

The Punjab State Cooperative ... vs The Registrar Cooperative Societies on 11 January, 2022

Author: Ajay Rastogi

Bench: Abhay S. Oka, Ajay Rastogi

REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 297-298 OF 2022
(Arising out of SLP(Civil) No(s). 1940-1941 of 2020)

THE PUNJAB STATE COOPERATIVE
AGRICULTURAL DEVELOPMENT BANK LTD.APPELLANT(S)

VERSUS

THE REGISTRAR, COOPERATIVE
SOCIETIES AND OTHERS
....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 303 OF 2022
(Arising out of SLP(Civil) No(s). 1934 of 2020)

CIVIL APPEAL NO(S). 311 OF 2022
(Arising out of SLP(Civil) No(s). 12822 of 2020)

CIVIL APPEAL NO(S). 312 OF 2022
(Arising out of SLP(Civil) No(s). 1935 of 2020)

CIVIL APPEAL NO(S). 310 OF 2022
(Arising out of SLP(Civil) No(s). 1936 of 2020)

CIVIL APPEAL NO(S). 300 OF 2022
(Arising out of SLP(Civil) No(s). 1949 of 2020)

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CIVIL APPEAL NO(S). 306 OF 2022

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CIVIL APPEAL NO(S). 299 OF 2022
(Arising out of SLP(Civil) No(s). 1944 of 2020)

CIVIL APPEAL NO(S). 308 OF 2022
(Arising out of SLP(Civil) No(s). 1859 of 2020)

CIVIL APPEAL NO(S). 309 OF 2022
(Arising out of SLP(Civil) No(s). 1942 of 2020)

CIVIL APPEAL NO(S). 301 OF 2022
(Arising out of SLP(Civil) No(s). 1932 of 2020)

CIVIL APPEAL NO(S). 302 OF 2022
(Arising out of SLP(Civil) No(s). 1931 of 2020)

CIVIL APPEAL NO(S). 304 OF 2022
(Arising out of SLP(Civil) No(s). 1939 of 2020)

CIVIL APPEAL NO(S). 305 OF 2022
(Arising out of SLP(Civil) No(s). 1937 of 2020)

CIVIL APPEAL NO(S). 307 OF 2022
(Arising out of SLP(Civil) No(s). 1945 of 2020)

CIVIL APPEAL NO(S). 313 OF 2022
(Arising out of SLP(Civil) No(s). 12864 of 2020)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. Civil Appeals @ SLP(Civil) Nos. 1940-1941 of 2020 and the cognate appeals arise from the self-same common judgment dated 29th July, 2019 and 4th October, 2019 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh.

3. The facts have been noticed by this Court from Civil Appeals @ SLP(Civil) Nos. 1940-1941 of 2020.

4. The appellant in the present batch of appeals, is the Punjab State Cooperative Agricultural

Development Bank Ltd. (hereinafter referred to as 'the Bank'), a registered cooperative society and connected Civil Appeal @ Special Leave Petition (Civil) No.12864 of 2020 has been preferred by the serving employees of the bank who also claim to be aggrieved by the self-same impugned judgment in the proceedings. At the same time, the respondents are the original writ petitioners who are the retired employees and the service conditions of the employees are governed by the Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978(hereinafter being referred to as the "Rules 1978") and became members of the Bank Pension Scheme, which was introduced w.e.f. 1st April, 1989.

5. The appellant Bank is a registered cooperative society which was earlier known as "Punjab State Cooperative Land Mortgage Bank Ltd." The principal object of the Bank is to provide long term loans to the farming community and to protect them from the clutches of money lenders. The main funding of the appellant Bank is by way of loans from National Bank for Agriculture and Rural Development(NABARD) as per the norms laid down. The appellant Bank has two tier structure comprising of "Punjab State Cooperative Agricultural Development Bank Ltd." at Apex level(SADB) and the "Primary Agricultural Development Banks"(PADB) at the grass root level. These two banks ensure timely delivery of credit to the farmers, who are its members and directly benefitted with various schemes which provide long term and short-term loans to them.

6. Prior to 1989, the employees of the appellant Bank were covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952(hereinafter being referred to as the "Act 1952"). The scheme was being duly adhered to and necessary contributions were regularly paid by employees and the employer Bank.

7. The Department of Finance, Government of Punjab, vide its letter dated 22nd September 1988, pursuant to recommendations of the Punjab Pay Commission to bring the employees serving in various Public Sector Undertakings and State aided institutions under purview of the State Pension Rules, solicited the views/comments of the concerned organisations to inter-alia communicate the additional financial burden involved in each case and whether the organisation/organisations could bear the additional liability out of their own resources. These recommendations were placed before the Administrator of the Bank who vide Resolution dated 22nd June 1989 decided to implement the recommendations of the State Government and as a consequence thereof, the pension scheme of the employees and Officers in the common cadre was introduced w.e.f. 1st April, 1989.

