State Of H.P & Ors vs Rajesh Chander Sood Etc Etc on 28 September, 2016

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Author: Jagdish Singh Khehar

Bench: C. Nagappan, Jagdish Singh Khehar

"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9750-9819 OF 2016
(Arising from SLP(C) Nos. 10864-10933 of 2014)

State of H.P. & Ors. … Appellants

versus

Rajesh Chander Sood etc. etc. … Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. The State of Himachal Pradesh came to be created, with effect from 25.1.1971. Consequent upon the creation of the State of Himachal Pradesh, employees engaged by the corporate sector, on their retirement, were being paid provident fund, under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Provident Fund Act). The Central Government framed the Employees' Provident Funds Scheme, 1995, whereby, it replaced the earlier statutory schemes, framed under the Provident Fund Act. This scheme was adopted for the corporate sector employees, engaged in the State of Himachal Pradesh.

2. In order to extend better retiral benefits to these employees, the Himachal Pradesh Government

framed another scheme on 29.10.1999 – the Himachal Pradesh Corporate Sector Employees Pension (Family Pension, Commutation of Pension and Gratuity) Scheme, 1999. In the present judgment, the instant scheme will be referred to as 'the 1999 Scheme'. A perusal of 'the 1999 Scheme' reveals that its application extended to employees of some of the corporate bodies (-specified in Annexure-I, appended to 'the 1999 Scheme') in Himachal Pradesh. There were in all 20 corporate entities, named in Annexure-I. These corporate bodies functioned as independent entities, under the Departments of Industries, Welfare, Horticulture, Forest, Food and Supplies, Tourism, Town and Country Planning, Housing and General Administration.

3. Paragraph 2 of 'the 1999 Scheme', provided for the zone of application of the said Scheme. It expressly provided, that the same would apply to only such of the employees, "who opted for the benefit under the scheme". It is necessary to expressly notice, that paragraph 2 of 'the 1999 Scheme' required, that the above option would be exercised by the employees in writing, in the format provided for the same. This option, was required to be submitted within 30 days of the notification of the scheme - by 27.11.1999. It was also provided in paragraph 2, that such of the employees who failed to exercise any option, within the period provided for, for whatever reason, would be deemed to have exercised their option, to be regulated by 'the 1999 Scheme'. It is therefore apparent, that it was imperative for all concerned employees, to express their option, to be governed by the Employees Provident Funds Scheme, 1995, in case the concerned employees, desired to avoid 'the 1999 Scheme'. In case of the exercise of such option, the concerned employee would continue to be governed by the Employees Provident Funds Scheme, 1995. Failing which, every employee, whether he opted for 'the 1999 Scheme', or chose not to make any option, would be regulated by 'the 1999 Scheme', with effect from the day the scheme was made operational – 1.4.1999.

4. It is also essential to indicate, that only those employees who had been appointed on regular basis, in corporate bodies, to which 'the 1999 Scheme' was applicable, could avail of the benefits of 'the 1999 Scheme'. In other words, employees engaged "...on part time basis, daily wage basis, piece-meal rate basis, casual and contract basis..." were not entitled to opt for 'the 1999 Scheme'.

5. Paragraph 4 of 'the 1999 Scheme' further provided, that those regular employees, who were entitled to the benefits postulated by 'the 1999 Scheme', would automatically forfeit their claim, to the employer's contribution in their provident fund account (including interest thereon), under the prevailing Employees Provident Funds Scheme, 1995, to the Government. The forfeited amount, would include the amount due and payable, under the Employees Provident Funds Scheme, 1995, up to 31.3.1999. The forfeited amount in consonance with paragraph 5 of 'the 1999 Scheme', was to be transferred to a corpus fund, to be administered and managed by the Government of Himachal Pradesh. The aforesaid corpus fund, was to be treated as the pension fund, for payment of pension under 'the 1999 Scheme'.

6. It is of utmost relevance to mention, that paragraph 4 of 'the 1999 Scheme' provided as under:-

> "4. Regulation of Claim to Pension:-

> Any claim to pension shall be regulated by the provision of this scheme in force at the time when an employee retires or is retired or dies or is discharged as the case may be subject to the following:-
>
> (a) The existing employees of the Corporation as on 1.4.99 shall have the option either to elect the pension scheme or to continue under existing Provident Fund scheme.
>
> (b) The existing employees who opt for Pension Scheme shall automatically forfeit their claim to employer's share of CPF including interest thereon to the State Government as well as other claims under CPF Schemes by whatsoever name called in respect of all past accumulations upto 31.3.1999.

The amount of their subscriptions to the fund alongwith interest (excluding employer's share and interest thereon) shall be transferred to GPF account to be allotted and maintained by the concerned Corporate Sector Organisation as per Rules adopted by them".

It is apparent from the above extract, that even though 'the 1999 Scheme' was to take effect from 1.4.1999 (- under paragraph 1(3) of 'the 1999 Scheme'), a claim for pension by an employee governed by the above scheme, would arise only at the time of the employee's retirement, on attaining the age of superannuation, or when he was retired from service by the employer, or in case of his death in harness. This is how, the appellant-State views the above provision (detailed submissions, are being noticed separately).

7. It is not disputed, that regular employees of corporate bodies, to whom 'the 1999 Scheme' was applicable, had opted in writing (or were deemed to have opted) to be governed by 'the 1999 Scheme', or alternatively, had been engaged on regular basis after the induction of 'the 1999 Scheme' but before 'the 1999 Scheme' was repealed (- on 2.12.2004).

8. While adjudicating upon the controversy, it is important to point out, that for the implementation of 'the 1999 Scheme', permission was sought from the Regional Provident Fund Commissioner, Shimla, for the transfer of the accumulated provident fund corpus, to the proposed pension fund under 'the 1999 Scheme'. It is also relevant to notice, that the Regional Provident Fund Commissioner, through a communication dated 23.2.2000, declined to accord the above permission, because 'the 1999 Scheme' included only regular employees. Part time, daily wage, piece rate, casual and contract employees, were not covered by 'the 1999 Scheme'. According to the Regional Provident Fund Commissioner, there was no provision under the Provident Fund Act, to exclude a part of the employees, from the purview of the Provident Fund Act. The Regional Provident Fund Commissioner was of the view, that permission sought by the State Government could be accorded, only if all employees of the concerned corporate bodies, were to be regulated by the substituting scheme (– 'the 1999 Scheme'). The Regional Provident Fund Commissioner accordingly, through his communication dated 23.2.2000, advised the concerned corporate bodies, to continue to comply with the provisions of the Provident Fund Act, in respect of all their employees. The above communication of the Regional Provident Fund Commissioner, was

superseded by another, dated 11.9.2001, addressed by the Additional Central Provident Fund Commissioner (Pension), to the Secretary to the Government of India (with copy to the Regional Provident Fund Commissioner, Himachal Pradesh). It was pointed out, that a perusal of the aforesaid communication would reveal, that out of the concerned corporate bodies, almost all were fully owned by the State or the Central Government, and the share capital of the general public in the remaining, was less than one per cent. It was therefore, that the concerned corporate bodies were found to be eligible for the exemption, and were accordingly exempted from the applicability of the Provident Fund Act. It is apparent, that the communication dated 11.9.2001 clarified, that as the corporate bodies fell within the ambit of Section 16(1)(b) of the Provident Fund Act, it would not be applicable to the concerned establishments in the State of Himachal Pradesh, with effect from 1.4.1999.

9. The above communication dated 11.9.2001, came to be endorsed by the Union Minister of Labour, on 17.9.2001. The observations recorded in the order of the Union Minister are extracted hereunder:

> "I have had the matter examined. It has been, noted from the Notification of the State Government dated 29.10.1999 that all regular employees of these undertakings are entitled to pension, commutation of pension, gratuity as applicable to the State Govt. Employees of Himachal Pradesh. In such circumstances the EPF & MP Act, 1952 shall not apply. The Pension would be discharged by the Himachal Pradesh Government in terms of Section 16(1)(b). These establishments would be out of the purview of the Act from the date the Notification has come into force." In view of the factual position narrated herein above, the provisions of the Provident Fund Act were not in any way an obstacle, to the operation of 'the 1999 Scheme'. As such, 'the 1999 Scheme' became operational, with effect from 1.4.1999. At the instant juncture, it would suffice to record, that 'the 1999 Scheme' remained operational till it was repealed, by a notification date 2.12.2004.

10. After the implementation of 'the 1999 Scheme', a high level committee was constituted by the Finance Department of the State Government, on 21.1.2003. The said committee was comprised of four managing directors of state public sector undertakings and corporations. The high level committee was entrusted with the task of examining, the financial viability of 'the 1999 Scheme'. The committee submitted its report on 15.11.2003. Briefly stated, the high level committee arrived at the conclusion, that the pension scheme for regular employees of corporate bodies, given effect to under 'the 1999 Scheme', would not be financially viable on a self- sustaining basis. One of the observations recorded in the report of the high level committee was, with reference to the Himachal Road Transport Corporation. It was pointed out, that the pension fund cash flow chart (year-wise) revealed, that in case new appointments were not made against retirees, it would have extremely grave financial consequences, inasmuch as, after the year 2009-10, the income by way of income tax, as well as, the contribution to the pension fund would continue to reduce, whereas pension payment expenditure, would continue to increase. It was expected, that by the year 2015-16, the balance amount left with the Himachal Road Transport Corporation Pension Fund, would be reduced to approximately Rs.10.82 crores, whereas the pension liability of the retired employees of the Himachal Road Transport Corporation, for the said year, would be approximately Rs.14.56

crores. Accordingly, it was inferred, that from the year 2015-16 onwards, it would not be possible to make payments, towards the recurring pension liability. The report also determined the viability of the scheme, with reference to the Himachal Road Transport Corporation, even if the staff strength is kept at the same level, as was then prevalent (- in 2003). The instant analysis resulted in the deduction, that the pension contribution would be slightly more, as against the available pension fund of Rs.10.82 crores. In case the staff strength was maintained at the same level, the pension fund balance would be Rs.15.76 crores. Keeping in mind, the approximate pension liability of Rs.14.56 crores for the year 2015-16, it was inferred, that the financial liability towards pension for the following year, i.e., 2016-17 would not be met, out of the pension fund. It was therefore infrerred, that the payment of pension to regular employees of the concerned corporate bodies, could not be paid and sustained, out of the pension fund contemplated under 'the 1999 Scheme'. Accordingly, the high powered committee recorded its conclusions as under:

> "In view of the above "the committee" is of the view that the pension scheme for Corporate Sector employees based on contribution by the State Government will not be viable on a self sustaining basis mainly due to the following reasons:-
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> i). Uncertainty in the rate of interest regime.
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> ii). Declining recruitment in the Corporate Sector would deplete the size of the corpus to be created and it would be difficult to honour liabilities accruing after 10-12 years.
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> iii). The pension plan envisages payment of pension to Corporate Sector employees as is being paid to the Government employees. Government employees at present are entitled to pension @ 50% of the basic pay last drawn with linkage to ADA. This return does not appear to be possible from the pension fund proposed to be created for corporate sector employees." At the instant juncture, it would also be necessary to mention that, as is apparent from the submissions advanced on behalf of the State Government, three factors primarily weighed with it for reconsidering the continuation of 'the 1999 Scheme'. Firstly, uncertainty in the rate of interest regime;

secondly, decline in recruitment in the corporate sector; and thirdly, on account of the fact that the respondent-employees would be entitled to pension at the rate of 50% of the basic pay last drawn, with linkage to an additional dearness allowance. And as such, it was not possible for the pension fund, to cater to the payment towards pension, under 'the 1999 Scheme'. It would also be relevant to mention, that besides the above three reasons depicted in the committee's report, the Cabinet Memorandum dated 12.10.2004, expressly took into consideration the poor financial health of the concerned corporations, and the current financial health of the State Government. Both the above factors also indicated, that it was not possible for the State Government to take upon itself, the financial burden of 'the 1999 Scheme'. And, there were also more pressing alternative claims. It was submitted, that as on 31.3.2014, the cumulative losses of Government owned corporations, stood at Rs.2,819.86 crores. The aforesaid Cabinet Memorandum was appended to the special leave petition, as Annexure P-4. The Cabinet in its meeting held on 29.11.2004, also approved, that the Government would be supportive of efforts by individual Government owned corporations, for setting up their own pensionary scheme(s).

11. After considering the report of the high level committee, the State Government took a decision on 29.11.2004 to repeal 'the 1999 Scheme'. While repealing 'the 1999 Scheme', it was decided, that regular employees who had retired from corporate bodies, during the period of the subsistence of 'the 1999 Scheme' from 1999 to 2004, would not be affected. For the implementation of the decision of the State Government dated 29.11.2004, a notification dated 2.12.2004 was issued, repealing 'the 1999 Scheme'. A number of employees who had been deprived of the benefit of 'the 1999 Scheme' by the notification dated 2.12.2004, challenged the repeal notification, by filing a number of writ petitions, before the High Court of Himachal Pradesh, at Shimla (hereinafter referred to as the High Court). By the impugned common order dated 19.12.2013, the High Court allowed all the writ petitions. The final determination of the High Court, is apparent from the following conclusions recorded by it:

> "78. There is no merit in the contention of learned Advocate General that the scheme could not be implemented due to financial crunch. The State was aware of the financial implication at the time of issuance of notification dated 29.10.1999. It is the sovereign responsibility of the State to garner revenue to make welfare measures, including payment of pensionery/retiral benefits.
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> 79. It cannot be gathered from the plain language that either expressly or by implication notification dated 2.12.2004 would apply retrospectively.
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> 80. Accordingly, in view of the analysis and discussion made hereinabove, all the writ petitions are allowed. The cut-off date 2.12.2004 is declared ultra vires. Notification dated 2.12.2004 is read down to save it from unconstitutionality, irrationality, arbitrariness or unreasonableness by including the petitioners and similarly situated employees also, who had become members of the scheme notified on 29.10.1999 and have retired after 2.12.2004 and those employees who were already in service when the pension scheme was notified on 29.10.1999 and had become members of that scheme and shall retire hereinafter, for the purpose of pensionery benefits after applying the principles of severability. The Regional Provident Fund Commissioner, Shimla is directed to transfer the entire amount of the CPF to a corpus fund to be administered and maintained by the Government of Himachal Pradesh in the Finance Department including upto date interest, within a period of two weeks. Thereafter, the Pension Sanctioning Authority is directed to sanction the pension/gratuity/commutation of pension after proper scrutiny of the cases forwarded by the concerned Public Sector Undertaking and issue pension payment order to Pension Disbursing Authority strictly as per para 6 of the scheme notified on 29.10.1999 with interest @ 9% per annum, within a period of 12 weeks from today."

12. Dissatisfied with the judgment rendered by the High Court, dated 19.12.2013, the State of Himachal Pradesh has approached this Court, challenging the common impugned judgment dated 19.12.2003.

