**(2004) 05 GAU CK 0034**

**Gauhati High Court**

**Case No:** Writ Appeal No. 128 of 2002 in WP (C) No. 62 of 2000

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| Malin Kanta Paul | | APPELLANT |
| | Vs | |
| State of Tripura | | RESPONDENT |

**Date of Decision:** May 21, 2004

**Acts Referred:**

- Central Civil Services (Pension) Rules, 1972 - Rule 55, 55A
- Constitution of India, 1950 - Article 14, 16, 162, 19(1), 21
- Life Insurance Corporation Act, 1956 - Section 11(2)
- Parliament Act, 1911 - Section 3

**Citation:** (2005) 2 GLR 340 : (2004) 3 GLT 56

**Hon'ble Judges:** T. Vaiphei, J; I.A. Ansari, J

**Bench:** Division Bench

**Advocate:** D.K. Biswas, for the Appellant; T.K. Roy, A.G. and S. Chakraborty, for the Respondent

**Judgement**

I.A. Ansari, J.
By the impugned judgment and order, dated 9.8.2002, passed in WP(C) No. 62/2000, the writ petition has been dismissed. Feeling aggrieved, the writ petitioner has, now, preferred the present appeal.

2. Can the terms and conditions of the service of a Government servant, unlike that of an employee in a private sector, be altered unilaterally by the statutory or constitutional authority concerned? If so, whether such alteration can be made with retrospective effect and if so, what is the extent of such powers ? Will the power to amend the conditions of service rertospectively include the power to take away or abridge, with retrospective effect, those rights, which have already accrued to the Government employee under the existing rules and before the amendment was introduced ? Whether the writ of mandamus, issued in a given case, can be superseded by the Government and if so, how and what extent ? What was the real

question, which the WP(C) No. 62/2000, had raised for determination and whether the learned Single Judge has, on 9.8.2000, correctly disposed of the writ application ? Did Rule 55A, introduced in the Central Civil Services (Pension) Rules, 1972, as adopted, in the State of Tripura, by virtue of notification, dated 2.7.1972, issued by the Government of Tripura, vest in the Government servants any legal and/or fundamental right to receive Dearness Relief? What was the real controversy in Civil Rule No. 259/ 1995 ? Has the impugned notification, dated 27.10.1998, brought, now, any change to what was read and understood in Civil Rule No. 259/ 1995 ? How the said Pensioners'' Association justify, in Civil Rule No. 259/1995, their demand for payment of Dearness Relief at the rate fixed by the Central Government and why did the Court issued Mandamus therein ? By virtue of the notification, dated 27.10.1998, published by the Government of Tripura, whether the Government of Tripura has altered the legal and factual foundations of the Writ of mandamus issued, on 22.04.1997, in Civil Rule No. 259/1995 and upheld, on 25.06.1997, in WA No. 330/97, and whether the mandamus, so issued, has become ineffective in consequence of the notification, dated 27.10.1998, aforementioned ? These are the moot questions, which this writ appeal has raised.

3. This appeal has a history. As history is not merely a collection of the events of the past, but a connecting-link between the past and the present, so is this appeal. We are, therefore, required to not merely assemble together the events of the past leading to the present appeal, but also to explore if there is a connecting-link between the events of the past and the present appeal and if so, whether the mandamus issued in the past still, notwithstanding the charges introduced presently, hold good.

4. The material facts and various stages, which have led to the present appeal, may be summarised as follows : -

(i) By a notification, dated 8.8.1978, the Government of Tripura adopted the Central Civil Services (Pension) Rules, 1972, in respect of the Government servants, "serving in connection with the affairs of the State of Tripura", subject, however, to certain modifications giving indication therein, inter alia, that the expressions "Central Government", "Central Service" and "Ministry of Finance, Government of India", occurring in the said Pension Rule, 1972, shall stand substituted by the expressions "State Government", "State Service" and "Finance Department, Government of Tripura", respectively.

(ii) The rate of Dearness Allowance available to the Government servants in the State of Tripura was same as the rate of the Dearness Relief applicable to the pensioners of the State. The Stage of Tripura had been issuing notifications from time to time declaring enhancement in the rate of Dearness Allowance and dearness Relief, but the rate and periodicity of such increase were not at par with the Central Government servant or pensioners. While the Central Government had been reviewing, as a matter of routine, the rate of Dearness Allowance after every 6 (six)

months, once in January and again, in July, such review by the State Government was irregular.

(iii) The Third Tripura Pay Commission, constituted by the Government of Tripura, observed and recommended, in its report of February 1998, thus : "All the Employee''s Organisations without exception have urged for payment of Dearness Allowance elements at the same rate and periodicity as under the Central Government. The Commission, after careful consideration of all aspects, particularly, the fact that the payment of this allowance at Central rates and periodicity is in force in many States, recommends that payment of Dearness Allowance elements may be made at Central rates. The periodicity of payment may also be as in the Central Government from time to time." The recommendations so made by the Finance Commission, in respect of Dearness Allowance, was wholly accepted by the State Government by its Memorandum, dated 18.07.1988, though many of the other recommendations made by this Pay Commission were not acceded to by the State Government.

(iv) When the Government of India, Ministry of Personnel, by its notification, dated 22.1.1991, introduced some amendments to the Central Civil Services (Pension) Rules, 1972, by incorporating Rule 55 A thereto and defining thereby the Dearness Relief and its entitlement to pensioners, the Government of Tripura too adopted the said amended Rule 55 A as a part of its pension rules by issuing notification, dated 2.7.1992. The Tripura Pension Rules accordingly stood amended by incorporation of the said Rule 55 A of the Central Civil Services (Pension) Rules, 1972, which reads, "Relief against price rise may be granted to the pensioners and family pensioners in the form of Dearness Relief at such rates and subject to such condition as the Central Government may specify from time to tome."

(v) Claiming that even after Rule 55 A stood adopted by the State Government, in respect of the Dearness Relief, the State Government had not been granting the Dearness Relief at the rate at which and the periodicity with which the Central Government had been granting Dearness Relief to their pensioners, the Government Pensioners'' Association, Tripura, which was a registered association of pensioners in the State and which is hereinafter referred to as the said Pensioners Association, filed a writ petition in this Court, which gave rise to Civil Rule No. 259/95.

(vi) The State respondents contested Civil Rule No. 259/95 aforementioned by filing their affidavit, their case being, briefly stated, thus : The writ petition is not at all maintainable on the sole ground that the allegation of the petitioners that the Government of Tripura has not been releasing Dearness Allowance/Dearness Relief, in short D.A. and D.R., to its employees and the pensioners and family pensioners at the rate given by the Central Government to its employees/ pensioners is not at all correct. The State respondents have been releasing D.R. to the pensioners at the rate at which the same is realised by the Government of India from time to time,

though, on account of financial constrainst, the State respondents cannot cope with the periodicity of release of such D.R. by the Central Government to their pensioners. Therefore, the allegation that the respondents are not releasing D.A./D.R. at the rate of Central Government is not at all correct and as such, this writ petition is liable to be dismissed in limine". The State respondents have already, in principle and in practice, implemented all the claims made in the writ petition, but such acceptance of monetary and pecuniary largesse to the employees/pensioners concerned do not confer any right upon any employees/pensioners to claim the same at any point of time ignoring the financial ability and capability of the State Government and also ignoring the liabilities, responsibilities and duties of the State respondents towards much larger section of the people of the State, who are much more sufferer than the pensioners. As the respondents have already decided the point that the existing employees of the respondents, the pensioners and also the family pensioners would get monetary benefits as per the Central Government rate, there arises no question of issuing any writ in the nature of mandamus to the respondents. As and when funds would be available and the respondents would be in a position to pay the D.A./D.R. to the pensioners concerned, the same would be paid to them, but at this stage, it was impossible to maintain the periodicity of such payment along with the Central Government. The State of Tripura is not only a poor State having very little source of income of its own, the State is solely dependent upon the Central assistance. Therefore, the total developmental works of the State including release of D.A./D.R. depend upon the Central assistance made available to the State Government from time to time.

(vii) The Civil Rule No. 259/95 aforementioned was disposed by the learned Single Judge by judgment and order, dated 22.4.1997. While disposing of the writ petition, the learned Single Judge observed in his judgment and order to the effect, inter alia, that in the face of the admitted facts, the question, which actually arose for determination was as to whether the State Government, which mainly depended on the central assistance, was capable of clearing the Dearness Relief to their pensioners upto the rate, which the Central Government had already paid to its employees. As in the Civil Rule No. 259/1995 aforementioned, the State respondents had admitted that the State Government had agreed to pay Dearness Relief at the same rate at which the Central Government allowed such relief to its pensioners and the only difficulty expressed by the State respondents, in this regard, was their financial constraints, the learned Single Judge obtained affidavits from the parties concerned, examined the relevant financial records of the State Government and, upon making calculation in the open Court, observed and directed, in the Judgment and Order aforementioned, as follows : -

"It is clear from the foregoing discussions that the State Government, i.e., the respondents defaulted in making payment of Dearness Relief promptly. It has also been quite clear from the discussion made above that the State Government received the amount; hence it is ill-behaved to say that the dues will be cleared up

when it will be possible. The writ petition was filed on 5.5.1995 and it could have been disposed of at least on 16.12.1996 to which date the case was adjourned on the basis of the submission made by the learned Advocate General on 10.12.1996. At certain stage of the case, it was submitted that some pensioners passed away during pendency of the case. Therefore, I consider it appropriate that the dues should be paid within a reasonable time and accordingly In order and direct the respondents to pay 20% of the un-paid D.R. out of 42% latest by 2nd June, 1997 minus the amount, if any, is paid toward D.R. during pendency of the writ petition and the balance of 22% of the D.R. by 2nd August, 1996. Keeping in view the hardship which the pensioners are passing through at this old age, I hope that the Government of Tripura shall not cause delay in clearing up the dues within the time limit I have mentioned above."

(viii) Aggrieved by the judgment and order, dated 22.4.1997, aforementioned, the State Government preferred an appeal, which gave rise to Writ Appeal No. 330/1997. At the time of hearing of the appeal, the State Government did not pursue the appeal and the learned Advocate General, Tripura, merely sought for extension of time to enable the State respondents to comply with the directions issued by the learned Single Judge in Civil Rule No. 259/1995 aforementioned. The Writ Appeal was accordingly disposed of, on 25.06.1997, extending the last date for making of payment of the unpaid Dearness Relief up to 21st October, 1997, and for payment of the remaining 22% of the Dearness Relief, in terms of the order passed by the learned Single Judge, the date was extended upto 31st December, 1998.

(ix) Following the directions contained in Civil Rule No. 259/95 and Writ Appeal No. 330/97 aforementioned, the State Government, vide Memorandum, dated 11.2.1998, allowed the Dearness Relief. When the Memorandum, dated 11.2.1998, aforementioned was issued, the present writ appellant learnt about the said Memorandum. However, as the State respondents failed to pay the Dearness Relief in terms of this Court''s directions as mentioned hereinbefore, the said Pensioners'' Association made an application for drawing a contempt proceeding against the State respondents. This application gave rise to Contempt Case (Civil) No. 177 1999. In this Contempt Case, the State respondents, while submitting their reply, annexed a notification, dated 27.10.1998, whereby the State Government claimed to have amended, in exercise of its powers under Article 309 of the Constitution of India, its notification, dated 2.7.1992, aforementioned to the effect that in Rule 55 A aforementioned, the expression "Central Government" shall stand substituted by the words "State Government" meaning thereby that the Dearness Relief would be available to the pensioners at such rate and subject to such condition as the State Government may specify from time to time.

