jsn, spk, ksj

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4080 OF 2002

Sudhakar Sitaram Chitale & Ors. ...**Petitioners**

Versus

The Bank of Maharashtra & Ors. ...**Respondents**

Mr. Piyush P. Hushing, i/b. P.K. Hushing for the Petitioners.

Ms. S.V. Bharucha (Thru V.C.) for the Respondent No.3 - Union of India.

CORAM	:	**R.I. CHAGLA AND FIRDOSH P. POONIWALLA, JJ.**
RESERVED ON	:	**29th AUGUST, 2026.**
PRONOUNCED ON	:	**11th SEPTEMBER, 2026.**

JUDGMENT:-

1. By this Writ Petition, the Petitioners have sought a declaration that they are entitled to all the benefits of the revision of the pay scale under the Agreement dated 14th December 1999. Further direction is sought against Respondent Nos. 1 and 2 to give effect to the revision of pay scales, with effect from 1st November 1997, in the case of the Petitioners, inspite of the fact that they have

retired after 1st November 1997 and before 1st April 1998. A further direction is sought against the Respondents to pay forthwith the amounts as claimed by the Petitioners from 1st November 1997 onwards on the basis of the said revised pay scales, along with interest on the said amounts, at the rate of 18% per annum, from 1st November 1997 till actual payment to the Petitioners.

2. Respondent Nos. 1 and 2, who are the contesting parties, have, inspite of several opportunities being given to them, as has been observed in the order dated 29th August 2026, failed to make an appearance. Accordingly, the present Petition has been heard in their absence.

3. The Petitioners were working as officers in various branches and offices of Respondent No. 1 - Bank of Maharashtra. Petitioner Nos. 1 to 12 retired by accepting voluntary retirement and Petitioner Nos. 13 to 21 retired from service on superannuation. All the Petitioners have retired on various dates from 1st November 1997 to 31st March 1998. The respective dates when the Petitioners retired from service have been mentioned in Annexure-A to the Petition.

4. Respondent No. 1 - Bank of Maharashtra, is a banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and is wholly owned and controlled by Respondent No. 3 - Union of India. Respondent No. 2 is the **Indian Banking Association**, which is an association of most of the banks, including Respondent No. 1, and conducts negotiations with organizations of officers and workmen in all banks and takes decisions on service conditions and wage revision agreements at the national banking industry level, which are followed by all the member banks.

5. The present Petition has challenged the arbitrary fixation of pension with effect from 1st April 1998 under a joint note dated 14th December 1999 entered into between Respondent No. 2 and the representatives of the officer - employees of the nationalized banks. It is the case of the Petitioners that the revision should have been with effect from 1st November 1997, being the date immediately following the expiry of the preceding bipartite settlement.

6. The Petitioners have stated that there were bipartite settlement agreements for wage revision entered into, and which are

set out in tabular form as under:

Settlement of Wages/Pension	**Date of Signing**	**Effective From**	**Preceded by expiry on**
5th Bipartite Agreement	10/04/1989	01/11/1987	------
6th Bipartite Agreement	14/02/1995	01/11/1992	31/10/1992
7th Bipartite Agreement	27/03/2000	01/11/1997	31/10/1997
Impugned Joint Note/Agreement	14/12/1999	**01/04/1998**	**31/10/1997**

7. The Petitioners have stated that from the above, it is a consistent, unbroken practice in the banking industry for every wage-revision settlement to be given retrospective effect from the day immediately following the expiry of the preceding settlement.

8. It is the contention of the Petitioners that the 6th bipartite settlement was arrived at and signed on 14th February 1995, but was brought into force retrospectively with effect from 1st November 1992, i.e., on the expiry of the previous 5th bipartite

agreement. The bipartite agreements were thus brought into force retrospectively for a period of 5 years from 1st November and in the case of the 6th bipartite agreement, it was brought into effect from, as aforesaid, 1st November 1992. The 6th bipartite agreement expired on 31st October 1997. There were negotiations for the 7th Bipartite Agreement, which is stated to have continued for a long time, and it was arrived at and signed on 27th March 2000. This was also for a period of 5 years only, and the scales of pay, therefore, were given retrospective effect from 1st November 1997, i.e., immediately from the expiry of the previous bipartite agreement.

