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Editorial

NO LETUP IN OUR PREPAREDNESS

This issue of Common Bond will reach our subscribers/readers after the conclusion of the annual ritual of burning the effigy of Ravana on the day of Dussehra, heralding the triumph of good over evil as well the Festival of Lights - Deepavali. The lighting of diyas during the festival of lights also signifies the eternal triumph of light over darkness, knowledge over ignorance. At the end of the festive season, while the farmers return to the field to reap their harvest, we will also be back in our workplaces. However, this time around, we would take a cue from the triumph of good over evil in our mission to defend the public sector banks/ regional rural banks/old generation private sector banks/co-operative banks and to protect our hard-earned rights.

The festive season comes after the devastation of the second wave, and we sincerely hope that the festivities and the revelry will not result in a surge of cases. We sincerely hope that the carnival does not lead to the resurgence of the pandemic. It is also a time to look back and introspect over the events that had unfolded during the entire period of lockdown and the effect on the economy.

The word lockdown has found its place in our vocabulary, following the sudden announcement by Hon'ble Prime Minister on 24th March, 2020 catching the entire nation unawares. The impact of this unplanned lockdown was visible within a short time. Innumerable people were thrown out of their jobs. Thousands of labourers started

walking for their homestead land in what may be described as the worst human migration of the decade, comparable to what happened immediately after our independence.

The first step to bring the economy back to rail was the announcement to write off the defaulted corporate debt of Rupees sixty-eight thousand crore covering fifty selected borrowers. The emergence of a pandemic is nothing new in the history of human civilization. The virus will emerge where ever there is a sign of life. It is also true that this virus and its mutated variants have snatched so many precious lives from our midst, including those of the bankers who are the real frontline Covid warriors from day one of the announcements of the lockdown and imposition of restrictions. We also witnessed for the first time in independent India such a virulent and vitriolic attack on the public sector and on the working people, including on farmers like one we had seen during the entire period of lockdown. We are aware that the world economic system has been down with recessionary tendencies ever since 2008. The Indian economy has been no exception. More and more people are going below the poverty line, skewing the income disparity between the rich and the poor. Pandemic has only accentuated the existing crisis. The rate of investment and industrial production index has been moving southwards ever since 2018. The revenue collection of the government started declining from the same period. The graph of internal production in the economy had a downward slope even in the fourth quarter of 2017-18.

The crisis in the economy is structural and not merely Covid induced. Covid has only aggravated the crisis in automobile, transport, tourism, entertainment, and the construction sector with a multiplier effect on the rest of the economy.

The official statistics show that the Indian economy contracted by 7.3 percent in the first quarter of 2021. The rate of unemployment has reached 12 percent of the employable population. The entire economy barring a few selected segments of the service sector, is reeling under the adverse impact of the recession. The loss of jobs has affected consumer spending. The spiraling hike in oil prices has possibly driven the proverbial last nail in the coffin of a tottering economy.

The government is trying to respond to this crisis by adopting the wrong doctrine of encouraging profit maximization of select individuals at the expense of welfare-oriented economic policies. Both sales and purchases are stagnating as a result of loss of income and decline in GDP, affecting the profitability of the corporates also. The so-called revival package of the government only aims to ensure a steady profit rate for the corporates by shifting the burden of adjustment on the shoulders of the common masses. A Pandora's Box of selling off the family silver like railways, seaport, airports and airlines, telecommunication infrastructure, banks, insurance, national highways, warehouses of FCI, defence production units, and even the sports stadiums has been opened up in the name of national monetisation pipeline (NMP). Three farm laws have been enacted to ensure corporatization of the agriculture sector, while the new labour code will snatch whatever little the workers are enjoying in the current circumstances. National Sample Survey Organisation (NSSO) rolled out grim statistics which tells that 10 percent of the population control 50 percent of the national wealth. In comparison, the bottom 50 percent has only 6.2 percent of national wealth in their hands. The so-called story of economic revival is only reflected in the stock exchange indexes fuelled by speculative money having both national

and international origin while millions of countrymen are suffering silently. It reminds us of a lyric penned by Satyajit Ray in his creation "Hirak Rajar Deshe" (In the land of the diamond king), which tells "How many dramas are being enacted in all corners, only I fail to comprehend them. The good souls stay in their broken hearts while the wicked ascend the throne. One who tills the land does not have a square meal. The diamond miners do not have their wages while the king and his courtiers are amassing unimaginable wealth."

