Pramod Kumar Agarwal & Ors vs Indian Oil Corporation Ltd. & Ors. on 4 April, 2025

Author: Jyoti Singh

Bench: Jyoti Singh

$~
* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of Decision:
+ W.P.(C) 4406/2017
RETIRED OFFICERS WELFARE SOCIETY & ORS .....Petitioner
Through: Ms. Meenakshi Arora and Mr. P.B Suresh, Senior Advocates with Mr. Udayad Banerjee, Ms. Kritika Bhardwaj, Ms. Shub Pandey and Mr. Saday Mandal, Advocates.
versus
INDIAN OIL CORPORATION LTD. & ANR .....Responde
Through: Mr. V.N. Koura and Mr. S. Siris Kumar, Advocates for R1.

+ W.P.(C) 7690/2017 and CM APPLs. 19978/2 55593/2024

PRAMOD KUMAR AGARWAL & ORS ....Petition
Through: Ms. S. Janani, Senior Advocate wit Ms. Sharika Rai and Mr. Firasat Ali, Advoca
versus
INDIAN OIL CORPORATION LTD. & ORS. .....Responde
Through: Mr. V.N. Koura and Mr. S. Siris Kumar, Advocates for R1.
Ms. Pratima N. Lakra, Central Government Standing Counsel with Mr. Chandan Prajap Advocate for R2.
CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
JUDGEMENT

JYOTI SINGH, J.

1. Petitioner No. 1 in W.P.(C) 4406/2017 is Retired Officers Welfare Society of Indian Oil Corporation Ltd. ('IOCL') while Petitioners No. 2 and 3 are individual retired officers. Petitioners in W.P.(C) 7690/2017 are individual retired employees of Mathura Unit of IOCL. Petitioners lay a challenge to impugned Circular dated 19.04.2011 and Office Memorandum dated 01.06.2011 as also Deed of Variance dated 18.05.2011 issued by IOCL, whereby Superannuation Benefits Fund Scheme ('hereinafter referred to as 'SBF Scheme') dated 24.12.1987 was retrospectively modified w.e.f. 01.01.2007. Declaration is sought to declare that all Deeds of Variance making changes to Principal Trust Deed dated 24.12.1987 are illegal and void ab initio. Writ of Mandamus is sought to IOCL to

restore pension benefits to the Petitioners in accordance with the original SBF Scheme calculated on actual salary (Basic Pay + DA) and reckonable years of service as on actual date of superannuation of the members of Petitioner No.1 Society and individual retirees, who superannuated after 01.01.2007. On account of similitude of legal issues with respect to the same SBF Scheme, both petitions were heard together and are being decided by this common judgment.

2. Facts to the extent necessary and as averred in the writ petitions are that Board of Respondent No.1/IOCL vide Board Agenda No.CH/371 in a meeting held on 05.11.1986, passed a resolution approving in principle, the institution of a Self Contributory Superannuation Benefits Fund Scheme ('hereinafter referred to as 'SBF Scheme') on co-operative basis for the employees of the Corporation, as a social welfare measure and to enable the Corporation to attract and retain talent. The proposed scheme was felt necessary as the existing benefits available to employees by way of Provident Fund, Gratuity, Encashment of leave were inadequate to meet the needs of the employees in their post-retirement phase. To secure their retired life, employees conveyed their willingness to contribute part of their salaries and also to forego some of the existing benefits like uniform allowance etc. to contribute indirectly towards the corpus.

3. It is averred that prior to grant of in-principle approval by the Board, a study was made with the help of Consulting Actuaries as to the funding needed for ensuring a guaranteed superannuation benefit @ 40% of the salary (Basic Pay + DA) of the employee upon his retirement with a consideration that an employee would contribute for minimum 32 years of service. Pursuant to Resolution dated 05.11.1986, IOCL through its Director, Director (Finance), Director (Marketing) and Director (R&P) entered into a Memorandum of Understanding ('MoU') dated 07.11.1987 with the representatives of the Indian Oil Officers' Association, for setting up the Self Contributory Superannuation Benefits Fund ('SBF Fund') for the benefit of the employees of the Corporation. The salient features of MoU were nearly similar to the Board Agenda dated 05.11.1986, save and except, the following salient deviations:

> "a). As per Note of Clause 2, Officers having service of less than 5 years for superannuation shall be required to contribute minimum for a period of 5 years. For this purpose, contribution was to be made on monthly basis during the service period and balance was to be paid in lumpsum at the time of superannuation.
>
> b). As per Clause 5, 32 years' service was replaced with 32 [full] years' reckonable service for earning full 40% of benefits.
>
> c). As per Clause 8, no officer was required to contribute for the past service."

4. With the above deviations, an officer superannuating immediately on implementation of the proposed scheme was eligible for the benefit merely by paying contribution for a period of 5 years only. During the initial years of the SBF Scheme, numerous objections were raised by some of the employees especially younger group, who did not want to opt for this Scheme, considering that the proposed contribution including surrender of allowances was not in line with the envisaged benefits. However, the employees were assured that the proposed scheme would provide them a social

security to lead a reasonably comfortable post-retirement life, which was more crucial and important than current benefits. Clause 13 of the MoU provided that if in future, Government of India came up with any Pension/Superannuation Scheme, the same would be introduced in addition to SBF Scheme.

5. By an Internal Office Memo ('IOM') dated 10.11.1987, IOCL formally introduced the SBF Scheme in its different Divisions. The Scheme was made applicable to all officers, new entrants and the promotees from amongst the ranks of non-officers in service as on the date of introduction of the Scheme. It was stated in the IOM that monthly fixed rate of contribution would be in the range of 2% to 5% of the salaries, depending upon the age group and cost towards surrender of the allowances such as Benevolent fund for education, compensation towards rehabilitation of a spouse on death of an officer while in service, Tea/Coffee allowance, washing allowance, uniform allowance etc. would go as contribution to fund the SBF Scheme. In return, SBF Scheme assured 40% of the last drawn salary (Basic Pay + Dearness Allowance) for a reckonable service of 32 years as monthly pension and for lesser period pension was to be pro-rated. IOCL was to pay monthly pensions by purchasing annuities of equivalent value from LIC from the fund accumulated with the Trust.

6. It is stated that pursuant to the MoU, a Trust Deed dated 24.12.1987 was executed and signed between IOCL and the Trustees to form the Indian Oil Employees Superannuation Benefit Fund. The signatories to the Trust Deed were the then Chairman of IOCL and the then Director (Finance) and Director (Personnel) of IOCL as Trustees and the then President of Indian Oil Officers' Association. Although the Scheme was primarily funded by employees' contributions, power to appoint the Trustees rested with the Chairman of IOCL. The number of Trustees was to be kept at minimum of two but not more than nine. Normally, majority of Trustees including Chairman and Secretary were officers of IOCL. Therefore, for all practical purposes, IOCL and the Trustees were one i.e. Trustees were the extended arm of IOCL and worked under the aegis and control of IOCL. In a nutshell, corpus of the Trust was to be used for working the SBF Scheme, which was a self-contributory scheme and the corpus comprised of monthly contributions by employees from their salaries as also costs of allowances surrendered by them.

7. It is averred that in consonance with Rule 16(a)(iii) of the Trust Deed, IOCL was to pay annual contribution as determined by actuarial valuation not exceeding the limit prescribed under Rule 87 of the Income Tax Rules, 1962 i.e. 25% of salary of an employee reduced by employer's contribution towards provident fund. Notably, Rule 4.12 of "Rules and Regulations of Indian Oil Corporation Limited Employees Superannuation Fund" framed as Schedule to the Trust Deed stipulated that the Trustees may at any time by a Resolution and with the consent in writing of the company, but not otherwise, alter, vary or/amend any of the provisions of the rules, provided that subject to Rule 9.2, no such alternation or variation shall be inconsistent with the main objects of the Trust nor shall such alteration or variation in any way prejudice the rights or interests of a member or his beneficiaries. As per Rule 21, no monies belonging to the Fund shall be receivable by the Company under any circumstances nor shall the Company have any lien or charge on the Fund.

8. It is stated that a Deed of Variation was executed on 24.03.1988 wherein provision of contribution by the employer towards cost of Benevolent Fund i.e. Rs. 25/- per month was removed

and a new provision i.e. a token contribution by employer of Rs.100/- per year to the Trust to meet Income-Tax requirements was introduced. Statutory approval of SBF Fund w.e.f. 07.11.1987 was granted by Income Tax Authority, Mumbai vide Order No. B.C.NO.T.II/251/7/87-88 dated 08.04.1988.

9. It is averred that between the years 1987-1995, post signing the MoU with Indian Oil Officers Association, IOCL signed 20 more such Tripartite Agreements through Conciliation proceedings under Section 18(1) of Industrial Disputes Act, 1947 before the respective ALC/RLC/DCCC with various collectives-20 Recognized Unions of IOCL on different dates to cover all the Non-Officers/Staff/Workmen under same social security cover. All these agreements had same/similar provisions like MoU with Officers. Significantly, after implementation of the scheme for all employees, the scheme was also made a part of the service conditions as could be seen from appointment letters as also notifications for filling up vacancies on different posts.

10. It is further averred that on 06.01.1992, a Deed of Variation was executed affecting a change in Rule 18.2(c). Under the earlier Rule, when a member resigned, without completing the qualification service of 15 years, accumulated contribution was to be refunded without interest, however, as per modified Rule, 10% per annum interest was payable. IOCL introduced a monthly ex-gratia payment system w.e.f. 01.12.2003 exclusively for ex-

employees who were not covered by SBF Scheme and to pay the differential amount to those employees who superannuated after introduction of SBF Scheme in 1987 and drawing less than ex-gratia amount payable under the Scheme.

11. It is averred that in the year 2000, to optimize manpower, a lucrative One Time Voluntary Separation Scheme ('OVSS') for the employees of 50 years and above age, was introduced by IOCL. Under this Scheme in addition to almost full salary for the balance period of service, full pension depending upon their reckonable service on that day was also granted. This unplanned mass retirement (about four times the normal average) resulted in temporary shortage of funds. Accordingly, as recommended by Advisory Council, the Trust in its 27th Board meeting held on 03.01.2003 decided that the salaries of the employees for calculation of the pension payable under the SBF Scheme will be frozen as on 01.01.2003. The subsequent increase in the salaries was limited to 7% p.a. for the purpose of calculation of pension. Further, as recommended by Advisory Council, the fund was to be reviewed every six months to take remedial measures.

