

jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

46. In this view of the matter, in our considered opinion, no case for interference with the impugned judgment passed by the Appellate Authority is made out.

47. In the result, this writ petition **fails** and is **dismissed**.

48. The interim order, already granted, is hereby vacated.

49. There shall be no order as to costs.

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**(2023) 5 ILRA 1629**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 27.03.2023**

**BEFORE**

**THE HON'BLE MRS. SANGEETA CHANDRA, J.**

Writ A No. 11593 of 2021  
with  
other cases

**Ved Prakash Mittal & Ors. ...Petitioners**  
**Versus**

**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioners:**

Sri Satyendra Singh, Sri Anil Kumar Bajpai

**Counsel for the Respondents:**

C.S.C., Sriprakash Singh

**Service Law-The formula and procedure for computation of pension as given in the Government Orders dated 18.07.2017 modifying the earlier decision for Government employees who retired before 01.01.2006 shall be applicable to the petitioners as well as the Concordance Tables issued from time to time for determination of their pension/ family pension including the ones appended to the Government Order dated 04.09.2017. The Government Order dated 01.05.2018 also shall apply to the petitioners-Retrospective operation of revised pension with effect from 01.01.2016 and arrears to be paid, nothing on record to show that question of payment of arrears with effect from 01.01.2016 to 24.02.2021 was deliberated upon seriously-It is evident from the fact that information in prepared formats continued to be collected by the Administrative Department even after issuance of the impugned office memo. It is therefore directed that the Respondent No.1 shall collect all necessary information and also determine the availability of finances and issue appropriate orders within a period of three months from the date a copy of this order is produced before it, taking into account also the observations made by this Court hereinabove-(Para 79)**

**Petition partly allowed. (E-15)**

**List of Cases cited:**

1. Praveen Kumar Agarwal Vs St.of U.P. & ors.(2011) ILR 1 Allahabad 21
2. (Shakuntala Singh Vs St.of UP & ors.) 2019 (11) ADJ 495
3. Subrata Sen Vs U.O.I.& ors.2021 (8) SCC 71

4. D.S. Nakara Vs U.O.I.1983 (1) SCC 305
5. Indian ex-Services League Vs U.O.I.1991 (2) SCC 104
6. Krishena Kumar Vs U.O.I.1990 (4) SCC 207
7. Subrata Sen another Vs U.O.I.& ors.2001(8) SCC 71
8. All India Reserve Bank Retired Officers Association Vs U.O.I.AIR 1992 Supreme Court 767
9. Indian Ex-Servicemen's Movement Vs U.O.I.& ors., 2022 (7) SCC 323
10. B.J. Akkara Vs U.O.I.(2006) 11 SCC 709

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

1. All of the above seven Writ Petitions have been filed by retired members U.P. Development Authorities Centralized Services or their dependent family members. They were holding various posts for example Chief Architect and Town Planner, Chief Town Planners, Chief Engineers, Executive Engineers and Assistant Engineers in different Development Authorities and had retired before 01.01.2016. Some of the writ petitions which were filed in 2019 and 2020 were filed mainly with a prayer to revise the pension of the petitioners in accordance with the recommendation of the Seventh Pay Commission and strictly in accordance with the Government Order dated 23.12.2016 read with Government Orders dated 18.07.2017 and 04.09.2017 which were issued for State Government employees. Some petitioners were also praying for grant of 20% additional pension to them as they had attained the age of eighty years. Pleadings were complete between the parties and matters were ripe for final hearing but in the meantime the

State Government issued Office Memo dated 24.02.2021, which made admissible revised pension to the petitioners in accordance with the Seventh Pay Commission's recommendations but with effect from the date of issuance of such order i.e. prospectively. Such Office Memo has been challenged in later Writ Petitions of 2021 as it provides that the formula given in Government Order dated 23.12.2016 will be followed while calculating revised pension/family pension only notionally, and actual benefits of revised pension shall be given with effect from 24.02.2021 meaning thereby that the arrears of more than five years have been denied. The impugned Office Memo also denies the benefit of modified formula and method for calculation of pension and family pension as provided in Government Orders dated 18.07.2017 read with Government Order dated 04.09.2017, saying that they were meant only for retired Government Servants and their dependents.

2. The facts that are common to all of the writ petitions are that after recommendations of the Seventh Central Pay Commission, the State Government constituted the Pay Committee 2016, to implement the Recommendations of the Seventh Central Pay Commission in the State of Uttar Pradesh. The Pay Committee 2016 presented its recommendations/report before the State Government with regard to the implementation of the Seventh Pay Commission upon different classes and categories of employees/retirees of various departments including the Housing and Urban Planning Department and Local Bodies, statutory institutions, public sector enterprises and autonomous bodies like Development Authorities. The State Cabinet accepted the recommendations of the Pay Committee 2016 with regard to

revised pay, Dearness Allowance/Relief as well as pension/family pension and other post retirement benefits for Urban Local Bodies, Zila Panchayats, Jal Sansthan and Development Authorities. Consequently, a Government Resolution (Sankalp) dated 16.12.2016 was issued which was published in the Gazette. Clause 1 of such Resolution provided that the recommendations of the Pay Committee with regard to the revision of salaries of employees of Development Authorities in revised Pay Matrix (provided by the Seventh Pay Commission) were accepted. Clause 5 of the said Resolution provided that pension of retirees of Development Authorities who had earlier been getting same pension as Government servants shall be revised in an identical manner to State Government pensioners. It further provided that the financial implications/burden in adopting the recommendations of the Seventh Pay Commission for Local Bodies, Zila Panchayats, Development Authorities etc., would be borne by such institutions. No transfer of funds other than funds which are already being given by the State Government to such authorities, would be made available for additional financial burden cast by such adoption. With regard to Development Authorities the recommendations would be admissible only on the condition that financial burden caused by such acceptance would not be borne by the State Government. The responsibility to deposit in time the installments regarding loans extended by the financial institutions giving credit to such Development Authorities would be discharged regularly and the increase in establishment cost due to grant of benefits admissible under the Seventh Central Pay Commission's recommendations shall be borne by such Development Authorities.

3. The State Government issued Government Order No.39 dated 23.12.2016 for Government employees who retired before 01.01.2016, providing therein that pension and family pension of such persons who retired or died prior to 01.01.2016 shall be as per the Report of the Pay Committee 2008 i.e. the Committee constituted for implementation of the recommendations of the Sixth Central Pay Commission, and will be revised by multiplying factor of 2.57 with pension/family pension which they were getting prior to 2016. The said Government Order also provided that pensioners who attained the age of 80 years shall be paid 20% additional pension. Arrears on revision of pension shall also be paid with effect from 01.01.2016.

4. A similar Government Order No.38 dated 23.12.2016 was issued for Government Employees who retired after 01.01.2016. It also provided that 50% of the last drawn basic salary would be given as pension. The ceiling limit of maximum amount of Gratuity was raised to 20 lakhs from 10 lakhs as provided under the recommendations of the Sixth Central Pay Commission.

5. Thereafter, the State Government in order to maintain homogeneity between Pre-2016 and post-2016 retired Government employees, issued another Government Order dated 18.07.2017 modifying the formula/ method for revision of pension/family pension for such Government employees providing therein that apart from the method of multiplying the existing pension by 2.57 points as provided in the Government Order No. 39 dated 23.12.2016, the calculation for revision of pension/family pension would also be done by notional pay fixation,

under each intervening Pay Commission's recommendations, based on the formula for revision of pay, and the amount which is higher shall be the revised pension/family pension. Clause 11 of the said Government Order provided for payment of arrears as a result of such upward revision with effect from 01.01.2016. The State Government thereafter issued an order on 04.09.2017 providing calculation method and Concordance Tables for revised pension/family pension for its employees in accordance with the method/principle provided in the Government Order dated 18.07.2017.

6. However, the formula given in such Government Orders were not applied for calculating Pension/revised pension of members of the Centralized Services of Development Authorities. The Government made it clear that separate orders shall be issued by the Department of Housing and Urban Planning. After five years of such implementation of the Seventh Central Pay Commission's recommendations with respect to salary and pension of Government employees, the impugned Office Memo has been issued on 24.02.2021. The said Office Memo provided that the formula set out in Government Order dated 23.12.2016 would be followed while calculating revised pension/revised family pension, but actual benefits of such revision would be given only from the date of issuance of the Office Memo that is with effect from 24.02.2021, denying the arrears of more than five years. The said Office Memo also denied the benefits of modified formula and method for calculating pension as provided in the Government Orders dated 18.07.2017 read with Government Order dated 04.09.2017 as applicable to State Government employees.

