* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 184/2007**

% **Reserved on : 21st February, 2017**
Pronounced on: 27th April, 2017

FEDERATION OF RETIRED LIC CLASS I OFFICER..... Petitioner
Through Mr. Rakesh Khanna, Sr. Advocate with Mr. Rajiv K. Garg, Mr.Ashish Garg, Ms. Mahima Rathi & Mr. S. Bushra Kazim, Advocates.

versus

UOI & ORS. ..... Respondents
Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.
Ms. Abha Malhotra, Mr. Sanjay Kumar Yadav & Mr. Tanuj Chopra, Advocates for UOI.

\+ **W.P.(C) 9440/2016**

LIFE INSURANCE CORPORATION OF INDIA ..... Petitioner
Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.

versus

KRISHNA MURARI LAL ASTHANA & ORS. ..... Respondents
Through Nemo.

\+ **W.P.(C) 9442/2016**

LIFE INSURANCE CORPORATION OF INDIA &ORS.. Petitioners
Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.

versus

KRISHNA MURARI LAL ASTHANA & ANR. ..... Respondents
Through Nemo.

\+ **W.P.(C) 9441/2016**

KRISHNA MURARI LAL ASTHANA & ORS. ..... Petitioners
Through Nemo.

versus

LIFE INSURANCE CORPORATION OF INDIA & ANR.
..... Respondents

Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.

\+ **W.P.(C) 5903/2016**

ALL INDIA RETIRED INSURANCE EMPLOYEES FEDERATION
..... Petitioner
Through Mr. Nidesh Gupta, Sr. Advocate with Mr.R.K. Singh, Mr. B.N. Dubey & Ms. Vriti Gujral, Advocates.

versus

LIFE INSURANCE CORPORATION OF INDIA & ANR.
..... Respondents

Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.
Mr. Bhagvan Swarup Shukla, CGSC & Mr.Shambhu Chaturvedi, Advocate for UOI.

\+ **W.P.(C) 5868/2016**

ALL INDIA INSURANCE PENSIONERS ASSOCIATION AND ORS. ..... Petitioners
Through Mr. Som Dutt Sharma, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr. Dev P. Bhardwaj, CGSC & Mr.Surender Kumar, Advocate for UOI.
Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms. Aakashi Lodha, Advocates for LIC.

\+ **W.P.(C) 4894/2016**

RETIRED LIC CLASS I OFFICERS ASSOCIATION HYDERABAD ..... Petitioner

Through Mr. Nidesh Gupta, Sr. Advocate with Mr.Ashish Tiwari, Mr. Samar Agrawal & Mr. S. Murthy, Advocates.

versus

LIFE INSURANCE CORPORATION OF INDIA AND ANR. ..... Respondents

Through Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms.Aakashi Lodha, Advocates for LIC.
Mr. Vivek Goyal, CGSC & Ms. Vanya Khanna, Advocate for UOI.

\+ **W.P.(C) 3984/2016**

KRISHNA MURARI LAL ASTHANA ..... Petitioner

Through Mr. Kumar Gaurav & Mr. P. Dayal, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr. Ripu Daman Bhardwaj, CGSC, Mr.T.P. Singh & Ms. Abha Malhotra, Advocates for UOI.
Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms. Aakashi Lodha, Advocates for LIC.

\+ **W.P.(C) 3983/2016**

MADAN LAL GANDHI AND ORS. ..... Petitioners

Through Mr. Jay Savla & Mr. Bharat Aggarwal, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr. Ripu Daman Bhardwaj, CGSC, Mr.T.P. Singh & Ms. Abha Malhotra, Advocates for UOI.
Mr. Dayan Krishnan, Sr. Advocate with Mr. Ashok Panigrahi, Mr. Surajit Bhaduri & Ms. Aakashi Lodha, Advocates for LIC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

This common judgment would dispose of the aforestated writ petitions and Civil Appeals / Letters Patent Appeals.

2. Writ Petition (C) No.184/2007, ***Federation of Retired LIC Class -I Officers and Ors. Vs. Union of India and Ors.*** was earlier disposed of by a short order dated 30th January, 2013 relying upon the decision of a Single Judge of the Jaipur Bench of the Rajasthan High Court, affirmed by the Division Bench in Civil Special Appeal (W)No.493-494/2010, ***Life Insurance Corporation Vs. Kishan Murari Lal Asthana and Anr.*** The decision of the Division Bench of the Rajasthan High Court, order of this court dated 30th January, 2013 and decision of the Punjab & Haryana High Court dated 9th November, 2012 in ***Madan Lal Gandhi & Others* v. *Union of India & Others***, CWP 16346/2010 (again relying upon the decision of the Rajasthan High Court), were made subject

matter of challenge before the Supreme Court in Civil Appeal Nos. 8959 to 8962/2013, 6995/2013, 9223/2013 and 9409-10/2013.

3. The Supreme Court after referring to the Life Insurance Corporation Act, 1956 (for short, 'the LIC Act'), vide judgment and order dated 31st March, 2016, held that the Board Resolution dated 24th November, 2001 to amend the LIC of India (Employees) Pension Rules, 1955 (Pension Rules for short), for upgrading the basic pension to All India Consumer Price Index of 1740 point and 100 per cent dearness allowance neutralization thereon in respect of retirees prior to 1st August, 1997 was *non est* and would not confer any legal right. On perusal of Section 48 of the LIC Act, it was clear as crystal that conferment of benefit, either pensionary or anything ancilliary thereto, has to be conferred by the Pension Rules, and as prescribed the Rule has to be tabled before Parliament. In absence of a rule, no benefit could be granted on the basis of the resolution.

4. Having held so, the Supreme Court noticed the second facet of the controversy relating to challenge to the legality of paragraph 3(A) of Appendix-IV restrictively applicable to employees, who had retired on or after 1st day of August, 1997 and not to the employees who had retired earlier in point of time, and the following order was passed:

> "21. It is urged by Mr. Gupta that once the employees are covered under Para 3A, being retirees after the cut-off date, the benefit cannot remain static but has to change with the pay revisions regard being had to the price index, for otherwise the provision does not spring to life and, eventually, paves the path of arbitrariness. He has heavily relied on paragraphs 34, 35 and 39 of ***Kallakkurichi Taluk***

Retired Officials Association, Tamil Nadu and others v. State of Tamil Nadu apart from other paragraphs. We may hasten to add that we have referred to this aspect in extenso as Mr. Gupta would submit that nonconferment of the benefit of the dearness relief keeping in view the subsequent pay revisions of the similarly situated employees leads to disastrous effect and in a way allows room for absurdity. Learned senior counsel has given an example to highlight as to how the absurd situation can creep in. It is urged by him that if an Executive Director stood retired sometime in 1997, he would get approximately Rs.7,000/- towards pension, whereas a person working in Class III, if he retires subsequently would get approximately double of the said amount.

22.We have already stated that the High Court of Delhi has really not adverted to as regards the constitutional validity of Para 3A of the Appendix. As far as the other delineations or deliberations are concerned, the High Court of Punjab & Haryana at Chandigarh has also not independently dealt with the controversy, but followed the decision rendered by the Rajasthan High Court. We have already adverted to the reasoning of the High Court of Rajasthan inasmuch as it has referred to the scheme of the Act, recorded the concession of the counsel for the Union of India and proceeded to apply the inherent principle enshrined in Article 14 of the Constitution, though constitutional validity was not challenged. Be it stated, there are two categories of employees, namely, the employees who have retired prior to the cut-off date i.e. 1st August, 1997, as a consequence of which they are not getting the benefit of dearness relief, and the employees who have retired after the said date but are not extended the benefit of dearness relief despite subsequent pay revisions. Needless to say, the quantum of pension is affected.

23.Regard being had to the piquant situation, we are inclined to set aside the orders passed by the High Courts of Rajasthan, Delhi and Punjab & Haryana at Chandigarh and

> transfer the writ petitions from the High Courts of Rajasthan and Punjab & Haryana to the High Court of Delhi, which will decide the constitutional validity of Para 3A of the Appendix to the Rules, as argued by Mr. Panchu, learned senior counsel appearing for the respondents, and also deal with the cases of the persons, who have retired after the cut-off date, consider the contentions raised by Mr. Gupta, learned senior counsel and the other contentions to be raised. However, we may clarify that we have not expressed any opinion on the merits of the case, except that the resolution could not become operative unless it was conferred the status of a rule as provided under Section 48 of the Act."

5. It was also directed that the cases pending before the Rajasthan High Court and the Punjab & Haryana High Court would be decided by the Delhi High Court. In paragraph 29 of the said order the following direction were issued.

> "29. As we are transferring the cases to Delhi High Court, the Registry of the High Courts of Punjab & Haryana and Rajasthan shall send the papers to the High Court of Delhi within three weeks hence. The learned Chief Justice of the High Court of Delhi is requested to constitute a Bench within four weeks from today. We grant liberty to the writ petitioners to file requisite amendments, if so advised. Counter affidavit to the same shall be filed by the contesting parties within three weeks from the date of filing the amendments. The High Court is requested to dispose of the writ petitions by the end of August, 2016. We ingeminate that we have not expressed any opinion with regard to any of the aspects of the matter, except what we have finally concluded, namely, that the resolution could not have been given effect to without framing a rule by the Central Government. Till the matter is decided by the High Court of Delhi, no other High Court shall proceed with the similar matters, as it is desirable that a singular judgment is passed so that the validity of the same can be adjudged."

6. The Supreme Court by an interim order dated 7th May, 2015 had directed that the Life Insurance Corporation (Corporation for short) shall release 20% of the amount in favour of the retired employees within six weeks, subject to final result. The controversy had arisen whether or not the Corporation had paid the said amount as the retired employees had contested the Corporation's claim. The Supreme Court, vide judgment and order dated 31st March, 2016, directed that the Corporation shall pay 40% as per paragraph 3(A) of Appendix IV to each of the retired employees and would file an affidavit to the said effect before the High Court. The amount already deposited by the Corporation before the Supreme Court was allowed to be withdrawn to be paid to the retired employees. Directions were also issued that the High court would decide the controversy, viz. whether or not the payment had been made to the employees, in terms of the directions given by the Supreme Court.

7. The aforesaid issue was decided by the Division Bench of the High Court on 11th November, 2016 accepting the contention of the Corporation that they had complied with the directions given by the Supreme Court in the order, observing that paragraph 3(A) of Appendix-IV dealt only with dearness relief payable on the basic pay and not computation of the basic pension. The Supreme Court had not directed enhancement or increase of basic pension by 40%.

8. In view of the aforesaid discussion, the issue which survives for consideration and has to be answered, relates to the validity of Rule 3(A) which is restricted to employees who have retired or died on or after 1st day of August, 1997. This, as noticed below, is not the primary issue.

The core issue is the prayer of the retired employees/ associations that all retirees prior to 1st August, 1997 should be given full neutralization and upgradation of basic pension with effect from 1st August, 1997, ensuring uniform pension for all retired employees, irrespective of the date of retirement and emoluments drawn at the time of retirement. In other words, the retired employees seek enforcement of the precept of "One Rank One Pension", by judicial verdict contrary to the Rule position.

9. The Corporation, i.e. Life Insurance Corporation of India, is established under Section 3 of the LIC Act. As per Section 48 power to determine terms and conditions of service of employees of the Corporation are vested with the Central Government. Section 6 mandates that the Corporation shall carry on Life Insurance business and shall so exercise its powers as to secure that the Life Insurance Business is developed to the best advantage of the community. Sub-section 3 to Section 6 states that in the discharge of any of its functions, the Corporation shall act so far as may be on business principles. Section 24 states that the Corporation shall have its own fund and all receipts of the Corporation shall be credited thereto and all payments of the Corporation shall be made therefrom. Section 26 provides that the Corporation shall, once at least in every two years cause an investigation to be made by actuaries into the financial conditions of the business of the Corporation, including a valuation of the liabilities of the Corporation, and submit report of the actuaries to the Central Government. Section 28 of the Act makes it mandatory for the Corporation to reserve or allocate 95% or more of the surplus, as the Central Government may approve, to the life insurance policy holders. After meeting the liabilities of the Corporation

that may arise under Section 9, the remainder shall be paid to the Central Government or utilized for such purposes and in such manner as directed. In this manner, 95% or more surplus is allocated/transferred for being paid as bonus etc. to the policy holders.

10. Consequent upon discussions held with the employees' Unions, in exercise of power vested under section 48 of the Act, the Central Government had notified the Pension Rules i.e. LIC of India (Employees) Pension Rules 1995 vide gazette notification dated 28th June, 1995. The Pension Rules framed, it is apparent, were based upon consensus and understanding between the Corporation, the Central Government and the Employees' Unions.

11. Earlier the employees of the Corporation were covered under the Compulsory Contributory Provident Fund as per Employees Provident Fund and Miscellaneous Provisions Act, 1952. The Scheme required opening of an account for the employees by the employer with an obligation of the employer, i.e. the Corporation, to make an equal contribution to that made by the employee in his account till he retires. On retirement the entire contributory provident fund amount was paid to the employees as retirement benefit. Thus on the retirement of the employee, the Corporation was not under obligation to contribute or pay any further amount to the said fund of the employee.

