IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 17825-28/2005

Judgment delivered on June 6th , 2008

Central Bank Retirees' Association & Ors. .... Petitioners

Through : Mr. Jitendra Sharma, Senior Advocate with Mr. P.N. Sharma, Advocate

Versus

$ Union of India & Ors. .... Respondents

^ Through : Mr. V.R. Reddy, Senior Advocate with Ms. Meera Mathur, Advocate for Respondents No. 3 to 5

Mr. J.L. Gupta, Senior Advocate with Mr. Sanjay Bhatt, Advocate for Respondents No. 6 & 7

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? yes

G.S. SISTANI, J.

1. The present petition, under Article 226 of the Constitution of India, seeks, *inter alia*, directions to the respondents to treat the petitioners at par with the employees of Nationalised Banks and Financial Institutions who have retired on or after 1.1.1986 for the purpose of grant of pension.
2. The undisputed facts, leading to the present petition, may first be noticed:

> In exercise of the powers conferred by Clause (f) of sub-section (2) of section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Central Bank of

India, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, framed Regulations known as the Central Bank (Employees') Pension Regulations, 1995 (hereinafter, "the Regulations"). Analogous Regulations to the same effect were also introduced *mutatis mutandis* by the Bank of India, the Industrial Development Bank of India and the Industrial Finance Corporation of India. In pursuance of these Regulations, a Pension Scheme was introduced in substitution of the existing Contributory Fund Scheme (hereinafter, "the CPF Scheme"). Whereas the Pension Scheme was made applicable to all employees entering service on or after 1.11.1993, the employees who had retired from service of their respective banks between 1.1.1986 and the date of the Regulations coming into force could either continue to be governed by the erstwhile CPF Scheme or they could opt for the benefit of the Pension Scheme. The employees who had retired before 1.1.1986, however, were not eligible for the Pension Scheme. Hence, the petitioners, retired from the service of different banks on or before 1.12.1985 and thus ineligible for being entitled to the new Pension Scheme, have filed the present writ petition challenging the constitutionality of these Regulations to the extent they disqualify a retiree who had retired prior to 1.1.1986 for grant of pension.

3. It is relevant to note that the petitioners, before approaching this Court, had filed the present petition as W.P. (C) No. 471 of 2003 before the Supreme Court of India. The petitioners, whilst challenging the *vires* of the 1.1.1986 cut-off date before the Apex Court, complained that the action in denying pension to persons who had retired before 31.12.1985 was violative of Article 14 of the Constitution of India. The claim made by the petitioners was contested by the respondents. It was, *inter alia*, pleaded that the

constitutionality of the 1.1.1986 cut-off date had already been upheld by a Bench of three Judges in the ***All India Reserve Bank Retired Officers Association and others*** *v.* ***Union of India and others***[1] (hereinafter, "the RBI Case"), and subsequently affirmed by a Bench of equal strength vide its order dated 17.11.1998 in ***All India PNB Retired Officers Association v. Union of India & Ors***.[2] (hereinafter, "the PNB Case"). The petitioners, whilst countervailing the defence of the respondents, claimed that the very basis for the fixation of the cut-off date had been obliterated by the recommendations of the Fifth Pay Commission Report, in pursuance whereof, both pre- and post- 1.1.1986 retirees have been brought at parity with each other. Upon considering the rival contentions of both parties, the Apex Court, in its wisdom, did not consider it a fit case to entertain the petition under Article 32 of the Constitution of India, and accordingly, dismissed the petition with the suggestion to the petitioners to register the same under Article 226 of the Constitution of India. The Apex Court's order dated 1.9.2005, directing this Court to dispose of the matter, is reproduced as under:

> "Heard learned counsel for the parties.
>
> We are of the considered view that this is not a fit case to entertain the petition under Article 32 of the Constitution of India. The proper course for the petitioners would be to move the High Court. To avoid unnecessary delay, we send the writ petition filed in this Court to the Delhi

[1] 1994 Supp (1) SCC 664

[2] W.P. (C) No. 467 of 1997

> High Court to be registered as petition under Article 226 of the Constitution of India. Since the dispute relates to claim of pension, if the matter is taken up for early disposal. We request the High Court to dispose of the matter as early as possible, preferably within twelve months from today.
>
> The Writ petition is dismissed with the aforesaid observation."

4. It is trite that the question of the applicability of the Pension Scheme introduced by the Regulations herein, including the constitutionality of the 1.1.1986 cut-off date, is no longer *res integra* in light of the decisions of the Apex Court in the ***RBI*** as well as the ***PNB Cases***[3]. It is also trite that any finding *qua* constitutionality of a cut-off date is essentially a finding of fact, and once there is a finding of fact arrived at by the highest Court of the land, all other Courts are estopped from revisiting that conclusion. Inasmuch as the constitutionality of the cut-off date of 1.1.1986 as well as the reasonableness of the classification into pre- and post-1.1.1986 resulting therefrom has already attained finality already by the Apex Court, it is trite that any decision that this Court takes in the present petition appertaining to an identical challenge cannot be *de hors* the ratio in the ***RBI Case***[4], or to put it differently, without having in perspective the judicial dicta in the said case.

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[3] *supra* at n. 1 and 2 respectively
[4] *supra* at n. 1

5. In the ***RBI case***[5], the RBI had introduced Pension Regulations in 1990 with effect from 1.1.1990 in lieu of the CPF Scheme. The said Regulations became applicable to all employees on roll from 1.11.1990. However, those employees who retired between 1.1.1986 and 1.1.1990 were given an option to opt for the Pension Scheme on certain conditions. The bank employees who retired from service prior to 1.1.1986 were not eligible to opt for Pension Scheme. Aggrieved, the All India Reserve Bank Retired Officer Association challenged this action of the RBI by way of a writ petition before the Apex Court.

