



ALL INDIA BANK PENSIONERS' & RETIREES' CONFEDERATION
(A.I.B.P.A.R.C.)



Office of GS at:
C/O BOIOA,
(EASTERN INDIA BRANCHES)
BOI, KOL. MAIN BRANCH,
23 A, NETAJI SUBHAS ROAD, KOLKATA – 700 001
Mobile: 9674188524,
E-mail: aibparc2@gmail.com

Regd. Office:
57 A, POCKET 3,
MAYUR VIHAR, PHASE - 1
DELHI 110091

Senior Office Bearers
PRESIDENT SHRI K.V. ACHARYA, MOB - 9868220338
GENERAL SECRETARY SHRI S. SARKAR MOB – 9674188524
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2. SHRI P.S. PATKI MOB – 8805607239
3. SHRI S.B.C. KARUNAKARAN, MOB – 9444772016
4. SHRI A.N. KRISHNAMURTHY, MOB NO. 9845697198
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6. Shri S.C. AHUJA MOB: 9650068773
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7. SHRI PAUL MUNDADAN MOB – 9895378557
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9. SHRI N.K. PAREEK MOB – 9829015773
10. SHRI S. NAGARAJ MOB – 9986644118
11. SHRI PRAKASH KAROTYA MOB- 9818821395
12. SHRI DAU DAYAL MAHESHWARI MOB: 9958739618
TREASURER: =====
SHRI TARUNESH CHATTERJEE, MOB -9051601591

Circular no 46-24

Date: May 11, 2024.

For circulation among members of the Governing Council, State Secretaries,
Special Invitees, Advisors, Affiliates, Constituents of CBPRO and Members.

Dear Comrade,

Sub: Various High Court /Supreme Court Judgements affecting Bank Pensioners and Retirees

We are reproducing here under the text of our letter written on date to The Chairman, IBA on the above-mentioned subject.

This is for information of members.

With best wishes and regards,

Comradely yours,

Suprita Sarkar
General Secretary

Encl: As stated

AIBPARC/IBA/ HC/SC Judgement / Email/2024

Date: May 11, 2024.

Shri M. V. Rao,
The Chairman,
Indian Banks' Association,
Mumbai.

Respected Sir,

**1. Writ Petition No: 75 of 2023(1)
Shri Babu Ram Kashyap (Petitioner)
VS.**

**Canara Bank (Erstwhile Syndicate Bank) – Respondent
& several other Petitions.**

Judgement dated 29.04.2024 by Hon'ble HC of Uttara Khand on Special Allowance



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2. Muralee Mohanan & ors Vs Corporation Bank

Order dated 15.10.2019 by Hon'ble HC of Kerala on Special Allowance

3. Regional Provident Fund Commissioner (II), WB order by Supreme Court on Special Allowance

4. Rajasthan Marudhara Gramin Bank Hon'ble SC upheld order of Hon'ble HC of Rajasthan on Special Allowance - benevolent connotation ought to be accepted

We wish to encroach upon your valuable time with a presumption that the aforesaid judgements have already come to your kind notice. However, we are enclosing the full text of the judgement delivered by the Hon'ble High Court of Uttara Khand Division Bench headed by Ms Rute Bahri, Chief Justice for your ready reference. These judgements have collectively allowed the following prayers:

(a) The Special Allowance and the component of Dearness Allowance thereon to be included for the purpose of calculation of gratuity under the scheme of the Bank.

(b) As regards additional amount of Gratuity for every completed year of service exceeding 30 years the Statute requires to make a payment of one-half month's pay i.e. total 45 days of pay for every year beyond 30 years.

(c) Special Allowance introduced wef 01.11.2012 to be reckoned for computation of Pension and calculation of Gratuity.

A careful reading of the above-mentioned judgements of various High Courts and the Apex Court of the Country would reveal t the above issues (a), (b) and (c) have been extensively and elaborately examined and settled in favour of the employees/officers as follows:

1. SC in the case of Regional Provident Fund Commissioner (II) W.B (Civil Appeal No.6221 of 2011) has held that the basic principle is that where a component of wages is **universally, necessarily and ordinarily paid to all employees across the board, such emoluments are basic wages.**

In the case of Bank Employees and Officers, the Special Allowance introduced w.e.f. 01.11.2012 is paid to all the employees/officers across the board including during the leave period and it's payment is not assigned to the performance of any specific function. It is also reckoned for Encashment of Leave.

