

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8897 OF 2022

1. Kashinath Shripat Teli,
Age 75 years, Occupation Retired,
R/o Tahsil Road, Santajinagar,
Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
2. Ravindra Ganesh Patil,
Age 73 years, Occupation Retired,
R/o Bhusawal Road, Behind Ramrahim
Chamber Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
3. Bhagwan Dagadu Badgujar,
Age 79 years, Occupation Retired,
R/o Behind Sahakari Dhanya Godowan,
Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
4. Ramdas Shamrao Karnataki,
Age 68 years, Occupation Retired,
R/o Behind Cinema Takis Oldgaon,
Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
5. Madhukar Sakharam Shrikhande,
Age 67 years, Occupation Retired,
R/o Opp. Gayatri Nagar Gajanan Mandir,
Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
6. Shaikh Lookman Shaikh Kadar,
Age 75 years, Occupation Retired,
R/o 40, Mohalla, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.

7. Abdul Majid Kadar,
Age 75 years, Occupation Retired,
R/o Seedform Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
8. Bhagwat Kadu Patil,
Age 69 years, Occupation Retired,
R/o At Post Uchane,
Tq. Muktainagar, Dist. Jalgaon.
9. Pandurang Shama Dutte,
Age 78 years, Occupation Retired,
R/o New Ghodasgaon, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
10. Ramesh Baburao Baide,
Age 65 years, Occupation Retired,
R/o Bhusawal Road, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
11. Arun Ramdas Satpute,
Age 66 years, Occupation Retired,
R/o Dhangar Wada, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
12. Narendra Kashinath Potdar,
Age 67 years, Occupation Retired,
R/o Muktainagar, Near Renuka Mata
Mandir, Talathi office, Tq. Muktainagar,
Dist. Jalgaon.
13. Ramesh Shriram Koli,
Age 68 years, Occupation Retired,
R/o Godawari Nagar, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
14. Ashok Moru Borakhede,
Age 67 years, Occupation Retired,
R/o Muktainagar, Plot No.314,
Santaji Nagar, Tq. Muktainagar,
Dist. Jalgaon.

15. Jagannath Ramchandra Thakare,
Age 75 years, Occupation Retired,
R/o Pratibhanagar, Near Ganesh
Xerox, Muktainagar, Tq. Muktainagar,
Dist. Jalgaon.
16. Nivrutti Trimbak Mali,
Age 65 years, Occupation Retired,
R/o Muktainagar, Ashtavinayak
Colony, Tq. Muktainagar,
Dist. Jalgaon.
17. Kishor Kisan Patil,
Age 77 years, Occupation Retired,
R/o Behind Jain Mandir, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.
18. Govardhan Motiram Kharate,
Age 79 years, Occupation Retired,
R/o At Post Nimkhedi (Khu.)
Tq. Muktainagar, Dist. Jalgaon.
19. Tapiram Jyotiram Patil,
Age 75 years, Occupation Retired,
R/o Dr. Ashok Patil, Muktainagar,
Sinhagad Building, Surana Nagar,
Tq. Muktainagar, Dist. Jalgaon.
20. Supada Rama Kumbhar,
Age 76 years, Occupation Retired,
R/o At Post Kurha,
Tq. Muktainagar, Dist. Jalgaon.
21. Vasant Ganpat Shingote,
Age 72 years, Occupation Retired,
R/o At Post Nimkhedi
Tq. Muktainagar, Dist. Jalgaon.
22. Natthu Ragho Tayade,
Age 67 years, Occupation Retired,

R/o Narwel (Bu.) Tq. Muktainagar,
Dist. Jalgaon.