The days of festivity are not divorcing us from this grim reality. Air India has already been handed over to the Tata Group with an employment guarantee for a year only. Newspaper reports suggest that BPCL, BEML, SCI, and some other public sectors will follow in the remaining few months of the current fiscal. The new fiscal year will open with a mega IPO of LIC and the privatisation of at least one public sector general insurance company. Banks possibly could be the last item of sale. It appears that the systematic movement launched by the Confederation with your active participation is thwarting the imminent danger. But we have to keep in mind that when fire sets in the neighbourhood, we cannot be silent spectators and keep ourselves locked in the narrow confinement of our homes. Public sector banks cannot survive when the economy is facing a deluge of privatisation. This is precisely the reason why AIBOC extended its fraternal support to the nationwide strike called by the farmers' organization on 27th September, 2021, and to the farmers' struggle itself.

Festival holidays are a time for introspection also. We all know the basic message of our religio-philosophical legacy of victory of truth over the deceits. Lord Krishna himself observed that whenever righteousness is at stake, wicked are in control, honest people are barricaded, and falsehood reigns supreme, the eternal 'He' will emerge from ages to ages to restore order. Time demands that in today's context, the bank employees' movement and AIBOC have to play

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

the pioneering role. Festival gives us a much sought-after break. It provides us an opportunity to reinvent ourselves and our thoughts. But it also braces us for the ensuing challenges with new vigour, gumption, and determination. We have now returned to our workplaces. We will also be back and hit the streets. There will be no letup in our struggle. We fight till the last to defend our national assets.

This is our commitment to the defence of the sovereignty of our nation. We will continue to invite our stakeholders, friends, and well-wishers to our FB page, <https://facebook.com/>

BankBachaoDeshBachao/. We will ensure that our genuine well-wishers, our bread providers, our customers do join us in the silent revolution by liking our Facebook page. We are connected to more than 120 crore of the populace, and we must reach at least 1 percent of them by the year-end. ■

March on comrades,
#NationAgainstPrivatisation
#IndiaAgainstNMP
#StrikeHard
#PowerofUnity
#BankBachaoDeshBachao

MARCH ON COMRADES OF CATHOLIC SYRIAN BANK

Common Bond congratulates the employees and officers of the CSB Bank Ltd. (erstwhile Catholic Syrian Bank Ltd.) who were on strike on and from 29th September, 2021 to 1st October, 2021. All AIBOC units deserve our salute that hit the street and stood behind the fighting comrades of CSB Bank Ltd., in their ongoing struggle. The background of their struggle is enumerated herein below, quoting liberally from circulars issued from the central office of AIBOC. This fight is a grim reminder of the reality that decade-long idea about the sanctity and enforceability of even the wage settlement would be at stake with a change in the ownership structure of the banks. It confirms our conviction that the proposed privatisation of public sector banks is not only a massive blow to the economic sovereignty of the country in a broader sense but will affect the existing rights and privileges of the staff members, serving and retirees alike. The strike by CSB comrades has to be viewed from this larger spectrum. They have to win their battle for the benefit of the entire banking fraternity.

A brief recital:

Whereas Settlement / Joint Note was signed by the Indian Banks' Association with the Employees Unions and Officers' Organisations in the Banks on 11.10.2020, covering revision of wages and improvements in other service conditions for the

period from 1-11-2017 to 31-10-2022 after three years of protracted negotiations with IBA and waging relentless intensive struggles under the banner of UFBU, where the employees and officers of the CSB Bank Ltd. (erstwhile Catholic Syrian Bank Ltd.) were a part :

Whereas the operation of the earlier Settlement / Joint Note ended on 31-10-2017 and

Whereas the need has arisen to revise the emoluments and service conditions of the workforce of CSB Bank Limited with effect from 1-11-2017, thereby implementing the 8th Joint Note and 11th Bipartite settlement

Whereas the CSB Bank Ltd. (erstwhile Catholic Syrian Bank Ltd.) had implemented all the Bipartite Settlements thus far, beginning with the first in 1966, up to the 10th BPS / 7th Joint Note in the year 2015 and

Whereas, in every round of negotiations, All India Bank Officers' Confederation had from the very beginning, unequivocally demanded that IBA should ensure that all its member banks submit unconditional mandate for facilitating meaningful discussion and

Whereas CSB Bank Limited is a Member Bank of

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

Indian Banks' Association and

Whereas, majority of the Private Sector Banks of India and Foreign Banks operating in India, where the norms of remuneration as per the bipartite wage settlement with IBA is in vogue, have already honoured the terms of the recently concluded wage settlement in the form of 8th Joint Note/11th BPS.

