



2026:AHC-LKO:34345-DB

*A.F.R.*

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**PUBLIC INTEREST LITIGATION (PIL) No. - 14796 of 2019**

Lok Prahari Thru Gen. Secy. S.N. Shukla .....Petitioner(s)

Versus

State of U.P. Thru Prin. Secy.  
Sansadiya Karya Vibhag and Ors. ....Respondent(s)

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Counsel for Petitioner(s) : R.D. Shukla In Person,  
Counsel for Respondent(s) : C.S.C., Abhinav N Trivedi

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*Reserved on 17.02.2026*

*Delivered on 13.05.2026*

**Court No. - 1**

**HON'BLE RAJAN ROY, J.  
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

**(Per: Abdhesh Kumar Chaudhary, J.)**

1. Heard Shri S.N. Shukla, petitioner in person, and Shri Abhinav N. Trivedi, learned Counsel for the respondent, as well as learned Standing Counsel for the State and perused the materials available on record.

2. By means of the present writ petition, the petitioner has sought for the following reliefs:

*“1. declare, at least prospectively that the provisions of Sections 4,5,9,13(3), 13(4), 15(2), 17-A, and Chapter VIII of The Uttar Pradesh State legislature (Members' Emoluments and Pension) Act, 1980 providing for certain 'allowances' and other facilities to members and their families/companions and pension to former members and their spouses, medical facilities to ex-members and their families as well as travel facilities to ex-members and their family members' and companions are ultra vires the constitution,*

*2. issue a Writ, order or direction in the nature of Mandamus to the opposite parties 1 to 3 to stop forthwith payment of pension/family pension to ex-MLAs/MLCs and their spouses, and provision of other facilities mentioned in 1 above.*

*3. order recovery of expenditure on illegal pension/ family pension and other impugned provisions during the pendency of this writ petition from the recipients thereof.*

*4. Issue a Writ, order or direction in the nature of Mandamus to the opposite parties to setup an independent permanent Mechanism to make recommendations regarding revision of salary and allowances to be given to the members,*

*5. pass any other suitable order to meet the ends of justice in the facts and circumstances of the case, and*

*6. allow this Writ Petition with cost to the petitioner organisation.”*

### **A. INTRODUCTION**

3. The present writ petition, instituted in the nature of a public interest litigation (PIL) by Lok Prahri, a Society registered under the Societies Registration Act, 1860 seeks to lay a challenge to the Constitutional validity of Sections 4, 5, 9, 13(3), 13(4), 15(2), 17-A, and Chapter VIII of **The Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980** (U.P. Act No. 23 of 1980). Apparently, these provisions, as amended from time to time, confer upon sitting Members as well as ex-members of a Legislative Assembly and/or a Legislative Council (MLAs/MLCs) a wide range of 'Salary, Allowances' and 'other facilities', and further extend pension, family pension, free travel, medical facilities and other amenities to non-members *i.e.*, their spouse, family members and companion.

4. Essentially, the fulcrum of the challenge of the petitioner rests on the competency of the State Legislature to legislate and/or provide for pension and grant of various facilities to its members/former members under the provisions of the Act of 1980. According to the petitioner, the said legislation is in the teeth of Article 195 of the Constitution of India (*corresponding to Entry 38 of List II of the Seventh Schedule*), as the same relates only to Salaries and Allowances of Members of a State Legislature and the word "pension" is conspicuously missing from the said enabling provision of the Constitution of India.

## **B. CONTENTION OF THE PETITIONER**

5. It has been submitted by Shri S.N. Shukla, petitioner-in-person that Article 195 of the Constitution of India (*corresponding to Entry 38 of List II of the Seventh Schedule*) empowers the State Legislature to make laws only for payment of 'Salaries and Allowances' to "*Members*" of the State Legislature. According to him, the word "*Member*" is clearly to be understood to mean a '*sitting member*'. Thus, the petitioner has submitted that in tandem with the said understanding the original Act legislated by the Respondent-State being The Uttar Pradesh Legislative Chambers (Members' Emoluments) Act, 1952 faithfully followed this mandate and as such at the time of commencement, it provided only a modest salary of ₹200 per month and two limited allowances (travelling allowance and daily allowance) that too only when the member had to attend to his duties and functions as a legislator. Further, there was no provision for pension, rent-free house, medical reimbursement, constituency allowance, secretarial allowance, free travel for family or companion, or any benefit whatsoever to existing members or ex-members or their families.

6. However, the point being tried to be made in the present petition is that the original 1952 Act was replaced in the year 1980 by a new consolidating Act, being the **Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980** (hereinafter referred to as "**Act of 1980**"). The said Act of 1980 consistently underwent repeated amendments and successive governments kept enhancing these facilities and showering doles of benefits on their own members/ ex-members, without any thrift or respite. According to Shri S.N. Shukla, petitioner-in-person, new benefits were added one after another *i.e.*, free bus passes, railway coupons for self and family/companion, rent-free furnished accommodation, constituency allowance, medical allowance, secretarial allowance, house-building and vehicle advances, daily allowance even for "Jan Sewa" tours, and finally pension (introduced in the year 1976). He has submitted that till the year 2016, just before the

filing of the present writ petition, the extent of benefits extended to members/ ex-members under different heads could be captured as follows (w.e.f. 16.09.2016) :-

**“For sitting MLAs/MLCs**

*Salary : ₹25,000 per month*

*Constituency allowance : ₹50,000 per month*

*Medical allowance : ₹30,000 per month*

*Secretarial allowance : ₹20,000 per month*

*Daily allowance during session/committee days : ₹2,000 per day*

*Daily allowance on non-session “public service” tours : ₹1,500 per day*

*Railway coupons worth up to ₹4.25 lakh per year usable by self + family members + companion in any class, any time, anywhere in India*

*Unlimited AC Deluxe bus travel inside Uttar Pradesh with one companion*

*Rent-free furnished government accommodation in Lucknow*

*Telephone bills up to ₹6,000 per month (two landlines + one mobile)*

*House-building and vehicle advances up to ₹2 lakh each*

*Free indoor medical treatment in any government hospital including a special revolving fund facility at S.G.P.G.I., Lucknow.*

**For ex-MLAs/MLCs and their families (Chapter VIII)**

*Pension of ₹25,000 per month (equal to the salary of a sitting member)*

*Family pension to the spouse*

*Same kind of railway travel coupons and bus travel facility for ex-member + family + companion*

*Medical facilities for ex-member and family members.”*

7. In the present writ petition, the petitioner has placed on record a comparative table which remarkably shows how the benefits have grown from a modest ₹200 salary plus limited allowances in 1952 to more than ₹1,25,000 per month in cash alone, (excluding the value of free travel, house, medical, telephone, advances, etc.). According to the petitioner, what began as modest reimbursement for actual work, now has been converted into a lifetime office of profit and perks for the member, his family and even a companion. Originally, pension required a minimum of five years' service but in the year 2004 even this requirement was

removed with retrospective effect, so that even a member who served for a few months or days became entitled to lifelong pension and all the other post-tenure benefits.

8. The core grievance of the writ petitioner is that all these provisions travel far beyond the limited power conferred by Article 195 of the Constitution of India, which speaks only of “salary and allowances” to “Members” and makes no mention of pension, post-retirement benefits, facilities to family/companion or “other facilities”. According to the petitioner, the State Legislature has, in effect, made itself the judge in its own cause and has showered benefits upon itself and its former members in a manner that is manifestly arbitrary, discriminatory and contrary to the basic constitutional idea that a public office is meant for public service and not for personal gain.

9. The writ petition also highlights that even Local body representatives (*i.e.* Nagar Nigam, Zila Parishad, Village Panchayat, etc.) get no such pension or lifelong facilities, not to mention of other Constitutional functionaries like Judges, Comptroller and Auditor General of India (C.A.G.), Election Commissioners and senior civil servants, who do not enjoy free travel or medical benefits for spouse/companion. The petitioner has further submitted that, even while in service, the State has itself abolished old pension schemes for its regular employees and it was ironical that it was showering with benefits on their own members/ex-members, who supposedly ought to be ‘jan sevaks’. It has been vehemently submitted that this ever-increasing burden on the public exchequer is unjustified and amounts to “loot of public money”.