8. Resolution No.24 passed by the Administrator of the appellant Bank dated 22nd June, 1989 is reproduced as under: Item Agenda Decision No. 1 (i) To consider to 1 (i) Resolved that the existing Common Cadre amend Common Rule No. 15 be numbered as 15(i) and a new Cadre Rules for rule 15(ii) be incorporated as under:

introducing 15(ii) The Board of Directors may formulate Pension Scheme. Pension Rule with the approval of RCS Punjab.

(ii) To consider to (ii) (a) Resolved that the Pension Scheme for introduce the employees/officers in the Common Cadre Pension Scheme of the Punjab State

Cooperative Agricultural for the Development Bank be introduced for the employees/office adoption w.e.f. 1.4.89.

rs in the (b) It is further resolved that the pension rules Common Cadre enclosed are approved. Any matter which is of the Punjab not specifically mentioned in these Rules shall State be governed by Chapter XIII of the Punjab Civil Cooperative Service Rules Vol. II.

Agricultural (c) It is further resolved that the Regional Development Provident Fund Commissioner, Chandigarh be Bank requested to exempt the bank from the payment of contributory provident fund scheme and refund the entire existing contribution with them along with family pension contribution and deposit linked insurance fund along with up to date interest on these amounts.

9. In furtherance thereof, the appellant Bank sent a letter dated 27th June, 1989 to the Registrar, Cooperative Societies, Punjab, seeking approval for introduction of the pension scheme for its employees covered under the Rules, 1978. The Registrar, Cooperative Societies, Punjab, by its communication dated 7 th February, 1990 conveyed its approval for introduction of the pension scheme proposed by the appellant Bank to its employees covered under the Rules 1978. In pursuance thereof, the amendment was carried out in the Rules, 1978 and Rule 15(ii) was introduced authorizing the Board of Directors to formulate pension scheme with the approval of the Registrar Cooperative Societies, Punjab. For the purpose of reference, Rule 15(ii) is extracted hereunder: □“15 (i) PROVIDENT FUND: □The employees shall be entitled to the benefit of the General Provident Fund as provided in the employees Provident Fund Act, 1952 and scheme framed thereunder.

(ii) THE PENSION SCHEME FOR THE EMPLOYEES/OFFICES IN THE COMMON CADRE RULES OF THE PUNJAB STATE COOPERATIVE AGRICULTURAL DEVELOPMENT BANK W.E.F. 1.4.89.

1. Short title and commencement: □

(i) The rules shall be called, the Punjab State Cooperative Agricultural Development Banks Employees Pension, Family Pension and General Provident Fund Rules.

(ii) These Rules shall come into force with effect from 1.4.89.

2. Application

(i) These rules shall apply to all the posts in the services specified in the Appendix ‘T’ of the Common Cadre Rules, provided that in case of the employees appointed by transfer from Government Departments, these rules shall only apply to the extent specified in their terms and conditions of deputation agreed upon with the Government Department concerned. Provided further that nothing in these rules shall affect the application of any other law, statutory rules, bye□laws and regulations for time being in force.

Provided further that an employee who joins service on or after coming into force of these rules and such existing employees, who opt for these rules, shall be covered by these rules. All category of employees shall have to exercise this option in Form ☐A to these rules within three months from the date of notification of these rules.

(ii) The employees who do not opt for these rules shall be governed by the Employees Provident Fund Act and Rules.

3. Definition: ☐XXX XXX XXX XXX

(o) Pay: ☐Pay means the pay as defined in Rule 2.44 of the Punjab Civil Services Rules Volume ☐ Part ☐. Note: ☐Unless the contrary appears from the context or subject to term 'pay' defined in Rule 2.44 of the Punjab Civil Services, Volume ☐, Part ☐, does not include "Special Pay."

10. In furtherance thereto, the amended Rule 15(ii) came into force with effect from 1st April, 1989. In sequel to the introduction of implementation of the scheme, the contributions made by the employees and the appellant Bank were transferred to create the pension corpus fund to make it functionally viable and a trust was created by a trust deed dated 24 th March, 1993 for management and effective implementation of the scheme.

11. It reveals from the record that the employees of the appellant Bank who had opted for pension became members of the pension scheme and continued to derive the benefit of pension after they had opted for it till the year 2010. Later, when the appellant Bank found the scheme to be unviable on account of financial constraints, the Board of Directors of the appellant Bank in its meeting dated 29th May, 2010 in reference to Agenda No. 15 reconsidered the matter about giving pension to the bank employees and resolved as under: ☐

1. Pension to the retired employees and those going to retire in future be communicated.
2. Pension Scheme will not be applicable in case of employees employed on or after 1.1.2004.
3. Pensioners be not given the benefit of commutation of pension, medical reimbursement and LTC.
4. As per existing rules, the contribution equal to the 12% GPF deduction of employees to be continued by bank.
5. As per letter No.CA3/64/13717 dated 29.8.2008 of Registrar, Cooperative Societies, 12% of the profits of SADB & PADBs be allocated to employees benefit fund and its 90% share be contributed to the pension fund.
6. Bank to continue pension from its funds/expenses by stopping the commutation of pension, medical reimbursement and LTC facilities to its employees and retired employees, imposing 25% deduction on eligible amount of pension and after adjusting the pension amount against SADB/PADBs profits according to rules be made up on the basis of outstanding loans of SADB and

PADB's.