6. While deciding upon the *vires* of the Pension Regulations under challenge , the Apex Court in the ***RBI Case***[6] observed as under:

> "[W]henever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article12 of the Constitution, the choice of the cut-off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the court and must be supported tin the touch-stone of Article 14. <u>If the choice of the date results in classification or division of members of a homogeneous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof.</u> The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be

[5] *ibid*
[6] *supra* at n. 1

offensive to the philosophy of equality enshrined in the Constitution."[7]

(emphasis supplied)

7. Explaining as to how the reasonableness of the classification resulting from the fixation of the cut-off date of 1.11.1986 is to be tested on the touchstone of Article 14 of the Constitution of India, the Apex Court succinctly observed as under:

> "[A] distinction (has to be drawn) between the continuance of an existing scheme in its liberalized form and the introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on a uniform basis and any division which classified them into two groups by introducing a cutoff date would ordinarily violate the principle of equality in treatment unless there is strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc.."[8]

8. In order to further vindicate the fixation of the cut-off date in pension matters, the Apex Court rationalised the prerogative of the State to

[7] *id* at para 8

[8] *id* at para 10

limit the applicability of a new scheme to a certain class of retirees by observing as under:

> "The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme."[9]

(emphasis supplied)

9. The trite propositions culled out in the foregoing paragraphs, in my view, constitute the ratio in the ***RBI Case***[10]. Applying this ratio to the Pension Regulations under challenge, the Apex Court upheld the constitutionality of the 1.1.1986 cut-off date. The various considerations, on the basis whereof the Apex Court in the ***RBI Case***[11] vindicated the reasonableness of the classification resulting

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[9] *ibid*

[10] *supra* at n. 1

[11] *ibid*

from the 1.1.1986 cut-off date, would be worthwhile to take note of, and accordingly, are consolidated as under:

i. There is a distinction between the liberalization of an existing scheme and the introduction of a new scheme.

ii. The introduction of the Pension Regulations for the first time in an organization in lieu of the CPF is a “new scheme”.

iii. The Provident Fund retirees who have retired and have already received their retrial benefits from the employer cannot claim a vested right to coverage under the Pension Regulations.

iv. The relation of the Provident Fund retiree with the employer snaps upon the retirement and receipt of retrial benefits and there is no continuing relationship between the two.

v. On the other hand, in the case of a pension retiree, his relation with the employer merely undergo a change upon retirement but do not snap altogether.

vi. The CPF Scheme and the Pension Scheme and the rights of the members thereunder are structurally different.

vii. The Provident Fund retirees and the Pension retirees do not form a homogeneous class.

viii. The employer has the right to fix a cut off date and restrict the application whilst introducing the Pension Regulations in lieu of CPF for the first time.

ix. The cut-off date of 1.1.1986 was otherwise valid because the demand for pension as a second retrial benefit broadly on the lines of Central Government pattern was mooted sometime in the year 1986 and the date was so adopted at that time since Central Government also adopted the same based on the Fourth Pay Commission Recommendations.

10. With the aforesaid facts, ratio and the decision in the ***RBI Case***[12] in perspective, I shall now advert to the rival contentions of both parties herein in the paragraphs *infra*.

11. Mr. Jitendra Sharma, learned senior counsel for the petitioners, has vehemently submitted that the Pension Scheme introduced by the Regulations is not a new scheme but only a liberalised form of the already existing CPF Scheme, and that as a result of such liberalization, a homogeneous set of employees have been classified into pre- and post- 1.1.1986 retirees. It is contended that the prescription of 1.1.1986 as a cut-off date is totally unsustainable in law and is irrational in nature inasmuch as the Regulations have *en bloc* made the pre-1986 retirees ineligible from the grant of pension.

12. It is further argued that the classification resulting from the liberalisation of the existing CPF Scheme lies in the teeth of the ratio

[12] *ibid*

in ***D.S. Nakara & Ors. v. Union of India***[13], wherein the Apex Court has unequivocally opined that classification of pensioners has to be based on some rational principle and the rational principle must have nexus to the objects sought to be achieved. The Apex Court therein has further opined that if any cut-off date classifying pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory and affront to the test of reasonableness under Article 14 of the Constitution of India

13. Learned senior counsel has strenuously argued that both the pre-1986 and post-1986 employees are at par when compared to their respective portfolios as well as the terms and conditions governing their respective appointment, and thus, the benefits of the new Pension Scheme have been arbitrarily denied to the petitioners by treating them as a separate class.

14. It is further contended by learned senior counsel for the petitioners that the petitioners are all octogenarians who are unable to take any alternative employment and are fully dependant upon the retrial benefits which they can derive on the basis of their past service. It is contended that the petitioners in their own right constitute a class of

[13] 1983 (1) SCC 305

persons who are in dire need of the Pension Scheme for their subsistence and to lead an independent, distinguished and decent lifestyle.

15. Learned senior counsel for the petitioners has relied upon ***Bharat Petroleum Management Staff Pensioners v. Bharat Petroleum Corporation Limited & Ors.***[14], to contend that pension is no longer considered a bounty and it has been held to be a property and it is thus onerous upon the State to take account of the rise in the pension of the retired personnel who are otherwise entitled to it.