Whereas, the Management of CSB Bank Ltd has been stubbornly refusing to implement the terms of the 8th Joint Note/11th BPS to the officers/employees who are under contract terms/wage pattern as per IBA settlements / Notes and

Whereas, in recent years, particularly ever since M/s Fairfax group of Canada, a Foreign Investment Company has acquired 51% of the controlling stake in CSB Bank Ltd. (formerly Catholic Syrian Bank Limited) in the year 2018 under the permission of the Reserve Bank of India, recruitment of staff as per IBA pattern has been discontinued in favour of the 'Hire and Fire model,' thereby ensuring that the workforce of the bank does not have any real stake in the governance and management of the organisation, which is a matter of grave concern in the background of the increasing number of failure of banks in private sector space in India in the near past.

Whereas, the work-life balance has reached a nadir in CSB in the forms of officers are being constantly sent SMSs and instructions over WhatsApp posts even at odd hours of the day. This has adversely affected their social and family life and infringed upon personal liberty.

Whereas, the CSB Bank Management has continuously been resorting to a strategy of inflicting torture on the IBA staff, by way of arbitrarily amending the service regulations underpinned by harmful norms, demoting them to lower ranks, reducing salary to subsistence levels, transferring officers/employees to distant locations forcing resignations, humiliating before the customers / in public, denying leave even for emergency occasions and forcing the officers to work on holidays / 2nd / 4th Saturdays / Sundays and

Whereas, there have been several attempts to create a smokescreen to divert attention from the real and core issues that continue to surround and plague the bank.

(1) Implementation of Wage Settlement in consonance with 8th Joint Note/11th Bipartite Settlement:

Whereas heinous attempts are being made by the CSB Bank Management to annul the legitimate rights of the officers and employees of the bank, offer to whom at the time of employment was that of IBA negotiated terms of service.

Therefore, the unconcerned attitude of the CSB Management towards the legal entitlement of the officers and employees of the bank in revised wage package/improvement in service conditions as per IBA negotiations is in the nature of deliberate attempt of depriving the workforce of the right enshrined in the Constitution of India.

(2) Serious IR issues and Deteriorating HR conditions in CSB Bank Limited:

The new Managing Director & CEO of CSB Bank had assumed charge during November 2016. Since then, he has committed gross violations of human rights in CSB; he has summarily dismissed officers without complying with due process. Several sincere and honest officers have been sent on cessation of service, denying them pension and their retirement benefits. The management has unilaterally withdrawn existing legitimate benefits of the employees/officers of the bank, using transfer as a tool to harass the employees (even pregnant women were not spared) and disrupted their work-life balance to such an extent that many were forced to submit their resignations. MD & CEO has threatened to end legitimate trade union activity in the bank.

All India Bank Officers' Confederation also had highlighted the serious IR and HR issues prevailing in CSB Bank in the recent past. Resolving of HR issues in CSB Bank was one of the demands placed by it to the CLC, DFS, and RB in the All India Bank Strike called by AIBOC on 21.12.2018.

OVERCOME ANGER BY LOVE, EVIL BY GOOD

Since not much headway has been made by the authorities to this long-desired direction. Au contraire, the IR has further deteriorated. The Confederation urges upon the appropriate authority to issue necessary directives to the Management of the bank to resolve all HR / IR issues in CSB forthwith.

(3) Work-Life Balance in CSB Bank Limited:

The workforce of the bank has been subjected to enormous stress due to ever-increasing workload, inadequate staff, continuous pressure for misplaced business priorities, besides high handedness of superiors in certain cases. Officers are constantly receiving SMS and instructions over WhatsApp messages even at odd hours. This has adversely affected their social and family life and infringed upon their personal liberty. Extended working hours have become the order of the day. This has taken a heavy toll on the efficiency level and is the root cause of frustration and anxiety disorder among the staff resulting in depression, anxiety, and lifestyle diseases.

