

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 163 OF 2018

1. **Pensioners Social & Welfare Association,**]
Flat No. 1403, Tower 'A']
Hirandandani Estate, Office G.B. Road,]
Dist-Thane (W).].. Petitioner

Versus

1. **Hindustan Petroleum Corporation Limited**]
Petroleum House,]
17, Jamshedji Tata Road,]
Mumbai – 400 020.]
]
2. **The Chairman And Managing Director,**]
Hindustan Petroleum Corporation Limited,]
Petroleum House,]
17, Jamshedji Tata Road,]
Mumbai – 400 020.]
]
3. **The Union of India**]
Through the Secretary]
Ministry of Petroleum and Natural Gas,]
Shastri Bhavan, New Delhi – 110001.].. Respondents

Mr.Sanjay Singhvi, Senior Advocate along with Mr.Bennet D'costa, Ms.Jignasha Pandya, Advocates for petitioner.

Mr.Sudhir Talsania, Senior Advocate along with Mr. Lancy D'souza, Ms. Deepika Agarwal and Mr. V.M. Parkar, Advocates for respondent Nos.1 and 2.

Mr.Dhanesh R.Shah, Advocate for respondent No.3

**CORAM : B.R. GAVAI &
N.J. JAMADAR, JJ.**

**RESERVED ON : 6TH MARCH 2019
PRONOUNCED ON : 3RD MAY 2019**

JUDGMENT (PER N.J. JAMADAR, J.) :

1) Rule. Rule made returnable forthwith and with the consent of the learned counsels for parties, heard finally.

2) This petition under Article 226 of the Constitution of India assails the action of Hindustan Petroleum Corporation Limited, respondent No.1, in pursuance of three notifications of even date, i.e, 14th March 2016, whereby HPCL *inter-alia*, discontinued the payment of pension to the retired employees, who were employed between 14th July 1974 to 1st May 1975; denied the additional pension relief, of Rs. 500/- to the employees, who retired after 28th June 1994; denied the dearness relief, linked to All India Consumer Price Index (AICPI) to the employees who retired after 28th June 1994; drastically reduced the quantum of pension, which was being paid to the employees, who were initially employed with Lube India Limited, which came to be amalgamated with Esso Standard Refining Company of India Limited; and also reduced the pension on account of increased provident fund and gratuity contributions by the employer.

3) As the issues of denial, capping and diminishing of the quantum of pension have their genesis in the events, which transpired over a period for 45 years, it is necessary to note the background facts in some detail.

4) The petitioner is an Association of the pensioners. It is registered under the provisions of Societies Registration Act, 1860. The petitioner claims to represent the bargainable employees who were covered under Section 2(s) of the Industrial Disputes Act, 1947. The petitioner represents three sets of retired employees : first, the retired employees of Esso Standard Refining Company of India [“ESRC”], second, the retired employees of HPCL, who were drawn from Lube India Limited [“LIL”]; and third, the retired employees of HPCL who were employed between the period 15th July 1974 to 1st May 1975 and were allegedly covered by a Settlement dated 24th July 1979.

INCORPORATION OF HPCL

5) ESSO Eastern Incorporation was a foreign company carrying on the business of distributing and marketing petroleum products manufactured by its undertakings : the ESSO Standard Refining Company of India and Lube India Limited. The Parliament enacted ESSO (Acquisition of Undertakings in India) Act, 1974 (hereinafter referred to as “the ESSO Act, 1974”) to provide for the acquisition and transfer of the right, title and interest of ESSO Eastern Inc. in relation to its undertakings in India. The ESSO Act, 1974 came into force on 13th March 1974. In pursuance of the ESSO Act, 1974, the undertakings of ESSO Eastern Incorporation, in India, were taken over by the Government of India and vested in, “ESSO

Standard Refining Company of India Limited” with effect from 15th March 1974.

6) On 12th July 1974, an order was passed by the Company Law Board whereby Lube India Limited (“LIL”), a company incorporated under the Companies Act, 1956, came to be acquired and amalgamated with “ESSO Standard Refining Company of India Limited (“ESRC”). Pursuant thereto, on the appointed day, i.e., 15th July 1974, the undertaking of LIL stood transferred to, and vested in, ESRC and immediately on the said transfer, the name of ESRC stood changed to “Hindustan Petroleum Corporation Limited (“HPCL”)”. Thus, HPCL came to be formed.

PROVISIONS REGARDING EMPLOYEES :

7) Section 9(1) of the ESSO Act, 1974 professed to protect the pension and other service conditions of the employees of the erstwhile ESSO Eastern Incorporation. Likewise, Clause 11 of the order dated 12th July 1974 professed to protect the rights and privileges as to pension, provident fund and gratuity then admissible to the employees of LIL, as if the said order had not been made.

8) It would be contextually relevant to note that the erstwhile employees of the ESSO were governed by the ESSO Pension Plan which was made effective from 1st April 1965. The erstwhile employees of the LIL were also covered by a Pension Plan brought into force vide the

Memorandum dated 29th April 1971. The broad parameters as to the quantum of pension under the ESSO Pension Plan and Lube Pension Plan were similar, with the change that maximum pension under Lube Pension Plan was capped at Rs.12,000/- per annum.

EMPLOYEES RECRUITED AFTER 12th JULY 1974:

9) After the enactment of ESSO Act, 1974, new employees came to be recruited in HPCL. However, there were no specific conditions of service to regulate their employment. A collective bargaining settlement came to be executed between HPCL and the workmen on 24th July 1979, *inter-alia*, fixing wages and other service conditions. In the said settlement, as regards pension, it was provided that the 'Corporation's current pension plan and gratuity policy' shall be applicable only to the employees on the roll of HPCL as on 1st May 1975. The petitioner claimed that this third set of retired employees, i.e., appointed in between 15th July 1974 to 1st May 1975, are entitled to the same dispensation as regards pension as is admissible to the other employees of HPCL.

GRANT OF PENSION RELIEF :

10) As it turned out that the basic pension which was admissible under the ESSO Pension Plan was meagre and inadequate, in the context of inflationary economy, there were certain demands for enhancement in the

pension. The Central Government and HPCL, in order to address the said situation, granted pension reliefs :-

The first pension relief was in the form of addition of 60% of basic pension subject to a minimum of Rs. 60/- per month and maximum of Rs.300/- per month from 1st April 1983 to 31st March 1986; and at the rate of 80% of the basic pension subject to a minimum of Rs.80/- per month and a maximum of Rs.400/- per month with effect from 1st April 1986, in terms of communication, dated 13th August 1986.

11) The second pension relief was by an order dated 1st April 1992 issued by the Government of India, in Ministry of Petroleum and Natural Gas, whereby the relief was enhanced to 100% of the basic pension subject to a minimum of Rs.100/- and a maximum of Rs. 500/- per month. The increase in relief was made effective from 1st April 1992. By the subsequent order dated 23rd October 1992, the said relief was made effective from 1st April 1989, instead of 1st April 1992.

12) The pension was still found to be inadequate. It was found that in the backdrop of the inflationary conditions of the economy, the value of pension eroded considerably and there was a strong justification for grant of pension relief linked to the escalation in the cost of living over the consumer price index. Post consideration, the Government of India, vide communication dated 28th June 1994 conveyed its approval to HPCL for

granting pension relief with effect from 1st April 1993 by multiplying the Basic Pension + Relief thereon as on 1st April 1989, by increase in AICPI over April, 1989. This dearness relief admissible to the pensioners was, however, on the basic pension of Rs.1,250/- only.