9. Petitioners state that the period of agreement executed in February 1995 which as aforementioned was for a period of 5 years with effect from 1st November 1992, expired on 31st October 1997. The talks for settlement on the terms and conditions of the next agreement were going on for a considerable period of time and during which Petitioner Nos. 1 to 12 decided to voluntarily retire after 1st November 1997 and before 31st March 1998, as they *bona fide* believed and reasonably expected that the first and second Respondents would agree to give periodical increase in salary with retrospective effect from 1st November 1997 in consonance with the

established procedure.

10. Petitioner Nos. 13 to 21 have been stated to have retired on superannuation between 1st November 1997 to 31st March 1998. They had planned their investments and lifestyle after retirement, and had also planned their privilege leave on the assumption of getting the difference in salary, leave encashment, pension, gratuity, and commutation amount on the basis of revision of pay scales with effect from 1st November 1997 itself.

11. The Petitioners state that inspite of the consistent unbroken practice for every wage-revision settlement in the banking industry to be given retrospective effect from the day immediately following the expiry of the preceding settlement, Respondent No. 1, by its letter dated 15th February 2000, instructed the bank managers/officers of the bank that Respondent No. 2 had signed a joint note on behalf of the member banks on salary revision to employees and the representatives of officers' organizations who have also signed the said joint note. In the said letter, the prescribed format for calculation of arrears payable was enclosed.

12. The Petitioners state that it is clear from paragraph 2 of the said letter that initially the amounts are to be calculated and disbursed on an ad-hoc basis only till formalities for amending the Officer Service Regulations are completed. Paragraph 5 directed that arrears payable for each individual officer under the various provisions shall be calculated effectively from the dates specified in that paragraph. The Petitioners state that, for the purpose of calculations of the arrears of pay and dearness allowance and pension, it is to be calculated from 1st April 1998 (and not from 1st November 1997, as was expected on the basis of the long-standing practice). Similarly, the fixed personal allowance, house rent allowance, city compensatory allowance, provident fund, gratuity, medical aid, recovery of house/furniture rent, and all other allowances are to be calculated from 1st November 1999 and not from 1st November 1997.

13. The Petitioners, who have, as aforesaid, retired during the period from 1st November 1997 to 31st March 1998, are aggrieved by the implementation of the Joint Note dated 14th December, 1999 as interpreted in the said letter dated 15th February 2000. The Petitioners have issued Demand Notice dated 16th

November, 2000 which Respondent Nos. 1 & 2 responded vide letters dated 28th November, 2000 and 19th April, 2001 rejecting the Petitioners' demand. Being aggrieved, the Petitioners have filed the present Writ Petition.

14. Mr. Piyush Hushing, the learned Advocate appearing for the Petitioners, has submitted that the 6th Bipartite Agreement governing pay scales expired on 31st October 1997. This was followed by the Joint Note/Agreement dated 14th December 1999 for officers/employees, which was signed after the Petitioners had retired. Clause 13 thereof gives revision in Pay/DA/Pension with effect from 1st April 1998 and the revision in the Provident Fund, Gratuity, and other allowances with effect from 1st November 1999. He submitted that for an identical revision cycle, the 7th Bipartite Settlement dated 27th March 2000 for award staff was given retrospective effect from 1st November 1997.

15. Mr. Hushing has submitted that there is arbitrariness in the decision taken by Respondent Nos. 1 and 2 in the revision of Pay/DA/Pension and giving effect to the same from 1st April 1998, as well as in the Provident Fund, Gratuity, and other allowances by

giving it effect from 1st November 1999. He submitted that in doing so there is a clear departure from the consistent, unbroken practice in the banking industry for every wage-revision settlement viz. giving it retrospective effect from the day immediately following the expiry of the preceding settlement. He submitted that this practice "has come to stay and has acquired the force of law". He submitted that the Respondents are estopped from deviating from it. The rationale of the practice, that no officer superannuating or voluntarily retiring in the interregnum between the expiry of an old settlement and the signing of a new one should suffer loss, is precisely the mischief the Petitioners have suffered.

