

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY ,THE 25TH DAY OF FEBRUARY 2019 / 6TH PHALGUNA, 1940

WP(C).No. 39855 of 2017

PETITIONER/S:

- 1 SAHEER S.
S/O.A.SAINULABDEEN, SDE (CM-INSPECTION) ,
O/O GM(NWO-CM) RTTC COMPLEX, KAIMANAM PO,
TRIVANDRUM-695040, BSNL HR NO.200205778,
EPF A/C.NO.KR/TVM/16720/1517, UAN NO.100327488900.
- 2 MAXMILAN K.
S/O.K.V.XAVIER, JTO (GPON), 3RD FLOOR NIB DTS
BUILDING CARRIER STATION ROAD, ERNAKULAM-682016,
BSNL HR.NO.200700279, EPF A/C.NO.KR/TVM/16720/616,
UAN NO.100224247488.
- 3 CIJO P.JOSEPH SO.PAUL JOSEPH
JTO(MKTG), BSNL, O/O.PGMT, BSNL BHAVAN,
KALATHIPARAMBIL ROAD, ERNAKULAM SOUTH, BSNL HR
NO.201001518 EPF A/C NO.KR/TVM/16720/425,
UAN NO.100126704171.
- 4 ANSAL MOHAMMED C.H.
S/O.C.H.MOHAMMED, SDE, BSNL, 1ST FLOOR, EXTERNAL
OFFICE, T/E VATTAPPALLY, CHANGANACHERRY-686 101,
BSNL HR NO.200304287 EPF A/C NO.KR/TVM/16720/157,
UAN NO.100087182179.
- 5 ABHILASH S. SO.SUDHAKARAN NAIR P.S.
JE BSNL, KURISUMMOODU T/E, KURISUMMOODU P.O.-
686104, BSNL HR NO.200802701 EPF A/C
NO.KR/TVM/16720/1101, UAN NO.100072761512.
- 6 AJAYAKUMAR A. SO.APPUKUTTAN K.N.
JTO BSNL, T/E KARUKACHAL, KARUKACHAL -686540, BSNL
HR NO.200803532 EPF A/C NO.KR/TVM/16720/1107, UAN
NO.100075740304.

JUDGMENT

[WP (C) 4794/2017 , WP (C) .3001/2018 ,
WP (C) .5001/2017 , WP (C) .9012/2017 ,
WP (C) .9672/2017 , WP (C) .9930/2017 ,
WP (C) .11867/2017 , WP (C) .20295/2018 ,
WP (C) .39855/2017 , WP (C) .40363/2017]

K. Surendra Mohan, J.

For the various reasons indicated in the judgment dated 12.10.2018 in W.P.(C) No. 13120 of 2015 and connected cases, these writ petitions are also allowed.

Sd/-

K. SURENDRA MOHAN

JUDGE

Sd/-

N. NAGARESH

JUDGE

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE A.M. BABU

FRIDAY , THE 12TH DAY OF OCTOBER 2018 / 20TH ASWINA, 1940

WP(C).No. 13120 of 2015

PETITIONER/S:

- 1 P. SASIKUMAR
SENIOR MANAGER, MALAPPURAM DISTRICT CO-OPERATIVE
BANK, PUTHANATHANI BRANCH, P.O.PUTHANATHANI, UAN
NO.100340029659.
- 2 E. VISWANATHAN
EXECUTIVE OFFICER, MALAPPURAM DISTRICT CO-OPERATIVE
BANK, HEAD OFFICE, MALAPPURAM, UAN NO.100410809080
- 3 C.K. ABDURAHIMAN
EXECUTIVE OFFICER, MALAPPURAM DISTRICT CO-OPERATIVE
BANK, HEAD OFFICE, MALAPPURAM, UAN NO.100072299781
- 4 C.K. GOPALAN
JUNIOR ACCOUNTANT, MALAPPURAM DISTRICT CO-OPERATIVE
BANK, HEAD OFFICE, MALAPPURAM, UAN NO.100155119334
- 5 P. PREMANANDAN, PEON
MALAPPURAM DISTRICT CO-OPERATIVE BANK, VENGARA
BRANCH, P.O.VENGARA, UAN NO.100280802239.
- 6 D. SHYLAJA JUNIOR ACCOUNTANT
MALAPPURAM DISTRICT CO-OPERATIVE BANK, MANJERI
BRANCH, P.O.MANJERI, UAN NO.100355616363.
- 7 T. MOHAMMED
SENIOR ACCOUNTANT, MALAPPURAM DISTRICT CO-OPERATIVE
BANK, PERINTHALMANNA BRANCH, P.O.PERINTHALMANNA, UAN
NO.100229420702.
- 8 V.V. PRASAD
DEPUTY GENERAL MANAGER, MALAPPURAM DISTRICT CO-
OPERATIVE BANK, HEAD OFFICE, MALAPPURAM, UAN
NO.100436941037.

33695, 33700, 33740, 33875, 33917, 33963, 34038, 34098, 34101, 34182, 34284, 34324, 34438, 34530, 34533, 34552, 34559, 34582, 34608, 34671, 34955, 34986, 34997, 34729, 34753, 34764, 34766, 34771, 34791, 34792, 35012, 35038, 35039, 35040, 35157, 35212, 35217, 35274, 35341, 35363, 35375, 35456, 35527, 35530, 35587, 35640, 35644, 35645, 35707, 35733, 35737, 35757, 35763, 35790, 35859, 35860, 36014, 36016, 36038, 36050, 36076, 36085, 36284, 36381, 36829, 37035, 37209, 37291, 37298, 37312, 37315, 37339, 37357, 37417, 37421, 37553, 37588, 37607, 37743, 37786, 37883, 37902, 37914, 37945, 37955, 38002, 38028, 38055, 38070, 38114, 38121, 38135, 38180, 38181, 38183, 38184, 38190, 38272, 38293, 38317, 38408, 38416, 38481, 38567, 38713, 38819, 38879, 39077, 39355, 39498, 39579, 39772, 39822, 40223, 40294, 40334, 40500, 40695, 9475, 9520, 9812, 32377, 34599, 38056, 38058, 39275, 39520, 39961, 40513, 40537, 41159, 18432, 27318, 27357, 27478, 29371, 29762, 28030, 28072, 28125, 28195, 28920, 30466, 30517, 31125, 31543, 31798, 34259, 37418, 38199, 39494, 39578, 39918, 40233, 40435, 25530, 29396, 37812, 40103, 38514, 37455 & 37581 of 2016 & 31, 32, 33, 34, 407, 584, 716, 914, 915, 1233, 2554, 71, 224, 333, 391, 1157, 1257, 1378, 1429, 1433, 1834, 1903, 2341, 2359, 2410, 2528, 2640, 2735, 2878, 2905, 3076, 2983, 3077, 3279, 3460, 3636, 3769, 3801, 3802, 4082, 4928 & 5186 of 2017 & 33944 of 2014

JUDGMENT

Surendra Mohan, J.

The petitioners in these Writ Petitions are all employees of various establishments covered by the provisions

of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act' for short). They are all aggrieved by the refusal of the respondents to extend the provisions of the Employees Pension Scheme, 1995 to them. They are also aggrieved by the changes brought about by the Employees' Pension (Amendment) Scheme, 2014. According to them, the provisions of the said amended Scheme drastically reduces the pension payable to them. In many of the Writ Petitions, the validity of the amendments have been challenged. Since the legal issues that arise for consideration are common, these cases have been heard together and are all disposed of by this common judgment.

2. The main question that arises for consideration here is whether the provisions of the Employees Pension Scheme, 1995 and the Employees' Pension (Amendment) Scheme, 2014 are valid and sustainable or not?