16. In the same vein, the following observations in ***State of Punjab v. K.R. Erry & Sobhag Rai Mehta***[15], have relied upon:

> "In short it must be conceded that though the State Government may have had some material before it for imposing a penalty by way of a cut in the pension it had failed to give a reasonable opportunity to the officers to put forward their defence or facts in extenuation before the cut was imposed. The case of Ridge v. Baldwin [1964] A.C. 40 comes to mind in this connection. Baldwin who was the Chief Constable of the borough police force was prosecuted on grave charges. Donovan J, the trial Judge made, while acquitting him, some observations about his moral incompetence to afford leadership to the police force. Acting on this severe criticism by a Judge of the High Court the Watch Committee, entitled Under Section 191 of the

[14] (1988) 3 SCC 32
[15] (1973) 1 SCC 120

> Municipal Corporations Act, 1882 to dismiss him on a charge of unfitness, dismissed him from service. This dismissal practically at the end of his official career had the consequence of depriving him of his pension. The House of Lords held that the order had to be set aside because Baldwin was not afforded an opportunity to defend himself, though the statute itself did not require any such opportunity being given."[16]

17. Relying upon ***Deokinandan Prasad v. State of Bihar and others***[17], learned senior counsel for the petitioners has contended that denial of pension was infringement of the fundamental rights guaranteed under Articles 19(1)(f) and 31(1) of the Constitution of India. The Apex Court in the said case observed as under:

> "[T]he right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1) (f) and it is not saved by Sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable."

18. Learned senior counsel for the petitioners has further contended that even otherwise the prescribed cut-off date of 1.11.1986 holds no water inasmuch as on the recommendations of the Fifth Pay

[16] id at para 18
[17] 1971 (2) SCC 330

Commission, Government of India has done away with the aforesaid cut-off date applicable to retired employees in their own departments and allied offices. Pursuant thereto, all employees have been brought at par irrespective of their date of retirement. It is contended that the Fifth Pay Commission has taken a practical view of the entire situation and has come to the conclusion that all retirees are to be treated alike and no discrimination can be practiced with any one them. To make good his point, learned senior counsel for the petitioners has placed on record a copy of the Office Memorandum No. F.45/86/97-P & PW(A)/Part – III, dated 10.2.1998 appertaining the revision of pension of pre-1.1.1986 pensioners. Relevant portions of the said Office Memorandum, filed as Annexure P-3 (Colly), are reproduced thus:

> "**REVISION OF PENSION OF PRE-1.1.1986**
>
> **PENSIONERS**
>
> In accordance with the provisions contained in CCs (Pension) Rules, 1972 and the Government's orders issued thereunder, at present pension of all pre-1986 pensioners is based on the average emoluments drawn by them during last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. Government has, inter alia accepted the recommendation of Fifth Central Pay Commission to the effect that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by

adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.1986. Accordingly, pay of all those Government servants who retired prior to 1.1.1986 and also in cases of those Central Government employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner, at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/death of Government employee consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration or judgment of Court or due to general revision of the scale of pay for the post, etc. The number of occasions on which pay shall be required to be fixed on notional basis in each individual case would vary and may be required to be revised on several occasions in respect of those employees who retired in the 'fifties and sixties'. In all such cases, pay fixed on notional basis on the first occasion shall be treated as 'pay' for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other elements like DA/Ad hoc DA/Additional DA, IR, etc., based on this notional pay shall be taken into account. In the same manner, pay on notional basis shall be fixed on subsequent occasions. The last occasion shall be fixation of pay in the scale introduced on the basis of Fourth Central Pay Commission and made effective from 1.1.1986. While fixation of pay on notional basis on each occasion, the pay fixation formulae approved by the Government and be strictly followed. However, the benefit of any notional increments admissible in terms of the rules and instructions applicable at the relevant time shall not be extended in any case of re-fixation of pay on notional

basis. The notional pay so arrived as on 1.1.1986 shall be treated as average emoluments for the purpose of calculation of pension and accordingly, the pension prescribed. [The pension so calculated shall be consolidated as on 1st January, 1996 in accordance with the provisions contained in Paragraph 4.1 of this Department's O.M. NO. 45/86/97-P & PW (A)-Pt. II, dated the 27th October, 1997. Such consolidated full pension shall not, however, be less effect from 1st January, 1996 for the post last held by the concerned pensioner. However, such pension will be suitably reduced pro rata, where the pensioner has less than the maximum required service for full pension as per the rule [Rule 49 of CCS(pension) Rules 1972] applicable to the pensioner as on the date of his/her superannuation/retirement and in no case it will be less than Rs. 1, 275 p.m."

(emphasis supplied)

19. The sum and substance of the contentions put forth on behalf of the petitioners are outlined as under:

i. Firstly, that as a result of 1995 Pension Regulations, when a liberalized pension formula was introduced, and no new scheme was involved, prescription of cut-off date of 1986 resulted in fragmentation of a homogenous class of employees into two groups, inasmuch as those who retired on or after 1.1.1986 were given the option to migrate from the CPF to the pension Scheme and those who retired prior to 1986 were denied this option. The classification resulting in pursuance thereunto has no nexus with the object sought to be achieved.

ii. Secondly, that the cut-off date of 1.1.1986 became totally obscure under the Central Bank Employees Pension Regulation of 1995,

inasmuch as the said cut-off date has been obliterated retrospectively from the parent government scheme from the year 1998.

iii. Thirdly, that banks and financial institution have incorporated the obscure 1986 cut-off date in their new Pension Scheme *de hors* the decision taken by the government in 1998 pursuant to the 5th Pay Commission recommendations.

iv. Fourthly, that the classification ensuing discriminates against the interest of old elderly and needy citizen and is thus violative of doctrine of classification.

20. *Per contra*, Dr. V.R. Reddy, learned senior counsel for the respondents no. 3 to 5 and Mr. J.L. Gupta, learned senior counsel for respondents no. 6 and 7, have vehemently resisted the aforesaid contentions of the petitioners on the ground that petitioners are trying to raise the same issue which have attained finality in law in light of the decisions in the ***RBI and PNB Cases***[18] and ought not to be re-considered in the interest of justice and principle of adherence to precedent.