In this context, it may not be out of place to mention that though many top global companies are addressing this sensitive issue through various measures, the CSB Management is not paying any heed to this issue, though the principal equity holding in CSB Bank is with a global player in financial market, namely, Fairfax India Holdings Corporation having root in Canada.

(4) Unilateral reduction in the retirement age:

With effect from 30th April, 2019, the CSB management has unilaterally reduced the retirement age of officers from 60 years to 58 years, which is the first of its kind in the entire banking industry. A large number of officers were shown the exit door through this amendment. Moreover, all officers have been subjected to a performance review at the age of 50 years, whereby the retirement age of the workforce has effectively been reduced to 50 years. This has eventually been followed by an unprecedented increase in the number of CTC staff. The management had also recruited retired staff from other banks in order to dilute the strength of IBA staff.

Needless to emphasise that the whole exercise was done to reduce the strength of the staff recruited in the bank under IBA pay scale pattern and reorient the staffing pattern to contractual employees, who virtually have no stake in the organisation.

Since there was no positive response from the Management, the employees and officers of the Bank went on a one-day All India Strike on 26/03/2021 and went for Strike action again for three successive days, 29/09/21, 30/09/21, and 01/10/21. In response to this strike, the MD & CEO, instead of inviting the striking employees for conciliation talks and finding out a common mutually acceptable ground, adopted illegal methods like suspensions so as to further alienate the staff recruited as per IBA terms. Our Affiliate, CSBOA, as part of CSB United Forum of Bank Unions, has decided to go on three days' All India CSB Bank Strike on 20th 21st, and 22nd October, 2021. In support, Kerala State UFBU has made an appeal to all its constituents to go for an All Kerala Solidarity Strike on 22.10.2021.

Under the circumstances, the Confederation (AIBOC) has taken a considered decision to go ahead with a one-day All Kerala Strike action on 22nd October, 2021 on the demands delineated elsewhere in this Notice, where the entire membership of AIBOC in the State of Kerala will take part.

DEMANDING:

- ⦿ Immediate implementation of the 8th Joint Note with effect from 01.11.2017 and payment of arrears of salary and allowances in CSB Bank Ltd. (erstwhile Catholic Syrian Bank Ltd.).
- ⦿ Restoration of unilaterally reduced retirement age to 58 years in respect of officers in CSB Bank (erstwhile Catholic Syrian Bank Ltd.) to 60 years.
- ⦿ Withdrawal of illegal suspension orders of officers in CSB in connection with the non-usage of personal mobile phones for official work.
- ⦿ Immediate resolution of all HR issues in CSB Bank

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

- ⦿ Staff recruitment in consonance with IBA pattern in CSB Bank and Conversion of all the CTC (Cost to Company) / temporary staff to the IBA pattern on merit basis.

OPPOSING:

- Anti-officer/employee policies of CSB Management.
- Issuance of illegal charge sheets/imposition of punishments and initiation of vindictive actions

NEWS:

1. Most PSUs on government privatisation list created by private sector: Sanjeev Sanyal : Defending privatisation policy, Principal Economic Adviser Sanjeev Sanyal said most of the public sector undertakings (PSUs) that the government intends to sell were actually created by the private sector. Stressing that this government is unapologetic about privatisation, he said "you (Opposition) made the point that this (PSUs) has been built through the blood and sweat of the public sector. So, let me put the record straight on this: Actually much of what we are attempting to privatisate were actually built by the private sector." Citing an example, he said Air India was simply taken away from the private sector and nationalised in 1993. "In 1969, banks were simply taken away and nationalised. So, when people say that these institutions were built by the blood and sweat of the Indian bureaucracy, let me point out to you that these things were originally built by private companies," he said at India Today Conclave.

2. FY22 credit growth turns positive first-time ever: Credit growth turned positive year-to-date (YTD) at 0.1 per cent in September for the first time in 2021-22 (FY22), reflecting gradual pick-up in demand. According to the Reserve Bank of India (RBI) data, bank lending rose ₹ 7,283 crore till September 24, against a contraction of 1 per cent (or ₹ 99,280 crore) on a YTD basis in the same period last fiscal year (2020-21). Outstanding bank credit stood at ₹ 109.56 trillion as on September 24.

