2026 INSC 123

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2026
(Arising out of SLP(C)Nos.22628-22630 of 2022)

STATE OF WEST BENGAL
& ANR. …APPELLANT(S)

VERSUS

CONFEDERATION OF STATE
GOVERNMENT EMPLOYEES,
WEST BENGAL & ORS. …RESPONDENT(S)

WITH

CONTEMPT PETITION NO(s). of 2026
arising out of DIARY NO.(s) 35252 of 2025

CONTEMPT PETITION NO(s). of 2026
arising out of @DIARY NO.(s) 39626 of 2025

AND
CONTEMPT PETITION NO(s). of 2026
arising out of @DIARY NO.(s) 41566 of 2025

J U D G M E N T

SANJAY KAROL J.

This judgment is divided into the following parts:

INDEX

EXORDIUM 3
THE CONTROVERSY *IN SUMMARIUM* 8
A GLOSSARY OF TERMS AND DEFINITIONS 8
RoPA Rules 10
First Memorandum 19
PROCEEDINGS BEFORE THE TRIBUNAL 25
BEFORE THE HIGH COURT-ROUND ONE 28
ON REMAND BEFORE THE TRIBUNAL 32
BEFORE THE HIGH COURT- ROUND TWO 38
RIVAL CONTENTIONS 42
A. **Submissions on behalf of the Appellant-State** 42
B. **Submissions of the Respondents** 49
QUESTIONS TO BE CONSIDERED 53
ANALYSIS AND DISCUSSION 55
Dearness Allowance 55
Question 1: ARTICLE 309 61
Questions 2, 3 and 4 64
Question 5: ARBITRARINESS OF APPELLANT-STATE'S ACTION AND LEGITIMATE EXPECTATION OF ITS EMPLOYEES 78

Question 6 and 7: CONFLICT, IF ANY, BETWEEN LIST I AND II OF THE VIIth SCHEDULE AND FINANCIAL AUTONOMY OF THE STATE 93

Question 8: EFFECT OF FINDINGS IN FIRST ROUND OF LITIGATION 103

Question 9: WHETHER THE RESPONDENTS ARE ENTITLED TO DA TWICE A YEAR? 106

Question 10: DOES PAUCITY OF FUNDS DEFEAT A LEGAL RIGHT? 107

Question 11: FISCAL POLICY AND JUDICIAL REVIEW 112

Question 12: DEARNESS ALLOWANCE - A FUNDAMENTAL RIGHT? 118

Question 13: DELAY AND LATCHES 118

DIRECTIONS AND CONCLUSIONS 121

Leave Granted in SLP(C)Nos.22628-22630 of 2022.

These appeals are at the instance of the State of West Bengal and arise out of two prior rounds of litigation wherein the State suffered judgments against itself.

EXORDIUM

1. The idea of a welfare state casts a positive duty upon the State to ensure the social and economic well-being of its citizens. The role of the State is as such not limited to maintaining law and order or facilitating markets, but extends to creating or easing the way for conditions in which individuals can live with security, dignity, and a reasonable standard of living. One of the most persistent threats to this objective that has become a permanent

'*bad penny*', is inflation, which steadily erodes purchasing power, thereby placing a disproportionate burden on salaried and lower-income groups. In this context, Dearness Allowance emerges as a practical instrument of protection in the hands of the welfare state, which protects its employees from the adverse effects of rising prices.

2. Dearness Allowance is designed to neutralise the impact of inflation. When the cost of essential goods increases, salaries that do not account for the same and remain in a bygone era, often fail to meet the basic needs, leading to a decline in living standards. By way of periodic adjustment to salaries in response to changes in the cost of living, the State attempts to ensure that employment continues to provide economic security. This reflects a core concern of the welfare state that its employees should not be pushed into hardship due to economic forces beyond their control. Put differently, Dearness Allowance is not an additional benefit but a means to maintain a minimum standard of living.

3. The importance of preserving a reasonable standard of living is closely tied to the constitutional idea of dignity. Human dignity does not mean mere physical survival. Access to food, clothing, healthcare, shelter and the ability to participate meaningfully in social life are crucial aspects. Dignity is

compromised when individuals are unable to meet these basic needs. This link is recognized in our Constitution under Article 21, which guarantees the right to life and personal liberty. Judicial interpretation has consistently held that the right to life includes the right to live with human dignity, encompassing livelihood, adequate nutrition, shelter, and basic amenities. This right, under Article 21, would lose its substantive meaning without a minimum standard of living.

4. PN Bhagwati J. (as his Lordship then was) felicitously captured this constitutional diktat in the following words in ***Francis Coralie Mullin v. Administrator, Union Territory of Delhi***[1]**:**

> **"8.** But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would

[1] (1981) 1 SCC 608

> have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights…"
>
> (Emphasis Supplied)

A bench of three judges, nearly two decades later, echoed a similar sentiment. In ***Common Cause v. Union of India***[2]**,** it was observed:

> 175. "Right to Life", set out in Article 21, means something more than mere survival or animal existence. (See: State of Maharashtra v. Chandrabhan Tale [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : AIR 1983 SC 803 : (1983) 3 SCR 337] .) This right also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in different forms, freely moving about and mixing and commingling with fellow human beings…"
>
> (Emphasis Supplied)

5. The Preamble of the Constitution, right at the outset of our founding charter, establishes this connection between dignity and material conditions of life. By committing the State to social and economic justice, equality, and fraternity assuring the dignity of the individual, the Preamble sets the philosophical foundation of the Indian welfare state. With large sections of the population still been unable to achieve and maintain basic standards of living, it is clear that much is left to be desired when it comes to the ideals of socio-economic justice. Inequality and deprivation attack the

[2] (1999) 6 SCC 667

very core of social cohesion. Thus, the constitutional vision of dignity necessarily presupposes policies that protect living standards.

6. The strongest justification for Dearness Allowance in India, though statutory in nature, lies in its constitutional grounding, especially in the Directive Principles of State Policy. Articles 38, 39 and 43 thereof implore upon the State to promote social and economic justice, reduce inequalities, and secure a living wage and decent conditions of work. Dearness Allowance gives practical effect to the above-mentioned stipulations of the Constitution providing a barrier against salaries being compromised in value beyond sustenance. It is, as such, a tool for the realization of lived economic reality, ensuring that the promise of a living wage retains its substance.

7. Dearness Allowance represents a clear intersection of principles of welfare state and those enshrined by the constitutional vision. By protecting standards of living, it furthers the right to live with dignity under Article 21 and advances the goals articulated in the Preamble thereby being a concrete expression of the State's constitutional responsibility .

THE CONTROVERSY *IN SUMMARIUM*

8. The State of West Bengal[3] in these appeals by special leave, questions the legality and correctness of the final judgments and orders dated 20th May 2022 passed in WPST No.102 of 2020; 22nd September 2022 in RVW No.159 of 2022, and CAN 1 of 2022, passed by the High Court at Calcutta. At heart, the grievance of the State is that the High Court declared Dearness Allowance[4] as a facet of Article 21 of the Constitution of India[5] and directed the State Government to pay to the respondents the said allowance at the rate prevalent in the Central Government in accordance with the All-India Consumer Price Index[6]. Here, we are concerned with the disbursement of arrears of DA as claimed by the employees of the appellant-State for the period 2008-2019.

For the purpose of clarity, it is stated that the position of the parties is referred to as before this Court.

A GLOSSARY OF TERMS AND DEFINITIONS

9. Certain terms, which will be repeatedly used throughout this judgment, may be explained/defined at the beginning, before

---

[3] appellant-State
[4] DA
[5] Constitution
[6] AICPI

we proceed to the matter in issue, to facilitate ease of understanding:

Dearness Allowance: Dearness Allowance or 'DA' is defined as that amount of money which is added to a person's basic pay or pension, by the employer because of rising prices and other costs[7]. In similar terms are the "*Cost of Living Adjustments*" which is defined as *"an increase in a person's wages, pension, etc. that is made once a year according to how much the prices of things such as food, transport, and housing have increased".*[8]

Inflation: The International Monetary Fund defines '*inflation*' as the rate of increase in prices over a given period. "*Inflation is typically a broad measure, such as the overall increase in prices or the increase in the cost of living in a country. But it can also be more narrowly calculated - for certain goods, such as food, or for services, such as a haircut, for example. Whatever the context, inflation represents how much more expensive the relevant set of goods and/or services has become over a certain period, most commonly a year".*[9]

Consumer Price Index:- The United States Bureau of Labour Statistics, defines the Consumer Price Index as *"a measure of the*

[7] https://dictionary.cambridge.org/dictionary/english/dearness-allowance
[8] https://dictionary.cambridge.org/dictionary/english/cost-of-living-adjustment
[9] https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Inflation

average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."[10]

BACKGROUND TO THE LEGAL PROCEEDINGS

10. The appellant-State set up the Fifth Pay Commission[11] in 2008 to examine the structure of emoluments to be paid to the State Government employees. In the report submitted, the Commission made several recommendations, including the revision of the DA to be paid. In furtherance of such recommendations, the appellant - State, in accordance with the powers conferred under Article 309 of the Constitution, brought into force the West Bengal (Revision of Pay and Allowance) Rules, 2009[12], by Notification dated 23rd February 2009. The said Rules provide for revision of pay and allowances, viz., Dearness Allowance, House-Rent allowance, Medical Allowance, and Non-Practicing Allowance, and were to have retrospective effect, i.e., from 1st January 2006..

RoPA Rules

11. The relevant rules are as under, for ready reference:

"Rules

[10] https://www.bls.gov/cpi/
[11] Commission
[12] RoPA Rules

1. **Short title and commencement**– (1) These rules may be called the West Bengal Services (Revision of Pay and Allowance) Rules, 2009.
(2) They shall be deemed to have come into force on the first day of January, 2006.

x----------x----------x

3. **Definitions**. – (1) In these rules, unless the context otherwise requires, –

… … …

(c) "existing emoluments" mean the aggregate of –
(ii) existing basic pay,
(iii) dearness pay appropriate to the basic pay, and
(iv) dearness allowance appropriate to the basic pay plus dearness pay at index average 536 (1982 =100);

x----------x----------x

7. Fixation of initial pay in revised pay structure – (1) The initial pay of a Government employee who elects or is deemed to have elected under rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall, unless in any case the Governor by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien, or would have held a lien had his lien not been suspended, and in respect of his pay in the officiating post held by him in the following manner namely:–

(a) in case of all employees, –

(i) the pay in the pay band of a Government employee who continued in service after 31st December, 2005, shall be determined notionally as on 1st day of January, 2006, by way of multiplying his existing basic pay by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10:

Provided that if the minimum of the revised pay band is higher than the amount so

arrived at in accordance with the provisions of this item, the pay shall be fixed at the minimum of the revised pay band;

(ii) after the pay in the pay band so determined, grade pay corresponding to the existing scale shall be added;

(b) in case of medical officers and veterinarians who are in receipt of non-practising allowance, the pay in the revised pay structure shall be fixed notionally in accordance with the provisions of clause (a):

Provided that the pre-revised dearness allowance appropriate to the existing non-practising allowance admissible at index average of 536 (1982=100) shall be added while fixing the pay in the revised pay band, and the amount of non-practising allowance at the rate as specified in Part F of Schedule I shall be drawn with effect from the 1st day of January, 2006 or the date of option for revised pay structure notionally, in addition to the pay so fixed in the revised pay structure.

Note 1.– A Government employee who is on leave on the date of commencement of these rules and is entitled to leave salary, shall become entitled to pay in the revised pay structure from the date of actual effect of the revised emoluments. Similarly, where a Government employee is on study leave shall get the benefit of these rules.

Note 2.– A Government employee under suspension, shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure shall be subject to the final order of the pending disciplinary proceedings.

Note 3.–Where the amount of existing emoluments exceeds the revised emoluments in respect of any Government employee, the difference amount shall be allowed as personal pay to be absorbed in future increases in pay.

Note 4.– Where in the fixation of pay under sub-rule (1), the pay of a Government employee, who, immediately before the 1st day of January, 2006, was drawing more pay

in the existing scale than another Government employee junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised pay band as that of the junior.

Note 5. – In the case where a senior Government employee promoted to a higher post before the 1st day of January, 2006, draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of senior Government employee shall be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up shall be done by the Government with effect from the date of promotion of the junior Government employee subject to the fulfillment of the following conditions:–

(i) both the junior and the senior Government employees should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;

(ii) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(iii) the senior Government employee at the time of promotion should have been drawing equal or more pay than the junior;

(iv) the anomaly should arise directly as a result of the application of the provisions of the normal rule or any other rule or order regulating fixation of pay on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, the provisions of this Note shall not be

applicable to step up the pay of the senior officer.

Note 6. – Where a Government employee is in receipt of personal pay on the 1st day of January, 2006, which together with his existing emoluments exceeds the revised emoluments, the difference representing such excess shall be allowed to such Government employee as personal pay to be absorbed in future increases of the pay.

(2) Subject to provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay.

x----------x----------x

10. Date of increment in revised pay structure.– (1) In respect of all Government employees, there shall be a uniform date of annual increment and such date of annual increment shall be the 1st day July of every year:

Provided that in case of a Government employee who had been drawing maximum of the existing scale of pay for more than a year on the 1st day of January, 2006, the next increment in the unrevised pay scale shall be allowed on the 1st day of January, 2006 and thereafter the provision of this rule shall apply.

Note 1.– In case of Government employees completing six (6) months and above in the revised pay structure as on 1st day of July, shall be eligible to be granted the increment. The first increment after fixation of pay on the 1st day of January, 2006 in the revised pay structure shall be granted notionally on the 1st day of July, 2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.

Note 2. – In case of the Government employees who earned their last increment between the period commencing from the 2nd day of January, 2005 and ending on the 1st day of January, 2006, after fixation of their pay under revised pay structure, such Government

employee should get next increment on the 1st day of July, 2006.

Note 3. – In case of the Government employees whose date of next increment falls on the 1st day of January, 2006, after granting an increment in the pre-revised pay scale as on the 1st day of January, 2006, their pay in the revised pay structure should be fixed on the 1st day of January, 2006 and such Government employees should get their next increment on the 1st day of July, 2006.

Note 4. – If a Government employee opts to come under revised pay structure after any date between the 1st day of January, 2006 to the 1st day of July, 2006, his pay in the revised pay structure should be fixed accordingly, but his date of next increment should be 1st day of July, 2007.

x----------x----------x

12. Payment of arrears.– (1) Notwithstanding anything contained elsewhere in these rules, or in any other rules for the time being in force, no arrears of pay to which a Government employee may be entitled in respect of the period from the 1st day of January, 2006 to the 31st day of March, 2008, shall be paid to the Government employee.

(2) (a) The arrears of pay to which the Government employee may be entitled to in respect of the period from the 1st day of April, 2008 to the 31st day of March, 2009, shall be paid in three consecutive equal yearly installments in cash from the year 2009-2010.

(b) A Government employee, who retired on any date between the 1st day of January, 2006 to the 31st day of March, 2008, shall not be entitled to any arrears of pay for the period up to the 31st day of March, 2008.

A Government employee, who retired between the periods from the 31st day of March, 2008 to the 1st day of April, 2009, but before publication of these rules in the *Official Gazette*, shall receive arrears pay for the period from the 1st April, 2008 to the date of his retirement, in cash.