10. During the course of hearing, the writ petitioner appearing in person has invoked the debates made during framing of the Constitution and submitted that the framers of the Constitution did not ever envisage a lifelong “office of profit”. Speeches in the Constituent Assembly (e.g., Shri Biswanath Das on 20-5-1949) emphasized that ‘*members should serve with allowances without pay, reflecting the spirit of public service rather than personal gain*’. Even the chairman of the Drafting

Committee, Dr. B.R. Ambedkar warned about the same in the context of Representation of the People Act, 1951 stating that “*there can be no use in a Parliament if we adopt a system, which permits the Government to ‘corrupt the whole of Parliament’ either by offering Political offices or by offering some other advantages.*” According to the petitioner, the impugned provisions converted the position of MLA/MLC into a lifelong boon, contrary to the Constitutional scheme and democratic ethos.

**11.** The petitioner concluded his argument by submitting that the impugned provisions constitute ‘colourable exercise’ of legislative power which is *ultra-vires* to the Constitutional mandates as the Legislature cannot be permitted to do anything indirectly what it cannot do directly under Article 195 of the Constitution of India, as has been authoritatively held by the Constitutional bench in the case of *Golak Nath v. State of Punjab*, reported in *AIR 1967 SC 1643*. The contention that law cannot be questioned on implied prohibition unless express provision is contravened, is incorrect. It has been tried to bring home the analogy that the grant of pension to Ex-MLAs/MLCs does not qualify as “pension” in its true legal sense, as it fails every test applicable to government employees-employer sanctioned, part of service conditions, full-time devotion during prime years, and qualifying service. According to the petitioner, it is a gratuitous payment self-awarded by legislators.

**12.** The petitioner has also tried to instill logical reasoning to his submission by stating that traditionally pension meant to be a periodical payment in consideration of past services rendered under service conditions. However, since legislators do not fulfill these criteria and do not devote full prime years in service, they ought not to be granted any pensionary benefits. According to him, the impugned provisions are violative of Article 14 of the Constitution being arbitrary, irrational and discriminatory. The writ petitioner appearing in person in order to buttress his arguments advanced during the proceedings has strenuously relied on a plethora of cases being :-

- \* *U.P. State Agro Industrial Corpn. Ltd. v. Kisan Upbhokta Parishad*, (2007) 13 SCC 246;
- \* *S.G. Jaisinghani v. Union of India*, (1967) 65 ITR 34;
- \* *Hindalco Industries Ltd. v. Union of India*, (1994) 2 SCC 594;
- \* *Union of India v. Dinesh Engineering Corpn.*, (2001) 8 SCC 491;
- \* *State of U.P. v. Johri Mal*, (2004) 4 SCC 714;
- \* *Onkar Lal Bajaj v. Union of India*, (2003) 2 SCC 673;
- \* *Subramanian Swamy v. CBI*, (2014) 8 SCC 682;
- \* *Lok Prahari v. State of U.P.*, (2018) 6 SCC 1;
- \* *Abhay Singh v. State of U.P.*, (2013) 15 SCC 435;
- \* *Alagaapuram R. Mohanraj v. T.N. Legislative Assembly*, (2016) 6 SCC 82;
- \* *Vineet Narain v. Union of India*, (1998) 1 SCC 226;
- \* *Prakash Nath Khanna v. CIT*, (2004) 9 SCC 686;
- \* *Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd.*, (2015) 9 SCC 209;
- \* *Sakshi v. Union of India*, (2004) 5 SCC 518;
- \* *Shree Sajjan Mills Ltd. v. CIT*, (1985) 4 SCC 590;
- \* *Tandon Bros. v. State of W.B.*, (2001) 5 SCC 664;
- \* *State of Kerala v. Mar Appraem Kuri Co. Ltd.*, (2012) 7 SCC 106;
- \* *DTC v. Mazdoor Congress*, 1991 Supp (1) SCC 600;
- \* *Shayara Bano v. Union of India*, (2017) 9 SCC 1;
- \* *Petron Engineering Construction (P) Ltd. v. Central Board of Direct Taxes*, 1989 Supp (2) SCC 7;
- \* *CBI v. Keshub Mahindra*, (2011) 6 SCC 216;
- \* *MCD v. Gurnam Kaur*, (1989) 1 SCC 101;
- \* *Naresh Shridhar Mirajkar v. State of Maharashtra*, 1966 SCC OnLine SC 10;
- \* *B.R. Kapur v. State of T.N.*, (2001) 7 SCC 231;
- \* *Union of India v. V. Sriharan*, (2016) 7 SCC 1;
- \* *Raja Ram Pal v. Lok Sabha*, (2007) 3 SCC 184;
- \* *Alagaapuram R. Mohanraj v. T.N. Legislative Assembly*, (2016) 6 SCC 82;
- \* *N.D.P. Namboodripad v. Union of India*, (2007) 4 SCC 502;
- \* *State of Haryana v. AGM Management Services Ltd.*, (2006) 5 SCC 520;
- \* *Amalgamated Coalfields Ltd. v. Janapada Sabha*, 1962 SCC OnLine SC 72;
- \* *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1;
- \* *Roxann Sharma v. Arun Sharma*, (2015) 8 SCC 318;
- \* *Avishek Goenka v. Union of India*, (2012) 5 SCC 321;
- \* *State of A.P. v. P. Laxmi Devi*, (2008) 4 SCC 720;

- \* *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212;
- \* *D.C. Wadhwa v. State of Bihar*, (1987) 1 SCC 378;
- \* *Delhi Financial Corpn. v. Rajiv Anand*, (2004) 11 SCC 625;
- \* *A.K. Gopalan v. State of Madras*, 1950 SCC 228;
- \* *M.T. Khan v. Govt. of A.P.*, (2004) 2 SCC 267;
- \* *S.G. Jaisinghani v. Union of India*, (1967) 65 ITR 34.

### **C. CONTENTION OF THE RESPONDENT**

13. *Per contra*, at the very outset, learned Counsel appearing on behalf of the Respondent-State has submitted that the present writ petition is not maintainable either in law or on facts. The petitioner-organization lacks the requisite *locus standi* to challenge the Constitutional validity of the provisions relating to emoluments, allowances, and pension of Members and Ex-Members of the Legislature. As is evident from the record, similar issues have already been raised by the petitioner and adjudicated upon up to the Hon'ble Supreme Court and the same have been decided against the petitioner. Therefore, the present petition, raising materially identical issues, is barred by principles analogous to *res judicata* and constitutes an abuse of the process of law.

14. It has been vehemently submitted that the instant writ petition has not been filed *bona fide* in public interest. Rather, it seeks to reopen settled issues, thereby wasting valuable judicial time. Mere recognition of *locus* in earlier public interest matters does not confer an unfettered right upon the petitioner to agitate every issue repeatedly. The conduct of the petitioner clearly indicates lack of *bona fides*. It has been further argued that the impugned provisions of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980 fall squarely within the legislative competence of the State Legislature. Article 195 of the Constitution of India, read with Entry 38 of List II (Seventh Schedule), confers wide powers upon the State Legislature to determine salaries, allowances, and pensions of its Members, including former Members. The Hon'ble Supreme Court in *Lok Prahari vs. Union of India* reported in (2018) 16 SCC 696; has affirmed the validity of such

legislative provisions in an identical clause meant for Members of Parliament.

**15.** Furthermore, it has been strenuously argued that the contention of the petitioner that benefits cannot be extended to Ex-members is misconceived. The term “Member” as used in Article 195 of the Constitution of India and under the Act of 1980 is not restricted to ‘sitting members’ alone. The Legislature, in its legislative wisdom, has validly and rightfully extended certain benefits to former members considering the nature of their duties and continued public engagement. It has also been submitted that the allowances and facilities provided, including travel and medical benefits, are not arbitrary but are intrinsically connected with the discharge of legislative functions. Members of the Legislature are required to maintain extensive public and social interaction, and such provisions facilitate effective performance of their duties. The Legislature, being the best judge of its requirements, has rightly provided for these facilities. The grant of pension, family pension, and allied benefits to ex-members is a welfare measure enacted within the domain of legislative policy. Such provisions cannot be termed illegal or unconstitutional merely because similar benefits are not extended to other Constitutional authorities. The Legislature is empowered to make classifications based on *intelligible differentia* and functional requirements.