23. Tukaram Ishram Dhage,
Age 70 years, Occupation Retired,
R/o At Post Paranbi,
Tq. Muktainagar, Dist. Jalgaon.
 24. Madhukar Rambhau Narkhede,
Age 68 years, Occupation Retired,
R/o Tahsil Road, Near Leva Samaj
Mandir, Tq. Muktainagar, Dist. Jalgaon.
 25. Babu Shenu Patil,
Age 67 years, Occupation Retired,
R/o Behind Panchayat Samiti,
Tq. Muktainagar, Dist. Jalgaon.
 26. Nana Pandurang Patil,
Age 67 years, Occupation Retired,
R/o Muktainagar, Near State Bank,
Dhangarwada, Tq. Muktainagar,
Dist. Jalgaon.
- ...Petitioners**

VERSUS

1. The Employees Provident Fund
Organization A Central Government
Undertaking, Through Ministry of
Labour and Employment,
Government of India, having its
office, At Pune Cantonment Board
Building, Golibar Maidan, Pune
Through the Nominated Authority.
2. The Assistant Provident Fund
Commissioner, Regional Office, Bhavishya
Nidhi Bhavan, Plot No.P-11, MIDC,
Satpur, Nashik, Dist. Nashik.
3. The Assistant Provident Fund

Commissioner, 2nd Floor, near Khelwade
Hospital, J.M.P. Market, Chitra Chowk,
Jalgaon Tq. And Dist. Jalgaon.

4. The Maharashtra State Road Transport
Corporation, Jalgaon Region, Jalgaon
Tq. And Dist. Jalgaon
Through Divisional Controller.

...Respondents

.....
Advocate for Petitioners : Mr. A. D. Shinde
Advocate for Respondents No.1 to 3 : Mr. N. K. Choudhary
.....

**CORAM : MANGESH S. PATIL &
SHAILESH P.BRAHME, JJ.**

**Date of Reserving the Judgment :
27/06/2023**

**Date of Pronouncing the Judgment:
18/07/2023**

JUDGMENT : (Per SHAILESH P. BRAHME, J.)

1. Rule. Rule made returnable forthwith with the consent of the parties.
2. Both the parties submitted written notes of submissions.
3. The present writ petition assails the order dated 05/07/2021, passed by the respondent No.1, Nominated Authority of the Central Government rejecting the claim of the petitioners. The petitioners had filed distinct complaints before the District Consumer Forum,

Jalgaon. Their complaints were allowed by common Judgment and order dated 03/01/2019. Being aggrieved, the respondents had filed appeals before State Consumer Forum, Nashik. By common Judgment and order, passed on 18/12/2019, Judgment of the District Consumer Forum was quashed and the matter was referred to the respondent No.1 under Section 41 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter shortly referred to as the 'Act').

4. The petitioners' are superannuated employees of the respondent No.4 Corporation. They were appointed during the period 1973 to 1990. They superannuated during the period 2005 to 2014. They rendered services and are entitled to receive pensionary benefits. The details of their services are provided in a Chart (Exhibit "A"). There is no serious dispute about the details of appointment, retirement and their pensionable service mentioned in the chart. The dispute is in respect of the difference of pension and the arrears of pension claimed by them in the chart.

5. According to petitioners, they were the members of Employees' Family Pension Scheme, 1971 (hereinafter shortly referred to as 'Scheme of 1971'). The Scheme was superseded on

16/11/1995 by Employees' Pension Scheme, 1995 (hereinafter shortly referred to as 'Scheme of 1995').

6. The petitioners had contributed under the Scheme of 1971 as well as Scheme of 1995. When they superannuated, Scheme of 1995 was in operation. They were not paid the pensionary benefits considering the past service rendered from their date of appointment till 15/11/1995. There is deficiency of the services and legitimate benefits were denied to them.

7. It is contention of the petitioners that Act of 1952, Schemes of 1971 and 1995 are the beneficial legislations meant for the welfare of the employees. Therefore, they were entitled to the benefits of enhanced pension considering the past services.

8. The claim of the petitioners was contested by the respondents No.1 to 3 before Consumer Forum as well as in this Court. According to them, the petitioners were paid due benefits under the old Scheme and existing Scheme. The past service rendered by them was duly considered while calculating the pensionable service. They were not governed by paragraphs No.12 (2) of the Scheme of 1995. They were in fact governed by paragraphs No.12 (3) (4) and

(5) of the same. Along with affidavit in reply, the respondents also produced the pension payment orders (PPO) disclosing the consideration of past service. Therefore, the claim of the petitioners is contended to be extraneous.

