

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

M.A.No.854/2012 in O.A No.1065/2010, M.A.No.851/2012 in  
O.A.No.247/2011, M.A.No.852/2012 in O.A.No.808/2011  
& M.A.No.853/2012 in 1059/2011

Wednesday, this the 14th day of November, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

M.A.No.854/2012 in O.A.No.1065/2010

The Administrator,  
U.T of Lakshadweep,  
Kavaratti-682 555. - Applicant

(By Advocate Mr S.Radhakrishnan)

v.

1. Lakshadweep Special Pay Opted Pensioners' Association (LSPPA), (Affiliated to the Central Government Pensioners' Association (CGPA)), Kerala, Headquarters: Thrissur (Reg.No.1765/98) represented by its General Secretary, Shri R Sadasivan Nair.
2. R.Sadasivan Nair, S/o late Shri K Raman Pillai, Headmaster(Retired), Government JB School (North), Agatti, UT of Lakshadweep, residing at: SRUTHI, NRA-G/20, NCC Nagar, P.O.Perukkada, Trivandrum-695 005.
3. V.K.Balakrishnan, S/o KK Kesavan, (Operator, Canning Factory, Fisheries, Minicoy, Minicoy, Lakshadweep- retired), residing at: No.19/123, ARA-50, P.O.Palluruthy, Kochi-682 006.
4. Union of India represented by its Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001. - Respondents

(By Advocate Mr P.V.Mohan for R.1 to 3)

M.A.No.851/2012 in O.A.No.247/2011

1. The Administrator,  
U.T of Lakshadweep,  
Kavaratti.
2. The Director of Education,  
Union Territory of Lakshadweep,  
Kavaratti.
3. The Accounts Officer, O/o the Principal Pay  
and Accounts Office (GPF & Pension), Union  
Territory of Lakshadweep, Kavaratti.
4. The Headmaster, Government High School,  
Androth, Lakshadweep-682 551. - Applicants

(By Advocate Mr S.Radhakrishnan for R.1 to 4)

v.

1. B.Sundaram, S/o late R.Balakrishnan,  
Residing at Sri Kailas, Elevanchery.P.O.,  
Palakkad-678 508.
2. K.P.Rajalakshmy, W/o B Sundaram,  
Residing at Sri Kailas, Elevanchery.P.O.,  
Palakkad-678 508.
3. Union of India represented by its Secretary,  
Ministry of Home Affairs,  
New Delhi. - Respondents

(By Advocate Mr M.R.Hariraj for R.1 & 2)

(By Advocate Mrs Deepthi Mari Varghese, ACGSC for R.3)

M.A.No.852/2012 in O.A.No.808/2011

The Administrator,  
U.T of Lakshadweep,  
Kavaratti-682 555. - Applicant

(By Advocate Mr S.Radhakrishnan )

v.

1. Lakshmanan.S, S/o M.S.Sasthrigal, Block Development Officer  
(Retired), Chethalath Island, U.T of Lakshadweep,  
Residing at: Murali Bhavan, No.7/865, Opposite Sub Post Office  
Edathara, Palakkad-6788 611.

2. Union of India represented by Secretary,  
Ministry of Home Affairs,  
New Delhi-110 012. - Respondents

(By Advocate Mr PV Mohanan for R.1)

M.A.No.853/2012 in O.A.No.1059/2011

The Administrator,  
UT of Lakshadweep,  
Kavaratti- 682 555. - Applicant

(By Advocate Mr S Radhakrishnan)

v.

1. K.R.Govindan, S/o Raman Nair,  
Headmaster, JBS(S), Kadmat, UT of Lakshadweep,  
Residing at Sangeetha, Mettadi, P.O.Porora,  
Via Mattannur, Kannur-670 702.
2. P.Vatsala, W/o M.S.N.Nair,  
Headmaster, JBS(S), Kadmat, UT of Lakshadweep,  
Residing at Harshri Araharam,  
Nalleppally (P.O), Palakkad – 678 553.
3. P.M. Devadasan Nair, S/o. Kuttyraman Nair,  
PTI, GHSS, Kavaratti,  
Residing at Deva Sadan, Vallikkunnu,  
Kadalundi Nagaram, Kozhikode – 673 314.
4. S. Alimohammed, S/o. Mohammed,  
Headmaster, JBS(S), Kiltan,  
Residing at Sankethathil House, Koppam,  
(P.O) Pulasseri, Pattambi – 679 307.
5. K. Raghavan, S/o. Kochappy Panicker  
Headmaster, JBS(N) Amini,  
UT of Lakshadweep, Residing at Deepthi,  
Venkulamthoppu, Chempakamangalam, P.O, Korani,  
Thiruvananthapuram – 695 104.
6. C.V. Chandradas, S/o. Kesava Menon,  
Headmaster, JBS(S) Andrott,  
Residing at Sagarika, Vaidyarangadi,  
Ramanattukara, Kozhikode – 673 633.
7. A.J. Marcose, S/o. A.V. John,  
Headmaster, JBS(S) Amini, UT of Lakshadweep,  
Residing at Alu parambil House, Thalacode (P.O),  
Mulanthuruthy, Kochi – 682 314.

8. A.J. Lilly, W/o. A.J. Marcose,  
Headmaster, JBS(C) Amini, UT of Lakshadweep,  
Residing at Alu parambil House, Thalacode (P.O),  
Mulanthuruthy, Kochi – 682 314.
9. K. Ranganathan, S/o. KMC Nambiar,  
Primary School Teacher, JBS (MC), Andrott,  
UT of Lakshadweep, Residing at Sreeviila,  
Puthuppally South (P.O), Puthuppally, Kayamkulam – 690 527.
10. P.M. Rebecca(Retired), W/o. Late Anaghan,  
Primary School Teacher, Govt. JBS (Keecherry),  
Andrott, Residing at Care Saju Varnan, 17-C  
Pocket – A2, Mayur Vihar, Phase-3,  
New Delhi – 110 096.
11. P. Viswamithran, S/o. M.K. Paramu,  
Headmaster, JBS(N), Kadamat,  
Residing at Mulackal Thekkethil, Neeravil,  
P.O Perinad, Kollam – 691 601.
12. T.D. Thresiamma, W/o. Y. George,  
Primary School Teacher JBS (C), Amini,  
UT of Lakshadweep, Residing at Plavila Puthen Veedu,  
Karavalur (P.O), Via-Punalur, Kollam – 691 318.
13. K.C. Annie, W/o. P. Jacob,  
Craft Teacher, S.B. School, Kavaratti,  
UT of Lakshadweep, Residing at  
Chempalakunnil House, Narickal (P.O),  
Via-Punalur, Kollam – 691 326.
14. K.A. Mathai, S/o. Abraham,  
Boilerman, Canning factory, Minicoy,  
Residing at Kalladanthyil (P.O),  
Neendur, Kottayam – 686 601.
15. K.M. Sudhikshina Devi, W/o. Sundaran,  
K.V. Nursery Teacher, Amini, UT of Lakshadweep,  
Residing at Lakshmi Bhavan, No. 5/165, Tharakalam,  
P.O. Chittur, Palakkad – 678 101.
16. Elizabeth Lukose, W/o. V.V. Yohannan (late),  
Vadakkaneth, P.O Vaduthala, Kochi – 682 023.
17. Premalatha Devi, W/o. K.R. George,  
Teacher, Nursery School Amini,  
Residing at Kachipilly House,  
P.O Chengalur, Thrissur – 680 312.
18. P. Viswanathan, S/o. Parameswara Panicker,  
Malayalam Teacher, GHSS, Kadamat.  
Residing at Valiya Veedu, Guardian Controls Road,  
Vengalur P.O, Thodupuzha -685 584.