12. It is averred that pursuant to recommendations of the Justice (Retd.) M. Jagannadha Rao Committee, Department of Public Enterprises ('DPE') vide Office Memorandum dated 26.11.2008 revised the pay scales for Board Level and below Board level Executives and Non-Unionized Supervisors in Central Public Sector Enterprises ('CPSEs') w.e.f. 01.01.2007 for a period of 10 years. CPSEs were allowed to contribute 30% of Basic Pay as superannuation benefits, which may include Contributory Provident Fund ('CPF'), Gratuity, Pension, and post-superannuation medical benefits. DPE vide O.M. dated 02.04.2009, clarified that the 30% limit on the superannuation benefits, would be calculated on Basic Pay plus DA, instead of Basic Pay alone. With the above guidelines of DPE, IOCL after discounting payments made towards PF, Gratuity, and post-retirement medical

benefits from 30% limit was left with around 14% of salary for investment in a new Pension Scheme.

13. It is averred that instead of bringing in the new Superannuation Benefit Fund Scheme (hereinafter referred to as 'SBFS-2') as an additional scheme, as envisaged in Clause 13 of MoU, through its Board Agendas dated 25.01.2011 and 10.02.2011, IOCL resolved to terminate/modify the existing SBF scheme retrospectively w.e.f. 31.12.2006 and introduce SBFS-2 w.e.f. 01.01.2007. It was resolved to freeze the existing superannuation benefits as on 31.12.2006 in respect of each employee who was on roll on that day and was to continue in service, which meant that pension was to be computed taking the reckonable service period and salary (Basic Pay + DA) as on 31.12.2006. It was also resolved that no interest will accrue to the employees on the frozen amount of benefit, which will be paid as pension on actual date of superannuation. This, according to the Petitioners, was contrary to the Actuary Report attached with the Board Agenda dated 25.01.2011, as per which opening balance of the SBF Fund as on 01.04.2011 was Rs.414.64 Crores and thus there was no shortage of fund to continue with the SBF Scheme. Further, albeit direct contribution already received from employees in the period of 01.01.2007 to 31.04.2011 was transferred to individual accounts for purchase of annuity, the indirect contributions were utilized by IOCL to reduce the foreclosure liability.

14. Petitioners aver that the impugned action of IOCL created wide disparity between similarly placed employees who retired before and after 31.12.2006. Employees who retired prior to the cut-off date of 31.12.2006 were paid full benefit (40% of salary) as per reckonable service, whereas for employees superannuating w.e.f. 01.01.2007, the pension reduced drastically. It is brought forth that illustratively, for an officer retiring in January, 2016, pension reduced to as low as 8%, as against the promised pension of 40% salary for 32 years of service.

15. It is stated that the Marketing Division of IOCL through its Circular No. 2011/HR/22 dated 19.04.2011 enforced the changes highlighting that SBF Scheme be frozen as on 31.12.2006 and new defined contribution scheme shall take effect from 01.01.2007. It was also stated that earlier freezing of pension calculation from 01.01.2003 will be withdrawn. This action was contrary to Rule 4.12 of Trust Deed and illegally and arbitrarily, IOCL executed Deed of Variation dated 18.05.2011 with the Trust. Notably, unlike the Trust Deed dated 24.12.1987, this Deed was not signed by the employees' collective and was only signed by the then Chairman of IOCL and the then Chairman of the Trust, who also happened to be Director (Finance) of IOCL.

16. It is stated that pursuant to Resolutions dated 25.01.2011, 10.02.2011 and Deed of Variation dated 18.05.2011, IOCL vide IOM No.DP/3/21/52 dated 01.06.2011 formally brought into force SBFS-2 in place of the SBF Scheme and that too, retrospectively from 01.01.2007. SBFS-2 is a defined contributory scheme wherein employees' contribution was kept at 2% of the salaries and IOCL's contribution was to be 30%, after discounting expenditures towards PF, Gratuity and Post-Retirement Medical benefits, as per DPE Guidelines. Numerous protests lodged by employees and written representations were of no avail despite immense hardships being caused to the employees as they were retiring on reduced pensions.

17. Aggrieved by the impugned decision, Petitioner No. 1 Society along with individual Petitioners approached the Supreme Court under Article 32 of the Constitution of India by way of W.P. (C) No.207/2017 challenging the impugned action, however, vide order dated 10.04.2017, the Supreme Court permitted the Petitioners to approach the High Court and these petitions were filed.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

18. Petitioners contended that the impugned action of IOCL is discriminatory, arbitrary and contrary to Article 14 of the Constitution of India. In the name of modification, SBF Scheme was terminated by IOCL vide Circular dated 19.04.2011, retrospectively. The net effect of the impugned Circular was that while those employees who retired prior to 01.01.2007 were granted full pension at 40% of last salary if they had 32 years of service or in case of lesser service at a proportionate rate but for those like the Petitioners who retired post the cut-off date, their salaries as also reckonable service period was frozen as on 31.12.2006, resulting in drastic reduction of pension due to reduced service and last drawn salary. This created a class within a homogenous class of retirees with no nexus with the object sought to be achieved. Both set of employees performed the same duties and contributed in the same manner to the SBF Fund yet the date of retirement which was a fortuitous circumstance, was taken as a criteria to create this huge disparity and gap and thus the decision deserves to be struck down.

19. Pursuant to Circular dated 19.04.2011, Deed of Variance dated 18.05.2011 was executed by the Trust modifying the earlier Trust Deed and the superannuation benefits were bifurcated into two periods. Benefit of pre-01.01.2007 service period was given as per the Original SBF Scheme, however, the same was kept in the frozen accounts for later payment. Benefit for post 01.01.2007 period was given under SBFS-2 and even if the consolidated pension is to be taken, for most 2006 retirees the pension did not work out to more than 20% of the actual last salary drawn on the date of retirement, against an entitlement of 40% for 32 years of reckonable service or even lesser on pro-rata basis, causing irreparable prejudice.

20. Petitioners invested percentage of their salaries every month into the corpus of the SBF Fund and had also foregone most of their allowances so as to contribute their equivalent value towards the corpus and yet they were meted with the differential treatment. It was mandatory for the Petitioners to become a member of the SBF Scheme and despite resistance most people contributed only because they were assured that they would be given full pension at 40% of the last salary drawn on the date of retirement if they had 32 years of service and the pension will be prorated in case of lesser service. Since Petitioners became members the Scheme and the Fund and contributed over the years their hard earned salaries and allowances, vested rights accrued in their favour to receive pension at the rate assured by the written terms of the SBF Scheme and as per settled law, vested rights cannot be taken away and that too retrospectively. The assured pension under the SBF Scheme was only a deferred payment as a promise under a service contract and this term could not be modified or varied by freezing from an earlier date, either the salary or the reckonable service. Even otherwise, as per terms of the MoU and the Trust Deed, IOCL had no power to alter either of the two and that too, to the detriment of the Petitioners.

21. Almost all members of Petitioner No. 1 Society were founder members of the SBF Scheme and the Trust and contributed towards the corpus, for decades. Members who superannuated prior to 01.01.2007 obviously contributed less towards the Trust but were given full benefits whereas members like the Petitioners who superannuated much later, were given meagre pensions. In fact, those employees who superannuated immediately after introduction of the SBF Scheme itself in 1987 were given full benefit on their total contribution for a period of just five years. This artificial division is completely irrational and arbitrary.

22. SBFS-2 was introduced pursuant to recommendations of Justice Rao Committee w.e.f. 01.01.2007 and was essentially employer's contribution scheme with an objective that those employees retiring post 01.01.2007 who were getting lesser pensions should get enhanced pensions with the increase in wages, but the objective was wrongly construed by IOCL and instead of enhancing the benefits, IOCL modified the original Scheme to reduce the pensionary benefits. Clause 13 of MoU dated 07.11.1987 clearly provided that any future Government Scheme for pension would only be in addition. Moreover, minimum service of 15 years was the criteria under SBF Scheme and Petitioners had already completed the eligibility period and therefore, it was not open to IOCL to introduce an artificial distinction and cut-off date to deprive the Petitioners of the benefits under the earlier Scheme. Reliance was placed on the judgment in State Bank of India v. L. Kannaiah and Others, (2003) 10 SCC 499, wherein the Supreme Court held that when the employees had completed minimum qualifying service, the benefits of pension could not be denied on the basis of a new scheme conferring a new benefit. Pension is not a bounty of the State but is a benefit that an employee earns by dint of long, continuous, dedicated and unblemished service and any artificial date creating a classification between a homogenous class of employees cannot be sustained in law as held by the Supreme Court in D.S. Nakara and Others v. Union of India, (1983) 1 SCC 305.

23. IOCL has mainly predicated its case on the Presidential Directive issued through the DPE O.Ms. Firstly, none of these O.Ms. compelled IOCL to apply the superannuation schemes envisaged by the Government of India in derogation of the existing Schemes and/or to prematurely terminate the SBF Scheme and that too with a retrospective effect. IOCL was certainly free to introduce the new scheme as per DPE Guidelines but the same could be in addition only and this could be achieved by IOCL by simply harmonising the old and the new schemes taking upon itself the burden of contributing 30% to the corpus as per the DPE O.Ms. and the old scheme would have run its course. The two Schemes were entirely different as SBF Scheme was an employee-centric Scheme with entire contribution coming from the employees while SBFS-2 was employer-centric, entailing 30% contribution from the CPSE concerned. There is nothing in the DPE O.Ms. which could be interpreted as a directive to IOCL to discontinue the employee's self-contributory schemes. Moreover, even under the MoU, there was no power with the Trustees to fix a cut-off date and Clause 10 provided a limited power that Trustees may review the availability of funds annually to decide whether any revision was required in the maximum entitlement and/or in the rate of the contributions.

24. The entire counter affidavit of IOCL is based on the alleged depleting funds of the corpus of the SBF Fund running the SBF Scheme and it is repeatedly stated that the SBF Fund was unviable.

