

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6101 OF 2011

1. Maharashtra Rajya Vidyut Mandal Seva
Nivrutta Karmachari Sangh, Amravati
through its Secretary Shri Narayanrao
Abarao Gaurkhede Aged about 74 years,
R/o 33, Deep Nagar, 1, Chatri Talav
Road, Amravati
2. Shri Satish Dattatraya Mujumdar,
Age : 63 years, 7, Public Co-operative,
Housing Society, Sahkar Nagar, Nagpur
440025
3. Shri Harihar Bapurao Thakre,
Age 66 years, "Shrihari" Plot No.42,
Chhatri Talao Road, Deepnagar 444606
Amravati
4. Shri Dattatraya Bapurao Bhuse,
Age 70 years, Plot No.7,
Deep Nagar No. 1, Chhatri Talao Road,
Amravati 444606
5. Shri Chandrabhan Surajbhan Singh
Age 62 years Thakurkunj, House No.563,
Lendra Park, Ramdaspath, Nagpur 440010
6. Shri Madhav Vinayak Joshi
Age 59 years, RB 401, Bhagwagar
Complex, Dharampeth, Nagpur 440010

.. Petitioners

Versus

1. Secretary, Ministry of Labour and
Employment Govt. of India, Shram
Shakti Bhavan, New Delhi
2. Regional Provident Fund Commissioner (II)
(Pension), Employees PF Commissioner,
Bhavishya Nidhi Bhavan, 14 Bhikaji
Kama Place, New Delhi 110066

.. Respondents

3. Regional Provident Fund Commissioner – II (Pension), 341, Bhavishya Nidhi Bhavan, Bandra (East), Mumbai 400051
 4. Regional Provident Fund Commissioner, 132-A, Ridge Road, Tukdoji Maharaj Square, Raghuji Nagar, Nagpur 440009
 5. Secretary, M.S.E.B. Provident Fund Estrela Batteries Extension Building, Provident Fund Section, Dharavi Road, Matunga East, Mumbai 400019
- .. Respondents

WRIT PETITION NO. 813 OF 2012

1. Nandlal s/o Sitaram Wagh
Aged 63 years, r/o House No.222-A Old Post Office Road, IInd Line, Gokulpeth Nagpur
 2. Prabhakar Chimasahab Bhosale
Aged about 67 years, At Post Raghuji Nagar, Near Laxmi Narayan Mandir, Nagpur
 3. Moreshwar Govindrao Rokade
Aged about 69 years, R/o 26 Central Excise Layout, Khamla Nagpur
 4. Subhas s/o Wasudeo Mokhare
Aged about 64 years, R/o 402, Navi Shukrawari Sq., Nagpur
 5. Mohd. Ibrahim Sheikh Chand
Aged about 64 years, R/o. Plot No. 16-A Rathore Layout, Anant Nagar, Nagpur
 6. Sukhadeo Mahadeo Kambale
Aged about 63 years, R/o. 70, Subedar Layout, Ayodhya Nagar, Nagpur
- .. Petitioners

Versus

1. Secretary, Ministry of Labour and Employment Govt. of India, Shram Shakti Bhavan, New Delhi
2. Central Provident Fund Commissioner, Employees Provident Fund Organization Bhavishya Nidhi Bhavan, 14 Bhikaji Cama Palace, New Delhi 110066
3. Regional Provident Fund Commissioner, Employees Provident Fund Organization Bhavishya Nidhi Bhavan, 132-A, Ridge Road, Raghuji Nagar, Near Tukdoji Putla Sq., Nagpur-440009

.. Respondents

WRIT PETITION NO.1314 OF 2013

1. Rajya Parivahan Nivruti Karmachari Sanghatna Maharashtra through its President Shri Bhaskar Bhanarkar, Aged about 66 years, Occ. Retired r/o at Post S.T. Colony Jamb Road Wadgaon Road, Yavatmal.
2. Shri Natthu s/o Nanuji Chavan Aged about 67 years, Occ. Retired, R/o Ward No.1, Dharmaji Nagar, Wadgaon Road, Yavatmal.
3. Shri Ratan s/o Baduji Pawar Aged about 65 years, Occ. Retired, R/o. At Post S.T. Colony Jamb Road Wadgaon Road, Yavatmal.
4. Shri Dnyaneshwar s/o Kerbaji Bhagat Aged about 60 years, Occ. Retired, R/o at Post S.T. Colony Jamb Road, Wadgaon Road, Yavatmal

.. Petitioners

Versus

1. Secretary, Ministry of Labour and Employment Govt. of India, Shram Shakti Bhavan, Rafi Marg, New Delhi.

2. Central Provident Fund Commissioner,
Employees Provident Organization
Bhavishya Nidhi Bhavan, 14 Bhikaji
Cama, New Delhi – 110066.
3. Regional Provident Fund Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhavan, 132-A Ridge
Road Raghuji Nagar Near Tukdoji Putla
Sq., Nagpur 440009
4. The Assistant Regional Provident Fund
Commissioner, Employee Provident Fund
Organization, Raghuji Arcade, Civil
Lines, Akola.
5. Regional Provident Fund Commissioner,
Nima House Satpur, MIDC, Nashik