**16.** It has been further submitted that the challenge based on the ground of Article 14 of the Constitution of India is also wholly misconceived. The principle of equality applies among equals, and Members of Legislature constitute a distinct class owing to the nature of their Constitutional functions. The petitioner’s attempt to equate legislators with government servants is fundamentally flawed. The impugned provisions are neither arbitrary nor discriminatory and thus, do not violate Article 14 of the Constitution of India. It is a settled principle of Constitutional law that Courts do not sit in judgment over the wisdom of legislative policy. The determination of quantum of salary, allowances, and pension lies exclusively within the legislative

domain. The Judiciary cannot assume the role of a “second legislature” to re-evaluate such policy decisions unless there is a clear Constitutional violation, which is absent in the present case.

17. Learned Counsel appearing on behalf of the respondents has lastly submitted that the issues in hand raised in the present petition are no longer *res integra*. The Hon’ble Supreme Court in *Common Cause vs. Union of India* (2002) and *Lok Prahari vs. Union of India* (2018), as well as this Hon’ble Court in earlier proceedings involving the same petitioner, have upheld the legislative competence and validity of such provisions. The petitioner has misinterpreted these judgments to advance untenable claims. The present writ petition does not raise any new question of Constitutional or public importance. The issues are repetitive and already adjudicated. Therefore, no interference by this Hon’ble Court is warranted in the present writ petition. Thus, it has been submitted that the Uttar Pradesh State Legislature (Members’ Emoluments and Pension) Act, 1980 is a valid piece of legislation enacted within the Constitutional limits. The provisions relating to salary, allowances, pension, and other benefits are reasonable, non-discriminatory, and enacted keeping in view the nature of legislative responsibilities.

#### **D. ANALYSIS AND DETERMINATION**

18. Having heard the petitioner appearing in person, as well as the learned State Counsel, and upon perusal of the pleadings, statutory provisions, and precedents relied upon, this Court proceeds to examine the Constitutional validity of the impugned provisions of the Uttar Pradesh State Legislature (Members’ Emoluments and Pension) Act, 1980.

19. This Court, while exercising its jurisdiction under Article 226 of the Constitution of India, is primarily concerned with examining the Constitutional validity of the impugned enactment and not the desirability or wisdom of the policy underlying it. The distinction between *illegality* and *policy disagreement* must be scrupulously maintained. Unless the petitioner is able to demonstrate that the

impugned provisions suffer from manifest arbitrariness, lack of legislative competence, or violation of Constitutional guarantees, interference is unwarranted. This Court is also mindful of the principle that economic and fiscal legislation is accorded greater latitude and the threshold for judicial interference is significantly high in these kind of cases. In the present public interest litigation, the core challenge pertains to the grant of salary, allowances, pension and ancillary benefits to sitting as well as former Members of the Legislature.

20. The basic postulate of the petitioner is founded on the legislative intent of *Article 195* of the Constitution of India which provides as follows:

*“195. Salaries and allowances of members:- Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.”*

21. Apparently, the aforesaid Article provides for entitlement of salaries and allowances of Members of Legislative Assembly and Legislative Council of a State. However, it is *Entry 38 of List II (State List) of the Seventh Schedule* to the Constitution of India, which is reproduced hereunder, which provides for law making powers to any state by virtue of Article 246(3) of the Constitution of India:

***“List-II - State List***

*38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.”*

22. This Court finds that the State of Uttar Pradesh by virtue of the aforesaid powers vested on it under Article 195 of the Constitution of India read along with Entry No. 38 of List-II (State list) has enacted the Uttar Pradesh Legislative Chambers (Members' Emoluments) Act, 1952, which was succeeded by a new consolidating Act, being the Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980. Further, the word "allowances" has not been defined in our Constitution of India nor the Act of 1980. In *Black's Law Dictionary*, Ninth Edition, the word "*allowance*" has been defined as under:-

*"Allowance- A share or portion, esp. of money that is assigned or granted."*

23. In the *Law Lexicon* by P Ramanatha Aiyar 2nd Edition, the word "*allowance*" has been defined as under:-

*"Allowance- Something given as a compensation, abatement, or deduction; a portion or a gift or gratuity to a child or other dependent; the sanction or approbation of the Court to certain acts; settlement; to put upon allowance; to restrain or limit to a certain quantity of provision or drink. Used in such terms (as) allowance of a specified amount as alimony Pendente lite; special allowance for costs in taxation; allowance for the maintenance of one's wife and children; allowance to insolvent debtors etc."*

Although, the Act of 1980 does not define "allowances" however, the said word is pre-fixed with several words in the Act like we have the Constituency allowances (Section 4), Daily allowance (Section 15), Secretarial allowance (Section 15A), Accommodation allowances (Section 16(2)) etc. Thus, given the *prima facie* meaning of the word allowances, we find that the Act of 1980 has been enacted by the State Legislature within its legislative competence as provided under Article 195 of the Constitution of India to provide various kinds of allowances. However, the petitioner has sought to challenge certain provisions of the Act of 1980, which according to them is beyond the legislative

competence of the State Legislature, as it could not have granted this allowances as per Section 4 (Constituency allowances), Section 5 (Railway coupons), Section 9 (Rail Journey allowances), Section 13 (Journey by bus allowances), Section 15 (Daily Allowances), Section 17A (Provision of loan to members) and most importantly the extended pensionary benefits to itself for two reasons, firstly, because Entry 38 of List II (State List) of the Seventh Schedule does not contemplate any pensionary benefits and secondly, because of the absence of such express Constitutional recognition.

24. Although, the two reasons apparently sounds to be one and the same as express recognition takes within its stride any contemplation, for without contemplation there cannot be any express Constitutional recognition.

25. However, before this Court proceeds any further, it would be in the best of things that at least, the impugned provisions, which has been sought to be challenged and form a part of the Act of 1980 be curled in for ready reference :-

*“4. Constituency allowance.—Every member of the Assembly or council, whether or not he holds any of the offices referred to in clause (i) of Section 2, shall be entitled to receive, for the duration of his membership a constituency allowance of <sup>1</sup>[seventy-five thousand rupees] per month:*

*<sup>2</sup>[Provided that the aforesaid member shall be entitled to only seventy per cent of the above mentioned constituency allowance from the month of April, 2020 to March, 2021.]*

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1 Subs. for “fifty thousand rupees” by U.P. Act 13 of 2025, S. 3 (w.r.e.f. 1-4-2025). Earlier, substituted. for “thirty thousand rupees” by U.P. Act 21 of 2016, S. 3 (w.e.f. 14-09-2016).

2 Ins. by U.P. Act 14 of 2020, S. 3 (w.r.e.f. 1-4-2020).

<sup>3</sup>**[5. Railway coupons.**—<sup>4</sup>[(1) Subject to the provisions of this Act, every member of the Assembly or the Council, whether or not he holds any office referred to in clause (i) of Section 2, shall be provided, in the manner prescribed with railway coupons of such value not exceeding <sup>5</sup>[five lakh rupees] per annum from June 1, 2015 as may be used by such member for himself and for the <sup>6</sup>[members of his family or his companion] for travel by any railway in any class at any time within or outside Uttar Pradesh in accordance with such principles as maybe prescribed.]

<sup>7</sup>[(2) subject to the other provisions of this Act, every ex-member shall be provided, in the manner prescribed, with railway coupons of such value not exceeding <sup>8</sup>[one lakh fifty thousand rupees] per annum as may be used by such ex member for himself and for the members of his family and the provisions of sub-section (1) shall mutatis mutandis apply to the railway coupons supplied under this sub-section.]

*Explanation*—value of railway coupons for journeys by railway referred to in this section shall from time to time be determined by the State Government in consultation with the Railway Board:]

<sup>9</sup>[Provided that out of the railway coupons to be supplied under this section to a member, he shall at his option,—

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3 Subs. by U.P. Act 13 of 1986, S. 4 (w.r.e.f. 1-4-1986). Prior to substitution it read as:- “**5. Journey by rail within Uttar Pradesh.**—Every member shall be provided, in the maimer prescribed, with railway coupons of such value as may entitle him to travel in first class within Uttar Pradesh at any time and by any railway.”