(x) In the above backdrop, the present writ appellant, who, admittedly, served the Government of Tripura as a Physical Instructor and who, having retired from service on 28.12.1989, acquired the status of a pensioner under the State respondents, with

effect from 1.1.1990, approached this Court with a writ application seeking, inter alia, a declaration that the notification, dated 27.10.1998, aforementioned was void, illegal and ultra virus and commanding the respondents to act in compliance with the directions contained in the order, dated 22.04.1997, passed in Civil Rule No. 259/1995 aforementioned, the writ appellant''s case being, briefly stated, to the effect that the notification, dated 27.10.1998, aforementioned is bad in law inasmuch as it seeks to take away the accrued rights of the petitioner to receive, as a pensioner, Dearness Relief at the rate at which the Central Government decides to give to its employees from time to time in terms of the directions contained in the judgment and order, dated 22.4.1997, passed in Civil Rule No. 259/1995, which stands upheld in Writ Appeal No. 330/1997. This writ application gave rise to WP(C) No. 62/2000.

(xi) The State respondents contested both the said cases, namely, Contempt Case (Civil) No. 17/1999 aforementioned initiated by the said Pensioners'' Association (who were the writ petitioner in Civil Rule No. 259/1995 aforementioned) and the WP(C) No. 62/2000, which was initiated by the present writ appellant, the case of State respondents being, in brief, as follows :

(i) The writ petitioner is State Government pensioner and his pension, like other State Government pensioners, is regulated by the CCS (Pension) Rules, 1972, as adopted, in Tripura, in the year 1978. The State Government pensioners get Dearness Relief at the same rate at which the State Government employees received Dearness Allowance. It is the policy of the Tripura Government not to make any discrimination in the matter of Dearness Allowance/Dearness Relief between the State Government employees and the State Government pensioners. Due to fragile resource position of the State, the State Government cannot grant Dearness Relief/Dearness Allowance at the same rate and periodicity as is done by the Central Government in order to neutralise the price rise. As a result, the rate of Dearness Relief/Dearness Allowance for the State Government pensioners and the employees, as on 1.4.1995, was 42% behind the Central rate. The State Government had not accepted the recommendations of the 3rd Pay Commission to grant Dearness Allowance/Dearness Relief at the Central rate. It is a wrong perception that the State Government employees and pensioners are entitled to get Dearness Allowance/Dearness Relief at the rate at which the Central Government grants from time to time to its employees and pensioners. Payment of Dearness Allowance/Dearness Relief rests on the policy decision of State, which is taken depending upon its resources. The Central Government, on 22.01.1991, inserted Rule 55A in the CCS (Pension) Rules, 1972 and the State Government adopted the same, in Tripura, on 2.7.1992. This Rule 55A provides for granting of relief against price rise in the form of Dearness Relief. Adoption of this new rule did not, in any way, confer any right on the pensioners to claim Dearness Relief at the rate and periodicity at which the Central Government grants the same to their pensioners. On the contrary, even while adopting Rule 55A, the State reserved its right to

declare Dearness Relief independent of Dearness Relief fixed by the Union Government.

(ii) The said Pensioners Association filed Civil Rule No. 259/1995 aforementioned claiming Dearness Relief at Central rate on the basis of Rule 55 A by resorting to a wrong interpretation that the word "Central Government" in the said rule means that whenever Central Government sanctions Dearness Relief to the pensioners, the State Government pensioners will automatically get Dearness Relief at the same rate. Unfortunately, this legal position could not be brought home in the said case and the Courts allowed the writ petition and directed the State Government to pay State Pensioners Dearness Relief at Central rate. The State Government filed Writ Appeal No. 330 of 1997, but lost. The State Government, thereafter, granted balance Dearness Relief of 42% to the State Petitioners, in two installments, to raise the same by 125%, which was the Central rate at the relevant time, whereas the State Government employees were then getting only 83% Dearness Allowance and, for the first time, because of the implementation of the said order of the Court, discrimination in respect of Dearness Allowance and Dearness Relief between the State Government employees and the State Government pensioners was created. Such discrimination created by the said judicial directions caused immense problems for the State. The State Government, therefore, issued notification, on 27.10.1998, making necessary amendment in Rule 55 A and made it clear that this Rule should be deemed to have been adopted by the State Government with the modification that for the expression "Central Government", wherever it so occurs in Rule 55, the words "State Government" shall be substituted. This amendment was necessary to settle the legal position that the authority to sanction Dearness Relief for State pensioners was the State Government and that sanction of Dearness Relief by Central Government for Central Government Pensioners did not automatically apply to the State Government pensioners unless the State Government by separate order granted Dearness Relief to the State pensioners. The amendment was further necessary to remove discrimination between the rate of Dearness Relief/Dearness Allowance for the State Government pensioners and State Government employees. The third necessity was to make the grant of Dearness Relief in accordance with the State''s resource position. By granting 42% extra Dearness Relief to the State pensioners as per Court''s order, as aforesaid, the resource position of the State Government had come under enormous strains thereby cutting into resource allocation to other vital developmental sectors. The Governor accordingly issued the notification, dated 27.10.1998, aforementioned in exercise of his legislative powers under Article 309 of the Constitution. It is settled law that the authority, who has the power to make a law has also the power to amend, vary and modify the law with retrospective effect. The Governor, by exercising this legislative power, only corrected/clarified the legal lacuna pointed out by the Court.

(iii) The subject matter relating to the grant of Dearness Relief to the State pensioners is covered by entry 42 of the State list (List II) of the VIIth Schedule of the

Constitution of India and under Article 246(3) of the Constitution, it is the State Legislature, which has the exclusive power to make a law with respect to any matter enumerated in the State List of the VII Schedule. Article 162 of the Constitution provides that the Executive powers of the State extend to the matters with respect to which the legislature of the State has power to make laws. It is, therefore, evident that on pension matters, the State Government has the exclusive powers. The resultant position of law after adoption of the Rule 55 A is that the State Government pensioners and family pensioners would get Dearness Relief at such rates and subject to such condition as the State Government may specify from time to time and not at the rate at which the Central Government grants Dearness Relief to their pensioners from time to time.

(xii) By the Judgment and Order dated 9.8.2002, which, now, stands impugned in the present appeal, the learned Single Judge dismissed the writ petition, which had given rise to WP(C) No. 62/2000 aforementioned and also dropped the Contempt Case (Civil) No. 177 1999. Against the dismissal of their contempt petition, the said Pensioners'' Association preferred an SLP, which gave rise to SLP (Civil) No. 21170/2002. By the order, dated 4.8.2003, passed in SLP (Civil) No. 21170/2002, the Apex Court requested the High Court to decide the appeal within a period of 4 (four) months. Perhaps, this writ appeal could not be taken up for hearing in the past, for, no Division Bench was regularly available at Agartala Bench and when this Division Bench was temporarily made available at Agartala and the directions contained in the order, dated 4.8.2003, aforementioned passed by the Apex Court, were brought to the notice of this Court, we decided to hear this appeal out of turn and the appeal has accordingly been heard.

5. We have perused the materials on record. We have heard Mr. D.K. Biswas, learned counsel, appearing on behalf of the appellant, and Mr. T.K. Ray, learned Advocate General, Tripura, assisted by Mr. S. Chakraborti, learned counsel, for the respondent.

6. Presenting the case on behalf of the appellant, Mr. Biswas has submitted that in the present case, the decision rendered by this Court, on 22.4.1997, Civil Rule No. 259/95, aforementioned, was a judgment in rem and covered all the pensioners of the State of Tripura and not merely the said Pensioners'' Association and this decision having not been reversed in Writ appeal No. 330/1997, the directions given in the decision, dated 22.4.1994, aforementioned attained finality inasmuch as no further appeal was preferred by the State respondents against the directions issued by this Court. As per this judgment, points out Mr. Biswas, the Government of Tripura is bound to pay to its pensioners Dearness Relief at the same rate and subject to such conditions as the Central Government may specify from time to time. By the impugned notification, dated 27.2.1998, aforementioned, the Government of Tripura has, submits Mr. Biswas, tried to supersede the writ of mandamus issued by this Court, which is, according to Mr. Biswas, impermissible

under the law.

7. It is also submitted, on behalf of the appellant, that the right to receive Dearness Relief at the rate at which and the periodicity with which the Central Government grants Dearness Relief to their pensioners is a right, which has accrued to the State Government pensioners including the writ appellant, initially, by adoption of Rule 55 A and, later on, by writ of mandamus issued by the Court. Such a right having accrued and crystallised in favour of pensioners, like the appellant, the State Government cannot take away such a right by mere issuance of notification, dated 27.10.1998, aforementioned, in purported exercise of powers under Article 309, whereby a clarification has been attributed to the earlier notification issued by the Government, on 2.7.1992, while adopting the notification, dated 22,1.1991, aforementioned, whereby Rule 55 A was introduced by the Central Government in the Central Civil Services (Pension) Rules, 1972 making provisions for Dearness Relief to their pensioners, which is nothing but a relief, in the form of compensation, against the rise in the cost of living beyond average consumer''s price index.

8. In exercise of powers contained in Article 309, contends Mr. Biswas, the Government could not have legally published a notification taking away the accrued rights of the persons, such as, the appellant, by merely clarifying the earlier notification, dated 2.7.1992, aforementioned and thereby annul the judgment of this Court, which had already attained finality. Such exercise of powers is, according to Mr. Biswas, ultravires the Article 309 and is, in reality, an attempt to abridge the powers of this Court conferred under Article 226.

9. It is contended by Mr. Biswas that the State respondents have endeavoured to falsely project before this Court that on account of implementations of the directions contained in the judgment and order, dated 22.4.1997, passed in Civil Rule No. 259/1995 and affirmed in Writ Appeal No. 330/97 aforementioned, the Government servants, presently in the service of the Government, are made to receive Dearness Allowance at a rate, which is lower than what is being paid to the pensioners, though it has been the policy of the Government to pay Dearness Allowance to its current employees and Dearness Relief to it''s pensioners at the same rate and that the State Government had not accepted the recommendations of the Third Pay Commission to grant Dearness Allowance/Dearness Relief at the Central Government rate.

