

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR
AND
The Hon'ble JUSTICE LAPITA BANERJI

APOT/4/2020
WPO/394/2004
IA NO: GA/1/2020 (Old No:GA/260/2020), GA/2/2020, GA/3/2021

Trustees of Balmer Lawrie & Co. Ltd. & Ors.
Versus
Balmer Lawrie & Co. Ltd. Ex Officers Forum & Ors.

For appellant	: Mr. Jishnu Saha, Sr. Adv. Mr. Kushagra Shah, Adv. Mr. Sourajit Dasgupta, Adv. Mr. Aniket Chaudhury, Adv.
For respondent nos.1& 2	: Mr. Arunava Ghosh, Sr. Adv. Mr. Puspall Chakraborty, Adv. Ms. Prisanika Ganguly, Adv. Mr. Soumyadeep Sarkar, Adv.
For UoI.	: Mr. S.K. Tiwari, Adv.
Hearing concluded on	: 23.02.2023.
Judgment on	: 05.04.2023.

Lapita Banerji:- This intra-court appeal arises out of a Judgment and Order dated November 5, 2019 passed by an Hon'ble Judge of this Court. By the **Impugned** Order dated November 5, 2019, the Hon'ble Single Judge allowed

the writ petition by restraining the respondents from giving any or any further effect to the decision of the respondent No.3 in the Writ Petition/Appellant in implementation of the Deed of Variation of the Superannuation Fund (SAF) and directed payment of arrears under SAF Scheme. The facts as culled out from the writ petition are as follows:

- (i) The writ petitioner No.1 is a registered society under the Registration Act, 1961.
- (ii) The members of the writ petitioner No.1/respondent No.1 in the appeal are all ex-officers of Balmer Lawrie & Company Limited (the company).
- (iii) The writ petitioners have been separated from the company after availing the Special Voluntary Separation Scheme (SVSS) introduced by the company on January 11, 2000 and Voluntary Retirement Scheme (VRS) introduced on August 3, 2002.
- (iv) Prior to their Voluntary retirement on around January 2, 1988, the Company introduced B.L. & Co. Limited Superannuation Fund Rules (SAF Rules).
- (v) On March 20, 1989, the Company executed a Trust Deed being B.L. & Co. Limited Superannuation Fund Trust Deed. The relevant clauses of the Trust Deed read as follows:-

“(2) These presents shall constitute a Trust established in India which Trust shall be irrevocable and the Trustees shall hold the Fund upon trust for the benefit of the members or other beneficiaries more particularly set forth in the Rules, and no money belonging to the Fund in the hands of Trustees shall

be recoverable by the Company, nor shall the Company have any lien or charge of any description on the same.”

“(4) The Trustees may at any time with the consent of the Company or on a recommendation from the Company by a Supplemental Deed amend or add to the provisions of the Trust Deed or the Rules provided, however, that such alteration does not adversely affect the benefits being paid from the Fund or the benefits accrued up to the date of such amendment or the object of the Fund provided always that no alteration in the Trust Deed, Rules, Constitution or Conditions of the Fund shall be made without the prior approval of the Commissioner.”

“8.(b) If the Company discontinues further contribution, the Trustee shall adopt either of the two following courses according to their discretion subject to Clause 7:

A. The Trustees shall continue the Fund for the benefit of the existing members until settlement of their benefits, the benefits being reduced on the advice of the Actuary of the Fund having regard to the assets of the Fund.

- (vi) By a communication dated August 28, 1989, a Superannuation Fund (SAF) Scheme was introduced by the company with effect from January 1, 1988. The object of the said scheme was to protect the salaried officers from the uncertainties of life due to old age and socio-economic demands arising out of the separation with the company on attaining the age of superannuation or otherwise.
- (vii) The SAF Scheme was to be contributory in nature. The generation of funds would be through direct contribution from the officers with a token contribution by the company to the fund.

- (viii) As per the SAF Scheme, pension shall be payable to a member on retirement (at or after normal retirement date) provided that a member has made at least 5 years' contributions immediately preceding his date of retirement. Furthermore, he was required to complete 15 years of service.
- (ix) The pension granted under the SAF Scheme would be payable to a member throughout his life subject to a minimum guaranteed period of 15 years.
- (x) In the event a member died before receiving 15 years of guaranteed pension, then, the same would be payable to the widow, children or other beneficiaries in accordance with the SAF Scheme.
- (xi) The pension shall be computed at the rate of 1.25% of the final salary for each year of reckonable service. The said calculation would be subject to a minimum of 6.25% of the final salary received by a member on separation and a maximum of 40% of the final salary.
- (xii) On separation of a member before the normal retirement date, but after completion of 15 years of service (including 5 years of payment of contribution), a pension would be payable to a member.
- (xiii) The pension under Clause 4(a)(ii) of the SAF Scheme would only become payable after the "normal retirement date".