7. As and when there is improvement in financial condition of bank, the payment of full pension may be considered.

12. The appellant Bank sent a letter dated 9 th June, 2010 to the Registrar, Cooperative Societies, Punjab, seeking approval of the aforesaid Resolution. The Registrar, Cooperative Societies, Punjab, vide its letter dated 3rd September, 2010 issued directions to the appellant Bank to review its proposal. Pursuant thereto, the appellant Bank submitted its revised proposal to the Registrar, Cooperative Societies, Punjab, on 30th March, 2011 to proceed with the pension scheme in accordance with Resolution No. 15 dated 29th May, 2010. Although the proposal was turned down by the Registrar, Cooperative Societies, Punjab, Chandigarh still the Board of Directors of the appellant Bank vide its Resolution dated 17 th August, 2012 decided to discontinue the pension scheme and revert to the scheme of Contributory Provident Fund with a proposal of One Time Settlement. The Board of Directors, later in exercise of its powers vested in Section 84A(2) of the Punjab Cooperative Societies Act, 1961 with the prior approval of the Registrar, Cooperative Societies made amendment in Rule 15 of the Rules, 1978 by order dated 11th March, 2014. Pursuant thereto, Rule 15(ii) stood deleted. The order dated 11th March, 2014 is reproduced hereunder: □O/o Registrar, Cooperative Societies, Punjab, Chandigarh (Credit Branch □) To The Managing Director, The Punjab State Cooperative Agri. Dev. Bank Ltd., Chandigarh.

Memo. Credit/CA□3/2841 Dated: 11.03.2014 Sub: □Amendment in Clause 15 of Punjab State Cooperative Agricultural Development Bank Service Common Cadre Rules, 1978. Ref: Your office letter No. Admn/SO7/11984 dated 27.01.2014 This office has received a proposal on the subject cited above. After examining the proposal and the legal opinion sent by the Bank, in exercise of powers vested vide Section 84A(2) of the Punjab Cooperative Societies Act 1961, Registrar Cooperative Societies, is pleased to allow the following amendments in the Punjab State Cooperative Agricultural Development Bank Service Common Cadre Rules 1978 as under:

Rule	Existing	Amended
15	(i) PROVIDENT FUND The employees shall be entitled to	(i) The employees shall be entitled to the benefits of the

the benefit of the General Provident Contributory Provident Fund Fund as provided in the employees as provided in the Provident Fund Act, 1952 and Employees Provident Fund & scheme framed thereunder. Miscellaneous Act, 1952 and schemes framed thereunder.

(ii) The Pension Scheme for the (ii) Deleted.

employees/officers in the common

cadre rules of the Punjab State
Cooperative Agricultural
Development Bank w.e.f.
01.04.1989.

13. It reveals from the record that since the appellant Bank much before the amendment had stopped making payments of pension in terms of Rule 15(ii) of the Rules 1978, the employees approached the High Court under Article 226 of the Constitution by filing writ petitions and various interim orders were passed from time to time and even at one stage, it was decided to introduce a proposal of one time settlement which was furnished by the appellant Bank on 16th October, 2012 in the pending proceedings before the High Court and, as informed, few of the employees have settled their claims under the One Time Settlement but it will be appropriate to notice at this stage that while the proceedings were pending before the Division Bench of the High Court, by Order dated 24 th January 2014, it was made clear that one time settlement which has been implemented after seeking approval of the competent authority shall be without prejudice to the legal rights of the applicant/respondent employees. The Order dated 24 th January, 2014 is reproduced hereunder: □
“CM□09□LPA□2014 Allowed as prayed for.

Document Annexure A1 is taken on record subject to such exceptions.

CM stands disposed of.

CM□71□LPA□2014 in LPA□2001□2013 Notice to the non□applicant/appellants. Ms. Jaishree Thakur, Advocate accepts notice.

After hearing learned counsel for the parties and keeping in view the fact that since One Time Settlement scheme has already been implemented after seeking approval of the competent authority, this application is disposed of with a clarification that the implementation of the said scheme shall be without prejudice to the legal rights of the applicant/respondents.”

14. This fact can be further noticed that the learned Single Judge of the High Court decided the writ petitions by a Judgment dated 31st August 2013 and Rule 15(ii) was deleted by the appellant Bank by Order dated 11th March, 2014 while the proceedings were pending in LPA before the High Court.