19. Mony P.S, S/o. Padmanabha Panicker,  
Assistant Director, Department of Education,  
Kavaratti. Residing at Anand, Naodaya Studio Road,  
Thengode (P.O), Thrikkakara, Kochi – 682 030.
20. John T.V., S/o. Ouseph Varkey,  
Junior Engineer (Fisheries), Fisheries Dept.,  
Kavaratti. Residing at Thuruthikkara (P.O),  
Potta, Chalakkudy, Thrissur – 680 722.
21. Bhaskaran Nair, K., S/o. Kunhiraman,  
Assistant Registrar of Co-operative Societies,  
Co-operative Dept., Kavaratti.  
Residing at Parthana, No. 27/82,  
Thiruvangad, Thalassery, Kannur – 670 103.
22. Prema, W/o. K. Asokan (late),  
Ranjiraj, No. 48/806, Veluthooparamba,  
Rarichan Road, Kozhikode – 673 006.
23. V.P. Ramachandran Nair (Retired), S/o. V.R.P Nair,  
Hindi Teacher, GHSS, Amini,  
Residing at Sagarika, Enadi, Kulasekhara Mangalam,  
Vaikkom – 686 608.
24. Anitha, V/o. Prathapan K.P (late),  
Prathap, Kakkara (P.O), Kathiroor,  
Via-Thalassery, Kannur – 670 642.
25. Mohanan K.C., S/o. Krishnan (Retired),  
Superintendent, District Panchayath, Kavaratti,  
Residing at Sreelakam, No. PP 1/302-A, Kottali Road,  
Podikundu, Pallikkunnu, Kannur – 670 004.
26. Somasundaran T., S/o. Unnalan (Retired),  
Sub-Inspector of Police, (Via) Kavaratti,  
Residing at Ribini, Edakkal, Puthiyangadi,  
Kozhikode – 673 021.
27. Sreedharan, T, S/o. Kelukutty (Retired),  
Head Constable, Police Station, Kavaratti.  
Residing at Sreelayam, Thavarakkattil,  
Modakkallur, Via-Atholi, Kozhikode – 673 315.
28. V. Narayanan Nambudiri, S/o. Raman Nambudiri (Retired),  
Headmaster, GHSS, Kiltan, Vallivattom Illam,  
P.O-Narikkuni, Kozhikode – 673 585.
29. Sreedhara Kurup P.P . S/o. Rama Kurup (Retired),  
Sub-Inspector of Police, Kavaratti.  
Residing at Field View, P.O. Vengeri,  
Calicut-10, Kozhikode – 673 010.
30. Pushpa, W/o. Ravindran T.K (late),  
Valappil House, Mukavoor, Eranhikkal,

Via-Elathur, Kozhikode – 673 303.

31. T. Vasu Nair, S/o. Kunhiraman Nair (Retired),  
Assistant Sub-Inspector of Police, Chetlat,  
UT of Lakshadweep, Residing at Thettath House,  
Vatayam moker, Nadupoil, Kozhikode – 673 518.
32. K.P. Vijayaraghavan, S/o. Kannan Master (Retired),  
Junior Engineer, PWD, Kavaratti.  
Residing at Kuni patikkal House, Kalpathur (P.O),  
Via-Meppayur, Kozhikode – 673 524.
33. C.M. Gangadharan, S/o. Gopalan Nair (Retired),  
Assistant Registrar of Co-operative Societies,  
Co-operative Department, Kavaratti,  
Residing at Roop kala, No. IX/131, Raroth,  
Muchukkunnu, Koyilandy, Kozhikode – 673 307.
34. V. Syamala, D/o. Venkiteswara Pai (Retired),  
Hindi Teacher, GHSS, Minicoy.  
Residing at Venkitesa Nivas, Opposite Lakshmi Clinic,  
P.O. Cherai, Aluva – 683 514.
35. Sujani, W/o. Balakrishnan. K. (late),  
Ambadi, Panangad (P.O),  
Via-Balussery, Kozhikode – 673 612.
36. K.R. Venkitachalam, S/o. Prof. Ramakrishnan (Retired),  
OSD (Academic), Edn Wing, LD Office, W/Island,  
Residing at Shantikuteer, D-137, Sixth Cross-Street,  
Maharaja Nagar, Tirunelveli – 627 001.
37. N. Viswanathan, S/o. Apputty (Retired),  
Assistant Sub-Inspector of Police, Police Station,  
Agatti. Pravi Nivas, Nadu Valappil, Mangalam,  
Via-Tirur, Malappuram – 676 561.
38. M. Sreenivasan, S/o. Viswanatha Pillai (Retired),  
Meter Mechanic, Electricity, Minicoy.  
Residing at H. No. 14, MGR Nagar,  
Behind Krishna-Colony,  
Singanallur, Coimbatore – 5.
39. Lakhsadweep Special Pay Opted Pensioners Association,  
Represented by its Secretary R. Sadhasivan Nair,  
Sruthi, NRA. G/20, NCC Nagar,  
Peroorkada, Thiruvananthapuram
40. Union of India represented by its Secretary,  
Ministry of Home Affairs, North Block,  
New Delhi – 110 001. Respondents

(By Advocate Mr PV Mohanan for R. 1 to 39)

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.40)

This applications having been finally heard on 08.11.2012, the Tribunal on delivered the following:

ORDER

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

MA 851 of 2012 in OA No. 247 of 2011  
MA 852 of 2012 in OA No. 808 of 2011  
MA 853 of 2012 in OA No. 1059 of 2011  
MA 854 of 2012 in OA No. 1065 of 2011

The above Misc. Applications have been filed seeking clarification of order dated 4<sup>th</sup> July, 2012 in OA Nos. 1065/2011, 247/2011, 808/2011 and 1059 of 2011. The clarification sought for is -

