IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.26318 of 2009
and
M.P.No.1 of 2009

R.Gunasekaran ... Petitioner

Vs.

1.The Officer-in-Charge,
Bureau of Naviks,
Cheetah Camp,
Mankhund, Mumbai -88.

2.The Director General,
(for PD(HRD)(JDCED))
Coast Guard Headquarters,
New Delhi - 110 001. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records proceedings of the 1st respondent in its No.00585 dated 26.10.2009 and quash the same and consequently direct the respondents to grant the invalid pension to the petitioner from the date of his medical invalidation.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.K.Gunasekar (SPCCG)

O R D E R

The petitioner was appointed as Coast Guard on 26.06.1985 under the respondents and was discharged from service on 13.06.1986 on medical invalidation for having acquired pulmonary tuberculosis out of stress and strain of his employment. A duly constituted Medical Board opined that he has suffered the disease out of work pressure and 100% disabled to continue in any service. He was granted disability pension, but service pension on medical invalidation was given. Aggrieved over the same, he approached this Court by way of a writ petition in W.P.No.18749 of 1999. This Court, considering the rule position has directed the respondents to grant pension to him under Rules 38 and 49 of CCS (Pension) Rules. The respondents reconsidered the issue in the light of direction issued by this Court and ordered lumpsum payment of

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Rs.920/- under Rule 38 in lieu of invalid pension by their order Quoting:00585 dated 26.10.2009. The present writ petition has been preferred challenging the validity of the order.

2. According to the petitioner, this Court has given a positive direction to grant pension in accordance with Rules 38 & 49 of CCS (Pension) Rules (hereinafter called as "Rules"), whereas to circumvent the same, the respondents contumaciously passed the impugned order. In the light of the orders passed by the Hon'ble Supreme Court in SLP.No.20339 of 2011 dated 14.03.2019 it is clarified that all eligible persons are entitled to invalid pension irrespective of number of years of service in view of O.M.NO.21/01/2016-P & PW(F), Ministry of Personnel, Public Grievances and Pensions Welfare Department dated 12.02.2019. The petitioner is entitled to receive the invalid pensions with retrospective effect as held by the Hon'ble Supreme Court in State Bank of India Vs. V.Ramakrishnan and others [2018 (17) SCC 394], as the amendment to Rules 38 & 49 of the Rules being clarificatory will take effect from the date of enactment.

3. However the learned Senior Central Government Standing Counsel would contend that petitioner is not entitled to pension under Rule 38 as he has put in only 11 months and 16 days of service. As per Rule 49 of the Rules the petitioner was ineligible for grant of pension as he had not completed 10 years of service. The judgment of Hon'ble Supreme Court in S.L.P.No.20339 of 2011 dated 14.03.2019 dealt with Rule 38 of the Rules with reference to Rule 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. On the date of discharge of the petitioner the above Act of 1995 was not enacted. Moreover vide Gazette of India No.15 dated 13.04.2002, Ministry of Social Justice and Empowerment and Notification No.1173 dated 28.03.2002, Armed force is exempted from the purview of the Act. Hence the petitioner cannot rely on an interim order of the Supreme Court of the year 2019 to his advantage. The petitioner's request was considered in compliance with the direction of this Court and suitable orders were passed as per Extant Rules. It is clarified by Principal Controller of Defence Accounts (Pension) Allahabed vide letter dated 15.07.2019 that Office Memorandum dated 12.02.2019, relied on by the petitioner would be effective from the date of implementation. Hence the petitioner is not entitled to the benefits as per O.M dated 12.02.2019 and the writ petition is liable to the dismissed.

4. Heard the rival submission.

5. There is no dispute about the fact that the petitioner had joined the service under the respondent, put in 11 months and 16 days of service and thereafter boarded out on medical invalidation. The duly constituted Medical Board

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declared him permanently disabled to hold any other post due to the ailment arose during and out of stress and strain of his employment under the respondent. He was granted disability pension but was refused service pension. This Court directed the respondents by its order dated 30.06.2009 in W.P.No.18749 of 1999 to grant pension to him under Rule 38 & 49 of Pension Rules. The respondents granted lumpsum payment of Rs.920/- in lieu of invalid pension as per Rule 38 of the Pension Rules.