3. Government initiates process for filling posts of independent directors in PSBs, FIs : The government

against IBA workforce in CSB Bank Ltd., including unreasonable and unwarranted transfers to distant locations, demotion to lower ranks, reduction of salary to subsistence levels

- Forcing the workforce to work on holidays / weekly offs.

#StrikeHard
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has initiated the process of filling about 100 vacancies of independent directors in public sector banks and financial institutions to meet regulatory norms of corporate governance. There have been vacancies at the independent director level across the public sector space leading to regulatory non-compliance, sources said.

4. Industrial loan growth, which has been decelerating during the last decade, turned negative for the first time during 2020-21 as economic activity slowed down in the aftermath of the COVID-19 pandemic, according to the latest RBI data. Working capital loans in the form of cash credit, overdraft and demand loans, which accounted for a third of total credit, contracted during 2020-21, the RBI said. The RBI on Friday released data on 'Basic Statistical Return on Credit by Scheduled Commercial Banks (SCBs) in India March 2021'.

5. IRDAI, Banks Board Bureau in the dock on promotions in insurance sector : All is not well in the government insurance sector with regard to elevation of officials, it seems. Recently, orders by two different High Courts, in a matter of two months, relating to non-promotion of insurance industry experts, has shocked the sector. In both cases, the court decisions were in favour of the petitioners. In one case, the aggrieved party is Ravi, General Manager, National Insurance Company Ltd. And in the other, it was S.N. Jayasimhan, Joint Director now known as General Manager, Insurance Regulatory and Development Authority of India (IRDAI).

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

6. Over 1.5 lakh family pensioners are going to benefit: IBA CEO on bank employees family pension revision : The Reserve Bank of India (RBI) has permitted banks to amortise the additional liability on account of revision in a family pension over five years beginning 2021-22. The banks, the RBI said, will be required to make appropriate

disclosures of the accounting policy followed in this regard in the 'Notes to Accounts' to the financial statements. The relaxation follows a request by the Indian Banks' Association (IBA) that it would be difficult for some banks to absorb large amounts of liability with regard to revision in the family pension in a single year.

Economy

RBI MONETARY POLICY OCTOBER 2021 REPORT: 10 KEY TAKEAWAYS

The RBI's monetary policy report placed on 8th October, 2021 has pegged GDP growth at 7.8% for FY23, assuming normal monsoon and full Covid vaccination. Let's take a look at the 10 most important takeaways from the report.

The Reserve Bank of India's biannual monetary policy report has projected 7.8 per cent growth for the Indian economy in FY23, provided the monsoon next year is normal, supply chains are restored, India has completed Covid-19 vaccination of its citizens, and there are no exogenous factors.

1. Economy recovering: India's economic activity has been normalising since June 2021, with the ebbing of the second Covid-19 wave, relaxation in restrictions, and improvement in the vaccination rate. Urban demand is likely to accelerate with the release of the pent-up demand.

2. Conducive environment for investment: The government's focus on capital expenditure and reforms push, and large FDI flows, provide a conducive environment for investment activity. There are signs of an increase in investment pipeline in the rest of 2021-22 and the coming year.

3. GDP growth forecast: Professional forecasters survey sees real GDP growth moving from 20.1 per cent in Q1 of 2021- 22 to 5.9 per cent in Q4. It could be 13.1 per cent in Q1 of 2022-23 due to a high base effect, and 6.1 per cent in Q2.

4. Inflation projections: Three-month ahead median inflation expectation for urban households came down by 50 basis points, and one-year projection by 60 basis points, in the September 2021 round of the RBI survey

5. Cost of raw materials and selling prices to rise: Manufacturing firms polled in the July-September 2021 round of industrial outlook survey expect the cost of raw materials and selling prices to increase further in the October-December quarter of 2021-22.

6. Upside and downside risks ahead: Upside risks emanate from persistence of supply chain disruptions, any further hardening of global commodity prices, especially that of crude oil. Downside risks arise from an earlier-than-expected mending of supply chain disruptions, the persistence of weak demand, and a slack in the economy.

