

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20150 of 2018 (O&M)

Reserved on: 31.10.2022

Pronounced on: 11.11.2022

Satya Devi

---Petitioner

versus

State of Haryana and others

---Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Ms. Savita Bhardwaj, Advocate for
Mr. N.P.Bhardwaj, Advocate
for the petitioner

Mr. Anant Kataria, DAG, Haryana

JAGMOHAN BANSAL, J.

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking declaration that sub clause (f) of Clause 4(ii) of Family Pension Scheme, 1964 (for short 'FPS, 1964') to the extent that it restricts benefit of family pension to parents of an unmarried officer being violative of Articles 14 and 21 of the Constitution of India is invalid.

Brief Facts:-

2. The brief facts emerging from the record and which are necessary for adjudication of present petition are that the petitioner had three sons and eldest of them (Amit Kumar) was recruited as Constable on 6.10.2004 in Ist Bn of Haryana Armed Police, Ambala City. Amit Kumar passed away on 15.3.2018. He was married with Suman Devi and from this

wedlock, they have got two children namely daughter Palak born on 20.8.2012 and son Priyanshu born on 17.8.2015. Both the children at the time of death of Amit Kumar were minor. Suman Devi-widow of the deceased Amit Kumar, after the death of her husband, along with her children left her matrimonial home and started staying with her brother at New Delhi. They have been arrayed as respondents No. 5 to 7.

3. The respondent-State with intent to grant compassionate assistance to its employees has framed rules called as Haryana Financial Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short '2006 Rules'). The rules have been framed in exercise of power conferred by proviso to Article 309 of the Constitution of India. The respondent in terms of the rules sanctioned financial assistance to Suman Devi, widow of the deceased Constable Amit Kumar.

The detail of benefits sanctioned and paid to Suman Devi and her children are as under:-

a)	Leave encashment	Rs.1,01,107/-
b)	HPWF/CPWF	Rs. 50,000/-
c)	GIS + Saving GIS	Rs. 30,000/- + 6404 (Total Rs.36,404/-)
d)	Funeral ceremony	Rs. 10,000/-
e)	Ex-Gratia amount	Rs. 25,000/-
f)	Gratuity	Rs. 3,95,640/-

4. As per 2006 Rules, family members of a deceased employee are entitled to monthly financial assistance equal to pay and other allowances that was last drawn by the deceased employee, for a period of 15 years from the date of death of the employee, if the employee at the time of his/her death had not attained the age of 35 years. In the case in hand,

the deceased was less than 35 years, thus, the family was sanctioned monthly assistance equal to last drawn salary and other allowances for a period of 15 years.

5. Rule 3 of 2006 Rules provides that eligibility to receive financial assistance under these Rules shall be as per provisions in the FPS, 1964. The expression 'family' has been defined under FPS, 1964, thus, a person falling within definition of 'family' as defined under Clause 4 (ii) of FPS, 1964 is eligible to get financial assistance under 2006 Rules. The expression 'family' has been defined under Clause 4 (ii) of the FPS, 1964. which reads as:-

“4(ii) "Family" for the purpose of this scheme includes the following relatives of the officer:-

- (a) wife, in the case of a male officer;*
- (b) husband, in the case of a female officer;*
- (c) minor sons;*
- (d) unmarried minor daughters;*
- (e) widowed/legally divorced daughters; and*
- (f) the parents of an unmarried officer*

Note 1.- Clause (c) and (d) include children adopted legally before retirement.

Note 2.- A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefit of the Family Pension Scheme 1964.”

6. The deceased was married and having two minor children and as per FPS, 1964 read with 2006 Rules, wife and children of deceased fell within definition of family and petitioner stood excluded. The petitioner has filed present petition claiming that she was dependent upon deceased,

and thus, she is equally entitled to monthly financial assistance as well as pension, however, she has been denied the same since she does not fall within the definition of 'family' as her deceased son was married. The petitioner has claimed that expression 'unmarried' used in sub clause (f) of Clause 4 (ii) should be declared ultra vires because dependent parents of a child cannot be deprived from their valuable right of pension and financial assistance just because their son/daughter was married at the time of his/her death.

Contention of petitioner:

7. Learned counsel for the petitioner contended that expression 'unmarried' used in impugned clause is contrary to the financial assistance scheme as well pension scheme because intent and purport of the scheme is to tide over the family from penury. The parents cannot be deprived from the benefit of financial assistance just because their son/daughter was married at the time of his/her death. The parents who were dependent upon their son/daughter, if deprived from financial assistance just because he/she at the time of death was married, would amount to violation with the scheme itself. She further contended that our country is a socialist and welfare state and pension or other financial assistance schemes are implemented to achieve the said goal. The denial of family pension or financial assistance to a mother who had lost her son amounts to violation of Article 14 as well 21 of Constitution of India apart from violation of scheme itself. With respect to affidavit dated 19.8.2016 of the petitioner, learned counsel submitted that petitioner cannot be deprived from her valuable right just because she had disowned her son and declared that she

had no relation whatsoever with her son and daughter-in-law.

Contention of State:

8. Learned State counsel opposing the prayer of the petitioner vehemently contended that petitioner was having three sons and deceased was the eldest one. The petitioner vide her affidavit dated 19.8.2016 (Annexure R-5/1) had already disowned her son as well as daughter-in-law. In her affidavit, she had categorically deposed that she had no relation whatsoever with her son Amit Kumar and his wife Suman Devi. The wife of the deceased had filed her written statement dated 12.3.2019 wherein she had categorically stated that husband of the petitioner is working in Liberty Shoe Factory, Karnal and getting salary around Rs. 20,000/- per month and her one son namely Goldy is working in Multi National Company at Noida and frequently visiting abroad. The petitioner neither by way of rejoinder nor during the course of arguments has refuted these facts, and thus, petitioner cannot claim that she was dependent upon her deceased son. On the question of vires of impugned clause of FPS, 1964 as made applicable to 2006 Rules, learned counsel submitted that this is policy of the State Government to extend financial assistance to family members and Government in its wisdom has considered parents of an unmarried officer dependent whereas wife and children are considered dependent of a married officer. It is matter of policy and normally Courts refrain from interfering in the policy matters.