Explanation.– For the purpose of this rule, "arrears of pay", in relation to a Government employee, means the difference between the aggregate of pay and allowances to which he is entitled on account of the revision of pay and allowances under these rules for the period in question and the aggregate of the pay and allowances to which he would have been entitled for that period had his pay and allowances not been so revised. The revised allowance (except for dearness allowance and non-practicing allowance) shall be payable only with effect from the 1st day of April, 2009.

Note.– Non-practising allowance at the new rate on the revised pay structure shall be admissible to the officers of the West Bengal Homeopathic Educational Service, the West Bengal Ayurvedic Educational Service, the West Bengal Homeopathic Health Service and the West Bengal Ayurvedic Health Service with effect from 1st day of April, 2009.

x----------x----------x

14. Overriding effect of rules.– The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules, orders or notifications for the time being in force, and all such rules, orders and notifications including the West Bengal Service Rules, Part I, shall have effect subject to the provisions of these rules.

15. Relaxation of rules. – Where the Governor is satisfied that the operation of all or any of the provisions of these rules causes undue hardship in any particular case or class of cases, he may, by order, dispense with or relax the requirement of all or any of these rules to such extent and subject to such conditions as he may consider necessary for dealing with the case or class of cases in a just and equitable manner."

(Emphasis Supplied)

Clarificatory Memorandum

"Government of West Bengal
Finance Department
Audit Branch

No. 1691-F Dated the 23rd February, 2009

MEMORANDUM

Subject: Clarificatory Memorandum on the West Bengal Services (Revision of Pay & Allowance) Rules, 2009 and on allied matters dealt with by the Fifth Pay Commission.

In Finance Department Resolution No. 6020-F dated the 28th August, 2008 the Government constituted a Pay Commission –

(1) to examine the present structure of pay and conditions of service after taking into account the total package of benefits available to the following categories of employees and to suggest changes which may be desirable and feasible keeping in view the decisions of Central Government on the recommendations of the Sixth Central Pay Commission:-

(a) employees under the rule making control of the Government of West Bengal except members of the All India Services, West Bengal Judicial Service and the members of the services to whom the University Grants Commission Scales of pay and AICTE scales of pay are applicable;

(b) teaching and non-teaching employees of Government sponsored or aided –

(i) educational institutions,
(ii) Training Institutions of Primary Teachers,
(iii) Libraries,
(iv) Polytechnics and Junior Technical Schools;

(c) non-teaching employees of non-Government Colleges (Sponsored or Aided);

(d) employees of the Municipalities, Municipal

Corporations, Notified Area Authorities, District Primary School Councils and Panchayat Bodies;

(2) to examine the existing promotion policies and related issues and to suggest changes which may be desirable and feasible, having regard to need for improving people orientation, social accountability and efficiency of the administration;

(3) To examine special allowance and other allowances, concessions including leave travel concession and benefits in kind which are available to the employees in addition to pay and suggest changes which may be desirable and feasible;

(4) To examine issues relating to retirement benefits; and

(5) To make recommendations on each of the above having regard *inter alia* to the prevailing pay structure under the Central Government, Public Sector Undertakings and other State Governments etc., the economic conditions of the country, financial responsibility to the Government of India and the pattern of allocation of revenues to the State, the resources of the State Government and the demands thereon on account of the commitment of the State Government to developmental activities.

The Commission submitted its report on the 12th February, 2009. After due consideration of the recommendations of the Commission, the Governor has been pleased to make the decisions set out in the following paragraphs in respect to the employees under category 1(a) above :-

2. *Scales of Pay* – The Government has accepted the recommendation of the Commission in respect of running pay bands and grade pay corresponding to each scale of pay without any modification.

The revised pay structure which has been prescribed by the Government are set out in –

(a) Schedule I to the West Bengal Services (Revision of Pay and Allowance) Rules, 2009 relating to services generally published with the Finance Department Notification No. 1690-F dated the 23rd

February, 2009.

(b) Rules relating to Subordinate Executive Staff of the Police Force, published with notification No. 688-PL, 689-PL and 690-PL dated the 23rd February, 2009.

(c) Regulations relating to the officers and staff of the West Bengal National Volunteer Force, published with the notification No. 342-CD dated the 23rd February, 2009.

(d) Regulations relating to the officers and staff of the Public Service Commission, West Bengal, published with the Finance Department notification No. 1693-F dated the 23rd February, 2009.

These rules and regulations have been published in the extraordinary issue of Kolkata Gazettee dated the 23rd February, 2009.

… … …

10. ***Dearness Allowance*** – Consequent upon revision of pay of Government employees in accordance with the West Bengal Services (Revision of Pay and Allowance) Rules, 2009, the dearness allowance to which a Government employee is entitled from time to time since the 1st day of January, 2006 needs to be related to pay in the revised pay structure. Necessary Government Order in this regard has been issued with Finance Department Memo. No. 1692-F dated the 23rd February, 2009.

… … …"

(Emphasis Supplied)

First Memorandum

"Government of West Bengal
Finance Department
Audit Branch

No.1692-F Dated the 23rd February,2009

MEMORANDUM

Subject: Drawal of Dearness Allowance in the revised pay structure under the West Bengal Services (Revision of pay and Allowance) Rules, 2009.

Consequent upon the revision of Pay Scales of Government employees under the provisions of West Bengal Services (Revision of Pay and Allowance) Rules, 2009. It has become necessary to relate Dearness Allowance admissible to a Government employee to his basic pay in the revised pay structure in the case he has elected or is deemed to have elected to draw pay in the revised pay structure prescribed under the aforesaid Rules.

2. As it has been laid down in Rule 12 of the West Bengal Servies (Revision of pay and Allowance) Rules, 2009, that no arrears of pay and allowances to which any Government employee may be entitled in respect of the period from the 1st January,2006 to 31st March 2008, shall be paid to the Government employee, the Dearness Allowance admissible to a Government employee needs to be related to his pay in the revised pay structure with effect from the 1st April, 2008 only.

3. Accordingly the Governor is pleased to decide that the Dearness Allowance payable to a Government employee with effect from 1st April, 2008, shall be at the following rates :-

Period for which payable	Rate of Dearness Allowance per month on basic pay
01.04.2008 to 31.05.2008	2%
01.06.2008 to 31.10.2008	6%
01.11.2008 to 28.02.2009	9%
01.03.2009 to 31.03.2009	12%
01.04.2009 onwards	16%

4. The payment of Dearness Allowance under this order from the dates indicated above shall be made after adjusting

the instalments of Dearness Allowance already sanctioned and paid to the State Government employee with effect from 01.04.2008, 01.06.2008, 01.11.2008 and 01.03.2009, vide Order No. 13-F dated 01.01.2008, No. 4236-F dated 12.06.2008, No.8195-F dated 04.11.2008 and 1370-F dated 12.02.2009 respectively.

5. The term 'basic pay' for the purpose of calculation of Dearness Allowance shall mean the Pay drawn in the revised pay band including the Grade Pay and NPA, where admissible, but shall not include any other type(s) of pay. In the case of those employees who do not opt for revised pay structure as per the West Bengal Services (Revision of Pay and Allowance) Rules 2009, the 'Pay' shall mean the Basic pay in the scales of pay as per the West Bengal Services (Revision of Pay and Allowance) Rules, 1998 plus Dearness Allowance as sanction to the State Government employees with effect from 01.04.2007, vide Finance Department Memo. No. 2416-F dated 27.03.2007.

6. The Dearness Allowance admissible in the para 4 of this memorandum shall be rounded off to the nearest rupee in each case.

By Order of the Governor,
Sd/- S.K. Chattopadhyay
Special Secretary to the Governor of West Bengal"
(Emphasis Supplied)

12. At this stage itself, it is imperative to take note of the position regarding the payment of DA prevalent in the Central Government at the relevant point in time.

"MINISTRY OF FINANCE
(Department of Expenditure)
NOTIFICATION
New Delhi, the 29th August, 2008

G.S.R. 622 (E).- In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148 of

> the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely : -
>
> 3. Definitions- In these rules, unless the context otherwise requires -
> (1) "existing basic pay" means pay drawn in the prescribed existing scale of pay, including stagnation increment(s), but does not include any other type of pay like 'special pay', etc.
> … … …
>
> (3) "existing emoluments" mean the sum of (i) existing basic pay, (ii) dearness pay appropriate to the basic pay and (iii) dearness allowance appropriate to the basic pay '+ dearness pay at index average 536 (1982=100)
> … … …"
>
> (Emphasis Supplied)

13. The appellant - State clarified by way of the above said Clarificatory Memorandum that DA would be linked to revised pay, from 1st January 2006. Also, it was stated in the First Memorandum issued on the same day, to the effect that starting from 1st April 2008 rate of DA would be increased periodically, to 16% from 1st April 2009. On 9th December 2009, DA was revised with effect from 1st December 2009 to 22%. The rate at which DA would be payable was further revised.

14. A table depicting the same as also the change carried out by the Central Government, facilitating comparison thereof, as submitted by the appellant State, is as follows:

Government of West Bengal

G.O. No. of Finance Department, Government of W.B.	Rate of DA (%) released by State Government	Date of effect given by State Government
1692-F dt. 23.02.2009	2	01.04.2008
Do	6	01.06.2008
Do	9	01.11.2008
Do	12	01.03.2009
Do	16	01.04.2009
10900-F dt. 09.12.2009	22	01.12.2009
2580-F dt. 06.04.2010	27	01.04.2010
10850-F dt. 23.11.2010	35	01.12.2010
11080-F dt. 12.12.2011	45	01.01.2012
10615-F dt. 31.12.2012	52	01.01.2013
8840-F dt. 16.12.2013	58	01.01.2014
143-F dt. 14.12.2015[13]	65	01.01.2015
8430-F dt. 14.12.2015	75	01.01.2016
18-F(P2) dt. 02.01.2017	85	01.01.2017
5724-F (P2) dt. 12.09.2017	100	01.01.2018
4037-F(P2) dt. 21.06.2018	125	01.01.2019

Government of India

Rate of DA (%) released by Central Government	Date of effect given by Central Government
2	01.07.2006
6	01.01.2007
9	01.07.2007
12	01.01.2008

[13] Notification on record reveals the actual date to be 9th January 2015

16	01.07.2008
22	01.01.2009
27	01.07.2009
35	01.01.2010
45	01.07.2010
51	01.01.2011
58	01.07.2011
65	01.01.2012
72	01.07.2012
80	01.01.2013
90	01.07.2013
100	01.01.2014
107	01.07.2014
113	01.01.2015
119	01.07.2015
125	01.01.2016

The case put up by the respondents before the Tribunal was that although various revisions were made to the DA, it was not paid to the employees between 1st July 2010 and 1st January 2012. After the latter date when DA was paid, it was paid at a rate different to what was paid to Central Government employees. Further revisions were made to the DA payable, on 31st December 2012, to be applicable henceforth @ 52%. The same was increased to 58% for the next year on 16th December 2013; then to 65% for the following year on 9th January 2015, with effect from the beginning of the year; and then further to 75% for the year following, on 14th December 2015.

15. Since the employees were not paid the DA as per the rates notified, hence a representation was made to the officials of the

Government of the appellant - State on 10th August 2016 regarding the non-payment of DA.

PROCEEDINGS BEFORE THE TRIBUNAL

16. Respondents, employees and their Union[14], filed O.A. No. 1154 of 2016 under Section 19 of the Administrative Tribunal Act, 1985 alleging that the State had not granted DA in terms of the recommendation of the Commission. It was submitted that the real value of the salary earned by the employees of the State has continuously been eroded due to the pressures of inflation. It was highlighted that there is stark difference between the pay structures of the appellant-State and the Central Government (75% of basic pay *vis-à-vis* 125% of basic pay) and the former had not followed a uniform pattern of payment along with large delay in disbursal of funds. There is further disparity, it is submitted, between the employees of the appellant-State serving in the State and those who serve outside the State i.e. '*Banga Bhawan in New Delhi*' and '*State Youth Service Department in Chennai, Tamil Nadu*' since the latter enjoy DA at the rates prevalent in the Central Government. The payment of DA is not a bounty or grace. Lastly, it was submitted that since the

[14] Respondent no.1 is the Confederation of the Employees, West Bengal; Respondent no.2 is Unity Forum; Respondent no.3 is Indranil Mitra, Member of Respondent no.1; Respondent no.4 is Gopal Majumder, member of Respondent no.2

employees of the appellant-State are not in any way responsible for the increasing rates of inflation, they cannot be expected to suffer at hand thereof. It was, therefore, prayed that the DA payable from 1st July 2010 be paid to the employees. The following reliefs were sought:

> "a) A direction upto the respondents authorities to forthwith release the 50% dearness allowances which is due to up to January, 2006 Immediately within a period of 1(one) month from the date of receiving of the order.
>
> b) A direction upon the respondent authorities to immediately comply with the report and the recommendations of the 5th pay Commission Report positively and without fail within a period of 1 (one) month from the communication of the order,
>
> c) A direction upon the respondent authorities to release the 50% of dearness allowances as the State Government without releasing the 50% dearness allowance for mere eye wash set up a 5th pay Commission who recommended for 10% interim relief upon the basic pay, But no whisper about due 50% dearness allowances and unless the court Intervene into it there may be every possibility of forfeiture of that 50% due dearness allowances which is the penultimate goal and gain of the State Government and the applicants will Suffer Irreparable loss and Injury.
>
> d) The applicants pray for relief order directing the respondent authorities to grant 50% of the Dearness Allowance as that of the, Central Government with arrear up to January, 2015, within a period of two weeks, from the data of order."

16.1 The appellant-State in response submitted as follows:

(a) There exists no justification for seeking the payment of DA at rates equivalent to the Central

Government particularly since payment thereof is subject to the availability of resources with the State;

(b) Insofar as the employees of the appellant-State serving outside the State, it was said that such employees were not affected by inflation in the same manner as those employed within the State and as such no infringement or discrimination, that would be offensive to Article 14 of Constitution of India, can be found;

(c) Given that the rules on the basis of which claim for DA is being made, were brought into force under Article 309 of the Constitution of India, the respondents ought to have taken a different remedy and that the application was not maintainable;

(d) The reliance of the Respondents herein on the Consumer Price Index has been termed as a '*hilarious error*', since the concept of DA has a wartime origin and therefore for employees to claim discrimination for payment to one and non-payment to another is misconceived.

16.2 By order dated 16th February 2017, the Tribunal dismissed the application making the following observations:

(a) The payment of DA is not a legal right of an employee, and it is the discretion of the employer, in this case, the State Government;

(b) The results and recommendations of the Pay Commission are at best a persuasive value and cannot be held to be mandatory;

(c) The question of discrimination between the employees of the State serving in and outside the State, no finding was given observing that, *"we feel the issue cannot be grappled and no analogy on the basis of the same can be derived in this context."*

BEFORE THE HIGH COURT-ROUND ONE

17. Aggrieved by such findings of the Tribunal, the respondents appealed to the High Court[15]. It was submitted *inter alia* that for the Tribunal to hold that the DA is not an accrued right of the employees is *ex facie* illegal since DA forms a part of pay; that once the recommendations of the Commission have been accepted, the appellant-State commenced itself to act

[15] WPST No. 45 of 2017

thereupon and the said recommendation can no longer be said to hold only persuasive value.

17.1 The learned Division Bench[16] framed the following issues for its consideration:

> "A. Whether the claim of the employees serving under the Government of West Bengal for Dearness Allowance is a legally enforceable right?
>
> B. Whether the claim of the employees serving under the Government of West Bengal for Dearness Allowance on the basis of the recommendations of the 5th Pay Commission is legally enforceable right?
>
> C. Whether the discrimination in the matter of payment of Dearness Allowance to the Employees of the State of West Bengal with their counterparts serving in Banga Bhawan at New Delhi and Youth Hostel in Chennai including the Employees of West Bengal State Electricity Development Corporation required consideration?"

