IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA- 1341-2014 (O&M)

Pronounced on : 5th February, 2016

Haryana Financial Corporation, Chandigarh .... Appellant

VERSUS

K.K.Sharma and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL

Present: Mr.Ashok Aggarwal, Senior Advocate, with
Mr.Mukul Aggarwal, Advocate, for the appellant.

Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Arjun Atma Ram, Advocate,
for respondents No.1 to 38 (in LPA-1341-2014).

Mr.Yadvinder Singh Turka, Advocate,
for respondents No. 1 to 3 (in LPA-1342-2014).

Mr.Sandeep K. Sharma, Advocate,
for respondents No.1 to 3 (in LPA-1343-2014).

Mr.Tara Chand Dhanwal, Advocate,
for respondent No.1 (in LPA-1344-2014).

Mr.Ravi Dutt Sharma, DAG, Haryana.

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RAJIVE BHALLA, J.

By way of this order, we shall decide LPA-1341-2014, LPA-1342-2014, LPA-1343-2014 and LPA-1344-2014. For the sake of convenience, facts are being taken from LPA-1341-2014.

The Haryana Financial Corporation (hereinafter referred to as the "Corporation) has filed this appeal to challenge order dated 14.03.2014, whereby the writ petition filed by respondents has been allowed and order dated 25.11.2004, whereby the pension scheme floated by the Corporation and availed by retired employees was discontinued, has been set aside.

Counsel for the appellant submits that apart from the fact that the Corporation is not a wholly owned Corporation of the State of Haryana, thus, ruling out the applicability of the letters and instructions issued by the State, the pension scheme could only have been implemented with the previous sanction of the State. Admittedly, the Corporation did not obtain the sanction of the State Government much less its “previous sanction”, thereby rendering it a nullity and, therefore, rightly withdrawn by the Corporation. Counsel for the appellant further submits that as the Corporation is not a wholly owned public sector undertaking and no regulation has been framed under Section 48(2)(k) of the State Financial Corporation Act, 1951 (hereinafter referred to as the 'Act'), no such right came into force that the respondents may enforce. It is further submitted that Section 39(1) of the Act, provides that the Board shall be guided by instructions, on the question of policy, as may be issued by the State Government but as the State Government has neither issued any instructions nor any policy nor has the resolution passed by the Board been approved, the resolution granting pension to the employees, is a nullity. The resolution passed by the Board and the consequent grant of pension does not operate as estoppel in the absence of any approval from the Government. The reference to the deletion of proviso to Section 23 of the Act, which empowered the

Government to determine the class and category of posts/remuneration etc. and instead providing for consultation with the State Government regarding appointments and remuneration, does not warrant the conclusion that providing a pension scheme is not a matter of policy. The impugned order also ignores the fact that the proviso to Section 23 of the Act was deleted in the year 2000 whereas the pension scheme was implemented and enforced in the year 1994. The validity of this scheme had to be tested on the basis of the proviso to Section 23 of the Act as it existed at the time of adoption of and implementation of the scheme. The Corporation, therefore, could not have adopted much less implemented the scheme without a direction from the Government and or its approval. The finding that sub-section (2-B) of Section 39 of the Act, diminishes the role of the State by use of the word "may" preceding the word "advice" disregards Section 48(1) and Section 48(2)(k) of the Act, which clearly provide that the Board may with the previous sanction of the State Government, make regulations for establishment and maintenance of a provident fund or other beneficial funds for employees of the Financial Corporation. It is further argued that the judgment of the Hon'ble Supreme Court in **State of Rajasthan Vs. A.N. Mathur** , JT 2013 (12) SC 642, has been ignored as in a similar situation, the Supreme Court has held that obtaining of previous sanction was imperative.

