

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 16<sup>TH</sup> DAY OF AUGUST 2022 / 25TH SRAVANA, 1944

WP(C) NO. 29890 OF 2018

**PETITIONER/S:**

M.K. RAVINDRAN  
AGED 73 YEARS  
SON OF LATE SHRI.O.V.GOVINDAN NAMBIAR, RESIDING  
AT L-11, CHANGAMPUZHA NAGAR, SOUTH KALAMASSERY,  
ERNAKULAM DISTRICT, KERALA-682033.  
BY ADVS.  
GEORGE CHERIAN (SR.)  
K.S. SANTHI  
LATHA SUSAN CHERIAN

**RESPONDENT/S:**

- 1 UNION OF INDIA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,  
BANKING DIVISION, DEPARTMENT OF FINANCIAL  
SERVICES, PARLIAMENT STREET, NEW DELHI-110001.
- 2 UNION BANK OF INDIA  
REPRESENTED BY ITS CHAIRMAN AND MANAGING  
DIRECTOR, UNION BANK BHAVAN, NARIMAN POINT,  
MUMBAI-400021.  
BY ADVS.  
SMT.C.G.PREETHA, CGC  
SRI.A.S.P.KURUP, SC, UBI  
SRI.SADCHITH.P.KURUP  
K.K.SETHUKUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 01.04.2022, ALONG WITH WPC 41327/2018, THE COURT ON  
16.08.2022 DELIVERED THE FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE V.G.ARUN**

**TUESDAY, THE 16<sup>TH</sup> DAY OF AUGUST 2022 / 25TH SRAVANA, 1944**

**WP(C) NO. 41327 OF 2018**

**PETITIONER/S:**

C.GOKULRAJ  
AGED 78 YEARS  
SON OF LATE SHRI. C. GOPALAN, RESIDING AT  
SREERUPA, CHANDRANAGAR, PALAKKAD, PALAKKAD  
DIST., KERALA-678 007  
BY ADVS.  
SRI.GEORGE CHERIAN (SR.)  
SMT.K.S.SANTHI  
SMT.LATHA SUSAN CHERIAN

**RESPONDENT/S:**

- 1 UNION OF INDIA  
REPRESENTED BY THE SECRETARY(BANKING DIVISION),  
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,  
DEPARTMENT OF FINANCIAL SERVICES, PARLIAMENT  
STREET, NEW DELHI-110 001
- 2 UNION BANK OF INDIA  
CENTRAL OFFICE UNION BANK BHAVAN, NARIMAN  
POINT, MUMBAI-400 021, REPRESENTED BY ITS  
MANAGING DIRECTOR AND CEO.  
BY ADV SRI.R.PRASANTH KUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 01.04.2022, ALONG WITH WPC 29890/2018, THE COURT ON  
16.08.2022 DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 16<sup>th</sup> day of August, 2022

The petitioners are retired employees of the Union Bank of India/second respondent. The grievance of the petitioners is regarding non-updation of their pension in consonance with the increase in pay band arising out of bi-partite settlements between the management of the Bank and the employees union from time to time. The writ petitions are hence filed seeking the following reliefs;

**WP (C) 29890/2018**

*"(a) To issue a writ of mandamus or any other writ order or direction directing the respondents to update the pension of petitioner as mandated by regulation 35(1) and 56 of the Pension Regulations and to pay arrears of pension with interest at the rate of 12 percent per annum yearly compounding as the amounts detained has been earning similar interest to the Pension Fund.*

*b) To issue such other writ, order or direction which this Hon'ble Court find fit and proper in the interest of justice and in the circumstances of this case."*

**W.P. (C) No.41327/2018**

*"a.To issue a writ of mandamus or any other writ or order directing the second respondent to update the pension of the petitioner in tune with the revised pay scale arising out of the Bipartite Settlements in compliance with regulation 35(1) and 56 and to pay the same to the petitioner."*

2. The essential facts are as under;

Prior to 1985, the employees of the second respondent were covered by the Contributory Provident Fund Scheme under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. While so, based on a memorandum of settlement arrived at between the managements of 58 banks represented by the Indian Banks Association and workmen represented by the All India Bank Employees Association, it was decided to introduce a pension scheme for the workmen in lieu of employers contribution to the provident fund. Accordingly, the first respondent formulated and notified the Union Bank of India (Employees) Pension Regulations, 1995 ('the

Regulations') and constituted a pension fund called 'the Union Bank of India (Employees) Pension Fund' under an irrevocable trust. The petitioners opted for pension under the Regulations and authorised the bank to transfer the entire contribution with interest thereon to the newly created pension fund. Transfer was effected accordingly and from then onwards, contributions to the employees provident fund, which was part of the petitioners' wages, was paid to the pension fund. The petitioners rely on Regulation 35(1), as amended on 18.05.2002, to contend that their basic pension is bound to be updated in consonance with the increase in the pay band. Reliance is also placed on Regulation 56 which provides that, in case of doubt as regards application of the Regulations, corresponding provisions of the Central Civil Service Rules, 1972 or Central Civil Services (Commutation of Pension) Rules, 1981, applicable

for Central Government Employees, can be adverted to. The petitioners therefore contend that their basic pension is liable to be revised in the same manner as that of retired Central Government Employees whenever pay band is revised.