.. Respondents

WRIT PETITION NO. 2721 OF 2013

1. Rajya Parivahan Nivruti Karmachari
Sanghatna Maharashtra through its
President Shri Bhaskar Mangalji
Bhanarkar, Aged about 66 years, Occ.
Retired r/o at Post S.T. Colony Jamb
Road Wadgaon Road, Yavatmal.
2. Shri Manzoor Ahmed S/o Moh. Murad
Shaikh, Aged about 65 years, R/o.
Memon Colony Ghatanji Road, Yavatmal.

.. Petitioners

Versus

1. Secretary, Ministry of Labour and
Employment Govt. of India, Shram
Shakti Bhavan, Rafi Marg, New Delhi.
2. Central Provident Fund Commissioner,
Employees Provident Organization
Bhavishya Nidhi Bhavan, 14 Bhikaji
Cama, New Delhi – 110066.
3. Regional Provident Fund Commissioner

.. Respondents

Employees Provident Fund Organization
Bhavishya Nidhi Bhavan, 132-A Ridge
Road Raghuji Nagar Near Tukdoji Putla
Sq., Nagpur 440009

4. The Assistant Regional Provident Fund
Commissioner, Employee Provident Fund
Organization, Raghuji Arcade, Civil
Lines, Akola.
5. Regional Provident Fund Commissioner,
Nima House Satpur MIDC, Nashik

.. Respondents

WRIT PETITION NO. 2802 OF 2013

1. Rajya Parivahan Nivruti Karmachari
Sanghatna Maharashtra through its
President Shri Syed Kadir Syed Mir
Bagban, Aged about 65 years, Occ.
Retired, R/o. Multani Chowk, Khadan,
Dist. Akola
2. Shri Makhram s/o Kashiram Chavan
Aged about 63 years, Secretary Rajya
Parivahan Nivrutta Karmachari
Sanghatana Maharashtra, R/o. Banode
Layout, Hingna Road, Akola.
3. Shri Jaidev s/o Sadashiv Telgote
Aged 64 years, Treasurer, Rajya
Parivahan Nivrutta Karmachari
Sanghatana Maharashtra, R/o Samata
Colony Ring Road, Kailkhed, Akola.
4. Shri Vishnu s/o Tukarao Kagde
Aged 65 years, R/o. V.H.B. Colony,
Ratanlal Plot, Akola.

.. Petitioners

Versus

1. Secretary, Ministry of Labour and
Employment Govt. of India, Shram
Shakti Bhavan, Rafi Marg, New Delhi.
2. Central Provident Fund Commissioner,

Employees Provident Organization
Bhavishya Nidhi Bhavan, 14 Bhikaji
Cama, New Delhi – 110066.

3. Regional Provident Fund Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhavan, 132-A Ridge
Road Raghuji Nagar Near Tukdoji Putla
Sq., Nagpur 440009
4. The Assistant Regional Provident Fund
Commissioner, Employee Provident Fund
Organization, Raghuji Arcade, Civil
Lines, Akola.
5. Regional Provident Fund Commissioner,
Nima House Satpur, MIDC, Nashik

.. Respondents

WRIT PETITION NO. 3195 OF 2012

Sukhdeo Mahadeo Kamble
Age : 60 years, Occ.: Retired from
Maharashtra State Road Transport
Corporation, R/o. Plot No.70, Old
Subhedar Layout, Sharada Chowk,
Nagpur (MS)

.. Petitioner

Versus

1. Central Provident Fund Commissioner,
Employees Provident Fund Organization
(HO), “Bhavishya, Nidhi Bhavan, 14
Bhikaji Cama Place, New Delhi –
110066.
2. Regional Provident Fund Commissioner
132-A Ridge Road, Near Tukdoji Maharaj
Square, Raghuji Nagar, Nagpur 440009
3. Divisional Controller,
Maharashtra State Road Transport
Corporation, Near Ganesh Tekadi
Temple, Main Railway Station Road,
Nagpur.

.. Respondent

WRIT PETITION NO. 4954 OF 2012

1. Shri Anilkumar Pendhari
Aged about 62 years, Occ. Retired,
R/o. Shanti Nivas Chabada Plot
Panchavati Nagar, Amravati.
2. Shri Subhash s/o Kashinath Asare
Aged about 65 years, Occ. Retired,
R/o. 23 Shreeshaya Colony, Shankar
Nagar, Amravati.
3. Shri Rangrao s/o Sahadeo Isal
Aged about 60 years, Occ. Retired,
R/o. Hariram Colony, Shankar Nagar
Road, Amravati.
4. Shri Manohar Gharad
Aged about 70 years, Occ. Retired,
R/o. Hariram Colony, Shankar Nagar
Road, Amravati.