12. For the sake of convenience, we would like to reproduce Rules 3 and 4 of the Pension Rules in entirety.

> 3. **Application** - These rules shall apply to employees who,- (1) (a) were in the service of the Corporation on or

after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause(b), the entire amount of the Corporation's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation; or

(2) (a) have retired on or after the 1st day of November, 1993 but before the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b), the entire amount of the Corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of twelve per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation; or

(3) (a) are in the service of the Corporation before the notified date and continue to be in the service of the Corporation on or after the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) authorise the trust of the Provident Fund to transfer the entire contribution of the Corporation to their Provident Fund alongwith the interest accrued thereon to the credit of the Fund constituted for the purpose under rule 5; or

(4) join the service of the Corporation on or after the notified date; and

(5) were in the service of the Corporation during any time on or after the 1st day of November, 1993 and had died after retirement but before the notified date, their family shall be entitled for the amount of pension payable to them from the date on which they would have been entitled to pension under these rules had they been alive till the date on which they died, if the family of the deceased-

(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (a) above, the entire amount of the Corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of twelve per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation ; or

(6) joined the service of the Corporation on or after the 1st day of November, 1993 but who have died while in the service of the Corporation before the notified date, their family shall be entitled to the family pension under these rules;

Provided that the family of such a deceased employee refunds within one hundred and eighty days from the notified date the entire amount of the Corporation's contribution to the Provident Fund, if any, and interest accrued thereon together with further simple interest at the rate of twelve per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation;

Provided further that the family of such a deceased employee shall apply in writing for grant of family pension; or

(7) were in the service of the Corporation during any time on or after the 1st day of January, 1986 and had died while in service on or before the 31st day of October, 1993 or had retired on or before the 31st day of October, 1993 but died before the notified date in which case their family shall be entitled to the family pension under these rules, if the family of the deceased, -

(a) exercises an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (a) above, the entire amount of the Corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation; or

(8) joined the service of the Corporation on or before the 31st day of October, 1993 and who died while in service on or after the 1st day of November, 1993, but before the notified date in which case their families shall be entitled to family pension under these rules if the family of the deceased employee-

(a) exercises an option in writing within one hundred and twenty days from the notified date to become a member of the Fund; and

(b) refund within sixty days from the date of expiry of the said period of one hundred and twenty days specified in clause (a) above, the entire amount of the Corporation's contribution to the Provident Fund, including interest accrued thereon, together with a further simple interest at the rate of twelve per cent per annum from the date of settlement of the Provident Fund account of the employee till the date of refund of the aforesaid amount to the Corporation.

4. **Option to subscribe to the Provident Fund -** (1) Notwithstanding anything contained in sub-rule (4) of rule 3, an employee who joins the service of the Corporation on or after the notified date at the age of thirty-five years or more, may, within a period of ninety days from the date of his appointment, elect to forego his right to pension, whereupon these rules shall not apply to him.

(2) The option referred to in sub-rule (1) and in rule 3, once exercised, shall be final."

13. Rule 3 of the Pension Rules postulate and classify the employees into four categories, namely, (i) those who had retired on or after 1st day of January, 1986 and before 1st day of November, 1993, (2) those who had retired on or after 1st day of November, 1993 but before the notified date, i.e. 28th June, 1995 (3) those who are in service of the Corporation before the notified date and continue to be in service and (4) lastly those who joined the service of the Corporation on or after the notified date. In respect of the 1st three categories, option was given to the retired or in service employee to give in writing within the time specified whether

they want to become members of the Pension Scheme. Retired employees, on exercising the option, had to refund the entire amount of the Corporation's contribution to the provident fund with simple interest @ 6% per annum in the case of employees who had retired before 1st November, 1993 and 12% per annum by others, who had retired on or after 1st November, 1993 and before the notified date, from the date of the settlement of provident fund account till the date of refund.

14. On the question of computation of pension, we would like to reproduce clauses (d), (o) and (p) of Rule 2, which is the interpretation provision as originally enacted, and Rule 35, which read as under:

> **2. Definitions - In these rules, unless the context otherwise requires –**
> xxx
>
> (d) "average emoluments" means the average of the pay drawn by an employee during the last ten months of his service;
>
> XXXX
>
> (o) **"pay"** includes,-
>
> (a) In relation to an employee who has retired or died on or after the 1st day of January, 1986 but before the last day of November, 1993.
>
> (i) the basic pay including the stagnation increments if any; and
>
> (ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

(b) In relation to an employee who retires or dies while in service on or after the 1st day of November, 1993.

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

(ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

(iii) fixed personal allowance not exceeding the last increment in the scale of pay; and

(iv) dearness allowance calculated upto Index No.1148 in the All India Average Consumer Price Index for Industrial workers in the series 1960=100.

XXXX

(p) "pension" includes the basic pension and the additional pension referred to in Chapter VI of these rules;"

XXXX

"35. Amount of Pension - (1) In respect of employees who retired between the 1st day of January, 1986 but before the 31st day of July, 1987, basic pension and additional pension will be updated as per the formula given in Appendix-III.

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

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

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

Explanation -- For the purpose of this sub-rule "allowances" means allowances which are admissible to the extent counted for the following purposes only, namely:-

(i) making contributions to the Provident Fund;
(ii) grant of house rent allowance;
(iii) payment of gratuity; and
(iv) re-fixation of salary on promotion.

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

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

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

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

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

15. Clause (o) to Rule 2 defining the term pension was amended vide Government notification dated 14th May, 1999, to read:-

(o) **"pay"** includes,-

(i) the basic pay including the stagnation increments if any; and
(ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and
(iii) fixed personal allowance not exceeding the last increment in the scale of pay; if any, and
(iv) in a case covered by the proviso to clause (j) or where the salary and other conditions have been fixed with the approval of the Central Govt., the dearness allowance calculated upto Index No.1148 in the All India Average Consumer Price Index for Industrial workers in the series 1960=100 applied on the basic pay drawn by him in the scale of pay notified by the Central Govt., for the post.

Provided that for the purpose of calculating average emoluments, as defined under sub-clause (d) of rule 2, in respect of employees whose ten months' period before retirement falls partly under pre-revised pay scales and partly under the revised pay scales, the pay for the period for which they have drawn pay as per pre-revised scales may be updated by including the dearness allowance actually drawn by them or the dearness allowance upto the AICPI to which the revised basic pay is pegged, whichever is less.

Clause (j) to Rule 2 which defines the expression "employee" referred to in clause (iv) of clause (o) reads:-

"(j) "employee" means any person employed in the service of the Corporation on full-time work on permanent basis and who opts and is governed by these rules but does not include an employee retired before the commencement of these rules and who is drawing pension from the Pension Fund of the Oriental Government Security Life Assurance Company

> Limited in accordance with sub-regulation (2) of regulation 76 of the Life Insurance Corporation of India (Staff) Regulations, 1960, made under the Act;"

16. Rule 38 which relates to determination of the period of ten months for average emoluments, reads:-

> "38. Determination of the period of ten months for average emoluments –
> (1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.
> (2) In the case of voluntary retirement the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires.
> (3) In the case of dismissal or removal or compulsory retirement or termination of service the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Corporation.
> (4) If during the last ten months of the service an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and an equal period before the ten months shall be included."

17. Rule 37 relates to dearness relief and reads as under:

> **"Dearness Relief** - (1) Dearness relief shall be granted on basic pension or family pension or invalid pension or on compassionate allowance in accordance with the rates specified in appendix IV.

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

18. Appendix IV referred to in Rules 37 is as under:

"Dearness relief on basic pension shall be as under:

(1) In the case of employees who retired on or after the 1st day of January, 1986, but before the 1st day of November, 1993, dearness relief shall be payable for every rise or be recoverable for every fall, as that case may be of every 4 points over 600 points in the quarterly average of the All India Average Consumer Price Index, for Industrial Workers in the series 1960 = 100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension per month **(1)**	**The rate of dearness relief as a percentage of basic pension** **(2)**
(i) upto Rs.1250/-	0.67 per cent
(ii) Rs.1251/- to Rs.2,000/-	0.67 per cent of Rs.1250 plus 0.55 per cent of basic pension in excess of Rs.1250/-
(iii) Rs.2001/- to Rs.2130/-	0.67 per cent of Rs.1250/- plus 0.55 per cent of the difference between Rs.2000/- and Rs.1250/- plus 0.33 per cent of basic pension in excess of Rs.2000/-
(iv) aboveRs.2130/-	0.67 per cent of Rs.1250/- plus 0.55 per cent of the

	difference between Rs.2000/- and Rs.1250/- plus 0.33 per cent of the difference between Rs.2130/- and Rs.2000/- plus 0.17 per cent of basic pension in excess of Rs.2130/-

(2) In the case of employees who retire on or after the 1st day of November, 1993, dearness relief shall be payable for every rise or be recoverable for every fall, as the case may be, of every 4 points over 1148 points in the quarterly average of the All India Average Consumer Price Index for Industrial Workers in the series 1960 = 100. Such increase or decrease in dearness relief for every said four points shall be calculated in the manner given below:

Scale of basic pension per month **(1)**	**The rate of dearness relief as a percentage of basic pension** **(2)**
(i) upto Rs.2400/-	0.35 per cent
(ii) Rs.2401 to Rs.3850/-	0.35 per cent of Rs.2,400/- plus 0.29 per cent of basic pension in excess of Rs.2,400/-
(iii) Rs.3,851 to Rs.4,100/-	0.35 per cent of Rs.2,400/- plus 0.29 per cent of the difference between Rs.3,850 and Rs.2,400/- plus 0.17 per 8 cent of basic pension in excess of Rs.3,850/-
(iv) above Rs.4,100/-	0.35 per cent of Rs.2,400/- plus 0.29 per cent of the difference between Rs.3,850

	and Rs.2,400/- plus 0.17 per cent of the difference between Rs.4,100/- and Rs.3,850/- plus 0.09 per cent of basic pension in excess of Rs.4,100/-

(3) Notwithstanding anything contained in Para (1) and Para (2), in respect of employees belonging to Class-III and Class-IV, who have retired on or after the 1st day of August, 1992 and in respect of Officers belonging to Class-I and Class-II, retired on or after 1st day of April, 1993, dearness relief shall be payable or be recoverable as may be determined from time to time.

3(A) In case of employees who have retired or died on or after the 1st day of August 1997, the dearness relief shall be payable for every rise or to be recoverable for every fall, as the case may be, of every 4 points over 1740 points in the quarterly Average Consumer Price Index for Industrial Workers in the series of 1960 = 100 Such increase or decrease in dearness relief for every said 4 points shall be at the rate of 0.23 per cent of the Basic Pension;

3(B) In case of any wage revision in future the rate of dearness relief payable to an employee shall be determined by the Corporation corresponding to the index to which the case is linked.

(The Corporation has determined that in case of employees who have retired or died on or after the 1st day of August 2002, the dearness relief shall be payable for every rise or to be recoverable for every fall, as the case may be, of every 4 points over 2328 points in the quarterly Average Consumer Price Index for Industrial Workers in the series of 1960 = 100 Such increase or decrease in dearness relief for every said 4 points shall be at the rate of 0.18 per cent of the Basic Pension).

(4) Dearness relief shall be payable for the half year commencing from the 1st day of February and ending with 31st day of July on the quarterly average of the index figures published for the months of October, November and December of the previous year and for the half year commencing from the 1st day of August and ending with the 31st day of January on the quarterly average of the index figures published for the months of April, May and June of the same year.

(5) In the case of family pension, invalid pension and compassionate allowance, dearness relief shall be payable in accordance with the rates mentioned above.

(6) Dearness relief will be allowed on full basic pension even after commutation.

(7) Dearness relief is not payable on additional pension."

19. There is also stipulation with regard to minimum pension in Rule 36, which is as under:

> "**36. Minimum pension** - The amount of minimum pension shall be,-
>
> (a) rupees three hundred and seventy five per month in respect of an employee, belonging to ClassIII or Class-IV, who had retired or died before 1st August,1992 and in respect of employee belonging to Class-I or Class-II, who had retired or died before 1st day of April, 1993.
>
> (b) rupees seven hundred and twenty per month in respect of an employee belonging to Class-III or Class-IV, who had retired or died on or after 1st August, 1992, and in respect of an employee belonging to Class-I or Class-II, who had retired or died on or after 1st April, 1993.

(c) rupees 1,100/- per month in respect of employees belonging to Class-I, Class-II, Class-III and Class-IV, who have retired or died on or after the first day of August, 1997;

(d) in case of any wage revision in future the amount of minimum pension payable to an employee shall be determined by the Corporation corresponding to the index to which the scale is linked"

20. Lastly, we will refer to the provisions relating to the pension fund. Rules 5, 7, 11 and 13 relating to the Pension Fund are as under:

"5. **Constitution of the Fund -** (1) The Corporation shall constitute a Fund to be called the Life Insurance Corporation of India (Employees) Pension Fund under an irrevocable trust within a period of one hundred and twenty days from the notified date.

(2) The Fund shall have for its sole purpose the provision of the payment of pension or family pension in accordance with these rules to the employee or his family.

(3) The Corporation shall be a contributor to the Fund and shall ensure that sufficient sums are placed in it to enable the trustees to make due payments to beneficiaries under these rules.