Firstly, this is factually incorrect. Minutes of Board Agenda dated 25.01.2011 clearly record that the opening balance of the SBF Fund as on 01.01.2011 was Rs.414.64 crores and it was noted that the Fund was viable as also that the contribution was sufficient to keep the Fund viable and running. Secondly, the Board Agenda does not reflect that the viability of the SBF Fund was the reason to introduce SBFS-2 and a plain reading only indicates that in order to follow the directives of DPE, by a reverse engineering method IOCL found a way to create an artificial shortfall, which did not exist and justify modification of the SBF Scheme, retrospectively. Even the figure of Rs.2224.84 crores was wrongly shown as a shortfall, calculated on an assumption that all employees would superannuate on 31.12.2006, which is not how a pension fund works. Assuming a shortfall, under Clause 16(a)(ii) of the Deed of Variation dated 24.03.1988, IOCL was under an obligation to contribute additional amount to maintain the viability of the Fund.

25. The shortfall, if any, was a result of mismanagement of the funds in the Trust and the methodology adopted to give effect to DPE O.Ms. as also working on assumptions on the disbursement of pension under the Scheme. Firstly, it was erroneously assumed that increase of wages from 01.01.2007 would deplete the fund, overlooking that there would be a proportionate increase in the contributions from the salaries and allowances. To compound, IOCL unilaterally refunded a sum of Rs.114.02 crores and credited the same to individual accounts of employees under SBFS-2. To adjust its liability created deliberately by foreclosure of the SBF Scheme, it took away Rs.432.31 crores, which was lying in the SBF Fund as an indirect contribution of the employees in lieu of uniform allowance. Additionally, IOCL in this period introduced the Scheme of ex-gratia payments as also voluntary retirement scheme, leading to mass retirements of employees and resultant payment of terminal benefits, but this could not be done at the cost of the Petitioners, who had rights under the old Scheme to receive a certain quantum of monthly pension.

26. Learned Senior Counsels referred to actuary reports and produced a graph to demonstrate that the fund was viable and the old scheme ought to have continued in the original form and also relied on the following judgments:-

> (A) Proposition: Rights of employees to receive benefits such as pension cannot be contingent on the fortuitous circumstance of the date of joining of an employee if the joining is beyond the control of the employee.
>
> (a). Avinash Singh & Ors. v. Union of India & Ors., 2011 SCC Online Del 2432;
>
> (b). Naveen Kumar Jha v. Union of India and Others, 2012 SCC Online Del 5606;
>
> (c). Inspector Rajendra Singh & Ors. v. UOI & Ors., 2017 SCC Online Del 7879; and
>
> (d). Naresh Kumar v. Union of India and Others, 2018 SCC Online Del 13015.
>
> (B) Proposition: An amendment having retrospective operation which has the effect of taking away a benefit already available or accrued to an employee under the existing rule is arbitrary, discriminatory and violative of rights under Articles 14 and

16 of the Constitution of India.

(a). Punjab State Cooperative Agricultural Development Bank Limited v. Registrar, Cooperative Societies and Others, (2022) 4 SCC 363;

(b). Chairman, Railway Board and Others v. C.R. Rangadhamaiah and Others, (1997) 6 SCC 623; and

(c). State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others, (2016) 10 SCC 77.

(C) Proposition: Article 14 of the Constitution of India forbids class legislation but permits reasonable classification, which classification must satisfy the twin tests i.e. classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who are left out and the differentia must have a rationale nexus to the object sought to be achieved. While a cut-off date can be fixed by the employer, but same cannot be arbitrary and that pensioners form a homogenous class.

(a). D.S. Nakara (supra); and

(b). All Manipur Pensioners Association by its Secretary v. State of Manipur and Others, (2020) 14 SCC 625.

SUBMISSIONS/ARGUMENTS ON BEHALF OF THE IOCL:

27. Absent any pension scheme in IOCL prior to 1987, its officers represented by the Indian Oil Officers Association, sought to create a superannuation benefit fund scheme to which employees of IOCL were to fully contribute to create a corpus for purchasing annuities on the retirement of employees so as to provide a defined benefit pension linked to the salaries of the retiring employees of IOCL. In this regard, officers and employees of IOCL desired that a Fund should be set up, administered and controlled by the Trustees. Accordingly, in November 1986, for the limited purpose of providing administrative support and infrastructure to setup, operate and maintain such a Fund, the Board of Directors of IOCL passed a resolution approving in-principle the Scheme of its employees for constitution of their own self-contributory superannuation fund on a clear understanding that there would be no resultant financial burden on IOCL.

28. Consequently, an MoU was executed and signed on 07.11.1987 between IOCL and its officers and a Trust was formed to administer the Fund and to provide defined pension as per the scheme, which was envisaged to be sustainable out of contributions by the employees, who would contribute out of their salaries and allowances, but with no contribution by IOCL. Only for Income Tax exemption, a token contribution of Rs.100/- was fixed to be paid by IOCL to the Trust. Pursuant to MoU, SBF Fund was formed through a Trust Deed dated 24.12.1987. The SBF Scheme had the following main features:

"(a) The employees would contribute of the SABF Fund as follows:

Direct contribution: Ranging from 2% to 5% of employee's salary depending on the age group;

Indirect contribution: Benefits/amount surrendered by employees for contribution to the SABF Fund like tea/coffee allowance. Washing allowance, Uniform, benevolent fund for education, etc.

(b) Except for the token contribution of Rs.100/- per annum required to sustain the Income Tax Exemption to the SBF Trust, the Respondent No. 1 Corporation had no financial liability or obligation to contribute to the SABF Fund.

(c) The role of the Respondent No. 1 Corporation was limited to providing administrative support by making deductions from the employee's salary and allowances and benefits as agreed and depositing the same in the SABF Fund.

(d) Superannuation Benefits through the SABF Fund would be available only to employees who retired after November 7, 1987."

29. Employees who superannuated before 07.11.1987, challenged the SBF Scheme as being discriminatory by filing a Writ Petition in the Bombay High Court titled V.R. Hiremath and others v. Indian Oil Corporation and others, 2002 SCC Online Bom 23, but the petition was dismissed holding that they could not be given membership of the Scheme. The Scheme continued to run as per the Rules and Regulations governing the Trust and SBF Fund, however, later in 2001, it was realised that the monies available in the Fund were not sufficient to purchase annuity policies to provide maximum pension benefits envisaged in the SBF Fund. Trustees had the power under Rule 9.2 to review the availability of funds and modify the SBF Scheme/Trust. Rule 9.2 is as follows:

"9.2 The Trustees shall review the availability of funds of the scheme annually or at such intervals as may be deemed fit by the Trustees and to decide any revision in the maximum benefit or rate of the employees contribution under the Scheme."

30. To obtain an actuarial valuation of the liability and the additional funds required to be contributed, if the current maximum benefits were to be maintained or increased, M/s K.A. Pandit, Consultant Actuary, was engaged and the Actuary found that there was a huge gap between funds currently available in the corpus of SBF Fund with future contributions at current rate and the funds required to meet liabilities of pension of the then existing employees at the current rate of maximum pension. It was found that the total fund required to meet the cost of purchasing annuities at the current level of benefits for the present employees would be Rs. 1881.50 crores. As against this, the SBF Fund had a current corpus of only Rs.107 crores. The contributions to the fund by the employees during the period for which the liabilities of the Trust had been calculated would be Rs.211.661 crores out of salary of the employees and Rs. 201.5265 crores out of the fixed allowances making a total corpus of Rs.520.1875 crores (i.e. Rs.107 crores + Rs.211.661 crores + Rs.201.5265

crores), leaving a shortfall or gap of Rs.1361.48225 crores between availability of funds in the SBF Fund and the liabilities of the Fund to meet the current maximum pension benefits fixed. In order to fund this shortfall, it was recommended that either the fixed contributions would have to immediately increase from Rs.450/- per employee per month to Rs.1700/- per employee per month, with an acceleration @ 10 % per annum, or the variable contributions would have to be increased by 7.5 times of the present variable contribution, if the current level of maximum benefits was to be retained. Alternatively, either the past service benefit had to be frozen or the current level of maximum benefits would have to be curtailed. The shortfall reflected in this Actuarial Report was in substance confirmed by a second Actuarial Report prepared by Ms. A.V. Ganapathy, another Actuarial Consultant for the Trust.

31. The shortfall in the SBF Fund was discussed by the Trustees, which included 5 Trustees (out of total 9 Trustees), who were representatives of collectives/unions of employees, in the meetings of the Trustees held on 30.12.2002 and 03.01.2003 and it was decided that in order to improve the financial viability and run the SBF Scheme, salaries of the employees for the purpose of computing the maximum benefit of pension under the Scheme could be frozen as on 01.01.2003 with a cap of 7% per annum applied on any subsequent increase in the salaries for the purpose of calculating the pension. Accordingly, all employees who superannuated from 01.01.2003 onwards were provided Annuity Policies purchased by the Trust from the SBF Fund on superannuation, in accordance with the revised benefits based on salaries frozen as on 01.01.2003 and a cap of 7% on increase in salaries thereafter, for the purpose of computing pension.

32. By the years 2010/2011, it became apparent that it would not be financially possible for the Trust to continue to fund even the revised benefits on the existing rates of employees' contributions and some solution had to be found if the SBF Scheme was to continue and sustain in any form. Prolonged discussions were held with the actuaries and employees' collectives and it was decided as follows:

> (i) The SBF Scheme would be continued only for employees on the rolls of the IOCL as on 01.01.2011;
>
> (ii) The benefits/pension to be paid @ 1.25% for each year of reckonable and pensionable service upto 31.12.2006; and
>
> (iii) Salaries to be reckoned for calculation of the pension would be salaries payable to the employees as on 31.12.2006.

33. M/s. K.A. Pandit, Actuarial Consultants, was tasked to make an actuarial valuation of the funds required to meet the shortfall between the liabilities of the SBF Fund for pension for the existing employees based on 1.25% of the monthly salary drawn by the existing employees as on 31.12.2006 for each year of reckonable and pensionable service as on 31.12.2006 and the funds/corpus available in the SBF Fund. M/s. K.A. Pandit submitted its Report dated 29.11.2010, which indicated that there was a shortfall of Rs.2224.84 crores between the funds available in the SBF Fund and the funds required to purchase annuities for the retired and retiring employees for pension @ 1.25% for each

year of reckonable and pensionable service rendered upto 31.12.2006 payable on the salaries drawn by them as on 31.12.2006. If this shortfall of Rs.2224.84 crores was to be funded immediately through one-time lumpsum payment, the discounted value of the funds immediately required to be provided to the corpus of the SBF Fund for investment at an anticipated return of the 10.95% per annum, would work out to Rs.1123.51 crores.