17.2 On the first question the High Court observed that *"there is no doubt that the Government of West Bengal accepted Dearness Allowance basically as a component of pay which is a fixed percentage of basic pay"*. It was held that once this is the accepted position, the Tribunal could not have come to the conclusion that the DA was the absolute prerogative of the State. It was further held that the right to DA stands recognized by the State as per Rule 12 of RoPA Rules and office memoranda to that effect have also been issued. In other words, the recommendations of the

[16] Judgment dated 31st August 2018. Hereafter " Judgement in Round One"

Commission have been accepted and acted upon thereby constituting a legal right in favour of the respondents herein.

17.3 On the second issue it was observed that the State Government has accepted the recommendations of the 5th Pay Commission till the period of 1st April 2009 leaving the calculation for the subsequent period for its future consideration at a rate on the basis of the accepted guidelines and therefore the Tribunal could not have rejected the right of the employees on the basis of general theory of law.

17.4 The third question for its consideration was decided by the High Court saying that the different effects of inflation as per the region, cannot be accepted as a basis for differing payment of DA, particularly when the logical and evidentiary basis thereof was not allowed to be brought on record, by the Tribunal. It was observed that the Central Government, irrespective of region, has similar slabs for payment of DA throughout the country, in the same manner, so should the State.

17.5 The conclusions of the High Court are as follows:

> "82. In view of the discussions and observations made hereinabove, I sum up as follows:-
>
> (i) The claim of the employees serving under the Government of West Bengal for Dearness Allowance is based on legally enforceable right on the all employees serving under the Government

of West Bengal up to such extent of the recommendations of the 5th Pay Commission which has been accepted by the Government of West Bengal by virtue of the provisions of sub-rule (1) Rule 12 of ROPA Rules, 2009 read with paragraph 10 of the clarificatory memorandum bearing No.1691- F dated February 23, 2009 on ROPA Rules, 2009 issued by the Government of West Bengal, Finance Department, Audit Branch, and paragraph 3 of memorandum bearing No.1692-F dated February 23, 2009 in the matter of drawl of Dearness Allowance in revised pay structure under the ROPA Rules, 2009 issued by the Government of West Bengal, Finance Department, Audit Branch.

(ii) The claim of the employees serving under the Government of West Bengal to get Dearness Allowance at a rate equivalent to that of the employees of the Central Government requires adjudication upon consideration of the relevant materials on record for the purpose indicated hereinabove.

(iii) The claim of the employees serving under the Government of West Bengal for Dearness Allowance at a rate equivalent to that of the employees discharging their functions in Banga Bhawan at New Delhi and in Youth Hostel at Chennai requires consideration of the materials which may be brought on record by the Government of West Bengal for adjudication of the issue of arbitrariness in payment of Dearness Allowance at differential rates."

(Emphasis Supplied)

17.6 Having observed as above, the matter was remanded to the Tribunal for adjudication of two issues:

> "**(i)** Whether the claim of the employees serving under the Government of West Bengal for Dearness Allowance at a rate equivalent to that of the employees of the Central Government, and **(ii)** Whether the discrimination in the matter of payment of Dearness Allowance to the Employees of the State of West Bengal with their counterparts serving in Banga Bhawan at New Delhi and Youth Hostel in Chennai…"

ON REMAND BEFORE THE TRIBUNAL

18. The parties were heard on the two issues framed by the learned Division Bench and judgment was delivered thereupon by the Tribunal on 26th July 2019, the observations wherein are summarised hereinbelow:

(a) It was noted that the learned counsel for the State had accepted that when the DA as revised by the RoPA Rules was at 16% w.e.f. 1st April 2009, it was done following the pattern of the Central Government;

(b) On comparison, the policies followed for computation of DA, by the Central and State Governments respectively, are the same. The Central Government, as per the 6th Commission, has released DA twice a year and the appellant-State initially did the same, but has since faltered. The relevant observations are as follows:

> "29. On comparison of payment of DA by the Central Government to its employees and by the State Government to its employees, we find that the principles followed by the State Government in terms of relationship between DA and basic pay, use of AICPI as a measure of inflation, relationship between DA and AICPI, and computation of DA are the same as that of the Central Government. The State Government has followed the same principles for computation and payment of DA on basic pay fixed under 5th State Pay Commission as has been done by the Central Government under 6th Central Pay Commission. The Central Government has revised DA twice in a year on 1st January and 1st July and paid them within 3rd month on which the DA is payable, whereas the State Government initially paid DA twice in a year, but discontinued to pay twice in a year after the year 2010 and has delayed payments of DA without following any principle in an arbitrary manner…"
>
> (Emphasis Supplied)

(c) If the real value of pay decreases due to inflation, the employees of the appellant-State have a right to be compensated therefor, and if it is not so done, their legal right stands infringed;

(d) The appellant-State has failed to place on record any other method for calculation of DA other than what has been followed by the Central Government as per AIPCI number, i.e., (1982=100), which is used throughout the country. It was held:

> "31. We have already observed that the payment of rate of DA on the basic pay is calculated to mitigate the loss of value of basic salary

> consequent upon inflation on the basis of AICPI number. The State respondents have failed to place any material on record to establish that there is any other mode of calculation of rate of DA for its employees. On the contrary, the State respondents have followed the pattern of releasing rate of DA on basic pay as followed by the Central Government for payment of DA for its employees, though the State Government has been releasing DA at a lesser rate and with effect from subsequent date. In the absence of production of materials to establish any alternative mode of calculation for release of DA to the employees by the State Government, we are constrained to hold that the State Government is duty bound to pay DA to its employees by taking into consideration inflation measured by Labour Bureau by publication of AICPI number with the base year 1982 (1982=100), which is used for determination of rate of DA of the Government employees of the entire country."
>
> (Emphasis Supplied)

(e) The appellant-State not being in a position, fiscally, to clear the backlog of DA payable to the employees, due to lack of financial resources, cannot be accepted as a ground for non-payment of the same;

(f) In view of the lack of mandate either statutory, or in the RoPA Rules, it could not be held that the employees of the appellant-State are entitled to DA at the same rate as Central Government employees. It was although held that the former are entitled to get DA, determined by the AICPI, for the time prior to the setting up of the 6th Pay Commission by the appellant-State. It would be within the discretion

thereof either to pay the amounts due in cash, or by depositing the same in the General Provident Fund, with suitable restrictions on withdrawing the amount. The pertinent observations are as follows:

> "33. We have already observed that there is no mandate either under the statutory rules viz. ROPA Rules, 2009 or in the administrative directions issued by the State Government in the form of Memorandum No. 1691-F dated February 23, 2009 and Memorandum No. 1692-F dated February 23, 2009 that the DA will be paid to the employees by the State Government at a rate and from the date as paid by the Central Government to its employees. In the absence of any mandate under the statutory rules or the administrative directions, we are unable to hold that the State Government employees are entitled to get DA at a rate payable to its employees by the Central Government. However, from the discussion made by us hereinabove, we can hold without hesitation that the State Government employees are entitled to get DA on the basic pay at the rate to be calculated on the basis of AICPI number published from time to time by taking the base year 1982 (1982=100). It is the bounden duty of the State Government to evolve norms/principles for payment of DA to its employees by calculating the same on the basis of AICPI on the basic pay fixed in terms of ROPA Rules, 2009 till the date of giving effect to the recommendation of 6th Pay Commission set up by the Government of West Bengal. The State Government is also duty bound to pay arrears of DA to its employees after fixing the rate on the basis of AICPI number before implementation of the report of 6th Pay Commission set up by the Government of West Bengal. We would like to observe that the State Government has the discretion to make payment of arrears of DA to its employees either in cash or by

> giving direction for depositing the same in the General Provident Fund (GPF) with suitable restriction on withdrawal of the same within specific period of time. The first issue whether the employees of the State Government are entitled to get DA at the rate payable to its employees by the Central Government is decided accordingly."
>
> (Emphasis Supplied)

(g) When it comes to the employees of the appellant-State posted at the '*Banga Bhawan*' in New Delhi or at the '*State Youth Service Department*', Chennai it is held that given that the manner of recruitment, terms and conditions of service, promotional avenues, and retirement benefits of those employees are the same as the others who are posted in the State; they cannot be justifiably treated as a separate class so far as Article 14 is concerned, following the principle laid down in ***Air India v. Nargesh Meerza***[17]***, D.S Nakra v. Union of India***[18] and ***Harakchand Ratanchand Banthia v. Union of India***[19]. There is nothing that stops the appellant-State from granting those posted in Delhi and Chennai, special allowances;

(h) Inflation, which is sought to be combatted by the grant of DA, is calculated by the Labour Bureau, Shimla for the

[17] (1981) 4 SCC 335
[18] (1983) 1 SCC 305
[19] (1969) 2 SCC 166

whole country. The appellant-State, cannot justifiably grant DA at a separate rate.

The concluding paragraphs of the order of the Tribunal and the directions issued therein are as follows: -

> "38. The function of the pleadings is only to state the material facts and it is for the Court or Tribunal to determine the legal result of those facts and to mould the relief in accordance with that result, as decided by the Federal Court in "Messers Moolji Jaitha and Co. v. Khandesh Spinning and Wearing Mills Co. Ltd." reported in AIR 1950 FC 83:1950 SCC online FC3. Accordingly, we would like to give the following directions on the basis of the findings made by us. The respondent No. 1, Chief Secretary to the Government of West Bengal is directed to evolve norms/principles within a period of three months from the date of this order for release of DA on the basic pay of the State Government employees fixed in terms of ROPA Rules, 2009 by taking into consideration inflation on the basis of AICPI number (1982=100), so that DA can be paid to the State Government employees at least twice in a year till the date of giving effect to the recommendation of 6th Pay Commission set up by the Government of West Bengal for its employees. The respondent No. 1 is directed to implement the norms/principles evolved as per direction of the Tribunal within a period of six months from the date of the order. The respondent No. 1 is further directed to make payment of arrears of DA on the basic pay to the State Government employees by taking into account level of inflation on the basis of AICPI number (1982=100) by following the norms/principles evolved as per direction of the Tribunal within a period of one year from the date of this order or before giving effect to the recommendation of 6th Pay Commission set up by the Government of West Bengal, whichever is earlier. The respondent No. 1 is at liberty to decide the mode and manner of payment of arrears of DA to the State Government employees within the period of time fixed by us. The respondent No. 1 is also

> directed not to give any effect to the office orders/memorandums issued for payment of DA to the State Government employees posted in New Delhi and Chennai at a rate payable to the employees of the Central Government, but the respondent No. 1 will not make any recovery for excess payment of salary to those State Government employees. The respondent No.1 is at liberty to give incentive to the State Government employees working in New Delhi and Chennai by payment of special allowance or any other allowances as the State Government may deem fit and proper. With the above directions, the original application stands disposed of."
>
> (Emphasis Supplied)

BEFORE THE HIGH COURT- ROUND TWO

19. Aggrieved by the findings of the Tribunal, the appellant-State once again approached the High Court. It is these proceedings that led to the judgment under challenge before this Court. The findings of the impugned judgment (Two Judges writing separate but concurring opinions) are:

First, that the appellant-State had accepted the recommendations of the Commission, and that accordingly, DA was a part of '*existing emoluments*' as defined under RoPA.

Second, it was observed that the first round of litigation before the High Court, which recognized the right to DA as an enforceable right had also stood the test of review, and therefore, had become binding. Further, reference was made to another judgment of the High Court in ***West Bengal State Electricity***

Transmission Company Limited v. West Bengal State Electricity Board Engineers Association[20] which held that the employees of the former were entitled to DA at a rate equal to that payable to Central Government Employees.

Third, it was held that the right to receive DA while is unquestionably, a statutory right, is also a facet of Article 21 of the Constitution of India. Denial of this right to those employees who keep the State Government running cannot be allowed to be adversely affected, on account of financial difficulties or inability. The Writ Petition was, therefore, dismissed.

The concurring opinion records in some detail, the origins of Dearness Allowance. It says that in view of the conclusions arrived at by the High Court in the first round of litigation, the only question before the Tribunal on remand and therefore, the Division Bench, was regarding the modalities by which the same shall be made. The learned judge specifically rejected a contention made by the appellant-State that DA is variable as per '*place of posting*', as held by this Court in ***Indian General Navigation and Railway Co. v. Workmen & Ors***[21]**.** The rejection was because, in the said factual situation, there were no rules governing the grant of DA, as in the present case. It was then observed that the Clarificatory Memorandum issued on 23rd

[20] MAT 501 of 2020 with MAT 502 of 2020
[21] AIR 1960 SC 1286

February 2009 relating to the release of DA leaves no room for any doubt as to it being imperative on the State to pay DA, calculated as per index average 536(1982=100). In other words, there can be no departure from statutory text, and the Government cannot, to save itself from the same, take a defense of inability. It was observed:

> "…The said rule manifestly exposes the lucid and explicit intention of the Government in a doctrine of the recommendation of the 5th Pay Commission and while defining "existing emoluments" under Clause 3(C) thereof. The method of ascertaining the DA has been clearly spelt out to be based upon at the index average 536 **(1982=100)**. It is logically inferred from the aforesaid stand of the State that the rate of DA declared by the Central Government though at the index average 536 **(1982=100)** cannot be extended to the State Government employee because of the variability in the living cost price within the State but the State Government cannot deny the applicability of the index average 536 **(1982=100)** under the said statutory rules. On the same day when the said rule was published in the official gazette, the Memorandum 1690-F dated 23rd February, 2009 was issued by the Special Secretary, Government of West Bengal indicating the conscious decision of the Government relating to the release of the DA admissible to the Government employees in the revised pay structure but the DA between the period from 1st January, 2006 to 31st March, 2008 was decided not to be paid to such employees. Consequent upon the said Memorandum, the clarification was made vide Memo No. 1691-F dated 23rd February, 2009 wherein the DA which the State Government employees were entitled from time to time since 1st January, 2006 was to be paid in terms of the said Memo No. 1692-F dated 23rd February, 2009. The subsequent memorandum clarifying the stand of the Government leaves no ambiguity that it is imperative on the part of the State to pay the DA to its

> employees on and from 1st April, 2008 at the rate calculated on the basis of the index average 536 **(1982=100)**. There cannot be any departure from the provisions of the statutory rules nor the State Governments can act contrary thereto taking shelter under the incapability and/or incapacity to meet such requirement. In fact, the Tribunal also held that it would not be proper to direct the State Government to pay the DA at the rate of the Central Government but in view of the discussions made hereinabove, there is no infirmity in the direction passed by the Tribunal for evolving the norms/principles in fixing the DA on the basis of the AICPI 536 **(1982=100)**…. "
>
> (Emphasis Supplied)

Continuing further, it was observed that the directions of the Tribunal to compute DA as per AICPI were found to be in consonance with law. Once the method of releasing DA twice a year has been adopted, which was indeed so adopted, the same cannot be deviated from, save and except in view of valid and compelling reasons. In so far as the employees of the appellant-State posted at New Delhi or at Chennai are concerned, it was concluded that the RoPA Rules make DA payable at AICPI rates to all employees of the appellant-State. They, therefore, form a homogenous class. Even though '*class within a class*' is permissible, one AICPI is the base for all, different DA based on location cannot be accepted.