13. Leave granted.

14. The first contention advanced at the hands of Mr. P.P. Rao, learned senior counsel for the appellants, was premised on the proposition, that the State Government which had promulgated 'the 1999 Scheme', was well within its rights to repeal the same, for good and sufficient reasons. It was submitted, that it stands established on the record of this case, that 'the 1999 Scheme' was not financially viable, inasmuch as, it could not be characterized as a self-sustaining scheme. It was asserted, that the determination of the State Government to scrap 'the 1999 Scheme', on the basis that the Scheme was not financially viable, was legal and bonafide. In order to canvass the instant proposition, learned counsel, relied on State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754, and invited the Court's attention, to the following observations recorded therein:

> "25. The only question, which is relevant and needs consideration, is whether the decision of the Central and State Governments to restrict the revision of the quantum of gratuity as well as the increased ceiling of gratuity consequent upon merger of a portion of dearness allowance into dearness pay reckonable for the purpose of calculating gratuity, was irrational or arbitrary.
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> 26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level." On the same proposition, reliance was also placed on A.K. Bindal v. Union of India, 2003 (5) SCC 163, and our attention was drawn to the following observations recorded therein:
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> "13. The change in policy effected by these memorandums was that the Government would not provide any budgetary support for the wage increase and the undertakings themselves will have to generate the resources to meet the additional expenditure, which will be incurred on account of increase in wages. So far as sick enterprises which were registered with BIFR are concerned, it was directed that the revision in pay scale and other benefits would be allowed only if it was actually decided to revive the industrial unit. The question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.
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> 17. The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by

> virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director, (1989) 3 SCC 448).

Since employees of government companies are not government servants, they have absolutely no legal right to claim that government should pay their salary or that the addition expenditure incurred on account of revision of their pay scale should be met by the government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in early nineties, Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19- 7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions.

18. We are unable to accept the contention of Shri Venkataramani that on account of non-revision of pay scales of the petitioners in the year 1992, there has been any violation of their fundamental rights guaranteed under Article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this article has been expanded by judicial decisions. Right to life enshrined in this article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of a very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution in State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387. Similarly, unfair conditions of labour in People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235. It has been held to embrace within its field the right to livelihood by means which are not illegal, immoral or opposed to public policy in Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545. But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised and enhanced periodically. It is true

that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms.....

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22. In South Malabar Gramin Bank v. Coordination Committee of S.M.G.B Employees' Union and S.M.G.B Officers' Federation, (2001) 4 SCC 101, relied upon by the learned counsel for the petitioners, the Central Government had referred the dispute regarding the pay structure of the employees of the Bank to the Chairman of the National Industrial Tribunal headed by a former Chief Justice of a High Court. The Tribunal after consideration of the material placed before it held that the officers and employees of the Regional Rural Banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scale, allowances and other benefits. The employees of nationalised commercial banks were getting their pay scales on the basis of the 5th bipartite settlement and by implementation of the award of the National Industrial Tribunal, the employees of the Regional Rural Banks were also given the benefits of the same settlement. Subsequently, the pay structures of the employees of the nationalised commercial banks were further revised by the 6th and 7th bipartite settlements but the same was not done for the employees of the Regional Rural Banks who then filed writ petitions. It was contended on behalf of the Union of India and also the Banks that financial condition of the Regional Rural Banks was not such that they may give their employees the pay structure of the employees of the nationalised commercial banks. It was in these circumstances that this Court observed that the decision of the National Industrial Tribunal in the form of an award having been implemented by the Central Government, it would not be permissible for the employer bank or the Union of India to take such a plea in the proceedings before the Court. The other case namely All India Regional Rural Bank Officers Federation v. Govt. of India, (2002) 3 SCC 554, arose out of interlocutory applications and contempt petitions which were filed for implementation of the direction issued in the earlier case, namely, South Malabar Gramin Bank. Any observation in these two cases to the effect that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees must, therefore, be confined to the facts of the aforesaid case and cannot be held to be of general application in all situations. In Associate Banks Officers' Assn. v. State Bank of India, (1998) 1 SCC 428, it was observed that many ingredients go into the shaping of the wage structure of any organisation which may have been shaped by negotiated settlements with employees' unions or through industrial adjudication or with the help of expert committees. The economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. It was also held that a simplistic approach, granting higher remuneration to workers in one organisation because another organisation had granted them, may lead to undesirable results and the application of the doctrine would be fraught with danger and may seriously affect the efficiency and at times, even the functioning of the organisation. Therefore, it appears to be the consistent view of this Court that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The material on record

clearly shows that both FCI and HFC had been suffering heavy losses for the last many years and the Government had been giving a considerable amount for meeting the expenses of the organisations. In such a situation, the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisations in which they are working are making continuous losses and are deeply in the red." Last of all, learned counsel drew our attention to Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L., (2003) 6 SCC 490, and reference was made to the following;

"7. In the above background, the question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim revision of wages that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay-scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.

8. We have carefully gone through the pleadings, the Annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A.K. Bindal and Anr. v. Union of India, (2003) 5 SCC 163, in support of her contention. We have perused the said judgment. In our opinion, since the employees of Government companies are not Government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government. Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay-scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees."

15. Based on the conclusions drawn in the above judgments, it was the contention of learned counsel, that the decision of the State Government to repeal 'the 1999 Scheme', on the basis of the report of the high powered committee, dated 28.10.2003, cannot be faulted. It was submitted, that the determination rendered by the High Court, was in clear disregard to the decisions in the cited cases. It was accordingly urged, that the option exercised by the State Government, on the basis of legitimate material and consideration, could not be interfered with, as the same constituted a legal and valid basis, for the discontinuation of 'the 1999 Scheme'.

16. In order to support the State Government's claim, it was also the contention of learned counsel, that the State Government has an inherent right to review its policy decisions, and as long as the decisions of the State Government are based on bonafide consideration, the same cannot be assailed in law. In order to support the instant contention, learned counsel placed reliance on BALCO Employees' Union v. Union of India, (2002) 2 SCC 333, and invited our attention to the following observations, expressed therein:

> “45. In Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664, there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows: (SCC para 229) "229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision.

Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy- making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."

46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers’ rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn it's change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.”

17. Learned counsel submitted, that the respondent-employees could not claim a vested right, with reference to the provisions of ‘the 1999 Scheme’. In this behalf, it was submitted, that neither the

principle of estoppel, nor that of promissory estoppel, could be invoked by the employees, so as to claim a right to be governed by 'the 1999 Scheme'. For canvassing that the principle of estoppel could not be invoked by the employees, learned counsel placed reliance on M. Ramanatha Pillai v. State of Kerala, (1973) 2 SCC 650, and invited the Court's attention to the following:

> "36. The abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post the Government servant who was holding the post would be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post." Reliance was also placed on Excise Commissioner, U.P., Allahabad v. Ram Kumar, (1976) 3 SCC 540, and reference was made to the following observations recorded therein:
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> "Appeals Nos. 399 to 404 of 1975 which raise another point as well viz. the validity of the appellants' demand from the respondents in respect of sales tax at the rate of ten paise per rupee on the retail sales of country spirit made by the latter with effect from April 2, 1969 stand on a slightly different footing. Section 3-A and 4 of the U.P. Sales Tax Act, 1948 clearly authorise the State Government to impose sales tax. The fact that sales of country liquor had been exempted from sales tax vide Notification No. ST-1149/X-802(33)-51 dated April 6, 1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the Revenues of the State which are required for execution of the plans designed to meet the ever increasing pressing needs of the developing society. It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers." To demonstrate that the principle of promissory estoppel could not be invoked by the respondent-employees, reference was also made to Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369, wherein it has been held as under:
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> "13. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case, (1979) 2 SCC 409, that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the

equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case and we find ourselves wholly in agreement with what has been said in that decision on this point."

18. In order to support the contention, that the respondent-employees had no vested right under 'the 1999 Scheme', reliance was placed on paragraph 4 of 'the 1999 Scheme' (already extracted above). It was the pointed assertion of learned counsel, based on paragraph 4 of 'the 1999 Scheme', that a claim towards pension could be raised by an employee under 'the 1999 Scheme' only "...when an employee retires or is retired or dies or is discharged as the case may be ...". It was submitted, that only such of the employees who could avail the benefit of pension, were protected from the effect of the repeal notification dated 2.12.2004. It was submitted, that such of the employees who had opted for 'the 1999 Scheme', but were not occasioned with the effect of the contingencies contemplated under paragraph 4 of 'the 1999 Scheme', were not entitled to claim a vested right. It was urged, that a vested right can only be established, when all the incidents which would entitle an employee to draw pensionary rights, under 'the 1999 Scheme', stood satisfied. It was pointed out, that only on the happening of one of the events depicted in paragraph 4, a vested right would emerge. It was the unequivocal submission of learned counsel for the appellants, that none of the respondent-employees in the present controversy, can claim a vested right under 'the 1999 Scheme', as neither of them had retired on attaining the age of superannuation (after putting in the postulated qualifying service), or had been retired by the employer, or had died in harness, or had been discharged from service. It was therefore asserted, that the challenge raised at the hands of the respondents, to the notification dated 2.12.2004, was legally unacceptable. In this behalf, learned counsel invited our attention to Commissioner of Income-tax, Kerala and Coimbatore v. L.W. Russel, (1964) 7 SCR 569, wherefrom our attention was drawn to the following:

"Before we attempt to construe the scope of s. 7(1) of the Act it will be convenient at the outset to notice the provisions of the scheme, for the scope of the respondent's right in the amounts representing the employer's contributions thereunder depends upon it. The trust deed and the rules dated July 27, 1934, embody the superannuation scheme. The scheme is described as the English and Scottish Joint Co-operative Wholesale Society Limited Overseas European Employees' Superannuation Scheme, hereinafter called the Scheme. It is established for the benefit of the male European members of the Society's staff employed in India, Ceylon and Africa by means of deferred annuities. The Society itself is appointed thereunder as the first trustee. The trustees shall act as agents for and on behalf of the Society and the members respectively; they shall effect or cause to be effected such policy or policies as may be necessary to carry out the scheme and shall collect and arrange for the payment of the moneys payable under such policy or policies and shall hold such moneys as trustees for and on behalf of the person or persons entitled thereto under the rules of the Scheme. The object of the Scheme is to provide for pensions by means of deferred annuities for the members upon retirement from employment on attaining certain age under the conditions mentioned therein, namely, every European employee of the Society shall be required as a condition of employment to apply to become a member of the Scheme from the date of his engagement by the Society and no member shall be entitled to relinquish his membership except on the termination of his employment with Society; the pension payable to a member shall be provided by means of a policy securing a deferred annuity upon the life of such member to be effected by the Trustees as agents for and on behalf of the Society and the members respectively with the Co-operative Insurance Society Limited securing the payment to the Trustees of an annuity equivalent to the pension to which such member shall be entitled under the Scheme and the Rules; the insurers shall agree that the Trustees shall be entitled to surrender such deferred annuity and that, on such deferred annuity being so surrendered, the insurers will pay to the Trustees the total amount of the premiums paid in respect thereof together with compound interest thereon; all moneys received by the Trustees from the insurers shall be held by them as Trustees for and on behalf of the person or persons entitled thereto under the Rules of the Scheme; any policy or policies issued by the insurers in connection with the Scheme shall be deposited with the Trustees; the Society shall contribute one-third of the premium from time to time payable in respect of the policy securing the deferred annuity in respect of each member as thereinbefore provided and the member shall contribute the remaining two-thirds; the age at which a member shall normally retire from the service of the Society shall be the age of 55 years and on retirement at such age a member shall be entitled to receive a pension of the amount specified in Rule 6; a member may also, after following the prescribed procedure, commute the pension to which he is entitled for a payment in cash in accordance with the fourth column of the Table in the Appendix annexed to the Rules; if a member shall leave or be dismissed from the service of the Society for any reason whatsoever or shall die while in the service of the Society there shall be paid to him or his legal personal representatives the total amount of the portions of the premiums paid by such member and if he shall die whilst in the service of the Society there shall be paid to him or his legal personal representatives the total amount of the portions of the premiums paid by such member and if he shall die whilst in the service of the Society or shall leave or be dismissed from the service of the Society on account of permanent breakdown in health (as to the bona fides of which the Trustees shall be satisfied) such further proportion (if any) of the total amount of the portions of the premiums paid by the Society in respect of that member shall be payable in accordance with Table C in the Appendix to the Rules; if the total amount of the portions of the premiums in respect of such member paid by the Society together with interest thereon as aforesaid shall not be paid by the Trustees to him or his legal personal representatives under sub-s.

(1) of r. 15 then such proportion or the whole, as the case may be, of the Society's portion of such premiums and interest thereon as aforesaid as shall not be paid by the Trustees to such member or his legal personal representatives as aforesaid shall be paid by the Trustees to the Society; the rules may be altered, amended or rescinded and new rules may be made in accordance with the provisions of the Trust Deed but not otherwise.

We have given the relevant part of the Scheme and the Rules. The gist of the Scheme may be stated thus: The object of the Scheme is to provide for pensions to its employees. It is achieved by creating a trust. The Trustees appointed thereunder are the agents of the employer as well as of the employees and hold the moneys received from the employer, the employee and the insurer in trust for and on behalf of the person or persons entitled thereto under the rules of the Scheme. The Trustees are enjoined to take out policies of insurance securing a deferred annuity upon the life of each member, and funds are provided by contributions from the employer as well as from the employees. The Trustees realise the annuities and pay the pensions to the employees. Under certain contingencies mentioned above, an employee would be entitled to the pension only after superannuation. If the employee leave the service of the Society or is dismissed from service or dies in the service of the Society, he will be entitled only to get back the total amount of the portion of the premium paid by him, though the trustees in their discretion under certain circumstances may give him a proportion of the premiums paid by the Society. The entire amount representing the contributions made by the Society or part thereof, as the case may be, will then have to be paid by the Trustees to the Society. Under the scheme the employee has not acquired any vested right in the contributions made by the Society. Such a right vests in him only when he attains the age of superannuation. Till that date that amount vests in the Trustees to be administered in accordance with the rules; that is to say, in case the employee ceases to be a member of the Society by death or otherwise, the amount contributed by the employer with interest thereon, subject to the discretionary power exercisable by the trustees, become payable to the Society. If he reaches the age of superannuation, the said contributions irrevocably become fixed as part of the funds yielding the pension. To put it in other words, till a member attains the age of superannuation the employer's share of the contributions towards the premiums does not vest in the employee. At best he has a contingent right therein. In one contingency the said amount becomes payable to the employer and in another contingency, to the employee." For the same proposition, learned counsel, placed reliance on Krishena Kumar v. Union of India, (1990) 4 SCC 207, and drew our attention to the following:

"32. In Nakara, (1983) 1 SCC 305, it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual P.F. retiree finally crystallized on his retirement whereafter no continuing obligation remained, while on the other hand, as regards Pension retirees, the obligation continued till their death.....” Based on the legal position declared by this Court in the above judgments, it was urged, that in the absence of any vested right, a challenge to the notification dated 2.12.2004, was neither sustainable nor maintainable in law.