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7. **Composition of the Fund –**

The Fund shall consist of the following, namely:-

For the purpose of this rule "pay" includes –

(i) the basic pay,

(ii) allowances other than dearness allowance which count for the purposes of making contribution to the Provident Fund and payment of dearness allowance,

(iii) dearness allowance payable on the basic pay and the allowances specified in clause (ii) above, upto Index Number 1148 in the quarterly average of the All India Consumer Price Index for Industrial Workers in the series 1960=100; and

(iv) allowances to the extent they count for Provident Fund, house rent allowance, gratuity and for refixation of salary on promotion:

Provided that the Corporation shall not make any contribution to the account of the Provident Fund of the employee ;

Explanation 2 : On and from the date of publication of Life Insurance Corporation of India (Employees) Pension (Amendment) Rules, 1997, "pay" includes –

(i) the basic pay,

(ii) allowances other than dearness allowance which count for the purposes of making contribution to the Provident Fund and also payment of dearness allowance,

(iii) allowances to the extent they count for Contribution to the Provident Fund, house rent allowance, gratuity and for refixation of salary on promotion:

Provided that the Corporation shall not make any contribution to the account of the Provident Fund of the employee ;

(b) the accumulated contributions of the Corporation to the Provident Fund and interest accrued thereon upto the date of such transfer in respect of the employees;

(c) the amount consisting of contributions of the Corporation along with interest refunded by the employees who had retired before the date of publication of these rules but who

opt for pension in accordance with the provisions contained in these rules;

(d) the investment in annuities or securities purchased out of the moneys of the Fund and interest thereon;

(e) amount of any capital gains arising from the capital assets of the Fund;

(f) the additional annual contribution made by the Corporation in accordance with the provisions contained in rule 11 of these rules;

(g) any income from investments of the amounts credited to the Fund;

(h) the amount consisting of contribution of the Corporation along with interest refunded by the family of the deceased employee.

XXXXX

11. **Actuarial investigation of the Fund** - The Corporation shall cause an investigation to be made by an Actuary into the financial condition of the Fund every financial year, on the 31st day of March, and make such additional annual contributions to the Fund as may be required to secure payment of the benefits under these rules:

Provided that the Corporation shall cause an investigation to be made by an Actuary into the financial condition of the Fund, as on the 31st of day of March immediately following the financial year in which the Fund is constituted.

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13. **Payments out of the Fund** - The payment of benefits by the trust shall be administered as follows, namely:-

(a) the trust shall purchase immediate annuities from the Corporation in respect of each employee or his family, as

the case may be, at the time he or his family becomes eligible for the benefits under these rules;

(b) the trust shall, subject to the availability of additional sums in the Fund, to be provided by the Corporation as required under rule 5 (3) purchase additional annuities as and when it becomes necessary to revise upwards the benefits payable in accordance with these rules;

(c) the trust shall, in the event of the benefits payable under these rules being revised downwards for any reason whatsoever, credit the benefits received from the Corporation under the annuities purchased as exceed the benefits payable under these rules, to the Fund."

21. Rule 35 relates to computation of pension. For employees who had retired after 1st January, 1986 but before 31st July, 1987 the basic pension and additional pension is computed as per the formula given in Appendix-III. This formula *per se* is not challenged and therefore need not be examined.

22. Under sub-Rule (2) to 35, for an employee retiring in accordance with the Service Rules or Staff Regulations having qualifying service of not less than 33 years, the basic pension is calculated at 50% of his average emoluments. Under clause (a) of sub-Rule (3) additional pension shall be 50% of the allowances drawn by the employee during the last 10 months of service. Clause (b) to sub-Rule (3) stipulates that no dearness relief is to be paid on the additional pension. The explanation defines the term "allowances" which are admissible for computing additional pension.

23. Sub-Rule (4) states that pension shall be the aggregate of basic pension and additional pension and shall be subject to the minimum pension specified in the Rules.

24. Sub-Rules (6) relates to employees who have completed 10 years qualifying service and have retired before completing 33 years of qualifying service. In such cases, the amount of pension is proportionate to the amount of pension admissible, being the sum-total of basic pension and additional pension.

25. Rule 37 states that dearness relief shall be granted on basic pension, family pension, invalid pension, or compassionate allowance in accordance with the rates specified in Appendix-IV.

26. As per the Pension Rules, the pension consists of two parts; basic pension and additional pension. The basic pension is computed on average emoluments as defined in Clause (d) to Rule 2, which is basic pay including stagnation increments, if any, and admissible allowances as specified, drawn by an employee during the last 10 months of service. Thus, the basic pension is fixed on the date of retirement. This amount does not vary and remains static, notwithstanding subsequent revision of pay applicable to in-service employees and not to retired employees. To off-set and negate the impact of inflation and loss of purchasing power, the Pension Rules provide for payment of dearness relief.

27. Similarly, additional pension, added to basic pension, remains static and constant. Additional pension is 50% of the "allowances" drawn during the last 10 months of service. No dearness relief is payable on additional

pension. Noticeably, "allowances" counted for payments to Provident Fund, are reckoned for both basic pension and additional pension.

28. Amendment to clause (o) to Rule 2 of the Pension Rules with effect from 14th May, 1999, would not make any difference. Substituted clause (iv) would apply to those retirees, who were in service as on 1st November, 1993 when the dearness allowance benefit calculated up to Index No.1148 of All India Average Consumer Price Index for Industrial Workers was applied on the basic pay drawn by him. This is clear from the proviso to clause (iv).

29. Before we refer to Appendix-IV, it would be relevant to first notice an important and significant fact. As per convention, every five years the employees of the Corporation are granted pay revision. Such pay or wage revision had taken place in with effect from 1992, 1997 and thereafter in 2002, 2007 and 2012. At the time of wage revision, the dearness allowance payable to the in-service employees gets merged and factored in the revised or replacement pay scale. On an average, the pay revisions have been at the rate of 15% above the last basic pay and dearness allowance.

30. Appendix-IV divides and classifies retired employees into 4 categories. Paragraph 1 relates to employees, who had retired between 1st January, 1986 and 1st November, 1993. Dearness relief is payable at the percentage of basic pension specified in the table for every 4 points over 600 points in the quarterly average of the All India Average Consumer Price Index for Industrial Workers- 1960 Series (AICPI-IW, for short). For basic pension upto Rs. 1250, dearness relief percentage or

equalization is 0.67%, for basic pension between Rs. 1251 and 2000 dearness relief percentage or equalization is 0.55% in excess of Rs. 1250, the dearness relief percentage or equalization between Rs. 2001 and 2130 is 0.33% and above Rs. 2130 is 0.17%.

31. For employees who have retired between 1st November, 1993 and 31st July, 1997 the dearness relief payable is for every 4 points over 1148 points in the quarterly average of the AICPI-IW. 1148 points was the Price Index as on 1st November, 1993 and is therefore the relevant figure for computing dearness relief. The date 1st November, 1993 is also relevant for it refers to the date on which the Pension Rules were deemed to have come into force. The equalization table given in paragraph 2 stipulates that for basic pension amount upto Rs. 2400, the percentage of dearness relief would be 0.35% and between Rs. 2401-3850 will be 0.29% of basic pension, between Rs. 3851 and 4100 the percentage of dearness relief would be 0.17% of basic pension and above Rs. 4100 would be 0.09% of basic pension.

32. Paragraph 3(A) relates to employees who have retired or died after 1st August, 1997 but before 31st July, 2002. In this case dearness relief is payable for every 4 points over 1740 points in the quarterly average of the AICPI-IW at the rate of 0.23% of basic pension. The date 1st August, 1997 has rationale and was fixed, as coinciding with the pay revision of in-service employees.

33. Paragraph 3(B) states that for any wage revision in future, dearness relief payable shall be determined by the Corporation corresponding to the index to which the case is linked. For employees who have retired or

died after 1st August, 2002 dearness relief is payable for every 4 point rise over 2328 points in the quarterly average of the AICPI-IW at the rate 0.18% of basic pay. The dearness relief for employees retiring between 01.08.2007 to 31.07.2012 and 01.08.2012 to 31.07.2017 has been reduced to 0.15% and 0.10%, respectively.

34. Thus dearness relief payable on basic pension for the employees retiring between 01.01.1982 to 31.07.2017 is as under:-

Pensioner retired between	**Rate of Dearness Relief**
01.01.1986 to 31.10.1993	0.67% to 0.17% (tapering formula)
01.11.1993 to 31.07.1997	0.35 to 0.09% (tapering formula)
01.08.1997 to 31.07.2002	0.23% (See Rule 3(A))
01.08.2002 to 31.07.2007	0.18%
01.08.2007 to 31.07.2012	0.15%
01.08.2012 to 31.07.2017	0.10%

35. The dearness relief payable therefore has reference to the basic pension. The principle of dearness relief acknowledges that basic pension would remain static and not account for the future increase in salary of in-service employees.

36. The Pension Rules, *ex facie*, seek to provide beneficial dearness relief to retired employees depending upon their date of retirement, which has reference to the basic pension. Higher percentage of dearness relief is

given to employees who had retired between 1st January, 1986 and 31st October, 1993 for their basic pension was lower. However, for amounts above Rs. 2130/-, the dearness relief of 0.17% is less than dearness relief in paragraph 3(A). Similarly, higher percentage of dearness relief is prescribed for basic pension upto Rs. 3850/- for employees who had retired between 1st November, 1993 and 31st July, 1997 in comparison to the dearness relief of 0.23% applicable to employees who had retired between 1st August, 1997 and 31st July, 2002. For amounts above Rs. 3850 and Rs. 4100 the equalization rate is 0.17% and 0.09% respectively. Under paragraph 3(A), uniform rate of 0.23% of basic pay for every 4 points over 1740 points in the quarterly average of the AICPI-IW is applicable. The discord and variation in neutralization on the pension amount above Rs. 2130 in paragraph 1 and pension amounts above Rs. 3851 in paragraph 2, have been dealt with and examined below

37. We shall, in the subsequent portion of the judgment, interpret the Pension Rules relating to the fund, etc. while discussing and adjudicating the contentions raised.

38. To avoid prolixity, we are not elucidating in detail the arguments raised by the retired employees/associations and the Corporation, and would only refer to the fundamental points raised by the retired employees/associations and the response of the Corporation.

39. The *primary* and the core issue raised by the retired employees / association is that dearness relief amount as per the Rules is not added or merged with the basic pension and this results in non-revision of basic

pension. As a result, the pension amount being paid to the retirees prior to 31st July, 1997 is restricted and remains at arbitrarily low levels resulting in invidious discrimination. Resultantly, the same rank officials retiring on different dates get different amount of pension. In fact, a lower rank officer who retires later ends up getting a higher pension solely because of the date of retirement. This defeats the very object of giving pension and violates Article 14 of the Constitution. Reliance is placed upon the meaning and concept of the term 'pension', as elucidated in ***Deokinandan Prasad Vs. State of Bihar & Ors.*** (1971) 2 SCC 330. ***D.S. Nakara & Ors. Vs. Union of India*** (1983) 1 SCC 305 and other cases. Similarity between the Pension Rules and the Central Civil Service (Pension) Rules 1972 applicable to Central Government Employees is projected to assert that Central Government employees, pursuant to the decision of the Constitution Bench in ***D.S. Nakara*** (supra), have been given upgradation of pension on acceptance of the recommendations of the 5th, 6th and 7th Pay Commission Reports. It is submitted that the Fund created under Rules 5 and 6 read with Rule 13 of the Pension Rules is not contributory or self-funded. The Corporation has statutory obligation to ensure that adequate sums are made available to the trustees of the Fund for payments due under the Pension Rules including any shortfall resulting from upward revision. Reference is specifically made to Rules 5 (3) and 13(b) of the Pension Rules. Reference was also made to Rule 56, which is a residuary Rule and stipulates that matters relating to pension and other benefits in respect of which no express provision has been made shall be governed by corresponding provisions contained in Central Civil Service (Pension)

Rules 1972 or the Central Civil Services (Commutation of Pension) Rules 1981. It is asserted that the Managing Director and the Chairman of the Corporation are being treated differently and pension is paid as per Rule 55-B of the Pension Rules at par with the Central Government Pensioners, whereas other retired employees have been left out and are being discriminated in violation of equality enshrined in Article 14. The financial implication as projected by the Corporation is disputed [This argument has been examined in detail separately].

40. The Corporation has challenged and contested the said submissions, *inter alia* stating that the pension in respect of employees is fund based unlike the Central Government employees, who receive their pension from Consolidated Fund of India. The Corporation contributes to the Fund @ 10% of each month's pay of each employee. On the basis of actuarial computation, the Corporation makes additional annual contribution to the Fund, which are restricted to secure payment of benefits under the Pension Rules. The Pension Rules provide for calculation of pension which is computed with reference to the last drawn pay under Rule 35 (2), read with Rules 2 (d) and (o). The dearness relief is payable on the basic pension and increases and decreases with the rise or fall of the quarterly average of the AICPI-IW. The basic pension gets crystallized based upon pay drawn in the last 10 months. This amount does not change but the pensioner is entitled to the benefit of dearness relief. The formula on dearness allowance is prescribed in Appendix-IV, as provided in Rule 37. Dearness relief for pensioners, who had retired before 1st November, 1993 / 1st August, 1997 is more beneficial vis-à-vis the dearness relief formula applicable

to the retirees on or after 1st August, 1997 / 1st August, 2002. Judgment and ratio of ***D.S. Nakara*** (supra) is not applicable and the judgments of the Constitution Bench of the Supreme Court in ***Krishena Kumar Vs. Union of India & Ors.*** (1990) 4 SCC 207 and ***Indian Ex-Services League Vs. Union of India*** (1991) 2 SCC 104, are apposite. Specific reference is also made to ***K.L. Rathi Vs. Union of India*** (1997) 6 SCC 7 and ***State of West Bengal Vs. West Bengal Government Pensioners Association*** (2002) 2 SCC 179. It is submitted that the retirees are given dearness allowance, as per scaled/tapering formula prescribed under Paragraphs 1 and 2 in Appendix-IV of the Pension Rules. The formula is not arbitrary nor violates Article 14. The contentions based upon financial implication, are challenged. [This aspect as indicated above would be examined separately].