.. Petitioners

Versus

1. Secretary, Ministry of Labour and
Employment Govt. of India, Shram
Shakti Bhavan, New Delhi.
2. Central Provident Fund Commissioner,
Employees Provident Organization
Bhavishya Nidhi Bhavan, 14 Bhikaji
Cama, New Delhi – 110066.
3. Regional Provident Fund Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhavan, 132-A Ridge
Road Raghuji Nagar Near Tukdoji Putla
Sq., Nagpur 440009
4. The Regional Provident Fund
Commissioner, Employee Provident Fund
Office, Raghuji Arcade, Civil Lines,
Akola.

.. Respondents

Writ Petition No.6101 of 2011 :-

Mr. M.M.Sudame and Mr. A. M. Sudame, Advocate for petitioners.

Mrs. Mugdha Chandurkar, Advocate for respondent No.1.

Mr. H. N. Verma, Advocate for respondent No.2 to 4.

Mr. A. D. Mohogaonkar, Advocate for respondent No.5.

Writ Petition No. 813 of 2012 , Writ Petition No. 1314 of 2013

Writ Petition No.2721 of 2013, Writ Petition No. 4954 of 2013 &

Writ Petition No. 2802 of 2013 :-

Mr.M.M.Sudame and Mr. A. M. Sudame, Advocate for petitioners in all these petitions.

Mrs. Mugdha Chandurkar, Advocate for respondent Govt. of India in all these petitions.

Mr. H. N. Verma, Advocate for respondents (PF Commissioner/Office) in all these petitions.

Writ Petition No. 3195 of 2012 :-

Mr. M.M.Sudame and Mr.A. M. Sudame, Advocate for petitioners.

Mr. H. N. Verma, Advocate for respondent Nos.1 and 2.

Mr. V. G. Wankhede, Advocate for respondent No.3.

CORAM : MANISH PITALE AND

VALMIKI SA MENEZES, JJ.

RESERVED ON : 29/08/2022

PRONOUNCED ON : 29/09/2022

JUDGMENT (Per : Manish Pitale J.)

Rule. Rule made returnable forthwith. Heard finally

with the consent of the learned counsel appearing for the parties.

(2) These petitions are filed by associations of employees of Government Organizations, as also individual employees raising a common question pertaining to Employees Pension Scheme framed under Section 6-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Various prayers have been made in these writ petitions, some of which have been given up, but the principal question that arises for consideration pertains to interpretation of Clause 12 of the Employees Pension Scheme, 1995, as it was notified on 16/11/1995, in respect of which a clarificatory letter dated 10/05/1999, was issued by the respondent Ministry of Labour and subsequently Notification dated 15/06/2007, was issued amending the said clause of the Scheme retrospectively.

(3) It is the contention of the petitioners that the aforesaid Pension Scheme framed on 16/11/1995, upon a proper interpretation, granted them and other such employees specific amounts of pension, taking into consideration past service, as well as actual service which was sought to be arbitrarily and illegally reduced by faulty interpretation on the part of the contesting respondents and

the purported clarificatory amendment by way of Notification dated 15/06/2007. On this basis, the petitioners prayed for upholding the interpretation placed by them on the said unamended Pension Scheme as per Notification dated 16/11/1995, seeking quashing and setting aside of the letter of clarification dated 10/05/1999 issued by the Ministry of Labour, as also quashing and setting of the subsequent Notification dated 15/06/2007, which amended Clause 12 of the Scheme retrospectively.

(4) It was submitted that such retrospective amendment could not take away the benefit that had already accrued to the petitioners and other such employees. On this basis, it was submitted that the pension payable to the petitioners be revised and arrears be paid with interest. As noted above, the petitioners gave up the prayer challenging the Constitutional validity of Section 7 of the aforesaid Act and they also gave up the prayer for grant of additional service weightage/benefit of two years while calculating pensionable service, as admittedly such benefits were already granted to the petitioners and all eligible employees.

(5) On 01/04/1997, by exercising power under the said

Act, the Central Government framed Family Pension Scheme. In 1996, Sections 6-A and 6-B were added to the aforesaid Act to enable the Central Government to frame an Employees Pension Scheme to provide for superannuation pension, retiring pension and permanent total disablement pension. On 15/11/1995, the Central Government exercised power under Sections 6-A and 7 of the aforesaid Act to frame the Employees Pension Scheme, 1995, which came into effect from 15/11/1995. The aforesaid Scheme defined various expressions including actual service, past service and pensionable service. All employees who were existing members of the Employees Family Pension Scheme, 1971, were eligible for the benefit of the aforesaid pension scheme framed in 1995. The Family Pension Scheme, 1971, stood repealed and for an employee who was a Member of the said scheme, eligible service under the Pension Scheme, 1995, was number of years of service prior to 15/11/1995 + the years of service rendered after 15/11/1995, till attaining the age of superannuation i.e. 58 years.