- (a) Para 25 contains certain typographical mistakes which may be corrected to make the said paragraph more lucid.
- (b) In para 32 (a) the condition mentioned is that the retirement of the individual should be anterior to the date of amendment to Rule 9(21) F.R. This needs correction since the said Rule did not undergo any amendment at all.
2. Reply has been filed in respect of M.A. No. 854 of 2012 in OA No 1065 of 2011 and M.A. No. 853 of 2012 in OA No. 1059 of 2011.
3. ~~Counsel for the Misc. Applicants submitted that Rule 9(21) of the F.R. relates to definition of the term 'Pay' which has been referred to in~~

para 16 of the Order under consideration, in which a part of High Court's Judgment in W.P.C.No. 22461 of 2005 has been extracted. This definition has not undergone any amendment, though, the term 'basic pay' has been defined in the CCS(RP) Rules, 1997 which specifically states that basic pay means pay drawn in the prescribed scale of pay, including stagnation increment(s), but does not include any other type of pay like 'special pay', 'personal pay' etc., It is this part that has been referred to in para 34 of the Order, when the Tribunal has stated "(i.e. their retirement is anterior to the date of taking effect of the amendment to the Rules, in 1996...)" .

4. Counsel for the respondents to the M.As submitted that the need to spell out about the said F.R. 9(21) arose due to the fact that the High Court referred to the same and while discussing about the immunity available to inter party judgment from subsequent conflicting judgments, the High Court opined that "But this will not affect the rights of the writ petitioners to undertake some legislative exercise to get over the judgment, if so advised." (Para 17 of the order of the Tribunal refers). The counsel thus argued that insertion of the words "to be made" after Rule 9(21) F.R. in para 32 (a) would reconcile the matter.

5. Arguments were heard. Para 25 of the OA does contain certain typographical mistakes. The same be read as under:-

*"25. The question for consideration therefore is as to who are all entitled to be treated as covered by the inter party judgments and which judgments could be stated as inter-party judgments."*

6. In so far as clarification of para 32(a) what was intended to specify was that the date of retirement should be anterior to the amendment to the term 'basic pay' whereby special pay has been excluded from the term 'basic pay'. This has been excluded in the Revised Pay Rules 1997, effective from 01-01-1996. That is the reason, reference to the year 1996 had been spelt out in para 34. This is the change that the legislature had made with reference to special pay, to which Island pay forms part.

7. As it is stated that Rule 9(21) of the F.R. has not undergone any amendment but the Revised Pay Rules, 1997 provides for exclusion of special pay from the term basic pay, para 32(a) is amended to read as under:-

(a) That the retirement of the individual should be anterior to the date when from 'special pay' has been excluded from the term 'basic pay' (i.e. from 01-01-1996, as per the CCS (Revised Pay) Rules, 1997).

8. It is made clear that the colour of the original order will not change due to the above amendments.

9. This order shall form part of our earlier order dated 4<sup>th</sup> July, 2012.

*sd/-*  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

*sd/-*  
Dr K.B.S.RAJAN  
JUDICIAL MEMBER

trs

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A Nos.1065/2010, 247/2011, 808/2011 & 1059/2011

Wednesday, this the 4th day of July, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.1065/2010

1. Lakshadweep Special Pay Opted Pensioners' Association (LSPPA), (Affiliated to the Central Government Pensioners' Association (CGPA)), Kerala, Headquarters: Thrissur (Reg.No.1765/98) represented by its General Secretary, Shri R Sadasivan Nair.
2. R.Sadasivan Nair, S/o late Shri K Raman Pillai, Headmaster(Retired), Government JB School (North), Agatti, UT of Lakshadweep, residing at: SRUTHI, NRA-G/20, NCC Nagar, P.O.Perukada, Trivandrum-695 005.
3. V.K.Balakrishnan, S/o KK Kesavan, (Operator, Canning Factory, Fisheries, Minicoy, Minicoy, Lakshadweep- retired), residing at: No.19/123, ARA-50, P.O.Palluruthy, Kochi-682 006. - Applicants

(By Advocate Mr P.V.Mohanan)

v.

1. The Administrator, U.T of Lakshadweep, Kavaratti-682 555.
2. Union of India represented by its Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001. - Respondents

(By Advocate Mr S.Radhakrishnan)

O.A.No.247/2011

1. B.Sundaram, S/o late R.Balakrishnan,  
Residing at Sri Kailas, Elevanchery.P.O.,  
Palakkad-678 508.
2. K.P.Rajalakshmy, W/o B Sundaram,  
Residing at Sri Kailas, Elevanchery.P.O.,  
Palakkad-678 508. - **Applicants**

(By Advocate Mr M.R.Hariraj)

v.

1. The Administrator,  
U.T of Lakshadweep,  
Kavaratti.
2. The Director of Education,  
Union Territory of Lakshadweep,  
Kavaratti.
3. The Accounts Officer, O/o the Principal Pay  
and Accounts Office (GPF & Pension), Union  
Territory of Lakshadweep, Kavaratti.
4. The Headmaster, Government High School,  
Androth, Lakshadweep-682 551.
5. Union of India represented by its Secretary,  
Ministry of Home Affairs,  
New Delhi. - **Respondents**

(By Advocate Mr S.Radhakrishnan for R.1 to 4)

(By Advocate Mrs Deepthi Mari Varghese, ACGSC for R.5)

O.A.No.808/2011

Lakshmanan.S, S/o M.S.Sasthrigal,  
Block Development Officer (Retired),  
Chethalath Island, U.T of Lakshadweep,  
Residing at: Murali Bhavan, No.7/865,  
Opposite Sub Post Office Edathara,  
Palakkad-6788 611. - **Applicant**

(By Advocate Mr PV Mohanan)

v.