16. Mr. Hushing submitted that the most striking illustration of arbitrariness is that for the very same revision cycle following the expiry of the preceding settlement on 31st October 1997; officers were granted the revision/Pension only from 1st April 1998, without any intelligible differentia. He submitted that the Respondents have advanced no rational basis whatsoever for this 5-month differential, a differential that has no nexus with any legitimate object, and which operates solely to deprive officers who retired in the intervening window (precisely the Petitioners' class) of their legitimate dues.

17. Mr. Hushing has submitted that the impugned Joint Note/Agreement dated 14th December 1999, as interpreted in the said in the said letter dated 15th February 2000, artificially divides retired officers into pre-1st April 1998 and post-1st April 1998 retirees.

18. Mr. Hushing has placed reliance upon the judgment of the Supreme Court in ***D.S. Nakara v. Union of India***[1], wherein it has been held that Petitioners from one class cannot be subdivided on the basis of an arbitrary eligibility cut-off, unrelated to the object sought to be achieved. The impugned cut-off has no rational nexus with any legitimate object of the revision. He submitted that the Respondents in the present case have unjustly differentiated between different categories of pensioners and sought to artificially divide the class of retired officers by prescribing different dates of effect of the said Agreement.

19. Mr. Hushing submitted that Petitioner Nos. 1 to 12, being conversant with the settled industry practice, voluntarily retired between 1st November 1997 and 31st March 1998 in the

1 **(1983) 1 SCC 305**

bona fide and reasonable expectation that the revision, whenever concluded, would be given effect from 1st November 1997. The Petitioner Nos. 13 to 21 were superannuated during that period. They calculated their retiral entitlements, gratuity, pension, commutation, and leave encashment on that footing. He submitted that the doctrines of legitimate expectation and promissory estoppel bind the Respondents to their consistent representation.

20. Mr. Hushing submitted that Respondent No. 1, being an instrumentality of the State under Article 12, is bound to treat all its similarly situated employees equally and cannot discriminate between officers who retired between 1st November 1997 and 31st March, 1998 and those retiring after 1st April 1998 by adopting a private commercial understanding to that effect. The window of 5 months which is left unprotected for the officers/employees who retired during those months, is arbitrary, illegal and discriminatory in nature and violative of Articles 14, 19, and 21 of the Constitution of India, and therefore needs to be set aside.

21. Having considered the submissions, the issue which arises in the present Petition is whether the Petitioners, having retired

between 1st November 1997 and 31st March 1998, are entitled to have their salary, pension, gratuity, commutation, leave encashment, and other retiral benefits re-fixed on the basis of the revised pay scales with effect from 1st November 1997. It is the Petitioners' case that the cut-off date of 1st April 1998 fixed under the impugned Joint Note-cum-Agreement dated 14th December 1999 is arbitrary, discriminatory, and violative of Articles 14, 19, and 21 of the Constitution.

22. It is pertinent to note that it has been a consistent, unbroken practice in the banking industry for every wage-revision settlement to be given retrospective effect from the day immediately following the expiry of the preceding settlement. This can be seen from the aforesaid chart that gives the particulars of the 5th Bipartite Agreement, 6th Bipartite Agreement, and 7th Bipartite Agreement, which include the date of signing, effective from, and preceded by the expiry dates. This can be contrasted with the impugned Joint Note-cum-Agreement dated 14th December, 1999 which gives cut off date of 1st April, 1998 though the expiry of the previous Bipartite Agreement was on 31st October, 1997. The banking industry having adopted this practice, there is no rationale for deviating from the

same. In doing so, the Respondents have subdivided pensioners forming one class on the basis of an arbitrary eligibility cut-off unrelated to the object sought to be achieved.

23. It has been held in ***D.S. Nakara (supra)*** at paragraph 11 that in order to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question.

24. Reliance has been placed on the judgment of the Supreme Court in ***Ram Krishna Dalmia vs. Justice S.R. Tendolkar***[2], in this context. It has been held that the classification may be founded on differential basis according to the object sought to be achieved, but what is implicit in it is that there ought to be a nexus, i.e., causal connection between the basis of classification and the object of the statute under consideration. It is equally well settled by the decisions of the Supreme Court that Article 14 condemns discrimination not

2 **AIR 1958 SC 538**

only by a substantive law but also by way of procedure.

25. Further, it has been held in the said judgment that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date. This would be violative of Article 14 of the Constitution.