13) Fourthly, the Government of India, vide communication dated 18th December 2003, conveyed concurrence of the Government to the payment of ad-hoc relief of Rs.500/- per month to ESSO pensioners. However, the pension relief was admissible to the extent of the basic pension of Rs.1,750/- and the amount beyond the said limit did not get the benefit of the linkage with Consumer Price Index. Lastly, a proposal was moved on 21st September 2006 to grant DA relief on basic pension beyond Rs.1,750/- per month. The Government of India, vide communication dated 4th October 2006, conveyed the approval to the proposal to remove the cap of Rs.1,750/- for grant of DA relief.

DOWNWARD SPIRAL :

14) Arresting the aforesaid trend of grant of pension relief, a contrarian proposal came to be moved on 16th March 2015, interestingly under heading “Proposal for grant of additional pension relief to Esso/Caltex Pensioners”. In the said proposal, it was pointed out that, in view of the spiralling increase in AICPI, the payment of pension has increased substantially. Thus, it was proposed that there should be a maximum

ceiling of total monthly pension of Rs.20,000/-. On 19th March 2015, the Committee of Functional Directors of HPCL accorded approval for fixing the maximum ceiling of total monthly pension of Rs.20,000/- for all the pensioners effective March 2015, to be reviewed for any increase, if any, in 2020.

WRIT PETITION NO. 9 OF 2016 & WRIT PETITION NO. 10 OF 2016

15) As the aforesaid decision to put a maximum ceiling of Rs.20,000/- on the drawal of pension affected a large number of retirees, who were already drawing pension more than the ceiling, two writ petitions came to be filed in this Court. The first petition, being Writ Petition No. 9 of 2016, was filed by Shri Gopal Balkrishna Ambre & 33 other workmen, and, the second petition, being Writ Petition No. 10 of 2016, was filed by Shri Sadashivam Shetty & 35 other workmen. Both the petitions, *inter-alia*, challenged the ceiling of Rs.20,000/- on pension. During the pendency of these writ petitions, the respondents brought on record the three notifications dated 14th March 2016, which denied and further restricted the entitlement to pension.

NOTIFICATIONS DATED 14TH MARCH 2016.

16) The first notification dated 14th March 2016 was addressed to the retired employees who were recruited after 15th July 1974. It was mentioned that they were not at all entitled to the pension benefits under

the ESSO and LIL Pension Plan. Since they were extended the benefits of pension erroneously, by the said notification, it was decided to stop the pension being paid to those employees with immediate effect. Thus, payment of pension to the third set of employees, i.e. 40 employees, recruited after 15th July 1974 was completely stopped.

17) The second notification was issued under the title, “Rectification in ESSO/LIL/CALTEX Pension in respect of ESSO/LIL/CALTEX Employees retired after 28th June 1994”. It proceeded on the premise that the retired employees were being paid pension erroneously to which they were not entitled to as per the original ESSO & LIL Pension Plan. The mistakes were identified as under :-

(i) Despite increase in the contribution in the provident fund by the employer from 8%, and contribution towards gratuity fund, there was no corresponding reduction by one-tenth of one percentum (0.10%) for each 1% excess contribution in provident fund and gratuity, out of the pension which was to be calculated at 1.33% of the compensation.

(ii) As per LIL Pension Plan, there was a maximum cap of Rs.12,000/- per annum. However, the pension

was paid to the erstwhile employees of LIL on actual basis exceeding the said ceiling.

(iii) The employees retired after 28th June 1984 were not entitled to additional pension relief of Rs.500/- made applicable with effect from 1st April 1989.

(iv) The employees retired after 28th June 1984 were also not entitled to AICPI linked pension formula. However, the employees retired after 28th June 1984 were extended the benefit of additional pension relief of Rs.500/- per month and were also given benefit of AICPI linked pension formula erroneously. Thus, it was decided that the pension be accordingly revised strictly in line with the respective Pension Plans and entitlements with effect from the month of February 2016. Pension of around 280 employees was thereby proposed to be revised.

18) The third notification dated 14th March 2016 was under the title, “Rectification in ESSO/LIL/CALTEX Pension in respect of the employees retired before 28th June 1994. The first two errors, which were allegedly found, as noted above, in respect of the employees retired after 28th June 1994, were reiterated.

The third error was stated to be in giving the additional relief of Rs.500/-, in addition to the AICPI linked pension relief, which ought not have been given. The pension of around 297 employees was sought to be accordingly revised in terms of the said notification.

In all the three notifications, HPCL reserved the right to initiate necessary action for recovery of the amounts which were stated to have been erroneously paid to the employees.

In view of the notifications, Writ Petition Nos.9 of 2016 and 10 of 2016 were suitably amended to impugn the said notifications.

JUSTICE MOHIT SHAH COMMITTEE :

19) During the pendency of the above Writ Petitions, the respondents submitted that a Committee chaired by Justice Mohit Shah has been constituted to conduct a detailed enquiry into the subject matter of the various disputes related to the pension. The terms of reference of the said Committee were also brought to the notice of the Court. Therefore, this Court, by order dated 22nd September 2016, observed that it would be appropriate that the parties approach the above committee so that the disputes are effectively resolved. All the points were expressly kept open, and the Committee was requested to tender the report by 31st January 2017. Accordingly, the petitions were disposed of.

20) The committee submitted its report on 28th April 2017. The petitioner avers that the committee has accepted all the contentions of the management, as placed before it by the management, and thereby post-facto validated the stand of the respondent No.1 as contained in the impugned notifications dated 14th March 2017. Hence, the petitioner has again approached this Court impugning the notifications dated 14th March 2016 which have allegedly unjustifiably denied the pension, drastically reduced the quantum of pension, and made unjust changes to the entitlement to pension in utter disregard to the principles of natural justice. The petitioner has therefore prayed that the above notifications be quashed and set aside and the pensionary benefits be restored to the position as obtained in the month of February 2015.

STAND OF THE RESPONDENTS :

21) The respondents have resisted the claim of the petitioner by filing a counter. The locus of the petitioner to invoke the writ jurisdiction of this Court is assailed. The respondents have justified the action of issuing notifications dated 14th March 2016 and the consequent stoppage and rectification of pension. The respondents have contended that the retired employees of HPCL were governed by the Pension Plans of ESSO and LIL. Their entitlement to pension was crystalized. They could not have been given benefit of pension beyond their entitlement. The erroneous extension

of certain benefits were, therefore, justifiably rectified. The respondents have, thus, resolutely supported the reasons which find mention in the respective notifications dated 14th March 2016, and the decisions recorded therein.

22) In addition, it is contended that the respondent-Corporation was not having any Scheme/Policy for extending any superannuation benefits to the employees who came on the rolls of the respondent-Corporation after 15th July 1974. Thus, pursuant to a Settlement, dated 11th January 1989, the respondent-Corporation introduced a self-contributory and participative superannuation benefit fund, effective from May 30, 1988. Subsequently, the said Scheme became a non-contributory Scheme in the sense that only the employer was required to contribute to the said fund. Thus, the ESSO and LIL pensioners were entitled to dual benefit; under the Superannuation Benefit Fund Scheme ('SBFS') as well as ESSO/LIL Pension Scheme. The pensioners are, thus, drawing benefit under the said Scheme in the range of Rs.12,000/- to Rs.23,000/- per month over and above ESSO/LIL Pension.

23) The respondents contended that the net effect of the erroneous computation of pension was that the retired employees were drawing huge pension, which in a given case, even exceeded the last salary drawn by the

employee. In such circumstances, it was necessary to rectify the error and grant pension in accordance with their entitlement.

24) Lastly, the respondents have asserted that since the members of the petitioner-Association fully participated in the proceedings of the Committee and agitated all the points, which are now sought to be urged in the instant petition, the report of the Committee binds the petitioner. Since the petitioner has not challenged the report of the Committee, the petitioner cannot question the legality and validity of the notifications dated 14th March 2016 and the consequent action thereto.