Issues for consideration

9. From the perusal of record and arguments of both sides, we find that following questions do arise for the consideration of this Court:-

(i) Whether expression 'unmarried' used in sub-clause (f) of Clause 4 (ii) of Family Pension Scheme, 1964 as made applicable to Haryana Financial Assistance to the Dependents of Deceased Government Employees Rules, 2006 is ultra vires the Article 14, 21 of Constitution of India and 2006 Rules itself?

(ii) Whether petitioner in the peculiar facts is entitled to benefit of monthly assistance granted by respondent in terms of Haryana Financial Assistant to the Dependents of Deceased Government Employees Rules, 2006?"

Discussion and findings:-

10. Hon'ble Supreme Court in **Probodh Verma and others vs. State of U.P. (1984) 4 SCC 251** has held that writ of certiorari is not maintainable to question vires because it is maintainable against order of Tribunal, subordinate Court, authority. The Court cannot call record of making Act or Ordinance, thus, writ of declaration and further mandamus to restrain from enforcing provision is maintainable. The Court has further held that writ may be dismissed on the ground of incorrect prayer though it is not to be dismissed on the technical grounds.

The petitioner has filed a writ of certiorari seeking striking down/deleting of word 'family' from sub clause (f) of Clause 4(ii) of Family Pension Scheme, 1964. The FPS, 1964 is part of Punjab Civil Services Rules. These rules were framed in exercise of power conferred by proviso to Article 309 of the Constitution of India. The petitioner is seeking striking down of a provision of a legislation. In view of judgment of Apex Court in **Probodh Verma (supra)**, the petitioner has wrongly sought issuance of writ of certiorari, however, ignoring technicalities, we

proceed to adjudicate the above framed issues.

11. There is rule making power under Article 309, 146 and 229 of the Constitution of India. Under Article 146, Chief Justice of India has power to make rules with respect to conditions of service of officers and servants of Supreme Court and under Article 229 similar power is vested in Chief Justice of High Court. As per proviso to article 309, President or such person as he may direct in case of services and posts in connection with affairs of the Union and Governor in case of affairs of the State may make rules regulating the recruitment and conditions of service of persons appointed until provisions are made by an Act of appropriate Legislature.

In **Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187**, the Apex Court while dealing with nature, ambit and scope of rules made by Hon'ble Chief Justice under Article 146 has held that rules are in the nature of subordinate legislation. The relevant para reads as:

“94. It is not and cannot be disputed that the Chief Justice of India, by virtue of the constitutional grant, exercises legislative power when he makes rules under Article 146(2). Those rules are in the nature of subordinate legislation having the force of law to the extent, and subject to the conditions, prescribed by the Constitution. Like all statutory instruments, they are subordinate to the parent law. The power of the President under the proviso to clause (2) of Article 146 to approve or disapprove the rules made by the Chief Justice of India (relating to salaries, allowances etc.) is likewise legislative in character. It is the approval of the President that stamps such rules, so far as they relate to salaries, allowance, etc., with the authority of subordinate legislation. The making of the rules by the Chief Justice of India in that respect is a

step— indeed a vital step—in the process of law-making, but they assume the character of subordinate legislation only on their approval by the President.”

A Constitution Bench of the Supreme Court in **B. S. Vadera Vs UOI AIR 1969 SC 118** adverted with the question of nature of rules made in exercise of power conferred by proviso to article 309 of the Constitution of India and held:

24. It is also significant to note that the proviso to Article 309, clearly lays down that ‘any rules so made shall have effect, subject to the provisions of any such Act’. The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning, unless hedged-in, by any limitations. The rules, which have to be ‘subject to the provisions of the Constitution, shall have effect, ‘subject to the provisions of any such Act’. That is, if the appropriate legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect,-subject to that Act; but, in the absence of any Act, of the appropriate legislature, on the matter, ‘in our opinion, the rules, made by the President, or by such person as he may direct, are to have full effect, both prospectively, and, retrospectively. Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such-rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority.

27. In this connection, we, may refer to two decisions, of the Mysore High Court, and one of the Allahabad High Court. The Mysore High Court, in the decisions, Govindaraju v. State of Mysore [AIR (1963) Mys 265] and Govindappa v. I.G. of Registration [AIR (1965) Mys 25] has taken the view that it is, not open to the Governor, under the proviso to Article 309, to

frame a rule, having retrospective effect. We may state that the decision in Govindaraju Case [AIR (1963) Mys 265] came up, before this Court, on appeal, in Nagarajan v. Mysore [(1956) 3 SCR 682] . But this Court, in Nagarajan's case [(1956) 3 SCR 682] had no occasion to express any opinion on the question as to whether the Governor, under the proviso to Article 309, could frame a rule, having retrospective operation, as it took the view that the relevant rules had not been made under Article 309.

28. A Full Bench of the Allahabad High Court, on the other hand, in Ram Autar v. State of U.P. [AIR (1962) All 328, FB] has taken a view, contrary to the one, expressed by the Mysore High Court. We are of opinion that the latter, represents the correct view. But, even the Allahabad High Court has not given due importance to the mandatory words, used in the concluding part of the proviso to Article 309, that the rules made, by the authority mentioned therein, 'shall have effect, subject to the provisions of any such Act'. This aspect has been emphasized by us, in the earlier part of this judgment.