19. It would be relevant to notice, that ‘the 1999 Scheme’ became operational with effect from 1.4.1999. It remained operational till the issuance of notification dated 2.12.2004. While repealing ‘the 1999 Scheme’, the notification dated 2.12.2004, did not deprive such of the employees who had retired during subsistence of the Scheme, of the benefits that had accrued to them, under ‘the 1999 Scheme’. Only such of the employees who were to retire on or after 2.12.2004, were disentitled to the benefits under the Scheme. It was the submission of learned counsel for the appellants, that the choice of the cut-off date – 2.12.2004 in the present controversy, is a permissible incident in law. It was pointed out, that the instant proposition has been repeatedly examined by this Court, wherein cut-off dates have been upheld; sometimes even where the cut-off date had been made applicable retrospectively. For the instant proposition, learned counsel placed reliance on Union of India v. P.N. Menon, (1994) 4 SCC 68, and invited the Court’s attention to the following observations:

“8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to “picking out a date from the hat”, as was said by this Court in the case of D.R. Nim v. Union of India, AIR 1967 SC 1301, in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative, because the benefit has to be allowed within the financial resources available with the Government.” Reliance was also placed on State of West Bengal v. Ratan Behari Dey, (1993) 4 SCC 62, and our attention was drawn to the following conclusions:

"7. In our opinion, the principle of Nakara, (1983) 1 SCC 305, has no application to the facts of this case. The precise principle enunciated in Nakara (supra) has been duly explained in Krishena Kumar, (1990) 4 SCC 207, by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay-scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf. It appears that in the Calcutta Corporation, a pension scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the Fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive years in the year 1977... maybe because in that-year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State Government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give effect to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government — a fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in specifying the said date. It may also be said that, that was the year in which the Left Front came into power in that State, but does not detract from the validity of the aforesaid reasons assigned by the State in its counter-affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High Court that the reasons assigned by the State Government are neither relevant nor acceptable.

8. In this context, it may be remembered that the power of the State to specify a date with effect from which, the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is

unreasonable or discriminatory.

Since we have found that the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint of discrimination must fail.

9. Now coming to the argument of Sri P.P. Rao that the Regulations bring about an unreasonable classification between similarly placed employees, we must say that we are not impressed by it. It is not submitted that the Corporation had no power to give retrospective effect to the Regulations. It was within the power of the Corporation to enforce the Regulations either prospectively or with retrospective effect from such date as they might specify. Of course, as repeatedly held by this Court, in such cases the State cannot, as the expression goes, pick a date out of its hat. It has to prescribe the date in a reasonable manner, having regard to all the relevant facts and circumstances. Once this is done, question of discrimination does not arise. Reference in this behalf may also be had to the decision of this Court in Sushma Sharma v. State of Rajasthan, 1985 Supp. SCC 45, a decision of the Division Bench comprising E.S. Venkataramiah and Sabyasachi Mukharji, JJ." It was pointed out, that the determination rendered in the above two judgments has been reiterated by this Court in State of Rajasthan v. Amrit Lal Gandhi, (1997) 2 SCC 342. Last of all, learned counsel invited the Court's attention to R.R. Verma v. Union of India, (1980) 3 SCC 402, wherefrom reliance was placed on the following:-

> "5. The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission: Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844; D.N. Roy v. State of Bihar, (1970) 3 SCC 119, and State of Assam v. J.N. Roy Biswas, (1976) 1 SCC 234. All the cases cited by Shri Garg are cases where the government was exercising quasi-judicial power vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court. We see no force in this submission of the learned counsel. The appeal is, therefore, dismissed."

> 20. Mr. R. Venkataramni, learned senior counsel, supplemented the submissions advanced by Mr. P.P. Rao. In his opening statement, he endorsed the submissions advanced by Mr. P.P. Rao, and accordingly, adopted the same.

> 21. In addition, it was contended, that 'the 1999 Scheme' was introduced for the first time on 29.10.1999, with retrospective effect - from 1.4.1999. It was asserted, that through 'the 1999 Scheme', it was proposed to supplement the post-retiral financial benefits of employees, engaged in corporate bodies, in the State of Himachal Pradesh. It was urged, that employees of corporate bodies, were hitherto before, recipients of Contributory Provident Fund (CPF), as the sole post-retiral financial benefit. It was submitted, that 'the 1999 Scheme', required employees of corporations to switch over from the CPF scheme, by exercising their option. And, such of the employees who did not exercise any option (under the provisions of 'the 1999 Scheme'), were also deemed to have exercised their option for the said scheme, on the expiry of the period specified.

It was highlighted, that the grant of pension under 'the 1999 Scheme', was based on the operation of the scheme. Stated differently, the contention was, that the right to receive pension emerged from 'the 1999 Scheme', and not from the option exercised by an employee, under the said scheme.

22. Insofar as the operation of 'the 1999 Scheme' is concerned, it was submitted, that the employer's contribution to the CPF account of the employee (including interest which had accrued thereon) upto 31.3.1999, was transferred to the State Government, so as to constitute the corpus fund, to be administered and maintained by the Finance Department of the State Government, which would make 'the 1999 Scheme', self-financing. The above submission, was drawn from a collective reading of paragraphs 4(b) and 5 of 'the 1999 Scheme'. It was further contended, that an employee's own contribution to the CPF, i.e. the subscription amount contributed by the employee to his own CPF account, was to be retained in his GPF account. The instant employee's contribution, was to be disbursed to him, at the time of his retirement, as GPF. As such, it was pointed out, that the contributions made by the employees, from out of their own funds, were unaffected by 'the 1999 Scheme'.

23. It was therefore highlighted by learned counsel, that the present controversy has nothing to do with an employee's contribution, but was limited to the right of an employee to claim pension under 'the 1999 Scheme'. It was urged, that the exercise of an option to switch over from the CPF scheme, to 'the 1999 Scheme', did not result in a vested right, to earn pension. To support the instant contention, it was pointed out, that one of the pre-conditions for earning pension, is to have rendered the minimum stipulated qualifying service. It was submitted, that there were various other similar conditions, on satisfaction whereof alone, an employee (despite his having exercised an option, to switch over to 'the 1999 Scheme'), would be entitled to pensionary benefits, after his retirement. It was, therefore asserted, that the crystalisation of the right for a legitimate claim for pension, would accrue on satisfaction of all the postulated conditions, and till the fulfillment of all the conditions, the mere exercise of option, to switch over to 'the 1999 Scheme', would not result in vesting a right in the respondent-employees, to receive pension.

24. In order to effectively project the assertion canvassed by him, the learned counsel highlighted, that the exercise of option by the employees who were engaged in corporations in the State of Himachal Pradesh, did not result in the employees having in any manner, altered their position to

their disadvantage. It was averred, that the employees did not forego any pre-existing better or higher benefit, while exercising their option to switch over to 'the 1999 Scheme'. Based cumulatively on the factual position projected above, it was urged, that it was not open to the employees of corporations in the State of Himachal Pradesh, to call into question, the repeal of 'the 1999 Scheme', through the impugned notification dated 2.12.2004.

25. In order to canvass the above proposition, that rights which were contingent upon the occurrence of an event, could not be described as vested rights, reliance was placed on Howrah Municipal Corporation v. Ganges Rope Co. Ltd., (2004) 1 SCC 663, and the following observations recorded therein:-

> "37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right" [see K.J. Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.]. The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule- making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfillment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon." Based on the conclusions drawn in the cited judgment, it was submitted, that a 'legitimate' or a 'settled expectation', suggesting the possibility of drawing pension after retirement,

> could not be treated as a vested right. It was submitted, that the respondent-employees were not justified in raising a claim based on the assumption, that they had a vested right, or 'settled expectation', under 'the 1999 Scheme', particularly in the light of the fact, that 'the 1999 Scheme' had been partly nullified, by the notification dated 2.12.2004.

26. It was also the assertion of learned counsel, that the repeal notification dated 2.12.2004, had the consequence of termination/cessation of benefits, as would emerge from the analogy of the principles expressed in Section 6 of the General Clauses Act. It was further submitted, that the requirement of dealing with rights and liabilities insofar as the present controversy is concerned, is clearly based on a valid classification. It was urged, that truly and factually, there was no classification whatsoever, inasmuch as, the benefits under 'the 1999 Scheme' were extended to a miniscule section of the employees, and excluded uniformally an overwhelming majority of employees. Learned counsel questioned the veracity of the conclusion drawn by the High Court, by reading down the repeal notification dated 2.12.2004, for the reason, that the same would deprive pensionary rights to those employees, who had opted for 'the 1999 Scheme', and had retired after 2.12.2004, as also, the employees who were already in service when 'the 1999 Scheme' was notified on 29.10.1999, and had become members of that scheme, and were due to retire after 2.12.2004. It was pointed out, that the above determination at the hands of the High Court, would have the effect of 'the 1999 Scheme' remaining in place, till such time as employees engaged in corporations upto 2.12.2004 eventually retired on attaining the age of superannuation. In the above view of the matter, it was asserted, that in the manner the legality of the issue has been determined by the High Court, 'the 1999 Scheme' which was repealed on 2.12.2004, would actually and factually continue to be operational, for a further period of approximately 20 years, by which time alone, employees engaged prior to the notification dated 2.12.2004, would retire from service.

27. It was also the contention of learned counsel, that the confinement of the pensionary benefits under 'the 1999 Scheme', to such of the employees, who had retired from the concerned corporations, between 1.4.1999 and 2.12.2004, could not be invalidated because the right to receive pension stood crystalised and vested in them in terms of paragraph 4 of 'the 1999 Scheme'. It was submitted, that a statutory classification cannot be set aside, when there is overwhelming justification, demonstrating a valid basis, therefor. The repeal of 'the 1999 Scheme' was based on financial constraints, which had not been legitimately repudiated. Insofar as the instant aspect of the matter is concerned, learned counsel, in the first instance, placed reliance on State of Rajasthan v. Amrit Lal Gandhi (supra), and our attention was invited to the following observations recorded therein:-

> "16. Applying the ratio of the aforesaid decisions to the present case, we find no justification for the High Court having substituted the date of 1-1- 1986 in lieu of 1-1-1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the Rajasthan Government was required. In the letter of 16-4-1991, written to the Vice- Chancellors of different universities of Rajasthan, it was stated as follows:

> "As per the direction in regard to the aforesaid subject, the State Government has decided to introduce Pension Scheme in the Universities of the State w.e.f. 1-1-1990. In this regard the State Legislature has passed University Pension Rules and General Provident Fund Rules. Therefore, by enclosing a copy of University Pension Regulations and General Provident Fund Regulations with this letter, it is requested that by obtaining approval of the competent body or Syndicate of the University, these Regulations be implemented in the University together and necessary information regarding implementation be intimated."
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> 17. The Syndicate and Senate of the University, when they had forwarded their recommendations in 1986, did not contain a specific date with effect from which the pension scheme was to be made applicable. Their recommendations were subject to approval. The approval was granted by the Government, after the State Legislature had passed the University Pension Rules and General Provident Fund Rules. The Government had stated in its affidavit before the High Court that the justification of the cut-off date of 1-1-1990 was "wholly economic". It cannot be said that the paying capacity is not a relevant or valid consideration while fixing the cut-off date. The University could, in 1991, validly frame Pension Regulations to be made applicable prospectively. It, however, chose to give them limited retrospectivity so as to cover a larger number of employees by taking into account the financial impact of giving retrospective operation to the Pension Regulations. It was decided that employees retiring on or after 1-1-

1990 would be able to exercise the option of getting either pension or provident fund. Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-1986 for 1-1-1990." For the same proposition, reliance was also placed in Union of India v. R. Sarangapani, (2000) 4 SCC 335, and our attention was drawn to the following observations recorded therein:-

> "11. One more aspect which we want to emphasise is that the applicants who were appointed to the technical posts and the other persons who were appointed to the non-technical posts are not on the same footing. The nature of their jobs was different, the qualifications for appointment were different and the training period was to be longer for the technical staff. It was obviously necessary that those who were to occupy the technical posts should have a longer period of training than those who were to occupy the non-technical posts. The training period for the former was one year while the training period for the latter was only three months. Naturally, the non-technical personnel could therefore be appointed earlier to the technical personnel even if both groups were selected at the same selection. Therefore, in view of the nature of the qualifications and nature of the posts and functions and duties, no equality in the dates of accrual of the increments could ever have been claimed by the technical personnel comparing themselves to the non-technical persons, by

> invoking Article 14.
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> 12. If, however, the Government thought it fit to bring some sort of equalisation in the matter of commencement of their increments, it was obviously by way of a sheer concession and was not as a matter of right nor was it to avoid any violation of any principles of equality under Article
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> 14. In fact, the very official memorandum of the Government dated 22-10-

1990 stated that under the Fundamental Rule 26 read with Rule 9(6)(a)(i) it was only in cases of probationers and apprentices where such appointments were followed by a confirmation that the said period of probation or apprenticeship would be counted for the purpose of scale of pay attached to the posts. This principle would "not" as per the Rules be applicable to the training period. However, during the meetings of the National Council (JCM) it was represented that where the training period was long, as in the case of technical personnel, the disparity would become perpetual. Therefore, it is obvious that the concession was not based on Article 14 nor was it on the basis of any rule but was clearly based only upon the fact that the training period of technical personnel was longer and the disparity would continue perpetually if these groups were selected at the same time. Therefore, Government considered initially to bring their increment on par with effect from 1-1-1990 and later on it felt that the grievance could be rectified with effect from 1-1-1986 as mentioned above, the date of commencement of the recommendations of the Fourth Pay Commission. It is, therefore, clear that the Government decided to extend the benefit in the abovesaid manner, even though parties had no right to the same either under Article 14 or under the Rules and the date was mainly based on the financial burden. It was open to the Government to decide, having regard to the budgetary provision, as to what extent it could go and whether it could fix a cut-off date which was co-terminus with the commencement of the recommendation of the Fourth Pay Commission, namely, 1-1-1986. On the peculiar facts of this case the said date was perfectly valid because the only consideration was the financial burden of the State and not any principle of equality."