41. Before referring to ***D.S. Nakara's*** case we would first take on record the meaning and concept of the word "pension" in the Indian context. The meaning, concept, and content of what is meant by the term "pension" are rather difficult to define in a straitjacket. In developed countries, pensions are mostly contributory in nature, non-contributory pensions being restricted to invalidity payments in the nature of social security measures rather than terminal service benefits. Item 17 of Article 366 of the Constitution defines the expression "pension" for the purpose of Constitution as contributory or of any kind whatsoever, payable to or in respect of any person, including retired pay, gratuity and any sum or sums payable by way of return to subscription to a provident fund. However, in service law, the expression "pension" in India as defined means a series of periodic payments, usually payable monthly for life,

for past services of himself or another. This concept involves recognition of the principle that there is an obligation to help the person who was in public employment and has reached the age of superannuation or incapacitated from rendering further service. The principle is that an employee should be paid compensation for the gradual destruction of his wage earning capacity in the course of work. The aim is to provide social security in old age.

42. In ***Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh & Ors.,*** (2011) 11 SCC 702, the Supreme Court referred to the earlier case law dealing with and explaining the expression "pension" and also the text book definitions of the said term, and had held as under:

> "**39.** Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependants of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. Like CPF, the object of providing pensionary benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from the service. The Government's/employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee.
>
> **40.** In *Deokinandan Prasad* v. *State of Bihar* [(1971) 2 SCC 330] , this Court has held:

> "*31.* … pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant."

43. In ***D.S. Nakara*** (supra), the subject matter of challenge was the office memorandum dated 25th May, 1979 issued by the Ministry of Finance, Government of India, propounding the modified formula for computation of pension. The formula made applicable from 1st April, 1979 had liberalized the computation of pension on the following accounts:-

(i) Application of slab system for calculation of pension;

(ii) Calculation of average emoluments over the preceding 10 months instead of 36 months;

(iii) Benefit of qualifying service up to 33 years instead of 30 years; and

(iv) Raising the ceiling limit of pension of Rs.1500/- per month.

The liberalized formula was made applicable to Government servants, who were in service on 31st March, 1979 or had retired after the said date. The liberalized formula was not applicable to employees who had retired earlier, and were to be paid pension on the basis of computation and average emoluments of 36 months' salary preceding the date of retirement. After exhaustive review of decisions explaining Article 14 of the Constitution and referring to the concept and meaning of the term 'pension' it was held that there was no reason for choosing 1st April, 1979 as the cut-off date for application of the liberalized formula. The cut-off date was struck down as invalid observing that pensioners constitute one class. The Supreme Court however did note that this was not a case of a contributory scheme or a pension fund from

which alone the pension was to be disbursed. Neither was it a case where a new retiral benefit was awarded. It was a case of an upward revision of an existing benefit. Argument of the Government regarding non availability or paucity of funds was rejected, observing, that it would make a marginal difference in the case of past pensioners, because the emoluments were not revised.

44. The ratio In ***D.S. Nakara*** (supra) was explained appropriately by the Constitutional Bench decision in ***Krishena Kumar*** (supra) wherein cut-off date, to be covered by the provident fund scheme or pension scheme, was challenged. ***D.S. Nakara's*** (supra) decision was distinguished. The persons covered by the provident fund scheme and those covered by the pension scheme did not form a homogeneous class. Therefore, basis for applying Article 14 between the two distinct groups was not there. The fixation of cut-off date, to provide an option to be covered under the pension scheme, was based on rational differentiation. Thus, fixing a cut-off date for grant of new service benefit would not tantamount to violation of Article 14.

45. More pertinent, and issue specific, is the third Constitutional Bench decision in the case of ***Indian Ex-Services League*** (supra). The petitioners therein had relied on ***D.S. Nakara's*** case(supra) to allege discrimination for the pensioners constitute a homogeneous class and no distinction could be made between pensioners who had retired earlier or after a particular date. The concept of pension in the Indian context, was additionally relied. The contention asserted was that the retirees, who held the same rank irrespective of the date of retirement must get the same amount of pension. The Constitutional Bench held that in

D.S.Nakara (supra), the portion of the Memoranda by which the benefit of the liberalized pension scheme was confined to persons retiring on or after the specified date was struck down and the benefit was extended to all retirees, irrespective of the date of retirement. The ratio related to the mode of computation of pension and not revision of emoluments of earlier retirees. In other words claim for "One Rank One Pension" irrespective of date of retirement, was rejected in ***Indian Ex-Services League*** (supra) by the Constitution Bench. ***D.S. Nakara's*** case (supra) was distinguished on the ground that this decision related to computation of pension applying a more liberalized formula under which "average emoluments" were determined with reference to 10 months' salary instead of 36 months' salary coupled with slab system and raising the ceiling limits for pension. The benefit, it was held, must be given to all retirees uniformly, as the mode of computation of pension was liberalized. The mode of computation would apply to all the retirees, irrespective of the retirement date. The earlier retirees would not be entitled to arrears prior to the specified date, but their pension would be revised according to computation made in accordance with the liberalized formula from the date it was applicable. If the pensioners are and form one class, then computation of pension cannot be by applying two different formulae, thereby inflicting unequal treatment solely based upon date of retirement. In ***Indian Ex-Services League*** (supra)**,** it was held:-

> **"11.** The conclusion of the Constitution Bench in *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] was that the benefits of liberalisation and the extent thereof given in accordance with the

liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined only to the persons who retired on or after the specified date because for the purpose of grant of the benefits of liberalisation in pension, all retirees constitute one class irrespective of their date of retirement. In order to give effect to this conclusion the only relief granted was to strike down that portion of the Memoranda by which the benefit of the liberalised pension scheme was confined only to persons retiring on or after the specified date with the result that the benefit was extended to all retirees, irrespective of their date of retirement. Once this position emerging from the decision in *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] is borne in mind, the fallacy in the petitioners' contention in these writ petitions becomes obvious and their claim based only on *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] is untenable.

12. The liberalised pension scheme in the context of which the decision was rendered in *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last ten months' salary instead of 36 months' salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within

that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in*Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] and no more.

14.*Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] decision came up for consideration before another Constitution Bench recently in*Krishena Kumar* v. *Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112] . The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in *Nakara*[(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] , it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] decision as one of limited application and there is no scope for enlarging the ambit of that

> decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different."

46. ***Indian Ex-Services League*** (supra) case relates to Army personnel. ***K.L. Rathi*** (supra) is a case relating to retired government employees. Relying upon the decision in ***D.S. Nakara*** (supra) the plea was that on revision of pay scales of in-service employees there should be revision of pension for the retirees, for all the pensioners of the same rank were entitled to the same pension irrespective of the date of retirement. The contention was rejected observing that the basic pension is computed on the average emoluments drawn during the last 10 months of service. The said rule is applicable to all pensioners irrespective of the date of retirement. This definition of emoluments in force at the time of retirement of the employees did not undergo a change. The same formula applies to the entire class of retirees, irrespective of the date of retirement. ***D.S. Nakara*** (supra) case did not strike down the definition of emoluments as prescribed in the pension rules or hold that the pension was to be recalculated on the basis of revised pay. Benefit of the liberalized formula based on the last 10 months' emoluments was applied universally. This meant those who were drawing higher emoluments as salary would get higher pension. In clear and categoric terms, it was held that ***D.S. Nakara*** (supra) case does not lay down that same amount of pension must be paid to all persons retiring from Government service, irrespective of date of retirement. Reference was

made to other two Constitutional Bench decisions in ***Krishena Kumar*** (supra) and ***Indian Ex-Services League*** (supra).

47. A lucid and clear pronouncement is to be found on the said subject in the ***State of West Bengal*** (supra). This decision refers to the earlier decisions and also judgment in the case of ***Union of India Vs. P.N. Menon & Ors.*** (1994) 4 SCC 68**,** wherein vide Office Memorandum dated 25.05.1979 a portion of the dearness allowance was to be treated as pay in respect of the government servants, who had retired on or after 30th September, 1977. This was challenged as discriminatory to those who had retired prior to 30th September, 1977. The challenge was rejected because it was not arbitrary or discriminatory and therefore violating Article 14. The decision to merge a part of dearness allowance to the paid pay, it was observed, was taken in view of the recommendation of the 3rd Pay Commission. Thus, the decision to fix the cut-off date with the revision of pay was not arbitrary, as the cut-off date on some reasonable or rational basis has to be fixed.

48. ***The State of West Bengal*** (supra) holds that merger of dearness allowance into pay would amount to a new retirement benefit, whereas ***D.S. Nakara's*** (supra) ratio and mandate was limited to upward revision of an existing benefit. The challenge made by the retired employees had failed to distinguish between the in force pension scheme and the revised pay scale. When there is a revision of pay, it applies to existing employees or in some cases even to retired employees, when given a retrospective effect. However, this does not mean that the pension should be revised on the basis of the new or upgraded emoluments. Unless there is a change in emoluments as defined in the pension

scheme, the basic pension payable would continue to remain as per the pay drawn by the employees immediately before his retirement. It was held:-

> **"20.** What is noticeable is that the definition of the word "emoluments" in the 1971 Rules was not amended. As such pension continued to be calculated on the basis of emoluments as defined in the 1971 Rules, namely, the last pay drawn immediately prior to retirement. The pay of the pre-1986 pensioners was not revised. The Third Pay Commission had given a reason for choosing 1-1-1986, as the cut-off date. As held in *Krishena Kumar* v. *Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] and *Union of India* v. *P.N. Menon*[(1994) 4 SCC 68 : 1994 SCC (L&S) 860 : (1994) 27 ATC 515] merely because a cut-off date is fixed would not make the exercise invalid although persons in the service immediately before the cut-off date would be deprived of the benefit of the revised scales of pay. It would depend upon the relevancy of the consideration underlying the choice of such date. The reason stated by the Third Pay Commission cannot be said to be arbitrary or irrelevant.
>
> **21.** Because the scales of pay had been revised from 1-1-1986, the recomputation of pension for such employees as had been granted the revised scales of necessity was limited to the same cut-off date. All that the impugned Memorandum No. 4056-F dated 25-4-1990 did was to recompute the benefits in favour of post-1-1-1986 retirees according to the existing formula as provided by Memorandum No. 7530-F and No. 7531-F, both dated 6-7-1988. The same formula continues to be applied to the pre-1986 retirees. The difference between pre-1986 pensioners and the post-1986 pensioners is only on account of the revision of pay scales and not on account of failure of the State Government to equitably apply the liberalised Pension Scheme formula. The quantum of the

emoluments formed no part of the formula for grant of pension during 1986 to 1995."

49. We would now refer to some of the judgments of the retired employees and their associations and see to what extent the ratio in ***Indian Ex Services League*** (supra) and other decisions have been differed from or distinguished and on what grounds and for what reasons.

50. We would begin by referring to ***K.J.S. Buttar Vs. Union of India & Anr.*** 2011 (11) SCC 429. In the said case the appellant, who was an ex-Captain in the Indian Army, in view of injury attributable to military service was entitled to pension assessed on the degree of disability of 50%. However, vide the Circular and Notification dated 31st January, 2001 the degree of disability for the injury was raised to 75% w.e.f. 1st January, 1996. The said letter had also stipulated grant of service element of full 10 years of service instead of 2 years and revision of the rates of disability pension w.e.f. 1st January, 1996. The Supreme Court accepted the contention of the appellant, i.e. the retired employee, that he would be entitled to revision as prayed and his disability should be treated as 75% instead of 50%, observing that the letter dated 31st January, 2001 would be applicable not only to those officers, who had been invalidated out of service after 1st January, 1996, but also to those who were invalidated earlier.

51. This case, we would observe, is again a case of enhancement of existing pensionary benefits covered by the decision in the case of ***D.S. Nakara*** (supra). It relates to calculation of the disability factor and not parity of emoluments. By the letter/ instructions dated 31st January, 2001, it was

held that where disability was assessed between 50 and 75 percent the same would be treated as 75%. As this instruction was made applicable w.e.f. 1st January, 1996, it was held that the appellant would be entitled to benefit of the said instructions from 1st January, 1996 and it did not matter, and made no difference, whether the employee was invalidated from service before or after 1st January, 1996.