25) In the light of aforesaid facts, we have heard Shri Sanjay Singhvi, the learned Senior Advocate for the petitioner and Shri Sudhir Talsania, the learned Senior Advocate for respondent Nos.1 and 2 at a considerable length. Post conclusion of hearing, the parties have also tendered written submissions.

26) Before advertng to deal with the rival submissions, in order to appreciate the controversy in correct perspective and understand the impact which the impugned notifications had on the entitlement of the retired employees to pension, we deem it appropriate to illustratively compare the position prior to and after the impugned actions. The

impugned notifications operated differently in respect of the three sets of employees, whom the petitioner claims to represent, as under :-

(1) The pension of the employees, who were employed in between 15th July 1974 and 1st May 1975, came to be stopped completely.

(2) The pension of the retired employees, who were drawn from LIL, was reduced drastically.

(3) The pension of the retired employees, who were erstwhile employees of ESSO, was also reduced significantly.

27) We chose to take the calculations submitted by the respondents, by way of illustration. Shri Pravin S. Ghevade represents LIL. Whereas Shri Dominic Fernandes represents ESSO. The impact on their pension is as under :-

Name of the employee	Erst-while Company	Date of Joining	Date of retirement	Last Gross Salary (Rs.)	Net Salary-Last Drawn	First Pension (Rs.)	ESSO/LIL Pension pre-correction (i.e. February, 2015)	ESSO/LIL Pension being given as on date	Pension being given as on date after the impugned notification
1	2	3	4	5	6	7	8	9	10
Pravin S. Ghevade	LIL	11/22/1973	5/31/2013	108,366	62,967	51,296	<u>53,366</u>	1,500	<u>1,500</u>
Dominic Fernandes	ESSO	3/11/1973	10/31/2013	92,000	50,024	41,500	<u>49,357</u>	6,462	<u>6,462</u>

28) At the threshold, we hasten to add that despite drastic reduction in pension, even bordering on denial of pension to the employees drawn from

LII, we would approach the issue on the basis of legal justifiability of the impugned measure. Another peculiar feature of the instant proceeding, which we must notice, is that it is not a case of initial denial of a pensionary benefit, consequent upon the upward revision of pension, but one of subsequent reduction in pension, which has been granted for a sufficiently long period.

29) It may be apposite, at this stage itself, to note what pension connotes. It is now well nigh recognised that the entitlement to pension is a substantive right to property. It is not a bounty or ex-gratia payment made to an employee by an employer at his sweet will and choice. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of *D.S. Nakara & Ors. Vs. Union of India*¹ wherein after an elaborate discussion, the legal connotation of pension, was expounded as under :-

“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 gave 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

1 (1983) 1 SCC 305

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 Art. 309 and clause (5) of Art.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.....”

(Emphasis supplied)

30) In this setting of the matter, we proceed to consider the submissions across the bar. To begin with, the preliminary objections to the tenability of the petition raised by Shri Talsania. It was urged that the petition has been filed in abstract. The petitioner is not a registered trade union. The petitioner has hitherto never espoused the cause of the employees of HPCL. Therefore, the petitioner has no locus to challenge the impugned notifications, urged Shri Talsania.

31) In order to lend support to aforesaid submission, the learned senior counsel placed reliance upon a judgment of the Division Bench of this Court in the case of *National Organisation of Bank Workers' Federatin of Trade Unions Vs. Union of India & Ors.*². In the said case, the appellant therein was not found to be a registered 'trade union' and, in that backdrop, it was observed that if the appellant is not in a position to raise an "Industrial Dispute", it has no *locus standi* to seek the privilege of negotiating those demands, which is the privilege of only registered trade union or a group of workmen under Industrial Disputes Act. The appellant, admittedly, not being a registered trade union, is not a juristic person, and hence also incompetent to file the writ petition.

32) We have perused the aforesaid ruling. We are not inclined to accede to the submission that it governs the facts of the case at hand. In the said case, the grievance of the appellant therein was that to the exclusion of the appellant federation, the management was negotiating with another federation. In that context, it was observed that since the appellant was not a 'trade union', it could not raise an industrial dispute.

33) In the case at hand, there is material to indicate that there are more than 100 members of the petitioner-Association. Initially, two writ petitions were filed by two groups of workmen, i.e., Writ Petition Nos. 9 of 2016 and

² 1993 (II) LLJ 537

10 of 2016. A number of retired employees of HPCL have either been denied pension or their pension has been substantially reduced. In this backdrop, when the rights of the retired employees have been allegedly severely jeopardized, we do not find that registered association of such pensioners, though not a registered trade union, can be precluded from espousing their cause. Moreover, in the light of the challenge to the impugned action by the respondent No.1, which is 'State' within the meaning of Article 12 of the Constitution of India, the objection to the tenability of the petition on the count of the locus of the petitioner seems to be hyper-technical.

34) It was then urged that the retired employees have an efficacious alternate remedy and, therefore, this Court may not entertain the instant petition in its writ jurisdiction. Shri Talsania submitted that the issue raised in the instant petition relates to the 'terms of employment' and could be covered by the term, "Industrial Dispute" and thus the affected retired employees can agitate the same before the statutory forums. It is true that the existence of an efficacious alternate remedy is a relevant factor in exercise of the jurisdiction under Article 226 of the Constitution of India. However, it is trite law that the availability of an alternative remedy for not exercising the writ jurisdiction is a self-imposed restraint, rather than a constitutional prescription, and that there are well recognised exceptions to

the said principle. Two of the exceptions are, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice.

35) On the aforesaid touchstone, reverting to the facts of the case, we find that the petitioner alleges the violation of the right to livelihood and serious infringement of the right to equality. There are allegations to the effect that, in breach of statutory mandate, the pension has been either denied or drastically reduced in complete violation of the principles of natural justice. In our view, hundreds of retired employees, who have been denied or deprived support and succor in the evening of their life cannot be relegated to the statutory remedies for enforcing right to pension, which was being paid to them for a long period. Thus, we are not inclined to accept the challenge to the tenability of the petition on the ground of alternative remedy.

36) It was lastly urged by Shri Talsania that since the petitioner has not challenged the Committee's report, the petition challenging the impugned notifications cannot be entertained. Amplifying the submission, it was asserted that, since the retired employees participated in the proceedings of the Committee, to which the dispute was entrusted pursuant to the order passed by this Court on 22nd September 2016, the findings of the

Committee are binding upon the petitioner, though they may not bind the Court.

37) We are afraid to accede to this submission as well. On a bare perusal of the order passed by this Court in Writ Petition Nos. 9 and 10 of 2016 on 22nd September 2016, it becomes abundantly clear that the said order came to be passed as the respondents submitted before the Court that the issues raised in those petitions were being enquired into by the Committee. The Court thus directed the parties to approach the said Committee for the effective resolution of the dispute. However, this does not imply that the Committee performed any adjudicatory role. The report of the Committee was also directed to be tendered to the parties. The report of the Committee, in this view of the matter, would at best assist the respondents in taking an informed decision. Therefore, the challenge to the tenability of the petition for want of challenge to the findings of the Committee is unworthy of acceptance.

38) Having dealt with the barnacles attached to the hull of the controversy, we propose to now deal with the core issues. In the backdrop of the facts, which we have noted in detail, the controversy boils down to the justifiability of the action of the respondents manifested in the impugned notifications dated 14th March 2016. Shri Talsania, the learned Senior Counsel would urge that the respondents were within their rights to

rectify the error in computation of the pension in the backdrop of the obvious discrepancy and unauthorized payments much beyond the entitlement of the retired employees. Thus, the action of the respondents was perfectly legal, valid and justified.