6. Now, the narrow compass under which the issue to be resolved is as to whether the petitioner is entitled to invalid pension for his 11 months 16 days service and as to whether the order passed by the Hon'ble Supreme Court in SLP (C).No.20339 of 2011 dated 14.03.2019, in the light of OM.No.21/01/2016-P & PW Department dated 12.02.2019 would give the benefit to the petitioner in the light of exemption granted to Armed forces and as to whether the OM dated 12.02.2019 can be applied retrospectively in the light of clarification issued by Principal Controller of Defence Accounts.

7. The entire issue revolve around Rules 38 & 49 of CCS Pension Rules.

Rule 38 reads as under:

> "38.Invalid Pension
>
> (1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.
>
> (2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-
>
> (a) a Medical Board in the case of a Gazetted Government servant and of a non Gazetted Government servant whose pay, as defined in Rule 9 (21) of the Fundamental Rules, exceeds Two Thousand and Two Hundered Rupees per mensem;
>
> (b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.
>
> (3) The form of the Medical certificate to be granted by the Medical Authority specified in Sub-rule (2) shall be as in Form 23.
>
> (4) Where the Medical Authority referred to in Sub-rule (2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension."

Rule 49 reads as under:

> 49.Amount of Pesion

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(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees for mensum;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensum;

(c) notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of the Rule 54."

8. As per Rule 38, a Government servant retires from service on account of any bodily or medical infirmity, which permanently incapacitates him for service is entitled to invalid pension, subject to the Medical Certificates issued by appropriate Medical Board notified by the Government in a prescribed form. As per Rule 49, the amount of pension is determined. As per Rule 49(1), in the case of a Government servant retiring from service before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six months period of qualifying service. Clause (a) & (b) of Sub-Section 2 of the above Rule will be applicable to those have completed qualifying service of 33 years and those who have completed 10 years but not 33 years. Hence the above clauses (a) & (b) are not relevant to the case on hand.

9. Clause (c) of Rule 49 (2) would be relevant as it starts with a non-absanti clause that "not withstanding anything contained in clause (a) and (b), the amount of invalid pension shall not be less than the amount of family pension admissible under Sub Rule (2) of Rule 54."

10. The above Clause (c) of 49 (2) of the Rules clearly spells out that irrespective of number of years of service, invalid pension shall not be less than family pension

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admissible. The above rule position was examined by this Court in its order dated 30.06.2009 in W.P.No.18749 of 1999. The respondents have not preferred any appeal against the same. The said order has become final. In that event the finding of this Court that the petitioner is certainly entitled to pension to be calculated as per Rule 49 is binding. There being no impediment of minimum qualifying service for grant of invalid pension specified under Rules 38 & 49 of the Rules, it should have been granted.

11. The entitlement of invalid pension whether contingent on completion of any particular length of service. Rather would such length of service be relevant for computation of quantum of invalid pension in the light of amendment made to pension Rules, subsequent to the enactment of "Persons with Disability (Equal opportunities, protection of Rights and full participation) Act, 1995", was posed to the Central Government by the Hon'ble Supreme Court in SLP.No.20339 of 2011.