15. The learned Single Judge of the High Court held that the employees of the appellant Bank, having served the Bank were covered under the scheme which was applicable at the given time under the Act 1952 (prior to 1989). It is the appellant Bank which accepted the recommendations of the State Government and solicited options from the employees as to whether they wanted to opt for a pension scheme which became applicable after the amendment was made under the Rules 1978 and after a conscious decision, Rule 15(ii) was introduced, it could not be justified to circumvent the impact of the amended rule and thus create a situation which would have the effect of defeating the rights which are conferred upon the employees to seek pension under the rules which became applicable with effect from 1 st April, 1989 and finally held that the employees are entitled to regular pension including revised rates of dearness allowance, to all the employees who became member of the pension scheme under the Rules 1978.

16. When the matter travelled to the Division Bench of the High Court, by that time, the amendment was made by an Order dated 11th March, 2014 and Rule 15(ii) was deleted. The Division Bench, after taking note of the submissions made by the parties observed that the decision to frame the pension scheme was a conscious decision of the appellant Bank taken in its own wisdom and corresponding rules were introduced and made applicable from 1 st April, 1989 and Rule 15(ii) was deleted on 11th March, 2014. In the interregnum, the employees became members of the pension scheme and were paid their regular pension for sufficient time which cannot be defeated and taken away retrospectively detrimental to their interest. The amendment which has taken away the vested and accrued right of the employees to get pension and that too with retrospective effect would be violative of Article 14 of the Constitution and disposed of the LPA with a declaration that amendment dated 11th March, 2014 under Rules 1978 shall apply prospectively.

17. The judgment of the Division Bench of the High Court dated 29th July, 2019 became subject matter of challenge at the instance of the appellant Bank and by the serving employees who have claimed that their right to get pension may be affected in futuro, and have approached this Court ventilating their grievances in the instant proceedings.

18. It may be relevant to note that before the High Court, at different stages, different counter affidavits were filed by the Regional Provident Fund Commissioner(RPFC) with reference to the grant of exemption after the Employees Pension Scheme 1995 became the part of the Act 1952.

19. It has been stated in the counter affidavit filed by the RPFC under the Act 1952 that earlier it was erroneously mentioned “granted exemption from pension scheme”, but that was a factually incorrect statement recorded and the RPFC has made an unconditional apology for making such a statement of fact. It is the admitted case of RPFC that neither any application was filed by the appellant Bank seeking exemption from the employees pension scheme nor it was granted or refused.

20. The stand of the EPFC is that Employees’ Provident Funds Scheme, 1952 and Employees’ Pension Scheme, 1995 both are designed to secure a minimum core of old age/terminal social security. Neither of these schemes exhaust an employee’s right to social security. According to the EPFC, the bank’s promise to supplementary pension outside of EPF must be evaluated in that light.

21. It is further stated that the benefits under bank’s pension scheme can only be understood as supplementary and not substitutionary because the bank’s pension scheme did not provide for dependents’ pension, nominees’ pension, childrens’ pension or withdrawal benefits. This only provides a far narrower pensionary cover to its employees. Its pension scheme could not be considered for exemption under Section 17(1C) of the Act.

22. Learned counsel for the appellant Bank submits that it has not been considered by the High Court that the appellant Bank had framed a pension scheme subject to approval of the competent authority. Even though, the appellant Bank had not applied for seeking approval/exemption from the authority, still the fact remains that in the absence of the approval being granted by the competent authority, the retirees were entitled to receive pension until the scheme remain in operation, i.e., upto 31 st October, 2013.

23. Learned counsel further submits that if the employees are being permitted to get pension under the scheme of the Bank after 31st October 2013 and also statutory pension from Regional Provident Fund Commissioner under the Act 1952, indeed there shall be payment of double pension which is in either way not permissible in law.

24. Learned counsel further submits that the employee is entitled for pension but how the pension is to be computed, no one can claim any vested/accrued right. It is not the case of the respondents that they are not being paid pension. It was paid earlier under the pension scheme introduced by the Bank from the year 1989 until it remained in force till 31 st October 2013 and thereafter, the employees are entitled to get a statutory pension as per the Employees Pension Scheme 1995 under the provisions of the Act 1952. Thus, plea of vested right which has been considered by the High Court is completely misplaced and as long as the appellant Bank fulfils its statutory liability under the provisions of the Act 1952, which they are under an obligation to comply with, the employees are not entitled to claim pension under the scheme introduced by the Bank after it stands withdrawn with effect from 31st October, 2013 and thus no vested/accrued right of the employee is in any manner has been defeated and a finding recorded by the High Court to continue the bank pension scheme after it stood deleted is not sustainable in law and deserves to be interfered by this Court.

25. In support of his submissions, learned counsel placed reliance on the judgments of this Court in Marathwada Gramin Bank Karamchari Sanghatana and Another Vs. Management of Marathwada Gramin Bank and Others¹, State of Rajasthan Vs. A.N. Mathur and Others² and State of Himachal Pradesh and Others Vs. Rajesh Chander Sood and Others³.