- (xiv) All the members of the writ petitioner No.1 became members of SAF Scheme with effect from January 1, 1988.
- (xv) By a communication dated January 11, 2000, the Executive Director (HR) of the company introduced a Special Voluntary Separation Scheme (SVSS). The said SVSS Scheme came into force with effect from January 17, 2000.
- (xvi) Under the said Scheme, the officers would be entitled to monthly benefits/pension from the notional date of retirement subject to completion of minimum 15 years of service.
- (xvii) Furthermore, the officers would also be entitled to medical facilities under Post Retiral Medical Benefit Scheme (PRMBS) with effect from the notional date of retirement.
- (xviii) Thereafter, the company introduced a Voluntary Retirement Scheme (VRS) on August 3, 2002. Under the said Scheme, all the permanent employees were entitled to apply. There was no age bar or minimum period of service applicable. For officers applying under the VRS of 2002, pension under the SAF Scheme would be admissible to them from the notional date of retirement subject to having fulfilled the eligibility criteria as per the Trust Rules.
- (xix) The officers would also be entitled to PRMBS from the notional date of retirement as per the Scheme in vogue.

- (xx) The company also reserved its right to modify or withdraw the “Scheme”/VRS at any time in its sole discretion without giving any reason or notice whatsoever.
- (xxi) The said VRS was further clarified on behalf of the company by a communication dated August 6, 2002 by the Executive Director (HR). The clarificatory notification primarily dealt with processing and computation of the benefits under the VRS.
- (xxii) The present writ petitioners filed a previous writ petition before this Hon’ble High Court being W.P. No.783 of 2003. The said writ petition was dismissed by the Hon’ble Single Judge vide Order dated May 22, 2003. In the said writ petition, the petitioners had prayed for immediate release of their pensionary benefits under the SAF Scheme without waiting for the notional date of retirement.
- (xxiii) The Hon’ble Writ Court held that the petitioners have separated themselves from the company after serving the company for at least 15 years immediately before such separation by taking advantage of the Voluntary Retirement Scheme. The petitioners after separating themselves have instituted the writ petition for preponing/advancing the date of commencement of pension under SAF Scheme. The same was held not to be permissible since no Court can alter a term of an agreement. Therefore, the writ petition was dismissed.

- (xxiv) An application for Stay of the Order dated May 22, 2003 was dismissed on August 8, 2003 by a Coordinate Bench of this Hon'ble High Court. Directions were given for filing of Paper Book for hearing of the appeal being M.O.T. 437 of 2003.
- (xxv) A Deed of Variation was sought to be executed between the Company/original Appellant no.2 and the Trustees/Appellant on December 15, 2003 seeking to vary the nature of the benefits granted under the SAF Scheme established on March 20, 1989 with retrospective effect from January 1, 1988.
- (xxvi) The said Deed of Variation was communicated to the writ petitioner No.2 being the General Secretary of Writ Petitioner No.1/Respondent No.1 in the instant appeal, on January 12, 2004. The Deed of Variation was to be effective from January 1, 2004. The petitioners had prayed for permanent injunction from giving any or any further effect to the said Deed of Variation dated December 15, 2003 as communicated vide letter dated January 12, 2004 in the Writ Petition.
- (xxvii) Under the **Impugned** Deed of Variation, the Trustees of the SAF Scheme recommended the nature of the Scheme to be changed from "defined **benefit** scheme" to "defined **contributory** scheme" with effect from January 1, 2004.
- (xxviii) Under the modified Scheme, the superannuation benefits that the members were eligible to get henceforth would be linked to

the individual's own contribution and would not be linked to his period of service or last drawn salary.

- (xxix) A calculation sheet was also provided along with the letter dated January 12, 2004. The effect of such calculation led to a result whereby the petitioner No.2, who was entitled to receive an assured pension of Rs.7,224/- (approximately) per month, would receive a sum of Rs.2,219/- (approximately) per month.
- (xxx) Challenging the letter dated January 12, 2004 and the Deed of Variation dated December 15, 2003, the instant writ petition being W.P. 394 of 2004 was filed.
- (xxxi) The said writ petition being W.P. No. 394 of 2004 was allowed by the Hon'ble Single Bench by the **Impugned** Order dated November 5, 2019 and the same is under challenge before this Court.

2. Mr. Saha, Learned Senior Counsel argued that the writ petition is not maintainable since it has not been stated in the writ petition that the appellant herein/respondent No.3 in the writ petition was under the management and control of B.L. & Co. Ltd/the respondent No.1 in the writ petition.