12. The relevant order dated 10.05.2018 is as under:

"A larger question arises in the case besides the one with regard to the correctness of either of the views expressed in Union of India Vs. Bashirbhai R.Khiliji (supra) and C.Jacob vs. Director of Geology & Mining & Anr.(supra)

Rule 38 of the Central Civil Services (Pension) Rules, 1972 has been amended on 30.09.2016. By virtue of the amendment made persons who suffer disabilities while in service, if given the benefit under Section 47 of the Persons with Disability (Equal opportunities, protection of Rights and full participation) Act, 1995 (For short, 'Disabilities Act') would henceforth be governed under the provisions of Section 47 of the Disabilities Act subject to production of a disabilities certificate from the competent authority as prescribed under the Act. However, Rule 38 (2), as amended, provides that if such employees to whom the provisions of Section 47 of the Disabilities Act are not applicable and such person retires from service on account of bodily or mental infirmity which permanently incapacitates him for service gratuity in accordance with Rule 49 of the Pension Rules depending upon the length of his qualifying service on the date of retirement.

The matter needs clarification and in our considered view, by the Government. If on sustaining incapacity while in employment alternative employment under Section 47 of the Disabilities Act is guaranteed in cases of permanent incapacity should grant of invalid pension be contingent on completion of any particular length of service. Rather would such length of service be relevant for computation of quantum of invalid pension.

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The learned Additional Solicitor General has submitted that the matter may be adjourned for a period of three months to enable the concerned authority in the Union of India to deal with the matter and pass appropriate orders / clarifications as may be considered necessary."

13. In pursuance of the order, Government amended Rules 38 & 49 and issued a notification dated 04.01.2019 published in the Gazette of India dated 07.01.2019,, which reads as under:

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Pension and Pensioners' Welfare)
NOTIFICATION
New Delhi, the 4th January, 2019

G.S.R.12(E) – In exercise of the powers conferred by the proviso to article 309 read with clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor – General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:

1.Short Title and Commencement:

(1) These rules may be called the Central Civil Services (Pension) Amendment Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2.In the Central Civil Services (Pension) Rules, 1972:

(i) In Rule 38, for Sub-Rule (1) and Sub-Rule (2), the following sub-rules shall respectively be substituted, namely:-

"(1) The case of a Government servant acquiring a disability, where the provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are applicable, shall be governed by the provisions of the said section:

Provided that such employee shall produce a disability certificate from the competent authority as prescribed under the Rights of Persons with Disabilities Rules, 2017.

(2) If a Government servant, in a case where the provisions of Section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are not applicable, retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service, he may be granted invalid pension in accordance with Rule 49:

Provided that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying service of ten years, may also be granted invalid pension in accordance with sub-rule (2) of Rule 49 subject to the conditions that the Government servant–

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(a) has been examined by the appropriate medical authority either before his appointment or after his appointment to the Government service and declared fit by such medical authority for Government service; and

(b) fulfils all other conditions mentioned in this rule for grant of invalid pension":

(ii) in Rule 49, for Sub-Rule (2), the following sub-rule shall be substituted, namely:-

"(2) Subject to the proviso to Sub-rule (2) of Rule 38, in the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem."

[F.No.21/1/2016-P&PW(F)]
SANJIV NARAIN MATHUR, Jt.Secy.

14. The above notification was presented before the Hon'ble Supreme Court on 09.01.2019. However, a direction was issued to clarify quantification of invalid pension to those, who put in less than ten years of service, in the following lines:

> "We have taken note of the said amendments, particularly, the proviso to Rule 38 (2), as inserted, and also the amendment to Rule 49(2).
>
> While the amendment to Rule 38(2) does contemplate grant of invalid pension to an employee who has suffered bodily or mental infirmity which permanently incapacitating him/her from further service before completing qualifying service of ten years, what we notice is that unlike in the case of a person who has put in more than ten years of service there is no rule as to how the quantification of invalid pension in the first case (i.e., service less than ten years) is to be made.
>
> We request the learned ASG to obtain necessary instructions and clarify the matter."

15. By way of clarification, Ministry of Personnel, Public Grievances & Pensions vide OM.No.21/01/2016 - P & PW (F) dated 12.02.2019 issued the following clarification.

OFFICE MEMORANDUM

Sub:- Grant of Invalid Pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 – Clarification regarding.