26. Learned counsel further submits that the pension scheme introduced by the Bank later became financially unviable and the number of retirees in comparison to the existing employees recruited after 1st January, 2004 is almost three times and if the appellant Bank is mandated to continue to make payment of pension under Bank Pension Scheme, the Bank will become defunct and the contribution towards pension made by the serving employees will be futile and they will get nothing at the time of their retirement. The Bank has earned a meagre profit in the later years and still, in the given circumstances, the appellant Bank, if allowed to made over pension in terms of the judgment impugned, there will 1 2011(9) SCC 620 2 2014(13) SCC 531 3 2016(10) SCC 77 be no option left except to close down the Institution in such an eventuality and that apart it has created a wide gap of inequality between the serving employees and the retirees without resorting to exemption from the RPFC.

27. Learned counsel submits that the RPFC has initiated separate proceedings under Section 7A of the Act 1952 for the year April 1989 to March 2015 and for the year April 2015 to June 2017, imposing liability on the Bank by an Order dated 14th September, 2015 and 31st August, 2017 respectively. At the same time, separate proceeding under Section 14B for damages and Section 7Q for interest were also instituted and in terms of orders passed by the Authority, demand raised pursuant thereto has been deposited by the appellant. In the given circumstances, the Regional Provident Fund Commissioner has recovered towards pension fund contribution along with damages and interest for the period commencing from April 1989 to August 2017. At the same time, the appellant has been asked to pay pension to the retirees under the Bank Pension Scheme in terms

of the impugned judgment to the employees who are covered at one stage under the scheme. It will almost be a double payment to the employees which is over and above the payment which was admissible to the employees in terms of statutory pension scheme 1995 under the Act 1952 and that apart, there are categories of employees who have settled their accounts under one time settlement which was approved by the Government and if the Judgment is to be implemented in rem, it will not only be a double payment of pension but a great financial distress to the Bank which is otherwise not permissible in law.

28. Per contra, Mr. P.S. Patwalia, learned senior counsel for the respondents submits that indisputedly the present respondents who were writ petitioners before the High Court are the retired employees and after amendment was made under the scheme of Rules 1978, they became its member and started getting pension in terms of the scheme under the Rules with effect from 1 st April, 1989 and without any justification, the appellant Bank unilaterally stopped full pension to the respondent pensioners in the year 2010 and that was the stage when the retired employees were constrained to approach the High Court wherein it was held that these pensioners are entitled to pension in terms of the scheme. To overcome the judgment dated 31st August, 2013 of the learned Single Judge of the High Court of Punjab and Haryana, by Order dated 11th March 2014, Rule 15(ii) was deleted and by deleting the said rule, it has taken away the vested right of the retired employees and their service conditions have been altered retrospectively to the detriment of the retired employees which is violative of Articles 14 and 21 of the Constitution.

29. Learned counsel further submits that so far as the scheme under the Act 1952 is concerned, the employees pension scheme was introduced under the Act 1952 for the first time in 1995 and it is nowhere related to the pension scheme introduced by the appellant under its Resolution No. 24 dated 22 nd June, 1989 with effect from 1st April, 1989 and the appellant Bank neither sought any exemption under Section 17(1C) of the Act 1952 nor it was required for the reason that the Bank introduced the pension scheme in the year 1989. At that time, there was no such pension scheme under the Act 1952 and once it is made clear that exemption was never sought by the appellant Bank, under the Act 1952, at least the vested right which has been accrued to the respondents cannot be taken away retrospectively which is not sustainable and this what the Division Bench has held in the impugned judgment.

30. The reliance has been placed on the Constitution Bench Judgment of this Court in Chairman, Railway Board and Others Vs. C.R. Rangadhamaiah and Others⁴ followed with U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others⁵ and Bank of Baroda and Another Vs. G. Palani and Others⁶.

31. Learned counsel further submits that more than half of the respondents are in the age group of 73 to 80 years and one-third of the retirees have already expired during pendency of litigation and it is the appellant Bank who had in its own volition introduced the scheme and the respondent employees have exercised their option to be governed by the said scheme and the employees have also foregone their Contributory Provident Fund. In the given circumstances, the rights which are conferred and vested in favour 4 1997(6) SCC 623 5 2006(9) SCC 630 6 2018 SCC Online SC 3691 of the respondent employees could not be divested by the appellant in an arbitrary manner which is in

violation of Article 14 of the Constitution.

32. Learned counsel submits that so far as the One Time Settlement scheme is concerned, it was introduced to mitigate the problem due to withdrawal of pension scheme as an interim measure under the orders passed by the High Court. Since there was no option left to the employees who became hand to mouth, some of them have accepted under the One Time Settlement scheme but the Division Bench by its interim order made it clear that acceptance of one time settlement shall be without prejudice to their legal rights, in the given circumstances, what has been paid under One Time Settlement scheme to few of the employees is always adjustable under the scheme to which they are entitled for under the law. The scheme was in vogue for more than two decades and it is not open for the appellant Bank to take away their vested rights in an arbitrary manner and deprive them the benefit of pension which is in vogue since 1989 so far as the retirees are concerned.