It was held that the definition of Payment is inclusive and hence exclusion of Special Allowance from the component of Basic Pay is not permissible for the purpose of calculation of Gratuity. The **crucial test for inclusion of Special Allowance and DA for the calculation of Gratuity is its Universality.** Both the components viz, Special Allowance and DA pass the test of Universality to be included in the Basic Wages for calculating Gratuity.

2. Supreme Court upheld the judgement of Rajasthan HC in the case of Rajasthan Marudhara Gramin Bank that -

(a) to include Basic Pay, Professional Qualification Pay, Fixed Permanent Pay, Stagnation Increment, Dearness Allowance, Special Allowance, Officiating Allowance drawn during last 12 months preceding retirement etc

(b) Calculate gratuity at the rate of one-month wages for every completed year of service upto 30 years with a maximum of 15 month and also pay one half month (45 days) wages for every completed year of service beyond 30 years.

The Apex Court also ruled that Payment of Gratuity Act 1972 being a welfare statute, the most benevolent connotation ought to be accepted without expanding the ambit of benefit.



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3. HC of Uttara Khand, Nainital in the case of Babu Ram Kashyap upheld the order of the Controlling Authority (Central), Dehradun and thus allowed inclusion of Dearness Allowance and Special Allowance for calculation of Gratuity and one-half month (45 days) for every completed year of service beyond 30 years of service. It was also held that the Controlling or Appellate Authority cannot reduce the rate of interest from what has been provided in the Statute/RBI. (Y K Singla vs Punjab National Bank - S C & Uttari Haryana Bijli Vitran Nigam Ltd - SC).

The Petitioners were held entitled to inclusion of Special Allowance as part of payment for calculation of Gratuity by including Dearness Allowance as well.

4. HC of Kerala in the case of Muralee Mohanan & Ors Vs Corporation Bank & Ors held that exclusion of Special Allowance payable to Bank Employees and Officers for calculation of Gratuity and Pension is not correct. The petitioners were held entitled to Pension in terms of Bank Employees Pension Regulations by taking into account the Special Allowance.

5. S C in case of Palani Vs Bank of Baroda (DA merger @ 1616 points vs 1684 points) held that the definition of Pay cannot be altered by any settlement/joint notes signed by the parties against the spirit of Pension Regulation 2(s).

On same grounds you will appreciate that Basic Wages cannot be different for the purposes of Encashment of Leave, Payment of Gratuity and Computation of Pension.

In view of what has been stated in the aforesaid paragraph, we request IBA to advise all Member Banks to calculate gratuity by including the components of Dearness Allowance and Special Allowance and also to give additional amount of 45 days pay for every additional year of service beyond 30 years. The interest as per applicable rules and specified rates should also be paid on the amount of differential gratuity upto the date of payment.

We also request you that IBA/DFS/Banks do not fall back upon the irrational logic that the entire issue is sub-judice. We shall be greatly obliged, if the Banks are not advised to go for further appeals in respect of the verdict of the Hon'ble Courts including the Division Bench of Uttarakhand High Court. We earnestly request you to exhibit due respect to the Honest Litigation Policy of the Government of India for the senior citizens. We hope that the Government/IBA shall not engage in procrastination of these issues as the same would be a great injustice to the senior and super senior citizens of the Banking Fraternity, who are already in the evening of their life. **Justice delayed is always justice denied. Let this dictum be allowed to be borne in our minds.**

The money spent by Banks is charged to P/L Accounts with nobody having personal stakes but the people on the other side have to spend from their hard – owned resources and sometimes even borrowing. The referred judgements have given a scope to all concerned (Banks/IBA/DFS) to be kind and sympathetic to the Pensioners and Retirees of the Banking Industry and resolve these long pending issues.

We make an appeal to you to kindly consider our requests favourably in line with the landmark judgements cited hereinbefore.

Wit kind regards,

Yours faithfully,

K.V. Acharya.
President, AIBPARC
& Jt. Conveners, CBPRO

Suprita Sarkar
General Secretary