Counsel for the respondents submits that the Corporation implemented the pension scheme of its own volition and whether there was any previous sanction or not, is a matter between the government and the corporation and, therefore, should not be read to the detriment of employees who opted for the scheme pursuant to an offer made by the Corporation in 1994. A perusal of Sections 9, 23 and 39 of the Act, reveals that the power to frame a scheme vests with the Corporation and as even if it is held that the appellant-Corporation is not a wholly owned Corporation of the State, there is no question of obtaining the previous sanction of the State Government whether under Section 48(2)(k) of the Act or otherwise. Counsel for the respondents further submits that Section 48 of the Act only provides the manner for making regulations whereas Sections 9, 23 and 39 of the Act prescribe the regulations to be made. The deletion of the proviso to Section 23 of the Act has diluted the power conferred upon the State by Section 48 of the Act and, therefore, the Corporation was well within its right to implement the pension scheme. It is further submitted that the respondents returned their CPF to the Corporation in 1994 and in case, the impugned order is set aside and pension is discontinued, it would have a drastic effect on the respondents one of whom even has even died during the pendency of the writ petition.

Counsel for the respondents also contends that the Government sent a letter to the Corporation to frame a scheme. The

Corporation framed a scheme and implemented it. The State nor the Corporation can turn around and urge that the scheme was implemented without its prior approval and is, therefore, illegal. The State of Haryana was informed at every step and every resolution passed by the Corporation was forwarded to the State. In fact there was a delay on the part of the Corporation and after a letter was received from the Corporation inquiring whether the scheme has been finally adopted and implemented, the Corporation immediately adopted and implemented the scheme. Counsel for the respondents submits that the appellants have been enjoying the benefits of the pension scheme since the year 1994 and, therefore, it would be unjust and inequitable to deprive them the pension scheme.

We have heard counsel for the parties, perused the impugned order and examined the statutory provisions of Act.

The questions, that require an answer and have been answered against the Corporation and the State of Haryana are: -

1. **Whether the Corporation was required to seek prior approval/consent of the State of Haryana before adopting/implementing the pension scheme?**
2. **Whether the deletion of the proviso to Section 23 of the Act that denudes the power of the State as regards its control over the class and category of posts and the service conditions of the employees of the Corporation in the year 2000 can be pressed into service to legitimise a decision taken in 1994?**
3. **Whether the respondents who have opted for the**

pension scheme on a bonafide belief of the legality of the scheme should be deprived of the benefits of the pension scheme in force since 1994?

The private respondents are former employees of the Corporation and were members of a contributory provident pension scheme. The State of Haryana, vide communication dated 26.06.1992, called upon all wholly owned boards and corporations of the State of Haryana, to consider the possibility of introducing a pension scheme as per pension rules framed and instructions issued, from time to time, by the State of Haryana so as to replace the contributory provident pension scheme. The letter also provided that in case the Corporation implements the scheme an option should be offered to employees, who are members of the contributory pension scheme to opt for the pension scheme. The letter also called upon boards and corporations to obtain necessary approval from the Board of Directors etc. and to comply with requirements and formalities of the law and the rules. The letter was admittedly communicated to the appellant. The appellant-Corporation constituted a six member committee to examine the matter. The committee recommended adoption of a pension scheme. The recommendation of the committee came up for consideration in a meeting of a sub-committee of the Corporation consisting of the Managing Director, representative of the Reserve Bank of India, representative of the

IDBI and the Small Industries Development Bank of India. The sub-committee also recommended adoption of the pension scheme. The State of Haryana, vide letter dated 01.03.1993, sought a response from the Corporation as to why it had not introduced the pension scheme. The pension scheme was put up before the Board of Directors on 05.09.1994 and immediately approved.

The decision of the Board of Directors was communicated to the employees, vide letter dated 28.09.1994 alongwith a proforma seeking their option. The employees/private respondents exercised their option and vide letter dated (Annexure P8). The Commissioner and the Secretary, Industrial Development, Haryana, was informed about the adoption of the scheme and approval was sought at an early date. The letter also informed the Government that benefit of the scheme would start accruing with immediate effect pending receipt of approval.