33. Mr. Siddharth, learned counsel for the Regional Provident Fund Commissioner submits that the appellant bank is covered under the provisions of the Act 1952 and under the Act, three schemes have been framed, firstly, Employees Provident Fund Scheme 1952 (EPFS) which establishes a contributory provident fund under Sections 5 and 6 of the Act. Employers and employees contribute to the provident fund in equal measure at the prescribed rates notified by the authority competent under the law from time to time. However, presently there is 12% employees' monthly wages. Secondly, there is Employees' Pension Scheme 1995 (EPS) scheme framed under Section 6A of the Act, 1952 which replaces the earlier Employees' Family Pension Scheme, 1971 (FPS). Family Pension Scheme provided for pension to the dependents of such employees who died in harness. EPS, on the other hand, is a comprehensive pension scheme that provides superannuation pension, early pension and dependents' pension. It is funded by diverting a part of the employers' share of contribution made to EPFS into the pension fund (presently 8.33% of monthly wages). Employees do not contribute under EPS. The third scheme is Employees' Deposit Linked Insurance Scheme, 1976. The Bank sought exemption from EPFS under Section 17(1)(b) and from EDLIS under Section 17(2A). The fate of exemption and its consequence may not be relevant so far as the present dispute raised in the instant proceedings is concerned, at the same time, it is being specifically stated that the appellant Bank did not seek any exemption from the operation of Employees' Pension Scheme after 16th November, 1995.

34. Learned counsel further states that, in the interregnum, since the appellant Bank failed to deposit its due contributions, first under the Family Pension Scheme and later under the Employees Pension Scheme for the period commencing from 1st April 1989 to 31st March 2015 and from April 2015 to June 2017, separate proceedings were initiated under Section 7A followed with damages under Section 14B and interest under Section 7Q and final assessments have been made after affording opportunity to the appellant Bank. Pursuant thereto, money has been deposited but that has nothing to do with the pension scheme introduced by the Bank which can only be understood as supplementary and not substitutionary for the reason that the Bank Pension Scheme did not provide for dependent's pension, children's pension or withdrawal benefits and such benefits are designed only under the Employees Pension Scheme 1995 introduced under the provisions of the Act 1952.

35. Mr. Gurminder Singh, learned senior counsel for the serving employees submits that that as per the pension scheme introduced by the appellant Bank, the employees have to make their own contribution and looking to the depleting strength of the serving employees, their contribution is being utilized for payment of pension to the retired employees and bank is throughout harping upon the plea that because of financial distress, it is not possible for the Bank to continue with the pension scheme any more and that is the reason for which the pension scheme was withdrawn by the Bank at a later stage and that affects the interest of the serving employees whose entire employees' contribution is being utilized against the payment of pension to the retirees and consistently, there is a shortfall of employer's share of in-service employees and this practice if being continued any more, by the time the serving employee will retire, they will not be able to get pension despite they have undertaken their contribution while in service.

36. The undisputed fact according to the learned counsel is that the retirees are being paid their pension under the Bank pension scheme at the cost of the serving employees and it affects the interest of the serving employees which is being jeopardized.

37. Learned counsel in alternate further submits that the class of the employees either retired/serving should be dealt with the same standards/yardsticks and one retiral scheme should be followed for all the employees regardless of the fact that whether they are serving or retired and it will be unjust if the Bank pension scheme is allowed to continue at the cost of serving employees which would deprive them of their right to pension introduced by the Bank to which they are otherwise entitled for under the law.

38. We have heard the learned counsel for the parties and with their assistance perused the material available on record.

39. The facts are not in dispute that the respondents are the retired employees and members of the Punjab State Cooperative Agricultural Development Bank Limited, Chandigarh and they were earlier the members of the Employees Provident Fund Scheme under the Act 1952. The scheme was being duly adhered to and necessary contributions were made over by the employees and employer Bank. Later on, with the recommendation of the Punjab Pay Commission, regarding introducing the pension scheme, the Administrator of the appellant Bank vide its Resolution dated 22 nd June, 1989 decided to implement the recommendations of the State Government and as a consequence thereof, the pension scheme for the employees and Officers in the Rules 1978 was introduced with effect from 1st April 1989.

40. Accordingly, the Rules 1978 were amended and Rule 15(ii) was introduced authorizing the Board of Directors to formulate pension scheme with the prior approval of the Registrar Cooperative Societies, Punjab. Pursuant thereto, the amendment was made with an option that such of the employees who opt for the rules(pension scheme) shall be covered by these rules. At the given time, such employees who do not opt for these rules shall be governed by Act, 1952.