10. As a matter of fact, points out Mr. Biswas, the State Government had already, as far back as on 18.7.1988, accepted the recommendations of its Third Pay Commission to grant Dearness Allowance to its serving employees at the rate and the periodicity with which the same was being granted by the Central Government. Having already adopted such a policy in respect of Dearness Allowance for their serving employees, the State Government had, further points out Mr. Biswas, no option but to adopt a policy in respect of Dearness Relief for its pensioners in order to ensure that no discrimination takes place between the two groups of their

employees, past and present, and it is with this object in view that the State Government adopted, according to the Biswas, Rule 55 A assuming thereby the responsibility to pay Dearness Relief to the pensioners at the rate at which the Central Government pays Dearness Relief to their pensioners. The adoption of Rule 55 A by the State Government was, emphasises, Mr. Biswas, nothing but a compelling step to remove the discrimination between the two groups of its employees. When the said Pensioners'' Association, submits Mr. Biswas, instituted Civil Rule No. 259/1995 aforementioned, the State Government could not and, in fact, did not dispute the fact that they had, indeed, adopted such a policy decision, but to wriggle out of their own stated policy, what was contended by the State Government, in the said Civil Rule, was that the financial conditions of the State did not permit them to implement their decision. However, on scrutinising the relevant records of the Government, learned Single Judge found, points out Mr. Biswas, that the State Government had, indeed, received financial assistance from the Central Government for payment of pension, but it was withholding the amount and not releasing to its pensioners the Dearness Relief, which had formed part of the pension, at the agreed and pronounced rate. On such a clear finding arrived at, submits Mr. Biswas, the learned Single Judge issued the said Writ of mandamus. As the finding, so reached by the learned Single Judge, was, according to Mr. Biswas, unassailable on the basis of the materials on record, the same were not, eventually, challenged in the Writ Appeal No. 330/1997 aforementioned and, hence, these findings attained finality. Even today, further points out Mr. Biswas, the State Government does not categorically claim that the Central Government has not given the requisite funds to pay the Dearness Relief. What the State respondents have attempted to do, according to Mr. Biswas, is to camouflage the issue by contending that making payment of Dearness Relief at the Central Government''s rate to the pensioners will have the effect of halting other developmental activities of the State Government. Similar objections were raised, points out Mr. Biswas, by the State respondents in their earlier writ petition too and these pleas were turned down by this Court and in the face of the decision, which has attained finality between the parties concerned, the State Government cannot, now, by repeating the same plea of financial difficulties and relying on their classificatory notification, dated 27.10.1998, get rid of the effect of their liability to comply with the Writ of mandamus issued by this Court.

11. It is further submitted by Mr. Biswas that the classificatory notification, dated 27.10.1998, issued by the Government is a colourable exercise of powers inasmuch as this amendment seeks to take away the accrued rights of the persons, such as the appellant, and such a colourable exercise of powers may not be allowed to stand good on record, particularly, when the Notification under challenge seeks to take away, with retrospective effect, the accrued rights of the pensioners, such as, the appellant. At any rate, contends Mr. Biswas, no legislative power can be exercised for clarifying a judicial decision, for, exercise of such a power is nothing but exercise

of judicial powers, which a legislator is not competent to exercise under the law. No State legislator or the Governor can enact a law in a manner, reiterates Mr. Biswas, which adversely affects the powers of the High Court under Article 226 inasmuch as Article 226 forms part of the basic structures of the Constitution.

12. Reliance in support of the above submissions is sought to be derived by Mr. Biswas from the law laid down in Madan Mohan Pathak and Anr. v. Union of India and Ors., reported in (1978) 2 SCO 50 , A.V. Nachane and v. Union of India and Anr., T.R. Kapur and Others Vs. State of Haryana and Others, Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, G.C. Kanungo and D.C. Routray Vs. State of Orissa, S.R. Bhagwat and others, Vs. State of Mysore, and Tamil Nadu Teachers Association Vs. Association of the Heads of the Government (B Wing) High and Higher Secondary Schools and Others,

13. Controverting the above submissions made on behalf of the appellant, Mr. T.K. Ray, learned Advocate General, Tripura, has submitted that unlike an employee in a private sector, a Government servant, such as the appellant, acquires, on his appointment, a status and all his rights and obligations are liable to be determined under the statutory or constitutional authority, which, for its exercise, requires no reciprocal consent and, hence, the Government has the liberty to alter the terms and conditions of its employees unilaterally. Reliance, in this regard, is placed by the learned Advocate General on the The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others,

14. In support of his submissions that the State Government is competent to change the conditions of service of its employees, learned Advocate General has also placed reliance on K. Nagaraj and Others Vs. State of Andhra Pradesh and Another,

15. It is also submitted by the learned Advocate General and that there is no impediment, on the part of the Government, to make any amendment in the terms and conditions of employment of its employees, which will include pensioners. Rule 55 Appoints out learned Advocate General, was introduced by the Central Government in their Pension Rules making provisions for Dearness Relief to their pensioners subject to such rates and conditions as the Central Government may specify from time to time. The adoption of this Rule, as a condition of service by the Government of Tripura in its Pension Rules, merely meant, contends the learned Advocate General, that the Government of Tripura had decided to pay Dearness Relief to its pensioners, but it did not meant that the Dearness Relief would be paid at such rates and/or subject to such conditions as the Central Government may specify; rather, what it really meant was, according to the learned Advocate General, that the State Government would pay Dearness Relief to its pensioners at such rates and subject to such conditions as the State Government may specify from time to time. This aspect of the matter, according to the learned Advocate General, was not clearly conveyed to this Court in the earlier writ petition, namely, Civil Rule No. 259/1995 and as a result thereof, this Court came to the conclusion that the

Dearness Relief had been undertaken to be paid by the State Government at such rate and subject to such conditions as the Central Government may specify from time to time. Since such an interpretation and consequential directions had created, submits learned Advocate General, several financial constraints for the State Government and also, at the same time, brought a discrimination between the Dearness Allowance and Dearness Relief, the State Government had to issue a classificatory notification by way of amendment and the Governor, according to learned Advocate General, is quite competent under Article 309 to do so. When this aspect of the matter was brought, in WP(C) No. 62/2000, to notice of the learned Single Judge, the learned Single Judge, contends learned Advocate General, correctly appreciated the position of the law as well as the financial conditions of the State and passed, therefore, the order dismissing the writ petition. The impugned order may, therefore, be maintained. So submits the learned Advocate General.

16. Relying upon Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, the learned Advocate General has contended that the Government is competent under Article 309 to issue clarificatory notification, such as the impugned one, to override the difficulties faced by it in the consequence of the directions issued in Civil Rule No. 259/1995 aforementioned.

17. The financial conditions of the State Government, reiterates learned Advocate General, do not permit it to pay Dearness Relief of the rate fixed by the Central Government for their pensioners and, hence, as the State Government was incapable of implementing the directions of this Court, which had been passed on the failure of the State respondents to correctly project the subject-matter before the Court earlier, the State Government had no option but to resort to the issuance of the clarificatory notification, dated 27.10.1998, aforementioned. The notification, so issued, is, contends the learned Advocate General, wholly within the ambit of the powers of the Government under Article 309 and the same may, therefore, be maintained as has been done by the learned Single Judge and this Writ appeal be dismissed.

18. Reacting to the submissions made on behalf of the State respondents, Mr. Biswas has submitted that the pension for a retired employee is not really a bounty. Far from this, it is, according to Mr. Biswas, an essential economic security as has been held in D.S. Nakara and Others Vs. Union of India (UOI), It is also submitted by Mr. Biswas that the Dearness Relief is nothing, but a relief, which has been given to pensioners so as to enable them to meet the price rise. If, according to Mr. Biswas, the Dearness Relief is not made available to a pensioners at the rate at which the price increases and thereby the price rise is neutralised, the pensioners, such as the appellant, may have to starve. The right to live with dignity is a fundamental right, contends Mr. Biswas, and the State Government cannot shirk its responsibility of giving Dearness Relief at the rate at which the Central Government gives the same, for, making Dearness Relief available at some other rate will only be a theoretical

grant of such relief and will not solve the practical problem of starvation of the pensioners.

19. In the present case, learned Single Judge, submits Mr. Biswas, discussed the merit of the decision, dated 22.4.1997, passed in Civil Rule No. 259/1995 and the directions issued therein as if the learned Single Judge, in the present case, was sitting as an appellate Court on the decision rendered in Civil Rule No. 259/1995 little realising that the directions contained Civil Rule No. 259/1995 were, in substance, upheld, in toto, by the appellate Court in Writ Appeal No. 330/1997.

Can the terms and conditions of the service of a Government servant, unlike that of an employee in a private sector, be altered unilaterally by the statutory or constitutional authority concerned ? If so, whether such alteration can be made with retrospective effect and if so, what is the extent of such powers ? Will the power to amend the conditions of service retrospectively include the power to take away or abridge, with retrospective effect, those rights, which have already accrued to the Government employee under the existing rules and before the amendment was introduced ?

20. Before entering into the merit of the various submissions made, on behalf of the parties, it is, to our mind, appropriate to ascertain the legal aspects of the law, which govern the case of the parties concerned. While considering this aspect of the matter, it is necessary to bear in mind that though the employment of a Government employee and the employment of a person in a private sector is, originally, contractual in nature, what distinguishes a Government employee from others is that a Government employee acquires, on his appointment to a Government office, a status. As a result of this status, which he acquires, his service conditions are determined on the basis of the relevant provisions of the Constitution and the statute. In consequence thereof, a Government servant''s rights and obligations can be determined by the statutory or the constitutional authority concerned and for such exercise of powers, the authority concerned does not, unlike the case of a private employee, require consent from the Government employee concerned. In other words, Government can alter terms and conditions of its employees unilaterally, though, in practice, such alteration may face protest from the employees concerned. This does not, however, mean, I must hasten to add, that the consent of the Government employee is a condition precedent for changing the terms and conditions of his service by the statutory or constitutional authority in terms of the provisions of the relevant statutes and/or the Constitution. The reference made by the learned Advocate General to the case The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, is not, therefore, entirely misplaced. In this case, the Apex Court held thus :
"It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a ''status'' on appointment to his office. As a result, his rights and obligations are

liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and through in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding."

21. What follows from the above is that the service conditions of a Government employee can be changed by making changes in the relevant statutes or rules by the statutory or constitutional authority concerned in terms of the statute and/or the Constitution. This power to alter conditions of service, undoubtedly, includes the power to alter the conditions of service with retrospective effect. Such a broadly stated position of law governing the status of a Government employee is, however, subject to the condition that the benefits acquired with regard to the conditions of service, by virtue of the relevant existing statutory or constitutional provisions, cannot, with retrospective effect, be taken away, abridge or withdrawn by amending ''the statute concerned and/ or the Constitution nor can such amendments be allowed if such amendment is arbitrary, discriminatory, unreasonable or violative of Articles 14 and 16 inasmuch as by acquiring such benefit, the employee is vested with a right and such a right cannot be taken away by a mere change in the statute or the rules with retrospective effect. While considering this aspect of the matter, the observations of the Apex Court in Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, may be referred to, and borne in mind, which run as follows : -

"12. In T.R. Kapur v. State of Haryana three petitioner T.R. Kapur, Mahinder Singh and V.D. Grover, who were Diploma holders, were working as Sub Divisional Officers on regular basis under the unamended Rule 6(b) of the Punjab Service of Engineers Class-I, Public Works Department (Irrigation Branch) Rules, 1964. They were eligible for promotion as Executive. Engineer in Class-I service despite the fact that they did not possess a degree in Engineering. By the notification, dated 22.6.1984, Rule 6(b) was amended and it was provided that a degree in Engineering was an essential qualification for promotion as Assistant Engineers (Irrigation Branch) to Class-I service and thereby the petitioners were rendered ineligible for promotion to the post of Executive Engineer in Class-I service. The amendment was challenged in this court by way of a petition under Article 32 of the Constitution of India. This Court came to the conclusion that the retrospective effect given to the amendment was violative of Articles 14 and 16 of the Constitution of India on the following reasoning : (SCC p. 595, Para 16).