3. Adv. George Cherian, learned Senior Counsel appearing for the petitioners contended that Pension Regulations is the outcome of a Memorandum of Settlement entered between the managements and employees unions on 29.10.1993. As per the recital in the Memorandum of Settlement, the bank was to introduce a pension scheme for workmen employees in lieu of employers' contribution to the provident fund. The pension scheme is to be in tandem with the Central Government/Reserve Bank of India pattern. The rate of basic pension was decided to be 50% of the average pay as defined in the pension scheme, subject to a minimum of Rs.375 per mensem. Clause 12 of the Settlement contemplated

the making of provisions prescribing qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions on the same lines as is in force in the Reserve Bank of India. Attention is drawn to Ext.P9 in W.P.(C) No.29890 of 2018, issued by the Government of India, declining the recommendation for updating the pension of Reserve Bank employees on the premise that any change in the manner of calculating pension is likely to result in similar demands from employees of public sector banks and financial institutions, most of which are facing financial difficulties. It is pointed out that, in spite of its earlier stand that any change in the mode of calculation of pension of the Reserve Bank employees will result in a contagion effect, the Government, by Ext.P10, approved the recommendation for increase in the pension and DA of RBI employees. It is hence contended that the

benefit of such increase ought to have been extended to the employees of Public Sector Banks like the second respondent also.

4. Referring to Regulation 35(1), it is submitted that the Regulation, as originally notified, was to the effect that, 'in respect of employees who retired between first day of January 1986, but before 31st day of October 1987, basic pension and additional pension will be updated as per the formula given in Appendix-I'. The Regulation, as amended on 18.05.2002, reads as under;

*'Basic pension and additional pension, wherever applicable, shall be updated as per the formula given in Appendix-I'.*

The words 'will be' in the original text having been replaced with 'shall be', by way of amendment, it is unambiguous that basic pension is bound to be updated in accordance with the



increase in pay bands. That apart, Regulation 56 also makes it abundantly clear that the pension scheme is in tandem with the Central Civil Services Pension Rules.

5. Another forceful contention urged by the Senior Counsel is that, pension fund of the second respondent has grown manifold over a period of time and as on 31.03.2017, Rs.11,032.28 Crores is available in the fund. Relying on Regulation 5(2), it is contended that the pension fund can be utilised only for payment of pension or family pension in accordance with the Regulations. It is pointed out that the average payment made towards pension/family pension is a meager 23.91% of the annual growth. Moreover, the employees who joined service after 31.03.2010 are covered under the PFRDA Scheme of pension of the first respondent. As such, the pension liability of the second respondent will get extinguished over a period of time. It is alleged that, the

second respondent is withholding the pension legitimately due to retired employees like the petitioners, with the evil design of utilising it for payment of dividend and other purposes. Reference is made to the decisions of the Apex Court to contend that pension is no longer a bounty to be disbursed according to the whims of the employer and has acquired the status of property under Article 300A of the Constitution of India.

6. Learned Standing Counsel for the Bank argued that the contentions urged on behalf of the petitioners have no legal backing and the only question to be considered is whether pension is being disbursed in accordance with the stipulations in the Regulations. It is submitted that Regulation 35(1) clearly states that the basic pension shall be updated as per the formula given in Appendix I. The petitioners have no case that the periodical updation of pension is not in

accordance with Appendix I. The contention that the updation ought to be in accordance with the Central Civil Service Pension Rules or at least in tandem with revision of pension of RBI employees, is too far fetched to be accepted. Finally, it is submitted that the same issue was considered and rejected by the Punjab and Haryana High Court in **M.C.Singla v Union of India [2012 SCC OnLine P&H 7136]**.

7. In the Memorandum of Settlement dated 29.10.1993 between the managements of banks and the employees association, the precursor to the Regulations, the understanding was to introduce a pension scheme broadly on Central Government/Reserve Bank of India pattern. The Pension Regulations does not contain any such provision, except Regulation 56, which stipulates that, in case of doubt in the matter of application of the Regulations, regard can be had

to the corresponding provisions of Central Civil Service Rules, 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees. The contention of the respondent Bank is that there is no scope for doubt in the application of the Regulations, since Regulation 35(1) is categoric to the effect that basic pension and additional pension, wherever applicable, shall be updated as per the formulae given in Appendix-I. The further contention is that even the petitioners have no case that the basic pension is not being updated in accordance with the formulae in Appendix-I. To buttress this argument, reliance is placed on the decision of the Punjab and Haryana High Court in **M.C.Singla** (supra).