9. The District Consumer Forum recorded that there was deficiency in the services. When the petitioners had contributed and were members of the Scheme of 1971, they were not paid benefit after their retirement. It was held that they were entitled to receive pension as per paragraph No.12 (4) of the Scheme of 1995.

10. The appeals were carried against the common Judgment referred to above to the State Consumer Commission, Mumbai. It was opined that there was a provision to redress the grievance by approaching Central Government under Section 41 of the Act. The petitioners were directed to make representation to the competent authority nominated by the Central Government. The concerned authority was directed to decide it within six months. In case, no decision was arrived at, the appeals were directed to be restored. Thus the appeals were allowed in above terms.

11. The respondent No.1 Nominated Authority passed distinct

orders on 05/07/2021 rejecting the claim of the petitioners. It was held that the amount of pension would be aggregate of the past service under Scheme of 1971 and contributory service under Scheme of 1995. It was further held that pension would not be payable by applying formula as per paragraph No.12 (2). Hence, their claims were rejected.

12. It is submitted by the petitioners that their past service rendered prior to 16/11/1995 was not considered while computing the pension. They are entitled to receive benefits of the Welfare Legislation. The respondents discriminated them. Similarly situated persons who were successful before District Forum, Solapur were given due benefits.

13. Per contra, the learned counsel for respondents relied upon the affidavit in reply filed in this matter. He submitted that the past service was taken into account and accordingly pension benefits were calculated and disbursed. There was no legal sanctity for the claim of the petitioners. The computation was arrived at as permissible within the statutory frame work. The nominated authority rightly held in favour of the respondents.

14. Considering the contest and the submissions of the parties, following issues fall for our determination :-

- 1) What is the statutory disposition for computing pension of the employees, like petitioners ?
- 2) Whether petitioners prove that computation of the pension is illegal and *de hors* the provisions of Act and the Schemes ?
- 3) Whether any interference is called for in the impugned order and the computation of the pension ?

15. Before we advert to the reasoning for the above issues, few provisions of the Act and the Schemes are relevant, which are as follows :-

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 :-

Section 2 (j) "member" means a member of the Fund;

Section 2 (k-A) "Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6-A;

Section 2 (k-B) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of section 6-A;

The Employees' Pension Scheme, 1995 :-

Section 2 (iv) "contributory service" means the period of "actual service" rendered by a member for which the

contributions to the fund have been received or are receivable;

Section 2 (v) "eligible member" means an employee who is eligible to join the Employees' Pension Scheme;

Section 2 (vi) "existing member" means an existing employee who is a member of the Employees' Family Pension Scheme, 1971 ;

Section 2 (viii) "pension" means the pension payable under the Employees' Pension Scheme and also includes the family pension admissible and payable under the Employees' Family Pension Scheme, 1971 immediately preceding the commencement of the Employees' Pension Scheme, 1995 with effect from the 16th November, 1995 ;

Section 2 (xii) "past service" means the period of service rendered by an existing member from the date of joining Employees' Family Pension Fund till the 15th November, 1995 ;

Section 2 (xv) "pensionable service" means the service rendered by the member for which contributions have been received or are receivable ;

16. Both the schemes are formulated under Section 6 of the Act.

Following are the salient features of the Scheme :-

(A) Scheme of 1971 :-

The scheme was brought into force on 01/03/1971 and existed

up to 16/11/1995. It was for family pension and life insurance benefits enurable to heirs after the death of the employee. As per para 9 of the scheme, the pension fund was to be created by contribution of $1\frac{1}{6}$ per cent of the employee's pay plus $1\frac{1}{6}$ per cent of the employer's contribution and $1\frac{1}{6}$ per cent of the pay was to be contributed by the Central Government. The scheme was superseded by Scheme of 1995 with effect from 16/11/1995.