"It is well settled that the power to frame Rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or altered the Rules with a retrospective effect : B.S. Vedera v. Union of India, Raj Kumar v. Union of India, K. Nagaraj v. State of A.P. and State of J&K v. Triloki

Nath Khosa. It is equally well settled that any Rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualification for promotion, is also competent to change the qualifications. The Rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This Rule is however subject to a well recognised principle that the benefit acquired under the existing Rules can not be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a Rule under the proviso to Article 309 which affects or impairs vested rights".

13. Finally this Court considered the effect of retrospective legislation on the vested rights of the affected person in P.D. Agarwal v. State of U.P. under the U.P. Service of Engineer (Buildings and Roads branch) Class-II Rules, 1936, the Assistant Engineers substantively appointed against temporary vacancies became members of the service and were entitled to seniority on the basis of continuous length of service. The Rules were amended in the years 1969 and 1971 wherein it was provided that the Assistant Engineers would only become members when they are selected and appointed against the quota meant for them and their seniority would be determined only for the date of order of appointment in substantive vacancies. These amendments were made with retrospective effect thereby taking away the vested rights of the Assistant Engineers appointed against temporary posts. The High Court held that the retrospective amendment of the Rules to be arbitrary and unconstitutional. This Court held the judgment of the High Court on the following reasoning : (SCC p. 637, Para 16; p. 638, Para-18; p. 639, Para-18).

"It has been urged that Government has the power to amend Rules retrospectively and such Rules are quite valid. Several decisions have been cited of this Court at the bar. Undoubtedly, the Government has got the power under proviso to Article 309 of the Constitution to make Rules and amend the Rules giving retrospective effect. Nevertheless, such retrospective amendments can not take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution."

22. From a close reading of the law laid down in Tushar Ranjan Mohanty (supra), it becomes evident that the power to frame rules to regulate conditions of service under the provisions of Article 309 carries with it the power to amend or alter the rule with retrospective effect. This rule is, however, subject to well recognised principle that the benefit acquired under the existing rule or a right vested in a Government employee under the existing rules cannot be taken away by amending the rules with retrospective effect, for, there is no power under the proviso to Article 309 enabling the Government to make rule in a manner so as to take away or impaire an accrued or vested right.

23. That the conditions of service can be amended even with the retrospective effect is too well settled to be doubted. In the case of K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, the Apex Court has made it clear that such a power flows to the Government under the proviso to Article 309 read with Article 313 of the Constitution and that the power so conferred on the Government is Legislative in character and is to be distinguished from an ordinary rule-making power. We may, for the sake of brevity, refer to some observations made, in this regard, in K. Nagraj (supra), which read, thus : It is well settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309 and that the power to amend these rules carried with it the power to amend them retrospectively. The power conferred by the proviso to Article 309 is of a Legislative character and is to be distinguished from an ordinary rule making power, The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. Therefore, the amendment made to the Fundamental Rules in the exercise of power conferred by Article 309, by which the proviso to rule 2 was deleted retrospectively, was a valid exercise of Legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but until that is done, the exercise of the power can not be challenged as lacking in authority. (See B.S. Vadera Vs. Union of India (UOI) and Others, Raj Kumar Vs. Union of India (UOI) and Others,

24. What logically follows from the above discussions is that unlike an employee in a private sector, a Government employee''s terms and conditions of service are governed by the relevant statutes, rules and provisions of the Constitution. Such conditions of service can be changed by the constitutional or statutory authority concerned unilaterally. Such a change can even be made with retrospective effect; but benefits'' acquired or a right, which has accrued or comes to be vested in a Government employee by virtue of the existing rules, cannot be impaired, far less, taken away by amending the conditions of service with retrospective effect. Whether an amendment, with retrospective effect, has taken away an accrued or vested right is, however, essentially a mixed question of fact and law and can be determined on the basis of the facts of a given case.

What was the real question, which the WP(C) No. 62/2000, had raised for determination and whether the Writ of mandamus, issued in a given case, can be superseded by the Government and if so, how and to what extent ?

25. In the case at hand, the question really is not as to whether the right to receive Dearness Relief under unamended Rule 55 A which is, indeed, one of the terms and conditions of the employment, can be taken away by amending the Rule. The question is also not as to whether the unamended Rule 55 A had vested any right in the writ appellant and whether, by virtue of the impugned notification, dated 27.10.1998, such accrued right is sought to be taken away. The question really is as to whether any right stands accrued to the writ appellant under the Writ of

mandamus issued, on 22.4.1997, in Civil Rule No. 259/1995 and upheld, on 25.6.1997, in Writ Appeal No. 330/1997 ? If so, whether such a right can be taken away and whether the right has, in fact, been taken away by the impugned notification, dated 27.10.1998, and if so, whether the impugned notification is constitutionally valid ?

26. While considering the questions posed above, it is important to bear in mind that a legislature has no legislative power to render ineffective an earlier judicial decision by making a law, which simply declares the earlier judicial decision invalid or not binding, for, such power would, if exercised, not to be an exercise of mere legislative power, but, in effect, exercise of judicial power. Since legislature has no judicial power, such legislation would amount to encroachment upon judicial powers of the State, which remains exclusively vested in Courts. Such exercise of judicial power is impermissible under the law. That this position of law is beyond dispute can be derived from G.C. Kanungo and D.C. Routray Vs. State of Orissa, wherein it has been laid down as follows :-

"17. It is true, as argued on behalf of the petitioners, that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions invalid or not binding, for such power if exercised by it encroaching upon the judicial power of the State exclusively vested in Courts. The said argument advanced, since represents the correct and well-settled position in law, we have thought it unnecessary to refer to the decisions of this Court cited by learned counsel for the petitioners in that behalf and hence have not referred to them."

27. In short, by changing the factual or legal situation based on which a judicial decision is rendered, the legislature may set at naught a judicial decision; but this can be permitted in a limited number of cases. One of such instances can be when an impost or levy is interfered with by the Court for some infirmity in the law, such as, the fact that the impost or the levy is without valid basis. Such an invalid law may, however, be validated by the legislature by making necessary provisions of law enabling the State to levy, provided that it has competent to legislate on the subject. When such a course can possibly be adopted by a legislature has been described in Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, by the Apex Court in the following words :

"A court''s decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

28. Can the above observations of the Apex Court made in PC Mills (supra) be stretched to mean that whenever any factual or legal situation is altered by retrospective legislation, a judicial decision rendered by a Court, on the basis of such factual or legal situation prior to such alteration, would inevitably and always cease

to be effective or binding on the parties? This question has been answered in the negative in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, The Apex Court, while dealing with this aspect of the matter, has held thus :

"The Life Insurance Corporation leaned heavily on the decision of this Court in Shri Prithvi Cotton Ltd. v. Broach Borough Municipality in support of this contention that when the settlement in so far as it provided for payment of annual cash bonus was set at naught by the impugned Act with effect from 1st April, 1975, the basis on which the judgment proceeded was fundamentally altered and that rendered the judgment ineffective and not binding on the parties. We do not think this decision lays down any such wide proposition as is contended for on behalf of the Life Insurance Corporation. It does not say that whenever any factual or legal situation is altered by retrospective legislation, a judicial decision rendered by a Court on the basis of such factual or legal situation prior to the alteration, would straight way, without more, cease to be effective and binding on the parties. It is true that there are certain observations in this decision which seem to suggest that a Court decision may cease to be binding when the condition on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances but these observations have to be read in the light of the question which arose for consideration in that case."

29. When the decision of a High Court is not merely declaratory in nature holding any impost or tax as invalid so that a statute can remove the defect, by is a judgment giving certain rights to a party by issuing a Writ of mandamus and if the factual or legal situation, based on which such a judgment has been rendered, becomes erroneous, the remedy really lies by way of appeal or review; but so long as the judgment stands, it cannot be disregarded or ignored. Reference, in this regard, may be made to Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, wherein the Apex Court has held thus :

"Here, the judgment given by the Calcutta High Court which is relied upon by the petitioners is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a Writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it can not be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is Constitutionally valid or not, the Life Insurance Corporation is bound to obey the Writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year, April, 1975 to 31st

March, 1976 to Class-III and Class-IV employees. Now to the grounds of Constitutional challenge."

30. From what have been discussed above, as a whole, it clearly follows that service conditions of a Government employee can be changed by making changes in the relevant statute or Rules. For making such changes, statutory or constitutional authority does not require consent of the Government employee. The Government has even the power to amend the rules governing the conditions of service with retrospective effect. Such a broadly pronounced position of law governing status of a Government employee is, however, subject to the condition that the benefits, which have accrued with regard to the conditions of service, by virtue of the relevant existing statutory or constitutional provisions cannot, with retrospective effect, be taken away, abridged or withdrawn by amending the statute or constitution nor can such amendments be allowed if the same is arbitrary, discriminatory, unreasonable or violative of the fundamental rights. But this power does not empower the authority concerned to take away the accrued rights. When the judgment of a Court is not merely declaratory in nature, but vests certain rights in a party to the proceeding before the Court, such a right cannot be taken away unless the foundation for such a right is completely altered.

31. In the light of the position of law pointed out hereinabove, let us, now, revert back to the case at hand.

Did Rule 55 A, introduced in the Central Civil Services (Pension) Rules, 1972, as adopted, in the State of Tripura, by virtue of notification, dated 2.7.1972, issued by the Government of Tripura, vest any legal or fundamental right in the Writ appellant to receive Dearness Relief ? What was the real controversy in Civil Rule No. 259/1995 ? Has the impugned notification, dated 27.10.1998, brought, now, any change to what was read and understood in Civil Rule No. 259/1995 ?

32. Bearing in mind the position of law as discussed and indicated above, when we revert to the case at hand, what attracts our eyes, most prominently, is that for fairly appreciating the nature of the reliefs, which the petitioner-appellant has sought for, the real controversy, which was raised in Civil Rule No. 259/1995, and the decision rendered therein, have to be correctly understood and borne in mind. For this purpose, the background in which the decision in Civil Rule No. 259/ 1995 aforementioned was rendered needs to be correctly recalled and stated.

33. By virtue of the notification, dated 8.8.1978, the Government of Tripura adopted the Central Civil Services (Pension) Rules, 1972, in respect of the Government servants, who were in the service of the Government. What the said notification, however, clarified was that wherever the word "Central Government" appeared in the said Pension Rules, 1972, the same should be read as "State Government". When the Third Pay Commission, constituted not by the Central Government but by the State Government, recommended, in its report of February 1998, payment of

Dearness Allowance to the serving employees of the State Government at the same rate and periodicity at which the Central Government grants Dearness Allowance to their employees, the Government of Tripura, vide its notification, dated 18.7.1988, accepted the recommendations so made meaning thereby that the Government of Tripura agreed to pay Dearness Allowance to its employees at the same rate at which, and the periodicity with which, the Central Government paid the Dearness Allowance to their employees. In other words, the Government of Tripura agreed, in principle, to pay to its employees, who were in the service of the State Government, Dearness Allowance at the same rate at which, and the periodicity with which, the Central Government pay Dearness Allowance to their employees.