RIVAL CONTENTIONS

20. Mr. Kapil Sibal, Mr. Shyam Divan and Mr. Huzefa Ahmadi, learned senior counsel, presented arguments on behalf of the appellant-State. The Respondents were represented by Mr. Gopal Subramaniam, Mr. P.S Patwalia, Mr. Bikash Ranjan Bhattacharya and Ms. Karuna Nundy, learned senior counsel. We have heard them at great length and also perused the respective written submissions filed.

A. Submissions on behalf of the Appellant-State

I. At the outset, it is submitted that the High Court misunderstood the order of the Tribunal and, therefore, proceeded on a wrong assumption that the Tribunal issued directions on both issues in favour of the respondents. It is their case that one issue had in fact been decided against them, that being the one regarding parity with the employees of the Central Government.

II. The direction to release DA to the employees of the appellant-State twice a year is without any basis as the RoPA Rules do not provide for the same. The legislative intent is clear that the State did not want to keep itself open to that possibility. There is no material on record to suggest that the State has accepted this as the norm.

III. It is argued that, in the '*judgment in Round One*' the respondents herein had specifically contended that DA should be paid twice a year as per the pattern of the Central Government, but the same was not accepted. Since that judgment has attained finality, the subsequent Division Bench, in its impugned judgment, in view of *res judicata,* could not have directed as such.

IV. The finding of the Court that DA is a fundamental right has been disputed as having grave ramifications, making the same payable even if the State does not have the financial capacity to do so. Such a finding, it is submitted, is in contravention of a judgment of this Court reported as ***Tamil Nadu Electricity Board v. TNEB Thozhilalar Aykkiya Sangam***[22]**.** [See also: ***Mahatma Gandhi Mission v. Bhartiya Kamgar Sena***[23] & ***State of Madhya Pradesh v. C. Mandawar***[24]]

V. The appellant - State has already paid DA in accordance with RoPA Rules to the extent of 125% of basic pay in 2019. This position stands acknowledged by the Tribunal. An approximate sum of Rs.1,79,874 crores stood paid as DA between 2008 and 2019, as under:

[22] (2019) 15 SCC 235
[23] (2017) 4 SCC 449
[24] AIR 1954 SC 493

Rs.76,189 crores for the years 2008 to 2016 and Rs.1,03, 685 crores for the years 2016 to 2019. The effect of this order, if it is allowed to stand, it is submitted, would be an additional liability of approximately Rs.41,770.95 crores which, in view of ***TNEB Thozhilalar Aykkiya Sangam (supra)*** the Respondents would not be entitled to. Further relying on ***Bengal Chemical and Pharmaceutical Works Ltd v. Workmen and Anr.***[25] it was submitted that the appellant-State is not bound to provide hundred percent neutralisation to its employees as the same would lead to inflation. The extent of DA has to depend on the ability of the employers since it is them who must bear the burden.

VI. The judgment and order dated 31st August 2018 only contemplated a limited remand to the Tribunal. It is submitted that the Tribunal went over and above the limited remand. The part of the order which oversteps the limited remand was a direction to the Chief Secretary of the appellant-State to evolve norms for payment of DA in accordance with AICPI. This aspect was not considered when the matter travelled in appeal to the High Court, once again. The said direction is also unnecessary since

[25] AIR 1969 SC 360

the State is already following the determination of DA in accordance with AICPI.

VII. Employees of the Central Government and State Government, are separate classes of employees as evidenced by Entry 70 of List I of the VIIth Schedule of the Constitution and in Entry 41 of List II thereof. This implies that if the former chooses to pay DA at a particular rate or not to pay at all, it is not incumbent upon the latter to follow the same. The only right that vests with the respondents is to seek enforcement of payment of DA consistent with the notifications issued by the State Government.

VIII. The Union Legislature may issue directions on matters under the control of the State under Articles 252 and 73 of the Constitution, with the consent of the State. The imposition of AICPI, in this particular manner, would be without the consent of the State and therefore, would deprive it of the legislative and executive functions in perpetuity, taking away from its control, all discretion in the fixation of DA.

IX. In support of its position, the appellant - State further submits that there are as many as 12 other States who do not follow the same rates, as far as DA is

concerned, as declared by the Central Government. It is highlighted that should this Court pass an order directing that DA be paid the same rate, the effect thereof shall be felt across all these States and, therefore, these States should also have the opportunity to make their case. Still further, examples are drawn from the State of Chhattisgarh which, similar to the appellant-State, includes Dearness Allowance in its definition of '*existing emoluments*' but posited it is, that the index average to be used is as on 1st January 2016. The DA rate payable there is 53%. The State of Himachal Pradesh employees index average of 1510 (1960 = 100) as on 1st January 1996; the DA rate payable there is 45%. The State of Meghalaya employs, for the purposes of DA the index average as on 1st January 2017; the DA rate payable there is 49%; and the State of Sikkim employs the Central Government standard of index average 536 (1982 =100).

X. Given that it has been held by the Tribunal and affirmed by the High Court that the employees of the appellant-State are not entitled to get DA at the rate payable to the Central Government employees and that further it has been held that they are entitled to get DA on the basis of the AICPI number, it is submitted that the findings of the Tribunal are incorrect and contradictory,

since the directions are to bring about parity without there being any statutory/constitutional basis for the same.

XI. Since there was no challenge to the provisions of RoPA, they continue to hold the field and cannot be bypassed. The entitlement to DA flows therefrom and from the subsequent memoranda issued in respect thereto. It is submitted that none of these memoranda explicitly accept the recommendations of the Commission, unconditionally, and in fact, wherever the recommendation has been accepted, it is particularly stated to be so.

XII. The RoPA Rules nowhere mandate DA rates to be according to a particular index. Holding so would be making an addition to the rules which, in effect, would take away the discretion of the State. It would also amount to judicial review of policy in which the Court is not an expert. The discretion with the State is not unguided and the rates fixed are so fixed after taking into consideration various factors such as availability of funds, financial benefits which already stand granted to the employees etc. No arbitrariness whatsoever, therefore, can be spoken of in this regard.

XIII. Rule 3(1)(c) which defines the term '*existing emoluments*' is a definition and does not create any obligation/entitlement. The phrase '*existing emoluments*' bears importance only insofar as the fixation of initial pay in the revised pay structure under Rule 7.

XIV. The employees of the appellant-State posted at New Delhi and Chennai, were considered by the State to be a separate class of employees given their geographic location. In the former, the separate notification applied only to 34 employees posted there and in the latter 35 employees. The said notifications were issued under para 10 of Memorandum No. 1691 – F_dated 23rd February 2009.

XV. The period that forms the claims of the respondents is 1st April 2008 to 31st December 2019. This claim is affected by delays and laches since the original application before the Tribunal was filed only in November 2016, and it is the matter of record that the State differed with the rates employed by the Central Government from 2008 itself.

XVI. A list of judicial pronouncements has also been provided, demonstrating as to how the judgments relied

on by the Respondents would not be applicable to the instant case. We have perused the same.

B. **Submissions of the Respondents**

I. Firstly, it is submitted that the entitlement to DA in terms of RoPA Rules as held by the Division Bench in the '*judgment in Round One*', has attained finality.

II. The DA, which the Tribunal and the High Court, both held the employees of the appellant-State to be entitled to, was to be construed in terms of RoPA, and nothing more or above what is provided therein.

III. The AICPI index number i.e., 536 (1982 = 100) has been admitted by the appellant-State for the purposes of calculation of '*existing emoluments*' which, as per the definition provided in the Rules, includes DA.

IV. Regarding the '*obligation*' of the appellant-State to pay DA twice a year, it is submitted that the grant of this amount is to protect the employees against the effect of inflation in the market. It is not an additional benefit but is the minimum protection provided. Arbitrariness, it is submitted, has led the State to stop the practice of adjusting/updating the DA twice a year, as it initially did after the enforcement of RoPA Rules. Discrimination is

also alleged between the respondents' and the employees of the appellant-State serving in New Delhi and Chennai on the ground that DA for the latter is still adjusted/updated twice a year.

V. It has been held by a bench of five learned judges of this Court in ***Purushottam Lal and Ors v. Union of India & Anr***[26] that if a State accepts the recommendations of a Pay Commission, the same must be implemented in respect of all government employees. It is submitted that while it is true that there will be significant variance in cost of living between States, at the same time, there shall be significant variance of different cities within the State. That on its own cannot be a ground for different DA. The different DA payable through the employees of the appellant-State only on account of location is therefore arbitrary, capricious and in violation of Article 14 of the Constitution. In this regard, reference is made to ***E.P. Royappa v. State of T.N*** [27].

VI. The appellant - State's reliance on ***Mandawar (***supra***)*** is untenable as the same is distinguishable on facts. In that judgment, the Rules referred granted

[26] (1973) 1 SCC 651
[27] (1974) 4 SCC 3

discretion to the State whereas, in the present facts, the Rules reflect a particular decision having been made which is that emoluments to be paid to employees, in accordance with RoPA Rules will be calculable as per the index rate set out therein. The Court in ***Mandawar*** (supra) had observed that the claim before it was not of arrears of DA which had occurred due to the rules in force relating thereto. It is highlighted that, taking support of this judgment, the appellant-State, in the review petition preferred against the impugned judgment before the High Court argued that binding precedent had been ignored and repelling such contention, the High Court distinguished the present facts.

VII. There are number of States that do not follow the rate adopted by the Central Government. An example is drawn from the State of Kerala, where the State has devised its own method of calculation based on an index which is prepared by research centres located at different places in the State. If the State chooses not to accept the process and the rates laid down by the Central Government, it ought to devise its own method and mechanism. In the present facts, there is a complete absence of facts and figures collected and analysed by the

State and as such the decision not to follow AICPI is arbitrary.

VIII. The first and subsequent memoranda issued by the appellant-State are not in conformity with RoPA as they do not reflect the incorporation of the AICPI number 536 (1982 = 100) even though the appellant-State had accepted the same. The former, therefore, cannot override the latter in view of Rule 14 in the latter. The well-established position that circulars/memoranda cannot override statutory provisions has been echoed in ***Ajaya Kumar Das v. State of Orissa & Ors***[28] and ***Ashok Ram Parhad v. State of Maharashtra***[29]**.**

IX. Paucity of funds is not a ground to deny the employees of the appellant-State, the payment of DA. Reliance is placed on ***Haryana State Minor Irrigation Tube Wells Corporation v. GS Uppal***[30]***; Punjab State Cooperative Agricultural Development Bank Ltd v. Registrar Co-Operative Societies and Ors***[31] and ***State of Andhra Pradesh & Anr v. Dinavahi Lakshmi Kameswari***[32]**.**

---

[28] (2011) 11 SCC 136
[29] (2023) 18 SCC 768
[30] (2008) 7 SCC 375
[31] (2022) 4 SCC 363
[32] 2021 SCC OnLine SC 237

X. A sliding scale is inbuilt in the structure of calculation of DA, is the next submission advanced with reference to ***Hindustan Times Ltd v. Workmen***[33]**.**

QUESTIONS TO BE CONSIDERED

From the aforesaid, in our considered view following questions require consideration:-

1. What is the scope and extent of the power under Article 309 of the Constitution of India?

2. What is the scope and extent of the Rules framed by the appellant-State i.e., RoPA Rules and the First Memorandum dated 23rd February 2009? Whether the Notifications/Official memoranda issued subsequent to the clarificatory memoranda dated 23rd February 2009 i.e., 9th December 2009; 6th April 2010; 23rd November 2010; 12th December 2011; 31st December 2012; 16th December 2013; 9th January 2015 and 14th December 2015 issued by the appellant-State revising the rates of DA are in consonance with RoPA Rules?

3. Given that the definition of '*existing emoluments*' in RoPA is identical to the Central Government Rules, i.e., legislation by incorporation, could the State have then deviated from the index

[33] 1962 SCC OnLine SC 190

being adhered to by the Central Government? In other words, was the incorporation of the AICPI number a one-time measure?

4. Whether DA, as a concept, is static or dynamic and whether, by the act of legislative recognition of a particular index, does the character thereof, change?

5. Whether the actions of appellant-State are vitiated by manifest arbitrariness as also negatively affecting the legitimate expectation accruing in favour of the employees?

6. Whether adoption of the AICPI, would render the distinct legislative domains under List I Entry 70 and List II Entry 41, otiose?

7. What is the impact of the direction of the Tribunal for the State to follow the AICPI, in so far as the financial autonomy of the State is concerned in the federal structure of the country?

8. What is the effect of the findings returned by the High Court in the first round of litigation?

9. Do the Respondent-employees have any right to receive DA twice a year in line with the pattern of the Central Government?

10. Is financial capability of a State, a ground available to deny the payment of DA, if under the existing rules, the same is held to be a legal right?

11. Since the question involved in this *lis* is the payment of DA which is an aspect of fiscal policy of a State, what is the extent of judicial review which is permissible?

12. Can DA be said to be a fundamental right under Article 21 of the Constitution of India as held by the High Court?

13. The claim of the respondents is for the period 2008-19 however the legal redressal of the alleged grievance was only initiated in 2016. Was the claim of the respondent affected by delay and laches, as such, liable to be dismissed?

ANALYSIS AND DISCUSSION

In view of the submissions made, as noted hereinabove, and the cases cited across the bar, which we have taken note and applied, where relevant, we proceed to the merits of these appeals.

Dearness Allowance

21. Prior to proceeding to the merits of the matter, the position held *qua* DA as recognized through judicial pronouncements must necessarily be taken note of: –

(A) Chief Justice Subba Rao, writing for the Constitution Bench in ***Hindustan Antibiotics Ltd. v. Workmen***[34], observed:

> "25…The doctrine of dearness allowance was only evolved in India. Instead of increasing wages as it is done in other countries, dearness allowance is paid to neutralise the rise in prices. This process was adopted in expectation that one day or other we would go back to the original price levels. But, when it was found that it was only a vain hope or at any rate, it could not be expected to fall below a particular mark, a part of the dearness allowance was added to the basic wages, that is to say, the wages, to that extent, were increased… Even on the basis of the increased wages, dearness allowance was necessary to neutralise the rise in prices. That is exactly what the Tribunal has done.
>
> (Emphasis Supplied)

(B) In ***Workmen v. Indian Oxygen Ltd.***[35], a bench of three learned judges held in respect of uniform rates of DA to be applied in India, as follows:

> "Uniformity, to an uninformed mind, appears to be very attractive. But let it not be forgotten that sometimes this uniformity amongst dissimilar persons becomes counter-productive… But when it comes to dearness allowance any attempt at uniformity between workmen in such metropolitan areas like Delhi, Bombay, Madras, Calcutta and in smaller centres would be destructive of the concept of dearness allowance. Dearness allowance is directly related to the erosion of real wages by constant upward spiralling of the prices of basic necessities and as a sequel to the inflationary input,

[34] 1966 SCC OnLine SC 106
[35] (1985) 3 SCC 177

the fall in purchasing power of the rupee. It is a notorious phenomenon hitherto unquestioned that price rise varies from centre to centre. Dearness allowance is inextricably intertwined with price rise, it being an attempt to compensate loss in real wages on account of price rise considered as a passing phenomenon by compensation. That is why it is called variable dearness allowance. Any uniformity in the matter of dearness allowance may confer a boon on persons employed in smaller centres and those in big metropolitan areas would be hard hit. Deafness allowance by its very form and name has an intimate relation to the prevailing price structure of basic necessities at the centre in which the workman is employed. … This view to some extent was affirmed in the *Remington Rand of India Ltd.* v. *Workmen* [(1968) 1 SCR 164 : (1967) 2 LLJ 866 : 33 FJR 133] . Leaving aside basic wages in the matter of dearness allowance especially the Court should lean in favour of adjudication of dispute on the principle of industry-cum-region because dearness allowance is linked to cost of living index of a particular centre which has a local flavour. If the concept of uniformity on an all-India basis is introduced in the matter of dearness allowance, it would work havoc, because the price structure in a market economy at places like Bombay, Madras, Calcutta, Delhi, Ahmedabad has little or no relation to smaller centres like Kanpur, Varanasi etc. If workmen working in such disparate centres are put on par in the matter of dearness allowance in the name of proclaimed. all-India uniformity, not only unequals will be treated as equals but the former would suffer irreparable harm. Such an approach would. deal a fatal blow to the well-recognised principle of industrial adjudication based on region-cum-industry developed by courts by a catena of decisions. Realising this situation courts have leaned in favour of determination of dearness allowance linked to cost of living index, if available for the centre where the workman is

employed and in the matter of neutralisation on the industry-cum-region principle."