Admittedly, the respondents/employees returned the amount of the contributory pension scheme and started availing the benefit of the pension scheme w.e.f. the dates of their retirement. A reference dated 13.08.2003 was made by the Corporation to the Government regarding the scheme. The Director, Industries Haryana, vide letter dated 27.05.2004, sought a clarification as to who would shoulder the liability for expenses of the pension. The Corporation, vide letter dated 17.12.2004, replied that expenses would be borne by the Corporation and once again made a request for approval of the pension scheme.

The Corporation, thereafter appears to have sought legal opinion as to the validity of the scheme. The legal opinion proffered was that the pension scheme could not have been implemented without the prior approval of the Government but suggested that employees who had already taken benefit of the pension scheme be allowed to continue after approval by the State Government but the scheme be discontinued with respect to serving employees. The Board of Directors passed a resolution, dated 25.11.2004, which reads as follows : -

> "The Board considered the proposal and after detailed discussions took the following decisions:-
>
> (a) Considering the advice of the Senior Legal Adviser as also the relevant provisions in this regard the pension scheme as floated by the Corporation becomes incompetent and therefore the same be scrapped for the time being.
> (b) The requisite approval of State Government, for want of which the scheme remains incompetent should be attempted to be obtained at the earliest and after getting that approval/decision of the Govt., process to adopt the pension scheme should be started de novo.
> (c) As a consequence from all such employees who have, though opted for the said incompetent pension scheme, yet who have not retired from the service of the Corporation, the adoption of the pension scheme be withdrawn immediately. As a consequence, they shall fall back into the contributory provident fund scheme and for the continuance of the same benefit of matching contribution as per Provident Fund Regulations towards their provident fund as employer share is to be made along with interest from respective due dates out of the Pension Fund
> (d) Such of the employees who are already availing the benefit of pension scheme after retirement or due to any other reason, the pension scheme should provisionally be continued in their case. However, even they should be given an option to shift to the contributory provident fund scheme. In such cases where this option is exercised, the amount should be appropriately reworked for passing on the balance benefit if any. However, in such cases, where as a consequences of the shifting, the retired employee has as a balance to make some payment to the Corporation, the same shall be waived.
> (e) The Board further observed that with the scrapping of the Pension Scheme all the existing employees shall be appropriately covered under the Contributory Provident Fund Scheme of the Corporation and resolved that provident fund accumulation of all the employees and employer's share along with interest be transferred to the Regional Provident Fund Commissioner.
> (f) The Board further authorised the Managing Director to take all action

required to give effect to this decision."

A perusal of the aforesaid decision reveals that it was resolved that approval from the State Government be obtained at the earliest and in the meanwhile, the scheme be withdrawn with respect to serving employes. With respect to the employees who had retired and were availing benefit of the pension scheme after retirement or for any other reason the pension scheme was ordered to continue provisionally but after furnishing an option to revert to the contributory pension scheme.

A letter dated 17.12.2004 was consequently forwarded to respondent No.1, Mr. K.K.Sharma, asking him to exercise his option. Mr. K.K.Sharma replied vide letter dated 27.12.2004 that he reiterates his earlier option. The respondents were thereafter issued letter dated 05.12.2007, informing them that though they had exercised their option to continue in the pension scheme but as the scheme "*....was improper and null & void without prior approval of the State Govt., the Board decided to stop payment of pension/family pension to the retirees/families w.e.f. 1.11.2007. The Board also decided to keep the pension scheme in abeyance for the time being till a decision from the State Govt. is received and till then no pension be released to the retirees forthwith. The Board further decided that the decision of the Government may be placed before the next Board meting. In view of the decision of the Board, as detailed above, no pension will be released till approval of the State*

Govt. is received."