41. Indisputedly, all the respondent employees were given the option to become member of the pension scheme on being retired from service and they continued to derive the benefit of pension

after they had opted continuously until the year 2010 and only thereafter, the litigation started when the appellant Bank stopped making payment of pension in terms of the Bank pension scheme. Although the Bank pension scheme will not apply in cases to employees employed on or after 1 st January 2004. Later on, the Bank took a decision by deleting Rule 15(ii) of pension scheme by an amendment dated 11th March, 2014 and that became the cause of grievance of the employees in questioning the action of the Bank by approaching the Courts for ventilating their grievance.

42. The question that emerges for consideration is as to what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the rule making authority.

43. The concept of vested/accrued right in the service jurisprudence and particularly in respect of pension has been examined by the Constitution Bench of this Court in *Chairman, Railway Board and Others*(supra) as follows: “11. On the basis of the said decision of the Full Bench of the Tribunal, other Benches of the Tribunal at Bangalore, Hyderabad, Allahabad, Jabalpur, Jaipur, Madras and Ernakulam have passed orders giving relief on the same grounds. These appeals and special leave petitions have been filed against the decision of the Full Bench and those other Benches of the Tribunal. Some of these matters were placed before a Bench of three learned Judges of this Court on 28th 3rd 1995 on which date the following order was passed:

“Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by rules made under the proviso to Article 309 or by an Act made under that article, and which of them and to what extent.

We find that the Constitution Bench decisions in *Roshan Lal Tandon v. Union of India* (1968) 1 SCR 185; *B.S. Vadera v. Union of India* (1968) 3 SCR 575 and *State of Gujarat v. Raman Lal Keshav Lal Soni* (1983) 2 SCC 33 have been sought to be explained by two threerd Judge Bench decisions in *K.C. Arora v. State of Haryana* (1984) 3 SCC 281 and *K. Nagaraj v. State of A.P.* (1985) 1 SCC 523 in addition to the twond Judge Bench decisions in *P.D. Aggarwal v. State of U.P.* (1987) 3 SCC 622 and *K. Narayanan v. State of Karnataka* 1994 Supp (1) SCC 44. Prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as a threerd Judge Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges.”

44. This Court, after taking note of the earlier view on the subject further held in *Chairman, Railway Board and Others*(supra)as under: “20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it

operates retrospectively.

24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* (1968) 1 SCR 185, *B.S. Vadera* (1968) 3 SCR 575 and *Raman Lal Keshav Lal Soni* (1983) 2 SCC

33.

25. In these cases we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in futuro. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.” (emphasis supplied)

45. Later, in *U.P. Raghavendra Acharya and Others*(supra), the question which arose for consideration was that whether the appellants who were given the benefit of revised pay scale with effect from 1st January, 1996 could have been deprived of their retiral benefits calculated with effect therefrom for the purpose of calculation of pension. In that context, while examining the scheme of the Rules and relying on the Constitution Bench Judgment in *Chairman, Railway Board and Others*(supra), this Court observed as follows:□“22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour.

The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1-1-1996, thus, could not have been denied to the appellants.

30. In *Chairman, Rly. Board v. C.R. Rangadhamaiah* (1997) 6 SCC 623, a Constitution Bench of this Court opined :

“33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.”

31. The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect.”

46. Later, in *Bank of Baroda and Another*(supra), the question arose with respect to the employees who retired or died while in service on or after 1st April 1998 and before 31st October, 2002 to whom benefits were vested and accrued could be deprived of their retiral benefits. In this context, while taking note of the view relying on the Constitution bench Judgment in *Chairman, Railway Board and Others*(supra), this Court observed as under: “29. Thus, in our opinion, the Regulations which were in force till 2003, would apply with full force and as a matter of fact, the amendments made in it by addition of Explanation (c) in Regulation 2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the Regulations of 1995. Even otherwise, if it had the effect of amending the pay and perks ‘average emoluments’, as specified in Regulation 2(d), it could not have operated retrospectively and taken away accrued rights. Otherwise also, it would have been arbitrary exercise of power. Besides, there was no binding statutory force of the so called Joint Note of the Officers’ Association, as admittedly, to Officers’ Association even the provisions of Industrial Disputes Act were not applicable and joint note had no statutory support, and it was not open to forgo the benefits available under the Regulations to those officers who have retired from 1.4.1998 till December 1999 and thereafter, and to deprive them of the benefits of the Regulations. Thus, by the Joint Note that has been relied upon, no estoppel said to have been created. There is no estoppel as against the enforcement of statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations framed under the Act of 1970. They could not have been tinkered with in an arbitrary manner, as has been laid down by this Court in *Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr.*, (1986) 3 SCC 156 & *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress*, (1991) Supp.1 SCC 600.”

47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

48. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.

49. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

50. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.