A two judge bench of the Supreme Court in **Bhakta Ramegowdav. State of Karnataka, (1997) 2 SCC 661** noticed its constitution bench judgment in **B.S. Vadera v. Union of India AIR 1969 SC 118** and held:

6. A Constitution Bench of this Court had held in B.S. Vadera v. Union of India [AIR 1969 SC 118 : (1968) 3 SCR 575] that rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, they could be made with retrospective effect. The same principle was reiterated in several decisions, viz., Chief Secy. to Govt. of A.P. v. V.J. Cornelius [(1981) 2 SCC 347, P.D. Aggarwal v. State of U.P.(1987) 3 SCC 622 , Supreme Court Employees' Welfare Assn. v. Union of India (1989) 4 SCC 187, R.L.

Bansal v. Union of India 1992 Supp (2) SCC 318 and V.K. Sood v. Secy., Civil Aviation 1993 Supp (3) SCC 9. The view of the Tribunal that the rules cannot be made with retrospective effect is ex facie illegal and unsustainable. The rules also were struck down on yet another ground, namely, until the guidelines have been provided for working out the rules, the rules are nonest and, therefore, the second proviso is ultra vires. This view also is not correct. The operation of the rules does not depend on the guidelines to be laid. Merely because the guidelines have not been provided in the manner in which the backlog vacancies are required to be filled up, the second proviso to Rule 8 made in exercise of the power under proviso to Article 309 does not become non est. At best, it remains unworkable. The Government is required to formulate the guidelines under Article 16(4) of the Constitution as to the manner in which the backlog vacancies are required to be filled up. Admittedly, such guidelines have not been provided including preparing the roster, identifying the backlog vacancies and the placement of the officers between the general and reserved categories which were annexed for the first time along with the counter-affidavit filed in the Tribunal. Under these circumstances, the view of the Tribunal is not correct. It may be construed to the extent the second proviso remains unworkable until the guidelines under Article 16(4) have been issued by the State Government. Under these circumstances, whatever promotions have been given, they would remain valid subject to laying down of the guidelines and working out of the backlog vacancies in the light of the guidelines provided thereunder and adjustment of the 11 officers promoted under the second proviso. All the promotions will be subject to the above fitment and adjustment

between general candidates and the reserved candidates in the respective categories, namely, Scheduled Castes and Scheduled Tribes and Other Backward Classes in accordance with the guidelines and the law laid down by this Court. The State Government is directed to complete the exercise within a period of three months from the date of the receipt of the order.”

In the case in hand, we are concerned with rules made in terms of proviso to Article 309. In view of law elucidated by Apex Court, we proceed to decide validity of impugned clause as if it is a plenary legislation.

The parameters laid down by Apex Court to examine validity of subordinate legislation and plenary legislation are slightly different because plenary legislation is an act of Union or State Legislature whereas delegated legislation is an executive act. Nevertheless, in view of law laid down by Apex Court when a piece of legislation whether plenary or subordinate is tested on the touchstone of fundamental rights guaranteed by chapter III of the Constitution, the dichotomy between the both stands almost evaporated.

12. Before advertent with the question of vires of a Legislation, it would be appropriate to look at relevant judicial pronouncements.

A two Judge Bench of Hon'ble Supreme Court in **T.N. Vs P. Krishnamurthy 2006 (4) SCC 517**, while dealing with validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959 in Para 15 expounded grounds to challenge subordinate Legislation which is reproduced as below:

“Whether the Rule is valid in entirety?”

15. There is a presumption in favour of constitutionality

or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-

a) Lack of legislative competence to make the sub-ordinate legislation.

b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

*d) Failure to conform to the Statute under which it is made or **exceeding the limits of authority conferred by the enabling Act.***

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such rules).

The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity”

In Cellular Operators Association of India v. Telecom

Regulatory Authority of India, (2016) 7 SCC 703, Hon'ble Supreme Court while holding Regulations framed under Telecom Regulatory Authority of India Act, 1997 as ultra vires adverted with its earlier judgments and held:-

“Violation of fundamental rights

*42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (See **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, SCC at p. 689, para 75.*

*43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In **Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304**, this Court held: (SCC p. 314, para 13)*

"13. It is next submitted before us that the amended rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected

*to emanate from an authority delegated with the law-making power. In **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."*

*44. Also, in **Sharma Transport v. State of A.P. [(2002) 2 SCC 188]**, this Court held: (SCC pp. 203-04, para 25)*

"25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

Hon'ble Supreme Court in **E.P. Royappa Vs State of T.N. (1974) 4 SCC 3** while dealing with the claim of the petitioner therein to the post of Chief Secretary in the State of Tamil Nadu in terms of Indian Administrative Service Rules, 1954 evolved the doctrine of arbitrariness and its application to State action as a distinct doctrine on which State action may be struck down as being violative of the rule of law contained in article 14. The Supreme Court held:

85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to

violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

The principle of arbitrariness laid down in **E.P. Royappa** (supra) was further thrashed out in **Maneka Gandhi Vs UOI (1978) 1 SCC 248** stating that various fundamental rights must be read together and must overlap and fertilize each other. The bench speaking through Justice Bhagwati observed:

"The interrelation between Article 14, 19 and 21.