3. He submitted that since the Trust formed for SAF Scheme was not under any statutory authority, no writ can be held to be maintainable against the Trustees of the said Superannuation Fund. He distinguished the Judgment relied upon by Mr. Chakraborty, the Learned Counsel appearing on behalf of the writ petitioners reported in 2006 (Vol.2) CHN 358 (**Kelvin Jute Company**

Limited vs. Krishna Kumar Agarwal) on the ground that the same related to Provident Fund Trust, which was a statutory trust, governed under the provisions of the “Employees’ Provident Fund and Miscellaneous Provisions Act, 1952. The Provident Fund Trust was required to be operated under guidelines as indicated in the 1952 Act. There was no such statutory provisions applicable in the present case. Therefore, no writ is maintainable against the respondent No.3 in the writ petition/appellant herein.

4. On merits he submitted that the Deed of Variation (D.V.) was necessitated on account of the financial conditions of the Fund. The same was a result of “falling interest rates, the galloping cost of annuities coupled with large scale separations of members without concomitant additions” resulting in unviability of the fund.

5. He drew the attention of the Court to Clause 4 of the Trust Deed dated March 20, 1989. Clause 4 is set out hereinabove.

6. He relied on the said Clause to argue that the petitioners at all material points in time being employees of the company were aware of the powers of the Trustees of the fund/appellant to amend and/or alter the Trust Deed.

7. Under the SVSS/VRS announced in January 2000 and August, 2002, respectively, it was also reiterated that pension would be admissible under SAF Scheme as per the eligibility criteria of the Trust Rules. The said variation was required due to the financial exigencies as recognized by the Hon’ble Supreme Court in a Judgment reported in (2005) 8 SCC 404 (**Air India Employees Self Contributory Superannuation Pension Scheme vs. Kuriakose V. Cherian &**

Ors.). Furthermore, he argued that the petitioners have not reached the “notional date” of retirement by December 15, 2003 (date of the Variation Deed of Trust) and consequently, were not entitled to the superannuation benefits under the original Trust Deed as there was no *vested right* on December 15, 2003.

8. Since the writ petition being W.P. No.783 of 2003 has been dismissed and the application for stay being rejected, the writ petitioners cannot claim to have any *vested right* in time prior to the “notional date” of retirement. Therefore, the writ petitioners/respondents were under an obligation to accept the modified terms of SAF Scheme.

9. Mr. Saha contended that neither under SVSS dated January 11, 2000, nor under VRS dated August 3, 2002, was there any assurance given to the writ petitioners to pay the pensionary benefits in accordance with the original Trust Deed of the SAF Scheme. Since the D.V. was executed prior to the notional date of retirement from which the petitioners were entitled to pensionary benefits, the petitioners could not argue that the benefits under the original SAF Scheme had to be disbursed to them. Furthermore, the writ petitioners were precluded from arguing that on the assurance given by the Company and/or the appellant regarding pensionary benefits to be granted to the writ petitioners in terms of the original Trust Deed on the date of their notional retirement, the petitioners have accepted voluntary retirement under VRS or separation under SVSS.

10. He relied on a decision reported in (1979) 2 SCC 409 (**Motilal Padampat Sugar Mills & Company Limited vs. State of Uttar Pradesh & Ors.**) for the proposition that only if a party makes “clear and unequivocal promise” by words of conduct which was entitled to create legal relations or affect legal relationship in the future knowing and intending that the other party would act upon it, then, the promise would be binding upon the party making it and he would not be entitled to go back upon the same. Here, according to Mr. Saha, no such promise was made either by SVSS or VRS. He relied on a Judgment reported in (1998) 2 SCC 502 (**Ashok Kumar Maheshwari Vs. State of Uttar Pradesh & Anr.**) and a judgment reported in (1995) 1 SCC 274 (**Kasinka Trading & Anr. Vs. Union of India & Ors.**) for the proposition that bald pleadings cannot be the foundation for invoking the doctrine of Promissory Estoppel.

11. The writ petitioners have failed to prove that the respondents should be precluded/estopped from executing the Deed of Variation due to their conduct. There is no question of inducement of the writ petitioners. The writ petitioners have failed to establish the precise act and/or conduct relying on which, the petitioners have altered their position. He relied on a Judgment reported in (2003) 2 SCC 355 [**B.L. Sreedhar & Ors. Vs. K.M. Monireddy (Dead) & Ors.**] and a Judgment reported in 2020 SCC OnLine SC 968 (**State of Jharkhand & Ors. Vs. Brahmaputra Metalics Limited, Ranch & Anr.**) in support of his contention.

12. Reliance is placed on a Judgment reported in (2009) 1 SCC (**Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.**) to negate the argument of the writ petitioners founded on legitimate expectation. For doctrine of legitimate expectation to be founded, there has to be a representation and denial of such expectation arising out of the representation leading to petitioners' detriment. Here no representation was made to the petitioners to pay the original benefits under the SAF Scheme effective from January 1, 1988 since the pensionary benefits were to be given from the notional date of retirement. Consequently, the writ petitioners knew that the benefits could be varied. Consequently, there was no denial of any expectation.