34. It has, now, been emphasised by the State respondents before this Court that the State Government would not like to make any discrimination on the question of payment of Dearness Relief to the pensioners and Dearness Allowances to the serving employees indicating thereby that the Government''s stand is that the rate at which they would pay Dearness Allowance to their serving employees, Dearness Relief would be paid to them to the pensioners at the same rate. Keeping these aspect of the matter in view, when we come to Rule 55 A, which has generated the heat, we find that this Rule reads as follows :

"Relief against price rise may be granted to the pensioners and family pensioners in the form of Dearness Relief at such rates and subject to such condition as the Central Government may specify from time to time."

35. From the careful reading of Rule 55 A, it clearly transpires that Rule 55 A is meant for the pensioners of the Central Government and envisages payment of Dearness Relief to the pensioners as a relief against price rise; but this Dearness Relief was to be made available to the pensioners subject to such rate and condition as the Central Government may specify from time to time. This Rule makes it abundantly clear that the rate of Dearness Relief may keep changing and may not, therefore, remain static. At the same time, the Dearness Relief may become subject to different conditions at different points of time depending upon what the Central Government chooses to specify.

36. It has, now, been contended, on behalf of the State respondents, that by adopting Rule 55 A, the State Government had not actually undertaken to pay Dearness Relief at the same rate at which and subject to the same condition to which the Central Government pays Dearness Relief to their employees. What, according to the State respondents, the State Government had agreed by adopting Rule 55 A was merely that it had adopted the policy of paying Dearness Relief to its pensioners, as a relief against price rise, at the rate at which, and subject to such conditions to which, the State Government decides to make such payments. With the help of present amendment to Rule 55 A, introduced by the impugned notification, dated 27.10.1998, according to the State respondents, the Government wanted to make Rule 55 A clear by specifying that in place of the expression "Central

Government", appearing in Rule 55 A, the expression "State Government" shall be read meaning thereby that the State Government undertakes to pay Dearness Relief to its pensioners at such rate at which the State Government decides to give the same. Whether this clarificatory amendment is permissible and valid or not is a question, which we would deal with a little later, but, for the moment, what needs to be understood is that according to the State respondents, the expression "Central Government", occurring in Rule 55 A, shall be read as the "State Government" and when it is so read, according to the State respondents, it becomes obvious that though the State Government agrees to pay Dearness Relief to its pensioners, such payment will be made at such rate and subject to such conditions as the State Government may decide from time to time.

37. What logically follows from what has been discussed above is that the State Government remains, even now, with the help of the impugned clarificatory notification, dated 27.10.1998, free to decide to pay Dearness Relief at the rate at which and subject to such conditions to which the Central Government makes the Dearness Relief available to their employees. At the same time, the State Government may also decide to pay Dearness Relief at a rate lower or higher than the rate of the Dearness Relief fixed by the Central Government. In other words, by the impugned amending notification, the State Government assumes the power to decide the rate of Dearness Relief and the condition subject to which such Relief would be made available to the pensioners of the State Government.

38. The question, now, is as to whether Rule 55 A was read or understood differently in Civil Rule No. 259/1995 aforementioned than what is, now, being sought to be interpreted by the State Government with the help of the impugned notification, dated 27.10.1998 ? By the impugned clarificatory amendment, the State Government has assumed, as contended by the State respondents, the power to take necessary decision in the matter of Dearness Relief. This, in term, means that the discretion to fix the rate of Dearness Relief would be of the State Government.

39. On a careful reading of the writ application filed in Civil Rule No. 259/1995 aforementioned, we find that the said Pensioners'' Association had read and interpreted Rule 55 A exactly in the same manner and to the same effect as is, now, being sought to be achieved by the State Government inasmuch as in para 13 of the writ application, the said Pensioners'' Association had stated as follows.

"13. That the application of the "Table" of the notification, dated 08.08.1978 adopting CCS (Pension) Rules, 1972, the said amendment of the Pension Rule 55 A has to be read as :

"Relief against price rise may be granted to the pensioners and family pensioners in the form of Dearness Relief at such rate and subject to such conditions as the State Government may specify from time to time."

40. While explaining, however, as to why the State Government shall pay Dearness Relief at the rate fixed by the Central Government, the said Pensioner''s Association further stated in their Writ application as follows : -

"14. That no condition has been specified by the State Government and as such the conditions behind the granting of Dearness Relief and which are specified by the Central Government are deemed to have been adopted by the Respondent State Particularly after the adoption of the amendment Rule 55 A as stated above. But even after the adoption of the amendment the Respondent State has the following irrational and inconsistent mode of compensating the pensioners for rise in cost of living beyond average consumers price Index - 608. Thus from 01.01.1991 to 1.1.1992 the State Government allowed an increase of 4% only whereas the rise was shown to be 20% and accordingly the Central Government allowed it."

15. That the Respondent cannot avoid the "Rate" (in the amended Rule) allowed by Central Government as the rate has direct nexus with the National Consumers Price Index and the principle being "Compensating the pensioners for rise in cost of living beyond average consumers Price Index 608" the Respondent cannot act in arbitrary manner by refusing the rate of compensation by way of Dearness Relief."

16. That it is significant to note that rate of Dearness Allowance (DA) to the Government servants and the Dearness Relief (DR) to the pensioners are given at the same rate on percentage basis, as a result, the total quantum of Dearness Allowance is double the amount received by the pensioners. It is for this reason the Pay Commission in 1982 recommended for allowing D.R. at double the rate of D.A.

17. It is also important to note that the rate of D.R. allowed by the Respondent No. 1 is 42% behind the Central Government rate as on 01.04.1995, but strangely the Government in its "information" submitted to the 10th Finance Commission state "The D.A. for mula in the State is the same as the case of Central Government." (Vide page - 88 of Finance Department Publication of "Information on Subsidiary point presented to the 10th Finance Commission, 1993). It is thus apparent that the amount earmarked for DR/DA is being diverted to other heads improperly depriving the legitimate demand of the pensioners and the employees as well.

18. That this is further to bring on record that in the "Memorandum to the 10th Finance Commission, 1993" the Respondent No. 2 has shown under the Head "2071 Pension and other Retirement Benefits" a growth rate during 1995-2000 A.D. of 20%. This growth rate is calculated on the anticipated increase of D.R. made on review from time to time. The Budget proposal for 1995-96 under the Head 2071-Pension & Misc. Government Services given the following figures : -

| | |
|---|---|
| | (Rs. in .000) |
| Actual of 1993-94 | Rs. 28,68,99 |

| | |
|---|---|
| Estimated 1994-95 | Rs. 30,39,75 |
| Revised 1994-95 | Rs. 31,90,00 |

The above statistics showing Rs. 286899 (1993-94) rising to Rs. 31,90,000 in 1994-95 indicates an increase of 26%. But the actual benefit as Dearness Relief given this period is only 11% (arise from 90% to 71%).

Extracts of the memo to the 10th Finance Commission and the budget for 1995-96 is annexed and marked as Annexure-15.

19. That it is evident from the above documents and discussions that the actual requirements towards the relief to the pensioners are taken into consideration and virtually admitted as "Due". But in actual practice the relief is denied. The reason are neither explicit in the memoranda enhancing the rate of D.R. (Annexures-1 to 10), nor explained by the State Respondent on submission of demands and representations."

41. From a bare reading of what have been pointed out above, it is become abundantly clear that by virtue of the impugned notification, dated 27.10.1998, the meaning, which is, now, sought to be attributed to the original notification, dated 2.7.1992, of the State Government does not change at all. The writ petitioners in Civil Rule No. 259/1995 aforementioned had clearly understood and mentioned in their writ petition, in no uncertain words, that the Dearness Relief, as per Rule 55 A, was payable at such rate and subject to such conditions as the State Government may specify from time to time. In short, what the impugned notification, now, seeks to achieve was already evident to the said Pensioner''s Association and also to the Court. In other words, by virtue of the presently impugned notification, the State Government does not really succeed in changing the meaning of Rule 55 A from what the same was understood by all concerned in Civil Rule No. 2597 1995 aforementioned.

How the said Pensioners'' Association justify, in Civil Rule No. 259/1995, their demand for payment of Dearness Relief at the rate fixed by the Central Government and why did the Court issue Mandamus therein ?

42. Now, the question, which arises for consideration is as to why, while knowing that Rule 55 A empowered the State Government to fix the rate of Dearness Relief, the said Pensioners'' Association had claimed Dearness Relief at the rate at which the Central Government would pay Dearness Relief to their pensioners. The reason as to why the said Pensioners'' Association took the stand in Civil Rule No. 259/1995 aforementioned that though under Rule 55 A, it is for the State Government to decide the rate at which and the conditions subject to which the Dearness Relief would be made available to the State Government pensioners, yet the State Government shall be treated to have decided and is accordingly obliged to pay Dearness Relief at such rate at which and subject to such condition to which the

Central Government would pay Dearness Relief to their employees were enumerated in paras 14 to 19 of the earlier Writ application, which we have already quoted hereinabove.

43. From a combined reading of the contents of paragraph Nos. 14, 15, 16, 17, 18 and 19, which stand quoted above, it clearly follows that according to the said Pensioners'' Association, since the State Government had not specified any condition subject to which Dearness Relief would be available to its pensioners, it logically followed that whatever conditions were specified by the Central Government for making Dearness Relief available to the Central Government pensioners would apply to the case of the State Government pensioners too. At the same time, since the Dearness Relief is nothing but a mode of compensating the pensioners for the rise in the cost of living beyond the average consumers price index, the State Government cannot avoid payment of Dearness Relief at the same rate at which the Central Government decides to give the same to their pensioners, because not giving of such a rate would be arbitrary inasmuch as the rate allowed by the Central Government has direct nexus with the Consumer Price Index. The third reason assigned for raising the demand of Dearness Relief at the rate at which the Central Government was making the same available to the Central Government pensioners was that the Dearness Allowance and the Dearness Relief are required to be given to the persons concerned at the same rate and on the basis of the same percentage and, hence, when the State Government had on the recommendations of their Third Pay Commission, accepted the recommendations for payment of Dearness Allowance to its serving employees at the r ate at which the Dearness Allowance was being given to the Central Government employees, there was no reason as to why the Government shall not pay the Dearness Relief at the same rate at which the Central Government paid th Dearness Relief to their pensioners. The fourth reason assigned for the demand so raised by the Said Pensioners'' Association was that the rate of Dearness Relief allowed by the State Government was 42% behind the Central Government rate as on 1.4.1995, though, strangely enough, the State Government in its "information" submitted to the 10th Finance Commission, had stated. "The D.A. formula in the State is the same as the case of Central Government", meaning thereby that the amount earmarked for Dearness Relief/Dearness Allowance was being diverted to other heads improperly depriving the legitimate demands of the pensioners and the employees as well. The fifth reason was that the statistics show as to how the State Government was projecting its requirements in respect of pensionary benefits before the Central Government and the Finance Commission, but diverting and/or not utilising the funds, so earmarked, to the pensioners.