(Emphasis Supplied)

(C) A bench of three judges in ***Bengal Chemical & Pharmaceutical Works Ltd. v. Workmen***[36], after the review of earlier decisions, formulated the following principles:

> **"21.** … … …
>
> The following principles broadly emerge from the above decisions:
>
> "*1*. Full neutralisation is not normally given, except to the very lowest class of employees.
>
> *2*. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
>
> *3*. The basis of fixation of wages and dearness allowance is industry-cum-region.
>
> *4*. Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.
>
> *5*. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account."
>
> (Emphasis Supplied)

(D) In ***TNEB*** (supra) it was held-

---

[36]1968 SCC OnLine SC 101

> **"21.** Each State Government following their own rate of dearness allowance payable to their employees may be adopting the revised dearness allowance of the Central Government. There is no rule or obligation on the State Government to always adopt the dearness allowance as revised by the Central Government. It is absolutely not necessary for the State Government to adopt the dearness allowance rates fixed by the Central Government. It should be looked from the financial position of the State Government to adopt its own rates/revised rates of dearness allowance. The Board, being the State Government undertaking, the money has to come from the State Government**…**"
>
> (Emphasis Supplied)

22. What flows from the above, and other judgments of this Court is that the concept of DA is a distinctly Indian response to the problem of inflation and its impact on wages, developed to safeguard employees against the steady erosion of their real income caused by rising prices. Different from the position in other countries where the wages and salaries themselves undergo a periodic adjustment, India introduced a DA as a compensatory measure to address rises or jumps in the cost of living. While originally conceived as a short-term arrangement, it acquired a sense of permanence, given that it was almost within the realms of certainty that the prices would not return to their original state. When this expectation proved unrealistic and inflation appeared to be a continuing feature of the economy, a portion of the DA was absorbed into basic wages. Even after such wage revisions,

however, the need for DA persisted, as prices continued to rise and purchasing power continued to decline.

23. At its core, DA is not intended to provide complete neutralisation of price rise for all employees, except in the case of the lowest paid categories. Its purpose is to offer partial compensation for increased living costs through a variable and flexible mechanism, usually linked to a cost-of-living index. This explains why DA is commonly structured on a sliding scale, rising alongside prices.

24. Uniformity in DA, though seemingly attractive at first glance, can be counter-productive when applied to regions with vastly different price structures. Metropolitan centres such as Delhi, Mumbai, Chennai and Kolkata experience levels of inflation that bear little comparison with smaller towns and semi-urban centres. Since DA is directly linked to the loss of real wages caused by inflation, imposing a uniform rate across such disparate regions would defeat its very purpose. It would confer undue benefit on employees in lower-cost centres while seriously disadvantaging those employed in high-cost metropolitan areas.

25. In determining DA, other relevant considerations include parity among employees receiving the same wages and the financial capacity of the employer to bear the additional burden. These factors assume particular significance in the case of State

Governments and their undertakings. There is no legal obligation on State Governments to automatically adopt the rates of DA as fixed by the Central Government. Each State is entitled to assess its own financial position and determine appropriate rates accordingly. DA is a balanced and pragmatic instrument of wage policy, aimed at mitigating the impact of inflation while respecting regional diversity and economic feasibility.

Question 1: ARTICLE 309

26. At first instance, what is to be understood is the scope of power under Article 309 of the Constitution. The Article reads as follows:

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

Over the years, many-a-rule promulgated hereunder has been the subject matter of controversy before the Courts. While the

propriety of the exercise of power under this Article is not in question in the instant *lis*, it would still be appropriate to refer to judgments to understand the scope, enforceability, limitations and other aspects.

(A) A Constitution Bench of this Court in ***B.N. Nagarajan v. State of Mysore***[37], held that insofar as rules made under this Article direct something to be done in a specific manner, the Government must abide thereby. The same cannot be side-stepped by exercise of power under Article 162 of the Constitution. [See: ***R.N. Nanjundappa v. T. Thimmiah***[38],]

(B) This power cannot be circumscribed by any agreement or by function of estoppel. So was held in ***C. Sankaranarayanan v. State of Kerala***[39].

(C) ***State of Assam v. Basanta Kumar Das***[40] held that executive instructions have less force than statutory rules. No direction can be issued, which in effect is an amendment to the rules framed under this Article. [See: ***S.L. Sachdev v. Union of India***[41]]

---

[37] 1966 SCC OnLine SC 7
[38] (1972) 1 SCC 409
[39] (1971) 2 SCC 361
[40] (1973) 1 SCC 461
[41] (1980) 4 SCC 562

(D) If, in the rules enacted under this Article, there exist some gaps, it is open for the Government to fill up such gaps by way of administrative instructions. This Court held thus in ***Distt. Registrar v. M.B. Koyakutty***[42].

(E) The power exercised under this Article must be exercised in a just, fair and reasonable manner for the same is not immune to the tests of Articles 14 and 16 of the Constitution. [See: ***Baleshwar Dass v. State of U.P.***[43]]

(F) In ***Accountant-General v. S. Doraiswamy***[44], the rules made under this power, are generally prospective in operation unless a statute conferring/asking for rules made hereunder provides for such rules' retrospective application. When retrospective application is directed, the date from which the rules in question are made retrospectively applicable should have reasonable nexus to the provisions contained in the rules.

(G) A bench of three judges held in ***Lila Dhar v. State of Rajasthan***[45], that unless oblique motives can be demonstrated, it is not open for the Courts to redetermine

[42] (1979) 2 SCC 150
[43] (1980) 4 SCC 226
[44] (1981) 4 SCC 93
[45] (1981) 4 SCC 159

methods of selection when the same has been done in accordance with the rules framed under this power.

(H) ***K. Nagaraj v. State of A.P.***[46], held that the power under this Article to promulgate rules also carries with it, the power to amend the same, even retrospectively.

The principles noticed hereinabove, are non-exhaustive.

Questions 2, 3 and 4

27. As is clearly established from the above, the power under Article 309 is extensive and expansive. In the present case, the exercise of this power has resulted in the promulgation of the RoPA Rules. Even though the said rules conceived '*existing emoluments*' to be paid for by the State, to be employing the same formula as given under the rules promulgated by the Central Government known as the Central Civil Services (Revised Pay) Rules 2008[47], by the first and subsequent memoranda the rates were changed, particularly when it came to DA. We must then consider the power to issue such memoranda. It appears that the Rules themselves do not provide the power to issue subsequent memoranda/notifications. That being said, the position now will be governed by the principle laid down in ***M.B. Koyakutty***

[46] (1985) 1 SCC 523
[47] Central Government Rules

(supra) as reiterated by the majority in ***Mahanadi Coalfields Ltd. v. Rabindranath Choubey***[48], which is to the effect that in the absence of rules, executive instructions would be binding. Obviously, such executive instructions would be subservient to the rules, and the word '*absence*' indicates that there would be a gap, to which effect the executive instruction in question, stands issued.

The question then is, whether the memoranda issued after 23rd February 2009, were indeed issued to fill in some gaps or in the absence of statutory rules for the specific area.

28. It would be appropriate at this stage to consider the impact of the definition of '*existing emoluments*' being word for word same as that of the Central Government rules.

In other words, the definition has been lifted from the Central Government Rules and placed in RoPA Rules. This falls within one of two types of legislation other than it being written *'from scratch'*. The two types are '*legislation by reference'* and '*legislation by incorporation'*. Plainly put, the former means that the provision of another Act is referred to, and by act of such reference, the provision is made applicable to the Legislation in which it has been placed. The latter implies a bodily lifting of the

[48] (2020) 18 SCC 71

provision given elsewhere, and its insertion into the Legislation being enacted subsequently.

This Court speaking through G.P Mathur J., in ***Rakesh Vij v. Raminder Pal Singh Sethi (Dr.)***[49],while referring to an earlier decision rendered by a co-ordinate bench of three judges in U.P. ***Avas Evam Vikas Parishad v. Jainul Islam***[50] stated the general position of law as follows:

> "**30.** …. This Court, after referring to a large number of earlier decisions, laid down the following principle in para 17 of the report : (SCC pp. 480-81)
>
> > "*17.* A subsequent legislation often makes a reference to the earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (*i*) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (*ii*) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the

[49] (2005) 8 SCC 504
[50] (1998) 2 SCC 467

> subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation. In the words of Lord Esher, M.R., the legal effect of such incorporation by reference 'is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all'. (See : *Wood's Estate, Re* [(1886) 31 Ch D 607 : 55 LJ Ch 488] Ch D at p. 615.) As to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances."

Regarding *incorporation,* the discussion made by the Constitution Bench in ***Girnar Traders (3) v. State of Maharashtra***[51] is also important for our purposes. Relevant extracts are:

> "**89.** … Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law i.e. by incorporation. In the case of legislation by reference, it is fictionally made a part of the later law. We have already noticed that all amendments to the former law, though made subsequent to the enactment of the later law, would ipso facto apply

[51] (2011) 3 SCC 1

> and one finds mention of this particular aspect in Section 8 of the General Clauses Act, 1897. In contrast to such simple reference, legal incidents of legislation by incorporation is that it becomes part of the existing law which implies bodily lifting provisions of one enactment and making them part of another and in such cases subsequent amendments in the incorporated Act could not be treated as part of the incorporating Act.
> **91.** Another feature of legislation by incorporation is that the language is explicit and positive. This demonstrates the desire of the legislature for legislation by incorporation…. When the later law depends on the former law for procedural/substantive provisions or is to draw its strength from the provisions of the former Act, the later Act is termed as supplemental to the former law…"
>
> (Emphasis Supplied)

29. Taking cue from the above it can be seen that the intent of the Legislature at the relevant point in time is demonstrated by incorporating the definition as given under the Central Government Rules, i.e., to follow the pattern thereof. Now then, it is to be examined, to bridge which gap or to fill in what void left by the RoPA Rules, were the subsequent memoranda issued?

30. It may be argued that since DA is subject to regular change to meet its basic purpose, the number as is given under Rule 3(1)(c), cannot be statically applied, and so, the subsequent memoranda were intended to obviate the repeated necessity of amending the RoPA Rules. This, however, was not advanced as an argument. Instead, there appeared to be an adaptation of

contrarian stands by the appellant - State. In the course of submissions, initially, the learned senior counsel appearing for the appellant - State submitted that DA is a static concept and that the index average as stipulated in the Rules has to be followed without change and therefore, the State cannot according thereto, grant DA as per the rules or numbers currently followed by the Central Government. In subsequent oral argument as also the written arguments, however, the staticity of DA as a limb of argument was given up. In our considered view though, even if such an argument had been made, it was liable to be rejected. In rules specifically designed to be for the purpose of revision of pay and allowances, the understanding of '*existing emoluments*' and the particulars supplied thereunder, cannot by any stretch of imagination be termed to be a gap or a void since the same is undoubtedly the mainstay of the rules and when particular intention has been demonstrated by inserting the definition, same as the Central Government Rules. To say that the number that has been explicitly put there is nothing more than a starting point or reference point, after which the State is free to do as it wishes under the garb of financial and fiscal policy, cannot be countenanced.

31. When the State did set up a Pay Commission for the purposes of revision of the pay rules nothing stopped the State from undertaking its own exercise to determine what the

appropriate rate would have been, keeping in view its own financial resources and ability to pay. It is nobody's case that such a study had been undertaken, and an independent finding had been arrived at. The Pay Commission in its wisdom adopted a stand and in consideration thereof, the appellant-State exercises its discretion to lay down a set of rules which would henceforth govern matters connected or incidental to the payment of its employees. Once it is so laid down, it is difficult to accept discretion overshadowing legislative exercise. In ***Mahatama Gandhi Mission v. Bhartiya Kamgar Sena***[52]:

> **"61.** Once the Government of India accepted the recommendations of the Pay Commission and issued orders signifying its acceptance, it became the decision of the Government of India. That decision of the Government of India created a right in favour of its employees to receive pay in terms of the recommendations of the Sixth Pay Commission and the Government of India is obliged to pay."

In effect, memoranda which are a product of discretion, in the current set up, trump Rules having legislative force. The only way possible, as it appears to us, for the State to deviate from what has been provided by the Rules is through a formal amendment thereto. The impact of this, it is made clear, cannot be taken to mean that the number as mentioned in the rule sets the emoluments to be paid thereunder, in stone. That would be going directly against its purpose, object and intent. It is not so much

[52] (2017) 4 SCC 449

the particular number or base year which is important, since that is itself, by its very nature, fluid and subject to change, [See: ***Hindustan Workmen*** (supra, ***Pharmed (P) Ltd. v. Workmen***[53]] but it is the statutory recognition of AICPI and the method for calculating existing emoluments, which is essential.

32. The AICPI is compiled and published by the Labour Bureau, under the aegis of the Ministry of Labour and Employment, Government of India. The Bureau with its headquarters at Shimla is tasked with overseeing the process, from start to finish, i.e., survey design and data collection to computation and publication. Each month, price data are gathered through an extensive network of field investigators covering 78 industrially significant centres across the country. These data are drawn from representative retail outlets and markets that reflect the consumption patterns of industrial workers. After validation and aggregation, the Bureau computes the All-India Index, which serves as a key measure for revising DA and for wage indexation across both public and private sectors.

The calculation of AICPI is a structured and statistically rigorous procedure which tracks changes in the cost of living. The process begins with the identification of a representative basket of goods and services, (*which is determined per regional needs*

[53] (1969) 3 SCC 745

and requirements) determined through a Family Living Survey conducted for the base year[54]. This basket includes essential items such as food, housing, clothing, fuel, healthcare, education, and transport. Each item is assigned a weight according to the proportion it occupies in the total household expenditure, corresponding to the frequency of purchase for a particular item, ensuring that a true picture is presented with more frequently purchased items exerting a greater influence on the final index. Every month, retail prices for all items in the basket are collected from the 78 centres.