7. On the other hand, the recommendations of the Seventh Pay Commission with regard to revision of salaries and other allowances except Dearness Allowance was duly implemented with effect from 01.01.2016 in Development Authorities by a Government Order dated 04.01.2017, and the employees of Development Authorities who retired after the revision of salary with effect from 01.01.2016 by the Government Order dated 04.01.2017 are getting pension at the rates prescribed by the Government Order dated 04.09.2017 (that is 50% of the basic salary at the time of retirement). One exemplar of Pension Payment Order with regard to one of such employees, *Ratan Kumar Nigam*, who retired on 31.08.2017 from the post of Assistant Engineer from Prayagraj Development Authority with last drawn basic salary of Rs.1,02,500/- (revised in the Seventh Pay Commission as per Government Order dated 04.01.2017) being granted Rs.51,250/- i.e. 50% of his last drawn basic salary, has been filed as an Annexure 12 to the Writ Petition No. 11593 of 2025.

8. It has been argued by Sri Satyendra Singh, learned counsel for the petitioners that the Development Authorities in the State of U.P. have been created under the provisions of the UP Urban Planning and Development Act 1973 (hereinafter referred to as the "Act of 1973"). After creation of Development Authorities, the State Government had issued Government Orders dated 17.03.1983 and 29.09.1983 providing therein that until model retirement benefit Rules are framed by the State Government under Section 56(2) of the Act of 1973, the employees of Development Authorities would be entitled for pension/family pension in accordance with Uttar Pradesh Palika Centralized

Services Retirement Benefit Rules 1981 (hereinafter referred to as "the Palika Rules of 1981"). The Palika Rules of 1981 provided pension and family pension at par with State Government employees.

9. Subsequently, the State Government notified the U.P. Development Authority Centralized Services Rules 1985 (hereinafter referred to as the Service Rules of 1985) and instead of framing retirement benefit Rules or Regulations for such Centralized Services, the State Government issued an order on 05.04.1999 providing therein that since no decision had yet been taken for payment of pension to employees of Centralized Services, they are not entitled for payment of pension/family pension and such pension was consequently stopped.

10. The Government Order dated 05.04.1999 was challenged in several writ petitions before this Court both at Lucknow and Allahabad and this Court in Writ petition No. 556 (S/B) 2009 *Praveen Kumar Agarwal Vs. State of U.P. and others*, decided on 20.11.2010 reported in **(2011) ILR 1 Allahabad 21**; allowed such writ petitions and quashed the Government Order dated 05.04.1999 and consequential Government Order dated 09.11.2004 by which pension/ Family pension was stopped with consequential benefits. This Court recorded a finding that the two Government Orders dated 05.04.1999 and 09.11.2004 had been issued in contravention of statutory provisions as contained in Section 24 of the Act of 1973 which provided that a Development Authority shall constitute for the benefit of its officers and other employees a Pension or Provident Fund. Rule 34(2) provides that all employees of Development Authorities retired in accordance with the said Rules

would be entitled to retiring pension and/other retirement benefits. Rule 37(2) provided that in regard to matters not covered by the Rules or by special orders, the members of service shall be governed by the Rules, regulations and orders applicable generally to U.P. Government Servants serving in connection with the affairs of the State. The Court observed that the action of the State Government in denying pension only because pension regulations had not been framed by it, was a completely arbitrary decision and liable to be quashed. The Court issued a mandamus directing the respondents to ensure payment of regular pension including arrears to the writ petitioners and other similarly situated employees, in accordance with the Rules applicable to the State Government employees.

11. In pursuance to the directions issued by this Court, the State Government after nearly four decades of creation of Development Authorities, ultimately notified the U.P. Development Authorities Centralized Services Retirement Benefit Rules 2011 (hereinafter referred to as the "Retirement Benefit Rules of 2011"). The said Rules provided for pension and other retirement benefits to members of Centralized Services of Development Authorities, who were appointed before 01.04.2005. Later, the cut-off date was modified by an order dated 22.12.2011 providing that such pension and retirement benefits would also be available to employees who retired prior to the commencement of the Rules on 11.11.2011.

12. Part VI of the Retirement Benefit Rules 2011 provides for establishment of U.P. Development Authorities Centralized Services Pension Fund, a consolidated and common pension fund under the control of

the Finance Controller, Lucknow Development Authority, and also provides the procedure for disbursement of pension/family pension by the Vice-Chairman of Development Authority concerned subject to approval of the Finance Controller, LDA.

13. The pension of all such petitioners who had retired prior to 01.01.2006 was revised as per the Sixth Pay Commission's recommendations with effect from 01.01.2006 on the basis of Government Order No.1515 dated 08.12.2008 meant for State Government employees, in pursuance of observations made by the Division Bench in the case of *Praveen Kumar Agarwal and others* (supra) and the State Government did not issue any separate Government Orders from the Department of Housing and Urban Planning for revision of pension of retirees of Centralized Services as per the Sixth Pay Commission's recommendations, other than the Government Order dated 08.12.2008 issued for State Government employees. Even while issuing the Government Resolution (Sankalp) dated 16.12.2016, it was provided that Pension/family pension of employees of Development Authorities who were getting same benefits as State Government pensioners shall be revised identically with that of State Government employees. Thereafter, Government Orders Nos. 38 and 39 dated 23.12.2016 were issued for State Government employees providing therein arrears of revised pension/family pension to be paid with effect from 01.01.2016. Such Government Orders were followed by two others dated 18.07.2017 and 04.09.2017, providing for revised pension/family pension after taking into account notional pay fixation for each pay revision, based on the formula as provided

"Concordance Tables" enclosed along with the said Office Memorandum. Such upward revision in pension and family pension was to be determined by the Head of the Department/Head of Office, without requirement of any application by the pensioners/family pensioners. Clause 5 of the Government Order dated 04.09.2017 provides payment of arrears of revised pension/family pension with effect from 01.01.2016 to State Government employees. Another Government Order has also been issued on 01.05.2018 clarifying that pension of pre-2016 retirees shall in no case be less than 50% of their notional pay in the Pay Matrix as determined by the Seventh Pay Commission, even if the retiree had rendered less than qualifying service required for full pension.

14. It has been argued by the learned counsel for the petitioners that Rule 4 of the Retirement Benefit Rules 2011 provides for calculation of pension of retirees of Development Authorities on the same formula and in accordance with the same procedure as is applicable to State Government employees. Similar provision has been made with regard to Gratuity under Rule 5. Rule 7 of the said Rules of 2011 provide that family pension to family members of deceased employees shall be regulated by relevant Rules applicable to Government servants serving in connection with the affairs of the State. As such members of Centralized Services of Development Authorities are entitled to pension, family pension and Gratuity at par with State Government employees and for the purpose of calculation/revision of such benefits the same procedure and formula shall be used, i.e. the same Concordance Tables shall be used as are applicable to State Government employees from time to time.

15. It has also been argued on the basis of judgement rendered by this Court in Writ A No.54211 of 2016 (*Shakuntala Singh versus State of UP and others*) reported in **2019 (11) ADJ 495**; that the Retirement Benefit Rules of 2011, by reference, adopted the same formula and procedure pertaining to pension/family pension as applicable to employees of the State Government and, therefore, subsequent Government Orders pertaining to post retirement benefits in respect of Government servants become automatically applicable and are enforceable upon the employees of Development Authorities by operation of law, from the date of their issuance. The Court had also observed that Finance Controller, LDA, who was in-charge of the Consolidated Pension Fund, had admitted that the requisite amount was available in such Pension Fund constituted under Rule 16 of the Retirement Pension Benefit Rules 2011, therefore, Development Authorities could immediately, without any approval from the State Government, implement the Government Orders revising pension/family pension of their employees pursuant to implementation of the Seventh Pay Commission Recommendations. The Court, therefore, observed that the Government Order dated 08.12.2008 and subsequent clarification the Government Orders and Concordance Tables enclosed therewith, dealing with computation and revision of pension/family pension and other benefits on adoption of the recommendations of the Sixth Pay Commission recommendations would apply in totality and without modification upon employees of the Centralized Services of such Development Authorities.

16. It has been argued that after the observations made by this Court in

*Shakuntala Singh* (supra), the Government Orders dated 23.12.2016, 18.07.2017 and 04.09.2017 and 01.05.2018, become applicable upon the petitioners in their totality from the date of their issuance including for payment of arrears with effect from 01.01.2016 consequent to such Revision, and therefore the date of applicability as mentioned in the impugned Office Memo dated 24.02.2021 is liable to be set aside.