28. In order to canvass the proposition noticed hereinabove, learned counsel also placed reliance on, 'A Treatise on the Constitutional Limitations', authored by Thomas M. Cooley (Indian Reprint of 2005, Hindustan Law Book Company, Calcutta), and invited our attention to following observations recorded in Chapter XI, bearing the heading – Of The Protection To Property By 'The Law Of The Land':-

> "The chief restriction is that vested rights must not be disturbed; but in its application as a shield of protection, the term "vested rights" is not used in any narrow or technical sense, as importing a power of legal control merely, but rather as implying a vested interest which it is equitable the government should recognize, and of which the individual cannot be deprived without injustice.
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> And before proceeding further, it may be well to consider, in the light of the reported cases, what is a vested right in the constitutional sense, that we may the better judge

how far the general laws of the State may be changed, and how far special provisions may be made without coming under condemnation. Every man holds all he possesses, and looks forward to all he hopes for, through the aid and protection of the laws; but as changes of circumstances and of public opinion, as well as other reasons of public policy, are all the time calling for changes in the laws, and these changes must more or less affect the value and stability of private possessions, and strengthen or destroy well-founded hopes; and as the power to make very many of them must be conceded, it is apparent that many rights, privileges, and exemptions which usually pertain to ownership under a particular state of the law, and many reasonable expectations, cannot be regarded as vested rights in any legal sense. In many cases the courts, in the exercise of their ordinary jurisdiction, cause the property vested in one person to be transferred to another, either through a statutory power, or by the force of their judgments or decrees, or by compulsory conveyances. If in these cases the court has jurisdiction, they proceed in accordance with the law of the land, and the right of one man is divested by way of enforcing a higher and better right in another. Of these cases we do not propose to speak; as constitutional questions cannot well arise in regard to them, unless they be attended by circumstances of irregularity which are supposed to take them out of the operation of the general rule. All vested rights are held subject to the laws for the enforcement of public duties and private contracts, and for the punishment of wrongs; and if they become divested through the operation of these laws, it is only by way of enforcing the obligations of justice and good order. What we desire to arrive at now, is the meaning of the term "vested rights", when employed by way of indicating the interests of which one cannot be deprived by the mere force of legislative enactment, or by any other than the recognized modes of transferring title against the consent of the owner, to which we have alluded." Based on the submissions recorded hereinabove, it was sought to be concluded, that the respondent-employees had no vested right to claim pension under 'the 1999 Scheme', and that, it was not open to them to assail the partial repeal of 'the 1999 Scheme', vide notification dated 2.12.2004.

29. In the process of repudiating the submissions advanced at the hands of the appellants, Mr. Guru Krishna Kumar, learned senior counsel representing the respondent-employees, drew our attention to certain factual aspects of the matter, which according to him, needed to be kept in mind, while determining the veracity of the challenge raised by the State Government. It was pointed out, that all the respondent-employees, were already in the employment of corporate bodies, in the State of Himachal Pradesh, on the date 'the 1999 Scheme' was introduced – on 1.4.1999. Learned counsel asserted, that it was not disputed at the behest of the State Government, that all the respondent-employees were entitled to benefits under 'the 1999 Scheme', either on account of having exercised their option to be governed by 'the 1999 Scheme', or by virtue of the deeming provision expressed in paragraph 2(2) of 'the 1999 Scheme'. It was asserted, that all the employees who came to be governed by 'the 1999 Scheme', constituted a homogenous class. Inasmuch as, the employees whose right to claim pension under 'the 1999 Scheme' has not been disturbed, despite the repeal notification dated 2.12.2004, and those whose right to draw pension has been taken away, cannot be distinguished in any manner, except on the basis of the cut-off date, expressed in the

repeal notification, dated 2.12.2004. It was contended, that merely because some of the employees had retired prior to 2.12.2004, and the respondent- employees had retired after 2.12.2004, cannot be accepted as a legitimate basis, to treat them differentially. It was asserted, that the mandate of paragraph 1(2) of 'the 1999 Scheme' extended pensionary benefits to employees engaged in corporate bodies, in the State of Himachal Pradesh, in accordance with the provisions laid down under the Central Civil Services (Pension) Rules, 1972, and the Central Civil Services (Commutation of Pension) Rules, 1981 "... as amended and adopted by the Himachal Pradesh Government for the State Government employees, save as otherwise provided in this scheme". In the above view of the matter, it was asserted on behalf of the respondent-employees, that the division of a homogenous class, so as to deprive one set of employees benefits, which still remained extended to another set of employees, was clearly unsustainable in law. It was pointed out with some emphasis, that the High Court had taken conscious notice of the fact, that 'the 1999 Scheme' was introduced by the State Government, after due deliberation by all concerned stake holders, and upon approval by the Chief Minister and his Cabinet. In the factual background highlighted hereinabove, it was urged, that denial of pensionary benefits to one set of employees, out of a homogenous class, was arbitrary and discriminatory, and as such, violative of the principles enshrined in Articles 14 and 16 of the Constitution of India. Based on the above factual background, it was urged, that the High Court was fully justified in reading down the repeal notification dated 2.12.2004, so as to extend the benefit of 'the 1999 Scheme' to all employees who either opted for, or were otherwise entitled to pensionary rights, under 'the 1999 Scheme'.

30. Learned counsel for the respondent-employees, contested the submission advanced by learned counsel for the appellants, that subscription to 'the 1999 Scheme' by employees engaged in corporations in the State of Himachal Pradesh, did not create a vested right in them. It was submitted, that a mere subscription to 'the 1999 Scheme', by exercising their option to be governed by the same, created a vested right in the respondent-employees. In this behalf it was pointed out, that retirement on attaining the age of the superannuation, was relevant, only for the purpose of the accrual of a cause of action, for raising a claim for pension (under 'the 1999 Scheme'). Learned counsel, while acknowledging, that a right to claim pension would arise only when the concerned employee attained the age of superannuation, yet submitted, that the moment a contribution earlier payable to the employees as CPF on their retirement, was diverted to the corpus fund maintained by the Finance Department of the State Government, the same created a contingent right in each one of them (under 'the 1999 Scheme') to claim pension. It was therefore submitted, that there was no justification in the contention advanced on behalf of the appellants, that the action of the respondent-employees in opting for 'the 1999 Scheme', did not alter their position adversely, with reference to their erstwhile vested right (under the Employees Provident Funds Scheme, 1995). In order to support his submission, that a vested right accrued to the respondent-employees, when they subscribed to 'the 1999 Scheme', learned counsel placed reliance on U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630, and drew our attention to the following observations recorded therein:-

> "3. It is not in dispute that the revised scales of pay as recommended by the Pay Revision Committee became applicable to the appellants with effect from 1-1-1986. It is also not in dispute that the UGC scales of pay were applicable to them. The

Government of Karnataka, by a letter dated 17-12- 1993, directed that the matter relating to the fixation of pension on the basis of UGC pay scales would be governed by Rule 296 of the Karnataka Civil Services Rules (hereinafter referred to as "the Rules"), providing for computation of emoluments for the purpose of pension and gratuity of a government servant. In the said letter it was stated:

"The term 'emoluments' has been defined and redefined from time to time whenever pension has been revised by executive orders. The term emoluments for purpose of pensionary benefits as defined in GO dated 17-8-1987 includes among other things the last pay drawn. It is, therefore, clarified that the pay drawn by the teachers of degree colleges in respect of whom UGC scales have been extended by GO No. ED 88 UNI 88 dated 30-3-1990 w.e.f. 1-1-1986 and who have opted to UGC scales of pay, the last pay drawn by them in UGC scales of pay among other things may be treated as emoluments for purpose of pensionary benefits under GO No. FD 20 SRS 87 (I) dated 17-8-

1987."

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9. However, para 27-A was inserted thereto in respect of revision of pensionary benefits, which is to the following effect:

"27-A. Revision of pensionary benefits.—(i) UGC scales as revised from 1-1- 1996 have been linked to the index level of 1510 points inasmuch as the revised pay scale structure includes the DA admissible as on 1-1-1996 to the extent of 138% of basic pay. As on 1-1-1996 the pensionary benefits under the State Government had not been revised. The revised pay scales of the State Government employees came into force from 1-4-1998 by merging the DA as on 1-1-1996. The pensionary benefits were also simultaneously revised w.e.f. 1-4-1998. Therefore, the revised pay drawn in the UGC pay scales for the period from 1-1-1996 up to 31-3-1998 shall not be taken as emoluments for the purpose of pensionary benefits. Accordingly,—

(a) In respect of teachers drawing UGC pay scales who have retired during the period from 1-1-1996 to 31-3-1998, they shall be eligible for the benefit of the fixation of pay and arrears under the revised UGC scales of pay only. There shall not be any change in their pensionary benefits with reference to the revised UGC pay and the retirement benefits already sanctioned in the pre-revised UGC pay scales will not undergo any modifications. However, they shall be entitled to the benefit of fixation of revised pension/family pension as contemplated in GO No. FD (Spl.) 2 PET 99 dated 15-2-1999 only w.e.f. 1-4-1998. Para 6 of GO No. FD (Spl.) 2 PET 99 dated 15-2-1999 stands modified to this extent.

(b) In respect of teachers drawing UGC pay scales and who have issued on or after 1-4-1998, the pay drawn in the revised UGC pay scales shall be counted for the purpose of pensionary benefits and the orders revising the pensionary benefits vide GO No. FD (Spl.) 2 PET 99 dated 15-2-1999 shall be made applicable." *** *** ***

23. The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1-4-1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1-1-1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1-1-1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the employees concerned despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1-1-1996. By reason of such notification, as the appellants had been deprived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions.

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25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement.

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28. The impugned orders furthermore are opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules w.e.f. 1-1-1996, vested in the appellants in terms of government notification read with Rule 296 of the Rules." Based on the above judgment, it was pointed out, that the right to draw revised pension under the Karnataka Civil Service Rules, was held to be vested in the concerned employees, from the date of revision of the pay- scales. It was pointed out, that while calculating pensionary benefits, it was imperative for the employer to take into consideration, the actual pay drawn by the employees, at the time of their retirement. Accordingly it was held, that the action of the State Government in granting revised pay- scales with retrospective effect (with effect from 1.1.1996), but extending the benefit of revised pay for calculating pension, only with effect from 31.3.1998, was not sustainable in law. Inasmuch as, employees who had retired between 1.1.1996 and 31.3.1998 would be prejudicially affected. On the same proposition, learned counsel placed reliance on D.S. Nakara v. Union of India, (1983) 1 SCC 305, and invited our attention to the following observations made therein:-

> "20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State

of Bihar, (1971) 2 SCC 330, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh, (1976) 2 SCC 1".

Reference was also made to Chairman, Railway Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623, wherefrom our attention was drawn to the following observations:-

"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, AIR 1967 SC 1889, B.S. Yadav, AIR 1969 SC 118, 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.

26. In Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330, decided by a Constitution Bench it has been laid down: (SCC p. 343, para 31) "31. ... pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant." [p. 152] (emphasis supplied) In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

27. In D.S. Nakara v. Union of India, (1983) 1 SCC 305, this Court, after taking note of the decision in Deokinandan Prasad (supra), has said: (SCC p. 323, paras 28 and 29) "28. Pension to civil employees of the Government and the defence personnel as

administered in India appears to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education, 302 US 74, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.

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29. … Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered." *** *** ***

30. The respondents in these cases are employees who had retired after 1-

1-1973 and before 5-12-1988. As per Rule 2301 of the Indian Railway Establishment Code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that running allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for computation of pension and other retiral benefits. The said right of the respondent-employees to have their pension computed on the basis of their average emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated 5-12-1988 inasmuch as the maximum limit has been reduced from 75% to 45% for the period from 1-1-1973 to 31-3-1979 and to 55% from 1-4-1979 onwards. As a result the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

31. In Salabuddin Mohamed Yunus v. State of A.P., (1984) Supp SCC 399, the appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution the appellant continued in the service of that State till he retired from service on 21-1-1956. The appellant claimed that he was entitled to be paid the salary of a High Court Judge from 1-10-1947 and also claimed that he was entitled to receive pension of Rs.1000 a month in the Government of India currency, being the maximum pension admissible under the rules. The said claim of the appellant was negatived by the Government. He filed a writ petition in the High Court of Andhra Pradesh. During the pendency of the said writ petition the relevant rule was amended by notification dated 3-2-1971 with retrospective effect from 1-10-1954 and the expression "Rs.1000 a month" in clause (b) of sub-rule (1) of Rule 299 was substituted by the expression "Rs.857.15 a month". This amendment was made in exercise of the power conferred by the proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1)(f) of the Constitution. Relying upon the decision in Deokinandan Prasad (supra), it was held: (SCC p. 406, para 6) "6. … The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take

away the appellant's right to receive pension according to the rules in force on the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void."

32. It is no doubt true that on 5-12-1988 when the impugned notifications were issued, the rights guaranteed under Articles 31(1) and 19(1)(f) were not available since the said provisions in the Constitution stood omitted with effect from 20-6-1979 by virtue of the Constitution (Forty-fourth Amendment) Act, 1978. But Notifications Nos. GSR 1143 (E) and GSR 1144 (E) have been made operative with effect from 1-1-1973 and 1-4-1979 respectively on which dates the rights guaranteed under Articles 31(1) and 19(1)(f) were available. Both the notifications insofar as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution.

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." Based on the above cited judgments, it was submitted, that the determination rendered by the High Court in the impugned judgment, that the respondent-employees acquired a vested right, the moment they had subscribed to 'the 1999 Scheme', was unexceptionable.

31. Learned counsel for the respondent-employees also contested the submission advanced on behalf of the appellants, that the right to receive pension accrues to an employee, on the date on which he attains the age of superannuation, and not earlier. On the instant aspect of the matter it was submitted, that even though pension can formally be claimed by an employee only on his retirement, the seeds for a claim to pension are sown, and the foundation for receipt of pension is laid, the very moment from which an employee commences to render qualifying service. It was submitted, that based on having acquired a minimum qualifying service postulated under the rules, an employee's claim eventually crystalises for entitlement to pension, on attaining the age of superannuation. It was contended, that since past service rendered by an employee, constitutes the basis for grant of pension, every day of service rendered by an employee, has to be taken into consideration, for computing pension. It was accordingly urged, that every day of service rendered by an employee, furthers the right in the employee to earn and receive pension. For the aforesaid reasons, according to learned counsel, pension has always been considered as deferred-wages for services rendered. It was asserted, that with effect from the date of commencement of qualifying service, the concerned employee is treated to have an inherent vested right, for a claim to pension. In order to substantiate the instant contention, learned counsel placed reliance on the D.S. Nakara case (supra), and invited our attention to the following observations recorded therein:-

> "46. By our approach, are we making the scheme retroactive? The answer is emphatically in the negative. Take a government servant who retired on April 1, 1979.

He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a, relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier? It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing, (see Craies on Statute Law, sixth edition, p. 387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty- five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages." Based on the observations extracted above, it was submitted, that it was not open to the State to contend, that a vested right would be created under 'the 1999 Scheme', only on the date of retirement. Since pension has been recognized as deferred-wages for past services, payable on retirement, according to learned counsel, the moment an employee is enrolled on the pension scheme, his right to claim pension, must be deemed to have materialized.

32. Relying on certain paragraphs of 'the 1999 Scheme' (referred to above), it was submitted, that the appellants have erroneously treated the date of retirement, as the date on which the right to pension accrued to the employees. In this behalf it was pointed out, that the cause of action to receive pension would accrue to an employee on the date of his retirement. However, the right to receive pension crystalises, at the end of every successive day, and at the end of every successive month, and at the end of every successive year. It was pointed out, that it crystalises and further crystalises, giving rise to an eventual claim for pension. It was accordingly pointed out, that the date of retirement had been legally perceived, as the date on which the cause of action arose to an employee to claim pension. Accordingly it was submitted, that the date of retirement was relevant only for the limited purpose of determining the cause of action, to receive pension. For this, learned counsel place reliance on Asger Ibrahim Amin v. Life Insurance Corporation of India, (2015) 10 SCALE 639, and invited our attention to the following observations:-

> "3. On 8.8.1995, that is post the promulgation by the Respondent of the Pension Rules, the Appellant enquired from the Respondent whether he was entitled to pension under the Pension Rules, which has been understood by the Respondent as a representation for pension; the Respondent replied that the request of the Appellant cannot be acceded to. The Appellant took the matter no further but has averred that in 2000, prompted by news in a Daily and Judgments of a High Court and a Tribunal, he requested the Respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the Respondent, in response to which the Respondent reiterated its stand that the Appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the Appellant filed a Special Civil Application on 29.3.2012 before the High Court, which was dismissed by the Single Judge vide Judgment dated 5.10.2012. The LPA of the Appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide Judgment dated 1.3.2013, against which the Appellant has approached this Court.
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> 4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in Union of India v.

Tarsem Singh, (2008) 8 SCC 648, that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held:

> "7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the

continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.

Reliance was also placed on the decision of this Court in State of Madhya Pradesh v. Yogendra Shrivastava, (2010) 12 SCC 538, wherefrom learned counsel emphasized on the following observations:-

"17. The appellants contended that the claims were therefore barred by limitation. It was pointed out that the respondents were paid NPA at a fixed rate as stipulated in the appointment orders and NPA was increased only when it was revised by the government orders from time to time; that the respondents accepted such NPA without protest; and that therefore, they cannot, after periods varying from 5 to 15 years, challenge the fixation of NPA or contend that they are entitled to NPA at a higher rate, that is 25% of their pay.

18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the

date of the original application. [See: M.R. Gupta v. Union of India, 1995 (5) SCC 628, and Union of India v. Tarsem Singh, 2008 (8) SCC 648]".

It was, therefore, the contention of learned counsel for the respondents, that the foundation to claim pension, accrued in the employees of all corporate bodies in the State of Himachal Pradesh (including all the respondent-employees herein), the very moment they came to be enrolled in 'the 1999 Scheme'. It was submitted, that all existing employees who had opted for pension or were deemed to have opted for pension, had vested in themselves the right to pension when they would retire from service. All employees who came to be engaged by corporations in the State, from 1.4.1999 up to 1.12.2004, were likewise vested with the right to receive pension, because of the fact, that at the very inception of their employment, they became members of 'the 1999 Scheme', and the period of service rendered by them would likewise constitute qualifying service, for pension. It was therefore submitted, that there was a clear distinction between two contingencies, firstly, the date on which a claim for pension can be stated to have vested in the employee, and the date on which the employee earns a right to receive pension. Insofar as the former is concerned, it was submitted, that the moment qualifying service commences to add up, a vested right to receive pension is created. For the latter, having rendered the postulated qualifying service (on the date of superannuation), gives rise to a cause of action to receive pension. It is this fine distinction which according to learned counsel, needs to be examined and has been overlooked during the course of the submissions advanced on behalf of the appellant-State.

33. Insofar as the issue of financial unviability of 'the 1999 Scheme' is concerned, it was submitted on behalf of the respondent-employees, that the State Government was estopped in law, from raising such a plea. In this behalf it was pointed out, that the Law Department and the Finance Department of the State Government, had advised, against the retrospective withdrawal of 'the 1999 Scheme'. If the advice had been accepted, according to learned counsel, persons similarly situated, as the private respondents, would have remained entitled to receive pension under 'the 1999 Scheme'. Additionally it was contended, that in identical circumstances, the State Government had repealed the provisions of the Central Civil Services (Pension) Rules, 1972, as were applicable to State Government employees, through a similar notification, dated 15.5.2003. It was highlighted, that the aforesaid repeal notification, was given a prospective effect, inasmuch as, employees similarly situated as the respondent-employees herein, who had not retired on the date of the repeal notification, were allowed to be governed by the Central Civil Services (Pension) Rules, 1972. At the cost of clarification, it was pointed out, that the repeal notification dated 15.5.2003, had the effect of not depriving pensionary rights to any of the existing employees. Based on the above contentions, it was submitted, that the action of the State Government, in depriving the respondent-employees of their pensionary rights, must be treated as based on an arbitrary exercise of power, and as such, was liable to be considered as violative of Article 14 of the Constitution of India.

34. It was also the contention of learned counsel for the respondent- employees, that pension was akin to the right of property, postulated under article 300A of the Constitution. For the instant proposition, learned counsel placed reliance on the decision rendered in State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210, and invited our attention to the following observations recorded therein:-

> "8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. v. Union of India, (1983) 1 SCC 305, by D.A. Desai, J., who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20) "18. The approach of the Respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
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> 19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.
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> 20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors., (1971) 2 SCC 330, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. v. Iqbal Singh, (1976) 2 SCC 1".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300A of the Constitution of India.

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13. A reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

14. The right to receive pension was recognized as a right to property by the Constitution Bench judgment of this Court in Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330, as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33) “27. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the Petitioner the right to receive pension is property and the Respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The Respondents, as we have already indicated, do not dispute the right of the Petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr. Jha, learned Counsel for the Respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned Counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the Petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned Counsel for the Respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

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33. Having due regard to the above decisions, we are of the opinion that the right of the Petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.”

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

> "300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the Appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced." For the same proposition, reliance was placed on the decision of this Court in the U.P. Raghavendra Acharya case (supra). Learned counsel while seeking to adopt the conclusions drawn by this Court in the above case asserted, that the subscription to the pensionary scheme by itself, would create a vested right in the respondent-employees, to draw pension under 'the 1999 Scheme'.
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> 35. At this juncture, learned counsel for the respondent-employees also placed reliance on the U.P. Raghavendra Acharya case (supra), and invited the Court's attention to the following:-
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> "19. The fact that the appellants herein were treated to be on a par with the holders of similar posts in government colleges is neither denied nor disputed. The appellants indisputably are governed by the UGC scales of pay. They are entitled to the pensionary benefits also. They had been given the benefits of the revision of scales of pay by the 10th Pay Revision Committee w.e.f. 1-1-1986. The pensionary benefits payable to them on attaining the age of superannuation or death were also stated to be on a par with the employees of the State Government. The State of Karnataka, as noticed hereinbefore, for all intent and purport, has treated the teachers of the government aided colleges and the regional engineering colleges on the one hand and the teachers of the colleges run by the State itself on the other hand on a par. Even the financial rules were made applicable to them in terms of the notifications, applying the rule of incorporation by reference. Although Rule 296 of the Rules per se may not be applicable so far as the appellants are concerned, it now stands admitted that the provisions thereof have been applied to the case of the appellants also for the purpose of computation of pensionary benefits. Therefore there cannot be any doubt whatsoever that the term "Emoluments" as contained in Rule 296 of the Rules would also apply to the case of the appellants. Rule 296 of the Rules reads as under:
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> "296. In respect of retirement or death while in service of government servants on or after first day of July, 1993, the term 'emoluments' for the purpose of this Chapter means, the basic pay drawn by the government servant in the scale of pay applicable to the post on the date of retirement or death and includes the following, but does not

include pay and allowance drawn from a source other than the Consolidated Fund of the State,-

xxx xxx xxx Note:- (a) Basic pay means the pay drawn in the time-scale of pay applicable to the post immediately before retirement or death." xxx xxx xxx

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 Grants 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.

23. The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1-4-1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1-1-1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1-1-1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the employees concerned despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1-1-1996. By reason of such notification, as the appellants had been derived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions.

24. The contention of the State that the matter relating to the grant of pensionary benefits vis-à-vis the revision in the scales of pay stands on different footing, thus, must be rejected.

25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is co-related and has a nexus with the salary payable to the employees as on the date of retirement.

> 26. These appeals involve the question of revision of pay and consequent revision in pension and not the grant of pension for the first time. Only the modality of computing the quantum of pension was required to be determined in terms of the notification issued by the State of Karnataka.

For the said purpose, Rule 296 of the Rules was made applicable. Once this rule became applicable, indisputably the computation of pensionary benefits was required to be carried out in terms thereof. The Pension Rules envisage that pension should be calculated only on the basis of the emoluments last drawn. No order, therefore, could be issued which would be contrary to or inconsistent therewith. Such emoluments were to be reckoned only in terms of the statutory rules. If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1-1-1996, to the appellants, allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date.

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28. The impugned order furthermore is opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules, w.e.f. 1-1- 1996, vested in the appellants in terms of government notification read with Rule 296 of the Rules."

36. It was also the contention of learned counsel for the respondent- employees, that the present controversy needs to be examined from the perspective, that the respondent-employees did not make any endeavour to claim pension as a matter of parity with Government employees, in the State of Himachal Pradesh. It was submitted, that legally such a claim would not be sustainable, because civil servants in the State of Himachal Pradesh, and employees of Government owned corporations in the State, can not be considered as entitled to the same monetary benefits. It was however pointed out, that insofar as the present controversy is concerned, the State of Himachal Pradesh at its own, had granted parity to employees of Government owned corporations on the subject of pension, with Government employees in the State. Examined in the above context, according to learned counsel, it is apparent that the right of employees of Government owned corporations, in the State of Himachal Pradesh, on the issue of pension, stood conceded in their favour, on the basis of 'the 1999 Scheme'. It was in the above view of the matter, that learned counsel for the respondent-employees asserted, that the revocation of a benefit which the State Government conceded to employees of Government owned corporations, was per se arbitrary, and as such, not sustainable in law.

37. Learned counsel for the respondent-employees raised a plea of discrimination as well. It was submitted, that through the repeal notification dated 2.12.2004, 'the 1999 Scheme' was sought to be withdrawn for one set of employees, and was sought to be retained for another set of employees. In this behalf it was submitted, that the action of the State Government in fixing the date of retirement, as a cut-off date for withdrawing or sustaining pensionary benefits, is clearly unacceptable in law. In this behalf it was pointed out, that this Court on a number of occasions held, that the date of

retirement, cannot be a valid criterion for classification. It was submitted, that the fortuitous circumstance (date) of retirement, by a day earlier or a day later (than the cut-off date), would result in discriminatory consequences, for persons who constitute a homogenous class. It was contended, that whilst 'the 1999 Scheme' was in operation, all employees of State owned corporations who had opted for the same, constituted a homogenous class, and there could be no division to segregate such a homogenous class, so as to extend pensionary benefits to one set of employees, and to revoke the same, for another. In order to support the above contention, learned counsel for the respondents placed reliance on the D.S. Nakara case (supra) and drew our attention to the following observations recorded therein:-

> "42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs.8100 p.a. And average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs.12,000 p.a. and average emolument will be computed on the basis of last ten months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore the classification does not stand the test of Article 14." On the same proposition, reliance was placed on Union of India v.

SPS Vains (Retd.), (2008) 9 SCC 125, and the Court's attention was invited to the following observations:-

"28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in the case of D.S. Nakara v. Union of India, (1983) 1 SCC 305, where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

29. The Constitution Bench (in D.S. Nakara (supra)), has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.

30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara's case (supra). The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension."

38. It was therefore asserted on behalf of the respondent-employees, that the concept of a cut-off date cannot be adopted, in case of a repeal of a pension scheme prospectively. In this behalf it was submitted, that it could not be forgotten, that consequent upon the respondent-employees having been enrolled in 'the 1999 Scheme', they had been deprived of the employer's share of provident fund (and the interest which had accrued, thereon). The same ought to be treated as consideration, which passed from the respondent-employees to the State Government, consequent upon their enrollment into 'the 1999 Scheme'. On account of having foregone the employer's contribution which was a pre-requisite for enrollment in 'the 1999 Scheme', it was submitted, that the respondent-employees must be deemed to have contributed by way of consideration, to earn the benefit which would accrue to them, under 'the 1999 Scheme'. Keeping the above legal proposition in mind, it was pointed out, that the action of the State Government in depriving the respondent-employees of pensionary benefits, while allowing the same to such of the employees, who had retired on or before 2.12.2004, was discriminatory and unsustainable in law. It was also the contention of learned counsel for the respondent-employees, that the only situation where a claim for pension under 'the 1999 Scheme' could have been legally denied, is when a succeeding pension scheme introduced by the employer, postulated better retiral benefits.

39. Reliance was also placed on Pepsu Road Transport Corporation, Patiala v. Mangal Singh, (2011) 11 SCC 702, wherein it has been held as under:-

> "48. The concept of "pension" has also been considered in Corpus Juris Secundum, Vol. 70, at p. 423 as thus:
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> "A pension is a periodical allowance of money granted by the government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants, and it presupposes the continued life of the recipient." Based on the above, it was the contention of learned counsel, that the State Governments' inference, based on the report of the Committee, dated 15.11.2003, that 'the 1999 Scheme' was not viable, was clearly unacceptable. In this behalf, learned counsel invited the Court's attention to the following observations, recorded in the said report:-
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> "14. After determining the magnitude of inflows and outflows, the sustainability of the corpus has been analysed assuming average interest income from corpus investment at various levels of interest over a period of 10 years. The highest rate of interest has been assumed to be 6.5% and the lowest 5.5%. In each scenario, the net surplus available for ploughing back into the pension fund starts declining from the 6th year onwards. This is essentially due to the fact that with dwindling fresh recruitments, the pension liabilities will continue to increase over the years, but the inflows would decline due to reduced contributions. Details of the calculations are as under:-

5.5% Annexure-F 5.75% Annexure-F-I 6.00% Annexure-F-II 6.25% Annexure-F-III 6.50% Annexure-F-IV" It was submitted, that there was no legitimate basis for recording such a conclusion.

40. It was also the contention of learned counsel, that the judgment rendered by the High Court, rightly negated the financial impact of 'the 1999 Scheme', because in terms of the conclusions drawn in the judgment, the same would not be applicable to future employees. And the deficiency in the financial resources was accordingly fastened on the State Government. On the issue in hand, it was submitted, that a number of employees, who became members of 'the 1999 Scheme', and would retire after 2.12.2004 (i.e. the cut-off date, determined under the repeal notification, dated 2.12.2004) is a definite number. In this behalf it was pointed out, that if the employees, who became members of 'the 1999 Scheme', are to be taken into consideration, there would be 6,730 employees, who would draw pension on their retirement. It was accordingly submitted, that there would be no further increase in the liability under 'the 1999 Scheme'. In order to demonstrate that the available funds accumulated on account of the employee's contribution to the EPF/CPF concerned, were sufficient to meet the liability, to administer the pension scheme, it was submitted, that the same has increased from 56 crores in 2003 to 253 crores in 2015. It was pointed out, that the aforesaid figures emerged, despite the withdrawal of provident fund amounts, by a number of employees. It was, therefore submitted, that payment of pensionary benefits to 6,730 employees, was well within the financial reach of the State Government, and that, the decision of the State Government to issue the repeal notification, on the ground that 'the 1999 Scheme' was not financially viable, was not acceptable.

41. It was also the contention of learned counsel for the respondent- employees, that all the State owned corporations were fully controlled by the Government. All shares in the corporations were held by the State Government. The management of all the corporations, was also under the direct control and supervision of the Government. Accordingly it was submitted, that the ultimate authority in determining the conditions of service of the concerned corporations, was vested with the Government. In this behalf, reliance was placed on Articles 51 and 52 of Articles of Association of the Himachal Pradesh State Forest Development Corporation Limited. It was highlighted that similar Articles of Association governed the other corporations, as well. It was therefore submitted, that the State Government, had no business, to withdraw itself, from its responsibility and commitment.