1. The Administrator,  
U.T of Lakshadweep,  
Kavaratti-682 555.

2. Union of India represented by Secretary,  
Ministry of Home Affairs,  
New Delhi-110 012. - Respondents

(By Advocate Mr S.Radhakrishnan for R.1)

O.A.No.1059/2011

1. K.R.Govindan, S/o Raman Nair,  
Headmaster, JBS(S), Kadmat, UT of Lakshadweep,  
Residing at Sangeetha, Mettadi, P.O.Porora,  
Via Mattannur, Kannur-670 702.
2. P.Vatsala, W/o M.S.N.Nair,  
Headmaster, JBS(S), Kadmat, UT of Lakshadweep,  
Residing at Harshri Araharam,  
Nalleppally (P.O), Palakkad – 678 553.
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PTI, GHSS, Kavaratti,  
Residing at Deva Sadan, Vailikkunnu,  
Kadalundi Nagaram, Kozhikode – 673 314.
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Headmaster, JBS(S), Kiltan,  
Residing at Sankethathil House, Koppam,  
(P.O) Pulasseri, Pattambi – 679 307.
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Headmaster, JBS(N) Amini,  
UT of Lakshadweep, Residing at Deepthi,  
Venkulamthoppu, Chempakamangalam, P.O, Korani,  
Thiruvananthapuram – 695 104.
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Headmaster, JBS(S) Andrott,  
Residing at Sagarika, Vaidyarangadi,  
Ramanattukara, Kozhikode – 673 633.
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Residing at Alu parambil House, Thalacode (P.O),  
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Headmaster, JBS(C) Amini, UT of Lakshadweep,  
Residing at Alu parambil House, Thalacode (P.O),  
Mulanthuruthy, Kochi – 682 314.
9. K. Ranganathan, S/o. KMC Nambiar,  
Primary School Teacher, JBS (MC), Andrott,  
UT of Lakshadweep, Residing at Sreevilla,  
Puthuppally South (P.O), Puthuppally, Kayamkulam – 690 527.

10. P.M. Rabecca(Retired), W/o. Late Anaghan, Primary School Teacher, Govt. JBS (Keecherry), Andrott, Residing at Care Saju Varnan, 17-C Pocket – A2, Mayur Vihar, Phase-3, New Delhi – 110 096.
11. P. Viswamithran, S/o. M.K. Paramu, Headmaster, JBS(N), Kadamat, Residing at Mulackal Thekkethil, Neeravil, P.O Perinad, Kollam – 691 601.
12. T.D. Thresiamma, W/o. Y. George, Primary School Teacher JBS (C), Amini, UT of Lakshadweep, Residing at Plavila Puthen Veedu, Karavalur (P.O), Via-Punalur, Kollam – 691 318.
13. K.C. Annie, W/o. P. Jacob, Craft Teacher, S.B. School, Kavaratti, UT of Lakshadweep, Residing at Chempalakunnil House, Narickal (P.O), Via-Punalur, Kollam – 691 326.
14. K.A. Mathai, S/o. Abraham, Boilerman, Canning factory, Minicoy, Residing at Kalladanthyil (P.O), Neendur, Kottayam – 686 601.
15. K.M. Sudhikshina Devi, W/o. Sundaran, K.V. Nursery Teacher, Amini, UT of Lakshadweep, Residing at Lakshmi Bhavan, No. 5/165, Tharakalam, P.O. Chittur, Palakkad – 678 101.
16. Elizabeth Lukose, W/o. V.V. Yohannan (late), Vadakkaneth, P.O Vaduthala, Kochi – 682 023.
17. Premalatha Devi, W/o. K.R. George, Teacher, Nursery School Amini, Residing at Kachippilly House, P.O Chengalur, Thrissur – 680 312.
18. P. Viswanathan, S/o. Parameswara Panicker, Malayalam Teacher, GHSS, Kadamat. Residing at Valiya Veedu, Guardian Controls Road, Vengalur P.O, Thodupuzha -685 584.
19. Mony P.S, S/o. Padmanabha Panicker, Assistant Director, Department of Education, Kavaratti. Residing at Anand, Naodaya Studio Road, Thengode (P.O), Thrikkakara, Kochi – 682 030.
20. John T.V., S/o. Ouseph Varkey, Junior Engineer (Fisheries), Fisheries Dept., Kavaratti. Residing at Thuruthikkara (P.O), Potta, Chalakkudy, Thrissur – 680 722.

21. Bhaskaran Nair. K., S/o. Kunhiraman,  
Assistant Registrar of Co-operative Societies,  
Co-operative Dept., Kavaratti.  
Residing at Prarthana, No. 27/82,  
Thiruvangad, Thalassery, Kannur – 670 103.
22. Prema, W/o. K. Asokan (late),  
Ranjiraj, No. 48/806, Veluthooparamba,  
Rarichan Road, Kozhikode – 673 006.
23. V.P. Ramachandran Nair (Retired), S/o. V.R.P Nair,  
Hindi Teacher, GHSS, Amini,  
Residing at Sagarika, Enadi, Kulasekhara Mangalam,  
Vaikkom – 686 608.
24. Anitha, V/o. Prathapan K.P (late),  
Prathap, Kakkara (P.O), Kathiroor,  
Via-Thalassery, Kannur – 670 642.
25. Mohanan K.C., S/o. Krishnan (Retired),  
Superintendent, District Panchayath, Kavaratti,  
Residing at Sreelakam, No. PP 1/302-A, Kottali Road,  
Podikundu, Pallikkunnu, Kannur – 670 004.
26. Somasundaran T., S/o. Unnalan (Retired),  
Sub-Inspector of Police, (Via) Kavaratti,  
Residing at Ribini, Edakkal, Puthiyangadi,  
Kozhikode – 673 021.
27. Sreedharan. T, S/o. Kelukutty (Retired),  
Head Constable, Police Station, Kavaratti.  
Residing at Seelayam, Thavarakkattil,  
Modakkallur, Via-Atholi, Kozhikode – 673 315.
28. V. Narayanan Nambudiri, S/o. Raman Nambudiri (Retired),  
Headmaster, GHSS, Kiltan, Vallivattom Illam,  
P.O-Narikkuni, Kozhikode – 673 585.
29. Sreedhara Kurup P.P . S/o. Rama Kurup (Retired),  
Sub-Inspector of Police, Kavaratti.  
Residing at Field View, P.O. Vengeri,  
Calicut-10, Kozhikode – 673 010.
30. Pushpa, W/o. Ravindran T.K (late),  
Valappil House, Mukavoor, Eranhikkal,  
Via-Elathur, Kozhikode – 673 303.
31. T. Vasu Nair, S/o. Kunhiraman Nair (Retired),  
Assistant Sub-Inspector of Police, Chetlat,  
UT of Lakshadweep, Residing at Thettath House,  
Vatayam moker, Nadupoil, Kozhikode – 673 518.
32. K.P. Vijayaraghavan, S/o. Kannan Master (Retired),  
Junior Engineer, PWD, Kavaratti.  
Residing at Kuni patikkal House, Kalpathur (P.O),  
Via-Meppayur, Kozhikode – 673 524.

33. C.M. Gangadharan, S/o. Gopalan Nair (Retired),  
Assistant Registrar of Co-operative Societies,  
Co-operative Department, Kavaratti,  
Residing at Roop kala, No. IX/131, Raroth,  
Muchukkunnu, Koyilandy, Kozhikode – 673 307.

34. V. Syamala, D/o. Venkiteswara Pai (Retired),  
Hindi Teacher, GHSS, Minicoy.  
Residing at Venkitesa Nivas, Opposite Lakshmi Clinic,  
P.O. Cherai, Aluva – 683 514.