13. He contended that by the **Impugned** Order, the Hon'ble Single Bench failed to consider that there was no promise/assurance to pay the original pensionary benefits under SAF Scheme in the SVSS or VRS. Furthermore, by the Order dated May 22, 2003, passed in W.P. No.783 of 2003, it was held that the pensionary benefits would not be available to the separated employees before the "notional date" of retirement.

14. The pension was supposed to be reduced from January 1, 2004. The same would have been reduced to Rs.4,817/- per month instead of Rs.7,224/- per month. The same would not have been reduced to Rs.2,219/- as alleged by the writ petition No.2.

15. He distinguished the decision relied upon by the writ petitioners reported in AIR 1997 SCC 3828 (**Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors.**) and AIR 2020 SC 1349 (**Punjab State Cooperative**

Agricultural Development Bank Limited vs. the Registrar, Cooperative Societies & Ors.) on the ground that since the petitioner had no *vested right* to the quantum of pension under the SAF Scheme till the date of “notional retirement”, the decision barring retrospective operation having the effect of taking away of a *benefit* already made available to an employee under the existing rule is arbitrary, discriminatory and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India.

16. He distinguished the Judgment reported in AIR 2017 SC 5435 (**Suresh Kumar Wadhwa Vs. State of M.P.**) on the ground that there was no contractual relationship nor was any pleaded to show that the writ petitioners’ participation in the trust fund resulted in a contractual relationship between the Trustees and the participating employees.

17. Mr. Chakraborty, Learned Counsel appearing on behalf of the respondents/writ petitioners submitted that the SAF Rules applicable with effect from January 1, 1988 were mandatory in nature. The said Rules clearly stipulate the period of “*reckonable service*” for the purpose of pension. All the members of the writ petitioner No.1 were already in service before January 1, 1988 and have joined the SAF Scheme at the time of its coming into force. Therefore, the entirety of their future service had to be taken into account along with the past service rendered before January 1, 1988 being discounted by applying the formula laid down in Rule 2(m) of the SAF Rules. Under Part-II of the SAF Rules, the administration of the Trust Fund was to be done by the Trustees appointed by the Company. Therefore, he argued that the

management/disbursement of the Trust Fund was under the control of the Trustees appointed by the Company. Hence, it cannot be argued that the said Trustees of SAF Fund/the appellant were not under the control of the Company and, therefore, the writ petition was not maintainable as against the appellant.

18. When the members of the writ petitioner No.1 applied and opted for SVSS or VRS, it was assured to them that the benefits under the SAF Scheme would be payable to them from the *normal/notional* date of retirement. The *benefits* under the SAF Scheme could not be curtailed by the Impugned Deed of Variation. The writ petitioners were entitled to the **benefits** assured under Part-VI of the SAF Rules. The **benefits** as defined under Part-VI of the Rules computed under the provisions of Rule 11(b) were required to be followed and the terms could not be unilaterally altered by the Deed of Variation. Rule 12 of Part-VI of the SAF Rules clearly stipulated that “*the pension under this Rule shall be payable and computed as detailed in Rule 11(b) above and such pension shall commence after the normal retirement date.*” Thus the mandatory nature of the rule was evident.

19. When the writ petitioners applied under SVSS and VRS, no alteration or modification or change or variation to the SAF Scheme to the disadvantage of the officers was either made or proposed to be made.

20. The Clause in the VRS dated August 3, 2002 regarding the reservation of the company’s right to *modify* or *withdraw* the Scheme at any time at its sole discretion without giving any reason or notice whatsoever, is a clause which

related only to the **Voluntary Retirement Scheme**. The said Clause is not applicable to the SAF Scheme in any manner whatsoever.

21. Since by the SAF Rules and the SAF Scheme, the pension was required to be computed on the basis of discounted past service till January 1, 1988 and full future service, the writ petitioners unequivocally altered their position relying on the said assurance/promise of calculation of pensionable service. The said calculation cannot now be unilaterally altered to the disadvantage of the writ petitioners by only taking into account the contribution made by them.

22. Clause 4 of the Trust Rules clearly stipulates that no alteration, which would *adversely* affect the **benefits** being paid from the Fund, will not be permissible. The Trustees were only entitled to review the availability of the Funds of the SAF Scheme to *maximize* the **benefits** or rate of the members' contribution under the Scheme.

23. By converting from "defined **benefit** scheme" to "defined **contributory** scheme" with retrospective effect and after the separation of the writ petitioners from the Company, the writ petitioners' rights have been adversely affected. Had the petitioners known the said SAF Scheme would be altered to their disadvantage, they would have continued their services till the *normal/notional* date of retirement and earned their entire salary.

24. Principles of Natural Justice have been violated by such unilateral alteration. The said variation/alteration was beyond the power and authority of the appellants. The doctrine of promissory estoppel and legitimate

expectation have also been argued in favour of the respondents/writ petitioners.