42. It was, therefore submitted, that the Government has consistently been extending the benefit of similar conditions of service, to employees of Government owned corporations, as are available to Government employees in the State. The Government having taken a conscious decision to extend pensionary benefits to all employees of Government owned corporations, under 'the 1999 Scheme', is clearly precluded from withdrawing the same, specially on account of the fact, that the corporations under consideration, are instrumentalities of the State in terms of Article 12 of the Constitution of India. According to learned counsel, 'the 1999 Scheme' was liable to be treated as a welfare measure, extended by the State Government to all employees, and therefore, it should not shirk its responsibility, to fulfill any financial deficiency therein, out of the Government treasury. In the above view of the matter it was submitted, that the impugned judgment rendered by the High

Court, deserved no interference.

43. It was also asserted, that even if it was assumed, that the report of the committee, dated 15.11.2003, with reference to the status of the corpus fund, is correct, still the same is liable to be rejected because the committee had sought views of 17 corporations/boards covered by 'the 1999 Scheme', however, it received views of 7 corporations only, namely, Himachal Pradesh Agro Industries Corporation, Himachal Pradesh Tourism Development Corporation, Himachal Pradesh State Industrial Development Corporation, Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd., Himachal Pradesh Housing Board, Himachal Pradesh State Forest Development Corporation Ltd., and Himachal Pradesh SC & ST Development Corporation. The above corporations had expressed the opinion, that a unified trust for pension with financial support of the State Government, could salvage the financial position, to enable the corpus fund to cater to payment of pension to employees under 'the 1999 Scheme'. It was therefore the contention of learned counsel for the respondents, that credence should not be given to the proposition propounded at the hands of the State Government, that 'the 1999 Scheme' was not financially viable.

44. In order to controvert the submissions advanced at the hands of learned counsel for the respondent-employees, Mr. P.P. Rao, learned senior counsel emphatically pointed out, that all the judgments relied upon by the respondents were inapplicable to the present controversy. It was submitted, that the judgments relied upon, did not deal with the rights of serving employees. It was pointed out, that a clear enunciation in this behalf was recorded by this Court, that the prayers raised at the hands of the respondent-employees, could only relate to superannuated personnel. For the above, learned counsel invited our attention to the Chairman, Railway Board case (supra), wherefrom the following observations were relied upon:-

> "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.
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> 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.
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> 30. The respondents in these cases are employees who had retired after 1-

1-1973 and before 5-12-1988. As per Rule 2301 of the Indian Railway Establishment Code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that Running Allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for computation of pension and other retiral benefits. The said right of the respondent-employees to have their pension computed on the basis of their average emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated 5-12-1988 inasmuch as the maximum limit has been reduced from 75% to 45% for the period from 1-1-1973 to 31-3-1979 and to 55% from1-4-1979 onwards. As a result the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

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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.

34. The learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as arbitrary for the reason that by the reduction of the maximum limit in respect of Running Allowance from 75% to 45% for the period 1-1-1973 to 31-3-1974 and to 55% from 1-4-1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from 1-1-1973, the maximum limit of 45% or 55% of the Running Allowance will have to be calculated on the basis of the revised pay scales while earlier the maximum limit of 75% of Running Allowance was being calculated on the basis of unrevised pay scales and, therefore, it cannot be said that there has been any reduction in the amount of pension payable to the respondents as a result of the impugned amendments in Rule 2544 and it cannot be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government. The respondents who retired after 1-1-1973 but before 5-12-1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated 21-1-1974, 22-3-1976 and 23-6-1976, would not mean that the pension payable to them was

not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated 5-12-1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated 5-12-1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from 1-1-1973 to 31- 3-1979 and reduce it to 55% in respect of the period from 1-4-1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution." For the same proposition, reliance was placed on the U.P. Raghavendra Acharya case (supra), wherefrom our attention was drawn to the following observations:-

"2. The appellants in these appeals are retired teachers of the University and Private Aided Colleges (to whom UGC scales of pay were applicable). They have retired during the period 1.1.1996 to 31.3.1998. So far as the teachers of the University or Privates Aided Colleges are concerned, indisputably, they were being paid the same salary as was being paid to the teachers of the Government colleges. The appellants in Civil Appeal No. 1391/2006, have retired from the Karnataka Regional Engineering College, Surathkal, Karnataka, which was established by the Government of India at the request of the Government of Karnataka. It is a Centrally aided institution as envisaged under Entry 64 of List 1 of the Seventh Schedule to the Constitution of India. So far as the said institution is concerned, its expenditure used to be borne by the Government of India and the State of Karnataka. It, however, has been notified by the Government of India as a Deemed University with effect from 26.6.2002.

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

45. A different projection was sought to be made by Mr. R. Venkataramani, learned senior counsel, who also represented the appellants. Learned counsel, placed reliance on State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694, and drew our attention to the following:-

"2. By that order the Division Bench upheld the order dated 23.12.1999 of the learned Single Judge in Civil Rule No. 2996/1995 allowing the respondent's writ petition and directing the state government to sanction financial assistance by way of grant-in-aid to Cachar and Karimganj District Milk Producers' Cooperative Union Limited ("CAMUL", for short) so as to enable CAMUL to make regular payment of monthly salaries, allowances as also the arrears to its employees.

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> 4. It is contended that the State Government had all-pervasive control over the affairs and management of CAMUL and therefore it should be treated as a department of the Government of Assam, though registered as a co-

operative society by lifting the corporate veil. It was further contended that State Government was responsible and liable to pay the salaries and emoluments of the employees of CAMUL and it was not justified in withholding the grant amount.

5. The respondent Union therefore sought a direction to the State Government to release the arrears of pay and allowances of employees of CAMUL with effect from December 1994 and for a direction to continue to pay the salary and allowances to the employees of CAMUL, every month in future. In addition to the state government (Respondent 1) and its officers (Respondents 2 to 4), the Union of India (Respondent 5) and CAMUL and its Managing Director (Respondents 6 and 7) were impleaded as parties to the writ petition.

6. The State Government opposed the petition. It inter-alia contended that the grant-in-aid was extended for helping CAMUL in its different development activities; that under a Centrally sponsored scheme, between 1981 to 1986, the earmarked amount was released on 50:50 basis by the Central and State Government with 70% loan component and 30% as grant component; that though the loan component was not repaid by CAMUL, the State Government continued the grant-in-aid for purposes of development activities; that the State Government had also provided Rs.43.60 lakhs for developing the milk-processing infrastructure of CAMUL; that despite such assistance, CAMUL became defunct and stopped all its activities and thereafter the Silchar Town Milk Supply Project was being run by the State's Dairy Development Department itself; that at no time, the State Government made any commitment or agreed to bear the salaries of employees of CAMUL or any other similar societies; that CAMUL had to generate its own funds and resources to pay the salaries of its staff; and that as there was no relationship of employer and employee between the State Government and the employees of CAMUL, it was not responsible to bear or pay any amount towards the salaries of the employees of CAMUL.

7. The learned Single Judge allowed the writ petition. He held that the State Government through its Veterinary Department undertook the Integrated Cattle Development Projects (ICDP) in various districts of Assam; and as a part of the said project, an ICDP block was created at Ghungoor, Silchar in Cachar district; that 32 cooperative societies of Milk Producers were established and CAMUL was formed as an Apex Body of those co-operative societies; that the Dairy Development Department of the State Government had been providing grant-in-aid earmarked in the State budget every year to CAMUL; that the State Government failed to offer any explanation or reason for stopping the grant-in-aid from 1994; that the Dairy Development Project at Silchar was purely a State Government scheme and as that Project has not been discontinued and as there was no decision to bar CAMUL from receiving grant-in-aid which was being granted from 1982-83 till 1994, the State Government could not deny the grant-in-aid amount. Consequently, the learned Single Judge directed release of the grand-in-aid for paying monthly salaries and allowances along with arrears to

the employees.

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10. CAMUL indisputably is a co-operative society registered under the provisions of the Assam Cooperative Societies Act, 1949. Section 85 of the said Act provides that every registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

11. Therefore, CAMUL, even if it was "State" for purposes of Article 12, was an independent juristic entity and could not have been identified with or treated as the State Government. In the view we have taken, it is not necessary in this case to examine whether CAMUL was "State" for purposes of Article 12.

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14. The respondent has not been able to show any right in the employees of CAMUL against the State Government, or any obligation on the part of the State Government with reference to the salaries/emoluments of employees of CAMUL either under any statute or contract or otherwise.

15. The learned Counsel for the respondent contended that the same issue arose for consideration in Kapila Hingorani (I) v. State of Bihar, (2003) 6 SCC 1 (for short "Kapila Hingorani (I)") and the issue has been answered in their favour. Reference is invited to the following question, which was set down as one of the questions arising for consideration in that case: (SCC p.17, para 20) "2. Whether having regard to the admitted position that the government companies or corporations referred to hereinbefore are "State" within the meaning of Article 12 of the Constitution of India, the State of Bihar having deep and pervasive control over the affairs thereof, can be held to be liable to render all assistance to the said companies so as to fulfill its own and/or the corporations' obligations to comply with the citizens' rights under Articles 21 and 23 of the Constitution of India?"

16. Reference is also invited to the following observations of this Court in considering the said question (Kapila Hingorani (I), SCC, pp. 20-21, paras 30-31 & 33-34):

> "30. The government companies/public sector undertakings being 'State' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the government companies; in the matter of enforcement of human rights and/or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

> 31. The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.
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> 33. The State having regard to its right of supervision and/or deep and pervasive control, cannot be permitted to say that it did not know the actual state of affairs of the State Government undertakings and/or it was kept in the dark that the salaries of their employees had not been paid for years leading to starvation death and/or commission of suicide by a large number of employees. Concept of accountability arises out of the power conferred on an authority.
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> 34. The State may not be liable in relation to the day-to-day functioning of the companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto lie the State's constitutional obligations. The State acts in a fiduciary capacity. The failure on the part of the State in a case of this nature must also be viewed from the angle that the statutory authorities have failed and/or neglected to enforce the social-welfare legislations enacted in this behalf e.g. the Payment of Wages Act, the Minimum Wages Act etc. Such welfare activities as adumbrated in part IV of the Constitution of India indisputably would cast a duty upon the State being a welfare State and its statutory authorities to do all things which they are statutorily obligated to perform.

Reference is invited to the fact that this Court directed the Bihar government to release Rs. 50 crores and deposit it with the High Court for disbursing salaries of employees of government corporations/companies. The contention of respondent is that the direction of the High Court, is in consonance with the said view.

17. The learned Counsel for the respondent also relied upon the following observations in Kapila Hingorani (II) v. State of Bihar, (2005) 2 SCC 262 (for short "Kapila Hingorani (II)): (SCC p. 268, paras 26-27) "26. We, therefore, do not appreciate the stand taken by the State of Bihar now that it does not have any constitutional obligation towards a section of citizens viz. the employees of the public sector undertakings who have not been paid salaries for years.

27. We also do not appreciate the submissions made on behalf of the State of Bihar that the directions issued were only one-time direction. In Clause 4 of the directions, it was clearly stated that the State for the present shall deposit a sum of Rs. 50 crores before the High Court for disbursement of salaries to the employees of the corporations. Furthermore, the matter had been directed to be placed again after six months." This Court also issued further interim directions to the

State of Bihar to deposit a further sum of Rs.50 crores and the State of Jharkhand to deposit a sum of Rs.25 crores to meet the arrears of salaries of public sector undertakings.

18. We have carefully examined the said two decisions. The two decisions are interim orders made in a writ petition under Article 32 of the Constitution. The said orders have not finally decided the issues/questions raised, nor laid down by any principle of law. The observations extracted above as also other observations and directions are purely tentative as will be evident from the following observations in Kapila Hingorani (I):

> (SCC pp. 34-35, paras 74 & 76) "74. We, however hasten to add that we do not intend to lay down a law, as at present advised, that the State id directly or vicariously liable to pay salaries/remunerations of the employees of the public sector undertakings or the government companies in all situations. We, as explained hereinbefore, only say that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time.
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> 76. This order shall be subject to any order that may be passed subsequently or finally." xxx xxx xxx

19. The position is further made clear in Kapila Hingorani (II) as under:

> (SCC p. 270, para 37) "37. We make it clear that we have not issued the aforementioned directions to the States of Bihar and Jharkhand on the premise that they are bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect. The directions, which have been issued by this Court on 9.5.2003 as also which are being issued herein, are in furtherance of the human and fundamental rights of the employees concerned and not by way of an enforcement of their legal right to arrears of salaries. The amount of salary payable to the employees or workmen concerned would undoubtedly be adjudicated upon in the proper proceedings. However, these directions are issued which are necessary for their survival."

20. It is thus clear that directions were not based on legal right of the employees, but were made to meet a human right problem involving starvation deaths and suicides. But in the case on hand, relief is claimed and granted by proceeding on the basis that the employees of corporations/bodies answering the definition of "State" have a legal right to get their salaries from the State Government. In fact Kapila Hingorani (I) and Kapila Hingorani (II) specifically negative such a right."

46. We shall now endeavour to consider the various legal parameters on the basis whereof, learned counsel for the rival parties have premised their respective submissions.

47. First and foremost, it is essential for us to determine whether or not a vested right came to be created in the employees of the corporate bodies, when they came to be governed by 'the 1999 Scheme'. The submission at the hands of learned counsel for the appellant-State was, that no such vested right was created, by the time the repeal notification was issued on 2.12.2004. The contention of learned counsel representing the State was, that under paragraph 4 of 'the 1999 Scheme', a right to draw pension would emerge, only when a concerned employee attained the age of superannuation, subject to the condition that he had rendered the postulated qualifying service. It was submitted, that prior to the fulfillment of the aforesaid condition, no employee under 'the 1999 Scheme', could be considered as being possessed of a vested right, to receive pension.

48. Having given our thoughtful consideration to the aforesaid submission, we are of the view, that such of the employees who had exercised their option to be governed by 'the 1999 Scheme', came to be regulated by the said scheme, immediately on their having submitted their option. In addition to the above, all such employees who did not exercise any option (whether to be governed, by the Employees' Provident Funds Scheme, 1995, or by 'the 1999 Scheme'), would automatically be deemed to have opted for 'the 1999 Scheme'. All new entrants would naturally be governed by 'the 1999 Scheme'. All those who had moved from the provident fund scheme to the pension scheme, would be deemed to have consciously, foregone all their rights under the Employees' Provident Funds Scheme, 1995. It is of significance, that all the concerned employees by moving to 'the 1999 Scheme', accepted, that the employer's contribution to their provident fund account (and the accrued interest thereon, upto 31.3.1999), should be transferred to the corpus, out of which their pensionary claims, under 'the 1999 Scheme' would be met. It is therefore not possible for us to accept, that the concerned employees would be governed by 'the 1999 Scheme' only from the date on which they attained the age of superannuation, and that too - subject to the condition that they fulfilled the prescribed qualifying service, entitling them to claim pension. Every fresh entrant has the statutory protection under the Provident Fund Act. All fresh entrants after the introduction of 'the 1999 Scheme', were extended the benefits of 'the 1999 Scheme', because of the exemption granted by competent authority under the Provident Fund Act. They too, therefore possessed similar rights as the optees.