17. It has been argued for the petitioners that apart from non-payment of arrears of revised pension/family pension with effect from 01.01.2016 i.e. arrears for more than five years, the impugned Office Memorandum dated 24.02.2021 is causing huge monetary loss to the petitioners every month by not implementing the formula provided in the Government Orders dated 18.07.2017 and 04.09.2017 and 01.05.2018. The learned counsel for the petitioners has drawn attention of this Court to paragraph-54 of Writ Petition No.11593 of 2021, wherein an illustration of monthly loss being caused to petitioner no.1- *Ved Prakash Mittal* has been given in a Tabular form. *Ved Prakash Mittal* retired on 31.10.2003 and last drawn salary was Rs.20,000/-. Basic pension as per the Fifth Pay Commission's recommendations was calculated at Rs.7273/-. Basic pension as per the Sixth Pay Commission's recommendations was calculated at Rs.17,855/-. When the Government Order dated 26.12.2016 alone is applied and the existing basic pension is multiplied by 2.57, it comes to Rs.45,887/-. However, if basic pension is revised as per Government Order dated 18.07.2017 read with Government Order dated 04.09.2017, as per the Concordance Tables, the pension payable comes to around Rs.69,550/-. The difference per month is of Rs.23,663/-. In

paragraph-55 of the writ petition, it has further been submitted that the State Government revises Dearness Relief every six months. Since the Dearness Relief at the time of filing of the writ petition was 28% on the amount of basic pension, the loss of the petitioner will keep increasing as and when the rate of dearness relief is enhanced by the State Government.

18. It has been argued that the recommendations of the Seventh Pay Commission with regard to salaries has been duly implemented for employees of Centralized Services of Development Authorities with effect from 01.01.2016 by Government Order dated 04.01.2017. Therefore, employees who retired after revision of salary with effect from 01.01.2016, are getting pension at the rates prescribed by Government Order dated 04.09.2017, that is, 50% of the Basic Salary at the time of retirement. One employee *Ratan Kumar Nigam* retired on 31.08.2017 and he is getting pension at 50% of the last drawn basic salary.

19. It has been argued that two separate classes have been created within one homogeneous class of employees belonging to Centralized Services of Development Authorities by giving benefits of the Seventh Pay Commission to those who retired after 01.01.2016 and refusing it to those who retired prior to it. Not only this, the giving of benefit of revised pension, without arrears and only with effect from the date of issuance of Office Memorandum dated 24.02.2021 amounts to hostile discrimination because other employees of Local Bodies such as Zila Panchayats have been given the benefit of the Resolution (Sankalp) dated 16.12.2016 and the Department of Panchayati Raj has issued a Government Order dated

16.02.2018 implementing the aforesaid Government Orders dated 23.12.2016, 18.07.2017 and 04.09.2017, in their totality without any modification. On the other hand, the Department of Housing and Urban Planning has issued the impugned Office Memorandum dated 24.02.2021 which not only denies the benefit of enhanced pension as provided by the aforesaid three Government Orders, but also disallows the payment of arrears of revised pension with effect from 01.01.2016.

20. It has been argued for the petitioners that since the respondents have kept the revision of pension/family pension of the petitioners pending for more than five years from the commencement of the Seventh Pay Commission's recommendations ignoring the mandatory provisions of the Statutory Rules 2011 and the observations made by this Court in the case of *Praveen Kumar Agarwal* and *Shakuntala Singh* (supra), the petitioners are entitled for interest at the rate of 12% per annum on the delayed settlement of the revised pension/family pension with effect from the date it became payable i.e., with effect from 01.01.2016.

21. Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Pradeep Kumar Tripathi, Standing Counsel, appearing on behalf of the State respondents has argued that the retirement benefits of the petitioners are governed by the Retirement Benefit Rules 2011. The provisions of Rule 4, related to pension and Rule 5 related to death-cum-retirement Gratuity, and Rule 7 related to family pension provide the same to be calculated according to the procedure and formula applicable to employees of the State Government. However, Rule 15 of the said



Rules also provides that the decision of the State Government in case of dispute or difficulty arising regarding interpretation of any provisions of the Rules would be final and conclusive and that matters not covered by the Rules shall be governed by such orders as the State Government may deem proper to issue.

22. It has further been argued for the Respondents that no doubt the pension of employees of Development Authorities is being paid from the Fund of the Development Authority itself and the State Government is not bearing the burden of payment to such employees, it is within the jurisdiction of the State Government to decide the date of implementation of the recommendations of the Seventh Pay Commission and that of the Pay Committee, 2016.

23. It has been argued for the Respondents that the employees of Development Authorities are not Government servants. A Development Authority is a body Corporate and an autonomous institution. Hence, the Government Orders issued with respect to Government servants are not automatically applicable upon employees of Development Authorities, and they are made applicable taking into account the financial conditions of the Development Authority concerned. The Government Order dated 23.12.2016 was issued by the Finance Department of Government of U.P. specifically providing that it will not be applicable upon employees of Local Bodies and Public Sector Undertakings and Development Authorities and other autonomous institutions. Government Orders dated 18.07.2017 and 04.09.2017 also clearly provided that they will not be applicable on employees of various

institutions including the High Court, Statutory Corporations, Basic Schools, aided Educational Institutions, Autonomous Bodies including Development Authorities which depend upon their own financial resources. For Development Authorities, separate Government Orders were issued by the Administrative Department applying the recommendations of the Pay Committee and, therefore, the monetary benefits given in such orders cannot be the same as applicable to State Government servants. The Administrative Department makes applicable the Government Orders taking into account the financial condition of the Authorities to bear the financial burden. Though some of the Development Authorities indicated their consent for extending the benefit of Seventh Pay Commission recommendations to their employees with effect of the date they became applicable to State Government servants, the State Government after considering the financial conditions of all Development Authorities and other ancillary factors which affect the financial resources of such Development Authorities, issued the Office Memorandum dated 24.02.2021 in exercise of its powers under the Retirement Benefit Rules of 2011.

24. Sri M.C. Chaturvedi has also referred to the Counter Affidavit filed by the State Respondents which also reiterated that the Government employees are different from employees of Development Authorities and, therefore, Government Orders issued with respect to State Government Servants are not applicable automatically upon employees of autonomous institutions like Development Authorities. The monetary benefits available to State Government employees cannot be automatically made available to employees of Development Authorities as

their financial conditions are different. Though the State Government in principle adopted the recommendations of the Pay Committee 2016 with regard to employees of urban Local Bodies, Zila Panchayats, Jal Sansthan and Development Authorities by its Resolution dated 16.12.2016 it was on the condition that the benefit of such recommendations would be made available to such employees only if the financial burden does not fall upon the State Government. The State Government would not transfer any funds. Moreover, the Development Authorities would have to discharge their responsibilities towards loans/advances made to them by different financial credit institutions. The additional establishment costs would have to be borne by such Development Authorities out of their own funds. The Government Order Nos. 38 and 39 dated 23 .12. 2016 issued by the Finance Department are with regard to pension, Gratuity and other payments admissible to Government employees and specifically provide that they will not be applicable upon employees of Local Bodies and Public Sector Undertakings and autonomous institutions. The Government Orders dated 18.07.2017 and 04.09.2017 provide for calculation of the amount of pension, Gratuity and family pension of employees of Development Authorities in accordance with the Formula and procedure prescribed for State Government employees but they do not provide for payment of the same amount as per to State Government employees.

25. The learned counsel for the respondent argued that the petitioners want benefit of Government Orders issued for government employees. All such Government Orders on which reliance has been placed by the petitioners and the benefit of which the petitioners want this

Court to extend to them, clearly say that they shall not be applicable to employees of autonomous institutions, local bodies, statutory corporations et cetera. The relevant exclusionary clauses have not been challenged by the petitioners.

26. It has also been argued for the Respondents that the date of applicability of Pay Commissions recommendations with respect to pension and other retirement benefits has not been given in Rule 4 or Rule 5 of the Retirement Benefit Rules. Only the formula and procedure to be adopted for determination of such pension and retirement benefits was to be the same as that of State Government employees. The Administrative department therefore was required to issue separate orders deciding the date of applicability of Pay Committee's recommendations. In this case, the respondent no.1 has decided that the Pay Committee's recommendations will be applicable to pensioners of Development Authorities notionally with effect from 01.01.2016 and actual benefits would accrue with effect from the date of issuance of the Government Order in this regard, that is, with effect from 24.02.2021. The Government has taken a conscious decision to deny arrears looking into the financial condition of the Development Authorities. The record produced before this Court would show that not all of the Development Authorities are in profit. Most of them are running in losses. The financial capacity to give pensionary benefits with retrospective effect was doubtful and therefore the Government decided on giving benefits of the Seventh Pay Commission's recommendations only prospectively. There is no doubt regarding complete administrative control of the State Government over the administration of Development Authorities. Rule 37 of the

Rules of 2011 refers to the final authority to decide a dispute or settle a doubt being with the State Government.