35. Sujani, W/o. Balakrishnan. K. (late),  
Ambadi, Panangad (P.O),  
Via-Balussery, Kozhikode – 673 612.

36. K.R. Venkitachalam, S/o. Prof. Ramakrishnan (Retired),  
OSD (Academic), Edn Wing, LD Office, W/Island,  
Residing at Shantikuteer, D-137, Sixth Cross-Street,  
Maharaja Nagar, Tirunelveli – 627 001.

37. N. Viswanathan, S/o. Apputty (Retired),  
Assistant Sub-Inspector of Police, Police Station,  
Agatti. Pravi Nivas, Nadu Valappil, Mangalam,  
Via-Tirur, Malappuram – 676 561.

38. M. Sreenivasan, S/o. Viswanatha Pillai (Retired),  
Meter Mechanic, Electricity, Minicoy.  
Residing at H. No. 14, MGR Nagar,  
Behind Krishna-Colony,  
Singanallur, Coimbatore – 5.

39. Lakhsadweep Special Pay Opted Pensioners Association,  
Represented by its Secretary R. Sadhasivan Nair,  
Sruthi, NRA. G/20, NCC Nagar,  
Peroorkada, Thiruvananthapuram

Applicants

(By Advocate Mr PV Mohanan)

v.

1. Union of India represented by its Secretary,  
Ministry of Home Affairs, North Block,  
New Delhi – 110 001.

2. The Administrator,  
UT of Lakshadweep,  
Kavaratti- 682 555.

Respondents

(By Advocate Mr Sunil Jacob Jose, SC/SC for R-1)  
(By Advocate Mr S. Radhakrishnan, for R-2)

This applications having been finally heard on 15.06.2012, the Tribunal on 04.07.2012  
delivered the following:

ORDER

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The common question involved in these original applications is in respect of eligibility of the applicants to get the Island special pay reckoned as part of basic pay for calculating pension. OA No. 1065 of 2010 has been taken as the pilot case for reference purposes. (Wherever, the Annexures belong to other O.As, specific mention of the OA is reflected therein.)

The issue has a significant background.

(a) Origin of grant of special Pay (Island): The Government of India, Ministry of Home Affairs had, by an order dated 28<sup>th</sup> March, 1958, provided for grant of a special pay of 40% of the basic pay subject to a maximum of Rs 350 per month to officers who were deputed from the mainland to the Islands of Lakshadweep, Minicoy and Amindive Islands. This was treated from 20-01-1970 as 'Special Pay' under F.R. 9(21) in contra distinction to local allowance.

2. In fact, another allowance called Special Allowance and Compensatory Allowance at certain prescribed rate and subject to a ceiling had been paid from April, 1970 onwards to all; however, by a clarification issued on 27-07-1978, it was stated that this compensatory allowance would not be admissible to those who were in receipt of the aforesaid Special Pay. The stoppage of Compensatory Allowance and recovery of over payment became the subject matter of many a writ petitions filed before the High Court of Kerala. The High Court by its judgment dated 15-02-1979 declared that the Ministry's letter dated 27-07-1978 conveyed only the intention of the Government and could not be treated as an order and thus, upheld the right of the Special Pay optees to receive the Compensatory Allowance till the date of issue of another letter dated

03-08-1978 of the Ministry.

3. As the latter order dated 03-08-1978 was not beneficial to the employees, the same, thereafter, became the subject of various writs and the High Court by its order dated 20-07-1981 disposed of the application without quashing the same as by then, the Government had superseded the said order by another order dated 30-06-1981.

4. This order dated 30-06-1981 clarified that those who opt for special pay under the existing conditions till promotion would not be eligible for either Special Allowance or Compensatory Allowance. This was again challenged through W.P. No. 5244 of 1981 and the High Court quashed the said order dated 30-06-1981 so far as it denied Compensatory Allowance to optees of Special Pay and it directed that the respondents should pass fresh orders for giving an opportunity to the optees of Special Pay to make their submission before the Compensatory Allowance was withdrawn.

5. The Association of the Special Pay beneficiaries made representation to the Government in November, 1985. Before any consideration was given, the recommendations of the IV Pay Commission surfaced. Thus, on 23-09-1986, the Government issued an order granting to the Island employees Special Compensatory Allowance in lieu of Compensatory Allowance and Special Allowance, but indicated that in case of Special Pay Optees who opted for Special Pay in lieu of Compensatory Allowance and Special Allowance, the Special Compensatory Allowance would be reduced by the amount of Special Pay or personal pay which they were getting. Yet another letter was also issued by the Government of India on 29-09-1986 revising the Island Special Pay. As by then, the Administrative Tribunal had been established, the Association came

up before the Tribunal by filing OA No. 896 of 1986 to resolve the controversy about the character of special pay, the entitlement to special pay and compensatory cum special allowance simultaneously etc., By Order dated 27-04-1989, the Tribunal held that Island Special Pay is Special Pay under F.R. 9(21) and not a local allowance, as clarified by the Government itself. The Tribunal had also declared the extent of entitlement of Compensatory Allowance etc., (which part is not the subject matter here). Annexure A-1 refers.

6. OA No. 1274 of 1991 filed by certain employee had also been decided by the Tribunal reaffirming that the Special Pay is treated as Pay for all purposes. In addition, the quantum of special pay admissible had also been specified in the order dated 03-04-1992 in that OA, vide Annexure A-2. Special Leave Petition filed by the Administration against the order of the Tribunal had also been dismissed.

7. Another OA No. 1706 of 1992 was filed by certain employees, which was decided by the Tribunal on 29-03-1993 and the operative portion of the said order reads as under:-

*"Accordingly, we allow this application and declare that the applicant is entitled to Islands Special pay at 80% of the basic pay applicable to him from time to time including the revised pay after 1.1.86 subject to a maximum of Rs.500/- per month and that he is also entitled to compensatory allowance at the rate of 10% of his basic pay including the revised pay from 1.1.86 upto a maximum of Rs.150/- per month. It is further declared that the Islands Special pay shall continue to be treated as part of basic pay for all purposes including D.A. pension, retirement and other service benefits. The respondents are directed to compute the amounts due to the applicant including arrears of special pay, compensatory allowance and other allowance and to make the payment of the same to the applicant within a period of three months from the date of receipt of a copy of this judgment."*

The above decision was followed in another OA No. 980 of 1993, vide Annexure A-4 of OA No. 247 of 2011.