6. *We may at this stage consider the inter-relation between*

Article 21 on the one hand and Articles 14 and 19 on the other. We have already pointed out that the view taken by the majority in A.K. Gopalan case [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] was that so long as a law of preventive detention satisfies the requirements of Article 22, it would be within the terms of Article 21 and it would not be required to meet the challenge of Article 19. This view proceeded on the assumption that “certain articles in the Constitution exclusively deal with specific matters” and where the requirements of an article dealing with the particular matter in question are satisfied and there is no infringement of the fundamental right guaranteed by that article, no recourse can be had to a fundamental right conferred by another article. This doctrine of exclusivity was seriously questioned in R.C. Cooper case (1970) 2 SCC 298 and it was over-ruled by a majority of the full Court, only Ray, J., as he then was, dissenting. The majority Judges held that though a law of preventive detention may pass the test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. The ratio of the majority judgment in R.C. Cooper case (1970) 2 SCC 298 was explained in clear and categorical terms by Shelat, J., speaking on behalf of seven Judges of this Court in Shambhu Nath Sarkar v. State of West Bengal (1973) 1 SCC 856. The learned Judge there said (SCC p. 879):

“In Gopalan case (1973) 1 SCC 856 the majority court had held that Article 22 was a self-contained code and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14 and 21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(1)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtained under clause (5) of that article. In R.C. Cooper v. Union of India (1970) 2 SCC 298 the aforesaid premise of the majority in Gopalan case AIR 1950

SC 27 was disapproved and therefore it no longer holds the field. Though Cooper case (1970) 2 SCC 298 dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in Gopalan case AIR 1950 SC 27 to be incorrect.”

Subsequently, in HaradhanSaha v. State of West Bengal (1975) 3 SCC 198 also, a Bench of five Judges of this Court, after referring to the decisions in A.K. Gopalan case 1950 SCR 88 and R.C. Cooper case (1970) 2 SCC 298 agreed that the Maintenance of Internal Security Act, 1971, which is a law of preventive detention, has to be tested in regard to its reasonableness with reference to Article 19. That decision accepted and applied the ratio in R.C. Cooper case (1970) 2 SCC 298 and Shambhu Nath Sarkar case (1973) 1 SCC 856 and proceeded to consider the challenge of Article 19, to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that the Act did not violate any of the constitutional guarantees enshrined in Article 19. The same view was affirmed once again by a Bench of four Judges of this Court in Khudiram Das v. State of West Bengal (1975) 2 SCC 81. Interestingly, even prior to these decisions, as pointed out by Dr Rajeev Dhavan, in his book, The Supreme Court of India at p. 235, reference was made by this Court in Mohd. Sabir v. State of Jammu and Kashmir (1972) 4 SCC 558 to Article 19(2) to justify preventive detention. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of “personal liberty” and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This

proposition can no longer be disputed after the decisions in R.C. Cooper case (1970) 2 SCC 298, Shambhu Nath Sarkar case (1973) 1 SCC 856 and Haradhan Saha case (1975) 3 SCC 198. Now, if a law depriving a person of “personal liberty” and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14. This was in fact not disputed by the learned Attorney-General and indeed he could not do so in view of the clear and categorical statement made by Mukherjea, J., in A.K. Gopalan case AIR 1950 SC 27 that Article 21 “presupposes that the law is a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does not infringe any of the fundamental rights which the Constitution provides for”, including Article 14. This Court also applied Article 14 in two of its earlier decisions, namely, State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75 and Kathi Raning Rawat v. State of Saurashtra AIR 1952 SC 123 where there was a special law providing for trial of certain offences by a speedier process which took away some of the safeguards available to an accused under the ordinary procedure in the Criminal Procedure Code. The special law in each of these two cases undoubtedly prescribed a procedure for trial of the specified offences and this procedure could not be condemned as inherently unfair or unjust and there was thus compliance with the requirement of Article 21, but even so, the validity of the special law was tested before the Supreme Court on the touchstone of Article 14 and in one case, namely, Kathi Raning Rawat case AIR 1952 SC 123 the validity was upheld and in the other, namely, Anwar Ali Sarkar case AIR 1952 SC 75 it was struck down. It was held in both these cases that the procedure

established by the special law must not be violative of the equality clause. That procedure must answer the requirement of Article 14.

The nature and requirement of the procedure under Article 21

7. *Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in **E.P. Royappa (supra)** namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would*

not be satisfied."

In **Sunil Batra Vs Delhi Administration (1978) 4 SCC 494**, Section 30(2) of the Prisons Act was challenged as being unconstitutional because every prisoner under sentence of death was to be confined in a cell apart from all other prisoners, that is to say he will be placed under solitary confinement. The Constitution Bench read down Section 30(2) to refer only to a person who is sentenced to death finally, which would include petitions for mercy to the Governor and/or to the President which have not yet been disposed of. The word "law" in the expression "procedure established law" in Article 21 has been interpreted to mean in Maneka Gandhi's case that the law must be right, just and fair, and not arbitrary, fanciful or oppressive. Otherwise it would be no procedure at all and the requirement of article 21 would not be satisfied. If it is arbitrary it would be violative of Article 14.

In **Mithu Vs State of Punjab (1983) 2 SCC 277**, validity of Section 303 of IPC was challenged. A constitution bench speaking through Justice Y.V. Chandrachud while striking down Section 303 of IPC observed:

"23. On a consideration of the various circumstances which we have mentioned in this judgment, we are of the opinion that Section 303 of the IPC violates the guarantee of equality contained in article 14 as also right conferred by article 21 of the constitution that no person shall be deprived of his life or personal liberty except according to procedure established by law. The section was originally conceived to discourage assaults by life-convicts on the prison staff, but the Legislature chose language which far exceeded its intention. The section also assumes that life-convicts are a dangerous breed of humanity as a class. That assumption is not supported by any scientific data. As observed by the Royal Commission in its

Report on 'Capital Punishment' (1) "There is a popular belief that prisoners serving a life sentence after conviction of murder form a specially troublesome and dangerous class. That is not so. Most find themselves in prison because they have yielded to temptation under the pressure of a combination of circumstances unlikely to recur'.