8. In my considered opinion the judgment in **M.C.Singla** was rendered by considering Regulation 56 in isolation. In the instant case, the

petitioners contend that there cannot be any consideration distinct from the purpose behind constitution of the pension fund. I find the submission to be well founded. Regulation 5(2) makes it abundantly clear that the sole purpose of the fund is payment of pension or family pension to the employee or his family in accordance with the Regulations. Going by the undisputed figures, only 23.91% of the fund is being utilised for payment of pension and family pension. Another crucial aspect is that the employees who have after 2010 are covered by another scheme. Therefore, the beneficiaries of the Pension Regulations are a vanishing class. This will definitely result in the trust being left with a huge some of money after the death of the last beneficiary.

It is also to be noted that the employer's contribution towards pension is also an entitlement of the employee, earned by reason of

the service rendered by him. In this context, it is pertinent to take into account the position of law emanating from the judgments in **D.S Nakara and others v. Union of India [(1983) 1 SCC 305]** and **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd and others [(1984) 3 SCC 369]** and **State of Jharkhand v. Jitendra Kumar Srivastava and another [(2013) 12 SCC 210]**.

9. In **D.S.Nakara** (supra), after detailed consideration of this aspect, the Apex Court held as under;

"31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare

*measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.*

10. In **Sudhir Chandra Sarkar** (supra), it was reiterated that pension is a right, the payment of which does not depend upon the discretion of the employer. The contextually relevant portion of the judgment is extracted hereunder;

*"18. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and*

*therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] , State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360] and D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165 : (1983) UPSC 263 : (1983) 1 LLJ 104] . If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par."*

11. It is pertinent to note that in **State of Jharkhand and others v. Jitendra Kumar Srivastava and another [(2013) 12 SCC 210]**, the Apex Court



declared the right to receive pension as akin to a right in property. The contextually relevant portion of that judgment reads as under;

*"The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:*

*300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.*

*Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that the attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

The legal position being as above, I find substantial force in the contention that the

accumulated surplus ought to be utilised by revising the pension periodically. In matters of pension, there has to be a holistic approach and not constricted interpretation of certain provisions.

In view of the above findings, the writ petitions are disposed of permitting the petitioners to file a detailed representation highlighting their grievances. Thereupon, the second respondent shall consider the representation and pass appropriate orders thereon within two months. For effective consideration of the representation, the petitioners shall make available copy of the writ petitions along with certified copy of the judgment.

Sd/-

**V. G. ARUN**  
**JUDGE**

sc1/

**APPENDIX OF WP (C) 29890/2018**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY APPENDIX-I TO PENSION REGULATIONS.
- EXHIBIT P2 THE DETAILS OF PENSION FUND OF THE SECOND RESPONDENT FOR LAST SEVEN YEARS FROM 2010-11 TO 2016-17 PREPARED IN A TABULAR FORM
- EXHIBIT P3 THE TRUE COPY OF THE ORDER DATED 01.07.2015 OF THE HONOURABLE SUPREME COURT IN CIVIL APPEAL NO.1123/15.
- EXHIBIT P4 THE TRUE COPY OF THE ORDER DATED 13.02.2018 IN CIVIL APPEAL NO.5525/12.
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 16.6.2018 MADE BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE STAFF CIRCULAR NO.4904 DATED 08.10.2002 (WHICH HAS DISAPPEARED FROM THE WEBSITE OF THE BANK) SHOWING THE EFFECTIVE DATE OF THE AMENDMENT AS 1ST SEPTEMBER, 2000.
- EXHIBIT P7 TRUE COPY OF THE EXTRACT OF REGULATION 28 SHOWING THE EFFECTIVE DATE AS 1ST NOVEMBER, 2000 AND THE EXTRACT OF REGULATION 29 ON "PENSION ON VOLUNTARY RETIREMENT.
- EXHIBIT P8 TRUE COPY OF THE EXCERPTS OF THE NOTIFICATION DATED 06.11.2017 IN THE GAZETTE OF INDIA CONTAINING THE FALSE AVERTMENT OF THE BANK.
- EXHIBIT P9 TRUE COPY OF THE LETTER F NO.11/5/2001-IR DATED 26.02.2018 OF THE FIRST RESPONDENT TO RESERVE BANK OF INDIA
- EXHIBIT P10 TRUE COPY OF THE LETTER F NO.11/5/2001-IR DATED 05.03.2019 OF THE FIRST RESPONDENT TO RESERVE BANK OF INDIA

**APPENDIX OF WP(C) 41327/2018**

PETITIONER EXHIBITS

- EXHIBIT P1                THE TRUE COPY APPENDIX-I TO PENSION REGULATIONS.
- EXHIBIT P2                THE DETAILS OF PENSION FUND OF THE SECOND RESPONDENT FOR THE PERIOD FROM 2010-11 TO 2016-17
- EXHIBIT P3                THE TRUE COPY OF THE UNSTARRED QUESTION NO. 2444 IN THE RAJYA SABHA AND THE ANSWER TO IT BY MOS, FINANCE.
- EXHIBIT P4                THE TRUE COPY OF THE LETTER DATED 15/09/2018 OF THE PETITIONER TO THE SECOND RESPONDENT.