The undersigned is directed to say that Rule 38 and Rule 49 of the Central Civil Services (Pension) Rules, 1972 have been amended vide Notification No.21/1/2016 - P & PW (F) dated 4th January, 2019

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(copy enclosed). The proviso to the amended Rule 38 of the CCS (Pension) Rules provides that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying service of ten years, may also be granted invalid pension in accordance with sub-rule (2) of rule 49, subject to the conditions that the Government servant:

(a) was examined by the appropriate medical authority either before his appointment or after his appointment to the service or post and was declared fit by that authority for Government service, and

(b) fulfils all other conditions mentioned in this rule for grant of invalid pension.

2. In this connection, it is clarified that the condition of qualifying service of ten years for grant of pension under Rule 49(2) of the CCS (Pension) Rules, 1972 shall not be applicable in the case of a Government servant retiring on Invalid Pension on account of any bodily or mental infirmity, under Rule 38. Accordingly, Invalid Pension at the rate of 50% of emoluments or average emoluments, whichever is more beneficial, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem, shall be payable to a Government servant who retires under Rule 38 of CCS (Pension) Rules, 1972 even before completing a qualifying service of ten years.

3. All Ministries / Departments are requested that the above clarification may be brought to the notice of Heads of Department, Attached and Subordinate Offices, Controllers of Accounts, Pay & Accounts Offices, etc., under them.

4. Hindi version will follow.

(Harjit Singh)

Director

16. On the basis of the above clarification, the Hon'ble Supreme Court on 14.03.2019 disposed of the Special Leave Petition with the following order:

"In our previous order dated 10.5.2018, we had recorded that benefits as claimed have been conferred to the respondent, but a larger question did arise in the case, which was recorded in the said order in the following terms:-

"Rule 38 of the Central Civil Services (Pension) Rules, 1972 has been amended on 30.09.2016. By virtue of the amendment made persons who suffer disabilities while in service, if given the benefit under Section 47 of the Persons with Disabilities (Equal

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Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'Disabilities Act') would henceforth be governed under the provisions of Section 47 of the Disabilities Act subject to production of a disability certificate from the competent authority as prescribed under the Act. However, Rule 38(2), as amended, provides that if such employees to whom the provisions of Section 47 of the Disabilities Act are not applicable and such person retires from service on account of bodily or mental infirmity which permanently incapacitates him for service, he may be granted invalid pension or service gratuity in accordance with Rule 49 of the Pension Rules depending upon the length of his qualifying service on the date of retirement.

The matter needs clarification and in our considered view, by the Government. If on sustaining incapacity while in employment alternative employment under Section 47 of the Disabilities Act is guaranteed in cases of permanent incapacity should grant of invalid pension be contingent on completion of any particular length of service. Rather would such length of service be relevant for computation of quantum of invalid pension.

The learned Additional Solicitor General has submitted that the matter may be adjourned for a period of three months to enable the concerned authority in the Union of India to deal with the matter and pass appropriate orders/clarifications as may be considered necessary.

List the matter after three months."

Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972 have been amended on 4.1.2019 in the following manner:-

"2. In the Central Civil Services (Pension) Rules, 1972-

(i) in rule 38, for sub-rule (1) and sub-rule (2), the following sub-rules shall respectively be substituted, namely:-

"(1) The case of a Government servant acquiring a disability, where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are applicable, shall be governed by the provisions of the said section:

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Provided that such employee shall produce a disability certificate from the competent authority as prescribed under the Rights of Persons with Disabilities Rules, 2017.

(2) If a Government servant, in a case where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are not applicable, retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service, he may be granted invalid pension in accordance with rule 49:

Provided that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying service of ten years, may also be granted invalid pension in accordance with sub-rule (2) of rule 49 subject to the conditions that the Government servant-

(a) has been examined by the appropriate medical authority either before his appointment or after his appointment to the Government service and declared fit by such medical authority for Government service; and

(b) fulfills all other conditions mentioned in this rule for grant of invalid pension";

(ii) in rule 49, for sub-rule (2), the following sub-rule shall be substituted, namely: -

"(2) Subject to the proviso to sub-rule (2) of rule 38, in the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem.""