A three Judge Bench of Supreme Court in **A.L. Kalra Vs Project and Equipment Corporation of India Ltd. (1984) 3 SCC 316** held:

18. It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it be struck down on the ground of arbitrariness as being violative of Article 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the Legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Article 13.

A three Judge Bench of Supreme Court in **K.R. Lakshmanan (Dr.) v. State of T.N. (1996) 2 SCC 226**, struck down 1986 Tamil Nadu Act on the ground that it was arbitrary, and therefore, violative of Article 14. In so far as the discrimination aspect is concerned, Court struck down the 1986 Act on the ground that it was discriminatory. In Paragraphs 48 to

50, while striking down 1986 Act, the court held:

"48. We see considerable force in the contention of Mr. Parasaran that the acquisition and transfer of the undertaking of the Club is arbitrary. The two Acts were amended by the 1949 Act and the definition of 'gaming' was amended. The object of the amendment was to include horse-racing in the definition of 'gaming'. The provisions of the 1949 Act were, however, not enforced till the 1974 Act was enacted and enforced with effect from 31-3-1975. The 1974 Act was enacted with a view to provide for the abolition of wagering or betting on horse races in the State of Tamil Nadu. It is thus obvious that the consistent policy of the State Government, as projected through various legislations from 1949 onwards, has been to declare horse-racing as gambling and as such prohibited under the two Acts. The operation of the 1974 Act was stayed by this Court and as a consequence the horse-races are continuing under the orders of this Court. The policy of the State Government as projected in all the enactments on the subject prior to 1986 shows that the State Government considered horse-racing as gambling and as such prohibited under the law. The 1986 Act on the other hand declares horse-racing as a public purpose and in the interest of the general public. There is apparent contradiction in the two stands. We do not agree with the contention of Mr. Parasaran that the 1986 Act is a colourable piece of legislation, but at the same time we are of the view that no public purpose is being served by acquisition and transfer of the undertaking of the Club by the Government. We fail to understand how the State Government can acquire and take over the functioning of the race-club when it has already enacted the 1974 Act with the avowed object of declaring horse-racing as gambling? Having enacted a law to abolish betting on horse-racing and stoutly defending the same before this Court in the name of public good and public morality, it is not open to the State

Government to acquire the undertaking of horse-racing again in the name of public good and public purpose. It is ex facie irrational to invoke "public good and public purpose" for declaring horseracing as gambling and as such prohibited under law, and at the same time speak of "public purpose and public good" for acquiring the race-club and conducting the horse-racing by the Government itself. Arbitrariness is writ large on the face of the provisions of the 1986 Act.

49. We, therefore, hold that the provisions of 1986 Act are discriminatory and arbitrary and as such violate and infract the right to equality enshrined under Article 14 of the Constitution.

50. Since we have struck down the 1986 Act on the ground that it violates Article 14 of the Constitution, it is not necessary for us to go into the question of its validity on the ground of Article 19 of the Constitution."

In Mardia Chemicals Ltd. & Ors. v. Union of India & Ors.

etc. (2004) 4 SCC 311, Supreme Court while striking down Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 concluded:

"64. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not only onerous and oppressive

but also unreasonable and arbitrary. Therefore, in our view, Sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."

In Malpe Vishwanath Acharya Vs Maharashtra, 1998 (2)

SCC 1 while declaring ultra vires provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the Apex Court has held:

15. The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended can still be regarded as valid now ?

29. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st March, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the Legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due

deliberation and thought, there will, perhaps, have to be very good and compelling reasons in departing from the said Model law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Control Act.

30. We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding the validity of the impugned provisions relating to standard rent was not correct. We however refrain from striking down the said provisions as the existing Act elapses on 31.3.1998 and we hope that a new Rent Control Act will enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment insofar as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the costs.

In ***Dr. Subramanian Swamy v. Director, Central Bureau of Investigation, (2005) 2 SCC 317*** after referring to several judgments including *Ajay Hasia*, *Mardia Chemicals*, *Malpe Vishwanath Acharya* and *McDowell*, a reference was made to the Constitution Bench. The reference *inter alia* was as to whether arbitrariness and unreasonableness, being facets of Article 14, are or are not available as grounds to invalidate legislation. A Constitution Bench in ***Dr. Subramanian Swamy v. Director, Central Bureau of Investigation, (2014) 8 SCC 682*** dealt with a challenge to Section 6A of the Delhi Special Police Establishment Act, 1946. This Section was ultimately struck down as being discriminatory and hence violative of Article 14. The Court held:

"48. In E.P. Royappa [E.P. Royappa v. State of T.N. (1974) 4

SCC 3], it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under:

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

Court's approach

49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders-if

such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."

The Court ultimately struck down Section 6A on the ground that it was discriminatory, thus it became unnecessary to pronounce on one of the questions referred to it, namely, as to whether arbitrariness could be a ground for invalidating legislation under Article 14.

In Shayara Bano Versus Union of India, (2017) 9 SCC 1

while dealing with validity of Triple Talaq, Constitution Bench has discussed plethora of judgments and concluded that Article 14 of the Constitution of India is a facet of equality of status and opportunity enshrined in the Preamble to the Constitution. Article 14 is divided into two parts i.e. (i) equality before law and (ii) equal protection of law. Equality is antithetic to arbitrariness and equality and arbitrariness are sworn enemies.