8. Yet another OA No. 580 of 1993 and connected cases were filed and a common order was passed by the Tribunal on 27-01-1994. The said O.As were decided by the Tribunal declaring as under:-

*"We direct respondents to grant the benefits granted to applicants in OA No. 896 of 86 and 1274 of 91 to applicants herein also. Amounts if any paid under this head will be adjusted and the remainder will be paid within six months from today. We are granting a long period of six months in the hope that extension will not be sought for. We alert the respondents to adhere to the time scheme strictly."*

Two more O.As No. 1359 of 1994 and 1360 of 1994 were filed by certain employees and the Tribunal vide its order dated 07-10-1994 (Annexure A-4 of OA No. 247 of 2011) passed the following order-

*"Applicants claim Island Special pay and Compensatory allowance on the strength of a declaratory judgment in O.A.580/93. Standing Counsel does not dispute about the applicability of the said judgment to the case on hand. According to him, there is a possibility of the Supreme Court taking a different view. But that would be no justification not to grant the relief which is admissible as matters now stand. The amounts due will be paid to applicants within three months of today, on condition that they execute a bond to reimburse the amount to respondents in the event of the Supreme Court differing from the view taken in O.A.580/93.*

2. Original Applications are disposed of as aforesaid. No costs.

9. It appears that one more OA No. 1545 of 1994 was filed on similar lines as in OA No. 896 of 1996 and the same was also decided by the Tribunal allowing the OA. The said order was taken up before the Apex Court in Civil CM No. 18386 of 1995, and the Apex Court considered the same along with a number of other identical S.L.Ps and by order dated 06-12-1996, the Apex Court had dismissed all the SLP holding that the impugned judgments in all the S.L.Ps are based on the earlier judgment dated 27-04-1989 of the C.A.T. in OA No. 896

of 1989 and in the impugned judgments the Tribunal had stated that the S.L.Ps was filed against the said judgment in OA No. 896 of 1986 and it was dismissed on December 27, 1990.

10. Thus, in a number of cases, the Special Pay had been treated as a part of pay for all purposes.

11. In an isolated case in OA No. 1038 of 1999, a single Member of the Tribunal, however, held by his order dated 05-07-2000 that Island Special Pay would not be included in pay in view of the provisions contained in Rule 33 of the CCS (Pension) Rules.

12. By that time this order had been issued, the earlier judgments became final as the earlier judgments were not interfered with by the Apex Court which had dismissed the SLP filed by the Administration. In fact even the Government of India had, by its order in pursuance of order in OA No. 1038 of 1999, stated in its letter dated 28-02-2002, that the order of the Tribunal in the aforesaid OA would be effective only in cases which have not been finalized by the date of issue of the Ministry's letter dated 28-02-2002.

13. The Fifth Central Pay Commission revised the pay scales of the Government employees effective from 01-01-1996.

14. The Administration, while calculating the pension of the employees who were in receipt of Special Pay during their service, did not include the Special Pay as a part of pay for all purposes. This resulted in OA No. 618 of 2002 filed by 21 employees and this OA was decided on 22-11-2004 holding that the applicants who had filed the above said OA No. 618 of 2002 were entitled to

have the special pay treated as pay for the purpose of pension and other terminal benefits. Annexure A-5 refers.

15. The above decision of the Tribunal had been taken up before the High Court in Writ Petition © No. 22461 of 2005(S) which was decided by judgment dated 02-01-2008 vide Annexure A-6. In the above judgment, the High Court referred to the earlier two OAs of 896 of 1986, 1274 of 1991, 580 of 1993 and also extracted the portion of the order in OA No. 580 of 1993, as extracted herein above as also part of orders dated 03-04-1992 in OA No. 1274 of 91 .

16. The High Court then analyzed the entire aspects of the case from the point of view of the provisions of Rule 33 of the CCS (Pension) Rules (which is the extant Rule after 1996 onwards) and Rule 9(21)(a)(i) of the Fundamental Rules and held as under vide para 2 of the judgment:-

*"2. We heard the learned counsel for the writ petitioners and also the learned counsel for the respondents. Rule 33 of the CCS (Pension) Rules reads as follows:*

*"Emoluments: The expression 'emoluments means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practicing allowance granted to medical officer in lieu of private practice."*

*Rule 9(21)(a)(i) of the Fundamental Rules reads as follows:*

*"21(a) Pay means the amount drawn monthly by a Government servant as -*

*(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre."*

*When the above two Rules are read together, we have no doubt in our mind that the Island Special Pay cannot be reckoned as part of the basic pay for the purpose of computing pensionary benefits. But, in this case, we find that there is an inter-party judgment, in which all the applicants are parties, which has become final. So, even if the said judgment is demonstrably wrong, the same will bind the parties thereto so long as the petitioners do not have a case that the*

*said judgment was obtained by fraud or collusion."*

17. After recording the fact that there is an inter-party judgment, the High Court further held in para 4 and 5 as under:-

*"4. Of course, the basis of a judgment can be knocked out and the effect of the judgment can be nullified by amending the law with a non-obstante clause. In this case, we find that no such legislative exercise has been undertaken. Rule 9(21)(a)(i) of the Fundamental Rules and Rule 33 of the CCS(Pension) Rules remain as such from 01.01.1986 till the date of retirement of the applicants. Therefore, the contention of the learned counsel for the petitioners that there is change in the Rules and the same will affect the rights of the applicants under Ext.P8 judgment, cannot be accepted.*

*5. In the result, the Writ Petition fails and it is dismissed. But, this will not affect the rights of the writ petitioners to undertake some legislative exercise to get over the judgment, if so advised."*

18. Special Leave Petition SLP © No. 4994 of 2009 filed against the aforesaid judgment also was dismissed. And, in compliance with the judgment, the respondents had issued Annexure A-7 order in O.A.1965/2010. The same reads as under:-

"F.No.10/1/09-F&A  
Administration of the  
Union Territory of Lakshadweep,  
Finance and Accounts Secretariat

Kavaratti, dated 29.11.2009.

ORDER

Sub: Reckoning of Island Special pay as part of basic pay for the purpose of determining pension-regarding

Ref: 1. Judgment in WP(C) No.22461/05 in O.A.618/2002 of Hon'ble High Court of Kerala  
 2. Dismissal of SLP NO.4994/2009 by Hon'ble Supreme Court of India  
 3. CAT Judgment in O.A.No.580/93, 877/93, 787/93, 1969/93, 1274/91, 947/03, 861/03, 714/05, 662/04, 861/03 and 502/04.

The Hon'ble Central Administrative Tribunal, Ernakulam Bench in various OA Nos. referred 3<sup>rd</sup> cited has directed the Administration to recompute the pensionary benefit of the applicants based on the revised pay under the CCS(Revised) Pension Rules treating the Island Special Pay as a part of basic pay for DA,

Pension Gratuity and other terminal benefits and make available to the applicant the monitory benefits at the earliest. Meanwhile the applicants in O.A.618/02 viz Shri Ragava Warrier and 21 others has filed contempt petition, thus the Administration has implemented the court order allowing the pensionery benefits to the applicants in the original OA. As some similarly placed applicant in the above OA's were also challenged in the same line and the Hon'ble Court has passed necessary orders including the applicant as referred 3<sup>rd</sup> above to extend the same benefit to the applicants also.