39) In support of the said submission, Shri Talsania placed a strong reliance upon a judgment of the Supreme Court in the case of *Union of India vs. S.R. Dhingra & Ors.*³. In the said case, while fixing the pension of the retired employees of the Indian Railways, notional pay was to be fixed without taking into consideration the “running allowance”. However, due to a clerical mistake, the running allowance was included and the pension came to be fixed at a much higher amount and the said error was later rectified. In this backdrop, the Supreme Court observed that it is well settled that a mistake does not confer any right to any party and can be corrected. Drawing a parallel to the facts of the instant case it was urged that the rectifications in the instant case were also justified.

40) Indubitably, if a benefit is extended by mistake, it would not crystalise into a right to continue to get the said benefit. In the light of this legal position and the factual matrix, the points which arise for consideration can be formulated as under :-

3 (2008) 2 SCC 229

(1) Whether HPCL was justified in re-computing the quantum of basic pension by reducing the rate of pension accrual (1.33%) by 1/10th of 1% (0.10%) for each additional percentum contributed to provident fund beyond 8%, and gratuity?

(2) Whether HPCL was justified in introducing the ceiling of Rs.12,000/- per annum on the pension payable to erstwhile LIL employees?

(3) Whether the decision to stop payment of pension to the retired employees recruited between 15th July 1974 to 1st May 1975 is justifiable?

(4) Whether the HPCL was justified in withdrawing the AICPI linked pension relief to the employees who retired after 28th June 1994?

(5) Whether the revocation of ad-hoc relief of Rs.500/- given by Circular dated 1st April 1992 on the premise that it was replaced by Circular dated 28th June 1994 is justifiable?

Point (1) : Reduction in the rate of accrual of pension :

41) Shri Talsania urged with a degree of vehemence that in the face of the clear stipulation in the ESSO Pension Plan as well as LIL Pension Plan, which mandated reduction of the pension accrual by 0.10% for each 1%

additional contribution to provident fund, and gratuity, the employees can have no grievance in respect of the said rectification. Our attention was invited to Clause (1)(b) of the ESSO Pension Plan, which reads as under :

“PART V : PENSION PROVISIONS

1. Amount of Pension :

.....

(b) Future Service – One point thirty three percentum (1.33%) of the compensation of the employee during each year of continuous service after December 21, 1964, until his retirement date, provided, however, if the Company shall contribute in respect of the employee to any provident fund or funds, at a rate in excess of eight percentum (8%) of the compensation of the employee, the rate of pension accrual of the employee for such period or periods of service shall be reduced by one-tenth of one percentum (0.1%) for each additional percentum in excess of eight percentum (8%) contributed to any provident fund or funds.”

(Emphasis supplied)

Clause 2(a) of the LIL Pension Plan made a similar provision for reduction.

It was urged that as the contribution of the employer to the provident fund, over a period of time, rose to 12%, the 0.50% reduction in the pension accrual was wholly justified.

42) In contrast to this, it was stoutly submitted by Shri Singhvi that the reduction in the pension accrual on the count of excess contribution to the provident fund was legally impermissible. It was urged that Section 12 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ('The Provident Funds Act, 1952') incorporates a specific bar against

reducing the wages and other benefits, on account of contribution to the provident fund. To bolster up this submission, a strong reliance was placed on the judgment of the Supreme Court in the case of ***Som Prakash Rekhi Vs. Union of India & Ors.*** ⁴

43) In the case of ***Som Prakash*** (Supra), the Supreme Court considered the question, “Whether there is a statutory ban on any diminution in the pension because of provident funds and gratuity benefits having been availed off?” The Supreme Court, after referring to the provisions contained in Section 12 of the Provident Funds Act, 1952 and Section 14 of the Payment of Gratuity Act, 1972 ('The Gratuity Act, 1972'), of which true import fell for consideration before the Supreme Court held, as under :-

“63

We take the view that this benignant provision must receive a benignant construction and, even if two interpretations are permissible, that which furthers the beneficial object should be preferred. From that perspective, the inference is reasonable that the total quantum of benefits in the nature of old age pension, gratuity or provident fund, shall not be reduced by reason only of the liability of the employer for payment of contribution to the fund. The Section prevails over the Trust Deed.

64 A similar result holds good even under the Gratuity Act. Section 14 of that Act reads thus:

14. The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

4 (1981) 1 Supreme Court Cases 449

The expression "instrument" certainly covers a Trust Deed and, notwithstanding the deduction that may be sanctioned by the Trust Deed, the overriding effect of Section 14 preserves the pension and immunises it against any deduction attributable to the statutory payment of the provident fund. The deduction made by the second respondent is, in that event, illegal.

.....

67 We must realise that the pension scheme came into existence prior to the two beneficial statutes and Parliament when enacting these legislations must have clearly intended extra benefits being conferred on employees. Such a consequence will follow only if over and above the normal pension, the benefits of provident fund and gratuity are enjoyed. On the other hand, if consequent on the receipt of these benefits there is a proportionate reduction in the pension, there is no real benefit to the employee because the Management takes away by the left hand what it seems to confer by the right, making the legislation itself left-handed. To hold that on receipt of gratuity and provident fund the pension of the employee may be reduced pro tanto is to frustrate the supplementary character of the benefits. Indeed, that is why by Sections 12 and 14 overriding effect is imparted and reduction in the retiral benefits on account of provident fund and gratuity derived by the employee is frowned upon. We, accordingly, hold that it is not open to the second respondent to deduct from the full pension any sum based upon reg. 16 read with Regulation 13. If Regulation 16 which now has acquired statutory flavour, having been adapted and continued by statutory rules, operates contrary to the provisions of the P.F. Act and the Gratuity Act, it must fail as invalid. We uphold the contention of the petitioner.”

(Emphasis supplied)

44) In view of the aforesaid enunciation of the legal position, the deduction from the pension accrual on the strength of the stipulations in the ESSO/LIL Pension Plans appears to be clearly in teeth of the statutory provisions contained in Section 12 of the Provident Funds Act, 1952 and Section 14 of the Gratuity Act, 1972.

45) Shri Talsania, the learned Senior Counsel, attempted to salvage the position by canvassing a submission that the provisions of the ESSO Act, 1974 have overriding effect over all other laws, including the Provident Funds Act, 1952 and the Gratuity Act, 1972. Our attention was drawn to the provisions contained in Section 9 of the ESSO Act, 1974 which provide that the employees shall hold office or service on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them if there had been no vesting of ESSO Incorporation in the Government. Juxtaposing this provision with Section 11 of the ESSO Act, 1974, which contains a non-obstante clause, it was urged that the stipulations in the Pension Plan are saved.

Section 11 of the ESSO Act reads as under :

“11. Effects of Act on other laws :

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority.”

46) We are unable to accede to the aforesaid submission. Undoubtedly, Section 11 of the ESSO Act, 1974 incorporates a non-obstante clause. However, it does not necessarily imply that the effect of the non-obstante clause can be so extended as to protect even certain stipulations in the Pension Plan as against the statutory provisions, which are of general

application and beneficial nature. Moreover, it is an established rule of interpretation that the wide amplitude of a non-obstante clause must be kept confined to the legislative policy and its scope ought not to be extended beyond the legislative intent. Of necessity, the Court, while interpreting a non-obstante clause, is required to find out the extent to which the legislature intended to give such clause an overriding effect.

47) A profitable reference in this context can be made to a three-Judge Bench judgment of the Supreme Court in the case of ***Central Bank of India Vs. State of Kerala*** ⁵. In the said case, while explaining the rule of interpretation of a non-obstante clause, the following observations were made :

“103 A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions.”