The Constitution Bench specifically overruled the three judge bench judgment in **State of A.P. v McDowell and Co. (1996) 3 SCC 709** where it was held that a challenge can succeed on the ground that law is "disproportionate, excessive or unreasonable" but cannot succeed on the ground being "unreasonable, unnecessary or unwarranted". The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Justice R.F. Nariman speaking for majority has concluded as below:

101. *It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.*

102. *Applying the test of manifest arbitrariness to the case at hand, it is clear that Triple Talaq is a form of talaq which is itself considered to be something innovative, namely, that it is not in the Sunna, being an irregular or heretical form of talaq. We have noticed how in Fyzee's book [Tahir Mahmood (Ed.), Asaf A.A. Fyzee, Outlines of Muhammadan Law, 5th Edn., 2008.] , the Hanafi School of Shariat law, which itself recognises this form of talaq, specifically states that though lawful it is sinful in that it incurs the wrath of God.*

In **Jospeh Shine Vs UOI 2019 (3) SCC 39**, Supreme Court reiterating its judgment in the case of Shayara Bano Vs UOI (supra) wherein earlier precedents are referred at length, has declared Section 497 of IPC (adultery) and Section 198 of Cr.P.C. (complaint by husband in case

of adultery) unconstitutional being arbitrary, discriminatory and violative of Article 14 and 15 of the Constitution of India.

A three Judge Bench in **Dadu @ Tulsidas Vs State 2000 (8) SCC 437** struck down Section 32A of NDPS Act on the ground that it took away discretion of court to suspend sentence or remit or commute. The discretion vested in courts cannot be taken away and power of judicial review is part of basic structure of the Constitution of India.

A constitution bench in **R.K. Garg v. Union of India (1981) 4 SCC 675** while dealing with constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 (hereinafter referred to as “the Ordinance”) and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 (hereinafter referred to as “the Act”) observed:

*8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:*

“In the utilities, tax and economic regulation cases, there are

good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”

*The Court must always remember that “legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry”; “that exact wisdom and nice adaption of remedy are not always possible” and that “judgment is largely a prophecy based on meagre and uninterpreted experience”. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Company* [94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the*

care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

13. The impugned clause is challenged on the ground of being violative of intent and purport of the pension scheme and fundamental rights guaranteed by Article 14 & 21 of the Constitution. In view of above enunciation of law, if validity of plenary as well delegated legislation is assailed on the ground of violation of Article 14 or 21, there remains no difference qua parameters. Right of livelihood, right to live with dignity, right of maintenance etc. are part of right of life and liberty enshrined under Article 21. Thus, pension schemes either for the benefit of retiree or his family members are nuances of implementation of mandate of Article 21. Thus, a person can be deprived from pension only after following procedure established by law and procedure must be just, fair and reasonable.

14. The Family Pension Scheme, 1964 is part of Punjab Civil Services Rules which have been framed in exercise of power conferred by proviso to Article 309 of the Constitution of India. The respondent-State of Haryana had initially adopted the Punjab Civil Services Rules, however, respondent-State w.e.f. 19.7.2016 has framed Haryana Civil Services (General) Rules, 2016. The respondent has also w.e.f. 19.7.2016 inserted

Haryana Civil Services (Pension) Rules, 2016 (for short 'Pension Rules, 2016'). Rules 7 of Pension Rules, 2016 provides that rules contained in Punjab Civil Services Rules, Volume II shall stand repealed. Rule 8 (Chapter II of Pension Rules, 2016) defines different expressions which includes expression 'family' for the purpose of family pension. Clause (B) of sub-rule 10 of Rule 8 which defines expression 'family' for the purpose of family pension reads as:

“ 10. Family means-

(A) XXXX XXXX XXX

(B) for the purpose of family pension means-

(i)(a) widow (widows wherever permissible under personal law) or widower, upto the date of re-marriage or death, whichever is earlier;

(i)(b) judicial separated wife or husband of a deceased Government employee, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

(i)(c) childless widow of a deceased Government employee who has got remarried provided her independent income from all other sources is less than or not equal to the minimum family pension prescribed by the State Government from time to time plus dearness relief thereon. In all such cases, she shall be required to give a declaration regarding her income from all other sources to the Treasury Officer and Head of Office once in every three months.

(ii) Failing (i) above, the eldest unmarried and dependent son(s) or daughter(s) upto the age of 25 years.

(iii) Failing (i) and (ii) above, the dependent eldest

divorced or widowed daughter(s) upto the age of 25 years, upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is the earliest provided she should have been widowed or divorced before the date of expiry of eligibility of other existing family member for family pension.

(iv) Failing (i) to (iii) above, the dependent eldest daughter amongst unmarried/widowed/ divorced. daughters of above 25 years upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is earlier. In case of widowed/divorced daughter, she is widowed/ divorced before the date of expiry of eligibility of other family member for family pension.

(v) Failing (i) to (iv) above, son and daughter suffering from disorder or disability of mind or physically crippled or disabled irrespective of his/her age provided they were wholly dependent upon the Government employee when he/she was alive.

(vi) Failing (i) to (v) above parents who were wholly dependent on the Government employee when he/she was alive provided their present combined income is less than the minimum family pension, prescribed from time to time, plus dearness relief thereon.

(vii) Failing (i) to (vi) above, unmarried physically disabled sibling (brother and sister) provided they were wholly dependent upon the deceased Government employee when he/she was alive.

Note 1.- For the purpose of this rule, "widow" means legally wedded wife of deceased Government employee.

Note 2.- Divorce by the Panchayat or Social Organizations shall not constitute a legal divorce.

Note 3.- Son/daughter includes children legally adopted under the

Hindu Law or personal law of the Government employee residing with and wholly dependent upon his/her parent but does not include step children.