52. In ***Kallakkurichi Taluk Retired Officials Tamil Nadu and Ors. Vs. State of Tamil Nadu*** (2013) 2 SCC 772, the Supreme Court was dealing with a case where retirees post 1st June, 1988 were drawing a lower pension on account of the rule position relating to merger of fixed percentage of dearness allowance with dearness pay for calculating pension. In this context, the Supreme Court reversed the decision of the Division Bench of the High Court and held that there was discrimination as two different parameters for computation cannot be applied for the purpose of adding component of dearness allowance as pay for computing the emoluments. The purpose of adding the component of "dearness pay" to wages for calculating pension was to offset the effect of inflation and in this context it would be odd that the retirees prior to 1st June, 1986 should be given higher pension than those who retire immediately post the said date. This objective had to be kept in mind while deciding the controversy whether the Rule was arbitrary or violative of Article 14. There was historical pattern and exemplar of inclusion of "dearness allowance" as "dearness pay" for calculating pension. The State, vide the Rules, had given effect to equation from time to time. Whenever there was discrimination, on account of addition of dearness allowance in pay in the computation of pension, by judicial

intervention parity was restored. Thus, where the rules or government orders grant/require computation by adding "dearness allowance" to "dearness pay" in the fixed percentage, it must be applied to all pensioners, and none should be discriminated. Having so observed, the Supreme Court was conscious and had added the caveat that no employee has the right to draw dearness allowance as dearness pay till such time the State Government decides to grant and treat dearness allowance as dearness pay. The (State) Government has the right to choose whether or not dearness allowance should be treated as dearness pay and in that context the Supreme Court had clarified:-

> "**37.** The issue in hand needs to be examined from another perspective as well. It must be clearly understood that no employee has a right to draw "dearness allowance" as "dearness pay" till such time as the State Government decides to treat "dearness allowance" as "dearness pay". And therefore, the State Government has the right to choose whether or not "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government not to treat any part of "dearness allowance" as "dearness pay". In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government to treat a fraction, or even the whole of "dearness allowance" as "dearness pay". Based on Rule 30 of the Pension Rules, it is clear that the component of "dearness pay" would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of "dearness allowance" would be treated as "dearness pay", it cannot discriminate between one set of pensioners and another, while calculating the pension

> payable to them (for the reasons expressed in the preceding paragraphs). Of course, a valid classification may justify such an action. In this case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment."

53. This brings us to the decision of the Supreme Court in ***Union of India & Anr. Vs. S.P.S. Vains & Ors.*** (2008) 9 SCC 125. Facts of this case are rather peculiar, for upon the implementation of the 4th Pay Commission Recommendation, Brigadiers in the highest bracket were getting higher salary than the starting salary in the promotional rank of Major General. Resultantly, the Brigadiers who were drawing more pay than the Major Generals were receiving higher pension or family pension. Noticing that the post of Brigadier was/is a feeder rank for promotional rank of Major General, the Government on the recommendation of the 5th Pay Commission had corrected the unintended anomaly. To correct this aberration, special instructions were issued that the initial pay at the rank of Major General would be fixed at the stage next above the pay notionally arrived at by increasing his pay, including rank pay of Brigadier, by one increment in the revised scale at the relevant stage, without retrospective effect. In this context reference was made to ***D.S. Nakara*** (supra) and the argument of the retired employees, i.e. retired Major Generals was accepted. We are in agreement with the counsel of the Corporation that the ratio and mandate of this decision is confined to the peculiar factual matrix of the said case. This decision does refer to ***D.S. Nakara*** (supra) and states that there were several other judgments, in which the principle expounded was followed. The judgment has not quoted and referred to these decisions, which in the said factual context

were not required to be quoted. We do not think the aforesaid decision propounds or exposits a ratio contrary to the ratio of the Constitutional Bench in ***Krishena Kumar*** (supra) and ***Indian Ex-Services League*** (supra) or the decision in ***K.L. Rathi*** (supra) and the ***State of West Bengal*** (supra)

54. In ***A.N. Sachdeva (Dead) by Legal Representatives and Ors. Vs. Maharishi Dayanand University, Rohtak and Anr.***, **(2015) 10 SCC 117**, the issue involved was different. The retired employees were being denied the benefit of counting past service in Kurukshetra University/Punjab University for computing qualifying service for purpose of pension after they were absorbed and became employees of the Maharishi Dayanand University, Rohtak. In this context, several decisions were referred to and the issue was decided in favour of the retired employees. This decision would not be of any help and assistance to the retired employees/associations in the present controversy.

55. Our attention was also drawn to ***B. Prabhakar Rao and Ors. Vs. State of Andhra Pradesh and Ors.***, 1985 Supp SCC 432. This again was a peculiar case relating to the State of Andhra Pradesh where first the age of retirement was reduced to 55 years from 58 years and then restored to 58 years in spite of the fact that the Supreme Court had in an earlier decision upheld the reduction of retirement age to 55 years. In this context, ***D.S. Nakara's*** case (supra) was referred to observe and hold that different treatment could not be accorded to those who had retired before and after a specified date as the choice of date was arbitrary, for

classification was based upon fortuitous circumstance relating to the date of retirement. Reference was made to the principle of reasonableness of classification and its nexus with the object of the legislation. The argument pertaining to the administrative chaos was rejected observing that the person who had stirred-up the hornet's nest, i.e. the State government, cannot complain of being stung.

56. ***Dhan Raj and Ors. Vs. State of J & K and Ors.***, (1998) 4 SCC 30 was a case of Drivers of the State Government, who were seeking pensionary benefits in terms of government order dated 3rd October, 1986, though they had retired prior to 9th June, 1981. The Supreme Court had noticed that the Government had oscillated on the question of grant of pensionary benefits. There was also a change in the status, as at one time the State undertaking was a department of the State Government. On the interpretation of the relevant orders, it was held that all retirees in the said case including those who had retired prior to 9th June, 1981, would be entitled to pensionary benefits. Recording the said finding, the stand of the State Government was rejected. In this context, reference was made to the ratio in ***D.S. Nakara*** (supra) to hold that the restrictive interpretation placed by the State Government for its own employees was not correct.

57. Reliance was placed on the decision in ***State of Rajasthan and Anr. Vs. Prem Raj***, (1997) 10 SCC 317, which refers to ***D.S. Nakara***, (supra) ***Krishena Kumar*** (supra) and ***Indian Ex-Services League*** (supra) and it was observed that for deciding the controversy in question in the said case it was not necessary for the Supreme Court to further delve into the

question as to the extent to which the ***D.S. Nakara*** (supra) has been followed or explained. Eluding to the decision in ***State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti,*** **(1995) 2 SCC 117**, the Court observed the ***D.S. Nakara*** (supra) has not been given a complete go by.

58. ***D.S. Nakara's*** case (supra) dealt with a situation where all Central Government pensioners, regardless of the date of retirement, were held to be entitled to computation of pension under the liberalized pension formula with effect from 1st April, 1979.

59. The factual position at the time when ***D.S. Nakara*** (supra) was pronounced should be recalled. The Central Government had earlier extended benefit of minimum pension to existing pensioners, which was mere Rs.25/- as on 1st January, 1964 and stood enhanced to Rs.160/- as on 1st April, 1983. However, no details of the basis adopted for fixing minimum pension are available. The First Pay Commission had recommended merger of dearness allowance with the basic pay from time to time. There were two such mergers of dearness allowance with basic pay effective from 30th September, 1972 (index average 272) and 31st January, 1982 (index average 320) before the pronouncement in ***D.S. Nakara*** (supra). This merger of dearness allowance was not carried out with effect from the date when the particular index average was reached, but from a subsequent date and was only made applicable to those who retired after that date. The Supreme Court was certainly conscious and aware that employees retiring from broadly comparable posts at different times were receiving different amounts of pension. These differences were due to the difference in emoluments drawn by

the retirees at the time of retirement and also on account of merger of dearness allowance with basic pay or due to interim relief granted from time to time. This was not struck down in the case of ***D.S. Nakara*** (supra). In fact, it was never made the subject matter of challenge.

60. The aforestated decisions are not contradictory or laying down different ratios. The principle enunciated in ***D.S. Nakara*** (supra) holds that formula for payment or computation of pension when liberalised has to be uniformly applied to all classes of pensioners except when classification made is with reference to the cut-off date that can be justified on a rational or a reasonable basis and does not lead to violation of Article 14. Equality doctrine and Article 14 are not violated when the basic pension of the retired employees is not enhanced when emoluments of the in service employees are revised. ***D.S. Nakara's*** case (supra) does not direct payment of equal amount of pension to all pensioners regardless of the date of retirement. In ***D.S. Nakara's*** case (supra), the Constitution Bench had observed:

> "49. …In our opinion, it would make a marginal difference in the case of past pensioners ***because the emoluments are not revised***. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation."
>
> (emphasis supplied)

Thus, ***D.S. Nakara's*** case (supra) had held that the formula computing pension by taking average of last ten months' emoluments would be applied universally. It did not lay down that quantum of emoluments drawn during the last ten months for each employee must be taken as uniform. The emoluments have to be calculated according to the pay scales applicable at the time of retirement.

In ***Indian Ex-Services League*** (supra) it was held:

> "14. … *Nakara decision* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] (is) one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different."

The Pension Rules do not postulate increase in pension payouts for retired employees upon wage revision. The Pension Rules to offset the adverse impact of inflation provide for dearness relief based upon price index. This cannot be faulted and struck down as violating Article 14. Thus, courts have recognized that amount of pension for retirees from the same post can be different.

61. The Fourth Pay Commission Report in paragraph 10.10 (Part-II) had observed that any attempt to equalize pension with reference to the revised scales of pay would, in fact, amounts to retrospective application of these scales of pay and had referred to the decision of the Supreme Court in SLP 14179-80/1985, ***State Government Pensioners***

Association and Ors. Vs. State of Andhra Pradesh while dealing with the revision of death-cum-retirement gratuity already received by past retirees in the following words:-

> "Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent and save, on the basis of the then prevailing cost of living structure and pay-scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made."

The suggestion for treating the full dearness allowance/relief drawn from time to time as emoluments was rejected by the Fourth Pay Commission on the principle that it would result in uneven amounts of pension, not only at different levels, but even employees drawing same basic pay, depending upon the date of retirement. We have referred to the Fourth Pay Commission report to highlight the divergent view expressed and not to accept similarity and equivalence between the Central Government pensioners and the Corporation pensioners. There are marked and important differences, which we have highlighted subsequently.

62. In the present case, challenge to the expression/date "on or after the 1st day of August, 1997" in paragraph 3(A) of Appendix IV of the Pension Rules is futile and pointless. Deletion or striking out of the expression "on or after the 1st day of August, 1997" would not result in the outcome sought by the retired employees/associations. The prayer is for

revalorization of basic pension by merging dearness relief paid upto index of 1740 points into basic pension or by notional increase in emoluments. The prayer would require re-writing the Pension Rules including the definition of "average emoluments" and Rule 35, 37 and 38 relating to computation of the amount of pension, dearness relief, and re-calculation of average emoluments for the period of 10 months. In case we accept the contention of the retired employees/associations, whenever there is a revision in pay after a period of every 5 years, all retired employees would be entitled to revalorization of basic pension on the basis of enhanced pay scales, notwithstanding the fact that they have retired prior to enhancement of pay scales. For reasons stated, this challenge and submission predicated on Article 14 is to be rejected.

63. The next question relates to the adequacy of pension and violation of Article 21. The question of adequacy of pension is rather difficult to decide by a judicial verdict unless the amount or figure is shown as grossly inadequate, unconscionable or an apparent case of arbitrariness and irrationality resulting in violation of Article 14 can be deciphered and is made out. As in the case of pay fixation, these are matters in the executive domain and relate to policy. While deciding the question of quantum of pension, multiple factors such as the age of retirement, the length of service of the employee, financial condition of the employer, concept of “living wage” etc. have to be taken into consideration. Pay at the time of retirement has been the factor under the pension rules for the Central Government, State Governments as well as the Corporation. Pension, more often, is calculated on the last pay drawn over the

prescribed period. (see paragraph 2.35 of the Fourth Central Pay Commission's Report, Part-II relating to pension).

64. Article 39 (a) of the Constitution under the Directive Principles stipulates that the State shall secure that the citizens have the right to adequate means of livelihood. The Directive Principles though not conferring a legal right require and remind the State of its duty and obligation to provide means of adequate pension and other terminal benefits. Article 43 of the Constitution refers to "living wage". The concept of "Universal Basic Income" and its recognition as a legal right is under debate and consideration.

65. The question of adequacy or the amount of pension should also take into account that a prudent person would make some personal savings for social security as well as old age. One should take into consideration the savings, which an employee makes for social security etc. so as to approximate the income needed to maintain the standard of living without being excessive. The benefit of service pension is confined to about 1 / 2 % of the Indian population. Overwhelming masses, who are either self-employed or those employed in the private sector, have to provide for themselves and their families. They rely on savings for old age and social security. We cannot ignore these facets and aspects when the question and clamour for grant of additional or new pensionary benefits is raised by the fortunate miniscule minority on the precept of violation of the Right to Life under Article 21. It is not uncommon when such claims are made, not to account for the assets, savings, and capital

created from the earnings/salary. These assets are excluded and not adverted to, as they are meant for inheritance by the next generation.

66. Traditionally, pensions were non-alterable because the value of the money was stable. However, in the Indian context, pensions normally are revised or increased in line with the rise in the cost of living or inflation. To what extent there would be adjustment would again depend upon a number of factors. We do not think that a fixed criteria or formula, which is applicable across the board or universally, can be adopted and applied.