(B) Scheme of 1995 :-

It is enforced from 16/11/1995. It is meant for pensionary benefits to the employees after superannuation and on their death to the members of the family. The pension fund would be comprising of contribution of 8.33 per cent of employee's pay to be contributed by employer plus contribution of $1\frac{1}{6}$ per cent from the Central Government. The scheme covers the pensionable service of existing member as well as new entrants. Explicit provisions are made for considering the contributory service rendered by an employee before commencement of the scheme.

ISSUE NO.1 :

17. The grievance of the petitioners is that their past service before the commencement of scheme of 1995 was not taken into

account and inadequate pension was paid. For the past service, the petitioners had contributed and still they are deprived of the returns. To appreciate the grievance of the petitioner, it is necessary to look into the statutory disposition for the computation of the pension for the persons like the petitioners. The petitioners attained the age of superannuation between 2005 and 2014. When they were appointed, they were governed by the Scheme of 1971. After 16/11/1995 they were governed by scheme of 1995. All the petitioners had contributory service within the meaning of para 2 (iv) of the Scheme of 1995. They are existing members within meaning of para 2 (vi). Their past service as contemplated by para 2 (xii) needs to be considered to arrive at pensionable service as per para 2 (xv).

18. The statutory disposition for the computation of pension is described in para No.6 to 10 of the affidavit in reply filed by the respondents. The respondents are the statutory authorities and expert in the technical matters of computation of the pension. The statements are in tune with statutory scheme of 1995.

19. The employees rendering service prior to commencement of the Scheme of 1995, are the existing members. They are not the

new entrant. As per para No.9 of Scheme of 1995 for new entrant, the contributory service would be treated as eligible service. As against that, for existing member aggregate of contributory service covers past service which would be treated as an eligible service. The petitioners are covered by para No.9 (b) of Scheme 1995.

20. Significantly para 12 (1) of Scheme 1995 lays down the formula for computation of pension. Para 12 (2) provides computation for new entrant who becomes member of the scheme after 16/11/1995. The existing members who are in service prior to commencement of the scheme and contributing are not covered by this method of the calculation. They have different parameter and method of calculation which is stipulated in para No.12 (3), (4) and (5).

21. In other words, there is distinct methodology for computation of pension for new entrants and existing members. The method of calculation for the pension of existing member does cover the contribution made by them, their past pensionable and eligible service (rendered for the period prior to the commencement of Act of 1995). The past pensionable service would be considered according to paragraphs No.12 (3) (4) and (5).

22. In case of computation of the pension for existing members, the provisions are made in sub-paragraph (3), (4) and (5). The calculation depends upon commencement of the pension. If the commencement is after 16/11/2005 then method of paragraph 12(3) applies. If it is between 16/11/2000 and 16/11/2005, then method paragraph 12 (4) applies. If it is before 16/11/2000, then paragraph 12 (5) applies. This is scientific method provided by the legislature. The methodology covers the past service like that of the petitioners. For the existing members computation as per paragraph 12 (3) (4) and (5) read with table "B" of the Scheme of 1995 is the only permissible and legitimate method.

23. The contributions made by the employees to the extent of 1-1/6 % is taken care of by the provisions of 12 (3) 12(4) and 12(5). In addition to that, they are entitled to get benefit of the scheme of 1995 for which the contribution of 8.33 % by the employer and 1-1/6 % by the Central Government are provided.

24. Thus the employees like petitioners are existing members. They would not be deprived of the benefits of their past pensionable services and the contributions. The previous service rendered by

them would not be excluded in view of well structured formula stipulated in para No. 12 (4) and 12(5) read with table 'B' of the Act.

ISSUE NO.2 :

25. The respondent demonstrated in para Nos. 6 to 10 of the affidavit in reply the mode of calculation. The mode of calculation is supported by the statutory provisions and schemes. It is the mistaken belief of the petitioners that they are covered by para No.12 (2) of the Scheme of 1995. There is no reason to doubt the computation of the pensions of the petitioners arrived at by the respondents. The petitioners have failed to demonstrate that their past services were not taken into account while computing the pension.