27. The learned counsel for the State Respondents has placed reliance upon reports/charts with regard to financial conditions and resources of Development Authorities filed as Annexure CA-6 to the Counter Affidavit filed in Writ Petition No.11593 of 2021. Sri M.C. Chaturvedi has read out CA-6 which is a letter dated 17.06.2021 sent by the Director Awas Bandhu, Uttar Pradesh, Lucknow, to the Under Secretary of Housing and Urban Planning Department with reference to the Government's letter dated 01.03.2021. It refers to information given in Form Nos. 7 to 10 and Form Nos. 11 to 13, being examined and comments being sent through letter dated 03.03.2021 written by him. It refers to a meeting held by the Principal Secretary Housing and Urban Planning on 11.06.2021 where a direction was issued for examination of information given in prescribed Form nos. 1 to 6 by the Awas Bandhu, and for a report to be submitted thereafter to the Government. Consequently, the report desired by the Principal Secretary in his meeting dated 11.06.2021 was being enclosed for consideration of the Government. The enclosure to the letter is in the form of a tabular chart containing information regarding income and expenditure of 33 Development Authorities and U.P. Awas Vikas Parishad for the year 2018-19, 2019-20 and 2020-21. It sums up such information by saying that for Raebareli, Aligarh, Bareilly, Muzaffarnagar, Gorakhpur, Rampur, Agra, Chitrakoot, Ghaziabad, Saharanpur and Prayagraj Development Authorities, the expenditure has been more than the income for the past three years. It has been argued that out of

33 Development Authorities, at least 11 Development Authorities were spending more than they earned. However, on a consideration of the income of all the Development Authorities for the past two years, it has been found that such income has increased by more than 8% for the financial year 202-21. The Director, Awas Bandhu, further says that despite the COVID-19 pandemic prevailing in the nation, the Development Authorities have made commendable efforts and their income has increased by more than 8% from the past financial year.

Sri M.C. Chaturvedi has tried to distinguish the judgement rendered in the case of *Shakuntala Singh* (supra) by saying that the prayer of the writ petition was for quashing of Clause 6 of the Government Order dated 05.07.2016 in so far as it denied payment of arrears of revised pension with effect from 01.01.2006 to employees of Centralize Services. The petitioner had further prayed for providing the benefit of the said Government Order dated 05.07.2016 and also the Government Order dated 21.01.2016 which were with regard to the grant of benefit of the Sixth Pay Commission's recommendations. The Court had specifically considered the argument that the matter relating to providing the benefits of the Seventh Pay Commission was pending consideration of the State Government. The calculation of the pension of the husband of Smt. *Shakuntala Singh* had been made by the Development Authority not in accordance with the formula applicable to State Government employees and, therefore, the Court had directed calculation of pension and consequently family pension in accordance with the formula for computation applicable to Government employees by observing that the

Administrative Department had not issued any orders independently providing for a different method of calculation of pension/family pension. The Government Order dated 18.07.2017 by which the earlier Government Order dated 23.12.2016 was modified and clarified that it would not be applicable to autonomous institutions was not considered by the Court in the case of *Shakuntala Singh*. Therefore, it has been argued that the reliance placed upon the judgement rendered in *Shakuntala Singh* by the petitioners is misconceived and liable to be rejected.

28. Sri Satyendra Singh and counsel for the petitioners in Rejoinder has submitted that the Office Memorandum dated 24.02.2021 was issued without application of mind to the financial conditions of Development Authorities whose pensioners were proposed to be given revised rates of pension as per the recommendations of the Pay Committee 2016. The counsel for the petitioners has referred to the paragraph No. 28 of the Counter Affidavit filed in Writ Petition No. 11593 of 2021 and Counter Affidavits filed in earlier writ petition of Narain Ji Gopal in December, 2021. It has been argued that no material as referred to in paragraph 28 and Annexure CA-6 of the counter affidavit filed in *Ved Prakash Mittal*, has been referred to at all in the Counter Affidavits filed in earlier writ petition. The learned counsel for the petitioner has taken this Court through CA-6 filed in Writ Petition No. 11593 of 2021 to show that it was only in pursuance of a letter issued on 01.03.2021 and correspondence undertaken after the meeting held on 11.06.2021 that the letter dated 17.06.2021 was written by the Director U.P. Awas Bandhu. The learned counsel for the petitioner has pointed out from point nos. 2 and 3 of the

enclosure to the said letter that the last three years average of Balance Sheet of various Development Authorities was taken into account and only 11 such Development Authorities had shown a deficit in the Balance Sheets and even with the difficulties faced during the COVID-19 pandemic the sum total of the Balance Sheets of all the Developments Authorities for the past two years showed profit of more than 8% over and above their earlier income. The learned counsel for the petitioner has tried to impress upon this Court that without there being any relevant material on record, the decision dated 24.02.2021 was taken. Later on, documents were filed along with the Counter Affidavit with regard to income and Balance Sheets of various Development Authorities as an afterthought. Such an explanation given ex-post facto cannot be taken into account.

29. It has also been argued that the Supreme Court has in several judgments held that mere financial constraints cannot be a ground for discrimination between members of the same pension scheme. No two classes of Pensioners can be created on the basis of the date of retirement.

30. It has also been argued that the Joint Secretary Government of U.P. sent letter dated 28.08.2017 to the Vice-Chairman of Development Authorities calling for the recommendations/opinion regarding implementation of the Pay Committee 2016 recommendations regard to revision of pension. In response to the aforesaid letter, all the Development Authorities have duly informed the State Government that they have no objection in extending the benefit of revised pension to the retirees and that they are financially capable to extend the benefit of revised pension in accordance with the Seventh

Pay Commission's recommendations. Copies of such a recommendation letters of 19 Development Authorities have been filed as Annexure to the Rejoinder Affidavit filed in the case of *Ved Prakash Mittal*. Even the Finance Controller, Lucknow Development Authority who is the custodian of the Common Pension Fund constituted under Rule 16 of the Retirement Benefit Rules, 2011 sent several letters requesting permission/direction with regard to implementation of the Seventh Pay Commission recommendations on pre-2016 retirees of Development Authorities but the respondent no.1 kept the matter pending for more than five years and ultimately issued the impugned Office Memorandum on 24.02.2021 denying benefit of arrears.

31. It had been argued that the State Government does not even provide monetary support to Development Authorities to meet their establishment costs or to give pension to the retirees. The Development Authorities are willing and financially capable of paying pension uniformly to the pensioners irrespective of the date of retirement, but the State Government has arbitrarily decided otherwise.

32. This Court, therefore, by its order dated 19.09.2022 directed the counsel for the State respondents to place before this Court the record relating to the decision taken by the Government for making applicable the Seventh Pay Commission's recommendations relating to pension and other retirement benefits of the Development Authorities. The record relating to the decision of the Government for giving such benefits prospectively was produced before this Court and several pages from the notings on the file for example page nos.164 to 167 and Page

nos.172 to 176 respectively of file no. 06E/2016 Awas-5 had been read out in their entirety by the counsel for the respondents. This Court directed the respondents to place photocopies of relevant pages of the record along with their written submissions.