The respondents filed a writ petition in which notice was issued and operation of the aforesaid order was stayed. During pendency of the writ petition, the Board of Directors passed another order dated 31.03.2009. A relevant extract from the order, reads as follows: -

> "Now, the State Government vide letter dated 10.2.09 (Annexure-IV) has informed that the Government has considered the proposal of the Haryana Financial Corporation and it has been observed that:
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> (i) In the first instance, HFC is not a wholly owned PSU of the State Government a can be made out from the share-holding pattern of the HFC at different point of time, more specifically at the time when the BOD passed the said resolution and the Government shareholding was only 78.21%. The FD circular made it clear that it was applicable only to the wholly owned PSUs of the State;
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> (ii) The FD circular made it clear that introduction of any such scheme would have to be financially sustained by the said organisation without recourse to state funding. The HFC has not established its financial viability of the proposed scheme. It has been established with the flux of time that the HFC is not in a position to financially sustain the scheme.
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> (iii) It was incumbent of the HFC to seek prior approval of the State Government in terms of Section-48 of the Act before implementing the decision and giving it the shape of a regulation. The BOD ha implemented the decision without taking prior approval of the State Government which is in violation of the provisions contained in Section-48 of the Act.
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> In view of the above, it has been further informed that State Government is not in a position to support the proposal of the Corporation. The State Government has also filed a reply in the Hon'ble Punjab & Haryana High Court on the above lines.
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> In continuation of the above letter dated 10.2.09, the State Government vide its letter Endst.No.LML/Misc/953/HFC/27767 dated 5.3.09 (Annexure-V) has submitted its observation that "a solution would need to be found to break the impasse. One option lies in restoring the position as it obtained on the day before introduction of the Scheme by the HFC. Once that it done, the account should be reconstructed to put together the employees' share of the CPF and the employer's contribution to the CPF. This corpus should then be converted into individual accounts. To the extent the individual corpus remained with HFC in the Fund created for the purpose, interest should be credited on a diminishing/reducing balance basis. The payment to the retirees should be progressively adjusted against such individual accounts. In case of any balance still remaining unpaid, the amount should be paid to the retirees on a lump-sum-basis. Those in whose cases the amount of pension paid exceeds the individual's corpus, no recovery should be made and the HFC should write off such amount a a one time measure. There appears no other option. It is only proposed as an advisory to HFC and not in the form of a Government approval or directive. The Board of Directors of

> Haryana Financial Corporation should consider this or any other better alternative proposal to settle the issue.
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> At the time of introduction of Pension Scheme, the Pension Fund was to the extent of Rs.1,53,28,258/- and this fund has been exhausted on 31.3.2005, when the amount of CPF of the employees,w ho did not give option for pension, was transferred to RPFC, Chandigarh.
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> Since then the Corporation is making payment to the pensioners from its own resources. The financial implication at present is Rs.3,82,825/- p.m. as on 28.2.09, which will further increase after the implementation of revised pay scales. The details of pension account, pension and CPF foregone in case of pensioners as on 28.2.09 is annexed as Annexure-VI. It may be observed therefrom that no unpaid balance is available with HFC against any pensioner and Rs.3.46 crores in total has been paid in excess to all the pensioners/petitioners. The accumulated losses of the Corporation are to the tune of Rs.132.00 crores as on 31.3.2008."

The order was also made subject matter of challenge in the writ petition.

The writ petition was eventually admitted and operation of order dated 31.03.2009 was stayed.

The Corporation filed a Special Leave Petition (SLP) against the interim order. The Hon'ble Supreme Court stayed operation of the impugned order. Eventually, the SLP was disposed of with a direction to decide the writ petition at an early date.

The writ petition has been allowed by primarily relying upon deletion of the proviso to Section 23 of the State Financial Corporations Act, 1951 (hereinafter referred to as the 'Act'), which empowered the State Government to specify the class or category of posts in respect of which appointments may be made by the Board etc. after relying upon Section 7 of the Act that places the general superintendence, directions and management of affairs of the Corporation with the Board of Directors and by holding that Sections

39 and 48(2)(k) do not curtail the authority of the Corporation to determine by regulations the conditions of appointment, service and remuneration of its officers and employees. After holding as above, it was held that even if the pension scheme is declared null and void the private respondents who opted for the pension scheme in 1994 and retired thereafter would continue to be governed by the pension scheme particularly as these persons had already forgone huge amounts deducted from them towards provident fund and it was the Corporation which had floated the scheme, invited option, implemented the scheme and that the impugned order violates the principles of reasonable and legitimate expectation and cannot deprive employees who have opted for the pension scheme and have retired prior to 1994, after 1994 or who were in service in 2007.