(6) The entire controversy in the present petitions concerns interpretation of Clause 12 of the Pension Scheme, 1995.

The contesting respondents placed a particular interpretation on the Pension Scheme, 1995 and payments were made accordingly, but, some employees had grievance that the interpretation placed by the contesting respondents on Clause 12 of the Pension Scheme, 1995 and such grievance led to initiation of litigation on the part of some of the employees. Due to the difference in interpretations placed by the contesting respondents and some employees on Clause 12 of the Pension Scheme, 1995, the aforesaid letter dated 10/05/1999, was issued by the Secretary, Ministry of Labour, New Delhi, stating that the interpretation placed by the contesting respondents on Clause 12 of the Pension Scheme, 1995, was the only way in which the same could be interpreted.

(7) A learned Single Judge of the Karnataka High Court in Writ Petition No.21359 of 2000, interpreted Clause 12(4)(a) and (b) of the Pension Scheme, 1995, and upheld the interpretation placed on the same by the employees and significantly expressed no opinion on Clause 12(3) and (5).

(8) A litigation instituted under the provisions of the Consumer Protection Act, 1986, by some employees resulted in orders

passed in favour of the employees by accepting the interpretation placed by them and favorable orders passed by the District Consumer Forum, Dharwad, State Consumer Commission, Bangalore and the National Consumer Commission, New Delhi, came up for consideration before the Hon'ble Supreme Court. Similarly, a Special Leave Petition against the aforementioned judgment of the Karnataka High Court also came up for consideration before the Supreme Court. On 20/04/2010, the Supreme Court dismissed all the petitions but expressly kept the question of law open.

(9) In the meanwhile, by the aforesaid Notification dated 15/06/2007, issued under Section 7 of the said Act, Clause 12 of the Pension Scheme, 1995, was amended with retrospective effect and it was claimed that the amendment was clarificatory in nature. The said Notification dated 15/06/2007, was challenged before the Madras High Court in Writ Petition (M.D.) No. 2173/2008, but the same was dismissed by the Court, observing that statutory right under the said Act was exercised and it could not be said to be an interference in the judicial process. The dismissal of the said writ petition by the learned Single Judge of the Madras High Court was challenged before a

Division Bench of the said High Court in Writ Appeal (M.D.) No. 933/2010. The Division Bench dismissed the writ appeals in view of the amendment made to Clause 12 of the Pension Scheme, 1995.

(10) The present bunch of writ petitions were filed before this Court, wherein the petitioners raised various grounds of challenge. The contesting respondents opposed the prayers made in the writ petitions and the petitions were taken up for final disposal.

(11) Mr. A. M. Sudame, learned counsel for the petitioners in all these petitions submitted that a perusal of Clause 12 of the Pension Scheme, 1995, as framed on 15/11/1995, shows that under Clause 12(3), past service and actual service as defined under the said Scheme were required to be taken into consideration for calculating the amount payable towards pension.

(12) It was submitted that the plain, reasonable and simple interpretation of the said Clause 12(3) led to specific amount payable on account of past service, subject to minimum amount and also for actual service, again subject to a minimum amount. It was submitted that an aggregate of the two, based on the formula specified under the Scheme led to a specific amount payable towards pension to

the employees.

(13) It was contended on behalf of the petitioners that the said Clause 12(3) and also (4) and (5), were misinterpreted by the contesting respondents, leading to reduction of the quantum of the pension paid to the petitioners and other such employees. It was submitted that in order to justify the arbitrary and illegal interpretation, the Secretary, Ministry of Labour, New Delhi, issued the letter of clarification dated 10/05/1999. The challenge raised to such arbitrary action resulted in favourable orders passed by the Karnataka High Court and the Consumer Fora, which were upheld by the Supreme Court, even if the question of law was kept open.

(14) It was submitted that the aforesaid Notification dated 15/06/2007 was issued, purportedly as a clarificatory amendment in a retrospective manner to arbitrarily foist the faulty interpretation of Clause 12 of the Pension Scheme, 1995, only with a view to illegally deprive the petitioners and other such employees of their rightful claims. It was submitted that a meager amount of pension was available under the Scheme as it stood and by bringing about such amendment retrospectively, the contesting respondents had

acted in a most arbitrary and unreasonable manner.

(15) By inviting attention of this Court to Clause 12 of the Pension Scheme, 1995, as it was framed w.e.f. 15/11/1995, as also the amended Clause 12 in terms of Notification dated 15/06/2007, it was submitted that such a retrospective amendment was in the teeth of settled law, because it amounted to arbitrarily taking away benefit, which had already accrued to the petitioners and other such employees, as per the Pension Scheme, 1995, made applicable from 15/11/1995.