44. In short, what falls from the discussions held above is that notwithstanding the fact that Rule 55 A gave the power to the State Government to decide the rate of payment of Dearness Relief to its employees at the rate at which, and subject to the conditions to which, the State Government decides to pay the same, the said

Pensioners'' Association claimed Dearness Relief at the rate at which the Central Government paid the same to their pensioners from time to time. For making this demand, altogether five prominent grounds were, as already indicated hereinabove, raised by the said Pensioners'' Association in Civil Rule No. 259/1995 aforementioned, namely, [I] Since the State Government has not specified any special conditions for making the Dearness Relief available to its pensioners, the conditions specified by the Central Government, in this regard, shall be deemed to have been adopted by the State Government too. [II] The Dearness Relief granted by the Central Government has a direct bearing and nexus with the National Consumer Price Index and the Dearness Relief is, thus, nothing but a compensation to the pensioners to meet the rise in the cost of living beyond average Consumer Price Index and, hence, it would be arbitrary, on the part of the State Government, to refuse to pay Dearness Relief at the same rate at which the Central Government, on account of the rise in the cost of living of average consumers, decides to pay to their pensioners. [III] When the State Government has adopted the policy of making no discrimination between the serving employees and the pensioners in the matters of Dearness Allowance and Dearness Relief, there is no reason for the State Government not to pay the Dearness Relief to their pensioners at the rate at which the Central Government pays to their employees, when the State Government pays to their serving employees Dearness Allowance at the rate at which the Central Government pays the Dearness Allowance to their employees. [IV] The rate of Dearness Relief allowed by the State Government is 42% behind the Central Government rate as on 1.4.1995, but belying this reality and the state of affairs, the State Government in its "information", submitted to the 10th Finance Commission, had stated, "The D.A. formula in the State is the same as the case of Central Government", meaning thereby that the amount earmarked for Dearness Relief/Dearness Allowance is being diverted to other heads improperly depriving the legitimate demand of the pensioners and the employees as well. [V] The statistics show how the State Government was projecting its financial requirements before the Central Government and the Finance Commission in respect of the pensionary benefits, but either diverting and/or not utilising the funds so earmarked.

45. Did the State respondents challenge the conclusions so reached by the said Pensioners'' Association and the reasons so assigned by them for claiming Dearness Relief at the rate at which the Central Government pays the same to their pensioners ? The answer to this question brings us to the affidavit-in-opposition filed by the State respondents in Civil Rule No. 259/1995 aforementioned.

46. From a careful reading of the contents of the affidavit-in-opposition filed in Civil Rule No. 259/1995, it clearly follows that the State Government did not dispute the fact that the reason assigned by the said Pensioners'' Association for demanding Dearness Relief at the rate aforementioned were illogical, false, wrong, irrational or incorrect. Far from this, the categorical stand of the State Government was thus, "the State respondents have already in principle and in practice implemented all the

claims made in this writ petition ..... As the State respondents have already decided the point that both the existing employees of the respondents, the pensioners and also the family pensioners would get monetary benefits as per the Central Government rate, their arises no question of issuing any writ in the nature of mandamus to the respondents."

47. From a bare reading of the contents of the "above affidavit filed by the State respondents, what emerges is that the State respondents accepted as true and correct the reasons assigned by the said Pensioners'' Association for demanding Dearness Relief at the rate aforementioned and the State respondents also conveyed to the Court that the State Government had, in fact, decided that not only the serving employees but also the pensioners would receive monetary benefits, such as, Dearness Allowance and Dearness Relief at the same rate at which the Central Government gives the same to their employees and pensioners respectively.

48. What emerges from the above discussion is that with the help of the impugned notification, dated 27.10.1998, the State Government has assumed the power to decide the rate at which and the conditions subject to which the State Government would pay Dearness Relief to their pensioners. This position of law has never been in doubt and had not been in doubt even in Civil Rule No. 259/95. The presently impugned notification does not, therefore, change and/or set at naught the earlier notification, dated 2.7.1992, whereby the State Government had adopted Rule 55A. A combined reading of these two notifications show that the State Government has assumed the power to decide the rate at which it would make Dearness Relief available to its pensioners. The fact of the matter, however, remains that in accordance with the powers, which the State has assumed to itself, the State Government had already, as is reflected from its affidavit filed in Civil Rule No. 259/95 aforementioned, taken the decision to pay Dearness Relief at the same rate at which the Central Government would pay to their pensioners. The only difficulty expressed by the respondents in their earlier writ petition was that the payment of Dearness Relief cannot be made by ignoring the financial capability, the liabilities, responsibilities and duties of the State Government to its people, in general. In support of its plea of poor financial ability to pay Dearness Relief to its pensioners at the rate at which the Central Government makes the same available to their pensioners, the State Government pleaded, in the earlier writ petition, that the State is solely dependent upon central assistance and that its total developmental activities including payment of Dearness Allowance and Dearness Relief depended on the central assistance made from time to time.

49. What crystallises from the above discussions is that in Civil Rule No. 259/95, the State Government did not dispute and could not have disputed that the demand of the said Pensioners'' Association was reasonable, logical and justified, that the State Government had already, on principal, decided to pay Dearness Relief at the rate at which Dearness Relief was being made available by the Central Government to their

pensioners. What was, however, pleaded by the State respondents to wriggle out of their so pronounced decision to pay Dearness Relief at the rate aforesaid was that the State Government was unable to implement this decision on account of their financial constraints. Thus, the only factor, which according to the respondents hindered the implementation of their decision to pay the Dearness Relief at the Central Government rate was the financial constraints of the State Government.

50. What is, now, of utmost importance to note, while considering the above aspect of the matter, is that in Civil Rule No. 259/1995, the learned Single Judge undertook an exercise, with the help of the officials of the State respondents, to ascertain if the plea of the financial constraints had taken by the State respondents was genuine and whether such financial constraints had really hindered and stopped the State respondents from fully implementing their decision to pay the Dearness Relief at the rate fixed by the Central Government. After holding an extensive enquiry into the matter, the learned Single Judge concluded as follows :

It is clear from the foregoing discussions that the State Government i.e. the respondents defaulted in making payment of Dearness Relief promptly. It has also been quite clear from the discussion made above that the State Government received the amount, hence it is ill-behaved to say that the dues will be cleared up when it will be possible. (Emphasis is supplied)

51. A careful reading of what was observed and concluded above clearly indicates that the plea of the State Government that they did not have the financial ability to pay Dearness Relief at the rate at which the said Pensioners Association had demanded was factually found incorrect. Following these conclusions, which has remained uncontroverted till today, the learned Single Judge directed as follows :

I order and direct the respondents to pay 20% of the unpaid Dearness Relief out of 42% latest by 2nd June, 1997 minus the amount, if any, is paid towards Dearness Relief during pendency of the writ petition and the balance of 22% of the Dearness Relief by 22nd August, 1996. Keeping in view of the hardship which the pensioners are passing through at this old age, I hope that the Government of Tripur shall not cause delay in clearing up the dues within the time limit I have mentioned above.

52. For coming to the above conclusions and for issuing the directions mentioned hereinabove, the learned Single Judge also took into account the object of pension and its importance in the life of pensioners in the following words :

"The term "Pension" has been judicially defined as stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. Therefore, it is debt to the Government.

The Supreme Court in its judgment viz. D.S. Nakara and Others Vs. Union of India (UOI), observed :

"…. The basic framework of socialism is to provide a decent standard of life to the working people and specially provide security from cradle to grave. This amongst others on economic said envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism learning heavily towards Ghandhisan socialism…. After the education is completed, socialism aims at equity in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise……..Then comes the old age in the life of everyone, be he a monarch or a Mahatama, a worker, or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But, here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the state shall ensure the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centers of power Legislative, Executive and Judiciary to strive to set up. Proceeding further the Supreme Court observed that if pensioners from a class, their compensation cannot be by different formula affording unequal treatment."

53. Shorn off the legal rhetoric and the irrelevant details, what survives, finally, from the discussions held above is that the presently impugned notification, dated 27.10.1998, does not bring any change, far less material change, to Rule 55 A as stood adopted by the State Government by virtue of notification, dated 2.7.1992. In the context of its application to the State of Tripura, when Rule 55 A of the CCS Pension Rules, 1972, is examined, even in the light of notification, dated 8.8.1978 (whereby the CCS Pension Rule, 1972, was adopted by the State Government) read with the impugned notification, dated 27.10.1998, what survives is that the Dearness Relief is a relief granted for the purposes of neutralising the price rise. Lest pension granted to a pensioner, which, though an allowance/stipend in consideration of his past services and yet which may form the only means/source of subsistence of his family, becomes redundant, Dearness Relief is granted to the pensioners so that the rise in the cost of living gets neutralised and the amount of pension becomes meaningful and does not remain an empty formality.

54. Keeping the above principle in mind, Rule 55 A was introduced in the CCS Pension Rules, 1972. Since the Dearness Relief is nothing but a relief against price rise, which would obviously keep fluctuating, there can be no fixed rate of Dearness Relief, for, the grant of such a relief may depend on a number of factors including

financial ability of the Government concerned. While, therefore, embodying in Rule 55 A, the concept of Dearness Relief for its pensioners, the Central Government made it clear that this relief would be given at such rate and subject to such condition as the Central Government may specify from time to time. When this Rule was adopted by the Government of Tripura by virtue of its notification, dated 2.7.1992, it means that the State Government too provided for grant of Dearness Relief to its pensioners at such rate and on such condition as the State Government may specify from time to time. In view of the fact that the State Government had already adopted, by virtue of its notification, dated 18.7.1988, its Third Pay Commission''s recommendations for payment of Dearness Allowance to its serving employees at the same rate at which the Central Government pays to their employees Dearness Allowance, which is nothing but a compensation for the rise in cost of living, and in view also of the fact that the State Government did not want and still profess to stand by the same policy of not making any discrimination between its serving employees and the pensioners, in the matter of giving such relief, they consciously decided to give, as indicated hereinabove, Dearness Relief to its pensioners at the same rate at which and subject to the same conditions to which the Central Government gives Dearness Relief to their pensioners. In practice, however, the State Government did not pay Dearness Relief at the Central Government rate. Feeling aggrieved, the said Pensioners'' Association approached this Court with the help of Civil Rule No. 259/1995. In this Civil Rule, while pleading before the Court that the State Government was keen to pay Dearness Relief at the same rate at which the Central Government pays the same to their pensioners, the State Government pleaded, at the same time, its inability to do so on account of its financial constrains inasmuch as its financial resources were dependent largely upon the Central assistance and the financial assistance received by the Central Government were not to be utilised only for payment of Dearness Relief, but for other developmental activities of the State and also to meet other liabilities, responsibilities and duties of the State Government towards its people, in general. However, on a careful scrutiny of the relevant official records of the State Government, the learned Single Judge concluded, as already indicated hereinabove, that the plea of financial inability taken by the Government was not in consonance with the materials on record inasmuch as the State Government had, indeed, received money for the purposes of making payment of pensionary benefits to its pensioners including Dearness Relief and the learned Single Judge, therefore, felt constrained to observe and did observe this, It is ill-behaved to say the that dues will be clearly up when it will be possible". On these premises, namely, that the State Government had consciously decided to pay Dearness Relief to its pensioners at the same rate at which the Central Government pays the same to their employees coupled with the fact that the State Government had, indeed, received the funds, which ought to have been utilised for the purposes of making payment of Dearness Relief but had not done so, the learned Single Judge passed the directions quoted hereinabove, which were, undoubtedly, as candidly conceded, at the time of hearing

of this appeal by even the learned Advocate General, a direction in rem to the Government to pay to its pensioners Dearness Relief in terms of the mandamus so issued by the Court. Aggrieved by the directions so passed, the State Government preferred an appeal. When the said appeal came up for hearing, the Government did not dispute the fact that it had taken a decision to pay Dearness Relief as indicated hereinabove nor did the Government dispute the findings reached by the learned Single Judge that he State Government had received funds from the Central Government and had the financial capability to pay Dearness Relief in terms of its decision. What was sought for and obtained by the State respondents, as appellants in Writ Appeal No. 330/1997, was merely an extension of time to clear the dues. The findings of the learned Single Judge remained unchallenged and undisputed. The findings, so reached, are, therefore, binding on the parties to the Civil Rule No. 259/1995 aforementioned.