25. Mr. Chakraborty relied on 2006 (2) CHN 358 (**Kelvin Jute Company Limited vs. Krishna Kumar Agarwal**) to support his contention that a writ petition is maintainable against a trust. He relied on the Judgment of **Motilal Padampat** (Supra) to support his contention that the Company should be estopped from reneging its promise due to the doctrine of Promissory Estoppel. **C.R. Rangadhamaiah & Ors** (Supra) was cited on the issue that the pensionary *benefits* cannot be amended with retrospective effect. **Punjab State Cooperative Agricultural Development Bank Limited** (Supra) was cited on the issue of *vested right* accrued in favour of the petitioners disentitling the subsequent amendment to the benefits. **Suresh Kumar Wadhwa** (Supra) has been cited on the issue of unilateral alteration of a contract being impermissible.

26. Having considered the rival submissions of the parties and the materials placed on record, This Court finds that:

- (a) The SAF Scheme and SAF Rules were formed with the objective of providing socio-economic security to the retired employees of the company. The said Scheme was brought into effect to curtail the uncertainty that was likely to arise due to the separation of an employee from the Company after his superannuation.
- (b) The SAF Rules and the SAF Scheme were brought into force with effect from January 1, 1988.

- (c) The members of the writ petitioner No.1 and the writ petitioner No.2 were in employment on January 1, 1988 and joined the SAF Scheme since the date of its establishment on January 1, 1988.
- (d) For members, who joined the Scheme from the date of establishment, the entirety of their future service and discounted past service arrived at in accordance with the formula stipulated in Clause 2(m) of the SAF Rules was to be considered as “*reckonable service* for the purpose of computation of the pensionary benefits of the members.”
- (e) “Pensionary salary” meant the monthly salary received by a member immediately before retirement.
- (f) “Normal retirement date” meant the date of attaining of the age of superannuation as applicable to a member as per the terms of employment/conditions of service.
- (g) The pension granted under the Scheme was payable throughout the lifetime of the member subject to a *minimum guaranteed* period of 15 years. In case the member died before 15 years, it would be payable to his widow/children etc. in accordance with the stipulation under the Scheme.
- (h) The SAF Scheme was a *contributory* scheme by the members.
- (i) The pension was to be computed at the rate of 1.25% of the final salary for each year of *reckonable service* subject to a minimum of 6.25% of the final salary and maximum of 40% of the final salary.

(j) Since the formula was stipulated for arriving at the pensionary benefits of the members by the SAF Scheme/Rules and the same was payable to the members throughout their lifetime, the members were assured that at least the said amount would be payable to them from their *notional date* of retirement.

(k) The SVSS was introduced on January 11, 2000. The VRS was introduced on August 3, 2002. A clarificatory Circular to the VRS dated August 3, 2002 was published on August 6, 2002.

(l) Under the SVSS, the monthly **benefits** were admissible to the officers subject to a minimum of 15 years of service from the notional date of retirement.

(m) Under the VRS, the officers were guaranteed that the **benefits** under the SAF Scheme would be admissible to them from the notional date of retirement subject to their having fulfilled the eligibility criteria as the Trust Rules.

(n) Neither in the SVSS nor in the VRS, was there any whisper as to the authority of the Trustees to curtail the **benefits** under the SAF Scheme/Rules to the disadvantage of the officers.

(o) On the contrary, they have been assured that the **benefits** under the SAF Scheme will be admissible.

(p) Under the Rule 12 of SAF Rules, the officers were guaranteed that pension shall be payable to them after the *normal date* of retirement in accordance with Rule 11(b).

(q) Rule 11(b) of the SAF Rules guaranteed that pension shall be payable to a member throughout the life with a minimum guaranteed period of 15 years. The computation of pension would be at the rate of 1.25% of the final salary for each year of reckonable service subject to a minimum of 6.25% of the final salary and a maximum of 40% of the final salary.

(r) Under Part-IV, Rule 9(d) of the SAF Rules, the Trustees were only allowed to review the availability of the funds for *maximizing* the **benefits** to its members or for revision of the amount of contribution under the Scheme.

(s) Under the Trust Deed dated March 20, 1989, the Trustees by a Supplemental Deed could *amend* or *add* to the provisions of the Trust Deed subject to the condition that such alteration does not *adversely* affect the **benefits** being paid from the fund or the **benefits** accrued upto the date of such amendment or the object of the fund.

(t) Therefore, this Court is of the view that no alteration by the Trustees could be made that would adversely affect the **benefits** of the members to be paid from the fund.

(u) Under Clause 3 of the Trust Deed, it has been stipulated that it *shall* be obligatory on the part of the Trustees/Appellant to pay the **benefits** according to the Rules. The mandatory nature of the obligation of the Trustees is unequivocally stated in the Trust Deed. Therefore, the

Variation Deed cannot be unilaterally brought into effect altering the SAF Rules and thereby the obligation of the Trustees under the Deed.