34. The date of 31.12.2006 was thus fixed for calculating the liability of the said SBF Fund and the rationale for fixing this cut-off date was that w.e.f. 01.01.2007, there was a very steep increase in the salaries and benefits payable to the officers and other employees of IOCL, pursuant to wage revision decision by DPE for all CPSEs. If pension was to be based on the revised salaries, the SBF Fund would not have had the money to meet the liability and the continuation of the SABF Fund and Scheme in any form would have been financially and practically unworkable and impossible. When SBFS-2 was introduced by IOCL, employees' collectives did not come forward with any proposal where the employees were willing to bear the burden of either funding the continuation of the earlier SBF Scheme in any form or funding in instalments the shortfall of Rs.2224.84 crores, or of making, in the alternative, a onetime lump sum contribution of Rs.1123.51 crores, required to fund the shortfall in the existing SBF Fund to meet even the pension liabilities frozen as on 31.12.2006.

35. IOCL was, therefore, faced with the dilemma of either permitting the SBF Scheme to perish, resulting in the existing employees who had contributed to this SBF Fund being left without any pension or meagre pension or to make a one-time lump sum voluntary contribution of Rs.1123.51 crores to the Fund to enable the SBF Fund to continue to provide pension benefits to its existing employees based on the salaries drawn by them on 31.12.2006 and on the reckonable service upto that date.

36. Consequently, there were deliberations aimed at ensuring that the employees who had contributed to the SBF Fund should get some pensionary benefit for their contributions. As a result of these deliberations, it was decided to request the Board of Directors of IOCL to authorize a onetime lump sum voluntary contribution of Rs.1123.51 crores by the IOCL to the existing SBF Fund of the employees so that all employees on the rolls of the IOCL as on 31.12.2006 could get pension out of the SBF Fund based on their salaries and reckonable and pensionable service as on 31.12.2006. Board of Directors at a meeting held on 10.02.2011 approved the one-time lumpsum voluntary contribution by IOCL and the same was given, envisaging that this would help tide over the crisis. In the meeting held on 18.04.2011, it was decided to continue the SBF Fund and the SBF Scheme but with benefits based on salaries drawn and reckonable and pensionable period as on 31.12.2006.

37. From 01.01.2007, the pay and allowances in CPSEs were revised for a period of 10 years as they were due for review, pursuant to O.M. dated 26.11.2008 issued by DPE. O.M. dated 02.04.2009 was issued by DPE making certain revisions/changes and giving clarifications in respect of the emoluments fixed by O.M. dated 26.11.2008 and by a binding and mandatory Presidential Directive dated 21.04.2009, IOCL was directed to implement the O.Ms. A salient feature of the revised pay and allowances covered by the Presidential Directive was incorporated in para (v) of Annexure IV of the DPE's O.M. dated 26.11.2008, which provided as follows:

> "(v) Superannuation Benefits: CPSEs would be allowed 30% of Basic Pay as Superannuation benefits, which may include Contributory Provident Fund (CPF), Gratuity, Pension and Post - Superannuation Medical Benefits. The CPSEs should make their own schemes to manage these funds or operate through insurance companies on fixed contribution basis. The amount of Pension, Gratuity and Post-Retirement Benefit will be decided based on the returns from the schemes to be operated. The Pension and Medical benefits can be extended to those executives, who superannuate from the CPSE and have put in a minimum of 15 years of service in the CPSE, prior to superannuation."

38. The DPE's O.M. dated 02.04.2009 in para 2 (ii) also provides as follows:

> "2(ii) Superannuation Benefit: The ceiling of 30% towards superannuation benefits would be calculated on Basic Pay plus DA instead of Basic Pay alone. Any superannuation benefit will be under a "defined contribution scheme" and not under a "defined benefit scheme". CPSEs that do not have superannuation scheme, may develop such scheme and obtain the approval of their Administrative Ministry. However, no other superannuation benefit can be granted outside this 30% ceiling, (para 12, Annex (V(v) of O.M. dated 26.11.2008 refers)"

39. Pursuant to the Presidential Directive, IOCL was bound to contribute upto 30% of Basic Pay and Dearness Allowance towards superannuation benefits, comprising of Provident Fund contribution, Gratuity, Post- Superannuation Medical Benefits and a defined contribution pension scheme (annuity based) and accordingly, it formulated the SBFS-2, which was "defined contribution scheme" as opposed to "defined benefit scheme", as earlier floated by its employees. IOCL decided to contribute to this new Pension Scheme each year the balance funds available out of the said 30% limit after accounting for employer's contribution towards Provident Fund, liability for payment of gratuity and the cost for providing Post Retirement Medical Benefits to its employees.

40. It was, therefore, decided by the IOCL that an amount equivalent to 14.62% (subject to review each year of the actual cost of Provident Fund, Gratuity and Post Retirement Medical Benefits), would be set aside for providing defined contributions by IOCL for providing annuity based pension to the employees of IOCL on its rolls as on 01.01.2007 and thereafter. In line with above, the actuarial valuation is carried out each year to determine the contribution, within the overall ceiling of 30% of Basic Pay and Dearness Allowance. The contribution and the resultant fund was to be run and managed by the Trust, under a fresh defined contribution pension scheme floated w.e.f. 01.01.2007, under which -

> "a) An account for each employee will be opened under the Scheme like PF Account from 1.1.07.
>
> b) The Company's contribution as per DPE guidelines which would come out of 30% of Basic Pay + DA after adjusting the contribution made against Provident Fund Scheme (i.e. 12% of Basic Pay + DA), Gratuity Scheme (i.e. 1.01% of Basic Pay + DA)

and Post-Retirement Medical Attendance Scheme (i.e. 2.37% of Basic Pay + DA) will be credited to the individual employee's account.

c) The Superannuation Benefit Fund would be managed by the existing Trustees through investment as per Income Tax rules. Interest earned on the fund will be credited to the individual employee's account every year just like Provident Fund account.

d) At the time of superannuation, annuity will be purchased for the balance in the individual's account as on the date of superannuation under the Respondent Corporation's defined Contribution Superannuation Scheme."

41. Board of Directors of IOCL accordingly, approved and resolved in the meeting held on 10.02.2011, for creation of the new defined contribution scheme w.e.f. 01.01.2007 i.e. SBFS-2, to which IOCL would contribute approximately 14.62% of the Basic Pay and Dearness Allowances, payable to each employee or such other sum as may be available in any year within the 30% ceiling permitted. Pursuant thereto, a Deed of Variation was executed on 18.05.2011 by IOCL and the Trustees of the Trust, with a view to incorporate the changes and provide maximum benefits available under the existing SBF Fund and Scheme of its employees and to introduce the new defined contribution scheme to provide additional superannuation recurring benefits/pension to its employees retiring on and after 01.01.2007.

42. Consequently, employees of IOCL in service retiring on or after 01.01.2007 were and are getting two pensionary benefits: (a) The Annuity Policy being purchased for providing the defined pension benefits under the 1987 employees SBF Fund and Scheme as frozen on 31.12.2006 (reckoning period of service as laid down under the 1987 SBF scheme not exceeding 32 years upto 31.12.2006); and (b) Annuity Policy, which could be purchased for an employee on his retirement from the monies standing in his credit in his account as established and as contributed by IOCL under the new defined SBFS-2 operating from 01.01.2007.

43. Petitioners have no right to pension under the SBF Fund, except the benefits determined by the Trustees of the Trust from time to time in accordance with Rule/Regulation 9.2 of the Trust Deed, depending on the monies available in the SBF Fund. Present petitions for grant of greater pension benefit from SBF Fund than those determined by the Trustees of the Trust depending on the monies available in SBF Fund are not only beyond the means and basic concept of SBF Fund and Scheme framed thereunder but are also without any legal or vested rights. Insofar as Clause 13 of MoU is concerned, Government of India did not introduce any pension/ superannuation scheme for Public Sector employees and any argument on this is irrelevant.

44. Prior to 01.01.2007, it was believed that freezing the maximum benefits of pension under SBF Scheme of 1987 on the salary drawn as on 01.01.2003 with a cap of 7% per annum on subsequent increases in salary, would render SBF Fund/Scheme viable even with the employees' contributions remaining at the same level. However, this scenario changed after the revision of pay scales w.e.f. 01.01.2007. The pay revision w.e.f.

01.01.2007 (which was implemented during 2009) introduced a sea change in the employees' ability to contribute to SBF Fund and the Scheme, through uniform, tea and washing allowances, which constituted the major contribution of the employees to the SBF Fund prior to 2007. While there was no limit on the allowances which could be drawn by employees prior to 2007 without affecting the take home pay, after 01.01.2007, however, a limit of 50% of basic pay was placed on the allowances which could be drawn by the employees on a cafeteria basis. This permitted the employees to choose the allowances which they wished to draw within the said 50% limit. Had the employees chosen to continue the uniform, tea and washing allowances and to contribute these to SBF Fund, this would have had an impact on their take home pay. The employees were, therefore, unwilling to continue their contributions to the SBF Fund through the uniform, tea and washing allowances as before, since this would affect their total take home pay. This was one of the major reasons why, after 01.01.2007, the employees were unwilling to continue to fund and support the SBF Fund, which would have called for even larger contributions forms the employees, if the SBF Fund was to provide pension based on revised salaries.

45. Employees have not contributed to the SBF Scheme Fund after 01.01.2007. If the employees' collectives wish to sustain their SBF Scheme to provide maximum defined benefits on the revised salaries actually drawn by them on the dates of their superannuation, an actuarial valuation undertaken indicates that an additional amount of Rs.20,483.77 crores would have to be contributed by the employees retiring from and after 01.01.2007 to draw such benefits based on existing salaries. If the Petitioners and the employees' collectives are willing to make these contributions, SBF Fund and Scheme of the employees would have the finances required to purchase the annuity policies to provide the pension under this SBF Fund and Scheme as sought by the Petitioners, based on current rates of salaries. This figure of employees' contribution will increase if there is any further increase in salaries or in annuity rates. Unless such additional contributions are made by the employees, the demands for enhanced pension as claimed by the Petitioners from the self- contributory SBF Fund/Scheme of the employees are wholly financially unsustainable and misconceived.