33. The Learned counsel appearing for the State Respondents while referring to the records produced before the Court of File No.06E/2016 has pointed out the Hon'ble Chief Minister's query with regard to financial liability on payment of pension as per the Seventh Pay Commission's recommendation. The administrative department had pointed out that Rs.33.30 crores would be required if upward revision in pension and other retirement dues is given with retrospective effect. There were a total of 405 pensioners in Centralized Services. The Hon'ble Chief Minister had asked a specific query with regard to the trend of income and expenditure for the past three years. Such query was answered at page 164 by saying that for the past three years the trend has been positive, i.e., the income generated by the Development Authorities was more than their expenditure. However, this was only for a few of the Development Authorities but not all of them. The administrative department had expressed an apprehension that applying Government Order dated 23.12.2016 with retrospective effect on employees of Development Authorities would also lead to grant of full pension on completion of 20 years of service, and also additional pension on reaching the age of 80 years and above. It also pointed out the liability of paying Gratuity to the extent of Rs.20 lakhs in case of fulfilment of such 20 years of service. The administrative department had suggested creation of a Corpus Fund of Rs.500 crores but had not

suggested as to how contributions from various Development Authorities were to be ensured in such Corpus Fund. It also suggested that by means of a Government Order dated 29.12.2020, a provision has been made for deposit of Rs.35.5 crores annually as contributions to the Pension fund by various Development Authorities but such contributions have not been paid in their entirety by such Authorities. Sri M.C. Chaturvedi has pointed out from the record that reminders have been sent repeatedly to various Development Authorities to deposit their share of contributions, the last such reminder being sent in August 2022. It was also pointed out that such contributions of Rs.35.50 crores were only to bear the additional expenditure for the financial year 2020-21 upto 2023-24. The approval granted by the Chief Minister on 04.02.2021 was with respect to financial liability to be created on grant of pensionary benefits prospectively as per the Seventh Pay Commission's recommendations. No approval was granted for retrospective operation of upward revision in the absence of calculation of arrears.

34. It has been argued by Sri M.C. Chaturvedi that the noting put up on the file by the administrative department was misleading and even all of the twenty Development Authorities which had shown their income as being more than their expenditure were not actually running in profit and had therefore not deposited contributions to the pension fund.

35. Sri Satyendra Singh has placed reliance upon judgement rendered by the Supreme Court in *Subrata Sen versus Union of India and others 2021 (8) SCC 71*; (paragraph 6 to 10, 13 to 17 thereof).

36. Before this Court enters into the merits of the rival contentions, it would be appropriate to consider the statutory provisions relevant for decision in the controversy. The Development Authorities are created under Section 4 of the U.P. Urban Planning and Development Act 1973. Section 5 of the Act of 1973 provides that the Secretary and Chief Accounts Officer of the Authority may be appointed by the State Government who shall exercise such powers and perform such duties as may be prescribed by the regulations or delegated to them by the Authority or its Vice-Chairman. Subject to such control and restriction as may be determined by general or special orders of the State Government, the Authority may then appoint such number of other officers and employees as may be necessary for the efficient performance of its functions and may determine their designations and grades. The Secretary and Chief Accounts Officers and their employees of the Authority would be entitled to receive from the funds of the Authority such salaries and allowances and shall be governed by other conditions of service as may be determined by regulations made in that behalf.

37. It is evident from a perusal of such provisions that a Development Authority may appoint Officers and employees but such employees would be entitled to receive salary and allowances only from the fund of the Authority. The conditions of service may be governed by regulations made in this behalf. Section 5-A confers power upon the State Government by notification to create one or more Centralized Services for such posts, other than posts mentioned in sub-section (4) of Section 59 common to all Development Authorities. The incumbents on such posts are transferable from one Development

Authority to another Development Authority. The State Government may prescribe the manner and conditions of recruitment to, and the terms and conditions of service of persons appointed to such service. A provision was made for absorption of a person already serving on a post included in such service immediately before such creation or on deputation in the Centralized Service unless he opts otherwise. The State Government was authorized also to transfer any person holding any post in a Development Authority Centralized Service from the one Development Authority to another.

38. Under Chapter VII of the Act of 1973, Section 24 provided for Pension and Provident Funds, which would be created by the Authority for the benefit of its whole time members and officers and other employees but subject to such conditions as the State Government may specify. If a Provident Fund is constituted by a Development Authority, the State Government may make applicable the Provident Fund Act 1925 upon such Provident Fund also.

39. Section 56 confers power upon the Development Authorities to make Regulations with the previous approval of the State Government for the administration of the affairs of the Authority including salaries allowances conditions of service of its employees.

40. The State Government in exercise of its powers under Section 5-A notified the U.P. Development Authorities Centralized Service Rules 1985. Rule 31 provides for leave, leave allowances, officiating pay, fee and honorarium as admissible to Government servants of like status under the Financial Handbook Volume II, Part 2

to 4. It provides for the cadre and strength of service and also the age of superannuation and retiring pension under Rule 34. Rule 37 mandates that in any matter not covered by these Rules or by special orders, the members of service shall be governed by the Regulations and orders applicable generally to the Government servants of Uttar Pradesh.

41. After the decision of this Court in *Praveen Kumar Agarwal* (supra), the State Government framed the Retirement Benefit Rules of 2011. Part I of said Rules deals with pension and Gratuity. Rules 4 & 5 provide calculation of pension and Gratuity has to be done according to the procedure and formula applicable to employees of the State Government. Under Part III, family pension is provided for, and it is to be regulated by the relevant Rules applicable to U.P. Government servants. The State Government by an order dated 08.12.2008 had accepted the recommendations of the Sixth Central Pay commission and made it applicable to all its employees, who retired prior to 01.01.2006. The State Government Order also provided therein a Tabular chart, which dealt with computation of pension/revised pension. The Finance Department published a Resolution (Sankalp) dated 07.02.2009, accepting the recommendations of the Sixth Pay Commission and made it applicable on all Local Bodies including Development Authorities. It further clarified that the State Government shall not be responsible to provide funds to meet the expenses which had to be borne by the respective Local Bodies/Development Authorities. The Tabular Chart / Concordance Table appended to the Government Order dated 08.12.2008 was, however, not followed for determination of pension of employees of the Development Authorities who had

retired prior to 01.01.2006. The State Government, thereafter, issued two other Government Orders dated 19.07.2010 and 07.11.2014, along with a Concordance Table showing the revised pay structure and corresponding minimum pensions and family pensions. Another Government Order was issued on 21.01.2016 clarifying that family pension shall not be less than the 30% of the basic pension. These Government Orders were also not followed in computing the pension and family pension of retirees of Development Authorities.

42. One retired Chief Engineer's widow approached this Court in Writ Petition No.54211 of 2016: *Shakuntala Singh versus State of U.P. and others*. This Court observed after considering the Act of 1973 and the Retirement Benefit Rules of 2011, that under Section 24 of the Act and Rules 4 and 7 of the Rules of 2011, all Rules/orders made applicable to the employees of the State Government and formula for computation of pension and family pension thereunder, would apply by reference to the employees of Development Authorities. Such Rules are in the nature of a legislative exercise, which cannot be superseded by any Government Orders/Resolution. The Court considered in paragraphs 43 and 44, the concept of Legislation by incorporation and Legislation by reference, and observed that there is a distinction between the two in as much as *"in the latter case the amendments made in the earlier legislation would be applicable to the referring legislation. Applying the principle in the instant case the Retirement Benefit Rules 2011, make applicable all Government Orders, in so far as it relates to pension/family pension by reference. The subsequent amendments thereto would therefore also apply."*

43. The Court observed in paragraph 44 thus: -

*"44. The Supreme Court in Bajaya v Gopikabai 1978 (2) SCC 542; explained the distinction between legislation by reference and incorporation.*

*"- -Legislation by referential incorporation falls in two categories, (a) where a statute by specific reference incorporates the provisions of another statute as at the time of adoption; and (b) where a statute incorporates by general reference the law concerning a particular subject, as a genus. In case of (a) the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. But in the category (b) it shall be presumed that the legislative intent was to include all the subsequent amendments also made from time to time. The generic law on the subject adopted by general reference. - -" ( Refer: Western Coalfields Ltd Vs. Special Area Development Authority, Korba 1982 SCC 125)"*

44. This Court in the judgement rendered in *Shakuntala Singh* had categorically held that Retirement Benefit Rules of 2011 are legislative in nature and, therefore, binding upon the Development Authorities uniformly and even upon the State Government. The Retirement Benefit Rules 2011 do not prohibit the Development Authorities from implementing Government Orders without approval of the State Government. Rather, the said Rules mandate that the Government Orders pertaining to pension/family pension, issued in respect of Government servants become applicable and enforceable upon employees of Development Authorities by operation of law. No further act of approval is required



at the end of the State Government. Office Memorandum dated 24.02.2021 has been issued by the respondent no.1 in complete violation of the provisions of the Retirement Benefit Rules 2011 and circumventing the judgment rendered by this Court in *Shakuntala Singh* (supra).