4 Subs. by U.P. Act 3 of 2015, S. 4(a) (w.e.f. 1-4-2015). Prior to substitution it read as:- “(1) Subject to the provisions of this Act, every member of the Assembly or the Council, whether or not he holds any office referred to in clause (i) of Section 2, shall be provided, in the manner prescribed, with railway coupons of such value, not exceeding forty-five thousand rupees per annum for the period from June 1, 1990 to August 15, 1991, not exceeding fifty-four thousand rupees per annum for the period from August 16, 1991 to May 1, 1994, not exceeding sixty-five thousand rupees per annum for the period from May 2, 1994 to May 31, 1997 and not exceeding eighty-five thousand rupees per annum from June 1, 1997 and not exceeding eighty-eight thousand rupees per annum from June 1, 1998 and not exceeding one lakh twenty thousand rupees per annum from April 1, 2004 and not exceeding one lakh fifty thousand rupees per annum from June 1, 2005, as may be used by such member for himself and for the members of his family for travel by any railway in any class at any time within or outside Uttar Pradesh in accordance with such principles as may be prescribed:”.

5 Subs. for “**four lakh twenty-five thousand rupees**” by U.P. Act 13 of 2025, S. 4(a) (w.r.e.f. 1-4-2025). Earlier, substituted. for “**three lakh twenty five thousand rupees**” by U.P. Act 21 of 2016, S. 4(a)(i) (w.e.f. 14-09-2016).

6 Subs. for “**members of his family**” by U.P. Act 21 of 2016, S. 4(a)(ii) (w.e.f. 14-09-2016).

7 Ins. by U.P. Act 30 of 1998, S. 4(b) (w.e.f. 25-9-1998).

8 Subs. for “**one lakh rupees**” by U.P. Act 13 of 2025, S. 4(b)(i) (w.r.e.f. 1-4-2025). Earlier, substituted. for “**eighty thousand rupees**” by U.P. Act 21 of 2016, S. 4(b)(i) (w.e.f. 14-09-2016).

9 Subs. by U.P. Act 27 of 2000, S. 2 (w.e.f. 1-6-2000). Prior to substitution it read as:- “Provided that out of the railway coupons to be supplied under this section to a member, he shall at his option, be supplied, instead of such value of railway coupons as he may desire, coupons of equal value for travel by air at any time within or outside Uttar Pradesh in accordance with such principles as may be prescribed.”.

(a) be supplied <sup>10</sup>[coupons of equal value or reimburse the fare] for travel by air at any time within or outside Uttar Pradesh; and

(b) be paid an amount in cash not exceeding <sup>11</sup>[the amount opted by him] per month for petrol or diesel for his own vehicle;

instead of such value of railway coupons as he may desire, in such manner as may be prescribed.]

<sup>12</sup>[Provided further that whenever there is an increase in the railway fare of <sup>13</sup>[air-conditioned two-tier], the State Government may by a notified order make a proportional increase in the value of railway coupons.]

<sup>14</sup>[Provided also that out of the railway coupons to be supplied under sub-section (2) to an ex-member, he shall at his option be supplied coupons of equal value for travel by air at any time.]

<sup>15</sup>[Provided also that an ex-member shall be paid out of the Railway coupons to be supplied to him an amount in cash not exceeding <sup>16</sup>[one lakh rupees] annually for petrol or diesel for his own vehicle.]

<sup>17</sup>**[9. Journey by Minister, Speaker etc.]**—The railway coupons referred to in Section 5, may, prescribed, be used by every member who holds any office mentioned in clause (i) of Section 2, for himself and members of his family for travel in any railway in any class at any time within or outside Uttar Pradesh for purposes otherwise than in discharge of official duties.]

<sup>18</sup>**[13. Journey Bus.-** [\*\*\*\*\*]

10 Subs. for “coupons of equal value” by U.P. Act 3 of 2015, S. 4(c)(i) (w.e.f. 1-4-2015).

11 Subs. for “**twenty-five thousand rupees**” by U.P. Act 13 of 2025, S. 4(b)(ii) (w.r.e.f. 1-4-2025). Earlier, substituted for “**eighteen thousand rupees**” by U.P. Act 21 of 2016, S. 4(c) (w.e.f. 14-09-2016).

12 Ins. by U.P. Act 4 of 1997, S. 3(b) (w.e.f. 1-5-1997).

13 Subs. for “**first class**” by U.P. Act 25 of 2000, S. 3 (w.e.f. 22-5-2000).

14 Ins. by U.P. Act 7 of 2006, S. 2(b) (w.e.f. 14-03-2006).

15 Ins. by U.P. Act 21 of 2016, S. 4(b)(ii) (w.e.f. 14-09-2016).

16 Subs. for “**fifty thousand rupees**” by U.P. Act 13 of 2025, S. 4(c) (w.r.e.f. 1-4-2025).

17 Subs. by U.P. Act 13 of 1986, S. 9 (w.r.e.f. 1-4-1986). Prior to substitution it read as:- “**9. Journey by Minister, Speaker etc.**—Every member who holds any of the offices mentioned in clause (i) of Section 2 shall be provided with railway coupons:— (a) referred to in Section 5, which he shall be entitled to use, in the manner prescribed, for travelling in First Class within Uttar Pradesh for purposes other than public business; (b) referred to in clause (b) of Section 6, which he shall be entitled to use, in the manner prescribed, for taking along with himself the members of his family in connection with journeys performed in First Class, within or outside Uttar Pradesh for purposes other than public business, so however, that the cost of such journeys in aggregate (including the cost of journey made by such member and the members of his family outside Uttar Pradesh does not exceed the maximum limit determined in accordance with clause (b) of the said section.”.

18 Subs. by U.P. Act 21 of 2005, S. 5 (w.e.f. 10-08-2005). Prior to substitution it read as:- “**13. Journey Bus.**—(1) Every member shall be provided, in the manner prescribed, with a free non-

**13(3)** Every person who is entitled to a pension under Chapter VIII shall be entitled, in the manner prescribed with a free non-transferable pass to travel at any time within Uttar Pradesh by the Uttar Pradesh State Road Transport Corporation Bus without payment of the passenger tax due under any law for the time being in force.

**13(4)** The pass referred to in sub-section (3) may also be used by such person for taking one companion along with him in the bus:

*Provided that if a person referred to in sub-section (3) travels in an air-condition bus or a deluxe bus he shall have to bear himself the excess amount of fare difference.]*

**15. Daily Allowance.**— [\*\*\*\*\*]

<sup>19</sup>**15[(2)** Every member whether or not he holds any office referred to in clause (i) of Section 2 and the Leader of Opposition shall be entitled to daily allowance at the rate of two thousand rupees per day for the days during which he tours for the works in the service of the public and for which the allowance or incidental charges under sub-section (1) are not, may not be admissible:]

<sup>20</sup>[Provided that a member shall not be entitled to the daily allowance admissible under sub-sections (1) or (2) for the period of his confinement in a jail except the day of his discharge.]

**17-A. Provision of Loan to Members.**—The State Government may provide for grant of repayable Advance to members advance of a sum <sup>21</sup>[not exceeding rupees two lakh] to any person who is a member, whether or not he holds any office referred to in clause (i) of Section 2, or who has held office as a member of the Assembly or Council, either for construction or purchase of residential, accommodation or for purchase of a vehicle in accordance with such terms and conditions as may be prescribed:]

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-transferable pass entitling him to travel, at any time within Uttar Pradesh, by the Uttar Pradesh State Road Transport Corporation Bus, in the highest class, if any, without payment of the passenger tax due under any law for the time being in force. (2) The pass referred to in sub-section (1) may also be used by a member for taking one companion along with him in the Bus. (3) Every pass issued to a member under this section shall be valid for the duration of his membership and on the expiration of the term of such membership, it shall be Surrendered to the Principal Secretary. (4) Every person who is entitled to a pension under Chapter VIII shall also be entitled to a free non-transferable bus-pass and the provisions of sub-section (1) and sub-section (2) shall, mutatis mutandis, apply to every such person as they apply to a member.”

<sup>19</sup> Subs. by U.P. Act 13 of 2025, S. 6(c) (w.r.e.f. 1-4-2025). Earlier, inserted by U.P. Act 16 of 1994, S. 3(b) (w.e.f. 30-4-1994). Prior to substitution it read as:- “(2) Every member shall be entitled to daily allowance at the rate of one thousand five hundred rupees per day for the days during which he tours for the works in the service of the public and for which the allowance or incidental charges under sub-section (1) are not, or may not be, admissible.”.

<sup>20</sup> Ins. by U.P. Act 13 of 2025, S. 6(d) (w.r.e.f. 1-4-2025).

<sup>21</sup> Subs. for “not exceeding rupees one lakh” by U.P. Act 4 of 1997, S. 6 (w.e.f. 1-5-1997).