46. Learned counsel for IOCL relied on the following judgments:-

(a) State of West Bengal and Others v. Ratan Behari Dey and Others, (1993) 4 SCC 62;

(b) Union of India v. P.N. Menon and Others, (1994) 4 SCC 68;

(c) State of Rajasthan and Another v. Amrit Lal Gandhi and Others, (1997) 2 SCC 342;

(d) T.N. Electricity Board v. R. Veerasamy and Others, (1999) 3 SCC 414;

(e) State of Punjab and Another v. J.L. Gupta and Others, (2000) 3 SCC 736;

(f) V.R. Hiremath (supra); and

(g) L. Kannaiah (supra).

ANALYSIS AND FINDINGS

47. Heard learned Senior Counsels for the Petitioners and learned counsels for the Respondents and examined their rival submissions.

48. Undisputed facts are that Board of IOCL in a meeting held on 05.11.1986 resolved for introduction of SBF Scheme for employees of IOCL as a social welfare measure and to enable the Corporation to attract and retain talent. This was in light of the fact that existing retiral benefits such as provident fund, gratuity, encashment of leave etc. were inadequate to meet the needs in the post-retirement period and considering this to be a welfare measure, employees conveyed their willingness to contribute to the Scheme. Basis the Resolution, IOCL entered into an MoU dated 07.11.1987 with the representatives of Indian Oil Officers' Association for setting up the SBF Scheme and pursuant thereto SBF Fund was formed through a Trust Deed dated 24.12.1987.

49. Admittedly, this was a self-contributory and self-sustaining Scheme with 'defined benefits' which were to be paid at the time of superannuation of employees. It is also an admitted fact that employees made direct monthly contributions to the Fund at the rate of 2% to 5% of their salaries (Basic Pay + DA) based on age profiles and indirect contributions by surrendering various allowances such as uniform, tea/coffee, washing, rehabilitation grant given to the spouse on the death of the employee, etc. IOCL made no contribution, save and except, a token contribution of Rs.100/- per annum to sustain the income tax exemption to the SBF Trust. Importantly, the SBF Scheme envisaged and assured a post-retirement monthly pension of 40% of the last drawn salary for a period of guaranteed 15 years or death of the employee, whichever was later for a reckonable service of 32 years. For lesser service, pension was prorated. Minimum qualifying service to become entitled for the benefits under the Scheme was 15 years which included minimum of 5 years service after introduction of the SBF Scheme, save and except, in the case of death/permanent disablement. In case, an employee with less than 15 years' service resigned from service, his contribution from salary was to be refunded without interest.

50. The other salient features of the SBF Scheme were that the recurring benefit was not linked to inflation or consumer price index and monthly benefit once fixed at the time of superannuation based on the annuity amount, remained fixed for all time. Annuities were purchased from Life Insurance Corporation of India under the standard option i.e. life time of the member with guaranteed benefit for 15 years. Employee had an option to commute 1/3rd pension on superannuation. Clause 13 of MoU provided that in case Government of India came out with a Pension/Superannuation Scheme, meant in general for all Public Sector employees, the Government Scheme will be introduced in addition to SBF Scheme.

51. A Trust Deed was thereafter executed and signed on 24.12.1987 between IOCL and the Trustees to form SBF Fund and signatories of the Deed were Chairman of IOCL for IOCL and Director (Finance) and Director (Personnel) on behalf of the Trustees and President of Indian Oil Officers' Association. The Trust fund was to be used for the SBF Scheme as the Scheme was primarily

self-contributory. Rule 4.12 of Rules framed as Schedule to the Trust Deed provided that the Trustees may at any time by a Resolution and with consent in writing of the company, alter, vary, or amend any of the provisions of the Rules provided that subject to Rule 9.2, no such alteration or variation shall be inconsistent with the main objects of the Trust nor such alternation or variation in any way prejudice the rights or interests of a Member or his beneficiary and shall not be without prior approval of the Commissioner, Income Tax. Rule 21 provided that no monies belonging to the Fund shall be received by the Company nor shall the Company have any lien or charge on the Fund and the termination of the Trust could only be for reasons specified in Rule 23. Statutory approval of the Fund was granted by Income Tax Authorities on 08.04.1988. After implementation of the SBF Scheme, the same was made a part of the service conditions and this was notified in the vacancy notices while conducting recruitments and can be seen from the appointment letters of some employees.

52. Subsequent thereto, a Deed of Variation was executed on 06.01.1992 with some minor changes, which are not relevant for the present case. On 19.12.2003, IOCL introduced monthly ex-gratia payment system for ex- employees not covered by the SBF Scheme and to pay differential amount to those who superannuated after introduction of the SBF Scheme in 1987 and were drawing less than the ex-gratia amount under the Scheme. To optimise manpower, OVSS was introduced by IOCL for employees of 50 years and above and in addition to almost full salary for balance period of service, full pension depending on reckonable service was to be granted. This led to unplanned mass retirements and temporary shortage of fund. On recommendation of Advisory Council, the Trust in its 27 th Board Meeting held on 03.01.2003, decided to freeze the salary component under the SBF Scheme as on 01.01.2003 and subsequent increase in salaries was capped at 7% per annum. Another development took place in this period where pursuant to recommendations of Justice (Retd.) M. Jagannadha Rao Committee, DPE vide O.M. dated 26.11.2008 revised the pay scales for below Board level and Board level Executives and non-unionized Supervisors in CPSEs w.e.f. 01.01.2007 and CPSEs were to contribute 30% of Basic Pay as superannuation benefits including CPF, gratuity, pension and post-superannuation medical benefits. By O.M. dated 02.04.2009, it was clarified that 30% limit would be calculated on Basic Pay + DA.

53. According to IOCL, there was already a shortfall in the Fund from 2001 as reflected from several Actuarial Reports which worsened with time and as per the report by M/s. K.A. Pandit rendered on 29.11.2010, there was a shortfall of Rs.2224.84 crores between the fund available in the SBF Fund and the fund required to purchase annuities for the retired and retiring employees for pension at the rate of 1.25% for each year of pensionable service rendered upto 31.12.2006, which had to be funded immediately through one-time lump sum payment and with increase in wages from 01.01.2007, it was decided by the Trustees in the meeting held on 18.04.2011 to continue the SBF Scheme and SBF Fund with benefits based on salary drawn and reckonable and pension service as on 31.12.2006. The salient features of the minutes are as follows:-

> "a) The freeze imposed on salary and service period for computation of benefit from 01.01.2003 as per Resolution passed in the Trust meeting held on 03.01.2003 shall stand withdrawn from 01.01.2003. Benefit to employees shall be payable at the rate of annuity calculated at 1/80th of Salary as on the date of superannuation or as on

31.12.2006, whichever is earlier for every completed year of reckonable service upto the date of superannuation or till 31.12.2006, whichever is earlier subject to maximum service being restricted to 32 years.

b) The maximum benefit payable under (i) a) hereinabove would be @40% of the Salary based on reckonable service of full 32 years. For reckonable service of less than 32 years, the benefit would be proportionately less.

This provision shall apply only in those cases where the employee was enrolled under the Scheme prior to 01.01.2007.

c) The monthly benefit as notionally accrued on 31.12.2006 but due on attaining the age of superannuation shall be frozen in respect of each employee on roll as on 31.12.2006 and continued in service thereafter.

d) The Reckonable Service of an employee shall include past service of that employee upto 01.01.1989 in respect of employees of erstwhile IBP Co. Limited or upto 01.12.2003 in respect of employees of erstwhile Bongaigaon Refinery and Petrochemicals Limited, discounted at the rate of one percent for each year of such service, plus the actual period of service of that employee put in after the date when he joined the fund upto 31.12.2006.

e) The monthly benefit nationally accruing on 31.12.2006 in respect of members of erstwhile IBP Co. Limited Superannuation Fund and erstwhile BRPL Employee Superannuation Benefit Fund shall be worked out based on the provisions of their respective SBF schemes prevailing before merger of their fund with IOCL SBF and frozen in the manner explained above.

f) In respect of employees retired during 01.01.2003 to 31.12.2006 and in receipt of monthly benefit by self or by the beneficiary(s) after the death of the retired employee, benefit shall be revised based on the salary and period of service as on the date of retirement. Such differential benefit shall however be paid prospectively. There shall be no review of benefit in the cases where no such monthly benefit is being received and return of capital has been settled by LIC."

54. According to IOCL, bound by the Presidential Directive issued by way of DPE O.Ms. dated 26.11.2008 and 02.04.2009, it introduced the SBFS-2 which was a 'Defined Contribution Scheme' as opposed to 'Defined Benefit Scheme' existing then. Under SBFS-2, IOCL decided to contribute an amount equivalent to 14.62% for providing annuity based pension to employees on rolls as on 01.01.2007. The salient features were as follows:-

"a) An account for each employee will be opened under the Scheme like PF Account from 1.1.07.

b) The Company's contribution as per DPE guidelines which would come out of 30% of Basic Pay + DA after adjusting the contribution made against Provident Fund Scheme (i.e. 12% of Basic Pay + DA), Gratuity Scheme (i.e. 1.01% of Basic Pay + DA)

> and Post-Retirement Medical Attendance Scheme (i.e. 2.37% of Basic Pay + DA) will be credited to the individual employee's account.
>
> c) The Superannuation Benefit Fund would be managed by the existing Trustees through investment as per Income Tax rules. Interest earned on the fund will be credited to the individual employee's account every year just like Provident Fund account.
>
> d) At the time of superannuation, annuity will be purchased for the balance in the individual's account as on the date of superannuation under the Respondent Corporation's defined Contribution Superannuation Scheme."

55. Pursuant to decision dated 18.04.2011 and Circular dated 19.04.2011, a Deed of Variation was executed on 18.05.2011 by IOCL and the Trustees to incorporate the changes and under SBFS-2, employees of IOCL in service who retired on or after 01.01.2007 were entitled to two pensions from: (a) annuity policy purchased for providing benefits under the SBF Scheme as chosen on 31.12.2006; and (b) annuity policy which would be purchased on retirement from the monies standing to the credit of an employee in his account as established and as per the contribution by IOCL. These decisions of IOCL led to the present writ petitions being filed.

56. The long saga and sufferings of the Petitioners in this case reminds me of a passage from the judgment of the Supreme Court in D.S. Nakara (supra), and I quote:-

> " With a slight variation to suit the context Woolesey's prayer: "had I served my God as reverently as I did my King, I would not have fallen on these days of penury" is chanted by petitioners in this group of petitions in the Shellian tune: "I fall on the thorns of life I bleed". Old age, ebbing mental and physical prowess, atrophy of both muscle and brain powers permeating these petitions, the petitioners in the fall of life yearn for equality of treatment which is being meted out to those who are soon going to join and swell their own ranks."

57. Coming back home, the vexed questions that arise for consideration in this case are: (a) do pensioners entitled to receive retiral pension under a particular scheme or rule form a class as a whole? (b) is the date of retirement a relevant consideration and enough to meet out a differential treatment to pensioners forming a homogenous class? and (c) does the discontinuation of the SBF Scheme for those retiring post 01.01.2007 resulting in considerable reduction of pension, violates Article 14 of the Constitution of India? Almost similar questions arose before the Supreme Court in D.S. Nakara (supra) and it would be apposite to refer to the observations of the Supreme Court in this context:-

> "2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ("1972 Rules", for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified

> date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-

economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.

xxx xxx xxx

9. Is this class of pensioners further divisible for the purpose of "entitlement" and "payment" of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual government servant happens to fall. In other words, all government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Article 14?

10. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621] from which the following observation may be extracted: (SCC pp. 283-84, para 7) "[W]hat is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or nonarbitrariness pervades Article 14 like a brooding omnipresence...."

11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of

permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279, 296 : 1959 SCJ 147]). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

xxx xxx xxx

13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case [(1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621] in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555 : (1974) 2 SCR 348 : (1974) 1 LLJ 172] it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para

85) "From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case [(1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621] as under at SCR p. 728: (SCC p. 342, para 94) "That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' -- if we may use current cliche -- can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you. [(1978) 1 SCC 248 :

AIR 1978 SC 597 : (1978) 2 SCR 621] "

Affirming and explaining this view, the Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : (1981) 2 SCR 79 : (1981) 1 LLJ 103] held that it must, therefore, now be taken to be well settled that what Article

> 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India v. Nergesh Meerza [(1981) 4 SCC 335 : 1981 SCC (L&S) 599 : 1981 UPSC 137 : (1982) 1 SCR 438AIR 1981 SC 1829 : (1981) 2 LLJ 314] the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

xxx xxx xxx

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.

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 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] 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 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360] xxx xxx xxx

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been

judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. 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. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence, 2d, 881).

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

xxx xxx xxx

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 10 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."

58. I may also allude to the judgment in All Manipur Pensioners Association (supra), wherein the Supreme Court was dealing with classification of retirees based on a formula of pension whereby those retiring prior to 01.01.1996 were given a lower rate of revised pension compared to those retiring after the said date and the Supreme Court held that the classification had no reasonable nexus to the objectives sought to be achieved while revising the pension as all pensioners formed a single class. Relevant paragraphs are as under:-

> "2. The facts leading to the present appeal in a nutshell are as under: that the State of Manipur adopted the Central Civil Services (Pension) Rules, 1972, as amended from time to time. As per Rule 49 of the Central Civil Services Rules, 1972, a case of a government employee retired in accordance with the provisions of the Rules after completing qualifying service of not less than 30 years, the amount of pension shall be calculated at 50% of the average emoluments subject to a maximum of Rs 4500 per month. It appears that considering the increase in the cost of living, the Government of Manipur decided to increase the quantum of pension as well as the pay of the employees. That the Government of Manipur issued an office memorandum dated 21-4-1999 revising the quantum of pension. However, provided that those Manipur Government employees who retired on or after 1-1-1996 shall be entitled to the revised pension at a higher percentage and those who retired before 1-1-1996 shall be entitled at a lower percentage.
>
> xxx xxx xxx
>
> 8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification.

However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

8.1. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] . The decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India,

> (1983) 1 SCC 305 : 1983 SCC (L&S) 145] shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order [State of Manipur v. All Manipur Pensioners' Assn., 2016 SCC OnLine Mani 22] passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order [All Manipur Pensioners' Assn. v. State of Manipur, 2005 SCC OnLine Gau 118 : (2005) 3 Gau LR 384] passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement viz. pre-1996 retirees shall be entitled to revision in pension on a par with those pensioners who retired post-1996. The arrears be paid to the respective pensioners within a period of three months from today."

59. From the conspectus of the aforementioned judgments, it is palpably clear that pension is not a bounty of the State but a right emanating from the long service rendered by an employee, subject of course to fulfilment of requirements of reckonable and satisfactory service. It is not a matter of discretion of an employer. Pension is a method of social-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and one falls back only on the saving, as observed by the Supreme Court. Thus, any Scheme or Rule which is the genesis of grant of pension must receive a liberal construction and interpretation. It is equally settled that pensioners for the purpose of pensionary benefits form a homogenous class and any classification must have nexus to the object sought to be achieved. Surely, when the purpose of pension is payment for the past service rendered and a measure of socio- economic justice for those who in the hey-day of their life tirelessly toiled for their employer on the assurance that in the old age they will not be left to fend for themselves, can IOCL be heard to defend its stand and justify a situation where those who retired prior to 01.01.2007 would get 40% of their last drawn salaries with entire reckonable service to their credit for computation, but those who retired post the said date with more or equal number of years of service are worse off, when they equally contributed their part salaries and surrendered allowances and the answer can only be a 'No'.

60. While this Court is conscious of the law that fixation of cut-off dates for the purpose of grant of benefits is the domain of the employer and in a given case may have a justification but at the same time, Courts can examine the arbitrariness in fixing the date and the resultant discrimination between a homogenous class of employees. Petitioners are right in relying on the judgements referred to above, that the fortuitous circumstance of retirement date may not in a given case be a justified marker to divide a homogenous class of retirees for the purpose of pension fixation. With that backdrop, let me now test whether the cut-off date of 31.12.2006 is arbitrary and discriminatory, in light of the SBF Scheme and the subsequent impugned Circular dated 19.04.2011, retrospectively modifying the SBF Scheme and limiting the benefits of monthly pension by freezing the salary and the reckonable service as on 31.12.2006.

61. Indisputably, under the SBF Scheme, employees of IOCL which includes the Petitioners in the two petitions, had contributed not only directly by way of a certain percentage of their salaries per month depending on varying age groups but had surrendered various allowances to indirectly contribute to the corpus of the Fund and in that sense the SBF Scheme was completely self-contributory and self-sustaining. In fact, there was no option to the employees to not contribute and/or join as members of the SBF Scheme. Most of the Petitioners are stated to be founder members of the SBF Scheme and the remaining have also given their dedicated services to IOCL over several years and contributed their hard-earned salaries and allowances. For the sake of completeness, it be mentioned that Petitioners are stated to have retired on different dates between 2013 and 2017. It was brought forth that in the initial stages, there was a resentment and resistance to contribute to the corpus, but on an assurance that the SBF Scheme was a welfare measure and on the day of retirement, an employee would get monthly pension computed at 40% of his/her last drawn salary based on the number of years of reckonable service, the contributions were consistently made for several years. In fact, this salient feature of the SBF Scheme is also highlighted by the Division Bench of the Bombay High Court in V.R. Hiremath (supra). The Court observed that the SBF Scheme did not depend on IOCL or on the Government Funds and was evolved by the employees and funded by them. It was a self-generating Scheme and prospective in nature and that the maximum benefit payable to an employee on superannuation was 40% of the last drawn salary for reckonable service of 32 years pro-rated in case of lesser years of service. Relevant paragraphs are as follows:-

> "11. The next question is whether it can be said that the fund or the scheme has been Jointly floated by the employer and the employees. No doubt. Rule 16(a) provides for contribution by the employer. Rule 16(a)(i) provides for mandatory contribution of Rs. 100 per annum by respondent No. 1. Rule 16(a)(ii) is a discretionary one is the respondent No. 1 may contribute additional amount. It has been pointed out by respondent No. 1 that no additional amount has been contributed by respondent No. 1 except the amount of Rs. 100 per annum. Obviously, the contribution of Rs. 100 is to enable the said Trust to get clearance or approval from the Income Tax Commissioner. The provisions of the Income Tax Act in this respect are relevant. Section 36 of the Income Tax Act, 1961, provides for other deductions. Section 36(iv) provides that any such amount paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund. Section 80-C(2)(e) (as it then stood) provides that if the assessee is an employee participating in an approved superannuation fund any sum paid in the previous year by him by way of contribution towards the superannuation fund can be deducted. Part B of Fourth Schedule of Income Tax Act deals with approved superannuation funds. Rule 2 thereof provides that the Chief Commissioner or the Commissioner may accord approval to the superannuation fund which complies with the requirement of rule 3. Rule 3 provides for conditions for approval. Rule 3(c) provides that the employer in the trade or undertaking shall be a contributor to the fund. It is clear from the said provisions that even if an employee who wants to get benefit of deduction from his income for the contribution made by him towards such a scheme or fund then such scheme or the fund is required to be approved under the

rules and one of the conditions for such approval is that the employer should make contribution. This clarifies why the mandatory contribution of annual Rs. 100 is provided under Rule 16(a)(i) of the scheme and which is in fact made by respondent No. 1. Therefore, making such a contribution for the purpose of getting clearance from the Income Tax Commissioner for the said fund of the scheme does not mean that the respondent No. 1 has made any contribution. It is merely a token or nominal contribution and employer getting deduction for it is irrelevant.

xxx xxx

13.....

The superannuation benefit fund scheme does not depend upon the respondent No. 1 or on the funds of the Government. This has been evolved by the employees and funded by them. It is self-generating scheme and prospective in nature. The employees were to decide the cut-off date and accordingly they have decided as 7 November, 1987. The contributions to be made were to be decided by the trustees from time to time and deductions were only to be made from the salaries by the respondent No. 1 as per the decision of the trustees. It has been pointed out that the maximum benefit payable to an employee on superannuation was at the rate of 40 per cent of the last drawn salary for a reckonable service of 32 years prorated in case of lesser years of service. For this purpose, annuity is to be purchased from L.I.C. out of the fund. It has been pointed out that since the contribution had to come from the members and not from the respondent No. 1 if any such benefit is given to the employees who retired prior to 7 November, 1987, there it would become unviable as there are no contributions from the respondent No. 1 and the contributions from the existing members cannot be sufficient to meet additional burden. It would not be possible to operate the scheme. Therefore, it is not possible to hold that it is a fund or the scheme floated jointly by the employer and the employees."