An answer to the first question would require a perusal of the statutory provisions that govern the powers of the Corporation and the State of Haryana as they existed in the year 1994 (the year of implementation of the pension scheme) namely Sections 9, 23, 39 and 48(2)(k) of the Act. Section 9 of the Act, reads as follows: -

> "**Section 9**: **Managements.**—(1) The general superintendence, direction and management of affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by this Act expressly directed or required to be done by the Financial Corporation in general meeting.
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> (2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman, managing director or the whole-time director."

A perusal of Section 9 of the Act reveals that it confers power of general superintendence, direction and management of affairs etc. of the Financial Corporation upon the Board of Directors and thereafter sets out the manner in which this power may be exercised and by whom and subject to what conditions. The Financial Corporation is empowered to manage its own affairs and in furtherance of this power to do all such things as may be necessary for the exercise of general superintendence and affairs and business of the Corporation.

Section 23 of the Act empowered the Financial Corporation to appoint its officers and employees and reads as follows: -

> "**Section 23. Officers and other employees of the Financial Corporation.**—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them." **Provided that the State Government may in consultation with and after obtaining the advice of the Development Bank, specify the class or categories of posts in respect of which appointments may be made by the Board on such remuneration and other conditions of service as the Board may determine, and no regulation made under this Act shall apply to such posts in respect of matters so determined by the Board."**

Section 23 of the Act confers power on the Corporation to appoint such officers, advisers and employees as it may consider necessary and while doing so determine by regulations the conditions of their appointment, service and remuneration. The words and expressions used in Section 23 of the Act particularly the words "their conditions of appointment and service and the remuneration payable to them" empower the Corporation to, apart from prescribing general conditions of service, frame regulations regarding retiral benefits. The proviso to Section 23 of the Act, however, as it existed prior to its deletion by Act No.39 of 2000, placed a caveat on the exercise of this power as it conferred power on the State Government in consultation with and after obtaining the advise of the Development Bank to set out the posts in respect of which appointments may be made by the Board on such "remuneration and other conditions of the service as the Board may determine." The proviso further provided that a regulation made under this Act shall not apply to such posts in respect of matters so determined by the Board. A plain reading of the proviso reveals that the State Government was empowered to specify the class and category of posts in respect of which appointments may be made but the remuneration and other conditions of service were to be determined by the Board, thus, clearly postulating that though the power to determine and specify the class and category of posts may be exercised by the Government but the remuneration and other conditions of service would be such as the Board may determine.

At this stage, it would be appropriate to point out that the proviso was deleted in the year 2000 thereby removing the power with the State Government to specify the class or category of posts in respect of which the Corporation may make appointments.

Section 39 of the Act mandates that the Board shall be guided by instructions as may be issued by the State Government, on the question of policy and reads as follows: -

> **Power to give instructions to Financial Corporation on questions of policy.—** (1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government [in consultation with [and after obtaining the advice of,] the "[Small Industries Bank].
>
> (2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.
>
> [(2A) Nothing contained in sub-section (1) and sub-section (2) shall apply in a case where a State Government holds less than fifty-one per cent, of the equity shares in the Financial Corporation.
>
> (2B) Notwithstanding the equity share holding of a Financial Corporation by a State Government, the State Government **may advise** the Financial Corporations on the matters of policy.]
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> (3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government [under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37A], the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any Court."

At this stage, it would be appropriate to point out that Sections (2A) and (2B) were introduced by Act No.39 of 2000 and were not in existence on the date the Board adopted the pension scheme.