67. During the course of the hearing, and in the written submissions, counsel for the retired employees/associations had drawn our attention to the following tables:-

Period of Retirement	01.04.1993 to 31.07.1997	01.08.1997 to 31.07.2002	01.08.2002 to 31.07.2007	01.08.2007 to 31.07.2012	01.08.2012 to 31.01.2013
Post of Retirement					
Executive Director	20920	31938	36249	48308	55618
Zonal Manager	19704	28690	32873	43373	49918
Deputy Zonal Manager	18623	25713	29622	38721	44548
Divisional Manager	17723	23209	26851	34609	39803

Assistant Divisional Manager	17723	21991	25504	32615	37503
Admin Officer	16390	19942	22812	28628	32903
Assistant Admin Officer	15976	18968	21652	27116	31158
Higher Grade Assistant	14513	15152	20323	21840	25070
Assistant	12777	12174	17490	17487	20040

An illustration of a Zonal Manager retiring on 30.06.1997 and another retiring on 31.08.2016 is given below:-

Cadre	Date of Retirement	Basic Pension	No of DR Slabs for the Period upto 31/8/2016	DR per Slab	Total DR Paid	Basic Pension + DR as in September 2016
Zonal Manager	30/6/1997	6325	1278	15.0325	19212	25537
Zonal Manager	31/8/2016	49918	388	49.918	19368	69286

”

It was accordingly submitted with reference to the first table that an employee who had retired from a higher post of Executive Director between 1993 to 1997 would be getting pension, which is almost equal to the pension payable to an Assistant, who had retired between 1st August, 2012 to 31st January, 2013. It is also highlighted that there is a huge difference between the pension payable to an Assistant, who had retired between 1st April, 1993 to 31st July, 1997 and 1st August, 2012 to 31st January, 2013. This variation, it was urged, violates Article 14 as well as Article 21 of the Constitution.

68. Violation of Article 21 is not made out with reference to the aforesaid tables. Pensions between Rs.13000 to Rs.21,000 a month do not violate Article 21 so as to affect the right to life. In the absence of cogent data and figures, we would not hold that the pensions payable are grossly inadequate so as to affect the right to life. The challenge is not that the amount being paid as pension is meager and piteous, but that the pension being paid is less than what is paid to others. The argument would have to be tested under Article 14 and not under Article 21 of the Constitution. Violation of Article 14 would not be made out for the reasons set out above, as was decided by the Constitution Bench in ***Indian Ex-Services League and Anr.*** (supra) , and ***K.L. Rathi*** (supra) and ***The State of West Bengal*** (supra). We are bound by the said decisions, which interpret ***D.S. Nakara*** (supra) and elucidate the ratio. The second table again would not carry the case for the same reason. The table does not take into account the fact that a Zonal Manager who retired on 31st June, 1997 or 31st August, 2016 is

entitled to fixation of pension on the basis of "emoluments" as defined in the Pension Rules.

69. There is another reason which weakens the retired employees' case, though we accept this would not be a ground to decisively reject the challenge relying on Article 14 of the Constitution. Employees, who had retired before 1st November, 1993 had to exercise option in writing to be covered under the Pension Rules within the period stipulated and were also required to deposit the Corporation's contribution to the Contributory Provident Fund with simple interest @ 6% per annum. For employees who had retired on or after 1st November, 1993 or before the notified date, i.e. 28th June, 1995, the option was required to be exercised and Corporation's contribution to the Provident Fund was to be refunded along with interest @ 12% per annum. The employees already in service were also to exercise the option and authorize the Trust of the Provident Fund to transfer the entire contribution of the Corporation in their Provident Fund along with interest accrued to the credit of the Fund constituted under the Pension Scheme.

70. The Pension Scheme was not compulsory but was optional, for the retirees, who have made the present challenge.

71. The petitioners/unions were conscious and had the knowledge that every 5 years there would be a revision of pay-scales and as per the Pension Rules, the employees, who had retired prior to the revision, would not get the benefit of the said upgraded or revised scales. The pension would be computed with reference to the pay drawn or average emoluments during the last 10 months. In order to off-set the

inflationary affect and fall in the value of money, the Pension Rules had postulated dearness relief stipulated as per the scale or formula in Appendix-IV. The purpose and object of Rule 37 read with Appendix-IV is to grant dearness relief on account of inflation and rise in prices. Dearness relief neutralized the inflationary effect to ensure that the pension is adequate and fair.

72. We now proceed to examine the difference in neutralization by grant of dearness relief and whether in this context Appendix IV violates Article 14 and infringes Right to Equality. The Pension Rules notified on 28th June, 1995 in Appendix-IV noted the difference in the pension payable to prior and post 1st November, 1993 retirees. This is the date on which the Pension Rules were deemed to have come into force. The AICPI-IW index on 1st November, 1993 was 1148. This index number became the basis for computing dearness relief in paragraph 2 of Appendix-IV. Paragraph 1 of Appendix-IV was applicable to employees, who had retired before the 1st day of November, 1993 (and after 1st January, 1986) in whose case the AICPI-IW Index of 600 points was applicable and made the basis for calculation of dearness relief. Dearness relief payable under paragraph 1 in Appendix IV is as under:-

"

Basic Pension	**Rate of Dearness Relief**
First 1250	0.67% of Basic Pension

next 1251 to 2000	0.55% of Basic Pension
next 2001 to 2130	0.33% of Basic Pension
Above 2130	0.17% of Basic Pension

”

Dearness Relief payable under paragraph 2 in Appendix IV is as under;-

“

Basic Pension	**Rate of Dearness Relief**
First 2400	0.35% of Basic Pension
next 2401 to 3850	0.29% of Basic Pension
next 3851 to 4100	0.17% of Basic Pension
Above 4100	0.09% of Basic Pension

”

73. Paragraph 3(A) in Appendix-IV regulates dearness relief for employees who have retired or died on or after 1st August, 1997. The same is payable for every 4 points rise over 1740 points in the quarterly AICPI-IW @ 0.23 percent of the basic pension.

74. As per paragraph 1 of Appendix-IV, the neutralization formula with reference to pensioners between 1st January, 1986 and 1st November, 1993 for basic pension for first Rs. 1250 per month is 0.67%, for pension in excess of Rs.1250 upto Rs. 2000 is 0.55% and for pension in excess of Rs.2000 till Rs. 2130 is 0.33%. Thereafter it gets reduced to 0.17% for the basic pension in excess of Rs.2130. For amounts upto

Rs.2130 the neutralization in paragraph 1 is higher than @ 0.23% stipulated in paragraph 3(A). However, neutralization benefit of 0.17% for payments in excess of Rs.2130 is lower than 0.23% in paragraph 3(A).

75. Similarly, the equalization of 0.23% of the basic pension for employees, who had retired or died on or after 1st August, 1997 till 31st July, 2002 for every 4 points over 1740 in the quarterly average of the AICPI-IW is higher than the neutralization provided in paragraph 2 for pension amount between Rs.3851 to Rs.4100 and above Rs.4100. Equalization in these amounts is between 0.17% and 0.09% of basic pension.

76. This, in our opinion, would fall foul and violate the ratio in the ***D.S. Nakara's*** case (supra). Pensioners prior to 31st July, 1997 face a greater or harsher impact of inflation as their basic pension is lower. Neutralization of rate of dearness relief in their cases cannot be lower than that of the retirees post 31st July,1997. This unequal treatment in computation to the detriment of pre 31st July, 1997 retirees results in discrimination and thus violates Article 14 of the Constitution. Thus, grant of higher equalization @ 0.23% of basic pension in paragraph 3(A), without extending this benefit to those in paragraphs 1 and 2 is unreasonable and discriminatory violating Article 14. Retired employees covered under paragraphs 1 and 2 are entitled to neutralization at ratio/scale as applicable and given to employees retiring post 31st July,1997. Equalization under paragraphs 1 and 2 should not be less or lower than the equalization provided in paragraph

3(A). This finding would be in consonance with the reasoning and the ratio in ***D.S. Nakara*** (supra) as expounded and explained subsequently in other decisions in ***Krishena Kumar & Ors***., (supra), ***Indian Ex-Services League***, (supra), ***K.L. Rathi*** (supra), etc. The equalization or neutralization criteria specified and fixed in paragraphs 1, 2, and 3(A) relates to the matter of computation, and takes care of the effect of fall of the value of money and inflation. This being a matter of computation, it would be wrong and inequitable not to grant benefit of higher scale equalization as stipulated in paragraph 3(A) wherever it is more beneficial.

77. The consequence of the difference in equalization ratio is that the retirees prior in point of time are getting the lower benefit of equalization in percentage terms as compared to retirees, who were getting a higher basic pension.

78. We are aware that in paragraphs 1 and 2, equalization criteria has been fixed in a descending scale. There is higher equalization on the initial amounts till Rs.2130 in paragraph 1 and Rs.3850 in paragraph 2. This would not make any difference, for we are concerned with reference to paragraphs 1 and 2 with cases of equalisation above the said figures, which must correspond and meet the equalisation given to pensioners under paragraph 3(A), who had retired subsequently after the 1st day of August, 1997 and are in receipt of a higher basic pension.

79. For the identical reasons, the pensioners in paragraph 1 should not be given dearness relief at a rate lower than the pensioners in paragraph 2. The rate of dearness relief on amounts above Rs.2130/- till Rs.3850/-

fixed in paragraph 1 at 0.17% of basic pension shall be enhanced to the rate of 0.29% as specified in clause (ii) of paragraph 2. However, for pension in excess of Rs.2130/-, rate of 0.23% of basic pension as stated in paragraph 3(A) would apply, with effect from the applicable date.

80. We are aware and conscious of the fact that paragraphs 1 and 2 form part of the Pension Rules as originally enacted. We have, in our reasons, indicated and referred to the option exercised by the retirees covered by paragraphs 1 and 2. Nevertheless, we would not for this reason refuse to grant relief to the pensioners in paragraph 1 in case we find that the original rule itself is discriminatory and draws an artificial distinction to the detriment of those drawing lower pension. Reference to option exercised by the retirees is pertinent and relevant in the context of the prayer for revalorization of pension on account of increase in emoluments of in-service employees or uniform rate of basic pension, albeit would not be a ground to deny relief for apparent violation of Article 14 of the Constitution.

81. During the course of hearing, we had asked the Corporation to submit a table explaining what would be the affect in case benefit of 0.23% is given to the employees covered by paragraphs 1 and 2. Along with written submissions, the Corporation has filed annexures. As per Annexure A, an employee, who was entitled to basic pension of Rs.5000 on retirement would be entitled to pension after giving benefit of indexation in paragraph 1 of Rs.24,681.88 and in case percentage of 0.23% is computed on pension above Rs.2130, the pension would be enhanced to Rs.27,634.95. Similarly, in case of an employee covered

under paragraph 2, who was given an initial basic pension of Rs.5,000, his pension on indexation under paragraph 2 would be Rs.17,286.17, whereas in case he is given benefit of indexation of 0.23% on the pension amount of Rs.3851 and upwards, he would be entitled to pension of Rs.19,489.50/- Thus, on indexation of 0.23% on the higher amounts, the retirees covered under paragraphs 1 and 2 would get greater/higher benefit. They would be entitled to the said benefit.

82. The aforesaid direction would largely benefit the retirees on the upper end i.e. whose basic pension in case of paragraph 1 exceeds Rs.2130 or in paragraph 2 when basic pension exceeds Rs.3850. This direction would not help the retirees at the lower end where the basic pension was/is less than Rs.2131 or Rs.3851. We would accept the said position, but this would not deter us from passing the order on the ground that the upper end pensioners covered by paragraphs 1 and 2 are entitled to and would get the said benefit.

83. There is another aspect on which we feel the retired employees/associations should succeed. The retired employees/associations on being asked could not point the lowest pension being paid. Perhaps the retired employees at the lower end are not adequately represented in the associations and do not have the same "access". The Corporation was asked to specify the correct position and state the lowest/minimum amount of pension being paid under paragraphs 1 and 2. For the sake of convenience, we would like to reproduce the chart filed by the Corporation, with reference to the minimum pension prescribed under Rule 36 quoted above:-

"

CHART SHOWING PENSION PAYABLE IN LOWEST SCALE IN THE CADRE OF CLASS-IV								
PENSION OF EMPLOYEES RETIRED ON OR AFTER								
Minimum service required to earn pension is 10 years as per Rule 14		1st August 2012	1st August 2007	1st August 2002	1st August 1997	1st August 1992	1st August 1987	1st January 1986
Basic at the 10th stage in the lowest scale (sweeper) as per wage		15455	8175	5430	3670	2150	1090	575
Basic Pension for such a person is proportionately calculated = Avg of last 10 months basic divided by 2 x 10/33	1/2x 15455x 10/33	2342	1239	823	556	326	165	158
Minimum Basic Pension as per rule 36		3010	1880	1480	1100	720	375	375
Hence Basic Pension Payable		3010	1880	1480	1100	720	375	375
DR as on 1/8/2016		1168	2338	2619	1864.5	3221	3555	3211
Total Pension payable if the pensioner has put up 10 years		**4178**	**4218**	**4099**	**2965**	**3941**	**3930**	**3586**
if the person retired after putting in 33 years service as a sweeper his terminal Basic i.e. Maximum of sweeper scale		25275	13330	8560	5595	3140	1575	875
Pension as per Rule 35 Last 10 months avg basic /2	25275/2	12638	6665	4280	2798	1570	788	754
DR as on 1/8/2016		4903	8288	7573	7271	7023	7466	6456
Total Pension payable if the pensioner has put up 33 years		**17541**	**14953**	**11853**	**10068**	**8593**	**8253**	**7210**

"