<sup>22</sup>[Provided that if the advance granted to any such member for one purpose and the interest due thereon has been repaid, the member may be granted advance for the other purpose.]

### CHAPTER VIII

#### PENSION TO EX-MEMBERS

**23. Meaning of certain expressions.**—For the purposes of this Chapter—

<sup>23</sup>[(a) the expression ‘Assembly’ or ‘Council’ shall include the United Provinces Legislative Assembly or the United Provinces Legislative Council respectively:—

(i) which was constituted and functioned as such under the Government of India Act, 1935, either before or after the commencement of the Indian Independence Act, 1947; or

(ii) which functioned as a House of the provisional Legislature for the State under the Constitution of India.]

(b) the expression ‘year’ means any period of twelve calendar months;

(c) the period-during which a person has, by virtue of his membership in the Assembly or Council, held any of the offices mentioned in clause (i) of Section 2 shall also be taken into account for determining the term of such member

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22 Ins. by U.P. Act 25 of 2000, S. 4 (w.e.f. 22-5-2000).

23 Subs. by U.P. Act 13 of 1984, S. 5 deemed always to have been substituted. Prior to substitution it read as:- “(a) the expression ‘Assembly’ or ‘Council’ shall include the United Provinces Legislative Assembly or the United Provinces Legislative Council respectively which functioned between January 1, 1946 and the date of commencement of the Constitution of India, and thereafter, as a House of the Provisional Legislature for the State;”.

<sup>24</sup>**[24. Pension to Ex-members.]**—<sup>25</sup>*[(1) Every person who has served as a member of the Assembly or the Council for any period shall be entitled to a pension at the rate of thirty five thousand rupees per month throughout his life:*

*Provided that where any person who has served as aforesaid for a period exceeding one term of whatever duration, he shall be entitled to an additional pension at the rate of two thousand rupees for every completed year in excess of one term:*

*Provided further that where any person who has served as aforesaid for his first full term of six years as a member of Council, he shall be entitled to an additional pension of two thousand rupees i.e. a total pension of thirty seven thousand rupees per month:*

*Provided also that in the event of dissolution of Assembly, the period from the date of dissolution of Assembly, till the date of first meeting of the new Assembly, shall be counted for pension purposes of a member who has been the speaker of the dissolved Assembly and has continued to be in office as such during the said period.*

*Explanation—Where a person has served as a member of the Assembly or the Council for a term of six months and above and has not completed one year then such person shall for the purposes of*

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24 Subs. by U.P. Act 4 of 1997, S. 7 (w.e.f. 1-5-1997). Prior to substitution it read as:- “**24. Pension to Ex-members.**—(1) Every person who has served for a period of five years (whether continuous or not), as a member of the Assembly or of the Council, or partly as a member of the Assembly and partly as a member of the Council shall be entitled to a pension at the rate of seven hundred and fifty rupees per month throughout his life: Provided that where any person has served as aforesaid for a period exceeding five years, he shall be entitled to an additional pension at the rate of one hundred rupees per month for every completed year in excess of five, so however, that the maximum amount of pension payable under this section shall, in no case exceed one thousand five hundred and fifty rupees per month. (2) Every person who has, for the first time, become entitled to a pension with effect from January 1, 1981 by virtue of— (i) the Explanation I to sub-section (1), or (ii) his membership of the Assembly or Council as defined in clause (a) of Section 23, shall also be entitled to a pension, at the rate specified in the said sub-section (1) for the period commencing from January 1, 1977 and ending on December 31, 1980. Explanation I—Where a person has served as a member of the Assembly or the Council for a term which falls short of five years by a period not exceeding one month, then such person shall, for the purposes of this section, be deemed to have served as a member for five years. Explanation II—Where a person has served as a member of the Assembly, constituted in the year 1980 or in the year 1985, for a term which falls short of five years by a period not exceeding three months, then such person shall, for the purpose of this section, be deemed to have served as a member for five years.”.

25 Subs. by U.P. Act 13 of 2025, S. 9 (w.r.e.f. 1-4-2025). Prior to substitution it read as:- “**24. Pension to Ex-members.**—(1) Every person who has served as a member of the Assembly or the Council for any period shall be entitled to a pension at the rate of twenty-five thousand rupees per month throughout his life: Provided that where any person has served as aforesaid for period exceeding one year, he shall be entitled to an additional pension at die rate of two thousand rupees per month for every completed year in excess of one year:] Provided further that in the event of dissolution of Assembly, the period from the date of dissolution of Assembly, till the date of first meeting of the new Assembly, shall be counted for pension purposes of a member who has been the speaker of the dissolved Assembly and has continued to be in office as such during the said period. (2) Where any person entitled to pension under sub-section (1) is also entitled to any other pension such person shall be entitled to receive the pension under sub-section (1) in addition to such pension. Explanation—Where a person have served as a member of the Assembly or the Council for a term of six months and above and have not completed one year then such person shall for the purposes of calculating the pension, be deemed to have served as a member for one year.”.

*calculating the pension, be deemed to have served as member for one year.*

*(2) Where any person entitled to pension under sub-section (1) is also entitled to any other pension, such person shall be entitled to receive the pension under sub-section (1) in addition to such pension.*

*(3) The pension and additional pension to every person shall be increased after every five years commencing from 1st April, 2025 on the basis of Cost Inflation Index provided under clause (v) of Explanation to Section 48 of the Income-tax Act, 1961 (Act 43 of 1961).]*

<sup>26</sup>**[24-A. Conditions of pension payable to certain persons.**—*Where a person becomes entitled to pension or additional pension under this Act on the ground that he has served as a member of the Assembly or Council, constituted or in existence before January 1, 1946 such pension or additional pension, as the case may be, shall be deemed to be admissible to such person with effect from January 1, 1977.]*

**25. Pension when not payable.**—*Notwithstanding anything contained in Section 24, no person shall be entitled to any pension under this Chapter in the following cases, namely—*

<sup>27</sup>[(a) <sup>28</sup>[\* \* \*]]

*(b) where any person is employed on a salary under the Central Government or any State Government or any Local Authority, or becomes otherwise entitled to any remuneration from any corporations owned or controlled by such Government or from a local authority, and such salary or remuneration is equal to or exceeds <sup>29</sup>[the amount of pension admissible under, Section 24] per month and he continues to be so employed or entitled to such remuneration;*

*(c) <sup>30</sup>[\* \* \*]*

*(d) where any person is elected to the office of the President or Vice-President or is appointed to the office of Governor of any State or the Administrator of any Union Territory and continues to hold such office;*

*(e) where any person is elected or nominated as a member of the Legislative Assembly or the Legislative Council of any State or of either of the Houses of Parliament and continues to be such a member.*

<sup>26</sup> Ins. by U.P. Act 13 of 1984, S. 7 (w.e.f. 29-4-1984).

<sup>27</sup> Subs. by U.P. Act 4 of 1997, S. 8(a) (w.e.f. 1-5-1997). Prior to substitution it read as:- “(a) where a person is entitled to any pension amounting to two thousand and fifty per month or more under the provisions of the Salaries, Allowances and Pension of Members of Parliament Act, 1954;”.

<sup>28</sup> Omitted by U.P. Act 30 of 1998, S. 10 (w.e.f. 25-9-1998).

<sup>29</sup> Subs. for “two thousand and fifty rupees” by U.P. Act 4 of 1997, S. 8(b) (w.e.f. 1-5-1997).

<sup>30</sup> Omitted by U.P. Act 30 of 1998, S. 10 (w.e.f. 25-9-1998).

<sup>31</sup>[*(f) where any person ceases to be a citizen of India.*]

<sup>32</sup>[*(2) Where any person entitled to pension under sub-section (1) is also entitled to any other pension such person shall be entitled to receive the pension under sub-section (1) in addition to such pension.*]

**26. Pension to be reduced in certain cases.**—Where in the circumstances mentioned in <sup>33</sup>[*clause (b)*] of Section 25, a person is entitled to a pension, salary or remuneration amounting to less than <sup>34</sup>[*the amount of pension admissible under Section 24*] per month, then the pension payable to such person under Section 24 shall not exceed the amount by which such pension, salary or remuneration falls short of <sup>35</sup>[*seven hundred and fifty rupees*] per month.