48) On the aforesaid touchstone, if the provisions of the ESSO Act, 1974 are considered, it becomes crystal clear that the avowed object of the ESSO Act, 1974 was to insulate the acquisition and vesting of the ESSO Eastern Inc. Though certain provisions for the protection of the service conditions of the employees of erstwhile ESSO Eastern Inc. were made, those

⁵ (2009) 4 SCC 94

provisions cannot be construed to override the provisions of the Provident Funds Act, 1952 and the Gratuity Act, 1972, which provide for labour welfare. The ESSO Act, 1974 and the above labour welfare legislations operate in different spheres. There is no apparent inconsistency.

49) Thus, we are inclined to hold that the deduction in the quantum of basic pension on the count of the excess contribution to the provident fund and gratuity, which were statutory liabilities, is not legally sustainable. The action of the respondents in recomputing the pension by resorting to the provisions in the ESSO/LIL Pension Schemes, which provided for such deduction, thus deserves to be quashed and set aside.

Point No.2 : Ceiling of Rs.12,000/- p.a. in respect of pensioners (LIL) :

50) Shri Singhvi, the learned Senior Counsel assailed the impugned notifications whereby the respondents introduced the cap of maximum pension of Rs.12,000/- per annum for the employees who were drawn from LIL as wholly unjust, arbitrary and inequitable. It was submitted that after almost 40 years, the instrumentality of State could not have resorted to a stipulation in the LIL Pension Plan of 1974, to introduce the ceiling, after having rightly treated all the LIL employees as the employees of ESSO and governed by the ESSO Pension Plan. It was urged that upon the amalgamation of LIL with ESRC, the employees of erstwhile LIL became the employees of ESRC. In this backdrop, the respondents could not have

resorted to a clause in the Company Law Board order dated 12th July 1974 which professed to protect the rights of the employees as to conditions of service, to their disadvantage. It was further urged that had the respondents implemented the said ceiling of Rs.12,000/- per annum, earlier, the employees of erstwhile LIL would have agitated the said unjust stipulation at an opportune time. Thus, after about 40 years, the respondents could not have arbitrarily introduced the said ceiling without recourse to the provisions of Section 9A of the Industrial Disputes Act, 1947 as the reduction in pension amounts to change in the conditions of service.

51) Shri Talsania, the learned Senior Counsel, joined the issue by putting forth a submission that the erstwhile employees of LIL were erroneously treated as governed by ESSO Pension Plan. It was urged that the erstwhile employees of LIL, upon merger, became employees of HPCL. However, they continued to be governed by the same terms and conditions, rights and privileges, including pension, as admissible to them under LIL. Support and sustenance to the aforesaid submission was sought to be drawn from Clause 11((1) of the Company Law Board order dated 12th July 1974. It reads as under :-

11. Provisions respecting existing officers and other employees -

(1) Every whole time officer or other employee (not including directors) employed immediately before the appointed day in

LIL shall, as from the appointed day become an officer or other employee, as the case may be, of HPC and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension, provident fund or gratuity as would have been admissible to him under LIL if this Order had not been made, and shall continue to do so unless and until his employment in HPC is duly terminated or until his remuneration and conditions of service are duly altered by HPC.

52) It would be contextually relevant to note that Clause 12 of the very same order made provision for provident, superannuation, welfare and other funds of the employees. Sub-clause (2) of Clause 12 is relevant. It reads as under :-

“12.....

(2) HPC shall as soon as may be after the appointed day constitute in respect of the moneys and other assets which are transferred to and vested in it under sub-clause (1), one or more trusts having objects, terms and conditions similar to those of the existing trusts as in the circumstances may be practicable. So however, that the rights and interests of the beneficiaries of the existing trusts shall not in any way be diminished or prejudiced.”

(Emphasis supplied)

53) Evidently, the aforesaid provisions were made so as to protect the service conditions of the erstwhile employees of LIL, when the later was merged with ESRC. Such provisions were made to ensure that the employees, consequent to merger, do not have the service conditions which are less favourable to them than the service conditions in their parent organization. From this standpoint, the question which crops up for

consideration is, can these provisions be so construed as to deny the benefit which was extended to the erstwhile employees of LIL for over 40 years?

54) The following factors have a material bearing in arriving at a legitimate answer to the aforesaid question. Firstly, the erstwhile employees of LIL were merged with the ESRC and not HPCL. The merger was of LIL with ESRC. ESRC was, in fact, rechristened as HPCL. Secondly, from the material on record, it becomes abundantly clear that in none of the circulars/orders, to which we have made reference hereinabove, there was a reference to LIL employees or Pension Plan. The erstwhile employees of the merged entities were all along identified as ESSO/CALTEX employees. Thirdly, there is material to indicate that the employees of LIL along with the employees of the erstwhile ESSO Eastern Inc., were identified as one group under the nomenclature of ESSO employees. Fourthly, it is pertinent to note that while granting the pension reliefs, no distinction was made in the ESSO and LIL employees. The additional pension reliefs of Rs.500/- each were extended twice, i.e., 1st April 1992 and 18th December 2003. This additional pension relief itself matched the monthly ceiling of Rs.1,000/-p.m., in terms of the erstwhile LIL Pension Plan, leave apart the basic pension accrued to the erstwhile LIL employees. Fifthly, the Government removed the cap of Rs.1,750/- for grant of DA relief. In terms thereof, even LIL pensioners were given the DA relief much

beyond the amount of Rs.1,000/-p.m. to which the respondents now have restricted their entitlement. It would be naive to assume that the authorities were then not aware of the stipulation of maximum pension in the LIL Pension Plan. This continuous course of action of treating the erstwhile LIL employees like the ESSO pensioners, cannot be brushed aside.

55) Even on legal premise, the submission of Shri Singhvi that pension of erstwhile LIL employees could not have been drastically reduced without following the mandate of Section 9A of the Industrial Disputes Act, 1947 appears to carry conviction. Indisputably, on the own showing of the respondents, the impugned action of the respondents affects the 'terms of employment'. Thus, can the reduction of pension of Shri Pravin S. Ghevde, an erstwhile LIL employee, from Rs.53,366/- to Rs.1,500/-, (as extracted above), said to be anything less than adverse change in the conditions of service?

56) In this context, the reliance placed by Shri Singhvi on a judgment of the Supreme Court in the case of *The Management of Indian Oil Corporation Limited vs. Its Workmen* ⁶ appears to be well founded. In the said case, the appellant-corporation had withdrawn the concession of Assam Compensatory Allowance granted to the employees. After referring

⁶ 1976 (1) SCC 63

to the provisions of Section 9A of the Industrial Disputes Act, the Supreme Court observed as under :

“5.....

An analysis of Section 9A of the Act clearly shows that this provision comes into operation, the moment the employer proposes to change any condition of service applicable to any workman, and once this is done twenty-one days notice has to be given to the workmen. This admittedly was not done in this case. By withdrawing the Assam Compensatory Allowance the employers undoubtedly effected substantial change in the conditions of service, because the workmen were deprived of the compensatory allowance for all time to come.”

(Emphasis supplied)

57) The second limb of the argument of Shri Singhvi that had the respondents resorted to the said ceiling in LIL pension scheme immediately after merger with ESRC or soon thereafter, the employees would have had the opportunity to raise an appropriate grievance or dispute, appears even more potent. The matter cannot be appreciated bereft of the time context. For almost 40 years, the respondents did not resort to the said stipulation of ceiling on pension. The respondents treated the erstwhile LIL employees as the ESSO pensioners, who are entitled to receive the pensionary benefits without any ceiling. This brings in its train the principle of legitimate expectation that the respondents would pay pension to the erstwhile LIL employees without any ceiling thereon. If the matter is considered through the prism of the positive acts of extending the pension reliefs, as indicated

in detail above, while narrating the facts, an inference becomes inescapable that the respondents consciously chose not to invoke the said ceiling.