Section 48 of the Act conferring power on the Board to make regulations, reads as follows: -

> "**Section 48 (1)** Power of Board to make regulations—(1) The Board may, after consultation with the (small Industries Bank) and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.
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> **Section 48 (2)** In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for—
>
> (a) to (j) xxx xxx xxx
>
> (k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation."

Section 48(1) empowers the Board to make regulations and after consultation with the Small Industries Bank and "with the previous sanction of the State Government", to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Section 48(2), commences with the words "in particular and without prejudice to the generality of the foregoing powers," the regulations may provide for and thereafter enumerates the matters for which regulations may be framed, and by way of sub section (k) empowers the Board to frame regulations "for the establishment and maintenance of provident or other benefit funds for employees of the Corporation."

A conjoint reading of the aforesaid provisions, in our considered opinion, reveals that the power to prescribe the conditions of appointment and service as well, remuneration payable, which would necessarily include pensionary schemes, rests with the Board subject to any guidance by the State on questions of policy as provided by Section 39 and then as provided by Section 48(2) regulations to be framed by the Board on matters particularly referred to in sub section 48(2) thereby enumerating that the Board may frame regulations enumerated under Section 48(2) but only with the previous sanction of the State Government. The Corporation, therefore, rightly urges that though the Board has power to frame a pension scheme but in view of Section 48 be framed not without the previous sanction of the State Government.

The impugned order has in essence also held as aforesaid but has thereafter relied upon the deletion of the proviso to Act No.39 of 2000 and after discussing the amended provisions of the Act that grants independence to Financial Corporations referred to the facts namely the scheme adopted on 02.09.1994, calling for options on 28.09.1994, the options offered by the respondents opting for the pension scheme and the various letters forwarded by the Corporation to the Government informing it of the adoption of the scheme and that as the pension scheme had come to operate, the private respondents have retired the benefit of pension scheme already granted cannot be withdrawn. A reference is also made to a judgment of the Supreme Court in **State of Rajasthan Vs. A.N. Mathur** case (supra) whereby the Supreme Court held that a pension scheme could not be implemented in the Rajasthan Agriculture University without the prior approval of the Chancellor, despite this finding held that if some of the employees had opted for the pension scheme, payment of pension to such employees would not be affected. The finding, so recorded, namely the finding that the scheme cannot be held to be illegal for want of prior approval by the State, in our considered opinion, is an incorrect interpretation of Sections 9, 23, 3 and 48 of the Act as they existed in the year 1994 for reasons we have already referred while interpreting the statutory provisions.

Having held as above, the first question is answered by holding that the Corporation was required to seek the previous sanction of the State Government before adopting/implementing the pension scheme.

As a corollary to the said answer a supplementary question would also require an answer namely whether there is any deemed approval particularly in view of the fact that the State of Haryana forwarded a letter to the Corporation to frame a pension scheme, called upon the Corporation to inform the Government whether it had framed the scheme and it was only thereafter that the Corporation proceeded to frame a scheme. A statutory provision that provides for previous sanction of the State, cannot in our considered opinion, be varied or diluted by the act of parties namely the act of the State or the Financial Corporation. The Corporation was, therefore, required to await for the approval of the State before implementing the pension scheme. The words "previous sanction" have to be read as approval prior to the act and cannot whether by inference from letters addressed by the State of Haryana or otherwise raise an inference of a sanction or a deemed sanction, an inference that may have only been possible if the word "previous" has not preceded the word sanction thereby clearly postulating requirement of a sanction prior to the introduction of the pension scheme.

Having answered the first and second questions, we proceed to answer the third question.