SLP No.CC.4994/09 filed by the Administration against the judgment of Hon'ble High Court in WP(C)NO.22461/05 in OA No.618/2002 filed by Shri Ragava Warrier & 21 others has been dismissed by the Hon'ble Supreme Court of India and therefore the Administrator, Union Territory of Lakshadweep is pleased to implement the judgment in the above referred OA's for all the applicants (except the applicants in OA 618/02 whom the benefits already given) treating the Island Special Pay as a part of basic pay for the purpose of pensionery benefit.

The DDO's in the islands are directed to implement the Court Order urgently within a period of one (1) month in respect of those in OAs cited 3<sup>rd</sup> (copy of judgment enclosed) and the details of compliances may be submitted in due course to this Secretariat.

DDOs are requested to furnish the details of amount of arrears if any paid, to the undersigned urgently.

(R.P.Pal.IAS)  
Secretary(Finance)

To

The Applicants in the above OAs  
Copy to the DDOs concerned  
Copy to Accounts Officer, PAO, Kavaratti.  
Copy to JAO, FPU in all islands  
Copy to the Under Secretary to the GOI, MHA, New Delhi with covering letter."

19. In execution of the above order of the Respondents, pension of various employees had been refixed by proceeding dated 15-07-2010 by which 50% of the Island Special Pay (50% of Rs 500 i.e. Rs 250) was added to the basic pension. Annexure A-8 and Annexure A-9 refer.

**Present claim:**

20. The claim of the applicants in all the OAs presently under consideration in this order is that the respondents ought to have, while revising the pay of the

applicants in it the wake of the acceptance of the recommendations of the V Pay Commission effective from 01-01-1996 fixed the pay treating the special pay enjoyed by them as a part of pay for all purposes including revision of pension and other terminal benefits. This was not done. Hence, this petition in which the prayers are as under:-

OA No. 1065 of 2010:

- (i) To call for the records leading to Annexure A8 and Annexure A-9 and direct the respondents to revise the pension of the applicants after fixing the pay in accordance with Rule 7 of CCS(Revised Pay) Rule 1997 w.e.f. 1.1.1996 by reckoning Island Special pay as part of basic pay with fitment formula adopted by the pay commission.
- (ii) To direct the respondents to consolidate the pension of the applicants in terms of OM No.3837/08 PNPW dated 1.9.2008 of the G.O.I MPPP after fixing the pay consistent with fitment benefits in the minimum pay plus Grade Pay in the pay band notionally under CCS (Revised Pay) Rules, 2008 as has been granted in the case of serving employee and disburse the same.
- (iii) Any other appropriate order or direction the Hon'ble Court deem fit in the interest of justice."

OA No. 247 of 2011:

- (i) To direct the respondents to comply with Annexure A4 and A5 orders of the Hon'ble Tribunal and to draw and disburse to the applicants the arrears of pay and compensatory allowance due to them after counting the Island Special Pay as part of their basic pay with effect from 1.1.1986 to the dates of their retirement along with interest @ 12% pr annum;

- (ii) To direct the respondents to revise the pension of the applicants after counting the Island Special pay as part of their basic pay with effect from 1.1.1986 to the dates of their retirement and to draw and disburse the arrears of pension and pensionary benefits with effect from the dates of their retirement @ 12% per annum after such revision;
- (iii) Grant such other reliefs as may be prayed for and the court may deem fit to grant.

OA No. 808 of 2011:

- (i) To direct the respondent to sanction and disburse the Death Cum Retirement Gratuity to the applicant with interest at the rate of 12% per annum from 1.9.1994 till the date of actual payment.
- (ii) To direct the respondents to fix the pay of the applicant notionally with effect from 1.1.1996 by reckoning the Island Special pay as part of basic pay based on pay fixation formula as contemplated in Rule 7 of CCS(Revised) Pay Rule, 1997 and to fix and disburse the DCRG and to refix the pension and disburse the same;
- (iii) To direct the respondent to consolidate the pension of the applicant in Central Civil Service (Pension) Rules, 2008 based on the formula adopted in O.M.No.45/80/97 dated 27.10.1997 and clarified in G.I., M.F.No.38/37/08-P & PW(A) dated 29.8.2008 and OM F.No.38/37/08-P & PW dated 1.9.2008 respectively and disburse the same.
- (iv) To direct the respondent to grant the benefits of surrender of Earned Leave to his credit and to encash the same forthwith with interest at the rate of 12% from 1.9.1994 till the date of actual disbursement.

(v) To direct the respondents to disburse the benefits of GPF forthwith.

OA No. 1059 of 2011:

(i) To declare that the applicants are entitled to get the Island Special pay reckoned as part of basic pay for fixation of pension and other terminal benefits and to direct the respondents to fix the pension of the applicant at higher rate by notionally fixing the pay under Rule 7 of CCS (Revised Pay) Rules, 1997 by reckoning Island Special pay as part of basic pay and to refix the pension with all consequential benefits.

(ii) To direct the respondents to consolidate the pension of the applicants in terms of OM No.38/37/08 PNPW dated 1.9.2008 of the G.O.I.MPPP after fixing the pay consistent with the fitment benefits in the minimum pay plus Grade Pay in the pay band notionally under CCS (Revised Pay) Rules, 2008 as has been granted in the case of serving employee and disburse the same.

(iii) To call for the records leading to Annexure A8 dated 10.1.2011, Annexure A9 and Annexure A10 dated 27.1.2011 and 20.5.2011 respectively and set aside the same in so far as it does not extend to the applicants (non-applicants in O.A.618/2002) the benefits of reckoning Island Special Pay as part of basic pay for the purpose of fixation of pension and other terminal benefits.

(The Annexure referred to in the above relief is identical to Annexure A-8 and A-9 in OA No. 1065 of 2010 already referred to earlier).

21. Respondents have contested the O.A. Their contention is that the decision in OA No. 896 of 1986 was prior to certain amendment to CCS Pension

Rules. However, the extant rule which is admissible to all the applicants herein, specified that the Special Pay would not form part of Pay for all purposes. The High Court in W.P. No. 22461 of 2005(S) (challenging the order of the Tribunal in OA No.618 of 2002) rendered its judgment on 02-01-2008. The said judgment clearly interpreted the correct rule position and held that special pay cannot be treated as pay for all purposes, however, as there has been an inter party judgment in which all the applicants are parties, which has become final, even if the judgment of the Tribunal is demonstrably wrong, the same will bind the parties thereto so long as the petitioners do not have a case that the said judgment was obtained by fraud or collusion. Hence, the respondents had limited the benefit of treating the special pay as pay for the purpose of working out pension only in respect of the applicants in the aforesaid OA No. 618 of 2002.