7. Liquidity conditions: Money market rates consistently traded below the reverse repo rate, the weighted average call rate – the operating target of monetary policy – on average traded 17 basis points (bps) below the floor of the corridor during the first half of the current financial year.

8. Commercial paper issuances: Riding on surplus liquidity, commercial paper issuances increased substantially to Rs. 10.1 trillion during the first half of FY22, compared with Rs. 7.9 trillion during the same period last year. Commercial paper rates generally traded above the reverse repo rate, with an average spread of 46 basis points.

9. External environment: Crude oil prices turned volatile since the second week of July. The dollar strengthened on the expectation of a US taper. Emerging-market currencies depreciated after peaking in the second week of June, mainly due to retrenchment of capital flows.

10. Impact of high crude oil prices: If crude oil prices are 10% above the baseline, domestic inflation

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

may be 30 basis points higher than the baseline and growth around 20 basis points weaker. For the rupee, a 5% depreciation from the baseline may increase

domestic inflation by up to 20 basis points, while GDP growth could get a 15-basis-point boost from increased exports.

CIRCULARS

71 dated 27th September, 2021: Circular on agitation in CSB Bank: Strike on Sept 29, 30 & Oct 1, 2021

72 dated 06th October, 2021: Circular on 36th AIBOC Foundation Day

73 dated 07th October, 2021: Strike Notice dated 06.10.2021 on All Kerala Bank Strike on 22.10.2021

JUDICIAL VERDICT

2021 LLR 917
SUPREME COURT OF INDIA
Hon'ble Mr. Hemant Gupta, J.
Hon'ble Mr. A.S. Bopanna, J.
CAJCA No. 4744/2021
(Arising out of SLP (C) No. 10622/2017),
Dt/- 13-8-2021
Krishna Gopal Tiwary And Anr.
Vs
Union of India And Ors. And Ors.

PAYMENT OF GRATUITY ACT, 1972 – Enhancement of gratuity – Not retrospective – Ceiling of gratuity was raised to ₹. 10 lakhs, w.e.f. 1.1.2007 by Government notification – Claim of the appellants for enhancement from 1.1.2007 was declined by High Court – Appellants filed SLP – Held, fundamental rule of law is that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication – Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors – Gratuity received under the Gratuity Act is exempted from Income Tax to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Gratuity Act – Enhancement to ₹ 10.00 lakhs is effective from 24.05.2010 (till 26.09.2018 when enhanced to ₹ 60 Lakhs) – Such amendment cannot be treated to be retrospective – Benefit of gratuity paid to appellants under office memorandum is not entitled to exemption in view of specific language of Section 10(10(ii) of the Income Tax Act – Appeal is dismissed.

IMPORTANT POINTS

Fundamental rule of law is that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.

Gratuity received under the Gratuity Act is exempted from Income Tax to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Payment of

THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE

Gratuity Act, 1972.

Enhancement of limit of gratuity amount to ₹ 10.00 lakhs is effective from 24.05.2010 and cannot be treated to be retrospective effect.

Benefit of gratuity paid to appellants much prior to enhancement in limit to ₹ 10.00 lakh is not entitled to exemption in view of specific language of Section 10 (10) (ii) of the Income Tax Act.

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Jharkhand on 27.7.2016 whereby the claim of the appellants to declare the applicability of Payment of Gratuity (Amendment) Act, 2010 (For short, the 'Amending Act') from 1.1.2007 was declined.

2. The appellants are employees of Coal India Limited. The Government of India approved enhancement of gratuity to the executives and Non-Unionized Supervisors of Central Sector Enterprises such as the Coal India Limited where the appellants were employed. The ceiling of the gratuity was raised to ₹.10 lakhs w.e.f. 1.1.2007 in terms of office memorandum of Government of India dated 26.11.2008.

3. The appellants were paid such gratuity in terms of such office memorandum. However, later on, the Payment of Gratuity Act was amended by Central Act No. 15 of 2010 which received the assent of the Hon'ble President on 17.5.2010. The relevant provisions of the Amending Act read as under:

"(1). This Act may be called the payment of Gratuity (Amendment) Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Section 4 of the Payment of Gratuity Act, 1972, in sub- section (3), for the words "three lakhs and fifty thousand Rupees", the words "ten lakh rupees" shall be substituted."