A perusal of the facts narrated in detail in the preceding paragraphs as well as in the impugned order reveals that the appellant at the prodding of the State of Haryana adopted the pension scheme on 05.09.1994 and thereafter circulated letter dated 03.10.1994 to its employees seeking their option as regards the pension scheme. The benefit of the pension scheme was granted to all employees who opted for the scheme. In answer to a query by the Director of Industries, Haryana, dated 27.05.2004, the appellant replied, vide letter dated 17.12.2004, that liability for the scheme shall be born by the Corporation. The pension scheme was, thus, introduced w.e.f. 05.09.1994 but subject to approval by the State Government which admittedly was never received. On the relevant date, the appellant had on its roll 320 employees out of which only 4 did not exercise their option. The learned Single Judge has tabulated the financial implications of contributory provident fund which was forgone at the time of retirement and were to be paid to the private respondents with interest @ 12% to 13 % per annum upto 2013 and a tentative figure of pension payable to the private respondents, which reads as follows: -

S.No.	Name	Date of Retirement	Amount foregone at the time of retirement	Approx. amount payable till the end of 2013.
1.	K.K. Sharma	31.10.95	Rs.215700/-	Rs.1950600/-
2.	V.P. Verma	30.4.95	Rs.152000/-	Rs.1447400/-
3.	B.M. Kapoor	30.11.95	Rs.208100/-	Rs.1862000/-
4.	J.C. Kamal	30.11.96	Rs.212900/-	Rs.1685000/-
5.	S.P. Bakshi	30.6.02	Rs.203550/-	Rs.815600/-
6.	Naresh Jain	10.9.02	Rs.14580/-	Rs.572300/-
7.	Balraj Verma	30.4.03	Rs.127331/-	Rs.460700/-

8.	B.K. Sharma	31.3.03	Rs.133000/-	Rs.486000/-
9.	Ram Singh	31.8.03	Rs.88000/-	Rs.305700/-
10.	Kumar Singh	16.11.04	Rs.95000/-	Rs.284500/-
11.	H.C. Chhalirg	31.10.04	Rs.85000/-	Rs.255900/-
12.	Suresh Kumar	1.12.03	Rs.78000/-	Rs.237300/-
13.	S.R. Vohra	11.11.04	Rs.118300/-	Rs.355400/-
14.	M.L. Rawal	30.11.02	Rs.199300/-	Rs.758000/-
15.	M.M. Arora	31.12.96	Rs.174200/-	Rs.1541900/-
16.	H.R. Nandwani	31.3.02	Rs.225700/-	Rs.932000/-
17.	V.K. Gupta	31.12.02	Rs.170800/-	Rs.642600/-

The pension scheme, would, thus, be extended to approximately 33% employees who have retired and from the fact that these employees have forgone a large amount contributed by them towards provident fund, it is apparent that the Corporation has saved this amount including its liability to pay interest @ 12% to 13% and has been utilising this amount since 1994. The private respondents have pointed out that they have forgone Rs.1.53 crores while opting for the pension scheme and if calculated with interest, this amount would swell to Rs.4.30 crores. The corporation alleges financial distress as its plea that the employees' claim for continuing the pension scheme may not be accepted.

We have considered this aspect as well as facts narrated above and though we have held that previous approval of the State Government was necessary, cannot ignore the fact that the private respondents are old and retired employees who did not of their own seek pension but only pursuant to a resolution passed by the Corporation and on an offer made to them opted for the pension scheme which remained in force from 1994 to 2013. The employees have foregone their contributory provident fund, deposited it with the Corporation and the Corporation has been using this amount ever since. We, therefore, tend to agree with the opinion recorded by the learned Single Judge that in these circumstances the employees can be said to harbour a legitimate expectation regarding the pension scheme and, therefore, cannot after a period of 19 years from the date of implementing of the pension scheme, be asked to revert to the contributory pension scheme, refund the amount of pension already received, as such an order would cause serious financial distress to retirees, some of whom who have passed away.

Consequently, while holding that the prior approval was necessary, we affirm the directions issued by the learned Single Judge in his order 14.03.2014 and dismiss the appeals.

[RAJIVE BHALLA]
JUDGE

5th February, 2016
shamsher

[REKHA MITTAL]
JUDGE