21. Refuting the petitioners' principle contention that the Pension Scheme is nothing but a liberalised form of the already existing C.P.F. Scheme, it is stoutly argued by learned senior counsel for the respondents that the Pension Scheme introduced by the

[18] *supra* at n. 3

Regulations is a totally new one and was not into existence prior to 1.11.1990. It is the case of the respondents that the pre-1.1.1986 retirees, having already collected the retrial benefits entitled to them under the erstwhile CPF Scheme, cannot now claim coverage under the new Pension Scheme. To make good their point, learned senior counsel for the respondents have drawn support from the decisions of the Apex Court in ***Sita Ram Bansal and Ors. v. State Bank of Punjab and Ors.***[19], ***ITC Ltd. Workers Welfare Association and Another v. Management of ITC Ltd. & Another***[20], ***T.N. Electricity Board v. R. Veeraswamy & Ors.***[21] and ***Transport Corpn., A.P. Ltd & Ors. v. P. Ramachandra Rao & Anr.***[22]

22. It is further contended by learned senior counsel for the respondents that the impugned Pension Regulations were introduced in the year 1993-95 and the challenge to the same after 8 to 10 years of their being in operation is uncalled for and bad on account of delay and laches. It is further contended that the petitioners herein had retired prior to 31.12.1985 and have approached this Court after 18 years of their retirement. It is contended that the claim of the petitioners,

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[19] AIR 1997 SC 2341

[20] (2002) 3 SCC 411

[21] (1999) 3 SCC 414

[22] (2006) 9 SCC 623

being totally barred by limitation, is not maintainable and liable to be dismissed. Learned senior counsel for the petitioners has placed reliance on the decisions in ***State of MP & Anr. v. Bhai Lal Bhai***[23], ***Sarat Chandra Misra v. State of Orissa***[24], ***Tilokchand Motichand & Ors. v. H.B. Munshi & Anr.***[25], ***Amrit Lal Berry v. Collector of Central Excise***, ***New Delhi & Ors.***[26], ***A.P. Steel Re-Rolling Mills Ltd. v. State of Kerala & Ors.***[27] to underpin the view that an aggrieved party ought to move to the Court at the earliest possible time and any inordinate delay may disentitle him to obtain a discretionary relief under Article 226 of the Constitution of India.

23. *Apropos* of the claim of the petitioners that the recommendations of the Fifth Pay Commission Report have obliterated the 1.1.1986 cut-off date, it is contended by learned senior counsel for the respondents that the said cut-off date continues to be relevant in so far as the recommendations of the Fourth Pay Commission Report is concerned. It is adduced that the scheme of Pension for the Reserve Bank employees was patterned on the Pension Scheme applicable to the Central Government employees as revised by the Fourth

[23] AIR 1964 SC 1006

[24] (2006) 1 SCC 638

[25] 1960 (1) SCC 110

[26] (1975) 4 SCC 714

[27] (2007) 2 SCC 725

Central Pay Commission with effect from 1.1.1986, and even otherwise, the legality of the said cut-off date has already been upheld by the Apex Court in the ***RBI and PNB Cases***[28]. It is further contended that the recommendations of the Fifth Pay Commission are only recommendations to the Central Government and are neither binding in nature nor are applicable to the employees of the banking sector.

24. On the same aforesaid issue, attention of this Court has been drawn to certain extracts from the Fifth Pay Commission Report, which, as per learned senior counsel for the respondents, show that that the cut-off date *viz.* 1.1.1986 has not been obliterated. The said extracts, filed as Annexure P-7, are reproduced thus:

> "**FIFTH PAY COMMISSION RECOMMENDATIONS**
>
> Compilation of Fifth Pay Commission Recommendations on Pension and Retirement Benefits
>
> **PARITY BETWEEN PAST AND PRESENT PENSIONERS**
>
> **The One Time Increase**
>
> **127.16** The most controversial subject in the field of pensions has been the glaring disparity between persons of equivalent rank and status drawing vastly unequal pensions if they retired at different points of time. Government had

[28] *supra* at n. 3

tried to solve the problem partially for the armed forces by adopting the One Time Increase formula, but this had not met their demand for One Bank One Pension. The inequity among the Civilian pensioners has continued over the decades with scant relief to the older of the senior citizens.

Modified Parity Formula

127.17 We have attempted a major policy thrust, by suggesting a complete parity between past and present pensioners at the time of the Fourth CPC, while recommending a modified parity between pre-1986 and post-1986 pensioners. The formula will ensure total equity as between persons who retired between 1986 and those who retired later. It also gives all pensioners atleast the minimum pension appurtenant to the post-1986 revised scale of pay of the post they held at retirement.

PRESENT POSITION

Extent of Disparity

137.10 Mainly because of the reasons mentioned in the preceding paragraph, past pensioners are in receipt of varying amounts of pension though they had retired from broadly comparable posts with the same length of qualifying service. The difference in the amount of basic pension alone between pre-1986 and post-1986 retirees upto the level of Director works out to Rs. 500 and more, whereas in respect of officers of the rank of Joint Secretary and above, the difference ranges between Rs. 850 and Rs. 1240. If the dearness relief and interim reliefs are added to the basic pension, the difference would range between more than two-

and-half times more than two times of the above amounts respectively, because of varying percentages of neutralization.

Our View

137.13 While it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of their retirement, this may not be feasible straightaway as the financial implications would be considerable. The process of bridging the gap in pension of past pensioners has already been set in motion by the Fourth CPC when past pensioners were granted additional relief in addition to the consolidation of their pension. This process of attainment of reasonable parity needs to be continued so as to achieve complete parity over a period of time.

Our Recommendations

137.14 As a follow up of our basic objective of parity, we would recommend that the pension of all pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formulas for the serving employees. This step would bring all the past pensioners to a common platform or on the Fourth CPC pay scales as on 1.1.1986. Thereafter, all the pensioners who have been brought on to the Fourth CPC by notional fixation of their pay and those who have retired on or after 1.1.1986 can be treated alike in regard to consolidation of their pension as on 1.1.1996 by allowing them the same fitment weightage as may be allowed to the serving employees. However, the consolidated pension shall be not less than 50% of the

minimum pay of the post, as revised by the Fifth CPC, held by the pensioner at the time of retirement. This consolidated amount of pension should be the cases for grant of dearness relief in future. The additions to pension as a result of our recommendations in this chapter shall not, however, qualify for any additional commutation for existing pensioners.

Procedure For Very Old Cases

137.16 There may be cases where it may not be possible for the pension sanctioning authorities to fix the pay of the very old retirees notionally because of non-availability of records due to such records having been weeded out or other administrative problems. In such cases, the pension may be revised with reference to the minimum pay of the post held by the pensioner, as revised by the Government of our recommendations.

UPDATING OF PRE-1986 PENSIONS

2. In accordance with the provisions contained in CCS (Pension) Rules, 1972 and the Government's orders issued there under, at present pension of all pre-1986 pensioners is based on the average emoluments drawn by them during last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. Government has, inter alia, accepted the recommendations of the Fifth CPC to the effect that the pension all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees and thereafter for the purpose of

consolidation of their pension/family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.986.

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6. No arrears on account of revision of pension/family pension on notional fixation of pay will be admissible for the period prior to 1.1.1996."

(emphasis supplied)

25. Attention of this Court has been particularly drawn to para 137.10 of the Report, wherein it has been noticed that there is *"difference in the basic pension alone and between pre-1.1.19986 and post-1.1.1986 retirees upto the level of …".* In para 137.13, the Commission records that *"while it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of retirement, this may not be feasible straightaway as the financial implications would be considerable."* Attention of this Court has been further drawn to para 137.13 of the Report, wherein it is recorded that *"while it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of retirement*, this may not be feasible straightaway as the financial implications would be considerable." Learned senior counsel next rely on para 137.14, the Commission makes its recommendations that *"the pension of all the*

pre-1986 retirees may be updated by notional fixation of their pay scales as on 1.1.1986 by adopting the same formula as for the serving employees. This step would bring all the past pensioners to a common platform or on to the Fourth CPC pay scales as on 1.1.1986." It is thus the case of the respondents that the said extracts clearly belie the petitioners' contentions that the recommendations of the Fifth Pay Commission have obliterated the cut-off date of 1.1.1986 so as to bring at parity all pre- and post-1.1.1986 retirees.

26. It is next contended by learned senior counsel for the respondents that the Pension Scheme has been introduced by the Regulations pursuant to a settlement arrived at between the Association of Banks representing 58 member banks and the Employees' Unions/Associations representing the majority of the bank employees. Taking a cue the case in ***ITC Ltd. Workers Welfare Association and Another v. Management of ITC Ltd. & Another***[29], it is contended by learned senior counsel for the respondents that a settlement which is a product of collective bargaining is entitled to due weight and consideration, and further, that such settlement can only be challenged in exceptional

[29] *supra* at n. 20

circumstances, *viz.* if it is demonstrably unjust, unfair or the result of *mala fides* such as corrupt motives on the part of those who were instrumental in effecting the settlement. It is thus the case of the respondents that there is an implicit presumption of the Pension Scheme being just and fair inasmuch as the said Pension Scheme is the product of a settlement between Association of Banks and the Employees' Unions/Associations, and thus, has a binding effect on all members of such associations. For felicity of reference, the respondents have placed on record a copy of the Memorandum of Settlement, dated 29.10.1993, between the Management of 58 Banks as represented by the Indian Banks Association and their Workmen as represented by the Indian National Banks Employees Federation[30], operative portion whereof is reproduced thus:

> "Whereas:
>
> a) During the course of negotiations on service conditions of the workmen employees in February, 1990 the Indian Banks Association (IBA) agreed to introduce pension scheme in banks for the workmen employees in lieu of employers' contribution to the Provident Fund. The pension scheme agreed by IBA ws to be broadly on Central Government/the Reserve Bank of India pattern details of the scheme were to be worked out.

[30] Annexure R-5/1 (Colly.) at p. 154 of the Writ Petition

b) INBNEF's initial demand was for pension as third superannuation benefit in addition to CPF and gratuity. This was not acceptable to the IBA. After careful consideration of the IBA's offer for pension as a second retiral benefit in lieu of employer's contribution to contributory provident fund, INBEF finally conveyed its acceptance of the same but demanded additionally that D.A. should also be reckoned for provident fund contribution and pension purposes. The IBA, however, was not agreeable to treating D.A. as pay for Provident Fund and pension calculations.

c) After protracted negotiations, over a period of time, the parties agreed to resolve the dispute by accommodating each others' view points in the interest of industrial harmony.

NOW, THEREFORE IT IS HEREBY AGREED BY AN BETWEEN THE PARTIES HERETO AS UNDER:

1. The member banks set out in the schedule I hereto shall introduce pension as second retirement benefit scheme in lieu of contributory provident fund where it does not exist for the workmen employees of the member banks with effect from 1st November, 1993.

2. Pension as a second retiral benefit scheme in lieu of contributory provident fund shall be available to the following category of employees/retired employees from 1st November, 1993 or the date of retirement, whichever is later.

I. Employees who join service of the bank on or after 1st November, 1993:

II. Employees in service of the bank as on 31st October, 1993 and who on or before 30th June, 1994 exercise an option in writing in response to bank's notice to this effect to be given not later than 31st December, 1993 to become members of the pension scheme and to cease to be members of the contributory provident fund scheme with effect from 1st November, 19993 and irrevocably authorize the bank or the trustees of the contributory provident fund to transfer the entire contribution of the bank along with entire interest accrued thereon to the credit of pension fund to be created for this purpose.