Note 4.- Dependent childless widow, children or parents who is drawing family pension shall submit a certificate to the pension disbursing authority once after every six months regarding their income, if any. Guardian shall also submit certificate on behalf of eligible family member regarding his income, if any.”

15. The respondent-State in exercise of powers conferred by proviso to Article 309 of the Constitution of India has framed Haryana Financial Assistant to the Dependents of Deceased Government Employees Rules, 2006. The 2006 Rules stand repealed by the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (for short '2019 Rules'). In the case in hand, death of employee took place on 15.3.2018, thus, 2006 Rules in vogue were applicable and have been relied upon as well as invoked by both sides. Rule 5 of 2006 Rules provides that on the death of any Government employee, the family of the deceased employee would continue to receive as financial assistance to a sum equal to the pay and other allowances that was last drawn by the deceased employee. Sub-rule (2) of Rule 5 further provides that family shall be eligible to receive family pension as per normal rules after the period during which it receives the financial assistance. Rule 5 of the 2006 Rules is reproduced as below:-

5. (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim,--

(a) For a period of fifteen years from the date of death of the employee, if employee at the time of his death had not attained the age of thirty-five years.

(b) For a period of twelve years till the date the employee would have retired from Govt service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years.

(C) For period of seven years or till the date the employee would have retired from Govt. service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purpose of calculation of assistance.

(6) All pending cases of ex-gratia assistance shall be covered under new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for the lump sum ex-gratia grant provided in the

Rules, 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006.

(7) If any doubt arises relating to the application, interpretation and scope of these Rules, it shall be referred to the Government in the department of General Administration (In General Services-II Branch) whose decision thereon shall be final.

(8) The Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2005, which are in force immediately before the commencement of these rules are hereby repealed:

Provided that families will have the option to opt for the lump sum ex-gratia grant provided in the rules 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under these rules:

Provided further that in all pending cases where the family exercises the option to receive the financial assistance under these rules the calculation of the period and payment shall be made from the date of notification of these rules.”

Rule 3 of 2006 Rules provides that eligibility to receive financial assistance shall be as per provisions of the Family Pension Scheme, 1964. The expression 'family' has not been defined under Rules 2006 and in view of Rule 3 of 2006 rules, the expression 'family' as defined under 4(ii) of FPS, 1964 is relevant. Clause 4(ii) of FPS, 1964 stands reproduced hereinabove, hence, to avoid repetition is not here reproduced.

16. The respondent has repealed 2006 Rules and as per Rule 5 of 2019 Rules which came into force w.e.f. 2.8.2019, the expression 'family' for the purpose of financial assistance means:

Rule 5 ***(f) "Family for the purpose of compassionate financial assistance" means-***

(a) widow (widows wherever permissible under personal law) or widower, upto the date of re-marriage or death, whichever is earlier;

(b) judicially separated spouse of a deceased or missing Government employee, provided that such separation has not been granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

(c) childless widow of a deceased or missing Government employee who has not remarried provided her independent income from all other sources is less than the minimum family pension prescribed by the State Government from time to time plus dearness relief thereon. In all such cases, she shall be required to give a declaration regarding her income from all other sources to the Head of Office once in every six months;

(ii) failing (i) above, the eldest unmarried and dependent son(s) or daughter(s) upto the age of twenty-five years;

(iii) failing (i) and (ii) above, the dependent eldest divorced or widowed daughter(s) upto the age of twenty-five years, upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is the earliest provided she should have been widowed or divorced before the date of expiry of eligibility of other existing family member for compassionate financial assistance;

(iv) failing (i) to (iii) above, the dependent eldest daughter amongst unmarried/widowed/divorced daughters of above twenty-five years, upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is

earlier. In case of widowed/divorced daughter, she should have been widowed/divorced before the date of expiry of eligibility of other family member for compassionate financial assistance;

(v) falling (i) to (iv) above, son and daughter suffering from disorder or disability of mind or physically crippled or disabled irrespective of his/her age provided they were wholly dependent upon the Government employee when he/she was alive;

(vi) failing (i) to (v) above, parents who were wholly dependent on the Government employee when he/she was alive provided their present combined income is less than the minimum family pension, prescribed from time to time, plus dearness relief thereon;

(vii) failing (i) to (vi) above, unmarried physically disabled sibling (brother and sister) provided they were wholly dependent upon the deceased Government employee when he/she was alive:

Note 1.-For the purpose of this rule, widow "means legally wedded wife of deceased Government employee.

Note 2-Divorce by the Panchayat or Social Organizations shall not constitute a legal divorce.

Note 3-Son/daughter includes children legally adopted under the Hindu Law or personal law of the Government employee residing with and wholly dependent upon his/her parent but does not include step children.

Note 4-It shall be the duty of person who is drawing compassionate financial assistance (son, daughter, parents, siblings or the guardian, as the case may be) to furnish a certificate to the disbursing authority, twice in a year, i.e. in the month of March and September every year, that she/he

or they have not started earning his/her or their livelihood. A similar certificate shall also be furnished by a childless widow after her re-marriage;”

From the perusal of above quoted Rule 5 of 2019 Rules, it is quite evident that respondent has made parents of an officer eligible to family pension subject to non-existence of legal heirs mentioned in different clauses of Rule 5 (f) of the 2019 Rules. The 2019 Rules are not retrospective in nature. Thus, for the adjudication of present petition, this Court is supposed to test validity of a clause which is applicable to the petitioner.

17. For the first time, a Constitution Bench of the Apex Court in **Budhan Choudhry and others vs. State of Bihar AIR 1955 SC 191** dealt with question of classification vis-a-vis Article 14 and propounded that State can make reasonable classification, however, classification must be based upon intelligible differentia and there should be rational relation to the object sought to be achieved. In case of challenge to State legislation, State was supposed to justify its act by bringing on record that there is classification based upon intelligible differentia and there is rational relation to the object sought to be achieved.