62. It is thus clear that by becoming members of the SBF Scheme and contributing to its corpus, vested rights accrued in favour of the Petitioners to seek and demand the fruits of the contributions in the form of assured percentage of the last drawn salary with computation based on reckonable number of years of service put in by the employees on the actual dates of retirement rather than by computing by freezing the salary and service period on an arbitrary date, to their detriment. In light of these crucial facts, Petitioners are right in contending that their right to receive pension as per Clause 4 of MoU dated 07.11.1987 on the basis of last drawn salary on the date of retirement cannot be taken away basis the impugned Circular dated 19.04.2011. For the ease of reference, to show the manner in which SBFS-2 works as a defined contributory Scheme, salient features from the impugned Circular dated 19.04.2011 are extracted hereunder:-

"Salient features of SABF trust consequent to implementations of DPE Guidelines on Pension Scheme.

OLD SCHEME:

• Old SABF scheme will be frozen as of 31.12.2006 • Earlier freezing of pension calculations from 1.1.2003 will be totally removed.

• Employees contributed for old Scheme will get pension for the services upto 31.12.2006 based on the Old SABF rules as below:

1. For every completed year of service 1.25% pension will be calculated.

2. Maximum pension period is 32 years

3. Service prior introduction of scheme, say prior to Nov 1987 will be discounted as specified in original scheme.

• Because of modification, employees retired from 1.1.2003 to till date will also get the benefits of current changes. NEW SCHEME • New pension scheme will be effective from 1.1.2007 • Contribution to the new scheme will be out of 30% of retiral benefit proposed by DPE • Currently, the retiral benefit is distributed in the following manner. This is subject to change every year, based on the valuation of Gratuity & PRMS.

1. PF =12.00%

2. Gratuity =1.01%

3. PRMS =14.62% • Earlier contribution to the SABF on the head of uniform stands withdrawn.

• The new Fund will be maintained by the trust similar to individual PF account.

• Employee's contribution of 2% will continue in the new scheme as additional contribution.

• Income tax is payable by the employee, in case employer contribution exceeds 1 lac per annum towards New Scheme. • Based on the amount available (contribution based) on individual account annuity will be purchased. It is not related to Basic pay and DA of individual employee. In addition to pension based on the new scheme, pension calculated for the service period up to 31.12.206 based on old scheme also will be paid.

• Commutation rule will continue i.e. Maximum of 1/3 of available fund on individual account can be commuted.

• Existing benefit on death cases will continue for R1 & R3 options. R2 option will be discussed with collectives at a later date. • In case of resignation, employee having less than 15 - years services will get back only 2% of employee contribution with interest.

• Those who resigned or who has gone on VRS after 15 years of service, pension will start at the age of 60 years.

• Employees shifting to another PSU and where such similar facilities are available, balance on individual account will be transferred the new PSU, irrespective of number years of service."

63. The impugned Circular is stated to be based on a decision taken by Board of IOCL in the meeting held on 25.01.2011 implemented by the Board of Trustees through a Resolution in the meeting held on 18.04.2011. The direct result of this decision to terminate/modify the SBF Scheme is that Petitioners having retired post 01.01.2007 will be entitled to lesser pension as compared to those who retired prior to that date, though both sets of retirees formed a homogenous class by rendering service to IOCL, discharging duties and by contributing from their salaries and allowances. The impact of this modification is demonstrated by the Petitioners by first comparing the salient features of the SBF Scheme dated 24.12.1987 and SBFS-2 and secondly, by the showing the difference in the actual monthly pension in a given case. Under SBF Scheme, an employee who retires on completion of 32 years of reckonable service would get 40% of the last drawn salary and benefit was to be calculated at the rate of annuity taking 1/80th of the last drawn salary for every completed year of reckonable service, subject to maximum of 32 years. Quite to the contrary, under Clause 3.4.2 of SBFS-2, the salary and reckonable service for computing the pension is frozen as on 31.12.2006 in respect of each employee on roll as on that date and who continued thereafter. Therefore, pension would be calculated by taking the reckonable service as on 31.12.2006 as also the actual salary (Basic Pay + DA) as on that day and no interest would accrue on the frozen benefit.

64. Illustratively, if an employee joined service in 1984 and retired in 2016, the reckonable service will be 32 years entitling him to 40% of the last drawn salary in 2016. However, due to freezing, his reckonable service will be 22 years as on 31.12.2006 and he will not get the maximum benefit of 40% and compounded disadvantage will be that his last drawn salary will be taken as on 31.12.2006. The inevitable result is that in a given case, the employee could be getting Rs.2 lacs as salary in 2016 but may have been in the salary of Rs.50,000/- on 31.12.2006 due to being in a lower post or in the pre-revised scale and therefore, his pension will be calculated at Rs.50,000/- with no interest on the monies paid to the Fund over the years. This difference will arise between a pensioner retiring on 01.01.2007 and the one retiring on 31.12.2016 and cannot but be termed as an arbitrary and discriminatory action, violative of Article 14 of the Constitution of India. Petitioners correctly flagged that being retirees between 2013 to 2017, they are worse impacted as they have put in many more number of years of service than an employee who retired on 31.12.2006 or even on 01.01.2007. In fact, Petitioners have demonstrated this through a table and graph which is extracted hereunder for ready reference:

65. The stand of IOCL that by introduction of SBFS-2, Petitioners seek to gain as they are drawing two kinds of pensions is completely misconceived. The retrospective modification of the SBF Scheme by IOCL and consequent issuance of Deed of Variance dated 18.05.2011 has led to grant of benefits to the Petitioners for two separate service periods i.e. for reckonable service upto 31.12.2006 and then from 01.01.2007 onwards. Benefit for pre- 01.01.2007 period was given as per original SBF Scheme but keeping 31.12.2006 as the date to calculate reckonable service period as also last drawn salary. This benefit was kept in frozen account to be paid later on superannuation.

Post-01.01.2007 benefit was given under SBFS-2 and even if consolidated pension benefits are worked out, according to the Petitioners, the monthly pension is not more than 20% of the actual last salary drawn on the actual date of retirement as against 40% full pension of last drawn salary for 32 years of service and above and in some cases as low as 8%. Therefore, it can hardly be argued by IOCL that grant of two pensions stands to benefit the Petitioners.

66. Petitioners are also right in their contention that there is no intelligible criteria for fixing the artificial cut-off date and it has no nexus with the object sought to be achieved and therefore, this classification cannot be called a valid classification in law. In this context, I may first refer to a passage from L. Kannaiah (supra), as follows:-

> "6. Para 5 of the circular stipulated that the age-limit (viz. not being over 35 years) for admission to Pension Fund shall continue. Thus the pensioned ex-service personnel were admitted to pensionary benefits with effect from 1-1-1965 subject to the restriction of the age-limit of 35 years (which was later on enhanced to 38 years) on that date. As the date of confirmation of the respondents was much earlier to 1-1-1965, the crucial date for admission to the Pension Fund would be 1-1-1965. On that date, the confirmed employee of the Bank should not have exceeded 35 years of age. That is the combined effect of Staff Circular No. 18 dated 8-4-1974 read with the Pension Fund Rules referred to supra. The reason for prescribing the maximum age-limit of 35 or 38, as the case may be, for the purpose of induction into Pension Fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rationale or discernible basis for fixing the cut-off date as 1-1-1965, notwithstanding their earlier confirmation in bank service. True, a new benefit has been conferred on the ex-servicemen and therefore, a cut-off date could be fixed for extending this new benefit, without offending the ratio of the decision in D.S. Nakara v. Union of India [(1983) 1 SCC 305 :
>
> 1983 SCC (L&S) 145 : AIR 1983 SC 130] but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view."

67. Case of IOCL is largely predicated on the viability of SBF Fund and the objective of the classification and fixing the cut-off date was to sustain the Fund. Learned Senior Counsels for the Petitioners had taken pains to show that this plea is wholly incorrect and the issue of viability is only a smokescreen to defeat the rights of the Petitioners who contributed through their service career

from their salaries and had also forgone most of their allowances to be comfortable in the post-retirement phase. I may also note that even in the counter affidavit, it is repeatedly asserted that the SBF Fund was not viable from 2001 and there was a huge gap in the available fund and the amounts required to discharge the liabilities and the crisis worsened due to ex-gratia payments and disbursal of pensionary benefits under the voluntary retirement scheme, due to mass retirements. The other two pedestals of IOCL's stand are: (a) Presidential Directive in the form of DPE O.Ms. to increase the wages from 01.01.2007 and contribute 30% to the superannuation funds; and (b) financial impact due to consequent steep increase in wages. Coming to the first plank of the argument. On this aspect, Petitioners are right that viability of the SBF Fund was never a reason for taking the impugned decision and in this context, Agenda for the Board Meeting dated 25.01.2011 was highlighted and rightly so. It is clearly mentioned in the Agenda in paragraph 2.4.4 that the SBF Scheme was viable with current contribution in the SBF Fund and was expected to meet future liabilities. It was noted that the Trustees manage the funds and upon a member qualifying under the SBF Scheme, they purchase annuities from LIC to secure entitled recurring benefit. SBF Scheme operates under the concept of 'defined benefit' wherein employees make direct monthly contribution as some percentage of their salaries as also indirectly by surrendering allowances. Petitioners have also brought forth in the rejoinder that in the 36th Meeting of the Board of Trustees held on 29.01.2010, the SBF Fund was held to be viable and there was a resistance to the merger of SBF Fund of erstwhile IBP Company Limited with IOCL SBF Fund. Fund position as on 31.12.2010 brought out in the rejoinder shows the net balance of contributions and refund of contributions under SBFS-2 as Rs.1,195.15 crores. Petitioners also highlighted Annexures-III and IV which is the Actuarial Report for the Board Agenda dated 10.02.2011, wherein it was stated that from 01.04.2006 to 31.12.2010 period not only annual collections remained more than liabilities of all superannuated employees, though separated due to VRS and death and reached double mark in 2008-09 onwards. It was also noted that there was a rising trend in cash flow surplus with the Trust from opening balance of Rs.(-)3 crore as on 01.01.2007 to Rs.414.64/- crore as on 01.01.2011. It was noted that cumulative cash flow surplus on 01.01.2011 was more than sufficient to cater to liabilities for next three years without any further contributions. Relevant paragraphs from Agenda dated 25.01.2011 are as follows:-

> "2.4.4 The Scheme since introduction is being operated through a Trust. The Scheme is viable with current contribution in the Fund and is expected to meet in future liabilities. The Trustee manages the funds and upon a member's qualifying under the scheme, purchase annuity from the LIC to secure entitled recurring benefit. The schehie operates under the concept of "defined benefit" viz. the benefits are determined at the time of superannuation based on the period of service and the last pay drawn of the employee. It has following silent features:
>
> a) Employees make a direct monthly contribution to the Fund @ 2% to 5% of (Basic Pay+DA) based on age profile at the time of Introduction / joining the scheme. As per the MOU with the collective, it was further agreed that certain benefits enjoyed by the employees at that time viz.. Uniform, Benevolent Fund for education.