51. The judgment on which learned counsel for the appellant Bank has placed reliance in the case of Marathwada Gramin Bank Karamchari Sanghatana and Another(supra), the issue under consideration was with respect to provident fund. The Marathawada Gramin Bank had floated a provident fund scheme built on better rates of contributions than the rates mandated under the employees provident fund scheme. Hence, the better scheme of provident fund was statutorily recognized by grant of exemption under Section 17(1). Later, Marathawada Gramin Bank discontinued its provident fund scheme for financial unviability, and reverted to rates mandated under paragraph 26 of the EPFS. The Bank later declined to exercise its voluntary contribution under Para 26 of the scheme after the exemption was declined and that came to be upheld by this Court which may not be of any assistance to learned counsel for the appellant in the instant case.

52. So far as the judgment in State of Himachal Pradesh and Others(supra) is concerned, it was a case where apart from the scheme under the provisions of Act 1952, the State of Himachal Pradesh framed another scheme for the Himachal Pradesh Corporate Sector Employees Pension(Family Pension, Commutation of Pension and Gratuity) Scheme, 1999. It was made operational with effect from 1st April 1999 but before the rights to the employees could be vested/accrued, it was repealed on 2nd December, 2004. The question arose whether such contingent right vested with the employee on their having once opted under 1999 scheme was at all be binding or irrevocable despite being repealed by a later notification dated 2nd December, 2004. In that context, this Court observed that it was not the case of the right which accrued to the employee and in that context, the repealing notification was upheld by this Court.

53. In State of Rajasthan(supra), it was a case where the University which was an autonomous body created under the provisions of the Act by its Resolution introduced the pension scheme, without taking recourse of the fact that the Resolution of the Board of the Management of the University can be enforced only with prior approval from the Chancellor, i.e., the Governor of the State in terms of Section 39 of the Act and it was never approved by the Chancellor, in absence whereof, such resolution of the Board of Management was unauthorized and was not open to be implemented. In the given circumstances, this Court was of the view that in absence of the mandate of Section 39 being complied with, the Board of Management of the University was not justified in introducing the scheme of pension.

54. So far as the submission made by learned counsel for the appellant about the financial distress of the appellant Bank to justify the impugned amendment to say that it may not be possible to continue the grant of pension any more is concerned, suffice to say, that the rule making authority was presumed to know repercussions of the particular piece of subordinate legislation and once the Bank took a conscious decision after taking permission from the Government of Punjab and Registrar, Cooperative, introduced the pension scheme with effect from 1st April 1989, it can be presumed that the competent authority was aware of the resources from where the funds are to be created for making payments to its retirees and merely because at a later point of time, it was unable to hold financial resources at its command to its retirees, would not be justified to withdraw the scheme retrospectively detrimental to the interests of the employees who not only became member of the scheme but received their pension regularly at least upto the year 2010 until the dispute arose between the parties and entered into litigation.

55. In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.

56. So far as the submission made by the serving employees is concerned, they have no locus to question. At the same time, their apprehension as being projected to this Court is completely misplaced for the reason that employer/employees contribution is being provided under the

employees pension scheme(EPS) of the Act 1952 which is made applicable to the serving employees and they are entitled to get pension in terms of the provisions of the Act 1952. So far as their complaint regarding payment of contribution is concerned, it is in no manner going to be adjusted for payment of pension to retirees/respondents, who are entitled to get their pension in terms of the pension scheme of which they are members and it is for the appellant Bank to reserve the resources and make payment to the retired employees seeking pension to the scheme in vogue when they became members and took benefits pursuant thereto.

57. Before we part with the judgment, we cannot be oblivious of the situation that the complaint of the employees that they are not being paid their pension since 2013, at the given time few employees have been given benefit of one time settlement as introduced by the Bank as an interim measure which was subject to their rights being preserved, in the pending litigation, taking grievance of the either party into consideration, the financial constraints of the Bank and the rights of the employees who are entitled to get pension under the bank pension scheme, we consider appropriate to observe that so far as the arrears towards element of pension to which the retired employees are entitled for, the appellant Bank is at liberty to pay arrears towards pension upto 31st December, 2021 in 12 monthly instalments in the next one year by the end of December, 2022 and those employees who have accepted payment under one time settlement at a given point of time, what is being paid to them is always open for adjustment against arrears of their due pension. Still if arrears remain outstanding, the same shall be paid in 12 monthly instalments. At the same time, each of the employee who is member of the Bank Pension scheme must get pension to which he/she is entitled from the month of January 2022 as admissible under the law.

58. So far as the complaint of the appellant Bank regarding orders passed under Section 7A, Section 14B and Section 7Q of the Act 1952 for the period April 1989 to March 2015 and for April 2015 to June 2017, copies of which has been placed on record is concerned, are not the subject matter of challenge in the instant proceedings, it will be open for the appellant to take legal recourse, if being aggrieved in the appropriate proceedings available under the law.

59. Consequently, the appeals fail and are accordingly dismissed with observations indicated above.

60. Pending applications, if any, stand disposed of.

.....J. (AJAY RASTOGI)J. (ABHAY S. OKA) NEW DELHI
JANUARY 11, 2022