55. After issuing the presently impugned notification, dated 22.10.1998, the State Government refused to pay Dearness Relief at the rate at which the Central Government had made the same available to their pensioners. It is this denial, which led to the institution of WP(C) No. 62/2000. Surprisingly, in this writ petition, the State respondent gave a complete go-bye to the stand that they had taken in Civil Rule No. 259/1995. While in Civil Rule No. 259/1995, the State Government did not dispute the fact that it had accepted the recommendations of its own the 3rd Pay Commission to grant Dearness Allowance to its employees at the Central Government rates and to review the same at such periodicity at which the Central Government reviews and pays the Dearness Allowance to their employees, the State respondents have, now, taken, in the present writ petition, the plea that the State Government had not accepted any such recommendations. The plea, so taken by the State respondent, is, to say the least, completely incorrect inasmuch as the categorical admission of the State Government in the earlier writ petition was that it had accepted, in principle, the recommendations of the 3rd Pay Commission to grant Dearness Allowance to its serving employees at the rate at which the Dearness Allowance was made available to its employees by the Central Government. Similarly, the clear and unequivocal assertion of the State Government, in the earlier writ petition, was that they had taken the decision to pay the Dearness Relief to its pensioners at the same rate at which the Central Government makes available Dearness Relief to their pensioners, the only limitation, however, being projected was the "State Government''s financial inability to pay the same to their employees." We are constrained to put it on record that we are distressed in the manner in which the affidavit has been filed by the State respondents in the present writ petition belying what they had stated in their earlier writ petition. We might have suggested taking action against the persons, who are responsible for making such falsified statements in an affidavit filed in a writ petition and the person, who swore the same, but we refrain from doing so by only cautioning the State respondents and its functionaries from repeating such acts in

future.

56. The fact, however, remains that with the adoption of Rule 55A, when the State Government adopted the policy of granting of Dearness Relief to its employees, it undertook, as reflected from its pleadings and stand in the earlier writ petition, to pay Dearness Relief at the same rate at which the Central Government pays the Dearness Relief to their pensioners. Until the time the conditions on the basis of which the directions contained in the order, dated 22.4.1997, aforementioned passed by the learned Single Judge in Civil Rule No. 259/1995 aforementioned and upheld in the judgment and order, dated 25.6.1997, passed in Writ Appeal No. 330/1997, materially change, the Mandamus issued by this Court cannot be refused to be obeyed. The mandamus were issued, we are tempted to emphasise, on account of two factors, namely :

1. That the policy decision of the State Government was to pay Dearness Relief to its pensioners at the same rate at which the Dearness Relief is made available by the Central Government to their pensioners and this policy is a reasonable one.

2. The State Government had the financial ability to make payment of Dearness Relief at the rate aforementioned and must pay so, for, pension is not a bounty but a well deserved right of a Government servant, who receives it in consideration of his past service, and the Dearness Relief is nothing but neutralisation of the price rise so that the pension does not become meaningless and empty formality.

57. So long as the two factors indicated hereinabove survive, the mandamus of the Court cannot, for the reasons discussed above, be defeated nor can the Dearness Relief be refused to be paid by taking resort to the presently impugned notification, dated 27.10.1998, aforementioned.

58. Having concluded thus, let us, now, examine if the notification, dated 27.10.1998, aforementioned has altered the foundation of the mandamus issued in Civil Rule No. 259/1995 and if so, what is the extent of alteration ?

By virtue of the notification, dated 27.10.1998, published by the Government of Tripura, whether the Government of Tripura has altered the legal and factual foundations of the Writ of mandamus issued, on 22.4.1997, in Civil Rule No. 259/1995 and upheld, on 25.6.1997, in WA No. 330/1997, and whether the mandamus, so issued, has become ineffective in consequence of the notification, dated 27.10.1998, aforementioned ?

59. In the present case, the State respondents have sought to project that the mandamus issued by the Court have become inexecutable on account of the fact that the policy of the State Government, now, stands altered with the help of the presently impugned notification and the State Government does not have financial ability to pay Dearness Relief at the Central Government rate. Both these pleas appear to be misconceived and incorrect. We have already pointed out hereinabove

that by virtue of the presently issued notification, dated 27.10.1998, the State Government does not change the meaning of Rule 55A. It merely clarifies as to what Rule 55A means. This clarification cannot be disputed, but so long as the factors, based on which the mandamus was issued by the Court, are not changed, the State Government must abide by the directions contained in the order, dated 22.4.1997, passed in Civil Rule No. 259/95 and upheld in Writ Appeal No. 330/1997 aforementioned. Though the State Government, in the present case too, has repeated their plea of financial incapacity, the fact remains that there is no categorical statement made either in the writ petition or in the writ appeal that the State Government have not been receiving from the Central Government financial assistance, as were pointed out by this Court, while issuing the writ of mandamus. Considered thus, we have no hesitation in holding that since the State Government has the powers under Article 309 to make changes in the relevant rules governing the service conditions of its employees, the impugned notification cannot be interfered with; but on account of the fact that the conditions based on which the mandamus of the Court were issued by the learned Single Judge, on 22.4.1997, hold good and so long as these conditions continue to exist, the State Government cannot refuse to pay Dearness Relief and abide by the mandamus on the pretext of having taken recourse to the impugned notification, dated 27.10.1998. If the State Government does not have funds sufficient to pay Dearness Relief, the mandamus issued will automatically become inexecutable; but we must hasten to add that merely by issuance of notification, dated 27.10.1998, aforementioned, the State Government cannot say that the basis for the mandamus stands changed. The basis for issuance of the mandamus were, we may reiterate, the decision of the State Government to pay Dearness Relief to its pensioners at the rate at which the Central Government pays the same to their pensioners and the fact that the State Government had, indeed, received funds and was financially capable of making payments of such Dearness Relief. When the State Government has, now, taken a stand that it does not want to make any discrimination between the serving employees and its pensioners and it wishes to maintain Dearness Allowance / Dearness Relief at the same rate, it logically follows that when the State Government has accepted the Finance Commission''s recommendations to pay Dearness Allowance to its serving employees at the rate at which the Central Government pays Dearness Allowance to its employees, there is no reason why the State Government shall not, in obedience to the mandamus issued in Civil Rule No. 259/1995, pay Dearness Relief to its pensioners at the rate at which the Central Government pays the same to their pensioners. If the payment of Dearness Relief, as has been directed by the learned Single Judge, leads to some differences or discrimination, the remedy is not to refuse to make the payment of Dearness Relief to the pensioners in terms of the mandamus. The remedy, rather, lies in making payments of the arrears of the Dearness Allowance to the serving employees of the State Government (see Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others,

60. We may also like to point out that in the case of Madan Mohan Pathak (supra), one of the questions, which arose was whether the impugned enactment had violated the fundamental right of property guaranteed under Article 19(1)(f) of the Constitution. Though Article 19(1)(f), which contained the right to property as a fundamental right, no longer survives, the fact remains that though subtle, there is a definite distinction between the right to hold property and the right to receive pension. Pension is a right arising out of the terms and conditions of employment. A Government servant may have more than one property; and if one of such properties or some of such properties are acquired or taken away by the Government, it may not affect the Government employee''s sustenance; but pension of Government employee stands on an entirely different footing, for, pension, in the case of most of the Government employees, particularly, when they are honest and sincere, form the only source of sustenance. Such a valuable right cannot be lightly dealt with by the Government and the Government cannot, without justifiable reason, curtail or take away such a right, and that too, without even according an opportunity of hearing to the affected party (see Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh, (2), Deokinandan Prasad Vs. The State of Bihar and Others, and State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta,

61. While considering the above aspect of the matter, we may recall the observations made by Apex Court in Madan Mohan Pathak (supra), which run thus :

"So far as the right of Class-III and Class-IV employees to annual cash bonus for the year April 1, 1975 to March 31, 1976 was concerned, if became crystallised in the judgment and thereafter they became entitled to enforce the Writ of Mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class-III and Class-IV employees for the year April 1, 1975 to March 31, 1976 in obedience to the Writ of Mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patents Appeal and allowed the judgment of the learned Single Judge to become final. By the time the Letters Patents Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal that, since the settlement, in so far as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from April 1, 1975, Class -III and Class-IV, employees were not entitled to annual cash bonus for the year April 1, 1975 to March 31, 1976 and hence no Writ of Mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any Constitutional challenge to the validity of the impugned Act, that the judgment of the learned Single Judge would have been upturned and the Writ Petition dismissed. But on account of some inexplicable reason, which is difficult to appreciat, the Life Insurance Corporation

did not press the Letters Patent Appeal and the result was that the judgment of the learned Single Judge granting Writ of Mandamus became final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the judgment to carry out the Writ of Mandamus by relying on the impugned Act.

Here, the judgment given by the Calcutta High Court which is relied upon by the petitioners is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the deffect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a Writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it can not be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is Constitutionally valid or not, the Life Insurance Corporation is bound to obey the Writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class-III and Class-IV employees. Now to the grounds of Constitutional challenge.

62. When the rights of a citizen are pitted against the powers of the State, the interpretation, which helps in upholding the rights of the citizen needs to be adopted. Reference may be made to Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, wherein the Apex Court has held thus :

"I may, however, observe that even though the real object of the Act may be to set aside the result of the Mandamus issued by the Calcutta High Court, yet, the Section does not mention this object at all. Probably this was show because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary Act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the States are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a Mandamus from the High Court could not taken away in this indirect fashion."