Rehabilitation. Grant given to spouse on death of an employee in service, Tea Allowance and Washing allowance will be discontinued and the costs incurred on these items will be utilized by the Corporation in finding the Scheme.

b) The scheme envisages a post-retirement monthly benefit of 40% of Basic Pay plus DA of the employee for a reckonable service of 32 years. For lesser period, the benefit is proportioned. This is subject to a minimum service requirement of 5 years in case of superannuation. The past service prior to introduction of the Scheme has been discounted @ 1% for each year.

c) The recurring benefit under the Scheme is not linked to inflation or consumer price index. Monthly benefit once fixed at the time of superannuation, based on annuity amount, remains fixed for all time.

d) Annuities are purchased from Life Insurance Corporation of India under the Standard option i.e. Life time of the member with guaranteed benefit for 15 years. The employee has an option to commute 1 /3rd pension at the time of superannuation. In case of death of an employee during service, benefit is given as per the rehabilitation option exercised.

...."

68. Petitioners have also brought forth that the counter affidavit incorrectly and falsely states that the reason for closing the SBF Scheme was a shortfall of Rs.2224.84 crores if the Scheme had continued. Firstly, the shortfall was calculated based on deemed superannuation of all employees on 31.12.2006, as rightly flagged by the Petitioners. If this is the methodology adopted to work out the viability, no pension fund will withstand the disbursal of a defined benefit scheme to all beneficiaries at one go at any point of time. SBF Scheme works on the principle of a rolling plan where place of outgoing employees on retirement is taken over by new employees which may be larger in number and whose contributions would naturally add to the Fund. Moreover, assuming for the sake of argument, there was a shortfall, as per Clause 16(a)(ii) of the Deed of Variation dated 24.03.1988, it was the obligation of the IOCL to contribute additional amount to maintain its viability, as in any event the Trustees were the extended arm of IOCL. Instead, as highlighted by the Petitioners, IOCL not only arbitrarily closed the SBF Scheme but took away Rs.432.31 crore, lying in the Fund from the indirect contribution of the employees in lieu of the uniform allowance to adjust its liability created due to foreclosure of the Scheme and also unilaterally refunded Rs.114.02 crores and credited the same to individual accounts of employees under SBFS-2.

69. At the cost of repetition, the entire counter affidavit filed by IOCL is replete with what according to them was a depletion in the corpus of the SBF Fund from 2001 onwards. It is stated that in 2001, the Trust realised that the money was not sufficient to purchase annuity policies to provide maximum benefits envisaged under SBF Scheme and accordingly, Consultant Actuaries were engaged who pointed out that the total fund required to meet the liability would be Rs.1881.50 crores at that time while the current corpus was only Rs.107 crore. The shortfall, according to IOCL, was confirmed in the subsequent Actuary Report also and which is why a decision was taken in 2003 to freeze the salaries as on 01.01.2003 with capping of 7% on increase in salaries. Reference is

then made in the counter affidavit to a shortfall of Rs.2224.84 crore as per the Actuary Report dated 29.11.2010. Interestingly, in the same affidavit, two factors are attributed to the change in decision to introduce SBFS-2. It is stated that if this shortfall was to be funded immediately through one-time lump sum payment, the discounted value of funds immediately required will be Rs.1123.51 crores. The second reason is the increase in wages from 01.01.2007 pursuant to a Presidential Directive. Both these reasons to my mind do not further the case of IOCL.

70. The stand that the impugned SBFS-2 was introduced due to a shortfall in the corpus of SBF Fund, as noted above, is belied by the Board Agenda dated 25.01.2011, noting that at that stage the Fund was viable. Secondly, this very Agenda indicates that the reason to introduce SBFS-2 was not the alleged shortfall but clearly the Presidential Directive to introduce revised provisions of superannuation benefits under the Defined Contribution, which too the IOCL, to my mind, totally misconstrued. A reading of the DPE O.Ms., which are extracted in the earlier part of the judgment, does not reflect any mandate by DPE to CPSEs including IOCL to introduce any new scheme and that too contrary to its own existing Scheme and certainly not to the disadvantage of the contributing members of the scheme. Moreover, Clause 13 of the MoU dated 07.11.1987 clearly mandated that any Government of India Pension/Superannuation Scheme shall be in addition to the existing SBF Scheme and therefore, no Scheme could have been introduced by the IOCL in derogation of the existing Scheme and that too with a serious impact on the employees reducing pensions in some cases to as low as 8%. There is also no mandate to prematurely terminate any existing pension scheme. In fact, the O.Ms. provided for CPSEs to contribute to a maximum of 30% to the superannuation benefits and therefore all that IOCL should have done was to increase its contribution to SBF Fund and the Scheme would have continued and run its course. There was absolutely no requirement of fixing a cut off date to freeze the salaries and reckonable service and deprive the retirees of pension computed at last drawn salaries. As rightly placed by the Petitioners, IOCL mismanaged the Fund and transferred monies to achieve a foreclosure of the SBF Scheme. Agenda dated 25.01.2011 clearly reflects the reverse engineering to achieve the goal of being in line with the DPE O.Ms. and start a new scheme and methodology of contribution and create an artificial shortage of funds, which actually did not exist and close to the decision, as mentioned in this very agenda, the Fund was viable.

71. As for the increase in wages from 01.01.2007 being one of the reasons to modify the SBF Scheme, this stand is also fallacious. It needs no reiteration that if the wages increased from 01.01.2007, the contributions by way of percentage of salaries as also surrender of enhanced allowances would have proportionately increased the corpus, assuming there was any shortfall. Therefore, even this contention has no merit. Clearly, IOCL has by the impugned decision seriously effected and prejudiced the vested rights of the Petitioners to reap fruits of the seeds they have sown over decades by rendering dedicated service and contributing percentages of their salaries every month and forgoing allowances to add to the corpus and the impugned decision cannot be sustained. The smokescreen of showing alleged shortfall in the fund on account of mass retirements due to introduction of VR Schemes or ex-gratia schemes also cannot help IOCL as this was neither attributable to the Petitioners nor can they be deprived of what they were assured when they were contributing to the SBF Scheme, a purely self- contributory and self-sustaining scheme, for this reason.

72. The judgments relied upon by IOCL do not inure to its advantage. In Ratan Behari Dey (supra), the Supreme Court has held that a Scheme of grant of pensionary benefit as a condition of service can be made operative from a cut-off date even retrospectively provided fixation of cut-off date is reasonable and non-arbitrary. There can be no dispute with this proposition and this is exactly what the Petitioners urge, however, in the present case, Court has found the fixation of the date to be arbitrary and discriminatory. To the same effect are the judgments in P.N. Menon (supra) and Amrit Lal Gandhi (supra). In T.N. Electricity Board (supra), the Supreme Court was again dealing with the validity of the cut-off date and in that context held that the Board was not bound to extend the pension Scheme to those who had retired earlier and availed of the benefit under the CPF Scheme existing before the Pension Scheme as they form a separate class. This judgment is wholly inapplicable to the issues arising in the present petitions. In J.L. Gupta (supra), the Supreme Court was dealing with a Government Notification pertaining to Dearness Allowance for the purpose of pension calculation etc. and has no application to this case. Lastly, Mr. V.N. Koura had relied on the judgment of the Bombay High Court in V.R. Hiremath (supra) and much emphasis was laid on the judgment on account of the fact that it dealt with the same SBF Scheme and where IOCL was the Respondent. The judgment of the Division Bench, however, cannot rescue IOCL for the simple reason that Petitioners in the said petition sought a writ to the Respondents to give benefit of the SBF Scheme under MoU dated 07.11.1987. Petitioners were employees of IOCL who had retired between October, 1986 to November, 1987. Declining the relief to the Petitioners, the writ petition was dismissed for the reason that the benefit of the Scheme could be given only to those employees who were in service when the Scheme came for the reason that the amounts were to be contributed by the employees themselves and annuities were to be purchased from LIC to grant pension, which is not the case here and in fact, as noted above, the Division Bench highlighted the self-contributory nature of the Scheme and how it was self-sustaining.

73. For all the above reasons, this Court holds that fixing the date of 31.12.2006 for freezing the salaries and reckonable service for computation of monthly pensions of the Petitioners is arbitrary and discriminatory and thus violative of Article 14 of the Constitution of India and to that extent Circular dated 19.04.2011, Deed of Variance dated 18.05.2011 and Office Memorandum dated 01.06.2011 will not come in the way of the Petitioners from getting monthly pensions under the original SBF Scheme. It is thus held that monthly pensions of the Petitioners will be re-fixed on the basis of the original SBF Scheme as per the terms of MoU dated 07.11.1987 and Trust Deed dated 24.12.1987, which would mean that their pensions will be re-fixed taking last drawn salaries and the reckonable service on the actual dates of respective retirements and not the date of freezing. Pensions of the Petitioners will be re-fixed and arrears will be disbursed with interest @ 6% per annum from the due dates till actual payments. The entire exercise will be carried out by IOCL within 03 months from today.

74. Writ petitions are allowed in the aforesaid terms. Pending applications also stand disposed of.

JY

APRIL 04 , 2025/shivam