22. The stand of the respondents is that after the amendment to the provisions of Rule 9(21) of the Fundamental Rules, read with the provisions of Rule 33 of the CC S (Pension) Rules the Island special pay is no longer considered as pay for all purposes and if at all that could be the beneficiary the same would be only those in whose favour there is an interparty judgment. Though the claim of the applicants is that they belong to the category of interparty judgment, as for the respondents, it is only those individuals who were party to OA No. 618 of 2002, in respect of which the High Court in its judgment in Writ Petition No. 22461 of 2005 has referred to the interparty judgment. The respondents thus have no objection to allow the claim of those applicants who are parties in OA No. 618 to 2002.

Arguments:

23. Counsel for the applicant's after referring to various judgments stated that

interparty judgments are those which have attained finality and the decision in which is to the extent that Island special pay is to be treated as a part of pay for all purposes. Viewed from this angle, applicants in all the OA-s, save OA No. 1038 of 1999 which was dismissed by the Tribunal by a single Bench and which had been also upheld by the High Court, would have to be categorised as persons with the credit of an interparty judgment.

24. Counsel for the Respondents, however, contended that only parties to OA 618 of 2002 would be covered by the inter-party judgment.

25. The question for consideration therefore is as to who are all entitled to be treated as far the two the interparty judgments and which advance could be stated as interparty judgments.

26. Before going into examining the above is the legal position in respect of interparty judgments may be considered.

27. An inter party judgment binds the party as has been affirmed by the Apex Court in the case of **Gorie Gouri Naidu (Minor) v. Thandrothu Bodemma, (1997) 2 SCC 552**, wherein the Apex Court has held as under:-

***"The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis."***

28. Again, an inter parte judgment is immune even to legislative changes. In the case of **Virender Singh Hooda v. State of Haryana, (2004) 12 SCC 588**, it has been held as under:-

***48. The legislature can change the basis on which a decision is given by the court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes***

**and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers (Emphasis supplied)**

29. *In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602*, the Apex Court has held as under:-

**"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen - nor has the overruling Bench any jurisdiction so to do - that the finality of the operative order, inter parties, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter parties. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter parties. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done" (Emphasis supplied)**

Fortunately the parties do not have the conflict over the legal position as to interparty judgment. The only question to be decided is that as to who were all the parties that would be the beneficiary of the doctrine of interparty judgments. Answer to this question is not far from comprehension. The High Court in its order clearly referred to an earlier OA (OA No. 1274 of 91) the order which went in favour of the applicants therein. And, while referring to the inter party judgment in para 2 of the judgment, the High Court has stated, "But, in this case, we find that there is an inter-party Judgment in which all the applicants are parties, which has become final. So even if the said Judgment is demonstrably wrong, the same will bind the parties thereto so long as the petitioners do not have a case that the said Judgment was obtained by fraud or collusion." The judgment that has been held as 'demonstrably wrong' is that judgment on the

basis of which order in OA No. 618 of 2002 had been passed, which had attained finality and the inter party judgment thereof would bind both the parties.

**30. The contention of the respondents that it is only the applicants in OA No. 618 of 2002 that are covered by the term "inter party judgment" is not correct in view of the fact that Order in that OA No. 618 of 2002 had not by that time attained finality since the High Court was seized of the same.**

**31. Thus, all those judgments/orders which had been decided holding that the Island Special Pay is a part of Pay for all purposes, which had attained finality are all inter party judgments. Such judgments could be traced right from 1986 when OA No. 896 of 86 was filed in which it was held that Island Special Pay is one that qualifies as pay for all purpose. All the other O.As in which the subject matter revolved round the character of Island Special Pay, and which had attained finality, would thus, be inter party judgments. In fact, prior to the decision of the Apex Court in the case of L. Chandra Kumar vs Union of India (1997) 2 SCC 261, there was direct access to Supreme Court challenging the order of the Tribunal. It would be seen from Annexure A-6 of OA No. 808 of 11, that while considering SLP against order in OA No. 15445 of 1994, the Apex Court has dealt with a number of other S.L.Ps also, and the Apex Court has in its order dated 07-12-1996 has held as under:-**

*"We have heard Shri Raghbir, the learned senior counsel for the petitioner's and Shri Nair, the learned counsel appearing for the respondent in SIP (C) 7909/96. The impugned judgement in these special leave petitions are based on the earlier judgement in the Central administrative Tribunal dated April 27, 1989 in O. A. No. 896 of 1986. In the impugned judgement is the tribunal has stated that the special leave petition was filed against the said judgement in the OA 896 of 1986 and it was dismissed on December 27, 1990. Since the impugned judgments are based on the earlier judgment in OA 896 of 1986 and especially petition filed their*

*incessant judgments has already been dismissed the special leave petitions are also dismissed."*

32. Thus, it can safely be stated that it is not judgment in OA No. 618 of 2002 that could be treated as interparty judgment but all the other judgments in which the Island special pay had been declared as they for all purposes should be treated as interparty judgments as these are already attained finality. The benefit of the judgment would accrue to all the parties to the judgment subject to the following conditions:-

- (a) That the retirement of the individual should be anterior to the date of amendment to Rule 9(21) F.R.
- (b) That the employee should have been in receipt of Island Special Pay with the last pay drawn prior to retirement.

All those who had retired prior to introduction of amendment to FR as stated above with Island special pay as part of the last pay drawn and also who were parties to one or the other of the O.As filed which were decided in their favour in respect of Island Special Pay, would be categorized as parties to the inter party judgments.

33. Admittedly, all the applicants in the above O.As were parties to earlier judgments and as such, subject to the above said twin conditions, these are entitled to have their Island Special Pay treated as Pay for the purpose of working out pension and other terminal benefits. It is so declared.

34. The O.As are thus, allowed to the above extent. Respondents are directed to verify the service records of all the applicants and subject to their fulfilling the afore said twin conditions, (i.e. their retirement is anterior to the date

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of taking effect of the amendment to the Rules, in 1996 and that they were at the time of retirement in receipt of Island Special Pay) their terminal benefits and pension be revised and the difference in the terminal benefits and pension be paid to them. No difference in Island Special Pay if any need be paid as the arguments advanced have been revolving around only about the entitlement of pension and terminal benefits, taking into account the island special pay.

35. As the case involves many applicants and also as the period involved is also substantial, a period of eight months is allowed for full compliance of this order.

36. No costs.

K.NOORJEHAN  
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN  
JUDICIAL MEMBER

trs