45. The Coordinate Bench also made reference to judgement rendered in the case of *State of U.P. Vs. Shivashray Singh and State of U.P. versus Preetam Singh and others* 2014 (15 ) SCC 774; and other judgements relating to U.P. Awas Vikas Parishad, where the relevant Government Orders as well as statutory scheme i.e., U.P. Civil Service Regulations, Pension Rules, U.P. Retirement Benefit Rules 1961. New Family Pension Scheme 1965, and all orders of the Finance Department in relation to pension/family pension/ Gratuity as are applicable to employees of the State Government were held as automatically incorporated by reference. It was held that except for the Government Order dated 08.12.2008 there was no other Government Order regulating the grant of financial benefits under the Sixth Pay Commission Report or payment of pension and gratuity to the employees of the State Government. This Government Order was, therefore, held to apply in its entirety to the employees of the Awas Vikas Parishad by virtue of the statutory Regulations of 2009 which provided that employees of the Parishad are entitled to payment of pension/family pension and gratuity as is admissible to officers and employees of the State Government.

46. In *Shakuntala Singh* (supra), the Coordinate Bench of this Court rejected the argument made by the State Respondents that the petitioner was not entitled to claim benefit of pension as per the Government

Order dated 08.12.2008, which was applicable to State pensioners and was not binding upon the Development Authorities. The Government Order dated 08.12.2008 had been further modified by Government Orders dated 19.07.2010, 14.07.2014 and 27.01.2016, which had not yet been made applicable to employees of Development Authorities for the purpose of payment of pension and other benefits.

47. It observed that the respondents had admitted that there was no alternate formula for computation of pension/family pension, other than that provided by the State Government Orders. In terms of the Retirement Benefit Rules of 2011, it was not open for the respondents to adopt a formula other than that applicable to State Government servants. Moreover, the Development Authorities had conveyed to the State Government that they had the financial capacity to bear the expenses of enhanced pension/revise family pension recommended by the Seventh Pay Commission for the employees for employees who had retired before 01.01.2016.

48. The Coordinate Bench went a step further and framed an ancillary question as to whether the Development Authorities were bound to take approval of the State Government before implementing the recommendations of the respective Pay Commissions made applicable to the Government servants through various Government Orders. The Court observed that Development Authorities are autonomous bodies having separate fund. The salaries, pension and other emoluments of their employees are funded by the Development Authorities from their own resources. The State Government does not fund the Development Authorities. The

Retirement Benefit Rules of 2011 does not provide for prior approval of the State Government to be taken by the Development Authorities for implementing Government Orders.

49. The Coordinate Bench placed reliance upon observation made by the Supreme Court in the case of *Preetam Singh* (supra) which provided that previous approval of the State Government to frame Regulations governing the conditions of service of its employees, including pension etc, was not required to be obtained by the Parishad.

It is relevant to note here that the judgement rendered in *Preetam Singh* was referred to a Larger Bench in State of U.P. versus *Virendra Kumar* Civil Appeal No.6622 of 2022 and judgement was rendered by the Supreme Court Larger Bench on 25.11.2022 reported in 2022 SCC Online Supreme Court 1628; were subject to a minor modification, the observations of the Division Bench in *Preetam Singh* were affirmed.

50. The Coordinate Bench in *Shakuntala Singh* observed that the Retirement Benefit Rules 2011 which govern the computation and payment of pension/family pension to employees and their dependents of Development Authorities nowhere prescribes prior approval to be obtained for Government Orders issued from time to time governing pension and family pension to be implemented. Since the Finance Controller of Lucknow Development Authority, who is the Custodian of Development Authorities Pension Fund constituted under Rule 16 of the Retirement Benefit Rules 2011 had expressed a willingness to implement the Government Orders revising

pension/family pension of Employees of Development Authorities, the Development Authorities can immediately and without any approval implement the Government Orders revising pension/family pension in favour of their retirees.

51. In *Shakuntala Singh* the Coordinate Bench also considered the question as to whether classification of pensioners made by the State Government on the basis of their date of retirement, was reasonable and whether it had any nexus with the object sought to be achieved. It referred to several Division Bench judgements of this Court and also judgement rendered by the Supreme Court including in *All Manipur Pensioners Association through its Secretary vs. State of Manipur* 2020 (14) SCC 625; where the Supreme Court had answered the question whether the State Government would be justified in creating two classes of pensioners, viz., pre-1996 retirees and post-1996 retirees, for the purpose of payment of revised pension, salary, on the ground of financial constraint. The Supreme Court rejected the cut-off date, as according to it such a classification had no nexus with the object and purpose of grant of benefit of revised pension. It observed: -

*"- - - - in our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the petty pensioners form one class, who are entitled to pension as per the pension Rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture, it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid*

*classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over the others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of factors differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for valid classification may be summarized as a distinction based on the classification founded on an intelligible differential, which has a rational relationship with the object sought to be achieved - -."*

52. Finally, the Coordinate Bench observed that it is not disputed by the respondents that the recommendations of the Sixth Pay Commission and the Seventh Pay Commission in respect of current employees of Development Authorities has been accepted by the State Government and implemented by the Development Authorities with effect from 01.01.2006 and 01.01.2016 respectively. However, retired employees were not being paid revised pension pursuant to the Government Orders issued from time to time. Revised pension is available for those employees who had retired after 01.01.2006 and 01.01.2016 respectively. However the pensioners who had retired earlier were being denied the benefit of revised pension/family pension on an artificial classification with regard to the date of implementation of such upward revision for the purposes of pension and family pension. *"...Such an artificial classification was not founded on any intelligible differentia so as to distinguish*

*persons that are grouped together from others that were left out."*

53. This Court has perused the relevant extract of the original record of File nos.06E/2016 of Awass Section 5. The file noting starts with page no.158 where the Administrative Department is considering the adoption of the Seventh Pay Commission's recommendations for retirement benefits as per the Finance Departments Government Order Nos.38 and 39 dated 23.12.2016. The proposal to adopt such Government Order would entail; (a) grant of pension and dearness allowance as per the Seventh Pay Commission; (b) minimum qualifying years of service for admission to pension being reduced from 20 years to 10 years; (c) admissibility of full pension being available on rendering 20 years of services instead of 33 years of service; (d) the ceiling limit for gratuity being raised from Rs.10 lakhs to Rs.20 lakhs on rendering such 20 years of service; (e) additional pension being given to old pensioners and family pension also being upwardly revised.

54. The Director, Awass Bandhu U.P., by his letter dated 08.10.2020 had indicated that there were 2578 pensioners currently in 29 Development Authorities who were being paid pension and other retirement benefits amounting to Rs.3,802.98 lakhs annually. In Case of adoption of the Seventh Pay Commission Recommendations such financial burden would be increased to Rs.4,898.89 lakhs. The additional burden annually would come to Rs.1,095.89 lakhs. The Finance Controller LDA by his letter dated 07.10.2020 had indicated that if pension and other retirement benefits are made admissible as per Seventh Pay

Commission's recommendations including Dearness Relief for pensioners of Centralized services, an amount of Rs.190.18 lakhs per month would be needed. The Finance Controller also in his earlier letter dated 15.09.2020 had informed of the amount of arrears of pension to be disbursed up to 31.03.2022. He informed that currently Rs.160.71 lakhs was being paid on a monthly basis for pension/Family pension. If the Pay Commission's recommendations are to be adopted with effect from 01.01.2016, then the arrears of pension/family pension upto 31.03.2022 would amount to Rs.5500/- lakhs. On the other hand, only Rs.750 lakhs was left in the Pension Fund Account maintained in IDBI bank. Only Rs.1000 lakhs per month as contribution to Pension Fund is expected to be made available by the various Development Authorities. Consequently, Rs.3550/- lakhs had to be arranged by increasing the monthly contribution of all Development Authorities to the Pension Fund. As a result of this correspondence from the Director, Awas Bandhu, and the Finance Controller, Lucknow Development Authority, a Government Order had been issued on 29.12.2020 directing payment of Rs.35.50/- crores additionally as pension contribution in the Fund by the various Development Authorities. But this was not sufficient and, therefore, a meeting would have to be arranged of all Development Authorities to determine the amount of contribution to the Pension Fund of each of them, and also for ensuring that the same is paid into the pension fund in time. In response to an earlier query made with regard to the consequences of grant of arrears as per the Seventh Pay Commission's recommendations, the Administrative Department had calculated an amount of Rs.190.18/- lakhs but this amount did not

take into account money needed for payment of arrears.

55. This Court has noticed that the Administrative Department in its noting had only dealt with financial liability/burden on payment of revised pension and other retirement dues prospectively as the Chart that has been prepared relates to the year 2020-21 upto 2023-24. For the said purpose alone a corpus fund of Rs.500 crores had been suggested to be created which would then be invested in such a manner as to realize Rs.30/- crores annually as interest thereon. However, no method has been suggested of how such Corpus Fund is to be created and what would be the specific contribution of each of the Development Authorities therein.