(16) In order to support the contentions raised on behalf of the petitioners, the learned counsel placed reliance on aforementioned judgments of the Karnataka High Court, as well as the National Consumer Commission, and findings rendered in order passed by a Pension Lok Adalat on 18/02/2006. Apart from this, on the legal proposition raised on behalf of the petitioners that a specific right had accrued and vested in the petitioners and other such employees under the Pension Scheme, 1995, w.e.f. 15/11/1995 and the Notification dated 15/06/2007, amending Clause 12 of the Scheme retrospectively, violated the fundamental rights of the

petitioners, reliance was placed on judgments of the Hon'ble Supreme Court in the cases of *State of Gujrat Vs. Raman Lal Keshav Lal Soni and Ors.*, AIR 1984 SC 161, *Chairman Railway Board Vs. C.R.Rangadhamaiah and Ors.* AIR 1997 SC 3828, *K. Narayanan and Ors. Vs. State of Karnataka and Ors.* AIR 1994 SC 55 and *Union of India Vs. Tushar Ranjan Mohanty*, 1995 AIR SCW 1758.

(17) On the other hand, Mr. H .N. Verma, learned counsel appearing for the contesting respondents submitted that a proper reading of Clause 12 of the Pension Scheme, 1995, would show that no specific right as claimed by the petitioners had accrued to them because such claim was based on a flawed interpretation of Clause 12 of the aforesaid Scheme. It was submitted that the interpretation sought to be placed on the said clause by the petitioners in the Pension Scheme, 1995, which was framed on 15/11/1995, was unreasonable and such an interpretation did not flow from the words of the said Clause. It was only because some employees were seeking to place such a faulty interpretation on the aforesaid clause that the letter dated 10/05/1999 for clarification was issued by the Ministry of Labour. When it was found that despite the clarificatory letter, the

employees were still raising the same issue, power under Section 7 of the aforesaid Act was exercised to issue Notification dated 15/06/2007, for amending Clause 12 of the Pension Scheme, 1995, which was clarificatory in nature. It was submitted that such an amendment was made effective retrospectively, only with a view to clarify the position and to reiterate as to what was the true object, meaning and interpretation of Clause 12 of the said Scheme, when it was made effective on 15/11/1995.

(18) The learned counsel for the contesting respondents compared the contents of the original Clause 12 as it stood on 15/11/1995 and the same clause as it stands after the Notification dated 15/06/2007. It was submitted that a comparative analysis of the two clearly brought out the fact that the amendment was clarificatory in nature and hence, it was made retrospective in operation. It was submitted that the petitioners were not justified in alleging arbitrariness on the part of the contesting respondents as the amendment was clarificatory and made retrospective in operation.

(19) It was submitted that if the Notification dated 15/06/2007, whereby the retrospective and clarificatory amendment is

upheld, the challenge to the letter of clarification dated 10/05/1999 is rendered meaningless. Consequently, it was submitted that the prayer made for revising the pension and payment of arrears also deserved to be rejected.

(20) The learned counsel for the contesting respondents placed reliance on the judgments of the Supreme Court in the case of *Kolhapur Canesugar Works Ltd. And another vs. Union of India and others, AIR 2000 SC 811, Rai Ramkrishna and others vs. State of Bihar, AIR 1963 SC 1667, State of Uttarakhand vs. Sudhir Budakoti and others, 2022 SCC OnLine SC 420.*

(21) On 08/09/2022, learned counsel for the rival parties jointly filed an application seeking extension of time to file written notes of arguments, alongwith the written notes. For the reasons stated in the application, the same is allowed.

(22) Heard learned counsel for the rival parties and perused the material on record. In order to decide the questions that arise in the present petitions and in order to understand the rival contentions, it would be appropriate to peruse relevant portion of

Clause 12, as it stood on 15/11/1995 and as it stands now, pursuant to retrospective amendment carried out as per Notification dated 15/06/2007.

Clause 12 of Pension Scheme, 1995, as it stood on 15/11/1995

“12. Monthly Member's Pension (1) A member shall be entitled to: -

(a) “Superannuation Pension”, if he has rendered eligible service of 20 years or more and retires on attaining the age of 58 years;

(b) “Retirement Pension”, if he has rendered eligible service of 20 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

(c) “Short Service Pension”, if he has rendered eligible service of 10 years or more but less than 20 years.

(2) In the case of a new entrant, the amount of monthly ‘Superannuation Pension’, or ‘Retiring Pension’, as the case may be, shall be computed in accordance with the following factors, namely: -

$$\text{Monthly member's pension} = \frac{\text{Pensionable salary} \times \text{Pensionable service}}{70}$$

[x x x x x]

(3) In the case of an employee [who was a member of the ceased Family Pension Scheme, 1971] and who has not attained the age of 48 years on the 16th November, 1995;

Superannuation/Retirement/Short Service Pension shall be equal to the aggregate of :

(a) pension as determined under sub-paragraph (2) for the period of pensionable service rendered from the 16th November, 1995 or Rs.635/- per month whichever is more ;

[(b) past service pension benefits shall be as given below : -

The Past Service benefit payable on completion of 58 years of age on 16.11.1995

Years of Past service	Salary upto Rs.2,500 per month	Salary more than Rs.2,500 per month
(1)	(2)	(3)
(i) Upto 11 years	80	85
(ii) More than 11 years but upto 15 years	95	105
(iii) More than 15 years but less than 20 years	120	135
(iv) Beyond 20 years	150	170

Subject to a minimum of Rs.800 per month provided the past service is 24 years. If the aggregate service of the member is less than 24 years, the pension and the benefits computed as above shall be reduced proportionately subject to a minimum of Rs.450 per month.]

[(c) On completion of the age of 58 years after 16.11.1995, the benefit under Column (2) or Column (3) above, as the case may be, shall be multiplied by the factor given in Table B- corresponding to the period between 16.11.1995 and date of attainment of age 58 to arrive at past service pension payable].

(4) In the case of an employee [who was a member of the ceased Family Pension Scheme, 1971] and has attained the age of 48 years, but less than 53 years on the 16th November, 1995, the superannuation / retirement pension shall be equal to the aggregate of :-

(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 or Rs.438/- per month whichever is more ;

(b) past service benefit as provided in sub-paragraph (3) subject to a minimum of Rs.600/- per month provided the past service is 24 years. Provided further that if it is less than 24 years, the pension payable and the past service benefits taken together shall be proportionately less subject to the minimum of Rs.325/- per month.

(5) In the case of an employee [who was a member of the ceased Family Pension Scheme, 1971] and who has attained the age of 53 years or more on 16th November, 1995, the superannuation/retirement pension shall be equal to the aggregate of :

(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 per month or Rs.335/- per month whichever is more;

(b) past service benefits as provided in sub-paragraph (3) subject to the minimum of Rs.500 per month provided the past service is 24 years. Provided further that if it is less than 24 years the pension payable and the past service benefits shall be proportionately lesser but subject to a minimum of Rs.265 per month."

Clause 12 of the Pension Scheme, 1995, as it stands after retrospective amendment as per Notification dated 15/06/2007

"12. Monthly Member's Pension - (1) A member shall be entitled to : -

(a) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years ;

(b) early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

(2) In the case of a new entrant, the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely : -

$$\text{Monthly member's pension} = \frac{\text{Pensionable salary} \times \text{Pensionable service}}{70}$$

(3) In the case of an existing member in respect of whom the date of commencement of pension is after the 16th November, 1995, -

(i) superannuation or early pension shall be equal to the aggregate of :-

(a) pension as determined under sub-paragraph (2) for the period of pensionable service rendered from the 16th November, 1995 or Rs. 635/- per month whichever is more;

(b) past service pension shall be as given below : -

The past service pension payable on completion of 58 years of age on the 16th November, 1995

Sr. No.	Year of Past service	Salary upto Rs.2,500 per month	Salary more than Rs.2,500 per month
	(1)	(2)	(3)
(i)	Upto 11 years	80	85
(ii)	More than 11 years but upto 15 years	95	105
(iii)	More than 15 years but less than 20 years	120	135
(iv)	Beyond 20 years	150	170

The amount under column (2) or column (3) above, as the case may be, shall be multiplied by the factor given in Table ' B ' corresponding to the period between the 16th November, 1995 and the date of exit to arrive at past service pension payable.

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 800/- per month, provided the eligible service is 24 years. Provided further, if it is less than 24 years, the pension as computed above shall be reduced proportionately subject to a minimum of Rs. 450/- per month.

(4) In the case of an existing member and in respect of whom the date of commencement of pension is between the 16th November, 2000 and the 16th November, 2005, -

(i) superannuation or early pension shall be equal to the aggregate of:-

(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 or Rs.438/- per month whichever is more ;

(b) past service pension as provided in sub-paragraph (3).

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs.600/- per month, provided the eligible service is 24 years. Provided further, if it is less than 24 years, the pension shall be proportionately less subject to the minimum of Rs.325/- per month.

(5) In the case of an existing member and in respect of whom the date of commencement of pension is before the 16th November, 2000, -

(i) the superannuation or early pension shall be equal to the aggregate of : -

(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 or Rs.335/- per month whichever is more ;

(b) past service pension as provided in sub-paragraph (3).

(ii) The aggregate of (a) and (b) calculated as above shall be subject to the minimum of Rs. 500/- per month, provided the eligible service is 24 years. Provided further, if it is less than 24 years the, pension shall be proportionately lesser but subject to the minimum of Rs.265/- per month.”

(23) The petitioners have supported the prayers made in the present petition by placing interpretation on Clause 12 as it stood on 15/11/1995 quoted above, in a particular manner while the contesting respondents have placed interpretation on the said clause as it stood on 15/11/1995, in terms of the contents of the said clause post amendment as per Notification dated 15/06/2007, contending that Clause 12 was always to be interpreted as per the clarificatory amendment brought about on 15/06/2007.