The said amendments having been placed before the Court, the Court was of the view that further clarification was required which has now been made by a clarificatory Office Memorandum bearing No. 21/01/2016- P&PW(F) dated 12.2.2019 in the following terms:-

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"2. In this connection, it is clarified that the condition of qualifying service of ten years for grant of pension under Rule 49 (2) of the CCS (Pension) Rules, 1972 shall not be applicable in the case of a Government servant retiring on Invalid Pension on account of any bodily or mental infirmity, under Rule 38. Accordingly, Invalid Pension at the rate of 50% of emoluments or average emoluments, whichever is more beneficial, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem, shall be payable to a Government servant who retires under Rule 38 of CCS (Pension) Rules, 1972 even before completing a qualifying service of ten years."

Having perused the aforesaid clarification, we are of the view that the matter now stands adequately covered and would be governed by provisions of the amended Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972, which would be applied to all eligible cases.

The special leave petition consequently shall stand disposed of in the above terms.

Pending interlocutory applications, if any, shall stand disposed of."

17. In the above order it is stated that it "would be applied to all eligible cases". Whether it will apply to the case of the petitioner or not? is to analysed here.

18. As discussed in previous paragraphs, Rule 38 before amendment would show that any Government servant permanently incapacitated on account of bodily or mental infirmity is entitled to invalid pension subject to production of Medical certificate in prescribed format from the notified medical authority. If such medical authority declares that the Government servant is fit for further service of less laborious work he can be employed, if it is not feasible invalid pension shall be granted. Sub Rule (4) of Rule lays down the above condition which is akin to Section 20 of Persons with Disabilities Act, 2016. Amended Provision of Section 38 also specify the very same procedure. Sub Rule 2 specifically reiterate the criteria for grant of invalid pension in respect of persons permanently incapacitated.

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19. As contended by the learned Standing Counsel for the respondents, that combined service of Armed force is exempted from the purview of Persons with Disabilities Act, 2016, still they are Governed by Rules 38 & 49 of CCS Pension Rules. Rule 38 before and after amendment provides for invalid pension to those permanently incapacitated subject to medical certificates. More so, when it is declared by the Hon'ble Supreme Court, applicable to all in rem. Even assuming it applies, Rule 38 does not mandate any qualifying service for getting "invalid pension". Now by declaration of the Hon'ble Supreme Court that the condition of qualifying service of ten years for grant of pension under Rule 49 (2) of CCS Pension Rules, 1972, shall not be applicable to invalid pension granted under Rule 38. The clarification in Office Memorandum dated 12.02.2019 clarifies the position as observed by the Hon'ble Supreme Court covers the entire issue in this aspect. The above said Office Memorandum requests all the Ministries / Departments to notify all Heads of Department. If the said Office Memorandum is not applicable, it shall be proved by substantial orders issued in this regard. No such material has been produced by the respondents. Even assuming such instructions are available, it will not prevail over the statutory Rules framed under Act 309 of the Constitution of India. Hence, it can be categorically inferred that Rules 38 & 49 of CCS (Pension) Rules, 1972, before and after amendment entitles a Government servant to invalid pension even before completing qualifying service of ten years.

20. Further contention that as per the instruction issued by Principal Controller of Defence Accounts that Office Memorandum dated 12.02.2019 will come into effect from the date of implementation is concerned, we have look into nature of the amendment and the Office Memorandum issued in this regard. There is no dispute with regard to applicability of Rules 38 & 49 of Pension Rules to the employees under the respondent. Whether the Office Memorandum issued by the Government takes effect retrospectively is the moot issue to be resolved. It is well settled that any amendment made to an Act will take effect from the date of enactment itself. Exception would be that it will not adversely affect the action taken earlier. If a benefit is still due, the amendment shall take retrospectively. More so, when the amendment is clarificatory in nature. Clarification issued by way of amendments will certainly take effect retrospectively. The present amendment made to Sections 38 & 49 of the said Rules are clarificatory and without any object attached to it.