56. The Hon'ble Chief Minister had directed the Finance Department to also be consulted in the matter.

57. The Finance Department in its advice only stated that as per the Sankalp dated 16.12.2016 adopting the Pay Committees 2016 Report and the Government Orders nos. 38 and 39 dated 23.12.2016 issued in this regard, the additional requirement of fund by the Development Authorities would have to be arranged by them from their own resources and the State Government would not transfer any fund for the purpose of additional establishment costs incurred by them in this regard. It also advised that if the Government Orders dated 23.12.2016 are adopted as it is, it would lead to qualifying service for pension being reduced from 20 years to 10 years, and qualifying service for full pension being reduced from 33 years to 20 years. Moreover pension would be admissible at

the rate of 50% of the last basic salary drawn and would in no case be less than Rs.9000/- per month. Moreover, additional pension at the rate of 20% of the basic pension would become admissible to pensioners who are 80 years old, at the rate of 30% would be admissible to pensioners over 85 years old, and so on and so forth, and there would be hundred percent increase in basic pension for a pensioner who was hundred years or more. Such provisions were not applicable to pensioners of Development Authorities in the past or even in the present. Death-cum-retirement Gratuity would also be increased and the ceiling limit would now be Rs.20 lakhs instead of 10 lakhs on rendering full service of twenty years.

58. The Administrative Department also pointed out that the currently in service employees of Authorities have been granted the benefit of the Seventh Pay Commission's recommendations and there are several writ petitions pending in the High Court by pensioners and family pensioners seeking benefit of the Seventh Pay Commission's recommendations.

59. On said file noting, the Hon'ble Chief Minister had made a query on 27.10.2020 asking for details regarding the trend of income and expenditure of various Development Authorities for the past several years.

60. A format was prepared seeking information from various Development Authorities thereafter which was circulated. The information was collected from 29 Development Authorities, reference of which was made in the file noting at page 166 onwards. The Development Authorities had informed the Administrative Department that they were ready and

willing to bear the financial burden in revising pension and other retirement benefits as per the Seventh Pay Commission's recommendations.

Then onwards Hon'ble Chief Minister again put up a query on 05.01.2021 with regard to the trend of income and expenditure in the past years and additional fund that would be required to meet the liability.

61. All previous developments were summarized in the Administrative file noting starting from page 169 onwards in File No. 06E/2016. Information was given by only seven Development Authorities, out of which four had informed that their income was less than their expenditure in the past three years. Most of the Development Authorities had expressed their willingness to bear the additional financial burden as a result of upward revision of pension and other retirement benefits on adoption of the Seventh Pay Commission's recommendations in this regard.

62. The Administrative Department in its noting on the file in paragraph-16 onwards, however, refers only to the expected financial burden to be caused by adoption of the Seventh Pay Commission's recommendations regarding retirement benefits in the future with effect from to the Financial Year 2020-21 up to Financial Year 2023-24. There is no reference to financial burden to be cast on payment of arrears of revised pension with effect from 01.01.2016. Thereafter, all of a sudden in paragraph-18 of the said noting on the file at page-175, there is a suggestion that the Pay Commission's recommendations be accepted with effect from 01.01.2016 notionally with actual payment being made

with immediate effect. The relevant draft of the Office Memorandum was thereafter prepared which was got approved and issued as Government Order dated 24.02.2021.

63. In **D.S. Nakara versus Union of India, 1983 (1) SCC 305**; the Constitution Bench had to consider the question of a cut-off date found in the pension scheme which was uniformly applicable to all the Central government employees who had formed one class at the time of retirement and who were entitled to pension. The question was whether the amount of pension which was computed for them in the light of the available formula could have been further enhanced on the basis of a subsequent more beneficial formula and whether it could be denied only on the ground that they had retired prior to the date on which such enhanced computation of pension was made available to the pensioners. In the light of the aforesaid fact situation, it was observed that all employees were governed by the pension scheme and who had become eligible to earn pension at the time of the retirement formed one class. It was held that such a cut-off date for granting additional benefits to some of the pensioners in the same class of employees would not be countenanced on the touchstone of Article 14 of the Constitution of India. In *D.S. Nakara's* case admittedly all the Central Government servants were governed by the pension scheme and were eligible to draw pension on retirement. They therefore, formed one class.

64. The ratio of *Nakara's* case was distinguished by two later Constitution Bench decisions. In the case of **Indian ex-Services League versus Union of India, 1991 (2) SCC 104**; the Supreme Court

made the following observations in paragraph 12 of the report: -

*"12. The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last 10 months salary instead of 36 months salary provided earlier, wielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to other retirees irrespective of the date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be re-computed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that "if the pensioners form one class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later". This according to us is the decision in Nakara and no more. .."*

*(emphasis supplied)*

65. In yet another Constitution Bench judgement of Supreme Court in the case of ***Krishena Kumar versus Union of India, 1990 (4) SCC 207***; *Nakara's* case was distinguished by holding that:

*"in Nakara's case the Court treated the pensioners only as a homogeneous class. It was never held that both the pension retirees and A provident fund retirees formed a homogeneous class, and that any further classification among them would be violative of Article 14. On the other hand, the Court clearly observed that it was not dealing with the problem of a fund.*

*It has to be kept in view that in the present case we are concerned with the pension fund and so far as the pension fund is concerned, Nakara's judgement by itself would not apply as is clearly mentioned in the very same judgement in paragraph 45....."*

*(emphasis supplied)*

66. This Court has gone through the judgement rendered by the Supreme Court in the case of ***Subrata Sen another versus Union of India and others 2001(8) SCC 71***; relied upon by the learned counsel for the petitioner. The Supreme Court placed reliance upon judgement rendered by it in *V. Kasturi versus Managing Director, State Bank of India, Bombay and another 1998 (8) SCC 30*; where referring to two categories of pensioners, the Supreme Court had observed that *"if the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force.* He would

be entitled to get benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. *In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to that date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. However, if an employee at the time of his retirement is not eligible for retiring pension and stands outside the class of pensioners, and subsequently by amendment of the relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and by then the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme.* If such a new scheme is prospective only, the old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep- - -."

*(emphasis supplied)*

67. Reliance was also placed upon paragraph 45 of the judgement rendered in D.S. *Nakara's* case, which reads thus: -

*"45. Let us clear one misconception. The pension scheme including the liberalized scheme available*

*to the Government employees is non-contributory in character. It was not pointed out that there is something like a pension fund - - - the payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, there is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share."*

*(emphasis supplied)*

68. Further, in *All India Reserve Bank Retired Officers Association versus Union of India*, AIR 1992 Supreme Court 767, the Supreme Court had highlighted the observations made in D.S. Nakara's case found in paragraph 46 to the following effect: -

*"46. - - - the pension will have to be re-computed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware, it is not a new scheme, it is only a revision of existing scheme. It is not a new retirement benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retirement benefit, one could have appreciated an argument that those who had already retired could not expect it."*

69. The Court further observed: -

*"- - - it must be realised that in the case of an employee governed by the contributory Provident fund scheme his relations with the employer come to an end*

*on his retirement and receipt of CPF amount, but in the case of an employee governed under the pension scheme his relations with the employer really undergo a change but do not snap altogether. That is the reason why this Court in Nakara's case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of Pensioners it is necessary to revise the pension periodically as a continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum returns which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in Krishena "s case".*

*(emphasis supplied)*

70. This Court finds that the judgement rendered in *Subrata Sen* turned on different facts. In the said case the Union of India had taken over the Assam Oil Company of which the petitioners were employees. The payment of pension was liability of the employer as per the Rules and the liability was required to be discharged by the Union of India, in view of its taking over the Company. The rights of the employees were protected under Burma Oil Company (acquisition of shares of Oil India Ltd and of the undertakings in India of Assam Oil Co Ltd and the Burma Oil Company Ltd) Act 1981. The increase in pension could be met from the general revenues of the Central Government. Such is not the case with the petitioners. No such reserve of funds is available for pensioners



of Development Authorities. Most of the petitioners were absorbed from Nagar Palika services into the Centralized Services of the Development Authorities. The Act of 1973 and the Rules of 1985 governing their conditions of service provided for creation of a Provident Fund and a Pension Fund. Under the Retirement Benefit Rules of 2011 the Finance Controller of the Lucknow Development Authority was made responsible for the upkeep and maintenance of the pension fund. The petitioners were to get retirement benefits from the pension fund alone. The pension fund is created out of contributions made by the Development Authorities in respect of its employees who are in service in the manner provided under the Rules. The contribution is in the form of a fixed percentage of salary of each of the employees. There is therefore no provision for an employer making an additional Contribution in respect of its past employees who are the existing pensioners.