III. Retired employees who were in service of the bank merged bank on or after 31st December, 1985 retired or after 1st January, 1986 nut before 1st November, 1993 provided that such retired employees apply for it on their own on the format prescribed by each bank and refund within a period of six months reckoned from 1st November, 1993 the bank's entire contribution to the provident fund including interest received with further simple interest at the rate of 6 percent per

annum from the date of withdrawal of the provident fund amount till the date of refund.

IV. Permanent part-time employees drawing scale wage."

27. The sum and substance of the contentions put forth on behalf of the respondents are outlined as under:

i. Firstly, that the Regulations were introduced in the year 1993-95 and the challenge to the same after 8 to 10 years of their being in operation is uncalled for and bad on account of delay and laches.

ii. Secondly, that the constitutionality of the cut-off date of 1.1.1986 has already been upheld by the Apex Court in the ***RBI*** as well as the ***PNB Cases***[31], and thus, the petitioners are trying to raise the same issues which have attained finality in law and not ought to be raised in the interest of justice and adherence to the Doctrine of Precedents.

iii. Thirdly, the classification resulting from the 1.1.1986 cut-off date into pre- and post- 1.1.1986 retirees stands the test of reasonableness inasmuch as the Pension Scheme introduced by the Regulations is entirely a new scheme, and thus, the pre-1.1.1986 retirees, having already collected the retrial benefits entitled to them under the erstwhile CPF Scheme, cannot now claim coverage under the new Pension Scheme.

iv. Fourthly, that even otherwise, the employer is entitled to fix cut-off dates in respect of new schemes introduced for the benefit of its employees and the same being a policy decision is not open to judicial intervention, unless the same is proved arbitrary or whimsical.

[31] *supra* at n. 3

v. Fifthly, that there is an implicit presumption of the Pension Scheme being just and fair inasmuch as the said Pension Scheme is the product of a settlement between Association of Banks and the Employees' Unions/Associations, and thus, has a binding effect on all members of such associations.

vi. Sixthly, that the recommendations of the Fifth Pay Commission do not in any manner obliterate the basis of the cut-off date of 1.1.1986, and even otherwise, the said recommendations are neither binding in nature nor applicable to employees of the Banking Sector.

28. Learned senior counsel for the petitioners has resisted the aforesaid submissions of the respondents by filing a rejoinder. The sum and substance of the submissions made by the petitioners in their rejoinder is outlined thus:

i. Firstly, that the ***RBI and PNB cases***[32] are not applicable to present case owing to the change of circumstances in the present case. At the time when the RBI Case was decided, the cut-off date of 1.1.1986 was still applicable in the Government Pension Scheme, whereas today it is an absolutely changed scenario, as the said date stands obliterated in view of the recommendations of the Fifth Pay Commission Report.

ii. Secondly, in the RBI Case, the Pension Scheme could not be made applicable to pre-1986 employees for want of records. However, the affidavit filed by the petitioners in the RBI Case to the effect that the RBI did not have the records for pre-1986 retirees was an incorrect affidavit and requires reconsideration. The Reserve Bank of India, as

[32] *supra* at n. 3

a matter of fact, was in possession of records for all pre-1986 retirees as is evident from the fact that the said Bank had in the year 1992 granted pension to the widows of those bankers who had retired prior to 1.1.1986. As per the RBI Manual and its Policy of Record Retention, records pertaining to the Pension, Provident Scheme, have to be maintained permanently, and thus, there was no occasion for the records to have been destroyed.

iii. Thirdly, that the present petition is not vitiated by delay and laches inasmuch as the dismissal of the petition in the PNB Case had dissuaded the petitioners to pursue the present petitioners from approaching the Court again either for clarification or review of its earlier orders or for filing the present writ petition. Thereafter, the Employees' Unions/Associations took time to convince the Members, who are all senior citizens of this country, above the age of 78 years with meager means to file the present writ petition.

iv. Fourthly, that merely because the respondents purport that the applicability of the Pension Scheme would entail State expenditure, the State cannot shirk its legal liability to pay the legitimate dues of the petitioners on the ground of increased financial liability. Banks have been making huge profits and giving large financial dividends to the Government. Further, most of the pre-1986 retirees are either on the wrong side of eighty or are no longer alive. The relevant pay scale at the relevant time was very low as compared to the present times. Thus, applicability of the Pension Scheme would not entail huge financial stakes for the respondents.

29. I have heard both parties at length and given my thoughtful consideration to the matter.

30. Learned senior counsel for the petitioners, in the first leg of their arguments, have fervently contended the Pension Scheme introduced by the Regulations is not a new scheme but only a liberalised form of the pre-existing CPF scheme, and thus, the prescription of cut-off date of 1986 resulted in classification of a homogenous class of employees into two groups, which classification has no nexus with the object sought to be achieved, and thus, is *ultra vires* Article 14 of the Constitution. Learned senior counsel have relied upon the decision in ***D.S. Nakara & Ors. v. Union of India***[33] wherein the Apex Court has categorically opined that any classification that has no nexus with object sought to be achieved is an unreasonable classification and liable to be set aside.

31. The aforesaid contention of the petitioners, I am afraid, is not acceptable to me. The petitioners, in my view, have wrongly premised their contention on the presumption that the Pension Scheme is inextricably connected with the erstwhile C.P.F. Scheme, whereas the correct position is that Pension Scheme introduced by the Regulations is a totally new one and was not into existence prior to 1.11.1990, and further, that the pre-1.1.1986 retirees, having already collected the retrial benefits entitled to them under the

[33] *supra* at n. 13

erstwhile CPF Scheme, cannot now claim coverage under the new Pension Scheme.