18. Prior to the judgment of the Apex Court in **E.P. Royappa (supra)**, the theory qua classification vis-a-vis Article 14 as elucidated in **Budhan Choudhry (supra)** was holding the field, however, the Apex Court in **E.P. Royappa (supra)** gave a new shape and dimension to the Article 14 and expanded its ambit and scope. The new theory of classification vis-a-vis discrimination and arbitrariness came into picture.

This opinion was further explained in **Maneka Gandhi (supra)**.

Question No. 1: Whether expression 'unmarried' used in sub-clause (f) of Clause 4 (ii) of Family Pension Scheme, 1964 as made applicable to Haryana Financial Assistance to the Dependents of Deceased Government Employees Rules, 2006 is ultra vires the Article 14, 21 of Constitution of India and 2006 Rules itself?

19. The respondent by 2006 Rules has introduced scheme of monthly financial assistance. As per 2006 Rules, the expression 'family' as defined under FPS, 1964 is applicable. In the definition of 'family' various categories of persons are included, however, parents are excluded as soon as their child gets married. On account of death of an employee, family of the deceased is entitled to various statutory benefits which include benefits extended by 2006 Rules or 2019 Rules or other compassionate employment schemes. As per impugned clause, no sooner a child gets married, the parents are excluded from the definition of 'family'. The rule does not contemplate different situations which qua parents may arise on account of death of their son/daughter-employee. The death of a child (employee) may entail following sets of permutations and combinations qua parents:-

- (i) Both son and daughter-in-law having no child may pass away together;
- (ii) Daughter-in-law may get married as soon as her husband has passed away;
- (iii) Daughter-in-law may be well placed whereas parents may be totally dependent upon their son;
- (iv) The deceased may be sole son or daughter or he/she may be having no other sibling.
- (v) The deceased employee may be a sole married daughter and parents may be dependent upon her. In this case, husband may or may not be dependent.

(vi) Son/daughter may at the time of death though married yet may be in the process of seeking divorce.

(vii) Son/daughter may be divorcee or widow/widower.

From the above quoted permutations and combinations qua parents of a deceased employee indicate that legislature while enacting impugned sub clause (f) of Clause 4(ii) of FPS, 1964 as made applicable to 2006 Rules has not contemplated above situations which may arise post death of an employee. There seems no intelligible differentia and reasonable rationale to the object of excluding the dependent parents from consideration. Classification on the basis of marriage may be made, in the given facts & circumstances and object sought to be achieved, however, the impugned clause does not seem to achieve the real intent and purport of the Rules i.e. tiding off the family members from penury. The impugned clause further does not pass through the test of reasonableness and absence of arbitrariness. The impugned clause is outcome of non-consideration of above cited permutation and combinations which have been well considered while promulgating the 2019 Rules. Thus, we are of the considered opinion that impugned expression 'unmarried' used in sub clause (f) of clause 4(ii) of FPS, 1964 as made applicable to 2006 Rules is violative of Articles 14 and 21 being arbitrary, unreasonable as well as unjust and unfair. Accordingly, we hold impugned expression 'unmarried' used in sub clause (f) of Clause 4(ii) of FPS, 1964 invalid. The state is always at liberty to take curative steps to remove the defect pointed out by Courts.

Question No. 2: Whether petitioner in the peculiar facts is entitled to benefit of monthly assistance granted by respondent in terms of Haryana Financial Assistant to the Dependents of Deceased

Government Employees Rules, 2006?”

20. The conceded position emerging from the record is that the deceased was married and having two minor children. The petitioner during the life time of deceased disowned her son as well as daughter-in-law from her movable and immovable properties. Wife of the deceased had paid a sum of Rs. 50,000/- out of financial assistance received by her and further a sum of Rs. 50,000/- was collected by other employees at the time of cremation of the deceased and said amount was handed over to the petitioner. Thus, the petitioner had already received a sum of Rs. 1,00,000/- as financial assistance. The husband of the petitioner is alive and he is earning about Rs. 20,000/- per month. As conceded by learned counsel for the petitioner, one son of the petitioner is working in a company at Noida. The petitioner is having two sons beside the deceased.

In view of the fact that:

- (i) husband and two sons of the petitioner are alive and they are earning handsome amount;
- (ii) the petitioner had already disowned her deceased son and daughter-in-law;
- (iii) the deceased is survived by his wife and two minor children;
- (iv) it is responsibility of wife of the deceased to look after her two minor children and she herself is 10+2 pass and in this competitive era, it is difficult to believe that a lady who is above 30 years and having qualification just 10+2 can get a decent job;
- (v) wife of the deceased is totally dependent upon financial assistance whereas petitioner did not seem to be dependent

upon her deceased son,

the intention of the petitioner seems to grab financial assistance which her daughter-in-law had received on account of death of her husband who was less than 35 years old at the time of his death. We do not find that petitioner is entitled to even a minuscule of financial assistance extended by respondent-State to the widow and children of the deceased employee, the present petition is bereft of merit, qua the said claim.

Conclusion:

21. In view of the above findings, we declare that expression "unmarried" used in sub clause (f) of Clause 4(ii) of Family Pension Scheme, 1964 as applicable to the Dependents of the Deceased Government Employees Rules, 2006 is invalid. We further hold that petitioner is not entitled to any part of the financial assistance extended to widow and children of the deceased.

The petition is disposed of in the above terms.

Pending miscellaneous applications, if any, shall stand disposed of.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

11.11.2022

PARAMJIT

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes