relevant portion of the notification dated 8.8.1978 is reproduced below :

"Government of Tripura

Finance Department

No. F. 1(3) - FIN(G)77 dated, Agt. the 8th August, 1978

NOTIFICATION

In exercise of the powers conferred by Article 309 of the Constitution of India and all other powers enabling him in that behalf the Governor of a Tripura has been pleased to adopt the Central Civil Services (Pension) Rules, 1972 as given in the Annexure which shall be applicable to the Government Servants in connection with the affairs of the Government of the State of Tripura, subject to the following modifications namely -

MODIFICATION

A GENERAL

1. Whenever an expression mentioned in column 1 of the Table below occurs in the said Rules, then, unless that expression is by this Notification directed to be otherwise modified, or to stand un-modified, or to be omitted, there shall be substituted therefore the expression set opposite to it in column 2 of the said Table, and there shall also be made in any sentence in which that expression occurs such consequential amendments is rules of grammar may require.

TABLE

1 2

President Governor

President of India Central Government Governor of Tripura State Government

Central Service State Service

Union Public Service Commission Tripura Public Service Commission

Consolidated Fund of India Consolidated Fund of the State of Tripura

Ministry of Finance Government of India Finance Department Government of Tripura"

15. Mr. B.R. Bhattacharjee, learned Advocate General further submits that the Central Government amended the Central Government Rules by notification dated 21.1.1991 in its application to the Central Government pensioners and family pensioners and that amendment cannot be automatically applied to the State Government pensioners and the State Government family pensioners. It is further submitted by Mr. Bhattacharjee that State Government pensioners and family pensioners will get the nearness relief in accordance with the provisions

made in the Tripura Pension Rules. It is submitted by the Bhattacharjee that by adopting the amendment made by the Central Government on 21.1.1991, the State Government definitely adopted the Rule 55A and after adoption, the said Rule 55A has become a part of Rule 55A of the CCS (Pension) Rules in its application to Tripura Government pensioners and the said provisions have to be read with the modification shown in the table. Mr. Bhattacharjee further submits that Rule 55A(r) is relevant in the present case. Rules 55A(i) as amended by the Central Government by notification dated 22.1.1991 reads as follows :

"DEARNESS RELIEF ON PENSION/FAMILY PENSION

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time."

16. Mr. Bhattacharjee accordingly submitted that when Rule 55A has become a part of Tripura Pension Rules, them it will have to be read as follows:

"Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness as the "State Government may specify from time to time."

17. Mr. Bhattacharjee submits that according to the general modification made in the CCS (Pension) Rules by notification dated 8.8.1978, the words "Central Government" have to be substituted in Rules 55A by the words "State Government". In support of his contention, Mr. Bhattacharjee further submits that the subject-matter "State pension" is relatable to Entry 42 of the State list (List II) of the VII schedule of the Constitution of India and the pension payable out of the consolidated fund of the State are to be regulated by laws framed by the State Legislature. It is further stated by Mr. Bhattacharjee that Article 162 of the Constitution provides that the executive power of the State extends to the matters with respect of which the Legislature of the State has power to make laws. Mr. Bhattacharjee consequently submits that pension being a state subject the Governor in exercise of his power under Article 309 of the Constitution of India can only make laws regarding State Government pensioners and the Central Government has nothing to say about the state Govt. pensioners. The state Government pensioners are to be regulated by the Rules framed by the State Government. Learned Advocate General further submits that CCS (Pension) Rules was adopted by the Governor in exercise of power conferred on him by Article 309 of the Constitution and while adopting that Rule, it has been clearly indicated that the Rule shall apply to the State Government pensioners with certain modifications and modifications have been indicated in the table of the said adoption notification.

18. There is sufficient force in the submission of Mr. Bhattacharjee. It is true that the State Government has adopted the amendment made by the Central Government in the CCS (Pension) Rules, 1972 by notification dated 22.1.1991 and the State Government has adopted the said amendment by notification

dated 2.7.1992. I am of the view that by adoption of the amendment made by the Central Government in the CCS (Pension) Rules, the adopted part will form a part of Tripura Pension Rules as adopted by the State Government by notification dated 8.8.1978. Tripura Government also adopted CCS (Pension) Rules with certain modification and one of the modification indicated in the table -is for words "Central Government" the words "State Government" shall be substituted and for words "Central Services", the words "State Services" shall be substituted, Consequently, while after adoption. Rule 55A has become a part of Tripura Pension Rules, this Rule 55A has to be read with modification indicated in the table of the notification dated 8.8.1978. Consequently, in Rule 55A as amended by the Central Government wherever the words "Central Government" appears after adoption of the amendment Rule 55A, the words "Central Government" must be road as "State Government" in its application to the State Government pensioners. Therefore, I am clearly of the view that with the modification indicated in the table Rule 55A as adopted by the State Government, in its application to the State Government pensioner as per Tripura Government pension Rules, that will read as follows :

"Rule 55A. Relief against price rise may be granted to the pensioners and family pensioners in the form Dearness relief at such rate and subject to such condition as the State Government may specify from time to time."

Consequence of adoption of the Central Government amendment, it will lead to only one conclusion that for the words "Central Government", the words "State Government " shall have to be read. The Central Government Pension Rules or the amendment made by the Central Government cannot have automatic application to the State Government pensioners. The way State Government adopts the Central Rule, it will not apply in the straight way. In view of the fact that the State Government applied the CCS (Pension) Rules with modification as indicated in the table, all amendments are to be read with modification as indicated in the table.

18. From the foregoing discussion, it is clear that the State Government pensioners cannot claim Dearness relief at Central rate whenever Central Government increases Dearness relief to the Central Government pensioners simply because of Rule 55A has been adopted by the State Government. The consequence of the adoption has to be seen and Rules have to be applied in its application to the State Government pensioners in accordance with the adoption order as indicated in the Notification dated 8.8.1978. I do not find any force in the submission of Mr. Biswas that the State Government pensioners are entitled to Dearness relief at the rate as Central Government pensioner are getting Dearness relief because the State Government has adopted the amendment made by the Central Government by notification dated 22.1.1991.

19. Second argument made by Mr. Biswas that the Tripura Government Pensioners Association earlier filed a writ petition which was registered as Civ. Rule 259/95 and this Court vide judgment and order dated 22.4.1997 directed

the State Government to pay the petitioners, i.e., State Government pensioners Dearness relief at the same rate as are available to the Central Government pensioners. Mr. Biswas further submits that in that case also the State Government pensioners claimed Dearness relief at Central rate or in other words at par with the Central Government pensioners on the basis of Rule 55A of the CCS (Pension) Rules as adopted by the State Government by its notification dated 2.7.1992 and the Court has granted relief to the State Government pensioners directing the State Government to pay its pensioners Dearness relief at the rate applicable to the Central Government pensioners.

20. I have gone through the judgment passed in W.P. (C) 259/95 on 22.4.1997. It is true that Tripura Government pensioners claim Dearness relief at par with the Central Government pensioners on the basis of Rule 55A as adopted by the State Government by notification dated 2.7.1992. In the said case, the Government took stand that mere adoption of Central Government amendment in Rule 55A, does not creat any right on the State Government pensioners to get pension at Central rate or at the rate as are admissible to the Central Government pensioners ignoring the financial ability and capability of the State Government at a particular point of time and ignoring the liabilities and responsibilities towards larger section of the people of the State. In the counter-affidavit, the State Government further averred that the State Government has already decided that it would pay the Dearness allowance and Dearness relief to State Government employees and State Government pensioners when the found would be available. It is further stated in the counter-affidavit that the State Government is solely dependent upon the Central assistance and, as such. State Government is unable to pay Dearness relief unless the additional fund is made available to it by the Central Government. It is further stated that the State Government is very much sympathetic to its employees, but it is unable to clear up the Dearness relief because of financial constraint.

21. From the aforesaid judgment, it is very clear that stand of the Government in Civ. Rule 259/95 is to pay the Dearness relief to the State Government pensioners at Central rate. The case was argued mainly on the account of availability of fund by the State Government. In the judgment, learned Single Judge has also obtained information not only from the Finance Deptt. of the State Government, but also from the Accountant General, Tripura regarding availability of fund in making payment of Dearness relief to the State Government pensioners. No point was raised or argued whether by virtue of adoption of Rule 55A the State Government pensioners are automatically entitled to Dearness relief at Central rate or at par with the Central Government pensioners. There is no finding of the Court on this point. After considering the fund position of the State from the reports of the 9th Finance Commission and 10th Finance Commission as well as Planning Commission and after obtaining the report from the Finance Deptt. of the State and Accountant General, Tripura, when the learned Single Judge was satisfied about the availability of fund, the learned Single Judge straightway directed the State Government to pay the State

Government pensioners Dearness relief at the rate available to the Central Government pensioners. The judgment is mainly based on availability of fund and when the learned Single Judge was satisfied that fund was available, learned Single Judge directed the State Government to pay State Government pensioners Dearness Relief at the rate applicable to the Central Government pensioners. The Court did not decide the issue whether by virtue of adoption of Rule 55A, the State Government pensioners are automatically entitled to get Dearness allowance at the rate available to the Central Government pensioners. No where it has been discussed what would be the effect after adoption men but they are also physically, mentally and financially crippled and hence their case needs special treatment. The term ''Pension'' has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. Therefore, it is a debt to the Government."

22. It would be quite apparent from the above quoted portion that on 1.4.1995, the State Government paid upto 83% whereas the Central Government paid 125% as on 1.1.1995. It is, therefore, clear that the State Government is lagging behind 42 per cent. This being the admitted position of the case, Mr. A. Ghosh, learned counsel for the respondents was asked to state the period within which the Government would be in a position to clear up the dues. This was felt necessary as on certain date prior to the final date of hearing, learned Advocate General conceded that the Government is agreeable to clear up the dues as per the intervals granted by this Court in its Judgment dated 7.2.1996 passed in Civ. Rule 525/95. From the aforesaid submission of the learned Advocate General, it is evident that the Government conceded to pay the arrear Dearness relief upto 125% as were applicable at that time to the Central Government pensioners within such intervals as the Court made allowed. Therefore, it is evident that the judgment and order passed by this Court on 22.4.1997 in Civ. Rule 259/95 was as per admission made by the learned Advocate General and the said judgment also discussed in detail the financial position of the State and, thereafter, directed the State Government to pay the State Government pensioners Dearness relief at the rates applicable to the Central Government pensioners. The Apex Court discussed in detail in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, regarding the decisions of the Court which have no binding force. While discussing, the Apex Court held that obiter dicta, per incuriam and sub silentio decisions and orders, other orders made with consent of parties and with the reservation that the same should not be treated as precedent, are not binding. In the earlier case, the pensioners claim pension at Central rate on the basis of adoption of Rule 55A as amended by the Central Govt. The State Government denied in the Counter-affidavit that by mere adoption, the State Government pensioners do not entitle to get pension at the rates applicable to the Central Government pensioners. However, this question was neither raised during the

argument; nor was it decided by the Court. On the contrary, it appears that earlier judgment was passed mainly on the consent of the State Government because it is evident that the learned Advocate General submitted before the Court that Government is agreeable to pay Dearness relief to the State Government pensioners at Central rate as are available at that time. Learned Single Judge even did not express his opinion about the consequence of adoption of Rule 55A by the State Government. No decision or even opinion was expressed by the learned Single Judge in the earlier case whether by virtue of adoption of Rule 55A a legal right has been accrued to the State Government pensioners to get Dearness relief at the rate applicable to the Central Government pensioners. No opinion has been expressed by the learned Single Judge whether any statutory obligation was created on the State Government to pay Dearness relief to the State Government pensioners at the rates applicable to the Central Government pensioners. In the earlier case, learned Single Judge did not discussed or expressed any opinion about the effect of adoption of Rule 55A by the State Government in its application to the Tripura Pension Rules. Admittedly, the learned Single Judge did not discuss or gave any finding that after adoption of Rule 55A and its incorporation in the Tripura Pension Rules whether the Central Government or the State Government is the authority to grant Dearness relief to the State Government pensioners. Undoubtedly, as per general modification of the Tripura Pension Rules, it is the State Government who is competent to grant Dearness Allowance to its pensioners. The law is very clear on this point. That apart, the learned Single Judge could not have made the impugned direction in the earlier case contrary to the provisions of Rule 55A in its application to the State Government pensioners as per provisions of Tripura Pension Rules, Rule 55A as adopted by the State Government with modification, empowers only the State Government to grant Dearness relief within State Government pensioners. Therefore, I am clearly of the opinion that the petitioner had no legal enforceable right in the earlier case to the grant of a direction as was given in the earlier case. The High Court could not obviously issue any such direction which would tantamount to a breach of law, Further more, High Court could not also make direction in Civ. Rule 259/95 in view of the provisions contained in Rule 55A or the Tripura Pension Rules which expressly conferred the power on the State Government to grant Dearness relief to the State Government pensioners. Earlier judgment in Civ. Rule 259/95 was passed mainly on the consent of the learned Advocate General, Tripura on behalf of the State Government respondents and after examining the financial position of the State. When a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as ''law'' applies to the principle of a case, its ratio decidendi. The only thing in a Judge''s decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio descidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without any investigation into the facts as in the present case it could not be assumed whether a similar direction must or ought to be made as a measure of a social justice. That being so, the direction made by this Court, in Civ. Rule 259/95 could not be treated to be a precedent and binding on me. With all respect, to the learned Single Judge who passed order in Civ. Rule 259/95, I cannot concede that this Court is bound to follow it. Earlier judgment was delivered without discussing the point of law whether by adoption the State Government pensioners are automatically entitled to Dearness relief at the rate applicable to the Central Government pensioners. No argument was made regarding the consequence of adoption of Rule 55A by the State Govt. Therefore, I am of the view that judgment in earlier case directing the State Government to pay State Government pensioners Dearness relief at the rates applicable to the Central Government pensioners is a decision which can be treated as given per incuriam as the direction was given without discussing the applicability of Rule 55A after adoption of by the State Government. So far as the judgment and order of the earlier case shows, no argument was address to the Court on the question whether or not any direction could properly be made compelling the State Government to pay Dearness relief to the State Government pensioners as may be declared by the Central Government to its pensioners in the face of modification indicated in the table of the notification dated 8.8.1978.

23. After going through the judgment of Civ. Rule 259/95, I am clearly of the view that a question was raised by the Govt. that by adoption of Rule 55A the State Government pensioners do not automatically become entitled to get Dearness relief at the central rate as and when declared by the Central Government. The Court mainly discussed the financial position of the state and when the Court was satisfied about the finance position of the State issued direction for payment of Dearness relief to the State Government pensioners at the rate applicable to the Central Government pensioners, but the first question regarding applicability of Rule 55A and entitlement of the State Government pensioners by virtue of adoption of Rule 55A has neither been discussed nor decided by the learned Single Judge in the earlier case. In the said circumstances, although financial position of the State was one of the factor to be considered, the directions were issued without considering the affect of Rule 55A in its application to the State Government pensioners. Therefore, the earlier judgment - passed in Civ. Rule 2597 95 cannot be a decision or - authority on the question whether by adoption, of Rule 55A the State Government pensioners will automatically become entitled to get Dearness relief at the Central rate as and when declared by the Central Government. Therefore, direction by the learned single Judge in the earlier case to pay the Dearness relief to the State Government pensioners at Central Government rate has been passed sub silentio.

24. Having felt aggrieved by the decision of the learned Single Judge in Civ. Rule 259/95 decided on 22.4.1997, the State Government filed an appeal before this Court which was registered as W. A. 330/97 (W. A. 10/00 (Agt.). In appeal also even though the State Government has raised many point but the appeal was heard on the point of financial capability of the State to pay Dearness Relief at

the Central Government rate and learned Advocate General submitted that considering the financial ability of the State it would not be possible for the State Government to pay D. R. to the State Government pensioners at Central rate within time fixed by the learned Single Judge. The Division Bench of this Court after considering the submission of the learned Advocate General made the following order :

"Regard being had to the number of persons eligible for the grant of Dearness Relief and the quantum of money needed to comply with the first part of the operative portion of the order and accepting the argument of the learned Advocate General, we hereby extend the last date for making payment of the 20% of the unpaid Dearness Relief out of the 42% not later than 21st October, 1997, and the remaining 22% shall be paid in terms of the order of the learned Single Judge not later than 31st December, 1998.

We hope that the appellants will be able to comply with the directipng of the learned Single Judge during the rescheduled time as fixed by this Court.

Ordered accordingly.

Parties to bear their own costs."

25. From the aforesaid direction of the Division Bench of this Court, it is clear that in appeal also only financial aspect was examined and no decision was given as to whether Tripura Government pensioners are automatically entitled to get Dearness relief at par with the Central Government pensioners. No point has been raised and no decision was given even by the Division Bench whether Rules 55A of the Tripura Pension Rules create any obligation on the State Government to pay Dearness Relief to the State Government pensioners at the fate fixed by the Central Government as and when declared by the Central Government. Therefore, it is evident that neither before the learned Single Judge nor before the Division Bench, the point regarding applicability of Rule 55A was examined by the Court; nor any decision was given on that point. Therefore, I am clearly of the view that decision of learned Single Judge as well as Division Bench cannot be a decision or authority on the question whether by adoption of Rule 55A by the State Government, the State Government pensioners will automatically become entitled to get dearness relief at Central rate as and when such Dearness relief is declared by the Central Government. The direction given to the State Government to pay Dearness relief to the State Government pensioners at Central rate as and when such rates are declared by the Central Government has been passed sub silentio. In my opinion, the State Government pensioner cannot claim Dearness relief at Central rate as and when declared by the Central Government simply because the State Government has adopted the amendment made in the Pension Rules by incorporating Rule 55A, When the amendment Rules were adopted by the State Government that have to be read with modification as indicated by the State Government while adopting the CCS (Pension) Rules by notification dated 8.8.1998 and the State Government

pensioners can claim Dearness relief as and when the same is declared by the State Government and not by the Central Government.

26. Mr. D. K. Biswas, learned Counsel appearing on behalf of the petitioner further argues that in pursuance of the judgment and order passed by this Court in Civ. Rule 259/95 and affirmed in W. A. 330/97 (W. A. 10/00 (Agt)), the petitioner is entitled to get Dearness relief at Central rate as and when declared by the Central Government Mr. Biswas also submits that in earlier case, the State Government Pensioners Association filed the writ petition claiming Dearness relief on the basis of Rule 55A as adopted by the State Government and the Court has also issued direction accordingly. I have already discussed that the earlier judgment cannot be a decision, or authority on the question whether by adoption of Rule 55A, the State Government pensioners will automatically become entitled to get Dearness relief at the central rate as and when declared by the Central Government. After adoption of Rule 55A by the Government of Tripura in the Finance Department notification dated 2.7.1992, Annexure - 3, Rules have to be read with modification as indicated in the table of the notification dated 8.8.1998. Consequently after adoption of Rule 55A and its incorporation in the Tripura Pension Rules, the words "Central Government" have to be substituted by the words "State Government". Consequently, the State Government is the ultimate authority to declare Dearness relief to the State Government pensioners and not by the Central Government. Accordingly, I do not find any merit in the argument of Mr. Biswas, learned Counsel for the petitioner.

27. Mr. Biswas further argues that the Government acted on the notification by which Central Government amendment was adopted and it was submitted in earlier case that the Government is willing to pay D. R. to the State Government pensioners at Central rate in accordance with the provisions of Rule 55A. It is further argued by Mr. Biswas that since the adoption notification creats an obligation on the State Government to pay Dearness relief to the State Government pensioners at Central rate, the State Government most arbitrarily and illegally amended and clarified the said notification by the impugned notification dated 27.10.1998, Mr. Biswas further submits that if the Government has any intention to pay Dearness relief at Central rate to the State Government pensioners then there was no need to amend or clarify the adoption notification by the impugned notification dated 27.10.1998.

28. Learned Advocate General Mr. B.R. Bhattacharjee submits that good wishes of the Government to pay D.R. at higher rate cannot be treated that the Government has accepted the Central Government amendment without any modification. It is submitted by Mr. Bhattacharjee that pension is relatable to Entry 42 of the State list (List II) of the VII schedule of the Constitution of India. The State Government did not framed any Pension Rules for the State Government pensioners and instead it had adopted CCS (Pension) Rules with certain modification. The principal Rules and any subsequent amendment thereof shall have to be read with modification indicated in the table of the notification

dated 8.8.1978. It is also submitted by Mr. Bhattacharjee, learned Advocate General that the question that requires a decision is whether Rule 55A as adopted by the State Government after modification in its application to the State Government pensioners whether the State Government pensioners can claim as of right Deafness relief at Central rate as and when such Dearness relief is declared by the Central Government, It is further submitted that from the very beginning the intention of the Government is very clear that Rule 55A must be read in its modified form and for the words "Central Government" the word "State Government" shall have to be read. Learned Advocate General however submits that it was felt necessary by the State Government to clarify the notification by which Rule 55A was adopted by the State Government by notification dated 2.7.1997, as the earlier judgment has created some confusion. Learned Advocate General further submits that even earlier judgment was a judgment per incuriam and/or a judgment sub silentio, but to honour the Court''s judgment, the State Government has cleared 125% Dearness relief declared by the Central Government and after clearing the arrear Dearness relief to the State Government pensioners, the State Government has clarified the position of the Rule 55A and in the said notification, it was made clear that payment already made in pursuance of the direction of the High Court will not be realised from the State Government pensioners. It is further argued by the learned Advocate General that in Contempt petition 32/97 decided on 4.11.1999, learned Single Judge clearly stated that once this Court directed the respondents by the said judgment and order dated 22.4.1997 to pay Dearness relief to the pensioners at the rate applicable to the Central Government pensioners and the said judgment and order attained finality, the respondents were under legal obligation to pay the same to the pensioners unless the relevant Rules were amended in the meanwhile. Learned Advocate General accordingly submits that learned Single Judge also was of the view that unless the impugned notification is amended, the state is under obligation to pay Dearness relief to the State Government pensioners at central rate. The said judgment was passed on 4.11.1998 and the impugned notification amending/clarifying the is notification dated 2.7.1992 has been issued by the Government on 27.10.1998. Learned Advocate General accordingly submits that before passing order by the learned Single Judge in contempt case 32/ 97, Government has amended and clarified the notification dated 2.7.1992 and therefore, after this clarification, the State Government pensioners cannot claim Dearness relief at the Central rate as and when such Dearness relief is declared by the Central Government. There is sufficient force in the submission of learned Advocate General, When a statute creates any right to any person that right will continue till the statute stands or till the statute remains in force. If the statute is amended, then such person cannot claim such right under the amended or abolished statute. In the instant case, the State Government Pensioners'' Association claimed right of Central Dearness relief in pursuance of adoption of such Rules by the State Government and court has also directed the payment of Central Dearness relief to the State Government pensioners, Now Rules being clarified and amended by substituting in the words

"Central Government" by the words "State Government", the State Government pensioners cannot claim Dearness relief as per clarified amended Rules of Rule 55A of the Pension Rules. Regarding competency of the State Government learned Advocate General argues that pension is a subject-matter exclusively to be dealt by the State Government as it relatable to list 42 of the State list (last II) of VII Schedule of the Constitution, It is also submitted that under Article 162 of the Constitution, executive power of the State extends to the matter''s with respect of which the Legislature of the State has power to make laws. The CCS (Pension) Rules was adopted by the State Government in exercise of its power under Article 309 of the Constitution and the impugned notification was also issued in exercise of the power conferred on it under Article 309 of the Constitution. It is true that the present clarification issued on 27.10.1993 gives effect from the date of adoption of original notification dated 2.7.1992, but it has been made clear that payments already made to the State Government pensioners as per earlier judgment shall not be realised. Therefore, I am of the view that no right exist to the State Government pensioners to claim Dearness relief at the Central rate as and when such Dearness relief is declared by the Central Government. There is no illegality in the amended/clarified impugned notification dated 27.10.1998. Further, the learned Single Judge in Contempt Petition 32/97 by his judgment and order dated 4.11.1998 has clearly stated that the State is bound to pay Dearness relief to the State Government pensioners if unless in the meanwhile the Rules are amended by the State Government. Before the aforesaid judgment in the Contempt petition, the State Government has amended/clarified the impugned, notification. Therefore, I do not find any illegality in the impugned notification and the State Government has power to issue such amendment/notification in exorcise of its power under Article 309 of the Constitution.

29. As regards the Contempt petition 17/99, I am of the view that by clarification/amendment of the notification dated 2.7.1992 Annexure -3 by the impugned notification dated 27.10.1998, I am of the view that a legal disability has been created for implementing the earlier judgment. Further, I am of the view that according to the judgment passed in WP(C) 62/00 the State Government pensioners do not acquire any right to claim Dearness relief at Central rate as and when such Dearness relief is declared by the Central Government pension is exclusively a subject-matter of State Government and the State Government having regard to ''its financial position may declare rise of Dearness relief and when such Dearness relief is declared by the State Government then only the State Govt. pensioners acquire right to get Dearness relief at the rate declared by the State Government. After modification/ clarification of the Notification adopting Rule 55A of this Pension Rules I am clearly of the opinion that no right exists after such amendment/clarification of Rule 55A to the State Government pensioner to claim Dearness relief at Central rate as and when such Dearness relief is declared by the Central Government and, therefore, I am of the view that the respondents did not violate any order of

this Court and in fact the respondents are under legal disability to implement the direction passed by this Court in earlier judgment. After amendment and clarification by the impugned notification the right of the pensioners have extinguished to claim Dearness relief at Central rate in pursuance of Rule 55A as amended by the Central Government. The State Government pensioners after impuged notification can claim Dearness relief only at such rate as may be declared by the State Government from time to time. This is the settled position of law. Therefore, I am of the view that there is no violation on the part of the respondents for non-implementation of the earlier judgment. The matter has now been clarified in judgment of W.P.(C) 62/00. It cannot be said that the respondents are liable to pay the Dearness relief at Central rate to the State Government pensioners. There is no violation by the respondents and therefore, I do not find any merit in the contempt petition.