26. The judgment of the Supreme Court in ***D.S. Nakara (supra)*** has been followed by this Court in ***Union of India vs. T. Mukundan***[3]. In the said decision, this Court considered Rule 48-B of the Central Services (Pension) Rules, 1972, which provided that in addition to qualifying service on voluntary retirement, there would be grant of weightage of 5 years in qualifying service on voluntary retirement to Government employees.

27. This Court has, in construing the said Rule, held that the

3 **(2005) 3 Mah LJ 412**

Rule does not suggest that it intended to create a different class of voluntary retirees who retired after 10th September 1983 and those who retired before that date. By the said Rule, the mode of computation of pension to the voluntary retirees is liberalised from a specified date, i.e. 10th September 1983.

28. Accordingly, it was held that the ratio of ***D.S. Nakara (Supra)*** is clearly applicable to the case in hand. The benefit of Rule 48-B must be given not only to the retirees who retire after 10th September 1983, but also those who retired earlier to 10th September 1983; though the retirees who retired earlier would not be entitled to any arrears prior to 10th September 1983 on the basis of revised computation based on Rule 48-B.

29. It follows from these decisions that Respondent Nos. 1 and 2 have, in not giving retrospective effect to the wage revision settlement from the day immediately following the expiry of the preceding settlement, acted in an arbitrary manner. The most striking illustration of arbitrariness is that for the very same revision cycle following the expiry of the preceding settlement on 31st October 1997, officers were granted the revision/pension only from 1st April

1998, without any intelligible differentia. There is no rational basis whatsoever for this 5-month differential, which differential has no nexus with any legitimate object of the Act and operates solely to deprive officers, such as the Petitioners, who have retired in the intervening period, of their legitimate dues. As held in the said decisions, this discrimination requires to be struck down under Article 14 of the Constitution of India.

30. Further, we find much merit in the submissions on behalf of the Petitioners that Respondent Nos. 1 and 2, being conversant with the settled industry practice, were required to consider the Petitioners who had voluntarily retired between 1st November 1997 and 31st March 1998 to be entitled to their retiral dues viz. Gratuity, pension, commutation, and leave encashment and other such entitlements in the same manner as other retirees after 1st April 1998.

31. The Petitioners had voluntarily retired between the said period of 1st November 1997 and 31st March 1998 in the *bona fide* and reasonable expectation that there would be similar revision. Accordingly, the doctrines of legitimate expectation and promissory

estoppel would bind the Respondents to that consistent representation.

32. We, accordingly, are of the view that the Respondent No. 1, as an instrumentality of the State under Article 12, was bound to treat all its similarly situated employees equally and not to discriminate between officers who retired after 1st April 1998 and before that date, viz. between 1st November 1997 and 1st April 1998. We find much merit in the submission of the Petitioners that the window of 5 months, being left unprotected for the employees who retired during those months, is arbitrary, illegal, and discriminative in nature and violative of Articles 14, 19, and 21 of the Constitution of India and therefore requires to be set aside.

33. Accordingly, we pass the following order:

(1) It is declared that the Petitioners are entitled to all benefits of the revision of pay scale under the Joint Note/Agreement dated 14th December 1999.

(2) The Respondent Nos. 1 and 2 are directed to give effect to the said revision of pay scales with effect from 1st

November 1997 in the case of the Petitioners, inspite of the fact that they retired after 1st November 1997 and before 1st April 1998.

(3) The Respondents are directed to pay to the Petitioners within a period of four weeks from receipt of upto date statement of the Petitioners' dues from 1st November 1997 onwards on the basis of the aforesaid revised pay scales as under:

(i) The Difference in Salary and Dearness allowance.

(ii) The Difference in Encashment of accumulated leave.

(iii) Increased Pension on the basis of the Revised Pay Scale.

(iv) Arrears of Difference in Pension.

(v) The Difference in the amount of Commutation of Pension on the basis of the Revised Salary and/or Pension.

(vi) The Difference in the amount of gratuity.

(vii) All other amounts payable to the Petitioners.

(4) Further, the Respondents shall pay interest on the aforesaid amounts at the rate of 6% per annum from 1st November 1997 till actual payment to the Petitioners.

(5) The Writ Petition is disposed of in the above terms. There shall be no order as to costs.

[FIRDOSH P. POONIWALLA, J.] **[R.I. CHAGLA J.]**