These individual item indices are then combined, using their expenditure weights, to produce a centre-level-index. The AICPI is derived as a weighted average of these centre indices, where each centre's weight reflects its relative industrial workforce population. At the cost of brevity and repetition, the relevant extract from the Labour Bureau is hereunder[55]:

> "The index is compiled by using Laspeyre's base weighted formula. In the first stage, price quotations of an item in all outlets of all the markets in a month are averaged for a centre. On the basis of this average centre price, a price relative (over base period price) is worked out. However, in case of items which are supplied through subsidised outlets (fair price shop also) the

[54] See generally, Manual on Consumer Price Index 2010 Government of India Ministry of Statistics and Programme Implementation Central Statistics Office Sansad Marg, New Delhi
Accessible at:
https://mospi.gov.in/sites/default/files/publication_reports/manual_cpi_2010.pdf?utm_source=chatgpt.com

[55] https://labourbureau.gov.in/CPI

> procedure is slightly different. In their case, first the weighted average price of open market and fair price outlets in each selected market of a centre is worked out (weights being availability ratio in the respective outlets in that month). In the next stage, a simple average of these market prices is worked out to arrive at the centre price. The sub-group/group Index is worked out as a weighted average of item/sub-group Index, respectively, the general index of a centre is worked out as weighted average of group indices. Thus, the index for each centre is derived in several stages, i.e. sub-group, group and general (all combined). All-India index is a weighted average of 78 centre indices. The weight assigned to each centre is the proportion of the estimated consumer expenditure of the centre to the aggregate consumer expenditure of all the centres. These indices are compiled on monthly basis with a time lag of one month and are released through Press Note, Monthly Index letter and Indian Labour Journal..."

This methodology ensures that the AICPI remains both statistically sound and policy-relevant. By grounding the index in real consumption data and periodically revising its base year and weights, the Labour Bureau ensures that the AICPI continues to accurately capture shifts in living costs and inflationary pressures faced by industrial workers across India.

33. What the above primer on the calculation of AICPI shows is that it is a number that comes together after taking into account a complex web of factors and variables, duly calculated by a body entrusted to do so. It is the diktat of logic then, that when a State is to grant DA, and it has not, on its own, carried out a study to determine rates, it ought to follow the rate as determined by a

body that is otherwise authorized to do so. Logic is the lifeblood of law. It is not only judicial action that is to be supported by logic and reason. The issuance of memoranda is an administrative action. These actions also must be governed by reason. If a State decides to grant DA at a particular rate, it ought to be able to show itself to have *'done its homework'* in arriving at that particular number. The respondents had made reference to the State of Kerala, and its procedure for granting the same, emphasising that the number adopted by the State had been arrived at by its own centers having undertaken the requisite study.

34. Having dealt with AICPI at a concept level, as also legislation by incorporation we now turn back to the issue of executive memoranda. We have observed above that Rules do not themselves provide for any rule making power to rest with the Executive. It is also given that when rules are promulgated under Article 309 it is done in the name of the Governor. The Constitution also provides for the State to have executive powers in so far as the subjects enumerated in List II and concomitantly to issue instructions thereon. It reads as under:

> **"162. Extent of executive power of State:** Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be

> subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof."

35. It is not in doubt that the First Memorandum dated 23rd February 2009 was issued under Article 309 of the Constitution. We will come to this later (Question No 5). At first, we address the memoranda issued thereafter. It appears that these subsequent memoranda are issued under Article 162. We say so for the reason that it has not been pleaded before us by the appellant-State that the subsequent memoranda are also issued under Article 309, when the power to issue the same was a significant point of contention across the Bar. A coordinate bench in ***R.N. Nanjundappa*** (supra) observed:

> **"26.** The contention on behalf of the State that a rule under Article 309 for regularisation of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the present case the rule which regularised the appointment of the respondent with effect from February 15, 1958, notwithstanding any rules cannot be said to be in exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 in the same breath. The two articles operate in different areas. Regularisation cannot be said to be a form of appointment..."
>
> (Emphasis Supplied)

36. The above extracted view has been accepted by a Constitution Bench in ***State of Karnataka v. Uma Devi***[56]. In that view of the matter what was to be shown is that the executive instructions were issued only to supplement a gap in the original Notification under Article 309, which the appellant-State has been unsuccessful in doing.

37. The legislative exercise carried out provided for a clear basis on which existing emoluments were to be calculated by incorporating AICPI into the framework. Thereafter, when there are no perceivable or justifiable gaps present, it was not open for the appellant-State to deviate from the mechanism so provided, more so when such deviation is by means of an otherwise inferior form, i.e., executive memoranda.

It has to be observed that consequent to the above, subsequent memoranda are hereby held to have been issued in an improper exercise of power. Despite this improper exercise of power, the RoPA Rules will remain unaffected. The doctrine of severance as discussed in the case of ***Harakchand*** (supra)**,** would apply to these memoranda as well. The relevant extract thereof is as under:

> **"27.** The only other point that remains to be decided is whether as a result of some of the sections of the impugned Act being struck down, what is left of the

[56] (2006) 4 SCC 1

impugned Act should survive or whether the whole of the impugned Act should be declared invalid. We are of opinion that the provisions which are declared invalid cannot effect the validity of the Act as a whole. In a case of this description the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is ultra vires. The matter is clearly put in *Cooley on Constitutional Limitations*, 8th Edn. at p. 360:

> "It would be inconsistent with all just principles of constitutional law to adjudge these enactments void because they are associated in the same Act; but not connected with or dependant on others which are unconstitutional. Where, therefore, a part of a statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is striken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative

> intent, wholly independent of that which was rejected, it must be sustained."
>
> Applying the test to the present case we are of opinion that the provisions held to be invalid are not inextricably bound up with the remaining provisions of the Act."

This principle would apply both to the First Memorandum and the subsequent memoranda.

In sum, it is hereby concluded that DA by its very nature is non-static, fluid and subject to change. How that change is to be carried out is through AICPI. The First Memorandum as also the subsequent memoranda fall prey to the fatal flaw that they do not make reference to the AICPI which is absolutely essential to the determination of DA which in turn is indispensable to the computation of the total amount of '*existing emoluments*'. As a necessary follow up thereto, it must be observed that the incorporation of the AICPI cannot be termed as a one-time measure and once DA was defined using it, to take a different path would be impermissible. Questions 2, 3 and 4 are answered accordingly.

Question 5: ARBITRARINESS OF APPELLANT-STATE'S ACTION AND LEGITIMATE EXPECTATION OF ITS EMPLOYEES

38. Once it is established as above, clearly, that no basis is found for the rates at which DA was to be disbursed as per the memoranda issued subsequent to RoPA Rules, another argument

of the Respondents comes into play. They allege violation of Article 14 of the Constitution. Article 14, as is well known and understood, provides for equality before law or equal protection of the law[57]. It is also well understood that classification is permitted by Article 14 so long as there are reasonable nexus and intelligible differentia backing the same or the action under question is not manifestly arbitrary. Equally so is the position in law that all State action must pass the test of Article 14 or in other words, State action must be reasonable and must not be arbitrary, whimsical or capricious.

> ***(a)*** Article 14 is one of the constituents of the golden thread that wraps around the Constitution. It is necessary to understand its importance in its true majesty. It is not a declaration of formal uniformity, simpliciter; it is instead a profound assertion of the rule of law itself. It only stands to reason that amongst other things, exercise of State power must also answer to fairness, justice and reason. This evolution from formal equality to an embodiment of the rule of law shows the development and maturing of Indian constitutional thought. In the early articulation, the aim and object of the Courts was to preserve legislative flexibility while preventing arbitrary discrimination and to do that there came to be evolved the twin test of

[57] 1958 SCCOnline SC 7

reasonable nexus and intelligible differentia. In other words, Article 14 in this *avatar*, was a restraint on legislative excess rather than a principle of substantive justice. As time moved further, a deeper understanding emerged and the repeated phrase that arbitrariness is the antithesis of equality became the new basis with rational governance being infused into the much narrower interest approach. Still further, its modern iteration is the test of proportionality. The State's legitimate objects must be pursued through suitable means ensuring that individual rights are not curtailed beyond necessity. This flows from the idea of constitutional morality which insists on the dignity of an individual, making that, the scales upon which any and all exercise of authority is to be judged.

(b) It is within this moral and intellectual landscape that the doctrine of manifest arbitrariness takes its place as the natural culmination of the equality principle. The word '*manifest*' confines the scope of judicial intervention to those cases where reason is *ex-facie* absent or compromised, or in other words, such reason is not apparent on the face of the action or law in question. This necessarily implies that the existence of arbitrariness is a matter of plain deduction and not subjective opinion. The remit of the Courts in applying this doctrine is to examine

the possibility of whether the subjectivity of opinion has creeped into a particular legislative exercise thereby compromising its sanctity in as much as it may have no rational basis or discernible principle in connection with the object sought to be achieved. This morphs into illegality. In ***Nergesh Meerza*** (supra) it was observed:

> **"71.** This brings us now to the next limb of the argument of Mr Setalvad which pertains to the question as to whether and not the conditions imposed on the AHs regarding their retirement and termination are manifestly unreasonable or absolutely arbitrary. We might mention here that even though the conditions mentioned above may not be violative of Article 14 on the ground of discrimination but if it is proved to our satisfaction that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down."
>
> (Emphasis Supplied)

This doctrine thus extends the reach of Article 14 to all forms of State action. The Constitution, being supreme, demands that every exercise of power, whether clothed in the form of a statute or an executive order, must remain subject to the discipline of rationality. Manifest arbitrariness, in this sense, is not a departure from legislative supremacy but its constitutional completion, for the very legitimacy of law in a democratic order lies in its reasoned foundation.

(c) In ***Shayara Bano v. Union of India***[58], Nariman J, for the majority held:

> "**100.** To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In *Cellular Operators Assn. of India* v. *TRAI* [*Cellular Operators Assn. of India* v. *TRAI*, (2016) 7 SCC 703] , this Court referred to earlier precedents, and held : (SCC pp. 736-37, paras 42-44)
>
> "*Violation of fundamental rights*
>
> *42*. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]
>
> *43*. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In *Khoday Distilleries Ltd.* v. *State of Karnataka* [*Khoday Distilleries Ltd.* v. *State of Karnataka*, (1996) 10 SCC 304] , this Court held : (SCC p. 314, para 13)

[58] (2017) 9 SCC 1

'*13*. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(*g*) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. *The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power*. In *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , this Court said that a piece of subordinate legislation does

not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. *A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable;*

"unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such rules; they are unreasonable and ultra vires". *In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution*.'

44. Also, in *Sharma Transport* v. *State of A.P.* [*Sharma Transport* v. *State of A.P.*, (2002) 2 SCC 188] , this Court held : (SCC pp. 203-04, para 25)

'*25*. … The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation.

> In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means : in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' "
>
> (emphasis in original)

… … …"

(d) In ***Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India***[59]:

> **"200.** It is now a settled position of law that a statute can be challenged on the ground that it is manifestly arbitrary. The standard laid down by Nariman, J. in *Shayara Bano* [*Shayara Bano* v. *Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] , has been citied with approval by the Constitution Benches in *Navtej Singh Johar* [*Navtej Singh Johar* v. *Union of India*, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] and *Joseph Shine* [*Joseph Shine* v. *Union of India*, (2019) 3 SCC 39 : (2019) 2 SCC (Cri) 84] . Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the

[59] (2024) 5 SCC 1

> statute is capricious, irrational and without adequate determining principle, or something which is excessive and disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:
>
> ... ...
>
> **204.** The above discussion shows that manifest arbitrariness of a subordinate legislation has to be primarily tested vis-à-vis its conformity with the parent statute. Therefore, in situations where a subordinate legislation is challenged on the ground of manifest arbitrariness, this Court will proceed to determine whether the delegate has failed "to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution." [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641] In contrast, application of manifest arbitrariness to a plenary legislation passed by a competent legislation requires the Court to adopt a different standard because it carries greater immunity than a subordinate legislation. We concur with *Shayara Bano* [*Shayara Bano* v. *Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] that a legislative action can also be tested for being manifestly arbitrary. However, we wish to clarify that there is, and ought to be, a distinction between plenary legislation and subordinate legislation when they are challenged for being manifestly arbitrary."

(e) Keeping in view the judgments referred to above, the principle of manifest arbitrariness under Article 14 refers to legislation that is capricious, irrational, lacking in reasoned principle, or excessive and disproportionate; such arbitrariness vitiates both subordinate and plenary

legislation alike. In the present facts, since a legislative exercise did incorporate AICPI into the framework, deviation therefrom without any basis as discussed above falls in the *'lacking in reasoned principle'* prong of manifest arbitrariness, apart from legislative competence. For the appellant-State to have deviated from the recognised position to something else without laying the groundwork therefor, compromises the exercise by rendering it capricious.

39. This limb of '*manifest arbitrariness*' within the discussion of Article 14 would equally apply to the First Memorandum dated 23rd February 2009. As already observed *supra,* an exercise undertaken by means of Article 309 of the Constitution has statutory force. Accordingly, the *vires* thereof can be adjudicated on the same grounds as well. Having said that, we notice that while the substantive RoPA Rules provide explicitly for a method to calculate the '*existing emoluments*' more particularly DA by way of the AICPI, the First Memorandum and the subsequent memoranda, issued, allegedly to clarify the same, without any reference thereto, quite apparently departs from the stipulation of the substantive law which was to follow the AICPI. To say the least, it is quite strange that the First Memorandum issued on the same day as the substantive law, deviates therefrom at the very inception. Such an action, in our

view, cannot stand judicial scrutiny, and will be hit by '*manifest arbitrariness*' for it fails to establish a link between the two i.e., the RoPA Rules and the First Memorandum. It does not show adequate determining principle in so far as it completely ignores the stipulation of AICPI within the RoPA Rules. As observed herein, doing so would have been permissible had the State carried out its own determinative exercise. The Memorandum dated 23rd February 2009 would also accordingly have to be held to be contrary to law. The doctrine of severance in ***Harankchand*** (supra) would dictate the said Memorandum to be *ultra vires* the substantive Rules.

40. Next, we now deal with the issue of legitimate expectation.

(a) The modern origins of this doctrine have authoritatively been traced to a judgment of the House of Lords, penned by Lord Denning in ***Schmidt v. Secretary of State for Home Affairs***[60]. The doctrine has, over time become well recognised in India also. ***Sivanandan C T v. High Court of Kerala***[61] in reference to ***Union of India v. Hindustan Development Corporation***[62] culled out the following

[60] [1969] 2 WLR 337
[61] (2024) 3 SCC 799
[62] (1993) 3 SCC 499

factors to be considered for application of the doctrine**:**

> **"25.** …(i) legitimate expectation arises based on a representation or past conduct of a public authority;
> (ii) legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular or natural sequence;
> (iii) legitimate expectation provides locus standi to a claimant for judicial review;
> (iv) the doctrine is mostly confined to a right of a fair hearing before a decision and does not give scope to claim relief straightaway;
> (v) the public authority should justify the denial of a person's legitimate expectation by resorting to overriding public interest; and
> (vi) the Courts cannot interfere with the decision of an authority taken by way of policy or public interest unless such decision amounts to an abuse of power."