<sup>36</sup>[**26-A. Family Pension.**—<sup>37</sup>[*(1) If a sitting member dies during the tenure of his or her office, the spouse of such member or if such person leaves no spouse, his minor children or unmarried daughters shall be entitled to a family pension equal to pension otherwise admissible to the deceased member at the time of death or a pension of thirty thousand rupees, whichever is greater, for the lifetime of such spouse or till the minor children attain the age of majority and in case of daughters till they get married.*]

<sup>38</sup>[*(2) If an ex-member dies, the spouse of such ex-member or if such person leaves no spouse his minor children or unmarried daughters shall be entitled to a family pension equal to pension of such ex-member at the time of death or a pension of thirty thousand rupees, whichever is greater, for the life-time of such spouse or till*

31 *Ins. by U.P. Act 15 of 1991, S. 2 (w.r.e.f. 7-1-1991).*

32 *Ins. by U.P. Act 30 of 1998, S. 9(b) (w.e.f. 25-9-1998).*

33 *Subs. for “clause (a) or clause (b) or clause (c)” by U.P. Act 30 of 1998, S. 11 (w.e.f. 25-9-1998).*

34 *Subs. for “two thousand and fifty rupees” by U.P. Act 4 of 1997, S. 9 (w.e.f. 1-5-1997).*

35 *Subs. for “five hundred rupees” by U.P. Act 13 of 1984, S. 9 (w.e.f. 29-4-1984).*

36 *Subs. by U.P. Act 9 of 2010, S. 7 (w.e.f. 5-3-2010). Prior to substitution it read as:- “26-A. Financial assistance to dependent of deceased members.—If a sitting member, dies during the tenure of his or her office, a sum of Rs. 5 lacks shall be granted by the State Government to his/her dependent as lump sum one time Financial assistance.*

*Explanation—“Dependent” in relation to a member means his or her spouse, son, daughter, father or mother in order of preference, residing with and wholly dependent on such member.”.*

37 *Subs. by U.P. Act 13 of 2025, S. 10(a) (w.r.e.f. 1-4-2025). Prior to substitution it read as:- “(1) If a sitting member, dies during the tenure of his or her office, the spouse of such member shall be entitled to a family pension equal to pension otherwise admissible to the deceased member at the time of death or a pension of rupees twenty five thousand whichever is greater, for the life-time of such spouse.”.*

38 *Subs. by U.P. Act 13 of 2025, S. 10(b) (w.r.e.f. 1-4-2025). Prior to substitution it read as:- “(2) If an ex-member 50% pension of such ex-member at the time of death or a pension of rupees twenty five thousand whichever is greater, dies, the spouse of such ex-member shall be entitled to a family pension equal to 50% of pension of such ex-member at the time of death for the life-time of such spouse.”.*

*the minor children attain the age of majority and in case of daughters till they get married:]*

*Provided that if the spouse is entitled to a salary under Section 3 or a pension under sub-section (1) of Section 24 she/he will not be entitled to receive family pension under sub-section (1) or sub-section (2):]*

<sup>39</sup>*[Provided further that where more than one person becomes entitled for pension under sub-sections (1) or (2) all such persons shall draw the said pension in equal shares.]*

<sup>40</sup>*[(3) Sub-section (1) and sub-section (2) shall also apply to a spouse who is alive on the date of commencement of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) (Amendment) Act, 2015.]””*

26. Having navigated through the aforesaid provisions and the dictionary meaning of “allowances” as well as the usage of the said word in common parlance, one can generally say that these all provisions are in the nature of allowances and facilities provided to the members/ ex-members, which are very much permissible under the provisions of Article 195 of the Constitution of India. Further, a scrutiny of these aforesaid provisions, as well as the plethora of precedents cited herein above, immediately brings us to fore that the petitioner organization has, on earlier occasions, raised substantially similar challenges concerning allowances, pension, and benefits of legislators, which have been repelled by the Hon’ble Supreme Court in the case of ***Lok Prahari v. Union of India***, reported in **(2018) 16 SCC 696**. This Court finds that although the said matter was related to allowances and pensionary benefits to members of Parliament, however, identical provisions like Entry No. 38 in List -II (State list), which is engaging attention of this Court in the present matter, came up to be considered by the Apex Court in the case of Member of Parliament, which is found in Entry No. 73 of

39 Subs. by U.P. Act 13 of 2025, S. 10(c) (w.r.e.f. 1-4-2025).

40 Subs. by U.P. Act 3 of 2015, S. 9(c) (w.e.f. 1-4-2015). Prior to substitution it read as:- “(3) Sub-section (2) shall apply also to a spouse who is alive on the date of commencement of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) (Amendment) Act, 2013 of such ex-member as died before March 05, 2010. Such spouse shall be entitled for family pension with effect from April 01, 2013.”

List -I (Union list). In order to give sanctity to the said comparison, Entry 73 of List-I is being quoted herein below:

**“List-I – Union List**

*73. Salaries and allowances of members of the parliament, the Chairman and Deputy chairman of the council of states and the Speaker and Deputy Speaker of the House of the People.”*

27. On a perusal of both the provision, whether it is Entry No. 38 in List No.-II or Entry no. 73 in List No.-I, according to this Court have identical language and meaning, except that the former is meant for State Legislature, whereas the later is meant for Union parliament. The Hon’ble Apex Court in the aforesaid case of **Lok Prahari** (*supra*), while examining the Constitutional scheme governing pensionary benefits to legislators and Constitutional functionaries, observed that the expression “allowances” of Members of Parliament (MP’s) as mentioned under Entry 73 of List-I of the Seventh Schedule in their opinion was wide enough to cover the payment of ‘pension’ and ‘other benefits’ covered by the impugned provisions for MP’s and ex-MP’s. The Hon’ble Supreme Court further rejected the contention that pension can be granted only to government servants upon superannuation and held that the concept of pension is not confined to a traditional employer-employee relationship, taking note of various categories of pensions recognized in law which are independent of conventional government service. The Apex Court in the said judgment, while answering to an identical contention of the petitioner as sought to be raised in the present petition, relating to whether the various benefits created under the impugned provisions are rational, the Court authoritatively held as follows:

*“31. We are of the view that these questions are in the orbit of the wisdom of the Parliament in choosing/changing the legislative policy whether the various benefits created under the impugned provisions are rational having regard to the affluent financial status of some of the MPs or the poverty of the millions of the population etc. These are not justiciable issues. In this context, we may refer to the principle laid down by this Court in Dr. P. Nalla Thampy Terah v. Union of India & Others (1985)Supp SCC 0189 :*

*“If the provisions of the law violate the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it. Can the Court, for example, strike down Rule 90 on the ground that the limit of rupees one lakh is too high in the Indian context? We may have our own preferences and perceptions but, they cannot be used for invalidating laws.”*

28. This Court is also of the considered opinion that the binding judgment rendered by the Hon’ble Supreme Court in the case of *Lok Prahari* (*supra*), though rendered in the context of Members of Parliament, squarely addresses the principal issues raised in the present writ petition. However, in view of the multifarious issues being raised by the petitioner in the present matter, this Court wishes to tread further and note that not only the Apex Court, but even the High Courts have expressed similar view on the said issue.