HIGH COURT OF DELHI

The aforesaid table indicates that a employee who had retired on 1st August, 2012, at the lowest end would get a minimum pension of Rs.4178 on 1st August, 2016 if he has put in 10 years of service or Rs.17,541 if he has put in 33 years of service. On the same day, an employee retiring on or before 1st January, 1986 would be entitled would be entitled to a minimum pension inclusive of dearness relief of Rs.3586 if he has put in 10 years of service and Rs.7210 inclusive of dearness relief if he has put in 33 years of service. Minimum basic pension is fixed under Rule 36 and has been revised as per the table above from time to time, from Rs.375 to Rs.720 on 1st August, 1992, to Rs.1100 on 1st August, 1997, to Rs.1480 on 1st August, 2002, to Rs.1880 on 1st August, 2007 and to Rs.3010 on 1st August, 2012. Rule 36 states that the amount of minimum pension shall be the amounts specified above. Benefit of enhanced minimum pension on each occasion is with reference to the date of retirement. Prior retirees have not been extended benefit of the increased minimum pension. We do not think that benefit of minimum pension can be restricted with reference to the date of retirement. If it is so fixed and computed, it will violate the principle of equality as expounded in ***D.S. Nakara, Krishena Kumar, Indian Ex-Services League and K.l. Rathi*** (supra). Minimum pension is a matter pertaining to liberalisation in computation of pension, and not connected with emoluments. In ***D.S. Nakara's*** case (supra), one of the benefits granted to the pre 1st April, 1979 retirees was the benefit of removal of limit of Rs.1500 per month. Secondly, the method of computation with reference to 36 months was struck down, in favour of the period of 10 months for it was more

beneficial. On the same analogy and reasoning, we would hold that whenever minimum pension is enhanced, the said benefit would accrue and should be given to those who were drawing pension lower than the stipulated figure. Minimum pension would, to some extent, have reference to the amount required to be paid in order to simply sustain oneself. Thus, Article 21 of the Constitution would be attracted. Effect thereof would be that whenever there is an enhancement of minimum pension, the pensioners drawing less than the minimum pension would be entitled to the minimum pension so fixed. In other words, an employee, who was drawing and entitled to minimum pension of Rs.375 with effect from 1st August, 1986, would be entitled to minimum pension of Rs.720 with effect from 1st August, 1992, minimum pension of Rs.1100 with effect from 1st August, 1997, minimum pension of Rs.1480 with effect from 1st August, 2002, minimum pension of Rs.1880 with effect from 1st August, 2007, and minimum pension of Rs.3010 with effect from 1st August, 2012, if the pension being drawn inclusive of dearness relief on the respective dates was lower. Either/or principle, i.e. whichever is more beneficial, will apply. Enhancement cannot obviously work to the detriment of the post retirees.

84. With effect from the said dates on grant of the said benefit, the pensioners would be entitled to dearness relief as specified and applicable with effect from 1st August, 1992, 1st August, 1997, 1st August, 2002, 1st August, 2007 and 1st August, 2012, respectively. This would be fair and just and would be in consonance with the judgment

and ratio in ***D.S. Nakara*** (supra) as expounded and explained in ***Krishena Kumar***, and ***Indian Ex-Services League*** (supra).

85. The next issue that requires examination is whether there is any intelligible difference between pension payment to the Central Government employees and the retired Corporation employees or they form one class. In order to decide this question we would refer to the Pension Rules relating to creation of the pension fund for disbursement of pension. In ***D.S. Nakara*** (supra) in paragraph 45, the Supreme Court had stated that the liberalized scheme applicable to government employees was a non-contributory scheme and that was not a case of pension fund. The pension in the said case was a statutory liability of the government under the rules. Thus, a distinction was drawn by the Corporation between the said position, and pension payable under the pension fund in the present case.

86. There is a basic difference between pension payable to retired Corporation employees and the Central Government employees. Pension to retired Central Government employees is paid on current disbursement approach i.e. "pay as you go" and not by the funded plan approach. (The position has changed with effect from 01.01.2004 with the introduction of the National Pension Scheme.) Under the "pay as you go" approach, the retired employee is paid pension as and when it becomes due and the outlay being provided from the current operating sources/income. It is treated as a part of current salary costs. Under the funded approach, the employer estimates the amount of future expenditure for pension and sets aside the necessary funds for it. The

funds can be contributory or non-contributory i.e. provided for by the employer alone or both by the employer and the employee. In case of a business enterprise, the "Fund" approach is preferred for obvious reasons. It reflects the correct liability obligation existing on the said date. It prevents overstatement of operational profits.

87. Noticing the adverse effect of the ballooning pension bill, the Central Government has introduced the contributory National Pension Scheme with effect from 01.01.2004. Notwithstanding this change, the contributory National Pension Scheme was only introduced for employees joining the Corporation in 2010. Equating Central Government pensioners and Corporation pensioners as one single class would have multiple unforeseen and unacceptable consequences.

88. In the present case, with reference to the Pension Rules in question, it is noticeable that there is a pension fund which is created and has to be maintained in terms of Rule 5. The composition of the Fund as per Rule 7 consists of the contribution made by the Corporation @ 10% per month of the pay of the employee. The expression “pay” has been defined. Investment in annuities or securities purchased out of money of the Fund, along with interest earned thereupon, is added to corpus of the Fund. Under Clause (f) of Rule 7, the Corporation is mandated to provide an additional annual contribution in accordance with the provisions contained in Rule 11. Rule 11 stipulates that the Corporation shall cause an investigation to be made by an actuary into the financial condition of the Fund every year as on 31st March of every year. Thereupon, the additional annual contribution shall be made to the Fund to secure payment of the benefits under these Rules.

89. Rule 13 dealing with payments out of the Fund, has been quoted in paragraph 20 above. As per Rule 13, the Trust has to purchase annuities from the Corporation in respect of each employee or his family at the time he or his family becomes eligible for pension under the Pension Rules i.e. at the time of retirement or death of an employee. Clause (b) of Rule 13 states that the Trust shall, subject to availability of additional sums in the Fund to be provided by the Corporation, purchase additional annuities as and when it becomes necessary to revise upwards the benefits payable in accordance with the Rules. As per clause (c), in the event of the benefits payable under these Rules being revised downwards, the annuities purchased under these Rules would be deposited in the Fund. Thus, the Corporation has an obligation and liability to provide for corpus and contribute towards any shortfall.

90. As per the Corporation, they have been providing additional annual contribution under Rule 7(f) read with Rule 11 to the following extent:-

"

Financial Year	Contribution under Rule 7(a) (10% of the pay of the employer) (Crores) (A)	Additional Annual Contribution under Rule 7(f) r.w. Rule 11 (Crores)	Total Contribution (Crores) (A) + (B)
2013-14	272.77	4769.21*	5041.98
2014-15	340.37	4037.43**	4377.80
2015-16	1004.18# (1002.34)	3589.25***	4593.43# (4591.59)

* As per actuarial valuation report as on 31.03.2014.

** As per actuarial valuation report as on 31.03.2015.
*** As per actuarial valuation report as on 31.03.2016. "

91. The Pension Rules, for a good reason, do not follow the principle of "pay as you go". It provides for additional funding on actuarial basis every year. As per the Pension Rules annuities are purchased at the time of retirement or death of an employee. These annuities have a reference to the total amount, which would be payable to the retiree or his family in future. The annuities are subject to actuarial evaluation under Rule 11. Similarly amounts, if required, must be deposited in the Fund on the basis of actuarial evaluation for the in service pension optee employees. These additional funds have to be provided by the Corporation to the Trust. Thus, the contention of the Corporation that in case prayer made by the employees/associations is to be accepted and the Court directs revision of basic pension whenever there is a revision of pay-scales, influx of funds on actuarial valuation by the Corporation would be required is correct. The inflow would not be restricted to purchase of annuities for pensioners alone, and would account for in service employees entitled to pension and would take into consideration periodic increase in pay every five years. This may and would lead to substantial financial obligation/liability and necessary consequences. This would certainly have an adverse affect on the profit and loss account and balance sheet of the Corporation.

92. Thus, while we accept the contention of the retired employees/associations that the Corporation is to provide for funds in case there is a shortfall and the Corporation cannot shy away from the

said liability, we would accept the contention of the Corporation and the Union of India that revalorization of pension beyond the statutory or constitutional mandate has to be commercially viable. In other words, no employer can be expected to pay more than his capacity unless there is a statutory obligation or constitutional rights are violated. In the present context, in the absence of any statutory right, we would observe that in case there is invidious discrimination that violates Article 14, the Corporation would be liable. The challenge predicated on Article 14 of the Constitution for reasons stated above and thereafter has been accepted only in part.

93. We have already noticed and referred to Section 6 of the Act which states that the Corporation shall carry on life insurance business. Section 26 mandates that the Corporation shall, once at least in every two years cause an investigation to be made by actuaries into the financial condition of the life insurance business, including a valuation of the liabilities and submit the report of the actuaries to the Central Government. This valuation would include the pension liability. This is also stipulated in Rule 11 read with Rule 5(3) and (13) of the Rules.

94. Actuarial valuations in the life insurance business are the corner stone and edifice for a viable commercial venture. In the life insurance business accounts cannot be maintained on current basis. As noticed below, the law mandates and requires that accounts be maintained on actuarial basis, keeping in mind and accounting for future projections. The principles of actuarial valuation help determine and estimate the financial liabilities on the basis of certain assumption with regard to mortality rates, investment, trends, work force profile etc.

95. In ***A.K. Bindal & Anr. Vs. Union of India & Ors.***, (2003) 5 SCC 163, on the question of economic viability and the difference between the Central Government and a commercial enterprise, which is also a State, it was held as under:-

> "**18.** We are unable to accept the contention of Shri Venkataramani that on account of non-revision of pay scales of the petitioners in the year 1992, there has been any violation of their fundamental rights guaranteed under Article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this article has been expanded by judicial decisions. Right to life enshrined in this article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of a very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution in *State of Maharashtra* v. *Chandrabhan Tale* [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : AIR 1983 SC 803] . Similarly, unfair conditions of labour in *People's Union for Democratic Rights* v. *Union of India*[(1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473] . It has been held to embrace within its field the right to livelihood by means which are not illegal, immoral or opposed to public policy in *Olga Tellis* v. *Bombay Municipal Corpn.*[(1985) 3 SCC 545 : AIR 1986 SC 180] But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that

the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms. It will depend upon the nature of duty and responsibility of the post, the requisite qualification and experience, working condition and a host of other factors. The salary structure of similarly placed persons working in other public sector undertakings may also be relevant. The petitioners have not placed any material on record to show that the salary which is currently being paid to them is so low that they are not able to maintain their living having regard to the post which they are holding. The observations made in paras 276 and 277 in *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress* [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : 1990 Supp (1) SCR 142] strongly relied upon by learned counsel for the petitioners, should not be read out of its context. In the said case the Court was called upon to consider the constitutional validity of Regulation 9 of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, which gave power to terminate the services of an employee after giving one month's notice or pay in lieu thereof. The termination of services of some of the employees on the ground that they were inefficient in their work by giving one month's notice was set aside by the High Court as in its opinion Regulation 9(*b*) gave absolute, unbridled and arbitrary powers to the management to terminate the services of any permanent or temporary employee and, therefore, the same was violative of Article 14 of the Constitution. It was in this context that the aforesaid observations were made by one Hon'ble Judge in his separate opinion. The issue involved was not of revision of pay scale but that of termination of services which has an altogether different impact on an employee.

19. The contention that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to us. The question

of revision of wages of workmen was examined by a Constitution Bench in *Express Newspaper (P) Ltd.* v. *Union of India* [AIR 1958 SC 578] having regard to the provisions of the Industrial Disputes Act and the Minimum Wages Act and the following principles for fixation of rates of wages were laid down: (AIR p. 605, para 73)

"(*1*) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, *the capacity of the industry to pay is one of the essential circumstances to be taken into consideration* except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(*2*) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross-section of the industry; and

(*3*) that the proper measure for gauging *the capacity of the industry to pay* should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the *industry could pay higher wages without difficulty* and the possibility of increase in the efficiency of the lowest-paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product — no doubt against the ultimate background that the *burden of the increased rate should not be such as to drive the employer out of business*."

(emphasis supplied)

20. The same question was again examined in *Hindustan Times Ltd.* v. *Workmen*[AIR 1963 SC 1332] and the Court recorded its conclusion in the following words in para 7 of the Report: (AIR p. 1336)

> "7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, *the economic factors have to be carefully*

> *considered*. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, *and of giving careful consideration to the ability of the industry to pay*."
>
> (emphasis supplied)
>
> **21.** It may be noticed that in these cases the Court was considering the question of wage structure for workmen who belong to an economically poor section of society and providing them even a living wage was held to be a distant dream on account of economic considerations and also the capacity of the industry to pay."

We would, therefore, reject the argument advanced by the retired employees or some of the associations that economic viability would not be the relevant criteria.

96. On the question of financial impact, the retired employees/associations have raised multifarious arguments which are to some extent even contradictory. The Corporation's obligation to provide an upgraded equal pension uniformly, it was submitted, is a constitutional right and, therefore, it would not matter whether the Corporation incurs losses or requires funding from the Central Government. Others have suggested that in-service officers or retirees post 1997 getting higher pension should forego their rights to ensure uniformity of pension. These arguments would not justify issue of Court direction. The first submission must be rejected as insubstantial and fallacious, for reasons set out above and subsequently. The employees, both serving and retired, would not agree with the suggestion given by some of the retired employees/associations. These pensioners or in-service

employees are well entitled to claim their entitlement to pension under the Pension Rules, which would give them a statutory right.