(b) In ***Ram Pravesh Singh v. State of Bihar***[63] the doctrine was explained as under:

> "15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority."
>
> (Emphasis Supplied)

[63] (2006) 8 SCC 381

(c) In ***Jitendra Kumar v. State of Haryana***[64] this Court observed:

> **"58.** Application of doctrine of legitimate expectation or promissory estoppel must also be considered from the aforementioned viewpoint. A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See *Chanchal Goyal (Dr.)* v. *State of Rajasthan* [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] and *Union of India* v. *Hindustan Development Corpn.* [(1993) 3 SCC 499]] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."
>
> (Emphasis Supplied)

(d) In ***Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies***[65], it was observed**:**

> **"46.** This Court, after taking note of the earlier view on the subject further held in *Railway Board* [*Railway Board* v. *C.R. Rangadhamaiah*, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527] as under : (SCC pp. 637-38 & 640, paras 20, 24-25 & 33)
>
> > "*20.* It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, *but a rule which seeks to*

[64] (2008) 2 SCC 161
[65] (2022) 4 SCC 363

reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

***

24. In many of these decisions [*K.C. Arora* v. *State of Haryana*, (1984) 3 SCC 281 : 1984 SCC (L&S) 520] , [*P.D. Aggarwal* v. *State of U.P.*, (1987) 3 SCC 622 : 1987 SCC (L&S) 310] , [*K. Narayanan* v. *State of Karnataka*, 1994 Supp (1) SCC 44 : 1994 SCC (L&S) 392] , [*T.R. Kapur* v. *State of Haryana*, 1986 Supp SCC 584] , [*Union of India* v. *Tushar Ranjan Mohanty*, (1994) 5 SCC 450 : 1994 SCC (L&S) 1118] , [*K. Ravindranath Pai* v. *State of Karnataka*, 1995 Supp (2) SCC 246 : 1995 SCC (L&S) 792] the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. *It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the*

> *rights guaranteed under Articles 14 and 16 of the Constitution*. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* [*Roshan Lal Tandon* v. *Union of India*, (1968) 1 SCR 185 : AIR 1967 SC 1889] , *B.S. Vadera* [*B.S. Vadera* v. *Union of India*, (1968) 3 SCR 575 : AIR 1969 SC 118] and *Raman Lal Keshav Lal Soni* [*State of Gujarat* v. *Raman Lal Keshav Lal Soni*, (1983) 2 SCC 33 : 1983 SCC (L&S) 231]"

We have also perused various other judgments concerning the doctrine of legitimate expectation viz. ***State of Jharkhand v. Brahmputra Metallics***[66], ***Navjyoti Coop. Group Housing Society v. Union of India***,[67] ; ***Food Corporation of India v. Kamdhenu Cattle Feed Industries***[68].

Once it is the established that a right exists, the following observation in ***G.C. Mandawar*** (supra) becomes relevant:

> **"5.** …Under this provision, it is a matter of discretion with the Local Government whether it will grant dearness allowance and if so, how much. That being so, the prayer for mandamus is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the government servants to the grant of

[66] 2020 SCC OnLine SC 968
[67] (1992) 4 SCC 477
[68] (1993) 1 SCC 71

> dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion, and no mandamus can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."
>
> (Emphasis Supplied)

(e) We are of the view that in light of the principles referred to above, legitimate expectation on the part of the respondents did arise in view of the change of law i.e., enactment of RoPA Rules and its recognition of AICPI as the determinative factor for the computation of DA.

Question 6 and 7: CONFLICT, IF ANY, BETWEEN LIST I AND II OF THE VIIth SCHEDULE AND FINANCIAL AUTONOMY OF THE STATE

41. In India, governance is through a federal structure. This means that authority is divided constitutionally between different levels of government allowing each of them to legislate, administer and adjudicate in relation to matters assigned to them by the Constitution. This division of power is not a mere formality but is legal and enforceable precluding any level from unilaterally encroaching upon the domain of the

other. This enables constitutional recognition of diversity be it geographical, cultural, linguistic or economic within a unified political framework thereby balancing the scales of unity and regional autonomy facilitating national cohesion.

42. In the context of federalism, while the central authorities retain power on issues connecting the entire country such as defence, foreign affairs, emergency provisions, residuary powers etc., but at the same time States have the legislative, executive and judicial authority for a variety of issues such as public order, public health, fisheries, public debt etc. There is another aspect which is equally important - the division of power acts as a security blanket. Each level of Government has its sphere of actions defined and cannot transgress. Should it do so, the Judiciary is bound to step in to reinforce these boundaries. It has to be importantly added here that a federal structure is not only sustained by law making or executive power, it also necessarily includes financial autonomy. In absence thereof, an elected Government, which is installed by the participation of the people in the electoral process, having put forth a vision which is by such process, accepted, would be rendered dependent and reliant on the otherwise all - powerful Central Government for handouts. The constitutional vision has put in place checks and balances to ensure that the States are not reduced to destitution. This is most obviously displayed by

separate consolidated funds being in place for the Centre and the State, among other moorings within the Constitution that reinforce this discipline.

Dr B.R. Ambedkar speaking in the Constituent Assembly said the following significant words: (CAD Vol. 11)

> "There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralisation and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the units by the Constitution. This is the principle embodied in our Constitution."

In ***State of W.B. v. Union of India***[69], BP Sinha, CJI writing for the majority explained the following features of federalism:

> **"25…**(*a*) A truly federal form of Government envisages a compact or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units. Ordinarily each constituent unit has its separate Constitution by which it is governed in all matters except those surrendered to the Union, and the Constitution of, the Union primarily operates upon the administration of the units. Our Constitution was not the result of any such compact or agreement : Units constituting a unitary State which were non-sovereign were transformed by abdication of power into a Union,
> (*b*) Supremacy of the Constitution which cannot be altered except by the component units. Our Constitution is undoubtedly supreme, but it is liable to be altered by the Union Parliament alone and the units have no power to alter it.
> (*c*) Distribution of powers between the Union and the regional units each in its sphere coordinate and independent of the other. The basis of such distribution of power is that in matters of national importance in which a uniform policy is desirable in the interest of the units authority is entrusted to the Union, and matters of local concern remain with the States.
> (*d*) Supreme authority of the courts to interpret the Constitution and to invalidate action violative of the Constitution. A federal Constitution, by its very nature, consists of checks and balances and must contain provisions for resolving conflicts between the executive and legislative authority of the Union and the regional units.

[69] 1962 SCC OnLine SC 27

> In our Constitution characteristic (*d*) is to be found in full force (*a*) and (*b*) are absent. There is undoubtedly distribution of powers between the Union and the States in matters legislative and executive, but distribution of powers is not always an index of political sovereignty. The exercise of powers legislative and executive in the allotted fields is hedged in by numerous restrictions so that the powers of the States are not coordinate with the Union and are in many respects independent."

In ***S.R. Bommai v. Union of India***[70], PB Sawant J. for himself and Kuldip Singh J., held as under:

> **"99.** The above discussion thus shows that the States have an independent constitutional existence and they have as important a role to play in the political, social, educational and cultural life of the people as the Union. They are neither satellites nor agents of the Centre. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal nature of our Constitution. The invasion of power in such circumstances is not a normal feature of the Constitution. They are exceptions and have to be resorted to only occasionally to meet the exigencies of the special situations. The exceptions are not a rule."

K. Ramaswamy J., in the same judgment held as under:

> "**247.** Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The State is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by Parliament. Neither the relative importance of the legislative entries in

[70] (1994) 3 SCC 1

> Schedule VII, Lists I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The State qua the Constitution is federal in structure and independent in its exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignty. Qua the Union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals including secularism."

43. Schedule VII embodies the federal structure and clearly delineates the spheres of action referred to above. List I is the exclusive domain of the Central Government while List II is for the State. The overlapping aspects that were also touched upon above are represented by List III.

S.M.Sikri CJI, for the majority in ***Union of India v. H.S. Dhillon***[71], while dealing with the question of the constitutional validity of Section 24 of Finance Act 1969, observed as under in connection with the law making power of the Parliament:

> **"14.** Reading Article 246 with the three lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Article 246. The State Legislatures have exclusive powers to make

[71] (1971) 2 SCC 779

laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Article 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount. Under clause (4) of Article 246 Parliament is competent also to legislate on a matter enumerated in State List for any part of the territory of India not included in a State. Article 248 gives the residuary powers of legislation to the Union Parliament. It provides:

"248. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists."

… … …"

In ***State of U.P. v. Lalta Prasad Vaish***[72], it was held:

> **"50.** The demarcation of legislative fields is based on a deliberate design as well as on the principles of federalism. Matters requiring coordination between different regions of the country or of national importance have been placed in the field of Parliament. Matters requiring localised focus and limited or no coordination between States have been placed in the State List. Fields of legislation which may require either uniform legislation for the entire nation or context and region-specific accommodation, depending on the circumstance, are placed in the Concurrent List. Moreover, the three Lists make a clear distinction between general entries and taxation entries. The power of taxation cannot be derived from a general entry. … The entries in the legislative lists do not cast an obligation to legislate or to legislate in a particular manner. Within the confines of an entry, the legislature exercises plenary power subject to the provisions of the Constitution. [*United Provinces* v. *Atiqa Begum*, 1940 SCC

[72] (2024) 17 SCC 1

OnLine FC 11 : (1940) 2 FCR 110 : AIR 1941 FC 16; *Constitution of India*, Article 13.]"

It is the appellant - State's contention that since Entry 70 List I and Entry 41 of List II, both dealing with public service employees, have been separately mentioned in two distinct lists; there can be no overlap and as such the central scheme of payment of DA cannot apply to the States. There cannot be any qualms with that argument, but at the same time, the State in its independent wisdom incorporated the definition of '*existing emoluments*' from the Central Government Rules, and it is once again the State who, despite having the requisite power to depart from what has been laid down in RoPA Rules, chose not the direct route but the side road, so to speak, to alter the rate of DA, and that too, without any basis for the same. It is, therefore, not open for the State to take the defence of separation of powers as enumerated in the Constitution, for that would amount to having your cake and eating it too.

44. Here itself we may deal with a further argument of the appellant - State that the conclusion in this adjudication has pan-India implications since there are as many as twelve States that do not follow the Central Government pattern in payment of DA whereas there are only four that do. It is submitted that should the conclusion be that the appellant - State is to follow the latter's pattern, these other States would be in considerable

trouble and difficulty. At first, this argument appears attractive but on a considered view of the matter, we find it imprudent to adjudicate the present *lis* keeping in view the supposed impact on States who are not parties before us. It is not anybody's case that the position the appellant - State finds itself in, is a consequence of a direction issued by the Central Government. While making rules under Article 309, of its own wisdom, the State incorporated for itself the definition employed by the Central Government. A legislative exercise carried out by the State presupposes that the requisite groundwork has been completed and the culmination of all the information received and collected along with the opinions of the necessary experts among other things has resulted in such an exercise. Once this is the position, judicial review thereof cannot account for perceived negative impacts on others particularly when such a decision is squarely within the financial autonomy of each body (State). It is also to be noted that in the subsequent evolution of wisdom, the successor Rules to the RoPA Rules that is, the RoPA 2019 omits the reference to the AICPI 536(1982=100) and instead provides for DA to be paid on the admissible rates as on 1st January 2016.

45. Still further, it be observed that after the enactment of RoPA 2009 it was entirely within the competence of the State to deviate from the prior position and disburse DA in accordance

with what had been stipulated in the said Rules of following the pattern of the Central Government, but the appellant - State chose to continue the same pattern. The above discussion sheds light on the fact that the Constitution envisions sufficient freedom upon the State to choose its path in financial matters. The choice had been made by the State itself. The Central Government has not imposed its definition of '*existing emoluments*'/ any condition upon the former. In ***Mahatama Gandhi Mission*** (supra), it has been observed:

> "**62.** The fact that the Government of India accepted the recommendations of the Sixth Pay Commission (for that matter any Pay Commission) does not either oblige the States to follow the pattern of the revised pay structure adopted by the Government of India or create any right in favour of the employees of the State or other bodies falling within the legislative authority of the State. The Government of India has no authority either under the Constitution or under any law to compel the States or their instrumentalities to adopt the pay structure applicable to the employees of the Government of India."

The alleged conflict, in our considered view, is a figment of imagination of the appellant - State. The argument seems to have been conjured up in thin air. Where is the exercise of power by the Union, legislative or executive, imposing any condition on the appellant - State? On the contrary, the power exercised is only by the appellant - State through the Governor,

permissible under Constitutional scheme in terms of Article 309 of the Constitution.

Question 8: EFFECT OF FINDINGS IN FIRST ROUND OF LITIGATION

46. When the findings returned by a Court are reaffirmed through the dismissal of a review petition, such findings acquire finality and become binding upon the parties to the litigation, in the event that no appeal thereagainst, is filed before this Court. The law recognizes that a review is not a rehearing of the matter, but a narrow and exceptional jurisdiction intended only to correct a patent error apparent on the face of the record, or to consider newly discovered evidence which could not, with and despite due diligence, have been produced earlier. The scope of review is thus, limited in nature. When, upon due consideration, the Court dismisses a review petition, it reaffirms the correctness of its earlier judgment, declining to interfere with the findings that stood returned. The inevitable consequence is that its findings, having passed through the process of judicial scrutiny a second time, attain conclusive finality as between the parties.

47. This principle finds authoritative exposition in the judgment of this Court in ***Lily Thomas v. Union of India***[73], wherein it was emphatically held that the power of review cannot be exercised to re-argue a matter already decided, and that once a review is dismissed, the earlier decision stands undisturbed and attains finality. The Court observed that review jurisdiction exists only for the correction of a manifest error, and not to substitute one view for another; hence, the dismissal of a review petition signifies reaffirmation of the original adjudication.

The principle of finality is further illuminated in ***Kunhayammed & Ors. v. State of Kerala & Anr.***[74], where the Court expounded the doctrine of merger and clarified that once the avenues of review are exhausted, the order under review merges with the final order of dismissal, thereby acquiring complete and binding effect. The discussion made therein pertains to special leave petitions before this Court, the underlying principle applies to the High Courts as well.

Thus, the dismissal of a review petition is not a mere procedural event but a substantive judicial affirmation of the correctness of the earlier decision. It signals the end of the Court's revisiting power and bestows upon the findings, a seal

[73] (2000) 6 SCC 224
[74] (2000) 6 SCC 359

of finality, both factual and legal. The parties, having invoked and exhausted their right to seek reconsideration, are thereafter bound by those findings, which operate as *res judicata* in all future proceedings. This doctrine safeguards the integrity and conclusiveness of judicial decisions and ensures that litigation, once finally adjudicated and reaffirmed, is not perpetually reopened to uncertainty.

48. In the instant facts, the effect that flows from the above discussion is that once the High Court in the '*Judgment in Round One*' had declared the receipt of DA to be a legally enforceable right and a review sought against this judgment stood dismissed with no appeal to this Court being filed, the findings arrived at therein, would attain finality and thereby bind the parties to that proceeding. Once a legally enforceable right has been established, the defence of the appellant - State so as to its financial ability or rather inability has to be kept at bay. The only question that remains thereafter is, how such a right has to be enforced, and considering the nature of the right, at what rate. The answer to this question, as we have already discussed in the preceding paragraphs of this judgment is that the right has to be enforced in accordance with AICPI.

Question 9: WHETHER THE RESPONDENTS ARE ENTITLED TO DA TWICE A YEAR?

49. The short answer to the question framed above is '*no'*. This is for the reason that the RoPA Rules which we have extracted *supra* nowhere provide that DA will be or can be paid twice a year. Anything that is not provided for in the Rules which govern the distribution of '*existing emoluments*' for the time period in question, cannot be said to be a right accruing on any party. The argument based on the principle of legitimate expectation of the employees' right of disbursal of DA twice a year, as alleged to have been disbursed earlier, needs to be repelled for the same does not emanate from the statutory text. [See: ***Sivanandan C T*** (supra)] In ***Ashok Ram Parhad v. State of Maharashtra***[75], it has been held that service rules are liable to prevail. The Government has power to issue resolutions that are in consonance with the Rules or are aimed at expounding the Rules but not in conflict with them. It is undisputed that the RoPA Rules do not provide for disbursement of benefits such as DA to be paid a specific number of times a year (*in this case twice as originally prayed for by the applicants in the OA, respondents herein*), the same cannot be introduced through judicial direction. There is deliberate omission in the State's

[75] (2023) 18 SCC 768

rules showing an intention to leave the same to discretion to some extent rather than mandate a fixed payment structure. This deliberate omission acquires significance since it pertains to an issue which has a direct bearing on the fiscal affairs of the State and is inextricably linked to budgetary planning, allocation of resources, assessment of financial capacity. Judicial interference therein amounts to intrusion with the fiscal autonomy of the State which in the absence of any stipulation, would be entirely unnecessary and therefore, avoidable. The direction of the Tribunal for DA to be paid twice a year till the implementation of the 6th Pay Commission of the State, in our view is without the authority of law.