58) There is material on record to indicate that, in the backdrop of historically low basic pension, the employees were consistingly agitating for pension relief. Had the respondents invoked the said ceiling on pension, the employees would have had an opportunity to ventilate their grievances. In this backdrop, the action of the respondents, in introducing a ceiling of Rs.12,000/- per annum on the pension payable to the erstwhile LIL employees without providing any opportunity appears to be wholly arbitrary and unjust.

59) We also cannot loose sight of the myopic view which the authorities of HPCL have taken. The implementation of ceiling of Rs.12,000/- per annum, without reference to the time context, is per se unreasonable and arbitrary. It does not take into account the erosion in value of money from the year 1974. Nor the authorities have considered the increase in the salaries of the erstwhile employees of LIL, during the intervening period. Obviously, the pension ordinarily bears a proportion to the salary drawn by an employee. Nor the said decision pays any heed to the Net Present Value of Rs.12,000/-(calculated from the year 1974, when the ceiling was introduced). No consideration was bestowed to the question as to whether such abysmally low amount can be termed “pension”. The implementation

of ceiling of Rs.12,000/- per annum was thus mechanical and without any application of mind as well. We are, therefore, inclined to hold that imposition of ceiling of Rs.12,000/- per annum on the pension of erstwhile LIL employees is unjust, arbitrary as well as illegal and deserves to be quashed and set aside.

Point No.3 : Stoppage of pension to the retired employees recruited between 15th July 1974 to 1st May 1975 :

60) Shri Singhvi urged that the stoppage of pensionary benefit to the retired employees, employed between 15th July 1974 to 1st May 1975 was in effect, deprivation of the right to livelihood. It was submitted that the employees who were appointed during the said period were governed by the ESRC service conditions, and their appointment letters were pressed into service in support of the said submission. Those employees were covered by the first Settlement of 1979. Under Clause 16 thereof, it was specifically mentioned that the employees as on the pay roll of HPCL on 1st May 1975 would be covered by, "Current Pension Plan" of the Corporation. Since the only Pension Plan, which was in operation and understood by both the parties, was the ESSO Pension Plan, the aforesaid employees were rightly extended the pensionary benefits. Denial thereof in the evening of their life, according to the learned Senior Counsel, is completely unjust and arbitrary.

61) Clause 16 of the Settlement reads as under :

“16. Retirement Age/Benefits :

The normal retirement age of all employees will be 58 years (optional retirement age, 48 years).

The Corporation's Current Pension Plan and Gratuity Policy shall be applicable only to employees on the permanent payroll of the Corporation as on May 1, 1975.”

62) Per contra, Shri Talsania would urge that as on the date of the settlement, there were three Pension Plans, namely, ESSO Pension Plan, LIL Pension Plan and CALTEX Pension Plan. Since the employees appointed after 15th July 1974 formed a class apart, and there was no Pension Plan, clause 16, extracted above, cannot be resorted to import ESSO Pension Plan as the current Pension Plan for the said class of employees, urged Shri Talsania. It was further submitted that, Pension Plan for the employees subsequently recruited came to be introduced, in the form of Superannuation Benefit Fund Scheme, only in the year 1989.

63) The controversy boils down to the construction of the expression, “Corporation's Current Pension Plan and Gratuity Policy”. It is imperative to note that though the settlement was arrived at in the year 1979, the said benefit of pension and gratuity was made applicable only to the employees on the permanent pay roll as on May 1, 1975. The employees who were on the pay roll as of May 1, 1975 were thus treated as one group.

Undoubtedly, the current Pension Plan would refer to the Pension Plan which was then in vogue.

64) It would be contextually relevant to note that the ESSO Pension Plan was applicable to even those employees who joined the service after the effective date, i.e., April 1, 1965. The eligibility clause thereof reads as under :-

“PART II : ELIGIBLE EMPLOYEES

All regular employees who are members of the permanent resident staff of the Company who are engaged in service on and after the effective date of this Plan may be eligible to the benefits as provided in this Plan upon retirement. An eligible employee may be retired from the service of the Company as hereinafter provided.”

(Emphasis supplied)

65) At this stage, the appointment orders of Shri Dashrath Nikam dated 14th September 1973, and Shri Gopal Ambre, dated 18th September 1974, who fall in the said group are required to be noticed. Clause (4) of the appointment orders reads as under :

“(4) You will be entitled to such privileges and benefits as applicable, per company policy, to other company employees in your category at your assigned location.”

66) A conjoint reading of aforesaid clauses in the Settlement, 1979, ESSO Pension Plan, and the appointment order would indicate that the group of employees who were appointed before 1st May 1975, in the newly

incorporated HPCL, were also entitled to pension. Clause 16, extracted above, recognised and crystalised the right of the employees to pension, provided they were on the pay roll on May 1, 1975. The term, “Current Pension Plan”, therefore, in our view, cannot be interpreted to mean as “No Pension Plan”. For such employees, the appropriate Pension Plan would be the ESSO Pension Plan as it also covered the employees, who came to be appointed subsequently. What tilts the scale in favour of the employees is the fact that the respondents extended the pensionary benefit even to this group of employees consciously.

67) It was submitted on behalf of the respondents that, in view of the introduction of SBFS, with effect from 1989, it cannot be said that the said group of employees was rendered without any social security post-retirement. Since SBFS, which was initially contributory, turned into a non-contributory scheme and provides substantial benefits to the retired employees, the benefit of ESSO Pension Scheme could never have been extended to this group of employees, urged Shri Talsania. Our attention was invited to an order passed by the Government whereby a huge sum of Rs.330 crores was infused by the HPCL in the year 2006 to make the SBFS Scheme workable.

68) Since the respondents heavily rely upon the SBFS Scheme to counter the submission of arbitrariness and denial of right to livelihood, it may be

necessary to notice the nature of the SBFS Scheme. So far as the existing employees, the Scheme was voluntary in nature. The Scheme was contributory in nature with defined benefits. It is pertinent to note that the Memorandum of Settlement dated 11th January 1989, pursuant to which the said Scheme was introduced, contained the following clause :

“13. If in future, Government of India comes out with a pension/ superannuation scheme in general for all public sector employees, such scheme will be introduced in addition to this contributory superannuation benefit fund scheme which in turn is exclusive of other currently applicable pension scheme in the corporation.”

(Emphasis supplied)

69) The aforesaid clause makes it explicitly clear that the SBFS was exclusive of, and without prejudice to, the currently applicable pension scheme in the corporation. Thus, the floating and continuation of SBFS Scheme did not impinge upon the accrued right of the employees to pension. Therefore, in our view, the respondents cannot draw any mileage from the benefits being extended to the retired employees under the said Scheme, in support of the impugned notifications. We are, thus, persuaded to hold that the stoppage of the pension of the employees appointed between 1st July 1974 to 1st May 1974 is also untenable.

Point No. 4 : Withdrawal of AICPI Linked pension relief to the employees retired after 28th June 1994 :

70) A two pronged submission was advanced on behalf of the petitioner. The denial of the benefit of AICPI linked pension relief to the employees

retired after 28th June 1994 constitutes an invidious discrimination between the members of the same class. Secondly, the said cut-off date, i.e., 28th June 1994 is wholly arbitrary and in violation of the right of equality under Article 14 of the Constitution of India. It was urged that there is no rationale which distinguishes between a homogeneous class of pensioners on the basis of an artificial cut-off date.

71) In support of these submissions, Shri Singhvi placed strong reliance upon the judgments of the Supreme Court in the cases of *D.S. Nakara* (Supra), *Subrata Sen & Ors. Vs. Union of India & Ors.*⁷ and *Kakkurichi Taluk Retired Officials Association & Ors. Vs. State of Tamil Nadu*⁸.