3. The bare facts necessary to be taken note of before the questions of law are addressed, are the following. As already noticed above, the petitioners are all employees of various establishments covered by the provisions of the EPF Act. The Act provides for the formulation of a Scheme for the creation of a Provident Fund Account in the name of each employee of a covered establishment. The fund was to be constituted by depositing an employee's share at the rate of 10% or 12% of the basic wages including Dearness Allowance. The employer has also to contribute an identical amount, which together would constitute the Provident Fund. Initially, the Act did not provide for the creation of a Pension Fund or for the payment of pension. Later on, Section 6A was inserted, authorizing the creation of a scheme for the purpose of providing pension to the employees. Accordingly, the Employees Pension Scheme, 1995 was framed. As per the said scheme the maximum pensionable salary was

Rupees six thousand five hundred per month and contributions to the pension fund were to be made only on that amount. The corpus of the pension fund was to be constituted by transferring 8.33% out of the employer's contribution under Section 6 of the Act. As per the scheme, the maximum pensionable salary was initially fixed as Rs. 5000/- and was later on enhanced to Rs.6500/-. Accordingly, contribution was payable only in respect of the said amount. Subsequently, a proviso was added to paragraph 11(3) of the Pension Scheme with effect from 16.03.1996 granting an option to the employer and the employee to contribute amounts towards the pension fund at the rate of 8.33% of the actual salary drawn by the employee, where the salary exceeded Rupees Six thousand five hundred per month. Thereupon, most of the employees who were drawing salaries in excess of the prescribed limit opted to pay contributions on the basis of the actual salaries drawn by them.

However, requests made by some of the employees were rejected on the ground that the option was not exercised on or before 01.12.2004. The said action was under challenge before this Court in W.P.(C) Nos.6643 and 9929 of 2007.

4. This Court considered the respective contentions, analysed the provisions of the Scheme and allowed the Writ Petitions by judgment dated 04.11.2011. A copy of the judgment is evidenced in these proceedings by exhibit P2 in W.P.(C) No.13120 of 2015. This Court held that the proviso to paragraph 11(3) of the Pension Scheme, added with effect from 16.12.1996 was retrospective in operation, applicable from the date of commencement of the Scheme. It was further held that, the cut off date of 01.12.2004 on the basis of which some of the options made by the employees were rejected was unsustainable. In the absence of any cut off date, this Court found that a joint application by the employer and the employee could be made at

any time and on the basis of such joint application they would be entitled to avail the benefit of the proviso to paragraph 11(3) of the Scheme. The Writ Petitions were accordingly allowed.

5. The Union of India as well as the Officers of the Employees Provident Fund Organization challenged the judgment unsuccessfully before a Division Bench of this Court in W.A.No.568 and 569 of 2012 and connected cases. Exhibit P3 is the appellate judgment. A special leave Petition filed against the said judgment was also dismissed. The resultant position is that a joint application made by the Employer and employee cannot be rejected for the reason that, the same was not made before the stipulated date.

6. In the above circumstances, the pension scheme was amended with effect from 01.09.2014. As per the said amendment, the pensionable salary has been altered to mean the average monthly pay drawn in any manner, including on piece-

rate basis, during the contributory period of service comprising of a span of sixty months preceding the date of exit from the membership of the pension fund. The pensionable salary shall be determined on pro-rata basis for the pensionable service up to the first day of September, 2014, subject to a maximum of Rs.6500/- per month and for the period thereafter at the maximum of Rs.15,000/- per month. The maximum pensionable salary shall be limited to Rs.15000/- per month. Consequently, it is pointed out by the petitioners that the pension that is to be drawn by them has been drastically reduced without any justification. The amendments are therefore under challenge in these Writ Petitions. These Writ Petitions are posted before us pursuant to an order of reference dated 21.06.2016 made by a learned Single Judge of this Court.

7. The Writ Petitions are contested by the Provident Fund Authorities. A detailed counter affidavit has been filed in

W.P.(C) No.18287 of 2016, which has been adopted in the other cases also. As per the counter affidavit, the Writ Petition itself is not maintainable and the allegation that the amendments are violative of Articles 14,15 and 21 of the Constitution is without any basis. The members who used to contribute more than the ceiling limit of Rs.6500/- for the sake of getting higher pension were found to be drawing disproportionately higher amounts as pension, thereby affecting the value of the pension fund. The intention of the Parliament in framing the Scheme was to secure the rights of the lower wage earners. The said object was being defeated by the action of the employees paying contributions above the ceiling limit. The situation created was one of reverse subsidization. It has also disturbed the fund base of the scheme which in turn was found to affect the rights of the lower wage income group who receive pension. It was in order to safeguard the interests of the said lower income group that the

amendments were brought into force. The authorities are clothed with sufficient powers to amend the scheme, which power has been exercised considering the larger interests of the working class. The petitioners being persons who have exercised their options to pay contributions on the basis of their actual salaries are estopped from challenging the amendments. The provisions of the EPF Act are relied upon to contend that the amendments were within the scope of the powers conferred by the enactment. With respect to the amendment altering the pensionable service to sixty months from the earlier period of twelve months, the contention is that, the same is a matter of policy over which the Parliament and the Legislature are entitled to claim freedom from interference. No complaint regarding formulation of policy would be entertained by Courts, since a policy is framed taking into account various sociological aspects also. It is contended that, no judicial interference is permissible

in respect of the same. Therefore, it is contended that the Writ Petitions are only to be dismissed.

8. According to Advocate P.N.Mohanan, the Pension Scheme had come into force on 16.11.1995. Initially Rs.6,500/- was stipulated as the salary. Later on, an option was given to employees drawing higher pay to contribute on the basis of their actual salaries, irrespective of the limit. However, a cut off date was stipulated for the purpose of exercising such option, which was 01.12.2004. The stipulation of the cut off date was challenged in W.P.(C) No.6643 of 2007 and connected cases. As per exhibit P2 judgment dated 04.11.2011 evidenced in W.P.(C) No.1312 of 2015 by exhibit P2, this Court held that the stipulation of a cut off date was unsustainable. Though the matter was carried in appeal before the Division Bench, W.A.No. 1137 of 2012 was also dismissed by exhibit P3 judgment. A Special Leave Petition filed before the Supreme Court was also

dismissed. Therefore, according to the learned counsel, no stipulation regarding a cut off date is permissible. Reliance is placed on exhibit P12 judgment of the Supreme Court to point out that stipulation of a similar cut off date was held to be unsustainable there also. In spite of the above, the amended Pension Scheme has again stipulated a cut off date which is liable to be struck down. As per the amendments, the contents of both 'pensionable service' as well as the 'pensionable salary' have been altered. The persons who had joined the scheme prior to the amendments had become vested with a right to claim pension on the terms as they stood prior to the amendments. Such vested rights cannot be taken away. Before the amendment, pension was to be calculated on the basis of the average pay drawn over a period of twelve months prior to retirement. As per the amendment, the pension is to be computed on the basis of the salary drawn over a period of sixty months prior to retirement.

The amendment drastically reduces the pension payable to an employee causing serious prejudice to him. Pension is nothing but deferred wages. The pension fund is created for the purpose of granting pension to the employees. The fund is constituted with the contributions made by the employees as well as employers. The fund is to be utilized for the benefit of the employees. It is contended that, a whopping amount of Rupees thirty two thousand crores is remaining as unclaimed pension in the fund. Therefore, there is no justification for denying to the employees what is legitimately due to them.

9. The amendments in so far as they deny the option that was given to the employees to receive higher pension by contributing a higher amount from their salaries causes prejudice to them. For the purpose of computing pension, the maximum salary has been capped at Rs.15,000/-. The amount is unrealistic, low and has no relation to the actual salaries drawn

by employees across the country. An implementation thereof would result in denying to the employees the benefits that are legitimately due to them. Therefore, the counsel contends that the amendments are unsustainable and liable to be set aside. A number of decisions are also relied upon in support of his contentions.