(v) The decision of **Kelvin Jute Company** (Supra) aids the writ petitioners in support of their contention that the writ petition is maintainable since the Appellant was discharging public duty by being under an obligation to pay pension to the writ petitioners by following the calculation under the SAF Rules. Under the Trust Deed, the Trustees/Appellant were required to discharge the public duty of paying the benefits to the members in accordance with the Rules. Once the Trust Deed was executed and the Trustees were appointed, they were under the public duty to provide *security* to the members from socio-economic exigencies/uncertainties by paying the pensionary benefits.

(w) In **Kelvin** (Supra), it has been reiterated that the appellants could not take shelter behind the high walls of legal technicalities since the hands of law are long enough and can reach any place to do justice.

(x) Mr. Saha's contention that the Trustees/Appellant are not discharging public duty under any statute nor are under the management and control of the company, cannot be accepted.

(y) The Trustees themselves are appointed by the Company and they could only amend the provisions of the Trust Deed or Rules by a supplemental deed only with the **consent** of the Company or on a **recommendation** from the Company. The Trustees did not have any

power/authority to go against any **consent/recommendation** of the company.

(z) All the Trustees, who were appointed on March 20, 1989 were either the Executive Director or General Manager or Company Secretary, i.e. office bearers of the Company. Therefore, it cannot be argued that the Trustees were not under the *management* and *control* of the company.

27. Several decisions have been cited in the present appeal which merit a detailed discussion:-

(aa) The case of **V.R. Hiremath & Ors. Vs. Indian Oil Corporation & Ors** reported in MANU/MH/0910/2002, relied upon by Mr. Saha is distinguishable primarily on two counts. The petitioners therein were employees, who retired on various dates between October, 1986 till November, 1987. The pension scheme as the Contributory Superannuation Benefit Fund Scheme was formulated on November 7, 1987. The Trust came into existence on December 24, 1987. Therefore, it was held that the benefits of the pension scheme could not be extended to the retired employees.

(bb) The Bombay High Court in that case also held that since the Chairman of the respondent No.1 company only appointed the Trustees and did not play any role in the management and control of the Trust, the said Trust was not managed and controlled by the respondent No.1 company. In the present case, the Trust Deed clearly stipulates that the Trustees may at any time with the **consent** of the company or the

recommendation of the company by a Supplemental Deed can *amend* or *add* to the provisions of the Trust Deed or the Trust Rules provided such alteration does not adversely affect the **benefits** being paid to the members. It is clear that the Trustees had to act with the **consent** of the company or upon the **recommendation** of the company and had no power/authority to go against the decisions taken by the company. Hence, it cannot be argued that the said Trustees were not under the *management* and *control* of the Company. An artificial distinction was sought to be made between the Company/original appellant no.2 and the Trustees of Balmer & Lawrie Company/original appellant No.1. On the prayer of Mr. Saha the names of the original appellants no.2 and 3 were struck out from the array of parties by an order passed by a Coordinate Bench on February 2, 2021. This Court is of the view that the present appellant/ Trustees are amenable to the present writ petition.

(cc) In **Kuriakose**(Supra), the issue was whether after retirement any additional contribution could be asked to be made by the retired employees since the benefits, that were being given to them in terms of the pension scheme, were disproportionately larger than the contributions made by them. In such a case, it was held that the moment annuity is purchased for payment of pension to the retired employees and the corpus for the same leaves the Trust Fund, all connections between the Trust Fund and the retired employees are severed. The retired employees are in no way concerned with the

financial position of the Fund for which the annuity was purchased and they cannot be asked to contribute further. In that case, it was held that as LIC after accepting the annuity effecting monthly payments could neither reduce the amount of annuity nor refund the said amount to the Trust Fund to the detriment of the retired employees since the rights of the retirees had *crystalized* when the annuity was purchased.

(dd) In the present case, the employees have voluntarily retired from service based on the terms stipulated in/assurances made in the SVSS and VRS. It is after the **actual date** of retirement of the employees that by the Impugned Deed of Variation the terms of the SAF Scheme had sought to be altered to the *detriment* to the retired employees. Such a course of action was held to be impermissible in **Kuriakose**(Supra). This Court is also of the view that the rights of the petitioners *crystalized* on their **actual date** of retirement even though the **benefits** were payable to them from the **notional date** of retirement. The argument made on behalf of the appellant that since prior to the *notional* date of retirement of the employees, the amendment has been sought to be affected, the said amendment is with prospective effect and not with retrospective effect, cannot be accepted.

