

LIC OF INDIA AND OTHERS

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v.

KRISHNA MURARI LAL ASTHANA AND ANOTHER ETC.

(Civil Appeal Nos.8959-8962 of 2013)

MARCH 31, 2016

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[DIPAK MISRA AND R. BANUMATHI, JJ.]

Life Insurance Corporation Act 1956 – ss. 21, 48 – Life Insurance Corporation of India (Employees) Pension Rules, 1995 – r. 37, 55, Appendix IV para 3A – Pensionary benefits – Resolution passed by the Board to the effect for Amendment to LIC of India (Employees) Pension Rules, 1995-Upgrading of Basic Pension in respect of retirees prior to 01.08.1997 – Corporation sought amendment to the 1995 Rules – Non-execution of the Resolution by the Corporation – Writ petitions – Single Judge and Division Bench of the High Court on the basis of the concession given by the counsel for the Union of India, directed the Corporation to take a decision for implementation of the resolution passed by the Board and the Corporation cannot provide different criteria for grant of dearness allowance to the existing pensioners based on cut-off date i.e. 31.7.1997 – On appeal, held: In the absence of a Rule, no benefit can be granted on the basis of the resolution passed by the Corporation – High Court could not have held to the contrary on the basis of the concession given by the counsel for the Union of India – Resolution could not become operative unless it was conferred the status of a rule as provided u/s. 48 – Orders passed by the High Courts of Rajasthan, Delhi and Punjab & Haryana set aside and the writ petitions transferred from the High Courts of Rajasthan and Punjab & Haryana to the High Court of Delhi, which would decide the constitutional validity of Para 3A of the Appendix to the Rules – Corporation to pay 40% as per Para 3A of the Appendix to each of the employees.

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Disposing of the appeals, the Court

HELD: 1.1 Rule 55 of the Life Insurance Corporation of India (Employees) Pension Rules, 1995 does not confer power on the Chairman of the Corporation to issue any instructions that can travel beyond the rules. In terms of Rule 55, he has been

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A authorized to issue instructions which are necessary and
expedient for the implementation of the rule. The Board had
passed the resolution. The Board can pass a resolution and the
Chairman can be the head of the Board, but it does not authorize
the Board to take a decision with regard to certain matters which
B are within the domain of the rule making authority. On a perusal
of Section 48, it is clear as crystal that conferment of benefit,
either pension or anything ancillary thereto has to be conferred
by the rules and the rule as prescribed under Section 48 of the
Act is to be tabled before the Parliament. In the absence of a
C rule, no benefit can be granted on the basis of the resolution
passed by the Corporation. This being the legal position, the High
Court could not have held to the contrary on the basis of the
concession given by the counsel for the Union of India. [Para 15]
[851-D-F]

1.2 There are two categories of employees, namely, the
D 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. The quantum of pension
is affected. [Para 22] [853-G-H]

E 1.3 Regard being had to the piquant situation, the orders
passed by the High Courts of Rajasthan, Delhi and Punjab &
Haryana at Chandigarh are set aside and the writ petitions are
transferred from the High Courts of Rajasthan and Punjab &
Haryana to the High Court of Delhi, which will decide the
F constitutional validity of Para 3A of the Appendix to the Rules,
and also deal with the cases of the persons, who have retired
after the cut-off date. However, it is clarified that no opinion is
expressed on the merits of the case, except that the resolution
could not become operative unless it was conferred the status of
G a rule as provided under Section 48 of the Act. [Para 23] [854-A-
C]

1.4 The pleadings are not adequate as it should have been
while assailing a constitutional validity of a provision as such the
matter is remanded back. It is well settled in law that he who
H assails the constitutional validity of a statutory provision or a rule,

has to specially assert the grounds for such challenge. The respondents would contend that the amount of pension the respondents are getting is a paltry sum and it is difficult to sustain in the present day. That apart, the Corporation should have been gracious enough to recognize the services rendered by them and the Union of India should have come with an affirmative response when the resolution was passed by the Corporation. The said facet has already been adjudicated but the matter is remanded to the High Court on a different count. In such a situation, the respondents should get certain amount as an interim measure. The Corporation is directed by the order dated 7th May, 2015 to pay 20% amount to the individual employees. It is submitted that the Corporation has already deposited the entire amount without the pay revision before the High Courts of Rajasthan and Punjab & Haryana at Chandigarh, regard being had to the order of this Court. As far as the High Court of Delhi is concerned, employees have been paid 20%, as directed by this Court. [Para 26] [855-C-G]

1.5 Keeping in view the totality of facts and circumstances of the case, the Corporation is directed to pay 40% as per Para 3A of the Appendix to each of the employees within six weeks and to file an affidavit before the High Court of Delhi to the said effect. The Corporation is at liberty to withdraw the amount deposited in the Courts so that it can pay the employees who have retired. The said payment shall be subject to final results in the writ petitions. [Para 27] [855-H; 856-A-B]

1.6 It is a case where the end does not bring the finality. It does not require Solomon's wisdom to state that an interim order is an interim order and does not have any impact at the time of final verdict especially in such a situation and, therefore, it is directed that it shall be applicable to the similarly placed persons. [Para 28] [856-C]

State of Uttar Pradesh v. Kartar Singh AIR 1964 SC 1135; 1964 SCR 679; *State of Andhra Pradesh and another v. K. Jayaraman and others* (1974) 2 SCC 738; *Union of India v. E.I.D. Parry (India) Ltd.* 2000 (1) SCR 537 : (2000) 2 SCC 223; *State of Haryana v. State of Punjab & another* 2004 (2) Suppl. SCR 849: (2004)

- A **12 SCC 673; Union of India v. Hira Lal (1996) 10 SCC 574; B.S. Bajwa v. State of Punjab 1996 (6) Suppl. SCR 451; (1998) 2 SCC 523; Vimalleshwar Nagappa Shet v. Noor Ahmed Shariff 2011 (6) SCR 392; (2011) 12 SCC 658; State of Rajasthan v. Surendra Mohnot 2014 (6) SCR 191; (2014) 14 SCC 77; D.S. Nakara v. Union of India and others AIR 1983 SC 130; 1983 (2) SCR 165; (1983) 1 SCC 305; All India Reserve Bank retired Officers Association v. Union of India 1991 (3) Suppl. SCR 256 : (1992) Suppl 1 SCC 664; V. Kasturi v. Managing Director, State Bank of India and another 1998 (2) Suppl. SCR 269; (1998) 8 SCC 30; Union of India and Another v. SPS Vains (Retd.) and others 2008 (13) SCR 257 : (2008) 9 SCC 125; K.J.S. Buttar v. Union of India and another 2011 (4) SCR 136; (2011) 11 SCC 429; Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and others v. State of Tamil Nadu 2013 (4) SCR 883 : (2013) 2 SCC 772 – referred to.**

Case Law Reference

	(1996) 10 SCC 574	referred to.	Para 13
E	1996 (6) Suppl. SCR 451	referred to.	Para 13
	2011 (6) SCR 392	referred to.	Para 13
	2014 (6) SCR 191	referred to.	Para 13
	1983 (2) SCR 165	referred to.	Para 17
	1991 (3) Suppl. SCR 256	referred to.	Para 17
F	1998 (2) Suppl. SCR 269	referred to.	Para 17
	2008 (13) SCR 257	referred to.	Para 19
	2011 (4) SCR 136	referred to.	Para 19
	2013 (4) SCR 883	referred to.	Para 21
	1964 SCR 679	referred to.	Para 26
G	(1974) 2 SCC 738	referred to.	Para 26
	2000 (1) SCR 537	referred to.	Para 26
	2004 (2) Suppl. SCR 849	referred to.	Para 26

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
8959-8962 of 2013

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From the Judgment and Order dated 21.01.2011 of the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in Special Appeal No. 493 and 494 of 2010 and Special Appeal No. 494 of 2010 and D. B. Civil Review Petition No. 86 of 2011 in D. B. Special Appeal (W) No. 494 of 2010 and D. B. Civil Review Petition No. 87 of 2011 in D. B. Civil Special Appeal (W) No. 493.

WITH

C. A. NOS. 6995, 9223 AND 9409-9410 OF 2013

Neeraj Kishan Kaul, ASG, Vibha Datta Makhija, Ashok Panigrahi, Surajit Bhaduri, Santosh Kumar, O. M. Swarup V. Partiban, T.V.S. Raghavendra Sreyas, (A.C.), Gayatri Gulati Sreyas, Rekha Pandey, Sushma Manchanda, Disha Verisj, Akash Jindal, B. Krishna Prasad for the Appellants.

Nidesh Gupta, Shree Ram Panchu, R. K. Singh, Kumar Gaurav, B. N. Dubey, Rameshwar Prasad Goyal, Rajiv K. Garg, G. N. Sridharan, V. K. Josh, T. L. Garg, Nahiketa Joshi, Sudhakar Joshi, Sucheta Joshi, Ritwiz Rishabh, Sushma Suri, Jay Savla, Renuka Sahu, Abhinav Sharma, Dr. Kailash Chand, R. K. Singh, B. N. Dubey, Robin Khokhar, P. Dayal, Sajith. P. for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Pension though, by the judicial pronouncements, has been treated as not a bounty yet the controversy relating to the said claim and denial thereof has been a matter of frequent cavil between the employer and the employee in numerous situations. And that is why this Court has been required to deal with and render judgments pertaining to pension and interpretation of the rules or policies or schemes relating thereto.

2. The present set of appeals fresco a picture which is not a happy one. It appears that the appellant, the Life Insurance Corporation of India (for short 'the Corporation') at one point of time was enthusiastic to confer certain benefits on the respondent-employees, may be without appreciating the legal nuances but its action irrefragably instilled a concrete hope in thousands of employees.

3. The Corporation is controlled by the Life Insurance Corporation Act, 1956 (for brevity, 'the Act'). Section 21 of the Act which provides that the Corporation to be guided by the directions of the Central Government reads as follows:-

- A **“21. Corporation to be guided by the directions of Central Government.** - In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.”
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4. Section 48 of the Act which is pertinent for the present purpose empowers the authorities to make rules. Section 48 (1) and (3) to which our attention has been invited read as follows:-

- C **“48. Power to make rules.-** (1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.
- D (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the term of office and the conditions of service of members;
- (aa) the instruments which may be issued and the amount of working capital under sub-section (2) of section 5;
- E (b) the manner in which the moneys and other assets belonging to any such fund as is referred to in Section 8 shall be apportioned between the trustees of the fund and the Corporation;
- (c) the services which the chief agent should have rendered for the purpose of the proviso to section 12;
- F (cc) the terms and conditions of service of the employees of the Corporation, including those who became employees of the Corporation on the appointed day under this Act;
- (d) the jurisdiction of the Tribunals constituted under section 17;
- (e) the manner in which, and the persons to whom, any compensation under this Act may be paid;
- G (f) the time within which any matter which may be referred to a Tribunal for decision under this Act may be so referred;
- (g) the manner in which and the conditions subject to which investments may be made by the Corporation;
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(h) the manner in which an Employees and Agents Relations Committee may be constituted for each zonal office; A

(i) the form in which the report giving an account of the activities of the Corporation shall be prepared;

(j) the conditions subject to which the Corporation may appoint employees; B

(k) the fees payable under this Act and the manner in which they are to be collected;

(l) any other matter which has to be or may be prescribed.

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(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.” D

5. In exercise of the powers conferred by Section 48 of the Act, the Central Government has framed a set of rules, namely, Life Insurance Corporation of India (Employees) Pension Rules, 1995 (for short, ‘the 1995 Rules’). Rule 37 of the 1995 Rules refers to “dearness relief”, which is extracted herein below:- E F

“**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. G

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

6. Appendix IV of the 1995 Rules, which is the principal plinth of quarrel, is as follows:- H

- A **“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) above 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 the difference between Rs.2130/- and Rs.2000/- plus 0.17 per cent of basic pension in excess of Rs.2130/-

- G (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: A

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 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

- A – 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.

- B *(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).*

- C (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.

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

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

- F (7) Dearness relief is not payable on additional pension.”

Be it stated, para 3A to the Appendix IV was incorporated on 22nd June, 2000, and was published in the Official Gazette.

- G 7. As the afore-quoted appendix would show, the Corporation has divided its employees for the purpose of dearness relief into three categories regard being had to the date of retirement. When situation remained thus, certain representations were submitted to the Corporation. The said representations were considered and Minutes were drawn up by the authorities of the Board.

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8. Mr. Nidhesh Gupta, learned senior counsel appearing for the respondents in Civil Appeal Nos.8959-8962 of 2013, would impress upon this Court that the Minutes are absolutely material to understand the controversy and, accordingly, he has laid immense stress on them. For the sake of completeness, we think it apposite to reproduce the relevant part of the said Minutes. It is as follows:-

“An index linked Pension Scheme in lieu of Corporation’s Contribution to Provident Fund (CCPF) was introduced in the Corporation vide Central Government Notification dated 28.06.1995. The Scheme provides for payment of pensionary benefits with effect from 01.11.1993. The employees of the Corporation, who retired between 01.11.1986 to 31.10.1993, are also covered under the scheme for pensionary benefits.

2. At the time of notification of the Pension Rules, the scales of pay and allowances of the employees of the Corporation were linked to All India Consumer Price Index (AICPI) 800 points. After the notification of the Pension Rules, the pay scales and allowances of the employees of the Corporation have been revised on two occasions – first in the year 1996 by linking it to AICPI 1148 Points and again in the year 2000 by linking it to AICPI 1740 Points. The revision in the year 1996 was made effective retrospectively from 01.08.1992 and the revision in the year 2000 was made effective retrospectively from 01.08.1997. Consequent upon the revision of pay scales, the Pension Rules were suitably amended to give effect to payment of pension commutation value and family pension as per the revised scales of pay and allowances. However, the Dearness Relief on pension is being paid to different generations of pensioners (depending upon their date of retirement) on a graded structure upto 31.07.1997 as per the rates given in Appendix-IV of the Pension Rules governing the rates of Dearness Relief is given in Annexure-I to this note.

3. It may be observed from the rates of Dearness Relief as given in Annexure-I, that there are three different rates prescribed for different groups of pensioners depending upon their date of retirement. Due to the different rates of Dearness Relief to different groups of pensioners, the real value of pension, which is being eroded over a period of time is not being protected besides causing administrative inconvenience. It has thus become

A necessary to rationalize the Dearness Relief structure and provide a suitable updatation formula to upgrade the basic pension to the employees of the Corporation who have retired prior to 01.08.1997. It may be mentioned that such a provision to upgrade the pension due to periodic revision in case of Central Government employees is incorporated in the Central Civil Services (Pension) Rules, on the basis of which the LIC of India (Employees) Pension Rules have been drafted.

B 4. In view what has been stated in Para 3 above, it is suggested that the following updatation formula to upgrade the basic pension/family pension in respect of employees who have retired between C 01.01.1986 to 31.07.1997 may be adopted.

a. The basic pension/family pension payable in relation to AICPI 600 points or 1148 points, as the case may be, shall be upgraded by merging the Dearness Relief payable upto AICPI 1740 points, and

D b. On the pension so upgraded, Dearness Relief of 0.23% of basic pension shall be paid or become recoverable for every 4 point rise or fall of AICPI from 1740 points.

E It is suggested that the above amendment shall be made from the date of its notification in the official gazette and no arrears on account of Pension/Family Pension/Commutation Value or Dearness Relief shall be payable. The one time financial implication of the above proposal has been actuarially determined to be Rs.51.37 Crore.”

F 9. On the basis of the said Minutes, a resolution was passed by the Board on 24th November, 2001. As the entire case hinges and rests on the resolution, it is extracted below:-

“Amendment to LIC of India (Employees) Pension Rules, 1955 – UPGRADING OF Basic Pension to AICPI 1740 Points and 100% DA neutralization thereon in respect of Retirees prior to 01.08.1997:

G Executive Director (Personnel), introducing the subject mentioned that there were three different rates for different groups pensioners at present depending upon their dates of retirement, which causes considerable administrative inconvenience. Chairman pointed out that he has since received a communication for Dr. S. Ram Khanna, Board Member, which refers to his meeting with the Retirees Federation and requests for examining the proposals as H

per Board Note in line with the demands made by the Federation viz. Giving effect to the proposals by 01.11.1993 and upgradation by giving weightage of 11.25% as in the case of in service employees. Chairman pointed out that these have been considered before placing the matter to the Board and it was felt that the same would increase the financial burden very substantially and may be unaffordable for the Corporation. Chairman pointed out that the implications of the proposal made have been actually determined at Rs.51.37 crore and the annual outlay would be in the region of 5 to 6 crore. After some discussion, the Board approved the proposal and suggested that it should be implemented prospectively after obtaining Government approval.”

10. After the resolution was passed, the Executive Director of the Corporation wrote to the Joint Secretary (Insurance & Banking) on 31st December, 2001, seeking amendment to the 1995 Rules. Nothing has been brought on record by the Corporation as to what ensued on the said communication. Be that as it may. The respondents being grieved by the non-execution of the resolution passed by the Corporation, preferred two writ petitions being S.B. Civil Writ Petition No.6676 of 1998 and S.B. Civil Writ Petition No.654 of 2007 before the High Court of Rajasthan at Jaipur.

11. The learned Single Judge, after hearing the learned counsel for the parties though as a matter of fact came to hold that no approval had been given by the Union of India, and the matter was pending before the Union of India; yet taking into consideration the concession given by the learned counsel for the Union of India, directed as follows:-

“The Respondent Corporation is directed to take a decision for implementation of the resolution dated 24.11.2001 passed by the Board. The respondent Corporation cannot provide different criteria for grant of dearness allowance to the existing pensioners based on cut-off date i.e. 31.7.1997. The benefit arising out of the directions above would, however, be considered by the respondent Corporation so that every retired employee may get the same benefit. Costs made easy.”

12. The Corporation being grieved by the decision of the learned Single Judge preferred two *intra*-court appeals D.B. Civil Special Appeal (W) Nos.493 and 494 of 2010. The Division Bench posed the question whether the resolution passed by the Corporation required approval of

A the Central Government, referred to Section 21 of the Act, reproduced a paragraph from the order of the learned Single Judge and came to hold as follows:-

B “The learned counsel for LIC Mr. Mahendra Singh contended, taking us through the provisions of the Act and the Rules under Section 48 and 49, that the rules with regard to the conditions of service of the employees could only be framed by the Central Government and could be implemented only after being notified in the official gazette.

C We are of the view that whatever grievance with regard to the implementation of the Board’s resolution dated 24.11.2001 is concerned, the same can be raised by the Union of India who has chosen not to file any appeal in the matter and this can easily be considered as an approval of the said resolution of the Board dated 24.11.2001 which was allegedly pending for nine years. The Board of LIC, who is the appellant before us against the judgment of the learned Single Judge, had itself taken a decision to remove the disparities and the discrimination with regard to the payment of Dearness Allowance and pension to the retired employees under its resolution of the Board dt.24.11.2001, which was in public interest. It could not and should not have filed the present appeal against the judgment of the learned Single Judge as the learned Single Judge has provided an umbrella to the appellant for the implementation of the decision of the Board dt.24.11.2001 on the categorical statement made by the learned counsel appearing on behalf of the Union of India and not assailed in appeal by the Union of India.”

F 13. It is submitted by Mr. Neeraj Kishan Kaul, learned Additional Solicitor General appearing for the appellant-Corporation that, the learned Single Judge as well as the Division Bench, has committed illegality in deciding an issue of law on the basis of concession given by the learned counsel for the Union of India, for a concession by counsel on a question of law, does not bind the Corporation and, in any case, it cannot form the foundation of a decision. (See *Union of India v. Hira Lal*¹, *B.S. Bajwa v. State of Punjab*², *Vimaleshwar Nagappa Shet v. Noor Ahmed Shariff*³, *State of Rajasthan v. Surendra Mohnot*⁴.)

¹ (1996) 10 SCC 574

² (1998) 2 SCC 523

³ (2011) 12 SCC 658

H ⁴ (2014) 14 SCC 77

14. The thrust of the matter is whether the approval of the Union of India is necessary. Mr. Gupta, learned senior counsel appearing for the respondents has drawn our attention to Rule 55 of the 1995 Rules, which reads as under:- A

“55. Power to issue instructions – The Chairman of the Corporation may from time to time issue instructions as may be considered necessary or expedient for the implementation of these rules.” B

Relying on the same, it is urged by Mr. Gupta that with regard to pay revision, the Chairman of the Corporation has been issuing circulars from time to time and the same is being followed by the Corporation and hence, the interpretation placed on Sections 21 and 48 of the Act by the Corporation is absolutely uncalled for and totally unjustifiable. C

15. On scanning of anatomy of Rule 55 of the 1995 Rules, we are absolutely clear that it does not confer power on the Chairman of the Corporation to issue any instructions that can travel beyond the rules. In terms of Rule 55, he has been authorized to issue instructions which are necessary and expedient for the implementation of the rules. The Board had passed the resolution. The Board can pass a resolution and the Chairman can be the head of the Board, but it does not authorize the Board to take a decision with regard to certain matters which are within the domain of the rule making authority. On a perusal of Section 48, it is clear as crystal that conferment of benefit, either pension or anything ancillary thereto has to be conferred by the rules and the rule as prescribed under Section 48 of the Act is to be tabled before the Parliament. In the absence of a rule, in our considered opinion, no benefit can be granted on the basis of the resolution passed by the Corporation. This being the legal position, the High Court could not have held to the contrary on the basis of the concession given by the counsel for the Union of India. D E F

16. Having stated so, in all possibility, we would have proceeded to record the conclusion but, a significant one, the controversy of this nature does not see the sunset with such immediacy. G

17. Mr. Shree Ram Panchu, learned senior counsel appearing for the respondents in Civil Appeal No.9223 of 2013, has submitted that certain petitioners had preferred writ petition No.184 of 2007 in the High Court of Delhi, assailing the constitutional validity of Para 3A of the Appendix to the Rules contending, *inter alia*, that the said Para is violative H

- A of Article 14 of the Constitution in view of the decisions rendered by this court in *D.S. Nakara v. Union of India and others*⁵, *All India Reserve Bank retired Officers Association v. Union of India*⁶ and *V. Kasturi v. Managing Director, State Bank of India and another*⁷, but the High Court has not adverted to the said facets and disposed of the writ petitions, placing reliance on the decision rendered by the High Court of Rajasthan. We are of the considered opinion that when the issue of constitutional validity of Para 3A to the Appendix was raised, the same deserved to be addressed by the High Court.

- C 18. Mr. Gupta, learned senior counsel appearing for the respondents, endeavoured hard to impress upon us to deal with the same, but as we find certain facts are to be adverted to and the pleadings are not adequate, we think it seemly to restrain from the same.

- D 19. At this juncture, we may usefully note another facet of the submission advanced by Mr. Gupta. The learned senior counsel would urge that there are certain employees who have retired after the cut-off date stipulated in Para 3A of the Appendix, but they are not being given the requisite dearness relief based on subsequent pay revisions. To bolster his submission, he has placed reliance on *Union of India and Another v. SPS Vains (Retd.) and others*⁸, *K.J.S. Buttar v. Union of India and another*⁹ and *V. Kasturi* (supra). Mr. Gupta would submit that there is a distinction between challenge to the constitutional validity of a provision and the interpretation of the provision and its applicability. For the aforesaid purpose, he has referred to us paragraph 16 of the *SPS Vains (Retd.) and others* (supra), which reads as under:-

- F “The case of the respondents, however, was that in view of the Constitution Bench decision of this Court in *D.S. Nakara v. Union of India*, the fixation of a cut-off date as a result of which equals were treated as unequals, was wholly arbitrary and had been rightly interfered with by the High Court. One of the questions posed in the aforesaid decision was whether a class of pensioners could be divided for the purpose of entitlement and payment of pension into those who retired by a certain date and those who retired thereafter. The question was answered by the Constitution Bench

⁵ AIR 1983 SC 130 = (1983) 1 SCC 305

⁶ (1992) Suppl 1 SCC 664

⁷ (1998) 8 SCC 30

⁸ (2008) 9 SCC 125

H ⁹ (2011) 11 SCC 429

holding that such division being both arbitrary and unprincipled the classification did not stand the test of Article 14.” A

20. Pyramiding the submission further in that direction, he has also laid emphasis on paragraphs 8 to 10 and 26 to 28 and 31 of *K.J.S. Buttar* (supra).

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*¹⁰ apart from other paragraphs. We may hasten to add that we have referred to this aspect in *extenso* as Mr. Gupta would submit that non-conferment 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. B
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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. E
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¹⁰ (2013) 2 SCC 772

- A 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.
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- D 24. We had indicated at an earlier stage that though the controversy relating to pension should be put to an end to in quite promptitude, yet for some reason or other, it does not so happen. When the present batch of appeals were argued, this Court on 7th May, 2015, as an interim measure, had directed as follows:-

- E “As an ad-interim measure, it is directed that the petitioner-Corporation shall release 20% of the amount as per the impugned judgments pertaining to the High Court, in favour of the respondent-employees within six weeks hence, subject to final result in the appeals. If any amount, that has been deposited before the High Court pursuant to the order passed by this Court, 20% of the same shall be released in favour of the Life Insurance Corporation of India, so that it can pay to the concerned employees. In case, where the amount has not been deposited, needless to emphasize, the Corporation shall pay and question of any kind of withdrawal from court does not arise. Needless to say, the payment in continuum shall be considered when the appeals are taken up for hearing.”
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- G 25. A grievance has been raised by the learned counsel for the respondents that the Corporation has really not paid the twenty percent of the amount. The same is seriously refuted by learned Additional Solicitor General on the count that they have deposited the amount as per Para 3A of the Appendix, but not given the benefit of pay revisions, as claimed by the certain respondents-employees.

- H 26. We have been apprised at the Bar that the respondents had

harboured hope when the resolution was passed. Their hope, as the learned counsel for the respondents would submit, was not unfounded, inasmuch as the revisions in pension were earlier made by issue of certain circulars issued by the Chairman in exercise of power conferred under Rule 55 of the 1995 Rules. Whether the hope was reasonable or not need not be commented upon, but the fact remains that certain respondents are septuagenarians and they have to fight another round of litigation in the High Court. We feel the pain while remanding the matter, but we have no option as the pleadings are not adequate as it should have been while assailing a constitutional validity of a provision. It is well settled in law that he who assails the constitutional validity of a statutory provision or a rule, has to specially assert the grounds for such challenge. [See *State of Uttar Pradesh v. Kartar Singh*¹¹, *State of Andhra Pradesh and another v. K. Jayaraman and others*¹², *Union of India v. E.I.D. Parry (India) Ltd.*¹³, *State of Haryana v. State of Punjab & another*¹⁴]. The purpose of saying all this is as the learned counsel for the respondents would agonizingly contend that the amount of pension the respondents are getting is a paltry sum and it is difficult to sustain in the present day. That apart, the Corporation should have been gracious enough to recognize the services rendered by them and the Union of India should have come with an affirmative response when the resolution was passed by the Corporation. We have already adjudicated the said facet, but as we are remanding the matter to the High Court on a different count. In such a situation, we are of the convinced opinion that the respondents should get certain amount as an interim measure. We had already directed by the order dated 7th May, 2015 that the Corporation shall pay 20% amount to the individual employees. Mr. Kaul, learned Additional Solicitor General would submit that the Corporation has already deposited the entire amount without the pay revision before the High Courts of Rajasthan and Punjab & Haryana at Chandigarh are concerned regard being had to the order of this Court. As far as the High Court of Delhi is concerned, employees have been paid 20%, as directed by this Court. The said fact is disputed by learned counsel for the respondents after obtaining instructions. The said aspect shall not detain us, for what we are going to direct in praesenti.

27. Keeping in view the totality of facts and circumstances of the case, it is hereby directed that the Corporation shall pay 40% as per

¹¹ AIR 1964 SC 1135

¹² (1974) 2 SCC 738

¹³ (2000) 2 SCC 223

¹⁴ (2004) 12 SCC 673

- A Para 3A of the Appendix to each of the employees within six weeks and shall file an affidavit before the High Court of Delhi to the said effect. The Corporation is at liberty to withdraw the amount deposited in the Courts so that it can pay the employees who have retired. Needless to emphasize, the aforesaid payment shall be subject to final results in the writ petitions.

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28. It is a case where we are constrained to speak that the end does not bring the finality. We say so as Mr. Kaul, learned Additional Solicitor General would contend that the parties to the litigation shall only get the benefit and not the similarly placed persons in view of the interim order passed by this Court on 07.05.2015. It does not require Solomon's wisdom to state that an interim order is an interim order and does not have any impact at the time of final verdict especially in such a situation and, therefore, we direct that it shall be applicable to the similarly placed persons.

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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.

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30. The appeals are disposed of accordingly. There shall be no order as to costs.

Nidhi Jain

Appeals disposed of.