49. With effect from 1.4.1999, the employees who had opted for 'the 1999 Scheme' (or, who were deemed to have opted for the same) were no longer governed by the provisions of the Provident Fund Act (under which they had statutory protection, for the payment of provident fund). Consequent upon an exemption having been granted to the concerned corporate bodies by the competent authority under the Provident Fund Act, the Employees Provident Funds Scheme, 1995, was replaced, by 'the 1999 Scheme'. All direct entrants after 1.4.1999, were also entitled to the rights and privileges of 'the 1999 Scheme'. We are therefore of the considered view, that the submissions advanced on behalf of the State of Himachal Pradesh premised on the assertion, that no vested right accrued to the employees of the concerned corporate bodies, on the date when 'the 1999 Scheme' became operational (with effect from 1.4.1999), or to the direct entrants who entered service thereafter, cannot be accepted. In this behalf it would also be relevant to emphasize, that as soon as

the concerned employees came to be governed by 'the 1999 Scheme', a contingent right came to be vested in them. The said contingent right created a right in the employees to claim pension, at the time of their retirement. Undoubtedly, the aforesaid contingent right would crystalise only upon the fulfillment of the postulated conditions, expressed on behalf of the appellants (on having rendered, the postulated qualifying service). However, once such a contingent right was created, every employee in whom the said right was created, could not be prevented or forestalled, from fulfilling the postulated conditions, to claim pension. Any action pre-empting the right to pension, emerging out of the conscious option exercised by the employees, to be governed by 'the 1999 Scheme' (or to the direct entrants after the introduction of 'the 1999 Scheme'), most definitely did vest a right in the respondent-employees.

50. We are also of the view, that there is merit in the contention advanced on behalf of the respondent-employees, inasmuch as, the seeds of the right to receive pension, emerge from the very day, an employee enters a pensionable service. From that very date, the employee commences to accumulate qualifying service. His claim for pension would obviously crystalise, when he acquires the minimum prescribed qualifying service, and also, does not suffer a disqualification, disentitling him to a claim for pension.

51. In the above view of the matter, it is not possible for us to accept, that the rights of the concerned employees under 'the 1999 Scheme', can be stated to get vested, only on the date when a concerned employee would attain the age of superannuation, and satisfy all the pre-requisites for a claim towards pension. We are also persuaded to accept the contention advanced on behalf of the respondent-employees, that the cause of action to raise a claim for pension, would arise on the date when a concerned employee actually retires from service. Any employee governed by a pension scheme, enrolls to earn qualifying service, immediately on his enrolment into the pensionable service. Every such employee must be deemed to have commenced to invest in his eventual claim for pension, from the very day he enters service. More so, in the present controversy, by having expressly chosen to forego his rights, under the Employees' Provident Funds Scheme, 1995.

52. We shall deal with the issue, whether or not such a contingent right, as was vested in the respondent-employees on their having opted for 'the 1999 Scheme' (or in the fresh entrants, on their very appointment), was binding and irrevocable, at a later stage of our consideration.

53. The second most important issue which deserves to be addressed by us, in the facts and circumstances of the present case is, whether or not the State Government was justified in postulating a cut-off date, by which some of the employees governed by 'the 1999 Scheme' (those who had retired prior to 2.12.2004) were entitled to draw pension under 'the 1999 Scheme', whereas others, who had not retired by the time the repeal notification was issued on 2.12.2004, were deprived of such benefits. In this behalf, the contention of the learned counsel for the respondent-employees was, that all those who had opted (or deemed to have opted) for 'the 1999 Scheme', and all the new entrants after the introduction of 'the 1999 Scheme', constituted a homogenous class, and it was impermissible for the State Government, to have treated them differently. It was submitted, that the aforesaid classification was invidious, inasmuch as, there was no reasonable basis for such classification, nor was there any discernable object, for bifurcating the

homogenous class of pensioners. It was submitted, that whilst those who had retired on the date of the repeal notification, would be entitled to pensionary benefits, those who retired on the following day, would be deprived of the same. Learned counsel for the rival parties have, relied on a series of judgments in support of the respective propositions canvassed by them. We have extracted the same, while recording their submissions.

54. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view, that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can therefore legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are therefore satisfied to conclude, that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned repeal notification dated 2.12.2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in the R.R. Verma case (supra), wherein this Court held, that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the above mentioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power, should be in consonance with all legal and statutory obligations.

55. It is equally true, that the power of administrative review can only be exercised, for a good and valid justification. Such justification besides being founded on reasonable consideration, should also not be violative of any legal right - statutory or constitutional, vested in the affected employees. Insofar as the permissibility of the administrative action taken, in issuing the impugned repeal notification dated 2.12.2004 is concerned, whether the said power was exercised by the State Government for good and valid reasons, and/or whether the same violated any statutory or constitutional right vested in the respondent-employees, shall be examined by us in the succeeding paragraphs.

56. In order to demonstrate, that the repeal notification dated 2.12.2004, was impermissible in law, reliance was placed on the U.P. Raghavendra Acharya case (supra). We are of the view, that the above judgment does not have any bearing on the facts and circumstances of this case. In the above judgment, the primary contention which weighed with this Court, in rejecting the contention advanced by the State Government was, that through an executive determination (by a letter, dated 17.12.1993), the State Government had breached a statutory rule, regulating the fixation of pension (Rule 296, of the Karnataka Civil Services Rules). The above position is not available in the present case, inasmuch as, no contention has been advanced at the behest of the respondent-employees, that the action taken by the State Government (in issuing the repeal notification, dated 2.12.2004), violated any legal obligation or statutory right. So also, the judgment relied upon on behalf of the respondent- employees in the D.S. Nakara case (supra), wherein the employees' claim for pension, was based on existing rules. And even so, in the Chairman, Railway Board case (supra), wherein it was held, that vested rights under the rules, could not be taken away. It would also be relevant to

mention, that in the last judgment referred to above, it was observed, that the employees who had retired from service, had been deprived of their pensionary rights, as the amended rule was not prospective, but was retrospective. In the instant case, the repeal notification does not adversely affect those employees who had retired prior to 2.12.2004, before the said notification was issued. The above referred judgment is also, therefore inapplicable to the present controversy. The conclusion recorded hereinabove, also emerges on a perusal of paragraphs 31 and 33 of the above judgment. It is therefore apparent, that the validity of the impugned notification cannot be assailed on the basis of the judgments cited above. We shall now deal with the legal submissions advanced on behalf of the respondent-employees, in their attempt to invalidate the repeal notification, dated 2.12.2004.

57. The first legal contention advanced on behalf of the respondent- employees was based on the principle of estoppel/promissory estoppel. It was the assertion of learned counsel, that the respondent-employees had altered their position to their detriment, on their having opted (or deemd to have opted) to be governed by 'the 1999 Scheme'. In order to highlight the above assertion it was submitted, that the entire employer's contribution towards provident fund (alongwith, the accumulated interest thereon), was foregone by the respondent-employees. The said amount unquestionably belonged to the respondent-employees, and their right over the same was protected under the Provident Fund Act. It was submitted, that the aforesaid option was exercised by the respondent-employees, only when the offer to extend pensionary benefits, was voluntarily made to the employees by the State Government. It was contended, that the promise to pay pensionary benefits, which was contained in the offer of the State Government, could not be unilaterally revoked, under the principle of estoppel/promissory estoppel. It was submitted, that the instant action of the State Government (taken by way of issuing the repeal notification, dated 2.12.2004), would seriously impair the financial benefits which had accrued to the respondent-employees, under 'the 1999 Scheme'. It was pointed out, that all that the respondent-employees had gained, by foregoing the employer's contribution (and the accrued interest, thereon), has been lost, consequent upon the issuance of the impugned notification, dated 2.12.2004.

58. We are of the considered view, that the principle of estoppel/promissory estoppel cannot be invoked at the hands of the respondent-employees, in the facts and circumstances of this case. It is not as if the rights which had accrued to the respondent-employees under the Employees' Provident Funds Scheme, 1995 (under which the respondent- employees were governed, prior to their being governed by 'the 1999 Scheme') have in any manner been altered to their disadvantage. All that was taken away, and given up by the respondent-employees by way of foregoing the employer's contribution upto 31.3.1999 (including, the accrued interest thereon), by way of transfer to the corpus fund, was restored to the respondent-employees. All the respondent-employees, who have been deprived of their pensionary claims by the repeal notification dated 2.12.2004, would be entitled to all the rights which had accrued to them, under the Employees' Provident Funds Scheme, 1995. It is therefore, not possible for us to accept, that the respondent-employees can be stated to have been made to irretrievably alter their position, to their detriment. Furthermore, all the corporate bodies (with which the respondent-employees, are engaged) are independent juristic entities, as held in State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha (supra). The mere fact, that the corporate bodies under reference, are fully controlled by the State Government, and

the State Government is the ultimate authority to determine their conditions of service, under their Articles of Association, is inconsequential. Undoubtedly, the respondent- employees are not Government employees. The State Government, as a welfare measure, had ventured to honestly extend some post-retiral benefits to employees of such independent legal entities, on the mistaken belief, arising out of a miscalculation, that the same can be catered to, out of available resources. This measure was adopted by the State Government, not in its capacity as the employer of the respondent-employees, but as a welfare measure. When it became apparent, that the welfare measure extended by the State Government, could not be sustained as originally understood, the same was sought to be withdrawn. We are of the view that the principle invoked on behalf of the respondent-employees, cannot be applied in the facts of the present case, specially, in view of the decision in M/s. Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut, AIR 2015 SC 901, wherein this Court held as under:-

> "The first contention advanced at the hands of the learned counsel for the appellant was based on the decision rendered by this Court in Tata Iron & Steel Co. Ltd. v. Union of India & Ors., (2001) 2 SCC 41, wherefrom learned counsel invited our attention to the following observations:-
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> "20. Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears, 1837 6 Ad. & El. 469, and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha, (1891-92) 19 IA 203, whereas earlier Lord Esher in the case of Seton Laing Co. v. Lafone, 1887 19 Q.B.D. 68, evolved three basic elements of the doctrine of Estoppel to wit:
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> "Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an Estoppel." Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterized as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd., 1920 28 C.L.R. 305. Dixon, J. in his judgment in Grundt v. The Great Boulder Pty. Gold Mines Pty. Ltd., 1938 59 C.L.R. 641, stated that:
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> "In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the

representee would be in if the representor were allowed to disavow the truth of the representation."

(In this context see Spencer Bower and Turner: Estoppel by Representation, 3rd Ed.). Lord Denning also in the case of Central Newbury Car Auctions Ltd. v. Unity Finance Ltd., 1956 (3) All ER 905, appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of 'detriment' to the effect as to whether it appears unjust or unequitable that the representator should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment, (vide Grundts: High Court of Australia (supra)).

21. Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

“Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like, and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed (Lyon v. Reed, (1844) 13 M & W 285 (at p. 309). The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: ‘Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter this own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.’ (Pickard v. Sears (supra)). And whatever a man's real intention may be, he is deemed to act willfully ‘if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it.’ (Freeman v. Cooke, 1848 (2) Exch. 654: at p. 663).

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled (Mercantile Bank v. Central Bank, 1938 AC 287 at p. 304, and National Westminster Bank v. Barclays Bank International, 1975 Q.B. 654). This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently (Moorgate Mercantile Co. Ltd. v. Twitchings, (1977) AC 890). The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time (Square

v. Square, 1935 P. 120)."

22. A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:-

> "We hereby undertake to refund to EEPC Rs... the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated against exports made during... In case any particular declaration/certificate furnished by us against our above referred to claims are found to be incorrect or any excess payment is determine to have been made due to oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C." and it is on this score it may be noted that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess (emphasis supplied), question of there being any estoppel in our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30.11.1990 from the Assistant Development Commissioner for Iron & Steel and the reply thereto dated 8.3.1991 which unmistakably record the factum of non-payment of JPC price." It is apparent from the factual position narrated above, that the original action of the State Government was bonafide, and for the welfare of the respondent-employees. The State Government cannot be accused of having misrepresented to the respondent-employees in any manner. The provisions of 'the 1999 Scheme', clearly bring out, that the pension scheme would be self-financing, and would be administered from the corpus fund created out of the employer's contribution to their CPF account (alongwith the accrued interest thereon). When the above foundational basis for introducing the pension scheme, was found to be an incorrect determination/calculation, the same was withdrawn. In the above view of the matter, it would not be possible to infer, that the State Government, induced the respondent- employees, to move to 'the 1999 Scheme'. Accordingly, it would not be possible to apply the principle of estoppel/promissory estoppel, to the facts of the present case.
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> 59. We are also of the view, that the principle of estoppel/promissory estoppel, is not applicable in a situation, where the original position, which the individual enjoyed before altering his position (by opting, or deemingly opting - for being governed by 'the 1999 Scheme') can be restored. For the instant proposition, reference may be made to the judgment in Pratima Chowdhury v. Kalpana Mukherjee, (2014) 4 SCC 196, wherein it was held as under:-

"We shall, however, endeavour to deal with the principle of estoppel, so as to figure whether, the rule contained in Section 115 of the Indian Evidence Act could have been invoked, in the facts and circumstances of the present case. Section 115 of the Indian Evidence Act is being extracted hereinabove:-

"115. Estoppel.- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title." It needs to be understood, that the rule of estoppel is a doctrine based on fairness. It postulates, the exclusion of, the truth of the matter. All, for the sake of fairness. A perusal of the above provision reveals four salient pre conditions before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position." Since there is no dispute, that the original position (the rights enjoyed by the respondent-employees, under the Employees Provident Fund Scheme, 1995) available before 'the 1999 Scheme' was given effect to, has actually been restored, we are of the considered view, that the principle sought to be invoked on behalf of the respondent-employees, cannot augur in a favourable determination for them, because it is not possible to conclude, that it would be unfair to restore them to their original position. In fact, in view of the financial incapacity to continue 'the 1999 Scheme', the only fair action would be to restore the employees, to the Employees Provident Funds Scheme, 1995. This has actually been done by the State Government. It is therefore not possible in law, to apply the principle of estoppel/promissory estoppel, to the facts of the present controversy.

60. Moving to the next contention. A serious dispute has been raised before us, in respect of the financial viability of 'the 1999 Scheme'. Insofar as the appellant-State is concerned, it was asserted on its behalf, that a high level committee, was constituted by the Finance Department of the State Government, on 21.1.2003. The said committee comprised of managing directors, of the concerned public sector undertakings and corporations. The task of the high level committee was, to examine the financial viability of 'the 1999 Scheme'. The said committee submitted a report dated

28.10.2003, returning a finding, that 'the 1999 Scheme' was not financially viable, and would not be self-sustaining. It is therefore, that a tentative decision was taken by the State Government, to withdraw 'the 1999 Scheme'.

61. To determine the modalities for withdrawing 'the 1999 Scheme', on the basis of the above report, the matter was jointly examined by the Finance Department and the Law Department of the State Government, wherein, in consonance with the advice tendered by the Law Department it was decided, that 'the 1999 Scheme' should not be withdrawn retrospectively. Based on the advice of the Law Department, it was finally decided, that those who had commenced to draw pensionary benefits under 'the 1999 Scheme', would not be deprived of the same. And that, 'the 1999 Scheme' should be withdrawn prospectively, for those whose right to receive pensionary benefits had not arisen, as they had not yet retired from service. In the above view of the matter, it was contended on behalf of the State Government, that the action of the State Government, in issuing the repeal notification dated 2.12.2004, was certainly not an arbitrary exercise of the power of administrative review. It was submitted, that the same was based on two factors. Firstly, the financial unviability of the scheme. And secondly, those who had already commenced to draw pensionary benefits under 'the 1999 Scheme', were not to be affected. It was therefore pointed out, that the classification made by the State Government was reasonable and justifiable in law, and it also had a nexus to the object sought to be achieved.

62. It is in the above scenario, that the legality and justiciability of 'the 1999 Scheme', will have to be examined. The submission advanced at the behest of the respondent-employees was, that it was not permissible for the State Government to advance any such plea, because the State Government must be deemed to have examined the financial viability of the scheme, before 'the 1999 Scheme' was given effect to. And that, it does not lie in the mouth of the State Government, after giving effect to 'the 1999 Scheme', to assert that 'the 1999 Scheme' was not financially viable. It was insisted, that even if data pertaining to the financial viability of the scheme, as was sought to be relied upon was correct, financial deficiencies if any, could be catered to by the State Government, from the vast financial resources available to it. And further, that 'the 1999 Scheme' in terms of the determination rendered by the High Court, even if permitted to be repealed, should not impact the rights of the respondent- employees, towards pensionary benefits.

63. We have given our thoughtful consideration to the above contention. It is not possible for us to accept the instant contention, advanced on behalf of the respondent-employees. The calculations projected at the behest of the State Government, to demonstrate the financial unviability of the scheme, have not been disputed. The same have been detailed in paragraph 10 above. The basis thereof, projected by the high level committee, admittedly constitutes the rationale for issuing the repeal notification dated 4.12.2004. We are of the view, that the consideration at the hands of the State Government was conscious and pointed. And was supported by facts and figures. It is apparent, that out of 17 corporations/boards who were invited to express their views on the issue, only 7 had actually done so. It is not the case of the respondent- employees, that any one of those who had expressed their views, contested the fact, that the pension scheme was not self-financing. Those who expressed their views, affirmed that the pension scheme could be salvaged only with Government support. Those who did not express their views, obviously had no comments to offer.

The position projected by the State Government, therefore, cannot be considered to have been effectively rebutted. Certain facts and figures, have indeed been projected, on behalf of the respondent-employees. These have been recorded by us in paragraphs 39 and 40. Financial calculations can not be made casually, on a generalized basis. In the absence of any authenticity, and that too with reference to all the 20 corporate entities specified in Schedule I of 'the 1999 Scheme', the projections made on behalf of the respondent-employees, cannot be accepted, as constituting a legitimate basis, for a favourable legal determination. Since the respondent-employees have not been able to demonstrate, that the foundational basis for withdrawing 'the 1999 Scheme', was not premised on any arbitrary consideration, or alternatively, was not founded on any irrelevant consideration, it is not possible for us to accept the contention, that the withdrawal of 'the 1999 Scheme', was not based on due consideration, or that, it was irrational or arbitrary or unreasonable. We are also satisfied, that the action of the State Government, in allowing those who had already started earning pensionary benefits under 'the 1999 Scheme', was based on a legitimate classification, acceptable in law. In the above view of the matter, the action of the State Government cannot be described as arbitrary, and as such, violative of Article 14 of the Constitution of India. We are also satisfied in concluding, that the understanding of the State Government (which had resulted in introducing 'the 1999 Scheme') on being found to be based on an incorrect calculation, with reference to the viability of the corpus fund (to operate 'the 1999 Scheme'), had to be administratively reviewed. And that, the State Government's determination in exercising its power of review, was well founded.

64. It is also not possible for us to accept, that any Court has the jurisdiction to fasten a monetary liability on the State Government, as is the natural consequence, of the impugned order passed by the High Court, unless it emerges from the rights and liabilities canvassed in the lis itself. Budgetary allocations, are a matter of policy decisions. The State Government while promoting 'the 1999 Scheme', felt that the same would be self-financing. The State Government, never intended to allocate financial resources out of State funds, to run the pension scheme. The State Government, in the instant view of the matter, could not have been burdened with the liability, which it never contemplated, in the first place. Moreover, it is the case of the respondent-employees themselves, that a similar pension scheme, floated for civil servants in the State of Himachal Pradesh, has also been withdrawn. The State Government has demonstrated its incapacity, to provide the required financial resources. We are therefore of the view, that the High Court should not (- as it could not) have transferred the financial liability to run 'the 1999 Scheme', to the State Government. Similar suggestions made by the concerned corporate bodies, cannot constitute a basis for fastening the residuary liability on the Government.

65. The action of the State Government, in revoking 'the 1999 Scheme' vide notification dated 2.12.2004, was also assailed as being discriminatory. And as such, violative of Article 16 of the Constitution of India. In this behalf, the submission advanced on behalf of the respondent-employees was, that the State Government extended similar benefits to Government employees under the Central Civil Services (Pension) Rules, 1972. The said pensionary benefits extended to Government servants, were also sought to be withdrawn. It was however pointed out, that while withdrawing the pensionary benefits from the Government employees, the State Government had taken a decision to protect all existing employees, who had entered into

Government service, till the revocation of the pension scheme. It was submitted, that the High Court had, by the impugned order, similarly protected only the existing employees, who were in service, as on the date of issuance of the repeal notification, dated 2.12.2004. It was contended, that the State Government's action, in not treating the employees of corporate bodies, governed by 'the 1999 Scheme', similarly as it had treated employees in Government service, was clearly discriminatory. It was submitted, that two sets of employees similarly situated, were treated differently. It was pointed out, that whilst protection was extended to one set of employees, similar benefits were denied to the other set of employees.

66. We have given our thoughtful consideration of the plea of discrimination, advanced at the behest of the respondent-employees. It is not possible for us to accept, that the employees of corporate bodies, can demand as of right, to be similarly treated as Government employees. Whilst it can be stated that Government employees of the State of Himachal Pradesh are civil servants, the same is not true for employees of corporate bodies. Corporate bodies are independent entities, and their employees cannot claim parity with employees of the State Government. The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with the employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay-scales and retiral benefits to civil servants. It may disagree, to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. It is common knowledge, that when pay-scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government. And similarly, not even to employees of Government companies. Likewise, there cannot be parity with Government employees, in respect of allowances. So also, of retiral benefits. The claim for parity with Government employees is therefore wholly misconceived. It is, therefore, not possible for us to accept the contention advanced on behalf of the respondent- employees, that the action of the State Government was discriminatory.

67. Another reason for us to conclude, that the action of the State Government was not discriminatory is, that despite having revoked 'the 1999 Scheme' through the notification dated 2.12.2004, the State Government had permitted such of the Government owned corporations in the State of Himachal Pradesh, which were not suffering any losses, to promote their own pension schemes, and to extend pensionary benefits to their employees, on an individual basis, in the same/similar fashion as had been attempted by the State Government, through 'the 1999 Scheme'. In the instant view of the matter also, we are of the opinion, that the action of the State Government cannot be assailed, on the ground of discrimination.

68. We shall now consider, whether the State Government which had introduced 'the 1999 Scheme', had the right to repeal the same. In answering the above issue, it needs to be consciously kept in mind, that the employees of corporate bodies, who were extended the benefits of 'the 1999 Scheme', as already noticed above, were not employees of the State Government. 'The 1999 Scheme' was, therefore, just a welfare scheme introduced by the State Government, with the object of ameliorating the financial condition of employees, who had rendered valuable service in State

owned corporations. In order to logically appreciate the query posed, we may illustratively take into consideration a situation, wherein an organization similar to the one in which the respondent-employees were engaged, suffered such financial losses, as would make the sustenance of the organization itself, unviable. Can the employees of such an organization, raise a claim in law, that the corporate body be not wound up, despite its financial unworkability? Just because, the resultant effect would be, that they would lose their jobs. The answer to the above query, has to be in the negative. The sustenance of the organization itself, is of paramount importance. The claim of employees, who have been engaged by the organization, to run the activities of the organization, is of secondary importance. If an organization does not remain financially viable, the same cannot be required to remain functional, only for the reason that its employees, are not adversely impacted. When and how a decision to wind up an organization is to be taken, is a policy decision. The decision to wind up a corporation may be based on several factors, including the nature of activities rendered by it. In a given organization, sometimes small losses may be sufficient to order its closure, as its activities may have no vital bearing on the residents of the State. Where, an organization is raised to support activities on which a large number of people in the State are dependent, the same may have to be sustained, despite the fact that there are substantial losses. The situations are unlimited. Each situation has to be regulated administratively, in terms of the policy of the State Government. Whether a corporate body can no longer be sustained, because its activities are no longer workable, practicable, useable, or effective, either for the State itself, or for the welfare of the residents of the State, is for the State Government to decide. Similarly, when and how much, is to be paid as wages (or allowances) to employees of an organization, is also a policy decision. So also, post-retiral benefits. All these issues fall in the realm of executive determination. No Court has any role therein. For the reasons recorded hereinabove, in our considered view, the conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, will necessarily have to be determined administratively, on the basis of relevant factors. Financial viability, is an important factor, in such consideration. In the facts and circumstances of the present case, it is not possible for us to accept, the contention advanced on behalf of the respondent-employees, that the State Government should provide financial support for sustaining 'the 1999 Scheme', at least for such of the employees, who were engaged on or before the date of issuance of the repeal notification (- 4.12.2004). We would like to conclude the instant submission by recording, that the respondent-employees have not been able to make out a case, that the notification dated 2.12.2004, repealing 'the 1999 Scheme', was in any manner, capricious, arbitrary, illegal or uninformed, and as such, we would further conclude, that the respondent-employees cannot be considered as being entitled, to any relief, through judicial process.

69. Having recorded our aforesaid conclusion, it is not necessary for us to examine the submissions advanced at the hands of the respondent- employees, that the action of the State Government, in issuing the repeal notification dated 2.12.2004, would violate Article 21 of the Constitution of India. All the same, since the contention was raised, we consider it just and appropriate, to examine and deal with the same. The contention advanced on behalf of the respondent-employees was, that the fundamental rights enshrined in the Constitution, do not extend to merely, providing for survival or animal existence. Article 21, it was pointed out, has been interpreted by this Court, as extending the right to life and liberty - as the right to live, with human dignity. It was submitted, that 'the 1999 Scheme', which allowed better post-retiral benefits to the respondent- employees, was an extension

of such a benefit. 'The 1999 Scheme', it was submitted, would have resulted in ameliorating the conditions of the respondent-employees, after their retirement. The submission advanced on behalf of the respondent-employees is seemingly attractive, but is not acceptable as a proposition of law. A welfare scheme, may or may not aim at providing, the very basic rights to sustain human dignity. In situations where a scheme targets to alleviate basic human rights, the same may possibly constitute an irreversible position, as withdrawal of the same, would violate Article 21 of the Constitution. Not so, otherwise. Herein, the Employees' Provident Funds Scheme, 1995, sponsored under the Provident Fund Act, is in place. The same was sought to be replaced, by 'the 1999 Scheme'. 'The 1999 Scheme' was an effort at the behest of the State Government, to provide still better retiral benefits. 'The 1999 Scheme' was not a measure, aimed at providing basic human rights. Therefore, 'the 1999 Scheme' can not be treated as irreversible. The same would not violate Article 21 of the Constitution, on its being withdrawn. It is not in dispute, that after the repeal notification dated 2.12.2004, the erstwhile Employees' Provident Funds Scheme, 1995, has been restored to such of the employees, who were impacted by the said repeal notification. We are of the view, that the repealing of 'the 1999 Scheme', in the facts and circumstances of this case, cannot be deemed to have in any manner, violated the right of the respondent-employees, under Article 21 of the Constitution of India.

70. It is also not possible to accept, the contention advanced on behalf of the respondent-employees, based on Article 300A of the Constitution of India. We have deliberated hereinabove, the nature of the right created by 'the 1999 Scheme'. We have examined all the legal submissions advanced on behalf of the respondent-employees. We have arrived at the conclusion, that action of the State Government, was well within its authority. We have also held the same to be based on due consideration. We have therefore, rejected the assertion made on behalf of the respondent-employees, that the impugned notification dated 2.12.2004, was unconstitutional, irrational, arbitrary or unreasonable. It is accordingly not possible for us to accept, the challenge raised by the respondent- employees, that they had been deprived of their right to pensionary benefits, without the authority in law. We are therefore of the view, that the claim raised on behalf of the respondent-employees, by placing reliance on Article 300A of the Constitution of India, is misconceived.

71. Our determination, with reference to all the issues canvassed above, would also answer the question left open in paragraph 52 above. Namely, whether or not the contingent right, as was vested in the respondent- employees, was binding or irrevocable. We may now sum up the position determined by us, in the foregoing paragraphs. It is no doubt true that we have concluded, that 'the 1999 Scheme', created a contingent right in the respondent-employees. The respondent-employees comprise of all those employees of corporate bodies, who had opted for 'the 1999 Scheme', immediately on its having been introduced; all those, who were deemed to have opted for 'the 1999 Scheme' by not having exercised any option; and all those who were appointed after the introduction of 'the 1999 Scheme'. The first issue that arises is, whether any express right or obligation existed, between the respondent-employees and the State Government. One can understand, such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo – a trade off based on a relationship (as between, an employer and employee). We have however concluded, that there was no such relationship between the State

Government, and the respondent-employees. All the corporate bodies in which the respondent-employees were/are engaged, are independent juristic entities. It is therefore apparent, that the claim raised by the respondent-employees, is not based on any right or obligation between the parties. We have also examined the submissions advanced by learned counsel premised on various constitutional provisions (- Articles 14, 16, 21 and 300A of the Constitution of India), but have found, that no right can be stated to have been violated, thereunder. We have also examined the other legal submissions, advanced on behalf of the respondent-employees, and have found the same, as unjustified. The issue whether administrative review was permissible, after 'the 1999 Scheme' had become operational, has been answered in the affirmative. And finally, we have concluded, that the exercise of such power, while issuing the repeal notification, was based on due consideration. We therefore hereby uphold, the legality and constitutionality of the notification dated 2.12.2004.

72. For the reasons recorded hereinabove, the present appeals stand allowed. The impugned order dated 19.12.2013 passed by the High Court is accordingly, set aside.

....J. (Jagdish Singh Khehar) ....J. (C. Nagappan) New Delhi;

September 28, 2016.

Note: The emphases supplied in all the quotations in the instant judgment, are ours.