29. Thus, we note with certain propensity similar judgments on these very aspect given by at least three different High Courts *i.e.* the Gujarat, Madhya Pradesh and the Rajasthan High Courts. We see that the Gujarat High Court was faced with a situation, wherein the *vires* of provisions of Gujarat Legislative Assembly Members' Pension Act, 1984 was sought to be challenged on similar grounds of non-competent because of Article 195 of the Constitution of India. The Gujarat High Court in the case of *Narayanlal Himatlal Bhatt v. State of Gujarat*, reported in *1986 SCC OnLine Guj 41:1986 GLH 579*; decided on *April 4, 1986* while examining Article 246(3) of the Constitution of India read with Entry 42 of List II of the Seventh Schedule, held that the State Legislature possesses exclusive legislative competence with respect to “State pensions”, including pension payable to former Members of the Legislative Assembly. The relevant portion reads as follows:

*“3. We have carefully considered all these arguments advanced by the party-in-person. There is absolutely no difficulty in appreciating and reading the various provisions of the Constitution wherein they speak of salary and other conditions of service to*

*various functionaries. As far as the members of the State Legislature are concerned, Article 194 deals with powers, privileges etc. of the Houses of Legislatures and of the members and committees thereof. Article 195 deals with salaries and allowances of members. The said Article reads as follows:*

*“195. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding province.”*

*4. No doubt this Article mentions only salaries and allowances and does not speak about pension. That does not mean that the Constitution prohibits payment of pension by appropriate enactment. It is too much to argue that there is an implied ouster of such privileges since this Article 195 speaks only of salaries and allowances without any reference to pension. According to the party-in-person, the payment of pension is detrimental to national interest and is an unauthorised drain of the consolidated funds of the State. When there is no constitutional prohibition for enacting such a law, the Legislature, in its wisdom, thought it fit to pay pension to the members who have served the State as the members of the Legislative Assembly. They have fixed up in the said Act the necessary criteria to receive the pension and such a decision is within the legislative competence of the State Legislature and cannot in any way be said either unconstitutional or against the Nation's interest. No doubt the words ‘pension’, ‘allowance’, ‘privilege’, ‘salary’, ‘remuneration’, and ‘emoluments’ have different connotations and are awarded in the context of such services rendered by the person concerned.*

*5. Mr. N.H. Bhatt also contended that the non-mention of the word ‘pension’ in Article 195 and the mention of such emoluments in some of the Articles referred above, clearly establish that the Constitution never intended to pay pension to the members of the Legislative Assembly. To draw support to this contention, Mr. N.H. Bhatt referred to Maxwell Interpretation of Statutes and stated that every clause of the Constitution should be construed with reference to the context and other provisions of law. He wanted to draw support to this submission by referring to the decision in **Life Insurance Corporation of India v. Escorts Ltd.** reported in (1986) 1 SCC 264 wherein the Supreme Court had occasion to consider Section 29 of the Foreign Exchange Regulation Act, 1973. In*

Section 29(1) of the said Act, the word 'permission' mentioned remains unqualified while in other Sections of the Act such as Sections 8 and 31, the expression 'general or special permission' is qualified by the word 'previous'. Referring to this, the Supreme Court held that:

*“the distinction made by parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us.”*

6. Proceeding further the Supreme Court held that it is not the way to interpret statutes and that the proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The said observations of the Supreme Court in the context of the dispute in that decision cannot have any bearing to the facts of the present case. The Supreme Court construed that the mere word 'permission' and the words 'previous permission' clearly indicated that the parliament deliberately avoided the qualifying word 'previous' in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. As far as the present case on hand is concerned, the mere fact that Article 195 used only 'salaries' and 'allowances' cannot be construed that the Constitution prohibited making of any law for the payment of pension to the ex-members of the Legislative Assembly.

7. The citing of the decision in **Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal** reported in AIR 1962 SC 1044 by Mr. N.H. Bhatt instead of helping his contention, makes it clear that the power to legislate given to the appropriate Legislatures cannot be whittled down in presuming doctrine of ouster on the reading of a particular Article. In AIR 1962 SC 1044 (supra), the Supreme Court has succinctly stated as to how the Legislative entries have to be interpreted. It will be useful to refer the same and we quote the following observation of the Supreme Court in that decision:

*“In the matter of construing entries in the Lists given in Schedule VII of the Constitution, the following rules of interpretation are now well-settled. The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate. It is also settled that widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap and sometimes*

*may also appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and bring about harmony between them. The underlying principle in such cases is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Constitution and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning. Thus, every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory.”*

**8.** *The learned Advocate General, assisting the Court, submitted that if it is found that the State has power to legislate on such matters, it cannot be stated that there is implied restriction by the Articles of the Constitution.*

**9.** *As we have stated in paragraph supra, we do not find any prohibition in the Articles referred above against enacting the Gujarat Legislative Assembly Members' Pension Act, 1984. It cannot also be said that there is implied ouster of enacting the law providing pension to the members of the Legislative Assembly from the words of Article 195 of the Constitution. Art. 246 of the Constitution clearly states as follows:*

*“246.(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).*

*(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated: in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).*

*(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).*

*(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.”*

*Entry 42 of List II of the Seventh Schedule states:*

*“42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.”*

*10. Reading this Entry along with Article 246(3), it is clear that the State has exclusive power to make laws for such State or any part there of with respect to the pension payable by the State or out of the Consolidated Fund of the State. Such provision for payment of pension will not in any way come into conflict with Article 195 of the Constitution, but, on the other hand, it will be only an additional benefit that is sought to be conferred upon the members of the Legislative Assembly to have served the State in that capacity.*

*11. Thus, from the foregoing discussion, we have absolutely no hesitation in coming to the conclusion that the Gujarat Legislative Assembly Members' Pension Act, 1984 is intra vires the Constitution and that the State Government has ample legislative competence to promulgate such a law. For all these reasons, the Special Civil Application is dismissed. Mr. M.C. Shah, the learned counsel for the petitioners, at this stage, orally applies for leave to appeal to Supreme Court. In our view, this is not a fit case for appeal to the Supreme Court as it does not involve substantial question of law which needs to be decided by the Supreme Court. Oral application for leave to appeal to Supreme Court is, therefore, rejected.”*

**30.** Similarly, the High Court of Madhya Pradesh in the case of ***Purwa Jain vs. Union of India and Ors.***, reported in ***MANU/MP/1893/2022***; decided on 19th of July, 2022, wherein the Constitutional validity of pensionary provisions applicable to Members of the Legislative Assembly was *upheld*. The Hon’ble Court held:

*“07. So far as the constitutional validity of Section 6A(1) and (3) of the Adhiniyam of 1972 is concerned, the validity of entire Section 6A was challenged before this Court in the case of **Raghu Thakur v/s The State of Madhya Pradesh** reported in **I.L.R. (1996) M.P. 334** and vide order dated 26.09.1996, this Court has dismissed the writ petition. The Division Bench has held that the Adhiniyam of 1972 is intra vires and it is within the competence of the State Legislature under Article 195 of the Constitution read with Entry 42 of List II of Seventh Schedule of the Constitution to legislate on a pension of members of Assembly. Therefore, the entire Section 6A(1) has been upheld by this Court. The petitioner being an advocate ought to have done homework before filing this petition challenging the constitutional validity of Section 6A(1).*

08. So far as pension payable to the M.Ps. and M.L.As. is concerned, the same issue came up for consideration before the Apex Court in the case of **Lok Prahari Through Its General Secretary S.N. Shukla & Another v/s Union of India Through Its Secretary & Others** reported in (2018) 16 SCC 696. The Apex Court negated all the arguments which satisfy all the queries in the mind of the petitioner as raised by her by way of the present petition. Paragraphs 20, 21 & 26 of the aforesaid judgment are reproduced below:

“20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment.

21. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that either the legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard.

26. Another argument advanced by the Appellants is that pension is payable to an employee of State after his superannuation. Since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. In our opinion, there is a fallacy in the above submission, insofar as it assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called pensions and the

*misconception of the Appellants that the expression 'pension' can only have one meaning. There are various other categories of payments made by State which are called 'pensions', such as, Old Age Pension, Widow Pension, and Disability Pension etc."*

*09. In the case of **Ashwini Kumar Upadhyay v/s Union of India & Another** reported in (2019) 11 SCC 683, the Apex Court has held that the mere fact that M.P. / M.L.A. draws salary under the Act of 1954 and different allowances under different Rules framed under the said Act does not result in the creation of a relationship of employer and employee between Government and the Legislature despite the description of payment received by them in the name of salary. Even the expansive definition of the term pension in the General Clause of 1897 will be of no away, therefore, the contention of the petitioner is baseless that there should be a minimum eligibility period for grant of pension to the M.Ps. and M.L.As. as provided for pension rules applicable to the Government employees / public servants. Hence, entire Public Interest Litigation is devoid of substance and filed without proper research."*

**31.** Further, this Court finds that recently the Rajasthan High Court has dealt with similar situation, wherein the Rajasthan Legislative Assembly (Officers and Members Emoluments and Pension Amendment) Act, 1956 was sought to be challenged under similar circumstances. The Division bench of the Rajasthan High Court vide a judgment dated 7 May, 2026, rendered in the case of **Milap Chand Dandia V/s State of Rajasthan**, reported as [2026:RJ-JP:19308-DB] after noting the judgment passed by the Gujarat High Court and Madhya Pradesh High Court concluded the issue in the following words:

*"11. The contention advanced on behalf of the petitioner essentially seeks to read into the Constitution an implied prohibition against grant of pensionary benefits to former legislators. Such a prohibition, however, cannot be inferred in the absence of any express constitutional limitation, particularly when the Constitution itself recognizes "State pensions" as a distinct legislative field under Entry 42 of List II of the Seventh Schedule.*

*12. This Court is also conscious of the settled principle that matters of legislative policy fall within the domain of the Legislature. The scope of judicial review in such matters is*

*limited to examining legislative competence and constitutional validity. Once an enactment is found to be within the constitutional framework, interference by this Court would not be warranted.*

*13. In view of the aforesaid discussion and the settled legal position governing the field, this Court is of the considered opinion that the petitioner has failed to make out any ground warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.”*

#### **E. REASONING AND FINDINGS**

**32.** We find that the cornerstone of the petitioner’s challenge relates to the alleged lack of legislative competence. Article 195 of the Constitution of India explicitly empowers the State Legislature to determine ‘Salaries and allowances’ of its ‘Members’. Entry 38 of List II (State List) further fortifies this power by conferring exclusive legislative competence in respect of emoluments and privileges of members of the State Legislature. The phraseology used in Article 195 of the Constitution of India is broad and enabling. It does not impose any express limitation restricting the Legislature from extending benefits beyond tenure. The absence of such restrictive language indicates Constitutional intent to vest wide discretion in the Legislature. Further, the Hon’ble Supreme Court in *Lok Prahari v. Union of India*, reported in **(2018) 16 SCC 696**; has authoritatively recognized the competence of the Legislature to enact provisions concerning pension and other benefits to former legislators. Thus, the impugned enactment squarely falls within the legislative field and cannot be struck down on this ground.

**33.** While arguing his matter, the petitioner-in-person has argued that once a person ceases to be a legislator, any continuing financial benefit is arbitrary and lacks Constitutional sanction. This argument overlooks the nature and character of legislative office. Unlike conventional employment, legislative service is rooted in democratic representation. Legislators often continue to engage with public affairs even after cessation of tenure. The Legislature, in its wisdom, has considered it appropriate to provide post-tenure benefits as a measure of social

security and institutional continuity. The material on record reflects that pension, family pension, medical facilities, and travel allowances are intended to recognize the nature of duties performed and to ensure that individuals who have held public office are not left without basic support. In absence of any Constitutional prohibition, such a policy decision cannot be invalidated merely because an alternative view is possible. The petitioner's principal contention is grounded in Article 14 of the Constitution of India, alleging arbitrariness and discriminatory treatment. Article 14 of the Constitution of India reads as follows:-

***“14. Equality before law :- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”***

**34.** This necessitates examination of two settled tests: (i) *Intelligible differentia*, and (ii) *Rational nexus with the object sought to be achieved*. The classification in the present case distinguishes Members/Ex-Members of Legislature from other classes such as government servants or Constitutional functionaries. This classification is clearly intelligible, as legislators discharge unique Constitutional functions involving law-making, representation, and governance oversight. The object sought to be achieved is to ensure effective functioning of legislative institutions and to provide reasonable post-tenure support. The nexus between classification and object is evident. The petitioner's attempt to equate legislators with government servants is legally untenable. The principle of equality does not mandate identical treatment of unequals. As reflected from the record, the Legislature has acted within permissible bounds of classification. Therefore, in our view the impugned provisions do not suffer from any kind of arbitrariness or discrimination.

**35.** A significant portion of the petitioner's argument relates to the alleged excessiveness of pension and allowances. This Court is of the considered view that the quantum of such benefits lies within the exclusive domain of legislative policy. Courts are neither equipped nor Constitutionally authorized to determine what constitutes an appropriate level of pension or allowances for legislators. Such determination

involves complex considerations of public policy, financial implications, and institutional requirements. The doctrine of separation of powers mandates judicial restraint, particularly in fiscal and policy matters. The reasonableness of quantum of pension or allowances cannot be adjudicated in absence of clear Constitutional violation. In ***Common Cause, A Registered Society v. Union of India***, reported in (2002) 1 SCC 88; the Hon'ble Supreme Court emphasized that Courts should refrain from interfering in policy decisions unless they are patently arbitrary or unconstitutional. No such arbitrariness has been demonstrated in the present case. The petitioner's restrictive interpretation of the term "*Member*" has been rightly contested by the State. The statutory scheme indicates that the Legislature intended to include within its ambit both "sitting and former members" for the purpose of certain benefits. The Court must adopt an interpretation that advances the object of the legislation rather than defeats it. A narrow construction, as suggested by the petitioner, would render several provisions otiose and undermine legislative intent. Hence, the broader interpretation adopted by the State deserves acceptance.

**36.** The issues raised in the present writ petition are no longer *res integra*. The Hon'ble Supreme Court in the cases of ***Lok Prahari (supra)*** and ***Common Cause (supra)***, as well as decisions of the aforementioned High Courts, including this Court have already examined similar challenges. The doctrine of *stare decisis* mandates judicial consistency and certainty. In absence of any distinguishing feature or change in law, this Court is bound to follow the settled legal position. In our view, the petitioner has failed to demonstrate any compelling reason to depart from established precedent. The Constitution envisages a delicate balance between the Legislature, Executive, and Judiciary. The determination of salaries, allowances, and pension of legislators is an internal matter of legislative functioning. Judicial interference in such matters would amount to encroachment upon legislative domain, which is impermissible unless a clear Constitutional violation is established. As observed in the material on

record, the Judiciary cannot assume the role of a “second legislature” to reassess policy choices. Furthermore, the petitioner has sought to rely upon plethora of judgments to contend arbitrariness and misuse of public funds. However, the said judgments, when read in proper context, do not support the petitioner’s case. On the contrary, the precedents relied upon by the State clearly uphold legislative competence and limit the scope of judicial interference in the present matter. The petitioner’s interpretation of the judgments is selective and misplaced.

**37.** Upon a cumulative and holistic consideration of the pleadings on record, the applicable statutory framework, and the binding judicial precedents governing the field, this Court arrives at the following settled conclusions. *Firstly*, the impugned legislation squarely falls within the legislative competence of the State Legislature and does not transgress any Constitutional limitation in that regard. *Secondly*, the extension of benefits to Ex-members represents a conscious and legitimate policy decision taken by the Legislature, which cannot be faulted merely on the ground of disagreement. *Thirdly*, the classification so made does not suffer from the vice of arbitrariness or hostile discrimination and therefore, withstands scrutiny under Article 14 of the Constitution of India. *Fourthly*, the determination of the quantum of benefits lies within the exclusive domain of the Legislature and does not ordinarily invite judicial review in the absence of manifest arbitrariness or unreasonableness. *Fifthly*, the issues sought to be raised in the present petition stand substantially concluded by binding precedents of the Hon’ble Supreme Court, leaving little scope for re-examination. *Lastly*, it is evident that the present petition is, in substance, an endeavor to re-agitate issues that have already attained finality.

**38.** In light of the aforesaid, this Court is of the considered opinion that the challenge mounted by the petitioner is essentially rooted in a policy disagreement rather than any demonstrable Constitutional infirmity. The Constitutional scheme does not inhibit the Legislature from enacting provisions relating to pension, allowances, or allied

benefits in favour of its 'Members', including 'former members'. In a democratic polity governed by the doctrine of separation of powers, such matters are best left to the wisdom and discretion of the Legislature, subject only to well-defined Constitutional limitations. In the absence of any violation of such limitations in the present case, any interference by this Court would be wholly unwarranted and contrary to settled principles of judicial restraint. There exists no Constitutional embargo upon the State Legislature in enacting a measure of social security for its 'Members', as well as 'former members'. The nature, character, and quantum of the benefits so extended do not disclose any manifest arbitrariness so as to attract the prohibition embodied under Article 14 of the Constitution of India. Thus, no further indulgence in any manner is required in the present stale issue, which in a way has attained finality due to the binding effect of the judgment of the Apex Court in the case of *Lok Prahari (supra)* and persuasive effect of judgments delivered on identical issue by the division benches of Gujarat, Madhya Pradesh and Rajasthan High Court.

**39.** As a sequel to the above findings, this Court is of the considered opinion that the present petition is devoid of any merits. The same is, accordingly, *dismissed*.

**40.** There shall be no order(s) as to costs.

**(Abdhesh Kumar Chaudhary, J.) (Rajan Roy, J.)**

**May 13, 2026**  
Praveen