63. By mere issuance of the presently impugned notification, dated 27.10.1998, as already indicated hereinabove, the foundation or basis for issuance of the writ of mandamus in Civil Rule No. 259/1995 aforementioned cannot be said to have been so fundamentally altered that the issuance of the notification simpliciter is enough

for the Government to deny its obligation to abide by the mandamus issued by this Court. The learned Single Judge, it appears from the reading of the impugned judgment, has fallen into error by, inadvertently, trying to determine the correctness or otherwise of the basis for issuance of the writ of mandamus, in Civil Rule No. 259/1995, instead of determining the legality and constitutionality of the impugned notification, dated 27.10.1998. The learned Single Judge has tried to determine if, as a result of the issuance of Notification dated 08.09.1978 (whereby the Government of Tripura adopted Central Civil Service (Pension) Rules, 1972) read with notification, dated 2.07.1998 (whereby the Government of Tripura adopted Rule 55 A aforementioned), the petitioners under the Government of Tripura have acquired any legal right to receive Dearness Allowance at the rate fixed by the Central Government. As matter of fact, this was not the question at issue WP(C) No. 62/2000, for, the said question already stood answered in Civil Rule No. 259/1995 and had attained finality, the findings therein having not been challenged. Hence, so long as the mandamus of the Court issued in Civil Rule No. 259/1995 aforementioned is not reviewed and interfered with by the appropriate judicial order, the Government and its functionaries remain bound to follow the same. Had the impugned notification, dated 27.10.1998, fundamentally altered the legal and factual foundation/basis of the very issuance of mandamus in Civil Rule No. 259/1995, then, the question might have arisen for consideration as to whether the pensioners had acquired any right to receive Dearness Relief at the rate fixed by the Central Government. If the foundation or basis of the writ of mandamus issued in Civil Rule No. 259/1995 remains unaltered, the mere clarificatory notification, such as the impugned one, cannot make the Government challenge the mandamus by saying that no legal right to receive Dearness Relief, as demanded by the writ appellant, had accrued by virtue of the notification, dated 2.7.1992, whereby State Government had adopted Rule 55 A.

64. The learned Single Judge observed, in his impugned judgment, to the effect that the order, dated 22.4.1997, passed in Civil Rule No. 259/ 1995, was a consent order and, therefore, the question as to whether the notification, dated 27.10.1998 dated 2.7.1992 {whereby State Government adopted Rule 55 A) had given any right to the said Pensioners'' Association to demand Dearness Relief at the rate fixed by the Central Government had not been answered in the Civil Rule No. 259/1995. While considering this aspect of the matter, it needs to be emphasised that in their writ application, the said Pensioners'' Association had stated in paragraphs 14-19 as to why the State Government shall pay to them the Dearness Relief at the rate fixed by the Central Government. The grounds, on which the demand was so raised by the said Pensioners'' Association, were not disputed and/or denied by the State Government and the State Government cannot, now, turn back and say that these grounds were unfounded and it is not, now, open to any writ Court to, once again, sit upon the judgment in Civil Rule No. 259/1995 and determine as to whether the grounds, on which writ of mandamus was so demanded by the Petitioners''

Association, were correct or not. It is only when foundation or basis for the issuance of the writ of mandamus in Civil Rule No. 259/1995 is changed so fundamentally that the mandamus becomes ineffective, one may come to the Court, in an appropriate case, to determine if the said Pensioners'' Association and/or pensioners, such as the appellant, are legally and constitutionally entitled to receive the Dearness Relief at the rate fixed by the Central Government for their pensioners.

65. Coupled with the above, it is also imperative to note that no Government is exempt from the liability to carry out representations, which it makes as regards its future conduct and it cannot, on undisclosed, undefined or unsustainable ground, refuse to carry out such obligation by becoming a judge of its own cause and without giving any opportunity of hearing to the affected party, particularly, when the matter involved is as grave as Dearness Relief of pensioners. In this regard, reference may, once again, be made to Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, wherein, relying upon, M/s Indo Afghan Agency Ltd., reported in AIR 1968 SC 718, the Apex Court has held thus :

"Further more I think that the principle laid down by this Court in Union of India v. Indo Afghan Agencies Limited can also be taken into account in judging the reasonableness of the provision in this case. It was held there (at p. 385)

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it can not on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, or claim to be the judge of its own obligation to the citizen on an ex party appraisement of the circumstances in which the obligation has arisen."

In that case, equitable principles were invoked against the Government. It is true that in the instant case, it is a provision of the Act or Parliament and not merely a Governmental order whose validity is challenged before us. Nevertheless we cannot forget that the Act is the result of a proposal made by the Government of the day which, instead of proceeding u/s 11(2) of the Life Insurance Corporation Act chose to make an Act of Parliament protected by emergency provisions. I think that the prospect held out, the representation made, the conduct of the Government and equities'' arising therefrom, may all be taken into consideration for judging whether a particular piece of legislation, initiated by the Government and enacted by the Parliament is reasonable."

66. The right to live with dignity forms an integral and insevereable part of the right to life guaranteed under Article 21. Dearness Relief, which is nothing, but a mode of neutralising the price rise, is, basically, a right to enable a pensioners to live, at the fague end of his life, with dignity and if once granted, it cannot be withdrawn on undisclosed, unfounded, unreasonable and arbitrary considerations nor can it be, if once granted, be denied without giving the pensioners concerned an opportunity of

hearing. It was correctly contended by the State respondents before the learned Single Judge that the payment of Dearness Relief rests on the policy decision of the State. This is also correct that Rule 55 A, on its mere adoption by the State Government in its Pension Rules, did not ipso facto made the pensioners of the Government of Tripura entitled to receive payment of Dearness Relief at the rate fixed by the Central Government. Though demand for Dearness Relief at the rate fixed by the Central Government was raised in Civil Rule No. 259/1995, what is of immense importance to note is that this demand was not raised on the ground that Rule 55 A mentioned about the Central Government and not the State Government. The demand was, in fact, raised on certain grounds, which we have already indicated hereinabove. These grounds were based on certain set of facts and on inferences drawn from those facts. Those facts and grounds were not disputed. What was pleaded was financial incapacity of the State to pay Dearness Relief at the rate fixed by the Central Government. This plea was, on examination by the Court, rejected. The mandamus accordingly followed. The mandamus, so issued, was allowed to attain finality. The State respondents cannot, now, turn back and say that Rule 55 A does not give any right to the pensioners to demand Dearness Relief at the rate fixed by the Central Government. So long as the basis for issuance of the Writ in the nature of mandamus remains unaltered, mandamus continues and the mandamus has to be followed by the parties concerned. With the help of clarificatory notification, dated 27.10.1998, the basis for the mandamus has not been as already indicated hereinabove, changed.

67. There can be no dispute that it is the State legislature, which has the authority under Entry 42 of List II of VIIth Schedule of the Constitution read with Article 246(3) thereof, to legislate with respect to pension. The power of the State Government to legislate on the question of pension is not the matter of controversy. What is in controversy is that in the face of the mandamus issued in Civil Rule No. 259/1995, whether the State Government by merely resorting to the impugned clarificatory notification, dated 27.10.1998, demand that the mandamus has been set at naught by the impugned notification. In answer to this question, we may merely reiterate that so long as the foundation for issuance of mandamus continues, notwithstanding the notification, dated 27.10.1998, the State Government and its functionaries are bound to follow the mandamus. By the clarificatory notification, dated 27.10.1998, State Government has not, as already indicated hereinabove, succeeded in changing the foundation for the decision in Civil Rule No. 259/1995. Hence, the mandamus continues. The right to receive Dearness Relief at the rate fixed by the Central Government is a right, which has accrued to the pensioners, such as the petitioner, by the decision in the Civil Rule No. 259/1995 and so long as foundation for such a decision survives, the right to receive Dearness Relief in terms of the directions issued therein by the Court shall continue to remain available to the pensioners, such as the appellant.

68. On careful scrutiny of the impugned judgment, we find, as correctly contended on behalf of the appellant, that the learned Single Judge sat upon the judgment passed in Civil Rule No. 259/1995 and, in effect, determined if the directions issued therein were correct and justified. This was wholly impermissible under the law inasmuch as directions, in the nature of writ of mandamus issued in Civil Rule No. 259/1995 had merged into appellate order, dated 25.6.1997 with the passing of the judgment and order, dated 25.6.1997, passed in Writ Appeal No. 330/97, and the learned Single Judge could not have re-opened the matter and allowed the mandamus to be superseded by the impugned notification unless the question, raised by the respondents was a question, which was not considered and decided earlier. It is, no doubt, true that in Civil Rule No. 259/1995, it was contended, on behalf of the respondents in their affidavit-in-opposition, that adoption of Rule 55 A did not confer any right on the pensioners to demand Dearness Relief at the rate fixed by the Central Government for the demand, so raised, the said Pensioners'' Association did not claim that adoption of Rule 55 A had ipso facto entitled them to received Dearness Relief at the rate fixed by the Central Government. For raising such a demand in the said writ petition, the said Pensioners'' Association had assigned certain other reasons. These reasons remained unchallenged. Far from this, the State Government took the stand that it had, on principle, decided to give Dearness Relief at the rate fixed by the Central Government, but, in practice, it was unable to implement the decision on account of financial constraints. The plea of financial incapacity was, upon consideration of the matter, found to be without valid foundation. Hence, mandamus followed. So long as foundation for the writ so issued exists, the State Government, with the help of mere clarificatory notification, dated 27.10.1998, cannot, for the reasons already discussed hereinabove, ignore and/or claim that the mandamus issued in Civil Rule No. 259/1995 and upheld in Writ Appeal No. 330/97 have ceased to be applicable. Though the impugned notification, dated 27.10.1998, does not clearly state that the State Government is no longer bound by the mandamus issued in Civil Rule No. 259/1995, the directions contained therein are, admittedly not being followed by the respondents for not following the mandamus, so issued, the respondents could assign no legally sustainable and/or justified reasons.

69. In the case at hand, same as in the case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, the impugned notification, dated 27.10.1998, does not alter the foundation of the decision in Civil Rule No. 259/1995 aforementioned so fundamentally that one can claim that with the help of impugned notification, the basis for the decision has been removed. In fact, the impugned notification, dated 27.10.1998, which we have already discussed above, merely repeats the position of law that it is the State Government, which has the authority to decide the rate of Dearness Relief. Notwithstanding, however, this factual and legal position, the fact remains that the reasons and basis on which the Writ of mandamus was issued by the Court still remain unaltered and so long as the

same remains unaltered, the State Government has no option but to follow the same. If the mandamus has to be changed, the State Government has to approach this Court for review of this Court''s directions. The State Government cannot sit on judgment of the wisdom of the mandamus issued in Civil Rule No. 259/1995 and claim that the mandamus issued was erroneously issued. If an error has to be reviewed and corrected, it can be done only by the Court, which passed the directions.

70. What crystallises from the above discussion is that the impugned notification, dated 27.10.1998, is within the authority of the State to issue inasmuch as the State has power to amend the terms and conditions of service of an employee. But in view of the fact that the factual and legal foundation of the Civil Rule No. 259/1995 have not been altered so fundamentally by the impugned notification that the mandamus issued therein has become infructuous and/or inexecutable, the State is bound to carry out the directions contained therein. Because of the conclusion so reached, we are of the clear view that the impugned judgment and order, dated 9.8.2002, passed in WP(C) No. 62/2000, needs to be interfered with.

71. In the result and for the reasons discussed above, this appeal succeeds. The impugned judgment and order dated 9.8.2002, passed in WP(C) No. 62/2000 shall accordingly stand set aside and the State respondents are hereby directed to continue to abide by and follow the mandamus issued in Civil Rule No. 259/1995 and upheld in Writ appeal No. 330/97.

72. With the above observations and directions, this Writ appeal shall stand disposed of.

73. No order as to costs.