72) As against this, Shri Talsania, submitted that the circular dated 28th June 1994, whereby the AICPI linked pension relief was made applicable, records in clear and explicit terms that the said relief will be admissible only to the retired employees of the HPCL and not to the serving employees. The distinction thus made between the then pensioners and serving employees is not only logical and reasonable but is necessarily required to be made, in the matter of grant of pension, urged Shri Talsania. To bolster up the aforesaid submission, the learned Senior Counsel placed a strong reliance upon a Constitution Bench judgment of the Supreme

7 (2001) 8 SCC 71

8 (2013) 2 SCC 772

Court in the case of *Confederation of Ex-servicemen Association & Ors. Vs. Union of India & Ors.*⁹.

73) In the said case, the Constitution Bench, after adverting to the principle of reasonable classification, observed as under :

“30 In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfill the twin-test, namely;

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.

31 In our considered opinion, classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees, it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution. To us, two categories of employees are different. They form different classes and cannot be said to be similarly situated. There is, therefore, no violation of Article 14 if they are treated differently.”

(Emphasis supplied)

74) There is a catena of decisions on the question as to whether the extension of the pensionary relief based on a cut-off date constitutes discrimination and thereby amounts to breach of the guarantee of equality

⁹ (2006) 8 SCC 399

under Article 14 of the Constitution of India. It may not be necessary to make a detailed reference to the judgments relied upon by the learned Senior Counsel for the petitioner. All the cases starting from the judgment in the case of ***D.S. Nakara*** (Supra) were considered by the Supreme Court in the case of ***V. Kasturi Vs. Managing Director, State Bank of India, Bombay & Another*** ¹⁰ and, thereafter, the following categories were illuminatingly culled out :

“21 *It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly get projected.*

Category I

22. *If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case (1997) 7 SCC 334, would cover this category of cases.*

Category II:

¹⁰ (1998) 8 SCC 30

23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter, Vs. Capt. Biplabendra Chanda, (1997) 1 SCC 208 and Govt. of T. N. v. K. Jayaraman, (1997) 9 SCC 606 and others to which we have made a reference earlier. If the claimant for pension who benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme would disentitle him from getting such a new benefit."

(Emphasis supplied)

75) We may make a useful reference to a recent judgment of this Court in the case of **Mumbai Municipal Pensioners Association Vs. Municipal Corporation of Gr. Mumbai & Ors.** ¹¹, wherein, after referring to all the judgments dealing with the aforesaid issue, the legal position was stated as under :-

"19. It could, thus, be seen that, after considering the legal position as it prevailed over the number of years, the Hon'ble Apex Court carved out two categories of cases. It

¹¹ Writ Petition (O.S.) No. 2598 of 2016 decided on 15th February 2019

found that, if the retirees are eligible for pension at the time of their retirement and if they survive till the time of subsequent amendment of the relevant pension scheme to enhanced pension or eligible to get more pension, as per new formula of computation of pension which is subsequently brought into force, they would be entitled to get the benefit of the amended pension provisions from the date such provision came into effect as they would be the members of the very same class of pensioners when the additional benefit is conferred on all of them. It was held by the Hon'ble Apex Court that, in such a situation, the additional benefit available for the same class of pensioners cannot be denied to them on the ground that they had retired prior to the date on which the aforesaid additional benefit was conferred on the members of the same class of pensioners who had survived by the time, the scheme granting additional benefit to those pensioners came into force. It has been held that, this is in line with the decisions tracing their roots to the ratio of D. S. Nakara's case (supra).

20. However, the second class that is carved out by the Hon'ble Apex Court is that of a pensioner, who at the time of retirement, was not qualified to get the pension on the basis of the existing rules. It takes into consideration the situation that, if the rules have changed subsequently making them the employees entitled to pension. The question that fell for consideration before the Hon'ble Apex Court in the case of V. Kasturi (supra) was, as to whether in such a situation, the employees, who were not entitled to pension on the date of retirement on the basis of the rules existing on the said date, would be entitled to pension, if subsequently the rules have changed so as to make the employees entitled to pension. The Hon'ble Apex Court held that, unless the rules made by the authorities, specify the rules to be retrospectively applicable, such an employee cannot get the benefit of the new scheme. Only if the rules mandate for the retrospective applicability of the liberal scheme to the employees who had retired prior to such scheme coming into effect, such an employee can get the benefit. In any other case, he cannot claim it as a matter of right."

76) We do not propose to burden this judgment by referring to any more authorities, and reiterating the legal propositions. Before we advert to

consider the applicability of the legal principles, to the case at hand, it may be necessary to note the two clauses of the Circular dated 28th June 1994, whereby the Government of India extended the AICPI linked pension relief.

They read as under :-

(i) *The relief to the HPCL (ESSO and Caltex) pensioners will be revised from 1.4.1993 as under :-*

(Basic pension + Relief thereon as of 1.4.89) X Increase in AICPI over April, 1989 / AICPI as on April, 1989.

....

(iv) *The relief will be admissible only to the retired employees of the HPCL (Esso and Caltex), and not to the serving employees.”*

77) At this stage, to again appreciate the implications of AICPI linkage, in correct perspective, the components of pre-revised and revised pension of Shri Pravin Ghevde and Shri Dominic Fernandes may be noted :

Name of the employee & Erst-while Company	ESSO/LIL pension pre-correction					Corrected ESSO/LIL Pension being given as on date			
	Basic Pension pay item 164	Additional relief pay item 165	Additional relief pay item 166	AICPI link relief-pay item 167	Total pension pre-correction	Basic pension-pay item 164	Additional relief pay item 165	Additional relief pay item 166	Net pension being given as on date
1	2	3	4	5	6	7	8	9	10
Pravin S. Ghevde, LIL	7,936	500	500	44,430	53,366	6,171	500	500	1,500
Dominic Fernandes, ESSO	7,297	500	500	41,060	49,357	6,462	500	500	6,462

78) It would be contextually relevant to immediately notice the difference in the pension of the employees who retired immediately after 28th June 1994 and those who retired prior thereto :

PENSIONER'S RETIRED BEFORE 28/06/1994-CORRECTED PENSION (PROVISIONAL)

Sr. No. as per HPCL affidavit	Em. Name	ESSO/LIL/CALTEX	DOR	REVISED TOTAL PENSION
1	2	3	4	5
35	K.S. Rangaraj	ESSO	31/12/1979	19967
279	V.K. Vohra	ESSO	31/01/1994	9126
159	Metha Harish CH	ESSO	30/06/1994	1002
114	Shroff C. Minoo	ESSO	30/06/1994	812

It is the bold stand of the respondents that the dispensation of AICPI linkage was extended to only the employees retired prior to 28th June 1994. The serving employees were specifically stated to be not entitled to be said benefit. Therefore, there was no ambiguity. Despite such clear stipulation, erroneously, the benefit of AICPI linkage was extended to the employees who retired subsequent to 28th June 1994, which resulted in huge pension pay out, which almost matched the last drawn salary.

79) Shri Talsania, the learned Senior Counsel further submitted that the rationale behind AICPI linkage for the pensioners who retired before 28th June 1994 is required to be appreciated. It was urged that if the AICPI linkage with effect from 1989 is given to the employees who retired after 28th June 1994, then such employees will get the benefit of dearness relief twice. Firstly, they would get the benefit of wage revision and their salary

would correspondingly increase. Secondly, they will again get the benefit of the dearness relief calculated right from 1989, on the basis of CPI index, though their salary has already been enhanced to accommodate the said dearness relief.