(ee) Next he relied upon the case of **Ashok Kumar Maheshwari**(Supra) for the proposition that only bald assertion was not sufficient to invoke the doctrine of “promissory estoppel”. In that case, the petitioners, who were working as Demonstrators in various Government Medical Colleges,

filed a writ petition to restrain the Government from filling up the posts of Lecturer in Pharmacy by direct recruitment. They claimed that at least 50% of the posts were to be filled up by promotion from the Demonstrators. Even though there was no statutory rule or executive instruction for promotional recruitment to the posts of Lecturer, the petitioners claimed that they were entitled to be promoted on the basis of an assurance given by the Director, Medical Education and Training, U.P. In such a case, the Apex Court held that even if it was accepted that the State Government or the Director assured the appellant or his colleagues that they would be promoted to the posts of Lecturer, the said promise was not enforceable as there was no avenue for promotion either under the statute or any executive instruction. The appellant did not make any “clear, sound and/or positive” averment as to which officer of the Government, when and in what manner gave assurance to the appellant or his colleagues. It was also not stated that acting upon such promise, the appellant altered his position subject to his detriment. In such a case, the appeal was dismissed holding that bald pleadings cannot be the foundation for invoking doctrine of “promissory estoppel”.

(ff) In the present case, relying on the assurance of the appellants as made in the SAF Scheme, SAF Rules, SVSS and VRS, the writ petitioners/respondents *materially altered* their position to their **detriment**. The writ petitioners could have worked for their entire length

of service, had they known that the assured monthly pensionary benefits would be significantly reduced prior to the notional date of retirement.

(gg) In **Kasinka Trading**, (Supra) the exemption, that was given to the manufacturers of certain products requiring PVC resin as one of the raw materials were given exemption under Section 25 of the Customs Act from basic import duty. The exemption was given till March 31, 1981. The said exemption was withdrawn by a Notification on and from October 16, 1980. In such a case, it was held that the doctrine of “promissory estoppel” or “equitable estoppel” could not be invoked, to carry out a representation or a promise, which is contrary to law or which is outside the authority or power of the officer of the Government or the public authority to make. An exemption notification did not make the items, which are subject to levy of custom duty as not leviable to such duty. It only suspended the levy and collection of the custom duty. Such exemption by its very nature was susceptible to being revoked or modified or be subjected to other conditions. The exemption notification could be revoked in public interest. The authority which had the power to issue the exemption notification, also had the power to rescind or modify the said notification.

(hh) In the present case, the Trust Deed clearly stipulated that the same could not be altered or modified contrary to the **benefits** of the members. In the event the Deed of Variation is allowed by the Court to alter unilaterally the terms and conditions of the SAF Scheme, the same

will not only tantamount to manifest injustice and be contrary to “*public interest*” but will also be contrary to the provisions of the “*Trust deed*”. The members have contributed to the SAF Scheme and there is no question of any ‘*bounty*’ or ‘*exemption*’ being granted to the members by payment of monthly pension in accordance with the terms of the said Scheme.

(ii) In **Brahmaputra Metallica**(Supra) it has been held that the respondent company was entitled to claim a rebate/deduction of 50% of the amount assessed towards electricity duty for the years 2012-13 and 2013-14. As has been stated hereinabove, this Court is of the view that the respondents/writ petitioners can invoke the doctrine of “*Promissory Estoppel*” in the present writ petition. Therefore, by necessary implication the writ Petitioners will be entitled to invoke the doctrine of “*Legitimate Expectation*” since it has been clearly held by the Apex Court in the said case that the doctrine of “*Legitimate Expectation*” is a concept that is much broader in scope than “*Promissory Estoppel*”. It was held in that case that a decision taken in an arbitrary manner contracts the principle of “*Legitimate Expectation*”. An authority is under legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power should confer.

(jj) In the present case, the powers stood conferred on the Trustees to pay the **benefits** under the SAF Scheme. They had no authority to alter the said Scheme. The petitioners not only had a “*Legitimate Expectation*”

that the **benefits** under the said Scheme be conferred upon them but also, the Trustees were debarred from reneging their promise due to the doctrine of “*Promissory Estoppel*”.

(kk) The same principle has been reiterated in **Sethi Auto Service Station** (Supra). In that case, the recommendation of an internal screening committee was sought to be relied upon by the appellants for re-location of their petrol pumps. There it was held that the doctrine of “*Legitimate Expectation*” was not attracted as under an old policy the appellants could have had an expectation to be considered for resitement and their claim was duly considered. By the time the final decision was taken, the policy underwent a change and the appellants did not meet the new criteria for resitement.

(ll) The facts of the present case are completely distinguishable. The writ petitioners not only can invoke the doctrine of “*Legitimate Expectation*” but are also successful in invoking the doctrine of “*Promissory Estoppel*” due to the prior assurances made in SVSS and VRS.

(mm) In **B.L. Sreedhar** (Supra), the rule of estoppel under Section 115 of the Evidence Act, 1872 was discussed. It was held that if a man either by words or by conduct has intimated consent to an act which has been done or intimated that there would be no opposition to it if done, although the act could not have been lawfully done or done without his consent, thereby inducing others to do that act which they otherwise

might have abstained from, he cannot question the legality of the Act. He had sanctioned the prejudice of those, who have good faith on his words or on the fair inference to be drawn from his conduct.