(24) A perusal and comparison of the contents of Clause 12 as it stood on 15/11/1997 and post amendment on 15/06/2007, is necessary to appreciate the contentions raised on behalf of the rival parties. It is crucial that the interpretation placed on behalf of the petitioners on Clause 12 as it stood on 15/11/1995, ought to be reasonable, to indicate that the quantum of pension payable as per the

said interpretation was justified and that the retrospective amendment had led to a vested right created in the petitioners and other employees, being taken away. Clause 12(3)(4) and (5) lay down the manner in which the aggregate of past service and actual service needs to be worked out for an employee eligible for grant of pension under the said Scheme. In this regard, definitions of the expressions “actual service” and “past service” assume significance and the same are defined in the Pension Scheme, 1995, as follows :

“2. Definitions. - (I) In this Scheme unless the context otherwise requires : -

(i)

(ii) " Actual Service " means the aggregate of period of service rendered from the 16th November, 1995 or from the date of joining any establishment whichever is later, to the date of exit from the employment of the establishment covered under the Act ;

(iii) to (xi)

(xii) " Past Service " means the period of service rendered by an existing Member from the date of joining Employees' Family Pension Fund till the 15th November, 1995;”

(25) After taking into consideration actual service and past service as defined under the Scheme, depending upon the age of employee as on 16/11/1995, Sub-Clauses (3) (4) and (5) of Clause 12 of the said Scheme lay down the basis for calculation of the quantum of pension payable.

(26) According to the petitioners, Clause 12(3)(a)(b) and (c) as it stood on 15/11/1995, when the Scheme was made effective, specified that past service benefit was payable subject to minimum of Rs.800/- per month and to the said component was to be added pension determined under Clause 12(2) for the period of pensionable service rendered from 16/11/1995 or Rs.635/- per month, whichever was more.

(27) On the other hand, the contesting respondents contended that proper interpretation of Clause 12(3) of the Scheme, 1995, was that pension as determined under Clause 12(2) for the period of pensionable service rendered from 16/11/1995 and past service benefit upon being added, were subject to minimum of Rs.800/- per month. Much emphasis was placed on the words “equal to the aggregate of” in Clause 12(3) just above Clause 12(3)(a). Emphasis was also placed on the use of words aggregate service in Clause 12(3) (b) as it stood on 15/11/1995.

(28) According to the contesting respondents, the amendment brought about by Notification dated 15/06/2007, was only with a view to clarify as to what was the true purport of Clause

12(3) of the said Scheme, from the very beginning, as on 15/11/1995. A perusal of the amended Clause 12(3) shows that in addition to the words “equal to the aggregate of” used in the context of superannuation pension, it was specifically stated that the aggregate of pension as determined under Clause 12(2) for the pensionable service rendered from 16/11/1995 and past service shall be subject to minimum of Rs.800/- per month. Clause 12(4) and (5) stood accordingly clarified by the amendment as per Notification dated 15/06/2007.

(29) We have carefully considered clause 12(3) as it stood when the Pension Scheme, 1995, was made effective on 15/11/1995 and we find that the interpretation sought to be placed on behalf of the petitioners is not reasonable and appears to be illogical, being in the teeth of the words used in the said Clause.

(30) It is correctly contended on behalf of the respondents that the words “equal to the aggregate of” used before Clause 12(3)(a),(b) and (c) in the original version necessarily required addition of what was stated in Clause 12(3)(a) and 12(3)(b), to then apply the words “subject to minimum of Rs.800/- per month, provided

the past service is 24 years”, for the reason that the aforesaid words are placed below Clause 12(3)(a) and 12(3)(b) put together, particularly since the aforesaid words “equal to the aggregate of” have been used just prior to Clause 12(3)(a),(b) and (c).

(31) It is for this reason that when some confusion appeared to have arisen in the minds of the employees as regards the interpretation of Clause 12(3) of the Pension Scheme, 1995, that the Secretary, Ministry of Labour, issued the letter of clarification dated 10/05/1999. But, when it was found that the said letter also did not serve its purpose, because the same was made subject matter of litigation, by issuing Notification under Section 7 of the said Act, the aforesaid amendment was brought about to clarify the position and to leave no scope for doubt in the matter. The amendment made effective retrospectively was placed before both houses of Parliament and it was duly passed.

(32) It is significant that the litigation, which arose after issuance of the letter of clarification dated 10/05/1999, wherein orders were passed in favour of the employees reached the Supreme Court, although the Special Leave Petitions were dismissed, the

question of law was kept open. The amendment brought about by the Notification dated 15/06/2007, operating retrospectively was clarificatory in nature.