32. Reliance by the petitioners on the decision in ***D.S. Nakara & Ors. v. Union of India*** [34] is utterly misplaced. Nakara's case, as I understand it, was a case where an artificial date was specified classifying the retirees, governed by the same rules and similarly situated, in two different classes, depriving one such class of the benefit of liberalized Pension Rules. It was found in that case that the specification of the date (from which the liberalized Rules were, to come into force) was arbitrary. Whereas in this case, the employees retiring prior to 1.1.1986 and those retiring thereafter are governed by different Rules. The argument to the contrary may mean that the Government can never change the conditions of service relating to retrial benefits with effect from a particular date. No such absolute proposition can be stated that while effecting any such change, no date from which such change will come into force can be specified. Of Course, as repeatedly held by the Courts, that in such cases, as the expression goes, "pick a date out of its hat". The cut-off date has to be prescribed in a reasonable manner, having regard to all the relevant facts and circumstances, and

[34] *supra* at n. 13

without bring about discrimination between similarly situated persons.

33. As to how the 1.1.1986 is valid and the classification into pre- and post-1.1.1986 retiress is reasonable has already been settled in the ***RBI and PNB Cases***[35], and it is not for this Court to re-consider the same.

34. This case has an interesting angle. Learned senior counsel for the petitioners, whilst stoutly distinguishing the facts and considerations which were prevalent at the time of the ***RBI Case***[36] from the facts considerations prevalent as of today, has gone a step further and challenged the very basis on which the Apex Court in the ***RBI Case***[37] arrived at its decision of upholding *vires* of the 1.11.1986 cut-off date. It is adduced by the learned senior counsel that the very basis on which the Apex Court in the ***RBI Case***[38] vindicated the 1.11.986 cut-off date has now been obliterated in view of the 5th Pay Commission Recommendations which bring at parity all retires of the Central Government irrespective of the date of retirement. Interestingly, albeit the petitioners in the relief clause of their writ

[35] *supra* at n. 3

[36] *supra* at n. 1

[37] *Ibid*

[38] *Ibid*

petitions have not expressly sought for reconsideration of the ***RBI Case***[39]***,*** the subtext of the submissions made by learned senior counsel for the petitioners is that the Apex Court in the ***RBI Case***[40] was constrained to validate the 1.11.1986 cut-off date for want of material records. *Inter alia*, it is contended by learned senior counsel for the petitioner that the affidavit filed by the petitioners in the RBI Case to the effect that it did not have the records for pre-1986 retirees, was an incorrect affidavit and requires reconsideration.

35. The plea of the petitioners warranting reconsideration of the ***RBI Case***[41] is *per se* without merit, and if accepted, would run counters to the mandate under Article 141 of the Constitution of India wherein it is stated that *"[t]he law declared by the Supreme Court shall be binding on all Courts within the territory of India".* There is, indeed, under Article 142 a tacit embargo on the High Courts to derogate from or overrule the decision of the Apex Court on the ground that the legal position in the said decision was laid down without consideration of material facts.

36. The mandate under Article 141 of the Constitution is mirrored in the Common Law Doctrine of Precedents which unequivocally stipulates

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[39] *Ibid*

[40] *Ibid*

[41] *Ibid*

that when a point or principle of law has been once officially decided or settled by the ruling of a superior Court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the subordinate Court which are bound to follow the superior Court's adjudications. The Doctrine of Precedent is embodied in the maxim "*stare decisis et non quieta movere"*, the literal translation whereof is "*[t]o stand by things decided and not to disturb settled points"*.[42] The Doctrine of Precedents, in fact, underscores one of the most cardinal principles of administration of justice being that like cases should be decided alike. The said Doctrine, in essence, is premised on public policy, and if not followed, is likely to create chaos in the administration of justice. It is a truism that precedents set a definite pattern or finality upon which the future conduct of Courts of Law may be based, and this, in effect, facilitates consistency, certainty and uniformity which are hallmarks of smooth administration of justice. It is these virtues of consistency, certainty and uniformity which create confidence in the Judicial System and these virtues can never be achieved without paying obeisance to the Doctrine of Precedent.

[42] *see*, *Black's Law Dictionary*, eighth edition, p. 1443

37. Learned senior counsel for the petitioners, however, have drawn support from ***Commissioner of Police and Ors. v. Acharya Jagdishwaranda Avadhuta and Anr.***[43] (famously known as the "***Ananda Margi – II Case***"). It may be recalled that a bench consisting of three learned judges of the Apex Court in the ***Acharya Jagdishwaranda Avadhuta and Ors. v. The Commissioner of Police , Calcutta and Anr.***[44] (famously known as the "***Ananda Margi – I Case***") arrived at a unanimous conclusion on facts that the Tandava Dance in public is not an essential and integral part of the Ananda Margi faith. The non-essential nature of the Tandava Dance to the Ananda Margi faith, as laid down in the ***Ananda Margi – I Case***[45]***,*** was challenged before the Apex Court in the ***Ananda Margi – II Case***[46] on the ground that Ananda Murti Ji, the founder of Ananda Margi faith, prescribed to perform Tandava dance in public as an essential religious practice in the "*Carya Carya*", a book containing the relevant doctrines. When the matter first came up for hearing, a bench consisting of two learned Judges of the Apex Court passed the following order dated 1.12.1987:

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[43] 2004 (12) SCC 770

[44] (1983) 4 SCC 522

[45] *Ibid*

[46] *supra* at n. 46

> "We are of the view that these cases should appropriately be examined by the High Court keeping in view that has been said by this Court in the Judgment in *Acharya Jagdishwaranda Avadhuta and Ors. v. The Commissioner of Police, Calcutta and Anr.* reported in (1983) 4 SCC 522 Petitioners are at liberty to go before High Court."

38. Taking a leaf out of the decision of the Apex Court in the aforesaid order setting the petitioners therein at liberty to approach the High Court, learned senior counsel for the petitioners has argued that just as the Calcutta High Court in the ***Ananda Margi-II Case***[47] re-considered the non-essential nature of Tandava dance to the Ananda Margi faith in view of the revised edition of the *Carya Carya*, likewise, this Court can also re-consider the findings in the ***RBI and PNB Cases***[48] in view of the recommendations of the Fifth Pay Commission. Learned senior counsel for the petitioners submit that they are further emboldened by the fact that in the present case, the Apex Court vide order dated 1.9.2005, has expressly directed this Court to dispose of the present matter.[49]

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[47] *Ibid*

[48] *supra* at n. 3

[49] The order dated 1.9.2005 is reproduced at para 3 of this judgment

39. Reliance by the petitioners on the ***Ananda Margi-II Case***[50]***,*** I am afraid, is misplaced. The Judgment in the ***Ananda Margi-II Case***[51], in fact, militates against the petitioners. It is important to note that pursuant to the aforesaid order dated 1.12.1987 of the Apex Court, first a Single Judge and subsequently a Division Bench of the Calcutta High Court arrived at the conclusion that taking out Tandava dance in public carrying skull, trident etc was an essential part of Ananda Margi faith and Commissioner of Police could not impose conditions to it. This unanimous decision of the Single and Division Bench of the Calcutta High Court was challenged in the ***Ananda Margi-II Case***[52], wherein the Apex Court has unequivocally observed that the writings in the *Carya Carya* cannot be a "*clue to re-open the whole finding*" (i.e., the non-essential nature of Tandava Dance to the Ananda Margi faith), and further, that *"[t]he learned judges of the (Calcutta) High Court wrongly proceeded on the assumption that the finding of this (Apex) Court regarding the non-essential nature of Tandava Dance to the Ananda Margi faith is due to the non-availability of any literature or prescriptions by the*

[50] *supra* at n. 46

[51] *Ibid*

[52] *Ibid*

founder"[53]. In view thereof, needless to state that the Apex Court in the ***Ananda Margi-II Case***[54] adopted the dictum laid down in the ***Ananda Margi-I Case***[55] and held that the Tandava Dance was non-essential to the Ananda Margi faith.

40. The crux of the decision in the ***Ananda Margi-II Case***[56] is that the essential part of a religious faith could not be altered at a subsequent point of time merely on the ground of non-availability of literature or prescribed documents. Even otherwise, it is the settled position of law, as laid down in ***Director of Settlement, A.P., v. M.R. Apparao and Anr.*** [57] and ***B.M. Lakhani v. Malkapur Municipality***[58], that a decision of the Apex Court cannot be assailed before any other Court on the ground that certain aspects were not considered or that the relevant provisions were not brought to the notice of the Apex Court.

41. It would be worthwhile to note that unlike the order dated 1.9.2005 appertaining the present case wherein the Apex Court dismissed the petition being W.P. (C) No. 471 of 2003 in order that the same be

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[53] *id* at para 8

[54] *ibid*

[55] *supra* at n. 44

[56] *supra* at n. 46

[57] (2002) 4 SCC 638

[58] AIR 1970 SC 1002

filed before this Court, the Apex Court in its order of 1.12.1987 did not dismiss the fresh writ petition filed after its decision in the ***Ananda Margi –I Case***[59]. When the precepts were recorded in the *Carya Carya* and made part of the new petition in the ***Ananda Margi-II Case***[60], the Apex Court ordered the same to be investigated by a fresh writ petition in the Calcutta High Court which was done by the Division Bench of the High Court.

42. It would also be worthwhile to note that the reasoning of the Calcutta High Court that a subsequent addition in the *Carya Carya* could constitute Tandava dance as essential part of Ananda Margi faith was not accepted by the Apex Court in the ***Ananda Margi –II Case***[61] for the reason that *"it is for the Court to decide whether a part or practice is an essential part or practice of a given religion. As a matter of fact if in the earlier litigations the Court arrives at a conclusion of fact regarding the essential part or practice of a religion -it will create problematic situations if the religion is allowed to circumvent the decision of Court by making alteration in its doctrine*"[62].

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[59] *supra* at n. 44

[60] *supra* at n. 46

[61] *Ibid*

[62] *id* at para 11

43. Applying the aforesaid analogy as in the ***Ananda Margi –II Case***[63] to the present case, I have no hesitation in stating that the validity of a cut-off date and the reasonableness of a classification resulting therefrom are essentially findings of facts, and at any given point of time, it is only for the Courts of law to arrive at such findings. Further, what has already been settled by the Courts, cannot not be re-considered or unsettled by the findings and suggestions of a recommendatory body like the Pay Commission. In the present case, the constitutionality of the 1.1.1986 cut-off date as well as the reasonableness of the classification resulting therefrom, having already attained finality in the decisions of the Apex Court, cannot now be challenged by purporting that the recommendations of the Fifth Pay Commission have obliterated the basis of fixing the cut-off date. Even otherwise, as rightly contended by the respondents, the recommendations of the Fifth Pay Commission are only recommendations to the Central Government and are neither binding in nature nor are applicable to the employees of the banking sector.

44. To conclude, the subject-matter of the *lis* herein, being squarely covered in facts and ratio by the Apex Court in the ***RBI and PNB***

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[63] *supra* at n. 46

Cases[64], this Court finds no ground to interfere in the present petitions. Any attempt on the part of this Court to take a contrary stand from the one taken in the said cases will be affront to the mandate under Article 141 of the Constitution of India. Consequently, the present petitions stand dismissed.

45. For the reasons aforesaid, I find no grounds to interfere in the present petition, and consequently, the same stands dismissed.

June 6th , 2008 **G.S. Sistani, J**

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[64] *supra* at n. 3