71. However, in the case of the petitioners the Development Authorities themselves have expressed their willingness and readiness to give the retirees enhanced pensionary and other retirement benefits in terms of the recommendations of the Seventh Pay Commission. As a corollary of the Government having nothing at all to do with the said Pension Fund, it is for the Development Authorities to bear the additional financial burden and consequently to determine also the date of application of the enhanced pensionary benefits to their retired employees.

72. Moreover, the impugned Office Memorandum disallows payment of arrears of revised pension with effect from 01.01.2016, and also the benefit of

enhanced pension made admissible to retirees of State Government, by modifying the formula and method for calculation of revised pension as given in Government Orders dated 18.07.2017 and 04.09.2017. The Government Order dated 23.12.2016 and also the Shasikiya Sankalp dated 16.12.2016 provides that pension and other retirement benefits shall be available to employees of other autonomous institutions and statutory bodies at par with State Government employees, if they were getting such parity in the past. Under Rule 4, 5, 7 and 34 of the Retirement Benefit Rules 2011, the pensioners of Development Authorities become entitled to payment of pension, family pension and Gratuity as is admissible to employees of the State Government as soon as the relevant Government Orders are issued in this regard as they were incorporated by reference in the Retirement Benefit Rules of 2011. Therefore, the recommendations of the Seventh Pay Commission with regard to salaries have been duly implemented with effect from 01.01.2016 for employees of Development Authorities by Government Order dated 04.01.2017.

73. It has not been submitted by learned Counsel for the Respondents that the Coordinate Bench decision in *Shakuntala Singh* was questioned in Appeal and set aside by any appellate Court. The Coordinate Bench decision has taken care of arguments of the State Respondents that employees of Centralized Services of Development Authorities cannot claim parity with State Government employees by referring to the Retirement Benefit Rules 2011 and the Centralized Service Rules of 1985, where it has been clearly provided that for all matters which have not been specifically provided for, in the Rules, the employees shall be governed by Rules

and Regulations and orders as applicable to Government Servants engaged in the affairs of the State. ***The Supreme Court in the case of Indian Ex-Servicemen's Movement Vs. Union of India and others, 2022 (7) SCC 323***; has observed in paragraph 34:-

*".....A hierarchy in law exists between Statutes and Rule. A statutory provision will have precedence over delegated legislation if the latter conflicts with the former. Similarly, executive instructions cannot overrule a Statute or Rules made in pursuance of a Statute."*

74. The Supreme Court in paragraph 55 and 56 of the judgement rendered in All India Ex-Servicemen Movement (supra), observed as follows: -

*"In the decision of this Court in Nakara, the Constitution Bench was deciding on the issue of whether the date of retirement would be a relevant consideration for determining the application of a revised formula for computation of pension. The liberalised pension scheme was made applicable prospectively to those employees who retired on or after 31 March 1979 in the case of Government Servants covered by the 1972 Rules and in respect of defence personnel, those who became non-effective on or after 1 April 1979. Consequently, those who retired prior to the date were not entitled to the benefit of liberalised pension scheme. It was held that payment of pension constitutes a compensation for the service rendered in the past and as a measure of social welfare for providing social economic justice to those who have rendered service to the state. The court noted that earlier, the measure of pension was related to the average emoluments*

*during a period of 36 months prior to retirement. By the liberalised scheme, the period was reduced to an average of 10 months preceding the date of retirement, coupled with the above aspects, a slab system for computation was introduced and the ceiling was raised. This Court held that there was no justification for arbitrarily selecting the criteria for eligibility for grant of benefits under the scheme based on the date of retirement. Hence, this court held that all pensioners formed a homogeneous class and where an existing scheme of pension was liberalised, a distinction could not be made on the basis of a specified cut-off date."*

*"56. At the same time, it must also be noted that the decision in Nakara noted that "the financial implication in such matters has some relevance". This Court struck down the portion of the memoranda by which the benefit of the liberalised pension scheme was only confined to persons retiring on or after the specified date which resulted in the benefit being extended to all retirees, irrespective of the date of retirement.*

75. The Supreme Court in One Rank One Pension case however emphasized the observations made by it in *Indian Ex Services League* (supra) by making the following observations in paragraph 61 of the Report:-

*"61. In Indian Ex Services League (supra), it was contended that in view of the decision in Nakara, all retirees who held the same rank irrespective of the date of retirement must receive the same amount of pension. This Court observed that there was nothing in Nakara that backed the claim of the appellants that the same Pension must be given to all retirees of the same rank. The Court observed that*

it was held in Nakara that only the same formula for the calculation of pension was to be used and over which the emoluments of the retirees revised.

*(emphasis supplied)*

76. It was observed that the effect of the judgement in the Nakara was that the same computation according to liberalised formula must be applicable to pre and post 1st April 1979 retirees, and that the decision cannot be construed to mean that the same amount of pension must be receivable. The Supreme Court in the case of One Rank One Pension also went on to quote the judgement rendered by it in K.L. Rathee versus Union of India, 1997 (6) SCC 7, where the decision in Nakara was explained in paragraph 6 and 7. In paragraph 7 in K L Rathee, the Supreme Court observed as follows: -

*"7. It is to be seen that the judgement did not strike down the definition of emoluments. It merely held that if pension was to be calculated on the basis of last 10 months emoluments of a government servant, after 1 April 1979, there is no reason why those who retired before 1 April 1979 should get pension calculated on the basis of average of last 36 months emoluments. In other words, the rule of computation must be the same. The Court did not hold that those who have retired before 1 April 1979 must be treated as having the same emoluments as those who retired on or after 1 April 1979 for the purpose of calculation of pension. Therefore, on the strength of Nakara case, the petitioner is not entitled to ask for computation of pension with reference to the emoluments which he never got - -."*

*(emphasis supplied)*

77. In K.L. Rathee and also in the One Rank One Pension case, the Supreme Court clarified that while rule of computation of pension must be the same i.e. average of last ten months emoluments irrespective of date of retirement, but the amount of pension of the retirees of the same rank cannot be the same irrespective of the date of retirement i.e. those who were actually drawing larger emoluments in the last ten months of their service, or at the time of their retirement their last basic pay was more, will get larger amount of pension.

78. In ***B.J. Akkara Versus Union of India (2006) II SCC 709***, the Supreme Court summarized the principles relating to pension. It was observed in paragraph 20 as follows:-

*"20. The principles relating to pension relevant to the issue are well-settled. They are:-*

*(A) in regard to pensioners forming a class, computation of pension cannot be by a different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the Government Order, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which day aforesaid additional benefit was conferred.*

*(B) But all retirees retiring with a particular rank do not form a single class*

*for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension), are different in respect of two groups of Pensioners, who retired with the same rank, the group getting lesser pension cannot contend that the pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where the average reckonable emoluments at the time of their retirement were different, in view of the difference in pay, or in view of different pay scales being in force.*

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*One set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment"*

79. Having considered the record produced before the Court relating to the decision making and also relevant and binding precedents as above; this Court is of the considered opinion that the formula and procedure for computation of pension as given in the Government Orders dated 18.07.2017 modifying the earlier decision for Government employees who retired before 01.01.2006 shall be applicable to the petitioners as well as the Concordance Tables issued from time to time for

determination of their pension/ family pension including the ones appended to the Government Order dated 04.09.2017. The Government Order dated 01.05.2018 also shall apply to the petitioners in view of the judgment of this Court in *Shakuntala Singh*.

With regard to retrospective operation of revised pension with effect from 01.01.2016 and arrears to be paid, this Court has found nothing on record to show that question of payment of arrears with effect from 01.01.2016 to 24.02.2021 was deliberated upon seriously. It is evident from the fact that information in prepared formats continued to be collected by the Administrative Department even after issuance of the impugned office memo. It is therefore directed that the Respondent No.1 shall collect all necessary information and also determine the availability of finances and issue appropriate orders within a period of three months from the date a copy of this order is produced before it, taking into account also the observations made by this Court hereinabove.

Consequently, the writ petitions stand **party allowed** with respect to the relief claimed regarding method of computation of pension/ family pension. With regard to denial of arrears, the matter is remitted to the Respondent no.1 to take an appropriate decision as aforesaid.

The relief claimed in Writ-A No.11020 of 2021: *Ratan Kumar Nigam Vs. State of U.P. & Another*, cannot be granted at this stage as the State Government has not yet decided the issue of applicability of entire recommendations of the Seventh Pay Commission to employees of Development Authorities.

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