4. In terms of sub-section (2) of Section 1 of the Amending Act, a notification was issued by the Government of India on 24.5.2010 appointing the said date as the date on which the Amending Act came into force.

5. The grievance of the appellants is that the tax has been deducted at source when the gratuity was paid to the appellants before the commencement of the Amending Act. The appellants have thus challenged the date of commencement as 24.5.2010 but asserted that it should be made effective from 1.1.2007 and consequently the appellants would not be liable for deduction of tax on the gratuity amount.

6. Certain provisions of the Gratuity Act as it existed prior to amendment by Central Act No. 12 of 2018 and that of Income Tax Act, 1961 would be necessary to be extracted:

"The Payment of Gratuity Act, 1972

4. Payment of Gratuity – (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

xx xx xx

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

xx xx xx

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

xx xx xx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

The Income Tax Act, 1961

10. Incomes not included in total income. – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

xx xx xx

10 (ii). any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act;"

7. Learned counsel for the appellants argued that the amendment of the Gratuity Act is to grant liberalised benefits. Therefore, it would be retrospective. Reliance is placed upon judgment of this Court in Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited,(2015) 1 SCC 1. The aforesaid case is of insertion of proviso to Section 113 of the Income Tax Act providing that tax chargeable under the said Section shall be increased by a surcharge and shall be applicable in the assessment year relevant to the previous year in which the search is initiated under Section 132 of the said Act. It was the said provision which came up for consideration before this Court. This Court held as under:

"31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors."

8. Learned counsel for the appellants also referred to a judgment of this Court in D.S. Nakara & Ors. vs. Union of India, (1983) 1 SCC 305, to contend that the cut-off date as 24.5.2010 has created two categories of employees, first who have attained the age of superannuation before the said date and second who have superannuated on or after

24.5.2010. Such classification is illegal and arbitrary in nature.

9.On the other hand, Mr. Vikramjit Banerjee, learned counsel for the Union has argued that D.S. Nakara's case deals with pensioners, who get recurring benefit every month whereas, the gratuity is one-time payment. This Court has held that the cut-off date so as to grant benefit of pension to the retirees after the cut-off date and to deny the retirees pension before the cut-off date is arbitrary. It was thus argued that benefit of gratuity stands on different footing, then recurring right of payment of pension. This Court held as under:

"38. What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?

xx xx xx

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date..."

10. The aforesaid judgment has come up for consideration before this Court in a judgment reported as State Government Pensioners' Association & Ors. vs. State of Andhra Pradesh, (1986) 3 SCC 501, wherein the payment of gratuity from a specified date of retirement was held to be not unconstitutional. This Court held as under:

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

"2. ... Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even)...."

11. Similar view was taken in a judgment reported as Union of India vs. All India Services Pensioners' Association & Anr., (1988) 2 SCC 580, wherein it was held that the pension is payable periodically as long as the pensioner is alive whereas the gratuity is ordinarily paid only once on retirement. This Court held as under:

"8. From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court which has taken a view contrary to the decision of Thakkar and Ray, JJ. in Andhra Pradesh State Government Pensioners' Association case [(1986) 3 SCC 501 : 1986 SCC (L&S) 676] and to the decision in N.L. Abhyankar case [(1984) 3 SCC 125 : 1984 SCC (L&S) 486] has been brought to our notice. The observations made in these two cases are binding on us insofar as the applicability of the rule in D.S. Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165 : 1983 UPSC 263] to the liability of the Government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to 1-1-1973 would be entitled to any additional amount by way of gratuity. The Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with the Government Notification No. 33/12/73-AISC(ii) dated 24-1-

1975 to all those members of the All-India Services who had retired prior to 1-1-1973."

12. Sub-section (5) of Section 4 of the Gratuity Act protects the right of an employee to receive better terms of gratuity under any award or contract with the employer. The gratuity paid to the appellants on the strength of office memorandum dated 26.11.2008 would fall in the said sub-section.