97. Difference must be also drawn between a legal right and corresponding duty, and a moral obligation. This distinction is referred to in ***Krishena Kumar*** (supra) in the following words:-

> "**31.** The argument of Mr. Shanti Bhushan is that the State's obligation towards pension retirees is the same as that towards PF retirees. That may be morally so. But that was not the ratio decidendi of *Nakara*. [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] Legislation has not said so. To say so legally would amount to legislation by enlarging the circumference of the obligation and converting a moral obligation into a legal obligation. It reminds us of the distinction between law and morality and limits which separate morals from legislation. Bentham in his *Theory of Legislation*, Chapter XII, page 60 said:
>
> "Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumference."

98. On the question of financial implication, the Corporation submits that on actuarial basis if the stand of the retired employees/associations is accepted, the financial implication would be to the extent of Rs.32000 Crores. The Corporation filed an affidavit and an additional affidavit to explain and affirm their stand and position. The aforesaid figure consists of actuarial evaluation of the present obligation, i.e. present pensioners as well as in service pension optees. The Pension Scheme, itself, as well as Section 26 of the Act mandates actuarial valuation for the Pension Scheme. This being the position, we cannot ignore the financial impact and the corresponding payments that the Corporation will have to provide immediately for even in-service employees. The actuarial calculation will have to include the future pay rises. Indeed, if we accept the contention of the retired employees/associations, they alongwith other retirees and in service officers would be entitled to increased revalorization of the basic pension after every five years when the pay revision takes place. These are complex and intricate calculations. The contention of the employees/associations that out of Rs.32000 Crores, Rs.23583 Crores is the cost for upgradation of future pensioners and hence is not an immediate liability and will become due and payable at successive intervals and about Rs.8000 Crores is the present liability, has to be rejected as in view of the nature of the Corporation's business and the mandate in law that its accounts must be maintained on actuarial basis. The retired employees/associations have submitted that the entire cost of arrears towards the pensioners from 1997 to 2017 would be about Rs.3163 Crores, which would be one-fifth of the annual expenditure on salaries and other benefits for

the Financial Year 2015-16. Cost of future upgradation for the present pensioners is Rs.5135 Crores. The figures fail to account for similar benefit or equal treatment to which the in-service pension optees would be entitled. These have to be factored and accounted. If we proceed on the said basis and accept the said submission, the financial implication for the Corporation will be much more for the present in-service employees, who retire in future. They too would be entitled, on the basis of parity and equality, to the same benefit and advantage on pay increases every five years in future.

99. The retired employees/associations had submitted that the Pension Fund as per the report for the Financial Year 2015-16 had a corpus of about Rs.39000 Crores and the Fund also earns about 9% annual interest on the investments it makes. This Fund can be used for the present and the future pensions and not for any other purpose. Referring to Financial Year 2013-14, it is submitted that fund then had a Corpus of Rs.27000 Crores and had earned interest income of Rs.2440 Crores, while the annual liability towards pension outgo was merely Rs.839 Crores. This argument again fails to notice the difference between purchase of immediate annuity on the retirement of an employee or his death, which has been treated as an expenditure or outgo. The deposit or increase in the fund cannot be computed on the outgoings towards purchase of annuity. This is the reason why the Corporation has been depositing substantial amounts towards additional annual contribution in accordance with Rule 7(f) read with Rule 11 of the Pension Rules. This contribution is based on actuarial valuation to secure payment of the pensionary benefits under the

Pension Rules for both the in-service pension optees and retired employees. As per the Corporation, the cost of Rs.23583 Crores is recognised as a known liability and has to be funded immediately as per Projected Unit Cost Method prescribed in Accounting Standard AS-15. To highlight the aforesaid position, the Corporation has stated as under:-

" **LIC Employees Pension Fund (in Crs)**

	31/03/2013	**31/03/2014**	**31/03/2015**	**31/03/16**
Fund at Beginning of year	16,544	21,073	27,039	32,578
Investment Income	2,111	1,950	2,439	2,728
Employers Contributions in lieu of PF under Rule 7(a)	269	273	340	1,004
Additional Contributions under Rule 7(f) r.w. Rule 11	3,654	4,769	4,038	3,589
Benefits paid	1,515	1,026	1,278	973
Fund as at end of year	21,073	27,039	32,578	38,925

"

It is pointed out that the additional contribution under Rule 7 (f) for the year ending 31st March, 2016 had come down for the contribution under Rule 7(a) in the said year had increased substantially to Rs.1004 Crores from Rs.340 Crores. The additional annual contributions will

go up substantially in case the prayer of the retired employees/associations is accepted.

100. The retired employees/associations had submitted that the present pension outgo expenses constitute a negligible or small percentage of the total premium income, i.e., it is within the range of 0.23 to 0.37% for the years 2004-05 to 2015-16. Pension outgo was a small proportion of the salary outgo and between 3.19 to 6.21% for the same period. Similarly, the pension outgo ratio in relation to management expenses was between 1.73 and 3.41% between Financial Years 2004-05 and 2015-16. The Corporation contests the said submission and submits that annual expenditure for providing pensionary benefits is about 12% of the total expenses and around 30% of the expenses under the Head Salary and Benefits to Employees. They have submitted the following details:-

"

Expenses in Rs. Crores	**2012-13**	**2013-14**	**2014-15**	**2014-16**
Commission to Agents (1)	14768	16681.29	15092.1	15477.17
Salary and other Benefits (including Pension contribution by corporation (2)	11894.9	14705.11	14523.44	14659.34
Other expenses(3)	4812.75	9060.79	7869.25	8033.42
Total Expenses(4)=(1+2+3)	31475.6	40447.19	37484.79	38169.93
Contribution to Pension Fund (5)	3923	5042	4378	4593

% of Pension Exp to Total Expenses item no. (5)/item no. (4)%	12.46	12.47	11.67	12.03
% of Pension Exp to Employees Remuneration	32.98	34.29	29.67	31.33

”

101. The error made by the retired employees/associations is they have not computed or taken the figure of the pension outgo from the Corporation to the Fund and have treated the annuities purchased as the actual outgo. This is erroneous and fallacious. In the Financial Year 2015-16, the Corporation had transferred Rs.4593 Crores to the Pension Fund. These were shown under the Head ‘Salary and Other Benefits to the Employees’, which were to the extent of Rs.14659 Crores. The payment to the fund by the Corporation represents the Corporation’s liability and outgo. Thus, for the Financial Year 2015-16, the pension expenses were nearly 31.33% of the total remuneration paid to employees, i.e., salary and other benefits. The proportion or percentage was 34.28% in 2013-14 and 30.14% in 2014-15. As far as Corporation is concerned, pension outgo either in form of payment under Rule 7(a) or additional contribution in 7 (f) is a pension outgo. This is the cost of pension to the Corporation.

102. There is another aspect, which must be referred to and taken into account. Section 40B of the Insurance Act, 1938 read with Rule 17D of the Insurance Rules, 1939 fixes and stipulate statutory limits on management expenditure. The said percentage or figure cannot be breached. For the Financial Year 2014-15, the ratio of actual expenses allowable in terms of Rule 17D was 83.4%. There is very little

leverage available to the Corporation which has to also ensure that the ratio is not breached now or in future because of the obligation and liabilities. The ratio ensures fair returns to the policyholders and restricts management expenses. It balances the two competing objectives and rights. As per the figures mentioned in the affidavit filed by the Corporation on 4th February, 2017, the Corporation has surplus of Rs.36,060 Crores in the Financial Year 2014-15, which was allocated in the form of bonus/payment to policyholders for Rs.34,257 Crores and Rs.1803 Crores to the Central Government. Setting aside or contributing Rs. 32000 Crores on actuarial calculation would certainly have a negative impact.

103. The pensioners/associations have submitted that the entire focus of the Corporation appears to be to protect "bonus" payable to the policy holders and not the rights of the pensioners. The fact that payment of higher pension would adversely impact the quantum of bonus to be paid to the policy holders, it is submitted, is justified as at best it would have miniscule impact. Bonus though declared yearly, is paid after 10-15 years when payment under the policy is to be made. Some of the pensioners/associations had even urged that pensionary benefits should be left out of the management cost so as to not breach the stipulations of Rule 17D. Still others had urged that arrears pertain to the period 1997 to 2017 and, therefore, need not be accounted for in one year for the purpose of Rule 17D.

104. These arguments have to be noted and rejected, as farfetched, unrealistic and unreasonable. The mandate of Rule 17D of the Insurance Rules, 1939 must be adhered to, for breach of statutory

obligations would result in penalties and would also affect and impact the financial viability of the Corporation. Bonus has to be paid to the policy holders and in most cases is the actual benefit which the policy holder earns over and above a premium paid by them. The suggestion would not be commercially viable or sustainable for any life insurance company, which does not offer a fixed return and pays bonus. The component or quantum of bonus is determined and decided today. The figure, and the amount appropriated on actuarial basis, takes into account what would be payable on maturity.

105. Lastly, we will deal with the contention of the retired employees/associations that the pension scheme is discriminatory as the Corporation is extending benefit of periodical revalorization of pension to Managing Director and Chairman under Rule 55B, who also receive payment from the pension fund. As per Rule 55B, notwithstanding anything contained in the pension rules, an employee appointed as Managing Director under Section 20 of the Act, who was in service on or after 1st January, 1996, the pensionary benefit shall be calculated in accordance with the provisions of Central Civil Service (Pension) Rules, 1972, Central Civil Services (Commutation of Pension) Rules, 1981 and in accordance with the instructions issued by the Central Government thereunder from time to time. The explanation of the Corporation and the Union of India is that appointments to the posts of Chairman and Managing Director are made by the Central Government under Sections 4 and 20 of the Act. These posts require approval of the Appointment Committee of the Cabinet and draw pay as per the scale of pay applicable to the Central

Government employees. This was the position even prior to introduction of the Pension Rules. Chairman and Managing Director of the Corporation by notification dated 3rd July, 1996, were made eligible for pension, though their salary and dearness relief were calculated on 608 index points whereas pension rules had provided for calculation of dearness relief at 1148 index points. Thus, there was an anomaly. The Central Government considered the issue and decided that there should be uniformity of terms and conditions of appointment approved by the Appointment Committee of the Cabinet in the insurance industry including retirement package.

106. In view of the explanation given, we do not think that the contention of the retired employees/associations should be accepted as a ground or reason to apply the notifications issued by the Central Government under the pension rules applicable to the Central Government employees. We have already referred to the distinction between pension payable under "pay as you go" approach applicable to the Central Government employees and "actuarial and annuity" method applicable to Corporation employees. Uniformity and parity has not been maintained between the Central Government employees and the Corporation employees.

107. In view of the aforesaid discussion, it is held as under:-

(i) Employees of the Corporation cannot be equated and claim parity or equivalence in respect of method and "content" of pension with the Central Government employees.

(ii) Challenge of the retired employees/associations for revalorization of basic pension or merger of dearness relief with basic pension upon re-fixation of pay scale of in-service employees relying upon Articles 14 and 21 of the Constitution is rejected, except to the extent of entitlement to minimum pension as enhanced/increased under the Pension Rules from time to time; and rate of equalization stipulated in paragraph 1 is lower than the rate in paragraph 2 and rates in paragraphs 1 and 2 are lower than the rate in paragraph 3(A).

(iii) In other words:

a) Retired employees, who are in receipt of pension lower than the minimum pension as enhanced from time to time, would be entitled to benefit of the minimum pension irrespective of the date of retirement. This direction would apply only when it is beneficial to prior retirees. Where such benefit of enhanced pension is granted, dearness relief would commence and would be calculated thereafter as per the applicable rate.

b) Retirees prior to 1st August, 1997 are entitled to dearness relief at a rate not lower than 0.23% of basic pension. Rate of dearness relief for pre 1st August, 1997 retirees cannot be lower than the rate stipulated for pensioners who had retired on or after 1st August, 1997 till 31st July, 2002.

c) Similarly, dearness relief @ 0.17% of basic pension in paragraph 1 shall stand enhanced to 0.29% for amounts between Rs.2130/- to Rs.3850/-, the rate stipulated in paragraph 2.

108. We would also clarify that payment made in terms of interim directions issued by the Supreme Court would not be refunded or returned to the Corporation. We have issued the said direction as the amount paid is not substantial for the Corporation, whereas asking the retired employees/pensioners to refund the amount would put them in a grave financial difficulty.

109. In view of the aforesaid directions partly allowing the Writ Petitions, the Corporation would have to re-work the pensions in several cases. This would be a time-consuming exercise and errors or mistakes can be made. It will be open to the Corporation to prescribe suitable method/procedure which may involve the retired employees/pensioners to submit their details, objections or even option. The said exercise should be completed within 9 months from the date a copy of this order is received. Arrears, if any, would be paid from the date when the first Writ Petition was filed, to all retired employees/pensioners who would be entitled to benefit of this judgment. Interest would not be payable in case, payment is made within a period of one year from the date copy of this order is received. In case there is delay beyond one year interest @ 8% per annum, unless explained and justified in writing to the retired employee, would be payable from the date of this judgment till payment is actually made. The retired employee if aggrieved by

the written order would be entitled to challenge the order in accordance with law.

110. The writ petitions are accordingly disposed of without any order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

APRIL 27, 2017
SSN/VKR/NA