10. Advocate M.P.Prakash supporting the contentions of the petitioners points out that the expressions "basic wages", "contribution" and "scheme" are all defined by Section 2 of the EPF Act. The power to frame a scheme has been made subject to the provisions of the Act. Therefore, once an option is exercised under paragraph 26 of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the 'EPF Scheme' for short), no further option under the pension scheme is necessary and cannot be insisted upon. Reliance is placed on the decision of the Apex Court in *Mafatlal Group Staff Association v. Regional*

Commissioner Provident Fund [(1994) 4 SCC 58)] particularly paragraph 10 to contend that the pension scheme is essentially a social welfare measure that should serve the social purpose for which it is brought into force. As per the present scheme, the pension payable to the employees would be drastically cut. They do not get any benefit that is commensurate with the contribution paid by them. Therefore, they stand to lose the benefit of their contribution. It is contended that, the authorities have no power to limit the pension payable by prescribing a limit on the pensionable salary. The manner of computing the pensionable service of an employee is also unsustainable. The counsel places reliance on the decision in ***Amrit Lal Berry v. Collector of Central Excise, New Delhi*** [(1975) 4 SCC 714] and ***Kunj Behari Lal Butail v. State of H.P.*** [(2000) 3 SCC 40] to contend that, the impugned provisions of the Scheme are ultra vires the power to frame scheme available to the Government.

Therefore, the counsel seeks interference of this Court to set aside the scheme as arbitrary and ultra vires.

11. Advocate P. Ramakrishnan while reiterating the contentions advanced by the other counsel points out that though pension before the amendment of the scheme was to be calculated on the basis of the salary drawn by an employee over a period of twelve months prior to his retirement, the said period has been extended to sixty months. Since the pay of the employees have been revised and enhanced more than once during the said period, the employees would be denied the benefit of their enhanced salaries while computing their pension. The maximum salary for the purpose of computation of pension has been fixed at Rs.15,000/-, which would have the effect of denying to the majority of the employees the rightful pension due to them which is to be computed on the basis of their last drawn salary. The stipulation introduced by the amendment that

the employees should make an additional contribution of 1.16% does not find support in any statutory provision. The stipulation creates different classes of employees, one section being paid on the basis of Rs.6500/- fixed as their salary and the other on the basis that Rs.15000/- was their salary. The classification itself is arbitrary, illegal and liable to be struck down.

12. According to Advocate R.Sanjith, the amendments have created three different categories of pensioners. The first category consists of people who have contributed on the basis of their actual salaries, after exercising an option to do so. The second category of persons are persons who have not exercised an option to make contributions on the basis of their actual salaries. The third category of persons are those who have retired prior to the amendments, who have a vested right to receive pension, which cannot be denied to them. Our attention is drawn to the power under Section 6D for laying

schemes before the Parliament and Section 7 for modification of the scheme to point out that the exercise of such powers shall not affect the validity of anything previously done. Therefore, it is contended that, the impugned amendments cannot upset or invalidate anything that was done in the past. Reliance is placed on Section 6A particularly sub section 2(a) thereof to contend that the prescription of a ceiling limit is violative of the said provision. According to the learned counsel, an employee retiring on 31.08.2014 would draw a higher pension than a person retiring after 01.09.2014. Reliance is placed on the decision in *State of Jharkhand v. JitendraKumar Srivastava* [AIR 2013 (4) SC 3383] to contend that, pension is the benefit earned by an employee during his service. The same is property of which he cannot be deprived of, other than in accordance with the due process of law. Therefore, it is contended that the amendments are unsustainable and liable to be set aside.

13. Advocate Ajith Joy points out that, the amendments create different categories of employees with some drawing higher amounts of pension while the other draw only much lesser amounts. Thus, the employees are treated differently without any rational basis leading to discrimination that is unsustainable under Article 14 of the Constitution. The employees are also being burdened with the liability to make an additional contribution of 1.16% on the salary exceeding Rs. 15,000/-. There is no justification for the fresh option that is contemplated by the amendment. There is no cut off date in paragraph 26(6) of the EPF Scheme. Since insistence on a cut off date has already been found to be bad and set aside by this Court, there is no justification for introducing the same again. The manner in which the scheme has been amended to reduce the pension payable to the employees is arbitrary and liable to be set aside.

14. Advocate Titus Mani points out that the amendments are ultra vires the Act. According to the learned Counsel, money is authorised to be extracted only as per Sections 5 and 6 of the EPF Act. No such power is conferred by Section 6A of the Act. Section 6A only empowers the authorities to appropriate a portion of the provident fund amounts to constitute the pension fund. In the absence of any power the amendment fastening financial liability on the employees is unsustainable. Section 5 defines the class of persons to whom the EPF Act applies. The authorities have no power under Section 6A of the Act to define a different class. Therefore, the classification created by the scheme is ultra vires, it is contended. The option contemplated by paragraph 26(6) of the EPF Scheme is intended only to get over the difficulty of making the employer liable to pay a contribution that is not stipulated by the EPF Act. The amendments, according to the learned counsel

are therefore unsustainable and liable to be set aside.

15. Senior Counsel Sri.N.N.Sugunapalan answers the contentions put forward on behalf of the petitioners by pointing out that Section 7 of the EPF Act confers power on the Central Government to modify the scheme either prospectively or retrospectively. Therefore, the Central Government was vested with sufficient powers to modify the scheme. According to the learned Senior Counsel, the option contemplated by paragraph 26(6) of the EPF Scheme and the option contemplated by Clause 11(4) of the Pension Scheme are different and have to be exercised separately. Exercise of an option is a precondition for availing the benefits under the pension scheme. The pension can be paid only from the date of remittance of the higher amount by an employee and not from the dates of retirement in the case of employees who have already retired without making contributions in excess of the stipulated salary limit. With

respect to the contribution of 1.16% directed to be made by the employees, it is contended that such contribution was to be made by the Central Government and what has been done is only to shift the same to the employees. No liability to pay any amount on the enhanced salary was ever assumed by the Government. According to the learned Senior Counsel, if the employees who are contributing to the fund on the basis of their actual salaries are paid pension computed on the basis of the average pay drawn by them during the period of twelve months preceding their retirement, they would draw pension in excess of their contribution. In other words, pension computed on the said basis would not be commensurate with the contribution received from them. What the amendments have envisaged is only to make available to the employees pension that is commensurate with the contribution received from them. Any other course would result in depletion of the pension fund itself

to the prejudice of a large section of employees who are low paid and under privileged. Reliance is placed on various decisions of the Apex Court to contend that the decision on the quantum of benefits made available to the employees was a policy decision taken by the Central Government after considering various inputs. For the above reason, it is contended that the Courts would be averse to considering the wisdom of such policy or interfering with the same. The learned Senior Counsel therefore seeks dismissal of the Writ Petitions.

16. We have considered the respective contentions advanced by the counsel on either side anxiously. In many of the cases before us, the validity of the amendments made to the pension scheme are under challenge. The Pension Scheme is made under Section 6A of the EPF Act. Therefore, it is necessary for us to consider the scope of the provisions of the EPF Act first. In the above context, it is necessary to take note of the

background in which the EPF act was enacted. The industrial revolution that brought about drastic changes in the structure of our society created a large and distinct section of people, the industrial workers. The large industrial establishments that started springing up all around, required the services of workers of various categories. They came in large numbers from the rural areas in search of better salaries, better living conditions and better career prospects. They settled down close to the industries spurring the growth of urban settlements, that later developed into our cities. Such workers, when they became old and infirm were found to be left with no income or means of sustenance. The west, where the above ill-effects of the industrial revolution were first felt, found a solution by introducing old age pension, to be paid by the State to persons above a particular age and survivor's pension to the dependents of employees who met with premature deaths. Though the

industrial revolution reached our country only much later, with the establishment of large industries, in our country also a sizeable industrial work force came into existence. The conditions of such workers when they became old and unable to work was found to be pathetic. In view of the obligation in the Directive Principles, to ensure social justice to one and all, the State had to find some means to ameliorate the conditions of the old and infirm industrial workers. Taking into account the fact that the financial resources at the hands of the State was limited, an alternative method of constituting a fund with contributions extracted from both the employers and employees has been statutorily put in place by the EPF Act. The Provident Fund so created is made up of the contributions of both the employers and employees, with no contribution from the State Exchequer.