80) We have given our anxious consideration to the aforesaid submissions in the backdrop of the governing legal principles. Indeed, the circular dated 28th June 1994 categorically records that the benefit AICPI linked pension relief shall not be applicable to the serving employees. The crucial question is whether this constitutes the reasonable classification of the homogeneous class of the pensioners? The entitlement to the basic pension is freezed in terms of the ESSO Pension Plan (1.33% of accrued salary during the entire service period). In this backdrop, the fact that the employees were yet not retired on 28th June 1994, on which the revised formula for grant of pension relief was made applicable, has no rationale nexus to the object sought to be achieved. The object of the said measure was to grant pension relief in view of the historically low salary. The fact remains that a person retired on 30th June 1994 also suffered from the said handicap of low salary. As indicated above, Shri Mehta Harish and Shri Shroff, who retired two days after the said circular i.e., 30th June 1994 are drawing the revised pension of Rs.1,002 and Rs.812, respectively. In contrast, Mr. K.S. Rangraj who retired long back, on 31st December 1979,

when the salaries were even low, draws a pension of Rs.19,967/-, and Mr.V.K. Vohra, who retired on 31st January 1994, draws a pension of Rs.9126/-. At the cost of repetition, it must be noted that the pension bears a proportion to the last drawn salary. The effect of the impugned notifications is that the person who retired later and with higher salary, draws lower pension. In this view of the matter, the distinction sought to be made between the employees who retired before and after 28th June 1994, in the matter of the pension relief linked to AICPI Index, appears arbitrary and inequitable. The said cut-off date, i.e., 28th June 1994 does not seem to have any rationale nexus with the object sought to be achieved, except the fact that the circular was issued on that date.

81) The submission of Shri Talsania that the AICPI linked benefit cannot be extended, from the year 1989, for computing the pension as the serving employees have already got the benefit of dearness relief, however, appears to have some substance. If we peruse the components of the pre-revised pension of Mr.Pravin Ghevde and Dominic Fernandes, it becomes evident that, the component of AICPI linked pension relief is huge (Rs.44,430/- and Rs.41,060/-, respectively as against the basic pension of Rs.7,936/- and Rs.7,297/-, respectively.). The reason is not far to seek. The basic pension is multiplied by the increase in the AICPI over the AICPI of 1989

(increase in index for over 25 years). This has obviously resulted in a huge increase in the AICPI linked component of pension.

82) From the perusal of the formula of computation of pension, as per clause (1) of the circular, extracted above, we do not find the principle that the employees who retired after 28th June 1994 ought to be given the benefit of the rise in AICPI index (over and above the increase in their salary, prior to the date of retirement) right from the year 1989. On the contrary, if properly construed, the said formula, envisages that the benefit of increase in the consumer price index for five years, i.e., 1989 to 1994 be given to the employees while fixing their pension. The appropriate formula in respect of the employees, who retired after 28th June 1994 would, therefore, be as under :-

	AICPI as on April of the year of retirement
Basic Pension + Additional Pension X relief	----- AICPI as on April of the year, five years prior to the date of retirement

For example, we may assume that the basic pension plus additional pension relief of an employee, who retired in the year 2005, comes to Rs.10,000/-. The AICPI index in the year of retirement is 150. The AICPI index, five years prior thereto, i.e., 2000, was 100. There is, thus, rise in AICPI index by 50 points. According to the aforesaid formula, the pension of such employee on the date of retirement would be fixed as under :-

$$\text{Rs.10,000} \times 150/100 = \text{Rs.15,000/-}$$

83) If the formula is made applicable in aforesaid fashion, it would operate equitably for all pensioners, whether retired before or after 28th June 1994. It is needless to add that once the pension is fixed in the aforesaid fashion, the employee (who retired after 28th June 1994) would also be entitled to the yearly increase in dearness relief, as is admissible to the employees who retired prior to 28th June 1994. We are, therefore, inclined to set aside the impugned notifications to the extent that it completely denies the AICPI linked pension relief to all the employees who retired after 28th June 1994. We are persuaded to modulate the equitable relief as indicated in the preceding paragraph. Such determination of pension, coupled with the benefit under SBFS, currently being drawn by the pensioners, in our view, would provide reasonable social security.

Point No. 5 : Revocation of ad-hoc relief of Rs. 500/- in terms of the Circular dated 1st April 1992 :

84) It was submitted on behalf of the respondents that though the respondents are of the view that the ad-hoc relief of Rs.500/- given by circular dated 1st April 1992, was replaced by, and subsumed in, the AICPI linked pension relief dated 28th June 1994, yet, in deference to the recommendations of the Committee, it has been decided to continue to extend the said benefit. Likewise, in respect of another ad-hoc relief of Rs.500/- given in the year 2003, in deference to the recommendations of

the Committee, it has been decided to continue the said benefit. In this view of the matter, we do not propose to delve into the aspect of justifiability of the withdrawal of additional/*ad-hoc* pension relief.

85) The only issue which now remains for consideration is the threat of recovery of the amounts, which were allegedly erroneously paid by the HPCL to the employees. Though, no coercive action to enforce the said recovery is stated to have been initiated, yet, in view of the aforesaid consideration, and the judgment of the Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.***¹², especially the observations in Para No. 18, which apply with equal force to the facts of the instant case, we direct that there shall be no recovery whatsoever from any of the retired employees in pursuance of the impugned notifications.

86) The upshot of the aforesaid discussion is that the petition deserves to be allowed in the following terms :

- (i) The petition stands partly allowed.
- (ii) The impugned notification dated 14th March 2016 and the consequent action of stopping the pension of the retired employees, recruited between 15th July 1974 and 1st May 1975 are hereby quashed and set aside.

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(iii) It is declared that the employees recruited between 15th July 1974 and 1st May 1975 are entitled to pension like the erstwhile employees of the ESSO.

(iv) The impugned notification dated 14th March 2016 and the consequent action of putting a ceiling of Rs. 12,000/- per annum on the pension payable to erstwhile LIL employees are quashed and set aside.

(v) It is hereby declared that the erstwhile employees of LIL are also entitled to pension like the employees of ESSO.

(vi) The impugned notification dated 14th March 2016 and the consequent action of recomputing the quantum of basic pension by reducing the rate of pension accrual by 1/10th of 1% (0.10%) for each additional percentum contributed to the provident fund, and gratuity, are quashed and set aside.

(vii) It is hereby declared that all the retired employees are entitled to computation of pension at the rate of pension accrual (1.33%) without any deduction or abatement therein.

(viii) The impugned notification dated 14th March 2016 and consequent action of withdrawing additional/ad-hoc pension relief of Rs.500/-, granted in terms of the Circular dated 1st April 1992, stands quashed and set aside.

(ix) It is hereby directed that the additional/ad-hoc pension relief be extended to all the pensioners, as conceded by the respondents.

(x) The impugned notification dated 14th March 2016 and the consequent action of withdrawal of AICPI linked pension relief to all the employees, who have retired after 28th June 1994, are hereby quashed and set aside.

(xi) The pension of all the employees who have retired after 28th June 1994 be recomputed in accordance with the following formula :-

Basic Pension	X	AICPI as on April of the year of retirement -----
+		AICPI as on April of the year, five years prior to the date of retirement
Additional Pension relief		

(xii) It is further clarified that once the pension is fixed in the aforesaid fashion, the employees, who retired after 28th June 1994, would also be entitled to the yearly increase in dearness relief, as is admissible to the employees who retired prior to 28th June 1994.

(xiii) The respondent No.1 shall revise the pension of all the retired employees, whose pension was revised in pursuance of

the impugned notifications, in accordance with aforesaid directions, and the revised pension be paid from the month of July 2019. The respondent No.1 shall also pay the arrears of pension so revised to all the retired employees, by the end of August 2019.

(xiv) There shall be no recovery whatsoever from any of the retired employees in pursuance of the impugned notifications.

87) Rule is made absolute in aforesaid terms.

No costs.

[N.J. JAMADAR, J.]

[B.R. GAVAI, J.]