(33) A perusal of Clause 12(3) as amended by Notification dated 15/06/2007, demonstrates that the words “equal to the aggregate of” were again retained and a further Sub-Clause (ii) was added to emphasize that the aggregate was of the two components pertaining to pension as determined under Clause 12(2) for the period of pensionable service rendered from 16/11/1995 and past service pension, both put together being subject to a minimum of Rs.800/-. This Court is of the opinion that the contesting respondents are justified in contending that what stood clarified by the Notification dated 15/06/2007, was indeed the real content and spirit of Clause 12(3), when the Pension Scheme, 1995, was framed and brought into effect on 15/11/1995. Even the unamended Clause 12(3), on a reasonable interpretation, shows that the pension being calculated and disbursed to the petitioners and other such employees on the basis of the interpretation placed by the contesting respondents, was correct and sustainable.

(34) As noted above, the interpretation sought to be placed by the petitioners on Clause 12(3) of the Pension Scheme, 1995, as it stood on 15/11/1995, cannot be said to be reasonable and acceptable, as it does not flow from the words of the clause and is in fact in the teeth of such words. Therefore, the petitioners are not justified in contending that a vested right had accrued in them, which could not have been taken away by a subsequent amendment made operative retrospectively by Notification dated 15/06/2007. Once this conclusion is reached, the judgments of the Supreme Court upon which the learned counsel for the petitioners has placed reliance, can be of no avail.

(35) On the other hand, the judgment of the Constitution Bench of the Supreme Court in the case of *Kolhapur Canesugar Works Ltd. And another vs. Union of India* (supra), relied upon by the learned counsel for the contesting respondents, justifies the stand of the said respondents to the effect that repeal of the earlier Clause 12(3) of the Pension Scheme, 1995 and its replacement by the retrospective amendment brought about by Notification dated 15/06/2007, did not lead to any arbitrariness and violation of Article

14 of the Constitution of India and it did not snatch away any vested right created in favour of the petitioners and other such employees. This Court is of the opinion that on a proper interpretation of Clause 12(3) of the Pension Scheme, 1995, as it stood on 15/11/1995, would lead to the same quantum of pension payable to the petitioners and other such employees, as is found payable upon Clause 12(3) of the said Scheme being amended by the Notification dated 15/06/2007.

(36) The petitioners are not justified in claiming that the phrase “subject to minimum of Rs. 800/- per month” used in Clause 12(3)(b) of the Pension Scheme, 1995 as it stood originally, was applicable to past service benefit only. Such an interpretation runs counter to the use of the words “equal to the aggregate of” used prior to Clause 12(3)(a) and (b) of the Pension Scheme, 1995, as it originally stood. Therefore, the very basis of the contentions raised on behalf of the petitioners, while claiming violation of fundamental rights under Article 14 and 21 of the Constitution of India, as well as violation of Article 300-A of the Constitution of India, is found to be fallacious. Consequently, it cannot be said that by issuing the clarificatory amendment by Notification dated 15/06/2007, which was

made operational retrospectively, any right, much less vested right, of the petitioners was taken away.

(37) It is not disputed on behalf of the petitioners that since the beginning, the contesting respondents have been paying pension in terms of the Pension Scheme, 1995, as per the interpretation placed by them and they have contested the interpretation placed on behalf of the employees who chose to knock the doors of the Court. The letter of clarification dated 10/05/1999, had to be issued, because of the litigation initiated by some of the employees and ultimately by issuing Notification dated 15/06/2007, exercising power under Section 7 of the said Act, the relevant clause itself was retrospectively amended, only with a view to clarify the position and reiterate the interpretation that was placed on such Clause forming part of the Pension Scheme, 1995, when it was brought into force on 15/11/1995. Therefore, it is not as if some of the employees were granted pension on the basis of the interpretation sought to be placed by the petitioners, while others were paid pension on the basis of the interpretation placed by the contesting respondents on the relevant Clause of the Scheme.

(38) Insofar as judgments of the Karnataka High Court, the order of the Pension Lok Adalat and the series of orders passed by the Consumer Fora are concerned, Special Leave Petitions filed before the Supreme Court were dismissed, yet the question of law was specifically kept open. The clarificatory amendment became subject matter of challenge before the Madras High Court, but the same met with failure before the learned Single Judge, as well as Division Bench of the High Court. Therefore, it cannot be said that such judgments and orders could accrue to the benefit of the petitioners.

(39) In the light of the above, it is found that the prayers made in the present writ petitions cannot be granted and the writ petitions deserve to be dismissed. As noted above, the petitioners specifically gave up challenge to the Constitutional validity of Section 7 of the aforesaid Act and they did not press the prayers pertaining to grant of additional service weightage / benefit of two years, for the reason that the said relief was already granted to the petitioners and other such employees of the contesting respondents.

(40) Accordingly, the Writ Petitions are dismissed. No costs.

(41) Rule stands discharged. Pending applications, if any, stand disposed of.

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]

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