13. However, what is exempt from the Income Tax Act is the amount of gratuity received under the Gratuity Act to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Gratuity Act. The Gratuity Act contemplated rupees ten lakhs as the amount of gratuity only from 24.5.2010. Such gratuity is the amount payable only once. Thus, the cut-off date cannot be said to be illegal, it being one-time payment. Therefore, such amendment in the Gratuity Act cannot be treated to be retrospective. Therefore, the provisions of the statute cannot be said to be retrospective.

14. In a judgment of this Court reported as Sri Vijayalakshmi Rice Mills, New Contractors Co. & Ors. vs. State of Andhra Pradesh, (1976) 3 SCC 37, the new rate of supply of rice was made effective on 23.3.1964. The question arose was as to whether the rice supplied earlier would have the benefit of beneficial provision as contained in the later notification dated 23.3.1964. This Court held that price as was prevalent on the date of sale alone would be payable and not the higher price introduced by amendment. It was held as under:

"6. The aforesaid sales in the instant cases having been made by the appellants before the coming into force of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, and the property in the goods having passed to the Government of Andhra Pradesh on the dates the supplies were made, the appellants had to be paid only at the controlled price obtaining on the dates the sales were effected and not at the increased price which came into operation subsequently."

15. In another judgment reported as Orient Paper and Industries Ltd. & Anr. vs. State of Orissa & Ors., 1991 Supp.(1) SCC 81, it was held that since the

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REGN. NO. KRNA/BGE - 1122/2020-2022 PUBLISHED ON 25-10-2021
POSTED AT BANGALURU PSO, MYSORE ROAD, BANGALURU - 560 026 / ON 2ND OF EVERY MONTH
LICENCED TO POST WITHOUT PRE-PAYMENT-LICENCE NO. PMG BG/WPP 330/2020-2022

executive has been empowered to choose the date of commencement of the Act, such delegation cannot be said to be case of excessive delegation. The Court held as under:

"29. Even if the section were to be seen as a delegation of power, it is a power conferred on the government to give full effect to the policy behind the legislation. It is with a view to achieving that purpose that the executive has been empowered to choose the time, place and forest produce for bringing the Act into operation having regard to the particular facts and circumstances in the contemplation of the legislature. There is no excessive delegation in such statutory grant of power. [See Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST [(1974) 4 SCC 98 : 1974 SCC (Tax) 226 : (1974) 2 SCR 879]; Harishankar Bagla vs. State of M.P. [(1955) 1 SCR 380, 388 : AIR 1954 SC 465]]"

16. In a recent judgment reported as Himachal Road Transport Corporation & Anr. vs. Himachal Road Transport Corporation Retired Employees Union, (2021) 4 SCC 502, in the case of payment of increased quantum of death-cum-retirement gratuity, it was held that the cut-off date cannot be said to be arbitrary which was fixed keeping in view financial constraints. This Court held as under:

"18. Though there are long line of cases, where validity of fixation of cut-off date is considered by this Court, we confine and refer to the case law which is relevant to the facts of the case on hand. In State of Punjab vs. Amar Nath Goyal [(2005) 6 SCC 754 : 2005 SCC (L&S) 910], while examining the validity of cut-off date fixed for grant of benefit of increased quantum of death-cum-retirement gratuity, this Court has held that the financial constraint pleaded by the Government, was a valid ground for fixation of cut-off date and such fixation was not arbitrary, irrational or violative of Article 14 of the Constitution....."

17. In view of the above, we find that the date of commencement fixed by the Executive in exercise of power delegated by the Amending Act cannot be treated to be retrospective as the benefit of higher gratuity is one-time available to the employees only after the commencement of the Amending Act. The benefit paid to the appellants under the office memorandum is not entitled to exemption in view of specific language of Section 10(10)(ii) of the Income Tax Act.

18. Consequently, we do not find any error in the order passed by the High Court. The appeal is dismissed.

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RATES OF SUBSCRIPTION: ANNUAL: ₹ 30/-

Drafts Should be Drawn

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REGISTERED NEWS PAPER

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The All India Bank Officers' Confederation

SBI Buildings, St. Mark's Road, Bangalore - 560 001.

Printed & Published/Edited by Shri Soumya Datta on behalf of AIBOC, at State Bank Building, St. Mark's Road Bangalore-560 001.
 Printed by Shri. Ranga Reddy, at L. V. Graphics 3968, 7th Cross, 2nd Main, Gayathri Nagar, Bangalore - 560 021.