21. The judgment of the Hon'ble Supreme Court in the case of State Bank of India Vs. V.Ramakrishnan and others [2018 (17) SCC 394], has held as under:

"33. The Report of the said Committee makes it clear that the object of the amendment was to clarify

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and set at rest what the Committee thought was an overbroad interpretation of Section 14. That such clarificatory amendment is retrospective in nature, would be clear from the following judgments:

33.1. CIT v. Shelly Products, (2003) 5 SCC 461:

"38. It was submitted that after 1-4-1989, in case the assessment is annulled the assessee is entitled to refund only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. But before the amendment came into effect the position in law was quite different and that is why the legislature thought it proper to amend the section and insert the proviso. On the other hand learned counsel for the Revenue submitted that the proviso is merely declaratory and does not change the legal position as it existed before the amendment. It was submitted that this Court in CIT V. Chittor Electric Supply Corpn [(1995) 2 SCC 430 : (1995) 212 ITR 404] has held that proviso (a) to Section 240 is declaratory and, therefore, proviso (b) should also be held to be declaratory. In our view that is not the correct position in law. Where the proviso consists of two parts, one part may be declaratory but the other part may not be so. Therefore, merely because one part of the proviso has been held to be declaratory it does not follow that the second part of the proviso is also declaratory. However, the view that we have taken supports the stand of the Revenue that proviso (b) to Section 240 is also declaratory. We have held that even under the unamended Section 240 of the Act, the assessee was only entitled to the refund of tax paid in excess of the tax chargeable on the total income returned by the assessee. We have held so without taking the aid of the amended provision. It, therefore, follows that proviso (b) to Section 240 is also declaratory. It seeks to clarify the law so as to remove doubts leading to the courts giving conflicting decisions, and in several cases directing the Revenue to refund the entire amount of income tax paid by the assessee where the Revenue was not in a position to frame a fresh assessment. Being clarificatory in nature it must be held to be retrospective, in the facts and circumstances of the case. It is well settled that the legislature may pass a declaratory Act to set aside what the legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear the meaning of a provision of the principal Act and make explicit that which was already implicit."

33.2. CIT v. Vatika Township, (2015) 1 SCC 1:

"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a

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particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory 39 Interpretation, (13th Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [in Central Bank of India v. Workmen, AIR 1960 SC 12, para 29]: 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally 40 intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

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22. From the ratio it can without doubt, be held that the amendment to Rules 38 & 49 of CCS (Pension) Rules, 1972, and the Office Memorandum dated 12.02.2019 are only clarificatory and will take effect retrospectively. In such circumstances, we have no hesitation to hold that the respondents are bound to grant invalid pension as directed by this Court in its previous order dated 30.06.2009 without insisting on qualifying service. As such, grant of Rs.920/- in lieu of invalid pension is arbitrary, illegal and contrary to statutory Rules adopted and followed by the respondents in respect of pension. In fine , the impugned order passed in Quoting:00585 dated 26.10.2009 is hereby set aside and the writ petition stands allowed.

23. The respondents are directed to calculate the pension of the petitioner, in the light of OM.No.21/01/2016-PNPW (F) Ministry of Personal, Public grievances and pensions dated 12.02.2019 and to disburse the same within a period of twelve weeks from the date of receipt of a copy of this order with effect from 13.06.1986 with all arrears and attended benefits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bri

To

1.The Officer-in-Charge,
Bureau of Naviks,
Cheetah Camp,
Mankhund, Mumbai -88.

2.The Director General,
(for PD(HRD)(JDCED))
Coast Guard Headquarters,
New Delhi - 110 001.

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W.P.No.26318 of 2009
and
M.P.No.1 of 2009

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