17. As noticed above, the EPF Act was enacted by the

Parliament with the object of providing certain terminal and other benefits to the employees of factories and other establishments, that were to be notified under the Act. The contributions are to be compulsorily extracted with no option available to the employees to decide whether to join the fund or not. Thus a stipulated percentage of the monthly wages of each employee is directed to be deducted and credited to the Employees Provident Fund. The employer is also liable to contribute an equal amount to the fund. Section 5 of the EPF Act reads as under.

“5. Employees' Provident Fund Schemes.– (1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of Provident Funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the

framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(1-A) The Fund shall vest in, and be administered by, the Central Board constituted under section 5-A.

(1-B) Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Schedule II.

(2) A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.”

The fund under the above provision is to be administered by the Central Board constituted under Section 5A. Section 6 stipulates payment of contributions to the said fund, which is extracted hereinbelow:-

18. Section 6 of the Act reads as follows:-

“6. Contributions and matters which may be provided for in Schemes.- The contribution which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any), for the time being payable to each of the employees (whether employed by him

directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Provided that in its application to any establishment or class of establishments which the Central Government, after making such enquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten per cent", at both the places where they occur, the words "twelve per cent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee."

What is clear from the above provisions is that Section 5 empowers the Central Government to frame the scheme for the establishment of Provident Funds under the Act "for employees

or for any class of employees" and to specify "establishments or class of establishments" to which the said scheme shall apply. Therefore, it is under the said provision that the Central Government has to specify the employees or class of employees and the establishments and class of establishments to which the Scheme shall apply. Sub Section (3) of Section 1 that stipulates the extent of application of the EPF Act being relevant in the context, is extracted hereunder.

“[(3) Subject to the provisions contained in Section 16, it applies--

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and
- (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two month's notice of its intention so to do,

by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.”

The above provision refers to the power of the Central Government to notify an establishment employing less than the stipulated number of workers also. Therefore, the above provisions define the class of persons to whom the provisions of the EPF Act would apply. The Act as it was originally framed did not contain a provision for payment of pension to the employees. Later on, Section 6A was inserted in 1971 empowering the Central Government to frame a Scheme called the Employees Family Pension Scheme to provide Family Pension and Life Assurance benefits to the employees of the establishments to which the Act applies. Accordingly, provision for payment of Family Pension at prescribed rates to survivors of employees who die while in service before reaching the age of superannuation

was introduced in supercession of the earlier scheme. Subsequently the Pension Fund was constituted, with the net assets of the Employees Family Pension Fund also. Section 6A as it stands now, reads as under:

“6-A. Employees' Pension Scheme.- (1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Pension Scheme for the purpose of providing for –

(a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme, –

(a) such sums from the employer's contribution under

section 6, not exceeding eight and one-third per cent, of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension fund, the Family Pension Scheme (hereinafter referred to as the ceased Scheme) shall cease to operate and all assets of the ceased Scheme shall vest in and shall stand transferred to, and all liabilities under the ceased Scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased Scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased Scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.”

The above provision empowers the Central Government to frame,

by notification in the official gazette, an Employees Pension Scheme and to establish a pension fund for the purpose of paying pension to the employees. Apart from superannuation pension, Widow or Widowers pension, children pension or orphan pension are also contemplated. Sub section (2) provides for payment of such sums to the Pension Fund from the employer's contribution not exceeding $8\frac{1}{3}\%$ of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employee as may be specified by the pension scheme. Therefore, the pension fund is to be constituted by transferring such portion of the employer's contribution under Section 6 not exceeding $8\frac{1}{3}\%$.

19. What emerges from an examination of the above provisions is that, the EPF Act is to apply to the employees of the establishments covered by the said enactment, who are treated as a homogeneous class, for the purpose of the enactment. The

benefits under the enactment and the schemes formulated thereunder are to inure in general, to the benefit of the said class of persons. No other class of persons is defined or contemplated by Section 6A of the Act. Section 6A only permits transfer of a portion of the employer's contribution made under Section 6 of the EPF Act to constitute the pension fund. The enactment does not contemplate the extraction of any other amount from either the employer or the employee. What is contemplated by Section 6A is only the transfer of a portion of the amount remaining unpaid in the provident fund representing $8\frac{1}{3}\%$ of the employer's contribution to the pension fund. Section 6A does not confer power on the Central Government or any other authority under the Act to demand and recover further amounts from either the employees or the employers.

20. In other words, Section 6A does not contemplate payment or extraction of any additional contribution and the

pension fund has to be constituted with the amounts already available as part of the provident fund.

21. Paragraph 26 of the EPF Scheme specifies the classes of employees entitled and required to join the fund. The said provision reads as under:–

“26. Classes of employees entitled and required to join the Fund.– (1)(a) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or

other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of

employees exempted under paragraph 27 or paragraph 27-A to join the fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than fifteen thousand rupees of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges

payable and shall comply with all statutory provisions in respect of such employee.”

22. As per the above provision, every employee who is a member of the Provident Fund is entitled and required to become a member of the Pension Fund from the day the provision comes into force. No employee has any other option. However, Sub paragraph 6 of the above provision gives an option to an employee to make contributions to the provident fund on the basis of the actual salary drawn by him.

23. Paragraph 26A that deals with retention of membership in the fund reads as follows:–

“26–A. Retention of membership.– (1) A member of the Fund shall continue to be member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or paragraph 27–A.

(2) Every member employed as an employee other than an excluded employee, in a factory or other establishment to which

this Scheme applies shall contribute to the fund, and the contribution shall be payable to the fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:

Provided that subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in sub-paragraph (1) of paragraph 27, or sub-paragraph (1) of paragraph 27-A, where the monthly pay of such a member exceeds fifteen thousand rupees the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession.”

24. As already noticed above, since there is no provision in the EPF Act contemplating the payment of any amount by either the employer or employee in addition to what has been stipulated by Section 6 of the EPF Act, it was not possible to require any further payment to be demanded from the contributories. That appears to be the reason why both the employer and the employee are given an option to express in

writing their willingness to make contributions in excess of the salary limit of Rs.15,000/-. In the above statutory scheme, what has to be examined is whether the impugned amendments are ultra vires as contended, or not.

25. In the above context, Section 6D that provides for laying of schemes before the Parliament and Section 7 that confers power to modify a scheme are also required to be examined. They read as under:-

“6-D Laying of Schemes before Parliament.- Every scheme framed under section 5, section 6-A and section 6-C shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme, or both Houses agree that the scheme should not be framed, the Scheme shall thereafter have effect only in such modified

form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.

7. Modification of Scheme.—(1) The Central Government may, by notification in the Official Gazette, add to, amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance Scheme, as the case may be.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.”

26. The effect of the above provisions is that, a scheme has to be framed under Sub section 1 of Section 5 of the EPF Act. Such scheme as already noticed above, is for establishing a provident fund for the employees of the establishment to which the scheme shall apply. Such scheme has been made subject to the provisions of the EPF Act by Section 5(1D) of the Act. Therefore, there cannot be any doubt that the scheme to be framed by the Central Government and the modification to be effected thereto by Section 7 shall be subject to the provisions of the EPF Act. In view of the above, it has next to be examined whether the provisions of the impugned pension scheme have exceeded the limits of the power conferred.

27. It is clear from the Scheme of things discernible from an examination of the above provisions that, the legislative intention has been to constitute a Pension Fund utilizing $8 \frac{1}{3}\%$ of the employer's contribution made under Section 6 of the EPF

Act. Sub paragraph 6 of paragraph 26 of the EPF Scheme gives an option to the employee to remit contributions at the rate of 12% of the actual salary drawn by him, provided a joint request is made by the employer and the employee for such purpose. Thereupon, the employer's contribution would also be 12% of the actual salary drawn. Since Section 6 has limited the employer's contribution to 10% or 12% of the salary of the employee and has specifically stipulated that "the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section", any contribution in excess of the statutory limit cannot be insisted upon. A joint request to be voluntarily made by the employer and the employee offering to pay contributions on the basis of the actual salary drawn by the employee was the only solution. Therefore, the option that was required to be exercised jointly by the employer and the employee under paragraph 26(6) of the EPF

Scheme was to tide over the above situation. It is further clear from the Scheme of the enactment that the beneficial provisions thereof as well as the Schemes framed thereunder are to apply uniformly to the homogeneous class of employees of the establishments covered by the provisions of the enactment. Therefore, any attempt at classifying or categorizing them on the basis of dates as sought to be done by the authorities here, cannot be countenanced unless there exists a proper rationale for such classification and an object that justifies such classification.

28. We are reminded of the fact that the object of framing the EPF Act was to provide succour to the large section of working class of our country who are left to live a life of penury in their old age when they are not in a position by reason of their health, to do any work or to earn a living. The limited financial resources with the State exchequer in our country is

insufficient to provide old age pension to such people. Therefore, the EPF Act envisages the creation of a pension fund by collecting contributions compulsorily from both the employers and employees of establishments covered by the provisions of the said enactment. The Pension fund is constituted by transferring 8.33% of the contributions made by the employers to the Provident Fund, with no additional contribution from the employees. Thus, the scheme ensures that the State Exchequer would not be burdened with any financial liability while at the same time ensuring that the employees are assured of a decent pension in their old age. Therefore, it is necessary to consider the effect of the amendments that are impugned in the light of the object of the enactment and to ascertain whether the amendments would subserve an attainment of the said objective.

29. As per the impugned amendments, the following changes have been effected:

(i) Paragraph 11 of the Pension Scheme limits the maximum pensionable salary to Rs.15,000/- per month. Prior to the amendment, though the maximum pensionable salary was only Rs.6,500/- per month, the proviso to the said paragraph permitted an employee to be paid pension on the basis of the actual salary drawn by him provided, contribution was remitted by him on the basis of the actual salary drawn by him preceded by a joint request made for such purpose jointly with his employer. The said proviso has been omitted by the amendment thereby capping the maximum pensionable salary at Rs.15,000/-. The Scheme has been amended further by a subsequent notification, the Employee's Pension (Fifth Amendment) Scheme, 2016 to provide that the pensionable salary for the existing members who prefer a fresh option, shall be based on the higher salary.

(ii) Paragraph 11(4) of the Pension Scheme has been amended to confer an option on the existing members as on 1.9.2014 to submit a fresh option jointly with their employer to continue to contribute on salary exceeding Rs.15,000/- per month. Upon such option, the employee would have to make a further contribution at the rate of 1.16% on the salary exceeding Rs.15,000/-, additionally. Such fresh option would have to be exercised within a period of six months from 1.9.2014. A power to condone the omission to exercise fresh option within the said period of six months by a further period of six months is conferred on the Regional Provident Fund Commissioner. If no such option is made, the contribution already made in excess of the wage ceiling limit would be diverted to the Provident Fund Account, along with interest.

(iii) Paragraph 12 has been amended to provide that

monthly pension shall be determined on pro-rata basis for pensionable service up to 1st of September, 2014 at the maximum pensionable salary of Rs.6,500/- and for the period thereafter at the maximum pensionable salary of Rs.15,000/- per month.

(iv) Paragraph 14 has been substituted by a fresh paragraph providing for withdrawal of the benefits where a member has not rendered the eligible service as required by paragraph 12.

30. The reasons for amending the Pension Scheme have been set out in the counter affidavit dated 20.6.2016 filed by the respondents. The relevant paragraphs are extracted hereunder for convenience of reference.

“7. It is submitted that the members who used to contribute more than the ceiling limit of Rupees Six Thousand Five Hundred for the sake of higher pension at the time of retirement, drew disproportionately higher

amount as pension and thus affected the fund value of the Pension Fund.

.....

.....

39. It is submitted that various benefits envisaged under the Employees' Pension Scheme, 1995 are actually conceived by adopting a fair actuarial process of assets/liability match. The annual valuation is carried out by a professional Actuary and assesses the long term viability of the EPS given its current and projected earnings, assets and liabilities. The valuation reports as on 31/03/2012, 31/03/2013 and 31/03/2014 revealed that the benefits liability of the members contributing on higher wages is disproportionately higher than those contributing below the wage ceiling. It can be seen from the report for the year ending 31.03.2014 that the percentage of members contributing on wages higher than the wage ceiling is only 0.41% whereas the benefit obligation is 7.31%. Accordingly, the said proviso has now been omitted with effect from 01/09/2014 vide Ext.P-6 Notification dated 22/08/2014. The amendment is meant to be made applicable to all the existing members as the new members as on 01/09/2014 considering that after the amendment, the provisions of the Employees' Pension

Scheme, 1995 will henceforth apply only to those Employees' Provident Fund (EPF in short) members whose pay at the time of becoming EPF member is not more than Rs.15000/- per month on or after 01/09/2014.

.....

.....

55. It is submitted that in the case of the Petitioners who are contributing on actual wages also the calculation of pensionable salary on the basis of average salary during the 12 months would result in disbursement of pensionary benefits disproportionate to the contribution remitted by the employer on their behalf under the Employees' Pension Scheme, 1995. A cursory perusal of the salary details and contribution received by the Employees' Provident Fund Organisation (EPFO in short) in one of the cases revealed that the employer was contributing to the Pension Fund on his behalf on wages ranging from Rs.59595/- to Rs.102971/- during the 5 year period. The range of salary for the 12 months preceding the date of retirement is Rs.93000/- to Rs.102971/-. The quantum of pensionable salary and pensionary benefits on the basis of average salary for the 12 months preceding his retirement in such cases will be very high and the pensionary benefits will not be commensurate with the contribution received by the

EPFO. In any case, the Notification envisages payment of optimum pensionary benefits commensurate with the contribution remitted by the employer on their behalf because the benefits are quantified purely based on the wages on which the employer had contributed to pension fund in respect of each member during the membership.”

31. The contention therefore is that, payment of pension computed on the basis of the contributions made on their actual salaries by the employees would deplete the Pension Fund and would make the Scheme unworkable. The above contention cannot be accepted as a legal and valid ground for scaling down the quantum of pension that the employees are entitled to receive, as per law. We have noticed that, as per the Scheme of the Act, the Pension Fund is constituted by transferring 8 1/3% of the employer's contribution remitted to the Employees Provident Fund under Section 6 of the EPF Act, without making the employees liable for any further contribution. We have found that the Pension Scheme was to

enure to the benefit of all the employees who were covered by the Employees Provident Fund Scheme. Since an option was given to employees to make contributions in excess of the ceiling limit, and on the basis of the actual salaries drawn by them, no other restriction can be imposed on their right to receive pension. No additional payment by the employees is also contemplated by Section 6A of the EPF Act. Therefore, the insistence on payment of additional 1.16% of their salary towards the Pension Fund by amending the Pension Scheme also cannot be sustained. The Apex Court has considered an allied aspect in Civil Appeal Nos. 10013–10014 of 2016 (arising out of SLP (C)Nos. 33032–33033 of 2015) and held as per order dated 4.10.2016 that the date of commencement of the Scheme referred to in the proviso to paragraph 11(3) of the Pension Scheme was not a cut-off date to determine the eligibility of the employer–employee to indicate their option under the said

proviso. The Apex Court has also in the said order approved the view taken by this Court on the point. Therefore, the stipulation of a cut-off date for conferring the benefits under the Pension Scheme cannot be sustained. In paragraphs 10 and 11 of the said order, evidenced by Ext.P12 in W.P.(C) No. 13120 of 2015, the Apex Court has further held as follows:

“10. We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under paragraph 26 of the Provident Fund Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. The above apart in a situation where the deposit

of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. Before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employee.”

32. The Apex Court has thus found the insistence on a date for exercise of the joint option to be without any justification. In other words, the proviso to paragraph 11 of the Pension Scheme does not stipulate a cut off date at all. Any such stipulation of a cut off date for conferring benefits under

the Pension Scheme would have the effect of classifying the employees into persons who have retired before or after the said date.

33. As per the amendments, the maximum pensionable salary has been fixed at Rs.15,000/- thereby disentitling the persons who have contributed on the basis of their actual salaries to any benefits on the basis of the excess contributions made by them. The said provision is arbitrary and cannot be sustained. The employees, who have been making contributions on the basis of their actual salaries after submitting a joint option with their employers as required by the Pension Scheme, are denied the benefits of their contributions by the said amendments without any justification. Apart from the above, to cap the salary at Rs. 15,000/- for quantifying pension is absolutely unrealistic. A monthly salary of Rs.15,000/- works out only to about Rs.500/- per day. It is common knowledge

that, even a manual labourer is paid more than the said amounts as daily wages. Therefore, to limit the maximum salary at Rs.15,000/- for pension would deprive most of the employees of a decent pension in their old age. Since the pension scheme is intended to provide succour to the retired employees, the said object would be defeated by capping the salary. The duty of the trustees of the Fund is to administer the same for the benefit of the employees – by wise investments and efficient management. They have no right to deny the pension legitimately due to them on the ground that the fund would get depleted. The demand of additional payment of 1.16% of their salaries exceeding Rs.15,000/- is unsustainable for the reason that, Section 6A does not require the employees to make any additional contribution to constitute the Pension Fund. Nor does it empower the authorities to demand additional contribution. In the absence of any statutory backing, the said provision in the

Pension Scheme is ultra vires. The amendment in so far as it stipulates the average monthly pay drawn over a span of 60 months preceding the date of exit as the pensionable service is also arbitrary for the reason that it deprives the employees of a substantial portion of the pension to which they would have been eligible had it not been for the amendment. The provision as it originally stood stipulated computation of pensionable salary on the basis of the monthly pay drawn over a period of 12 months prior to their exit. The reason for the amendments as disclosed by the counter affidavit filed is that payment of pension on the basis of the Scheme as it stood prior to the amendment would result in depletion of the Fund. Absolutely no material or data to support the above contention has been placed before us. On the contrary, placing reliance on a news report carried by "The Hindu" newspaper on 17.8.2014, it is contended by the petitioners that, a staggering amount of Rs.32,000 Crores of

unclaimed amount is lying in various inoperative accounts across the country, as unclaimed pension as disclosed by the Central Provident Fund Commissioner at an interactive session with employees at Hyderabad. In the absence of any material to support the contention that the fund is likely to be depleted, we reject the said contention. Apart from the above, there is no provision in the Act that stipulates the pension payments to commensurate with the amounts actually remitted by an employee and his employer. It is also a fact that the administrators of the Fund invest the amounts and generate profit from such investments.

34. Apart from the above it is common knowledge that, the salary of all employees have gone up to such an extent that, at present even a Class-IV employee or a person employed in Menial jobs would be drawing salaries far in excess of the celing limit of Rs.6500/-. Therefore, to cap the salary at

Rs.6500/- for the purpose of contributions is unrealistic. The authorities are turning a blind eye to the realities in the society by doing so. The further contention that the ceiling limit was intended to cater to the lower wage earners also has to be rejected for the reason that no such intention is discernible from the provisions of the Act. There would be no employee below the said ceiling limit, at present. Consequently, the allegation that there would be reverse subsidization is ill conceived.

35. It cannot be disputed that, the work force in our country has only been growing in numbers with more and more establishments springing into existence and getting covered by the provisions of the EPF Act. The contributions paid by them on the basis of the actual salaries drawn by the employees are constantly adding to the base of the fund. Such process of accretion is a continuing phenomenon. Therefore, there is no evidence of the fact that the fund is getting depleted by the

payment of pension, as alleged. At the same time, the Statistics only prove otherwise. It is commonly accepted that the fund base has only grown over the years by the accumulation of EPF contributions.

36. Considering the fact that, the pension fund is created for the purpose of providing succour to the employees in their old age, taking into account the further fact that the fund is created by collecting contributions from the employers and employees, casting no financial burden on the State, it follows that no scheme that defeats the purpose of the enactment by reducing the pension payable to the employees in their old age to a ridiculously low amount, which is not sufficient even for ensuring a decent life to them, cannot be sustained. There is no justification for stealing bread from the mouths of the pensioners to secure the Pension Fund. Though the Fund is replenished by the present workers, its beneficiaries are the old

and infirm former workers; the pensioners. The Fund is meant for their sustenance. It is the duty of the Central Board to administer the Fund efficiently and to augment the Fund through wise investments and professional management so as to ensure that it meets the commitment to pay pension to the employees. The said amendments are therefore ultravires the power to frame schemes.

37. The stated objective of the amendments is to prevent depletion of the fund. The said apprehension is absolutely baseless for the reasons stated above. The number of persons who are contributing to the Provident Fund as well as the Pension Fund have only grown over the years. The work force in our country would only grow further in the future. It has to be stated here that in view of the increase in the number of workers over the years, the contributions would also grow. The phenomenon is only bound to continue in future. Therefore,

even when payments of pension are made to the retired employees, the pension fund would continue to get replenished with the contributions of the new entrants. The said ongoing process would maintain the Fund in a stable condition. If at all, a situation where the Fund base gets eroded occurs, the situation could be remedied at that time by enhancing the rates of contributions of persons contributing to the Fund through a legislative exercise. The attempt to maintain the stability of the fund by reducing the pension would only be counter productive and would defeat the very purpose of the enactment.

38. As rightly contended by the counsel appearing for the petitioners, the effect of the amendments to the Pension Scheme is to create different classes of pensioners on the basis of the date, 1.9.2014, the date on which the amended Scheme came into force. Consequently, there would be –

(i) employees who have exercised option under the proviso

to paragraph 11(3) of the 1995 Scheme and continuing in service as on 1.9.2014;

(ii) employees who have not exercised their option under the proviso to paragraph 11(3) of the 1995 Scheme, and continuing in service as on 1.9.2014;

(iii) employees who have retired prior to 1.9.2014 without exercising an option under paragraph 11(3) of the 1995 Scheme;

(iv) employees who have retired prior to 1.9.2014 after exercising the option under paragraph 11(3) of 1995 Scheme.

The rationale in so classifying the employees covered by the Pension Scheme on the basis of the above date is not forthcoming. The object sought to be achieved is stated to be prevention of depletion of the Pension Fund, which cannot be accepted as a justification to support the classification.

Inasmuch as the statutory scheme is to make the Pension Fund enure to the benefit of the homogeneous class of the totality of employees covered by the Provident Fund, a further classification of the said class by formulating a Scheme is ultra vires the power available to the Central Government under Sections 5 and 7 of the EPF Act. Therefore, it has to be held that, the impugned amendments are arbitrary, ultra vires the EPF Act and unsustainable.

For the foregoing reasons, the petitioners are entitled to succeed. The writ petitions are all allowed as follows:

- i) The Employee's Pension (Amendment) Scheme, 2014 brought into force by Notification No. GSR. 609(E) dated 22.8.2014 evidenced by Ext.P8 in W.P.(C) No. 13120 of 2015 is set aside;
- ii) All consequential orders and proceedings issued by the Provident Fund authorities/respondents on the basis of the impugned amendments shall also stand set aside.

iii) The various proceedings issued by the Employees Provident Fund Organization declining to grant opportunities to the petitioners to exercise a joint option along with other employees to remit contributions to the Employees Pension Scheme on the basis of the actual salaries drawn by them are set aside.

iv) The employees shall be entitled to exercise the option stipulated by paragraph 26 of the EPF Scheme without being restricted in doing so by the insistence on a date.

v) There will be no order as to costs.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**A.M. BABU
JUDGE**

kkj/sb

Telephone: 011-2617521
Fax : 011-26175212



कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भिकाजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No. Actuarial/18(2)2008/Vol.III/

Date: 29 AUG 2014
29 AUG 2014

To

All Addl. Central P.F.Commissioners (Zones)
All Regional P.F.Commissioners-I (In-Charge of Region)

Sub: Gazette Notification providing for increase in wage ceiling under EPS, 1995 from Rs.6500/- to Rs.15,000/- which shall come into force on and from the 1st day of Sept. 2014.

Sir,

This is in continuation of this office circular No. Actuarial/18(2)2008/ Vol.III/5905 dated 23.07.2014 wherein it was informed that the Employees' Pension Scheme 1995 is being amended to increase the wage ceiling from Rs.6,500/- per month to Rs.15,000/- per month in the Employees' Pension Scheme, 1995.

2. The proposed amendments have since been notified vide Gazette Notification No. GSR 609 (E) which shall come into force on and from the 1st day of September, 2014 (Copy of notification enclosed).

3. Accordingly, with effect from the 1st day of September, 2014, the pensionable salary for all cases of exit/death on or after 01.09.2014, for calculating pension shall be the average monthly pay drawn during the contributory period of service in the span of 60 months preceding the date of death/exit from the membership of the Employees' Pension Fund. The pensionable salary shall be calculated on pro-rata basis separately for the period up to 31.08.2014 up to wage ceiling of Rs.6,500/- per month and for the subsequent period upto the wage ceiling of Rs.15,000/- per month. Similarly, the Withdrawal Benefit shall be based on the weighted wages at different wage ceilings. As already informed necessary amendments in the application software are being carried out and the necessary software shall be released by I.S. Division at the earliest.

4. Accordingly, requisite steps may be taken so that full details of wages for 60 months are available to settle the pension claims in accordance with the proposed modification. In this regard, Form 10-C & Form 10-D are also being redesigned to incorporate the above changes and shall be circulated soon. However in the meantime wage details be obtained by attaching additional sheet for giving details of 60 months of wages along with Form 10-D in respect of all members having date of exit from EPS 1995.

5. The members having date of exit from EPS, 1995 on account of superannuation/option date for commencement of early pension etc. prior to 01.09.2014 shall get Pensionary benefits on the basis of the existing pensionable salary calculations i.e. by taking 12 months average.

6. Further, with effect from 01.09.2014, wherever employer & employees have opted to contribute on salary exceeding Rs.6,500/- per month, such employer & employees will have to exercise a fresh option to contribute on salary exceeding Rs.15,000/- per month subject to the condition that such member would have to contribute the Government's share of contribution @ 1.16% on the salary exceeding Rs.15,000/- per month from his /her share of contribution. The fresh option is to be exercised within a period of 6 months. It is essential to know with certainty the employees who are currently permitted to contribute to EPS on higher wages, so that fresh options can be called for. Accordingly, you may immediately flag all such cases of contribution on salary exceeding Rs.6,500/- per month and obtain fresh options in a time bound manner. It may be made known to the existing optees that if the fresh option is not exercised it shall be deemed that the employee has not opted in allowing contribution over wage ceiling and the contributions to Employees Pension Fund made above the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time.

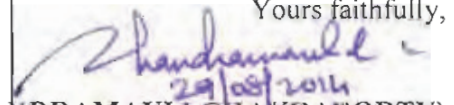
7. Furthermore, with effect from 01.09.2014 the provisions for contribution on higher salary has been deleted and as such no new options can be allowed to any member of EPS, 1995 on and after 01.09.2014.

8. As EPS will henceforth apply only to EPF members whose pay at the time of becoming PF member is not more than Rs.15,000/- per month on or after 01.09.2014 the entire employer and employee contribution shall remain in the Provident Fund and no diversion to EPS shall be made for all new PF members on or after 01.09.2014 having salary more than 15,000/- at the time of joining. This must be ensured as any negligence on this issue may lead to unwarranted litigations.

9. The above actions may be taken without any deviation and officer in charge shall be responsible for compliance of above directions under his jurisdiction.

(This issues with the approval of CPFC)

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Chandramauli Chakraborty', with the date '29/08/2014' written below it.

(CHANDRAMAULI CHAKRABORTY)
REGIONAL P.F.COMMISSIONER-I (Pensions)

5. मूल योजना के पैरा 12 के उप-पैरा (2) में निम्नलिखित परन्तुक अंतःस्थापित किए जाएंगे नामतः-
"वशतः कि उस सदस्य की मासिक पेंशन समानुपातिक आधार पर 1 सितंबर, 2014 तक पेंशन योग्य सेवा के लिए छह हजार पांच सौ रुपये प्रतिमाह के अधिकतम पेंशन योग्य वेतन पर और उसके बाद की अवधि के लिए पंद्रह हजार रुपये प्रतिमाह के अधिकतम वेतन पर निर्धारित की जाएगी")
6. मूल योजना में पैरा 14 के लिए निम्नलिखित पैरा प्रतिस्थापित किया जाएगा, नामतः
"14. सदस्य का मासिक पेंशन के लिए पात्र होने से पहले सेवा छोड़ने पर मिलने वाले लाभ— यदि कोई सदस्य जिसने सेवा छोड़ने की तिथि पर अथवा 58 वर्ष की आयु पूरी होने पर, जो भी पहले हो, को पैरा 12 के उप-पैरा (1) में विनिर्दिष्ट पात्र सेवा न की हो, तो यह सदस्य तालिका 'घ' में यथा विहित निकासी लाभ प्राप्त करने का हकदार होगा अथवा वह उस तिथि को 58 वर्ष की आयु पूरी न करने के अध्वधीन योजना का प्रमाण-पत्र प्राप्त करने का विकल्प ले सकता है:
वशतः कि ऐसे प्रत्याहरण लाभ की गणना के लिए सेवा छोड़ने के समय उसका वेतन प्रत्येक वेतन सीमा अवधि की समाप्ति पर उसके वेतन के भारित औसत के समान होगा:
परन्तु यह भी कि वर्तमान सदस्य, कर्मचारी परिवार पेंशन योजना, 1971 के अंतर्गत अपनी पिछली सेवा के लिए तालिका 'क' के अनुसार प्रत्याहरण सह-सेवा निवृत्ति लाभों के रूप में परिकल्पित तथा तालिका 'ख' में दिए पुणक द्वारा द्विगुणित अंशदानों का अधिकृत प्रतिकूल प्राप्त करेगा।"

[क्र. सं. एस-35012/1/2012-एनएस-III]

अरुण कुमार सिन्हा, अपर सचिव

टिप्पणी:- मूल योजना को दिनांक 16 नवंबर, 1995 की अधिसूचना संख्या सा.का.नि. 748(अ) द्वारा प्रकाशित किया गया था तथा पिछली बार इसे दिनांक 14 फरवरी, 2013 की अधिसूचना संख्या सा.का.नि. 80(अ.) द्वारा संशोधित किया गया था।

NOTIFICATION

New Delhi, the 22nd August, 2014

G.S.R. 609(E).— In exercise of powers conferred by section 6A read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees' Pension Scheme, 1995, namely:—

- (1) This Scheme may be called the Employees' Pension (Amendment) Scheme, 2014.
(2) It shall come into force on and from the 1st day of September, 2014.
- In the Employees' Pension Scheme, 1995, (hereinafter referred to as the principal Scheme), in paragraph 3, in sub-paragraph 2, in the proviso, for the words "rupees six thousand and five hundred", wherever they occur, the words "fifteen thousand rupees" shall be substituted.
- In the principal Scheme, in paragraph 6, in clause (a), after the words, figures and letter "or 27A of the Employees' Provident Funds Scheme, 1952", the words "and whose pay on such date is less than or equal to fifteen thousand rupees", shall be inserted.
- In the principal Scheme, in paragraph 11,-
(a) for sub-paragraph (1) and the proviso thereto, the following shall be substituted, namely:-
"(1) The pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on pro-rata basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month, and for the period thereafter at the maximum of fifteen thousand rupees per month:
Provided that if a member was not in receipt of full pay during the period of sixty months preceding the day he ceased to be the member of the Pension Fund, the average of previous sixty months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension;

(6)

- (b) in sub-paragraph (2), for the figures and word "12 months", wherever they occur, the words "sixty months" shall be substituted;
- (c) in sub-paragraph (3):-
- (i) for the words, letters and figures "rupees six thousand and five hundred/Rs. 6500", the words "fifteen thousand rupees" shall be substituted;
- (ii) the proviso shall be omitted.
- (d) after sub-paragraph (3), the following sub-paragraph shall be inserted, namely:-
- "(4) The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month:

Provided that the aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder:

Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:

Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:

Provided also that if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time.