(nn) This case supports the writ petitioners because relying on the acts and conduct of the appellants, the writ petitioners have voluntarily retired from their service and materially altered their position.

(oo) Mr. Chakraborty relied on **Motilal Padampat**(Supra) in support of his contention that the Trustees are debarred from going back on their promise by invocation of doctrine of "*promissory estoppel*". In that case, despite assurances given to the appellant, the State sought to recover the sales tax for a period of three years after the starting of the commercial production of Vanaspati. Based on the written assurance of the State Government regarding exemption when the appellant started production, the State Government decided to rescind their decision of granting of exemption. In such a case, it was held that the State could not go back on their promise and was required to refund the same deposit by the appellant on account of sales tax.

(pp) In **C.R. Rangadhamaiah**(Supra), it has been held that pension of the railway employees were to be computed on the basis of the extant rules applicable on the date of retirement.

(qq) As stated hereinabove, in the present case also the extant rules of the SAF Scheme/Rules/SVSS and VRS as on the date of "*actual*" retirement of the writ petitioners have to be considered. No amendment

to the Rules can be made with retrospective effect even though the pension was to be paid to the employees/members from the “*notional*” date of retirement. This Court also accepts the contention of Mr. Chakraborty regarding the issue that *vested/accrued* right of a petitioner/employee cannot be amended/altered with retrospective effect. This Court also relies on the Judgment of **Punjab State Cooperative**(Supra) for such a view. In that case, a pension scheme was introduced upon amendment of Rule 15(ii) of the Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978. The retired employees were being paid from April 1, 1989. Thereafter, the said scheme was withdrawn by a Memorandum dated March 11, 2014. It was held that any amendment with retrospective operation, which has the effect of taking away the benefit that is already made available to the employees under the existing rule, indeed would divest the employees from their *vested* or *accrued rights*. Hence, it would be violative of the rights guaranteed under Articles 14 and 16 of the Constitution. It has been unequivocally held in that decision that the contention of the appellant about the non-viability of the pension scheme due to the financial distress of the bank to justify the impugned amendment could not be accepted since the rule making authority was presumed to take into account the repercussions of a particular piece of beneficial legislation. Once the bank took a conscious decision and introduced a pension scheme with effect from April 1, 1989, it ought to

be presumed that the competent authority was aware of the resources from which funds were to be created for making payments to its retirees.

(rr) In **Suresh Kumar Wadhwa** (Supra), it was categorically held that a party to the contract had no right to unilaterally alter the terms and conditions of the contract nor do they have a right to add any additional terms/conditions in the contract. Furthermore, it has been held that it is a well-settled principle of law that in the event any additional terms/conditions in the contract are added without the consent of the other contracting party, then, such condition is not binding on the other party. In that case, the Apex Court held that the public notice/advertisement only stipulated a term for deposit of the security amount by a bidder but did not publish any stipulation with regard to the forfeiture of the said amount in case of certain contingencies. Without providing for such contingencies, in which the right of forfeiture could be exercised against the bidder, it was held that the State had no right to forfeit.

(ss) In the present case, the appellants could not have altered the terms to the detriment of the writ petitioners if the same was not stipulated either in the SAF Scheme/Rules or SVSS or VRS. Not only there was no clause regarding the alteration of the terms to the **detriment** of the writ petitioners, on the contrary, it was assured that the terms could not be altered contrary to the **benefits** to the members of the Scheme.

(tt) It was held that non-viability of financial resources would not be a defence available to the appellant for taking away vested right that accrued to the employees that too when it was for their socio-economic security.

(uu) In the present case also, the said pension scheme was for the socio-economic security of the members/employees. They were assured that after the *notional date* of their retirement, they will be made a periodic payment towards pension. The said pensionary benefits cannot be permitted to be curtailed by way of an amendment, operating retrospectively to the **detriment** of the writ petitioners/members. The argument with regard to financial non-viability of the scheme cannot be accepted by this Court to be operative retrospectively.

28. In the light of the discussions above, the appeal being **A.P.O.T. No.4 of 2020** along with **G.A. No.1 of 2020** be **dismissed**. **G.A 2 of 2020** and **G.A 3 of 2021** are **dismissed** as **infructuous**. The appellants are directed to disburse the arrears of pension to the members of the writ petitioner No.1 and writ petitioner No.2 immediately and not later than a period of three months from date along with interest assessed at 6% thereon. The writ petitioners would be entitled to the payment of the entire pensionary benefits in accordance with the SAF Fund/Rules from the date of their notional retirement for their lifetime subject to the minimum guaranteed period of 15 years. However, there will be no order as to costs.

29. All parties to act on the downloaded server copy of this order from the website.

30. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)

Later:

A prayer for stay is made on behalf of the appellant. Such prayer is considered and refused.

I Agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)