Question 10: DOES PAUCITY OF FUNDS DEFEAT A LEGAL RIGHT?

50. One of the implications of accepting the respondent's contention as submitted by the appellant - State is that it will lead to an incidence of thousands of crores on the State, thereby having a great negative impact on the economy and financial security of the State. We find this position difficult to accept. This is so because once a legal right has been established, as is the undoubted position in this case by virtue of the '*Judgment In Round One*', as also our discussion *supra,* irrespective of whether it pertains to salary, pension, gratuity or other statutory

benefits, it is not within the realm of permissible actions for the State to refuse payment of the same on account of financial inability/paucity of funds. The least that is expected of a State in a democracy is that it honours its obligations and commitments, arising from a legislation or judicial decisions, for such obligations are not discretionary in any way, shape or form. This clear position protects such statutory obligations for, if such a ground of limited financial ability was readily available to the State Government, which may undoubtedly in certain situations face tough times, it would render these obligations illusory. When it comes to employees' dues, this proposition would be extremely dangerous and stifling since the amounts received thereby are not handouts or acts of charity but are earned compensation / consideration for services given, and denial of such consideration would have a direct impact on the right to life and livelihood enshrined in Article 21 of the Constitution. In ***State of H.P. v. H.P. State Recognised & Aided Schools***[76], it has been held by a bench of three judges that constitutional duties cannot be evaded on the ground of paucity of funds. Granted, we have not given any finding with respect to DA being a facet of Article 21 but at the same time it has to be acknowledged that DA is an integral part of salary which is the

[76] (1995) 4 SCC 507

means by which various other facets of right to life under Article 21 can be seen to a logical and desirable end.

(a) In ***Haryana State Minor Irrigation Tubewells Corpn. v. G.S. Uppal***[77], this Court observed as under:

> **"33.** The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan* v. *Union of India* [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] and *Indian Overseas Bank* v. *Staff Canteen Workers' Union* [(2000) 4 SCC 245 : 2000 SCC (L&S) 471] . .."
>
> (Emphasis Supplied)

(b) In ***State of A.P. v. Dinavahi Lakshmi Kameswari***[78]:

> **"13.** The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other

[77] (2008) 7 SCC 375
[78] (2021) 11 SCC 543

> words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. …"
>
> (Emphasis Supplied)

(c) In ***Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies***[79]**,** this Court observed:

> **"57.** In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour."

51. It has often been recognised that the State must set an example for other employers in the country by behaving as a '*model employer'*. Such a position should not be difficult to attain given all the advantages that it has. Its power lies in the volume of employment, its sovereign/constitutional authority to tax, ability to borrow and manage public finances. In embodying the '*model employer*' the State not only fulfils its obligation but

[79] (2022) 4 SCC 363

also instils and maintains public confidence in the rule of law, governance and administration of justice. Leading by example, fulfilling its financial duties in times of fiscal strain, gives it the moral authority to wield the sword of law against private entities, should they not do so. The position stated by us above has been recognised in a number of judgments of this Court. In ***Bhupendra Nath Hazarika v. State of Assam***[80], a coordinate Bench took note of various past pronouncements as follows:

> **"61.** Before parting with the case, we are compelled to reiterate the oft stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.
>
> **62.** Almost a quarter century back, this Court in *Balram Gupta* v. *Union of India* [1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246] had observed thus: (SCC p. 236, para 13)
>
> > "*13.* … As a model employer the Government must conduct itself with high probity and candour with its employees."
>
> In *State of Haryana* v. *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] the Court had clearly stated: (SCC p. 134, para 21)
>
> > "*21.* … The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16."
>
> … … …

[80] (2013) 2 SCC 516

> **65.** We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretised. We say no more."

52. In that view of the matter, it is not open for the appellant-State to shirk away from its responsibility from paying DA on the count of financial difficulty that it may face in doing so. It is an obligation arising out of the statute of its own creation and it must be met.

Question 11: FISCAL POLICY AND JUDICIAL REVIEW

53. The judicial review of a fiscal policy is a limited but important domain. The various facets of fiscal policy such as taxation, subsidies, public expenditure etc., are primarily concerns of the Executive and Legislature, but are not beyond the pale of judicial scrutiny. The *brief* that is entrusted to the

Judiciary is to ascertain that such a policy flows from the Constitution, is procedurally lawful and non-arbitrary. Article 265, for example mandates that no tax shall be levied in the absence of the authority of law. Here, it would be the domain of the Courts to examine that fiscal measures are not imposed by executive fiat. Discipline in matters of fiscal policy is not only judicially enforced but provided for in the Constitution itself by virtue of Article(s) such as 266 and 283 by regulating the custody, appropriation and withdrawal of public funds.

54. Separation of powers which is a feature of the basic structure of the Indian Constitution[81] postulates that the complex assessment of economic conditions, social priorities etc., are evaluated and assessed by those institutions possessing democratic legitimacy. Herefrom arises the consistently articulated judicial position that Courts do not adjudicate upon the wisdom/adequacy or desirability of a chosen economic policy. At the same time, it is unquestionably the role of the judicial institutions to check fiscal policy that transgresses constitutional limitations. While reasonable classification and intelligible differentia are permitted, such classifications cannot be discriminatory or devoid of rational nexus to the avowed objectives thereof. That apart, Courts are also the arbiter of

[81] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

federal balance that is between the Centre and the State ensuring that the two powers stay within their own lanes as prescribed by Article 246. In essence, the role is to ascertain constitutional compliance and is, thus, a position of calibrated deference but most certainly not of abdication or no authority. In the context of the above, the following judgments spell out the well-recognised position:

(a) A bench of three Judges in ***BALCO Employees' Union v. Union of India***[82], observed:

> *"***92.** In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.
>
> **93.** Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. …"
>
> (Emphasis Supplied)

[82] (2002) 2 SCC 333

(b) In ***State of T.N. v. National South Indian River Interlinking Agriculturist Assn***.[83]:

> **"10…** An examination of this issue must begin with the primary question of the meaning of the phrase "policy". A policy is the reasoning and object that guides the decision of the authority, which in our case is the State of Tamil Nadu. Statutes, notifications, Ordinances, or government orders are means for the implementation of the policy of the State. Therefore, it is not possible to completely appreciate the law without reference to the policy behind the law. The judicially evolved two-pronged test to determine the validity of the law vis-à-vis Article 14 of the Indian Constitution, refers to the objective of the law because the "policy" behind the law is never completely insulated from judicial attention.
>
> **11.** However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. …It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights. In *R.K. Garg* v. *Union of India* [*R.K. Garg* v. *Union of India*, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , …
>
> > "*8*. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. [**Ed.** : The

[83] (2021) 15 SCC 534

reference appears to be to *Bain Peanut Co. of Texas* v. *Pinson*, 1931 SCC OnLine US SC 34 : 7 L Ed 482 : 282 US 499 (1931). See also *Missouri, Kansas & Texas Railway Co. of Texas* v. *Clay May*, 1904 SCC OnLine US SC 118 : 48 L Ed 971 : 194 US 267, 269 (1904).] , that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey* v. *Doud* [*Morey* v. *Doud*, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:

> 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are

> added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'"
>
> (Emphasis Supplied)

55. The case of the appellant - State obviously is that the High Court in terms of the impugned judgment has overstepped the bounds of judicial review and that of the respondents is that the High Court had only protected them against actions of the appellant - State which are *sans* basis.

It has been noted above that the question of DA being a legally enforceable right has already been put to rest. The time period in question is 2008 to 2019 that is approximately a period of eleven years. Each month that the requisite DA was not paid, is a wrong committed against the respondents. Certainly, when that is the case '*fiscal policy*' cannot grant a cloak of protection to the appellant - State. Should such an argument be accepted, the very concept of judicial review would be shaken. No one denies that it is within the State's power to make decisions regarding payments to its employees but once such a decision has been

made, it cannot deviate therefrom. It is this deviation which is a subject matter of judicial review.

Question 12: DEARNESS ALLOWANCE - A FUNDAMENTAL RIGHT?

56. In terms of the impugned judgment, the High Court held that payment of DA was a facet of Article 21 of the Constitution of India. Before this Court, however, the opposing parties have jointly agreed that none will press this question, either way. That being the accepted position we need not give any finding thereon and leave the question open to be decided in an appropriate case.

Question 13: DELAY AND LATCHES

57. Delay and latches do not defeat a claim on mere passage of time in all cases. It does defeat a claim, however, when the delay in question is unreasonable, unexplained and inequitable. Whether any of these *vices* affect a claim is to be determined *inter-alia* on the anvil of forum that has been invoked, the right that has been asserted and the consequences in granting the relief asked for. It is a doctrine of equity informed by public policy and judicial discretion. Delay is said to reflect acquiescence and waiver of right. For example, if a claim for seniority is brought after a long lapse of time, acceptance of such a claim would be

few and far between, if at all, given that the parties involved remained quiet for number of years and also that the consequence of such an act would be that the seniority of other serving members would be disturbed as a result. It has been recognised that in cases where there is a continuing wrong/recurring cause of action as against completed causes of action, delay in bringing a challenge would not be fatal. [See: ***Union of India v. Tarsem Singh***[84]; ***M.R. Gupta v. Union of India***[85]]

S.M.Sikri J. (as he then was) in ***Tilokchand & Motichand v. H.B. Munshi***[86], referred to Joseph Story's Commentary on Equity Jurisprudence as follows:

> **"16.** Story on Equity Jurisprudence states the legal position thus:
>
> "It was, too, a most material ground, in all bills for an account, to ascertain whether they were brought to open and correct errors in the account *recenti facto; or* whether the application was made after a great lapse of time. In cases of this sort, where the demand was strictly of a legal nature, or might be cognizable at law, courts of equity governed themselves by the same limitations as to entertain such suits as were prescribed by the Statute of Limitations in regard to suits in courts of common law in matters of account. If, therefore, the ordinary limitation of such suits at law was six years, courts of equity would follow the same period of limitation. In so doing, they did not act, in cases of this sort (that is, in matter of concurrent jurisdiction) so much upon the ground of analogy to the Statute of Limitations, as positively in obedience to such

[84] (2008) 8 SCC 648
[85] (1995) 5 SCC 628
[86] (1969) 1 SCC 110

> statute. But where the demand was not of a legal nature, but was purely equitable; or where the bar of the statute was inapplicable; courts of equity had another rule, founded sometimes upon the analogies of the law, where such analogy existed, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence, in matters of account, although not barred by the Statute of Limitations, courts of equity refused to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions had become obscure by time, and the evidence might have been lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *vigilantibus, non dormientibus jura subveniunt*. Under peculiar circumstances, however, excusing or justifying the delay, courts of equity would not refuse their aid in furtherance of the rights of the party; since in such cases there was no pretence to insist upon laches or negligence, as a ground for dismissal of the suit; and in one case carried back the account over a period of fifty years." (Third Edn., p. 224, Section 529)."

58. In view of the discussion aforesaid and taking a cumulative view of all the factors discussed in this judgment, we are of the considered view that appellant - State's contention as to delay and latches must be rejected. This is more so for the reason that when the law was set in motion the continuing non-payment of appropriate rates of DA gave the respondent employees sufficient cause of action and if recourse to law has been taken while the cause of action subsists, there is obviously no question of

dismissal of the same on delay. Also, were not the employees pursuing the remedies available to them, relentlessly?

DIRECTIONS AND CONCLUSIONS

59. Apropos to the above, we pass the following order:

59.1 The appeals are partly allowed and the contempt petitions stand disposed of.

59.2 To receive dearness allowance is a legally enforceable right that has accrued in favour of the respondents-employees of the State of West Bengal.

59.3 Given its incorporation in RoPA Rules, the AICPI is the standard to be followed by the appellant – State of West Bengal for determination of '*existing emoluments*'.

59.4 The employees of the appellant-State shall be entitled to release of arrears in accordance with this judgment for the time 2008-2019;

On 16th May 2025, we had passed the following order:

> "O R D E R
>
> 1. Having heard Dr. Abhishek Manu Singhvi, Mr. Huzefa Ahmadi learned senior counsel appearing for the petitioners and Mr.P.S.Patwalia, learned senior counsel appearing for the respondents, we are of the considered view that the petitioner State should release at least 25% of the amount due and

> payable to all the employees in terms of the impugned judgment dated 20.05.2022 passed by the High Court at Calcutta in WPST No.102/2020 titled "The State of West Bengal & Ors. Vs.Confederation of State Government Employees, West Bengal & Ors." and order dated 22-09-2022 in RVW No. 159/2022 22-09-2022 in CAN No. 1/2022, within a period of six weeks from today.
>
> 2. We find the Tribunal and the High Court to have adjudicated the right of the employees to receive Dearness Allowance pursuant to the 5th Pay Commission. The paucity of funds is a ground which stands negated both by the Tribunal and the High Court. Whether or not the right to receive Dearness Allowance is a fundamental right is an issue, amongst others, this Court is called upon to consider. We shall do so. However pending such consideration, we are of the considered view that the employees need not be kept waiting endlessly to receive the money in question.
>
> … … …"

Interim directions issued as herein above shall be complied with immediately.

59.5 On account of subsequent change in law, if any, any amount that would be disbursed in compliance of this judgment shall not be liable to be recovered;

59.6 Considering the financial implications involved and also recognising the need for a structured release of funds so as to not prejudicially impact State's exchequer while at the same time balancing the rights of the employees to receive emoluments due to them,

we find it fit to constitute a Committee, to monitor the implementation of the directions issued herein above, as follows:

1) A retired Supreme Court Judge namely, Hon'ble Ms. Justice Indu Malhotra-Chairperson.

2) Former Chief Justice/Judge of High Court namely Justices Tarlok Singh Chauhan and Goutam Bhaduri;

3) Comptroller and Auditor General of India or senior most officer in his establishment, nominated by him.

59.7 The import of the Committee shall be, in consultation with the State authorities to determine:

a) total amount to be paid;

b) schedule of payments which then the State shall be bound to follow;

c) Periodically verify the release of the amounts.

The exercise to determine (a & b) shall be carried out before 6th March, 2026. The next consequential step i.e. the payment of the first instalment, subject to the determination of the Committee should be paid by 31st March, 2026.

59.8 The Committee shall be accorded all facilities and privileges including all necessary logistical arrangements. The expenses shall be borne by the appellant - State. In so far as the remuneration for the Committee members is concerned, we leave the same to the wisdom of the Chairperson.

59.9 It stands clarified that those employees of the State who have retired in the pendency of this litigation shall also be entitled to benefits in accordance herewith.

60. Let the appellant - State, after payment of first instalment, file a status report indicating the determination made by the Committee, the schedule adopted, the status of the first payment. List on 15th April, 2026 for compliance.

Pending applications, if any, shall stand closed. In the circumstances there shall be no order as to cost.

……..J.
(SANJAY KAROL)

……..…….J.
(PRASHANT KUMAR MISHRA)

New Delhi;
February 5, 2026.