5 In the principal Scheme in paragraph 12, in sub-paragraph (2), the following proviso shall be inserted, namely:-

"Provided that the members' monthly pension shall be determined on a pro-rata basis for the pensionable service up to the 1st day of September, 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month".

6 In the principal Scheme, for paragraph 14 the following paragraph shall be substituted, namely:-

"14. Benefits on leaving service before being eligible for monthly member's pension.- If a member has not rendered the eligible service specified in sub-paragraph (1) of paragraph 12 on the date of exit, or on attaining the 58 years of age, whichever is earlier, such member shall be entitled to a withdrawal benefit as laid down in Table 'D' or may opt to receive the Scheme certificate provided on the date he has not attained 58 years of age:

Provided that for calculating such withdrawal benefit, the wages at exit shall be the weighted average of his wages at the end of every wage ceiling period:

Provided further that an existing member shall receive additional return of contributions for his past service under the Employees' Family Pension Scheme, 1971, computed as withdrawal-cum-retirement benefits as per Table 'A' multiplied by the factor given in Table 'B' ".

[F.No. S-35012/1/2012-SS-II]

ARUN KUMAR SINHA, Addl. Secy.

Note: The principal Scheme was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification number G.S.R. 748 (E), dated the 16th November, 1995 and last amended vide notification number G.S.R. 80(E) dated the 14th February, 2013.

अधिसूचना

नई दिल्ली, 22 अगस्त, 2014

सा.का.नि.610(अ).—कर्मचारी भविष्य निधि तथा प्रकीर्ण उपग्रंथ अधिनियम, 1952 (1952 का 19) की प्राचा 7 की उप-धारा (1) के माध पठित धारा 6न द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार कर्मचारी निक्षेप सहवद्ध वीमा योजना, 1976 में और संशोधन करने के लिए निम्नलिखित योजना बनाती है, अर्थात्:-

1. (1) यह योजना कर्मचारी निक्षेप सहवद्ध वीमा (संशोधन) योजना, 2014 कहलागी।

3297 57/14-2



Web circulation

Tele/Fax : 011 – 26175212

कर्मचारी भविष्य निधि संगठन

EMPLOYEES' PROVIDENT FUND ORGANISATION

श्रम एवं रोजगार मंत्रालय(भारत सरकार ,

MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA

मुख्य कार्यालय/Head Office

भविष्य निधि भवन, ,14भीकाजी कामा प्लेस नई दिल्ली 110066-

Bhavishya Nidhi Bhawan , 14, Bhikaji Cama Place, New Delhi -110066

www.epfindia.gov.in, www.epfindia.nic.in

No. EDLI/24/Amendment scheme 2014

Date: 29.08.2014

To

All ACCs (Zones)

All RPFC (In-Charge of the Region)

Sub: - Employees' Deposit Linked Insurance (Amendment) Scheme 2014 ^(E) G.S.R. 610 Gazette Notification increasing wage ceiling under the EDLI Scheme, 1976 dated 22-08-2014-Reg.

Sir,

The Gazette Notification issued by the Govt. of India referred above has brought Important amendments whereby the wage ceiling for EDLI contribution have been increased from the present amount of Rs. 6,500/- per month to Rs. 15,000/- per month.

2. Additionally, the benefits under paragraph 22 of this Scheme shall be increased by 20% in addition to the benefits admissible under Sub-Paragraph (1), (2) & (3) of paragraph 22. The notification will come into force from 1st September, 2014.

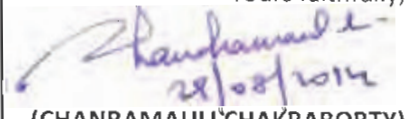
3. With the above amendments in the EDLI Scheme, 1976 the quantum of benefits will be substantially increased. In order to ensure uniformity in the application of the Amendments, all offices may note the following:-

- i. In all cases of EDLI claims where the date of death of the member occurs on or after 01.09.2014, the benefits shall be regulated on the basis of the enhanced wage ceiling limit of Rs. 15,000/- per month alongwith the admissible increase of 20% under newly introduced Sub-paragraph (4) of paragraph 22.
- ii. In those cases of EDLI claims where the date of death of member occurs prior to 01.09.2014 the benefits will be regulated on the basis of the wage ceiling limit of Rs. 6,500/- per month.

4. Necessary Amendments in the application software are being made by IS division, but in the meantime EDLI claims will be regulated as mentioned in the paragraph above. As it is an important Amendment you are requested to give wide publicity to the same. All Establishments under your jurisdiction may be advised to ensure compliance under the enhanced wage ceiling. EDLI exempted establishments may also be informed that benefits have to be paid on the higher wage ceiling along with 20% (Twenty percent) increase in benefits as provided in newly introduced sub-paragraph (4) of Paragraph 22 in all cases of claims where death occurs on or after 01.09.2014. Publicity may be given through press releases, letters to Employers/Employees Associations, e-mails, regional EPFO websites etc.

(This issues with the approval of CPFC)

Yours faithfully,



(CHANRAMAULI CHAKRABORTY)

Regional Provident Fund Commissioner-I (Pension)

4

NOTIFICATION

New Delhi, the 22nd August, 2014

G.S.R. 610 (E). —In exercise of the powers conferred by section 6C read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following scheme further to amend the Employees' Deposit-Linked Insurance Scheme, 1976, namely:-

1. (1) This Scheme may be called the Employees' Deposit-Linked Insurance (Amendment) Scheme, 2014.
(2) It shall come into force on and from the 1st day of September, 2014.
2. In the Employees' Deposit-Linked Insurance Scheme, 1976 (hereinafter referred to as the principal Scheme), in paragraph 7, in sub-paragraph (1), for the words "six thousand five hundred rupees", the words "fifteen thousand rupees" shall be substituted.
3. In the principal Scheme, in paragraph 22, in sub-paragraph (3),-
(a) in clause (i), for the words "six thousand five hundred rupees", the words "fifteen thousand rupees" shall be substituted;
(b) in the Explanation, for the words "rupees six thousand five hundred", the words "fifteen thousand rupees" shall be substituted.
4. In the principal Scheme, in paragraph 22, after sub-paragraph (3), the following sub-paragraph shall be inserted, namely:-
"(4) The benefit under this Scheme shall be further increased by twenty percent in addition to the benefits admissible under sub-paragraph (1), (2) or (3) of paragraph 22, as the case may be."

[F. No. S-35012/1/2012-SS.II]

ARUN KUMAR SINHA, Addl. Secy.

Note:- The Employees' Deposit-Linked Insurance Scheme, 1976 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i); vide number G.S.R. 488 (E), dated the 28th July, 1976 and subsequently amended as follows:-

- (1) GSR 1788, dated 07-12-1976
- (2) GSR 648, dated 01-05-1977
- (3) GSR 329, dated 20-02-1978
- (4) GSR 369, dated 14-07-1978
- (5) GSR 67, dated 23-12-1978
- (6) GSR 1013, dated 12-09-1980
- (7) GSR 548, dated 03-10-1981
- (8) GSR 828, dated 14-08-1985
- (9) GSR 873, dated 29-08-1986
- (10) GSR 228, dated 02-03-1989
- (11) GSR 354, dated 22-05-1990
- (12) GSR 30, dated 28-12-1990
- (13) GSR 321, dated 16-08-1991
- (14) GSR 420, dated 31-08-1992
- (15) GSR 176, dated 07-03-1994
- (16) GSR 334, dated 29-08-1997
- (17) GSR 238, dated 13-06-2000
- (18) GSR 523(E), dated 18-06-2010
- (19) GSR 9(E), dated 08-01-2011
- (20) GSR 83(E), dated 11-02-2011