30. Mr. Biswas, learned Counsel for the petitioner argues that the impugned notification dated 27.10.1998 has virtually taken away the rights of the State Government pensioners to get Dearness relief at Central rate in pursuance of the judgment dated 22.4.1997 in Civ. Rule 259/95. Mr. Biswas further argues that such amendment with retrospective effect is unconstitutional and, therefore invalid. In support of his contention, Mr. Biswas has referred the following decisions of the Apex Court, namely I.N. Saksena Vs. State of Madhya Pradesh, Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, P.D. Aggarwal and Others Vs. State of U.P. and Others, State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, Tamil Nadu Teachers Association Vs. Association of the Heads of the Government (B Wing) High and Higher Secondary Schools and Others, G.C. Kanungo and D.C. Routray Vs. State of Orissa, Uday Pratap Singh and Others Vs. State of Bihar and Others, Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, I have gone through the aforesaid judgment. The principles laid down by the Apex Court in the aforesaid judgments are binding on this Court. In the aforesaid judgment the Apex Court has struck down the executive instruction by which attempt has been made by the Government to take away the right which an employee has acquired under the statute. The second batch or cases is regarding retrospective amendment by the State Government which are contrary to the provisions of the Article 309 and Article 14 of the Constitution. After going through the aforesaid decisions of the Apex Court, I am clearly of the opinion that in the fact and circumstances of those cases the principle laid down by the Apex Court in the aforesaid cases cannot, apply in the present case though by the impugned notification Rule 55A has been amended by way of clarification with retrospective effect and at the same time, the Dearness relief already paid to the State Government pensioners have been protected. It has been clearly indicated in the said impugned notification that payment already made in pursuance of the decision of this Court passed in Civ. Rule 259/95 will not be realised from the State Government pensioners. After complying with the direction of the Court in the earlier case, the State Govt. has paid 42% Dearness relief in two instalments and after

payment of arrear Dearness relief as directed by the Court, the Government has come up with the clarification of the amendment of Rule 55A of the Tripura Government Pension Rules. Therefore, it is clear that even if Rule 55A was amended with retrospective effect, from the date of adoption in 1992, the modification made by the impugned notification dated 27.10.1998 has not taken away any right accrued to the State Government pensioners. It is submitted at Bar that the State Government has not only cleared the arrear Dearness relief to the State Government pensioners, but even after payment of 42% Dearness relief as direct by the Court, the Government has granted further Dearness relief to the State Government pensioners In contempt petition 32/97 decided on 4.11.1998, the learned Single Judge has clearly stated that the State Government is under obligation to pay Dearness relief to the State Government pensioners at Central rate if in the meantime the relevant Rules have not amended. Before the date of judgment on 4.11.1998 the impugned notification amending/clarifying the Rule 55A has been issued by the State Government by the impugned notification dated 27.10.1998. Therefore, the aforesaid observation of the learned Single Judge has also been upheld by the Division Bench in appeal. The learned Single Judge also recognised that if the relevant Rules are amended, then there may not be any obligation on the part of the State Government to pay Dearness relief at central rate to the State Government pensioners. Accordingly, after amendment of Rule 55A by notification dated 27.10.1998, it has been made clear that the State Government pensioners shall get Dearness relief at such rate as the State Government may decide from time to time. Therefore, I am of the view that after the impugned notification dated 27.10.1998, the State Government pensioners cannot claim Dearness relief at Central Government rate whenever such Dearness relief is declared by the Central Government I have already discussed about the validity of impugned notification. It is within the power of the executive to amend the law and if such amendment is not unconstitutional, it must be held to be valid. The impugned notification is not contrary to any provision of the Constitution or any statute and therefore, the impugned notification is declared as valid one.

31. After hearing the learned counsel of both the parties and after going through the papers and documents as placed in the case records, I am clearly of the opinion that there is no merit in WP(C) 62/00 and accordingly, it is dismissed. There is no violation by the respondent and accordingly the contempt case No. 17/99 is dropped and closed.

I make no order as to costs.