26. The respondents have produced the pension payment orders of the petitioners at Exhibit R - 1. Minute perusal of these orders discloses that benefit of past service was given to the petitioners. Therefore, there is no merit in the submission of the petitioners that their past service was not taken into account. We find that the allegations are not supported by any material.

27. The counsel of the respondent submitted that the petitioner

did not raise any grievance regarding the computation shown in pension payment order. The pension payment orders are not challenged. The complaints which were lodged before Consumer Forum did not spell any mistake in the calculation. Only repeated grievance of the petitioner all through the proceeding was that their past services were not taken into account. We find that the calculation of the pension is as per para No. 12(4) and 12(5) read with table 'B'. No fault can be found in the computation of the pension. We, therefore, come to conclusion that no mistake was committed by the respondents in disbursing the pension to the petitioner. The computation and calculation of the pension is in tune with the provisions of scheme of 1995 and Act of 1952.

28. There is substance in the submission of the respondent that the District Consumer Forum committed illegality and perversity in recording findings in a common Judgment and order dated 03/01/2019. The contention that a prejudice was caused in applying the pension scheme without considering the past services, is without any substance. No threadbare analysis of the provisions of the schemes was made by the learned Members of District Consumer Forum. We are, therefore, of the opinion that the common

Judgment and order passed by District Consumer Forum was not in tune with the provisions of the Act and the statutes and rightly interfered with by the respondent No. 1.

ISSUE NO.3 :

29. The learned counsel for the petitioner submitted that Act of 1952 and Schemes of 1971 and Scheme of 1995 are benevolent legislation. The interpretations of the provisions should be made keeping in mind the object of social welfare. The benefits of the scheme should be given to the petitioners to the fullest extent.

30. The learned Counsel for the petitioners placed on record following case laws :-

- 1) Employees Provident Fund Commissioner vs. O.L. of Esskay Pharmaceuticals Limited, reported in 2012 AIR (SC) 11,
- 2) Regional Provident Fund Commissioner vs. The Hooghly Mills Co. Ltd. And Ors., reported in 2012 (2) SCC 489,
- 3) R. C. Gupta and Others Etc. Etc. vs. Regional Provident Fund Commissioner Employees Provident Fund Organisation and others Etc., (Civil Appeal No(s). 10013-10014 of 2016.

31. So far as the reliance of the petitioners on the Judgments

above are concerned, in the matter of Employees Provident Fund Commissioner vs. O.L. of Esskay Pharmaceuticals Limited (Supra), the paragraph No.22 is relied upon. It depicts that Act of 1952 is the social welfare legislation intended to protect the interest of the weaker section of the society. While interpreting the provisions, the liberal and purposive interpretation is to be adopted. Further reliance is placed on the Judgment of Regional Provident Fund Commissioner vs. The Hooghly Mills Co. Ltd. And Ors. (Supra) on paragraph No.22. The guidelines are in respect of interpretation of a statutory provisions of social welfare legislation. In last Judgment, reliance is placed on paragraph No.8 which pertains to the calculation as per Clause No.11 (3) of the Pension Scheme. The guideline is in respect of interpretation of the beneficial scheme.

32. We are indeed bound by the above principles. However, in the present matter, we are of the considered view that there is no question of interpreting any of the provisions of the Act or the Schemes. We are called upon to decide which is proper statutory method applicable to petitioners for calculating their pension. In that view of the matter, the guidelines laid down in above Judgments may not be helpful to the petitioners.

33. There is no doubt that the Act and the Scheme in question are for the welfare of the employees. In the present matter, there is no question of interpretation of any of the provisions of Act or Scheme. The provisions are unambiguous and need no interpretation as such. Question of interpretation normally comes when the provisions are ambiguous, they tend to give more than one meaning or there is a void. The legislative disposition provides mandatory method of calculation applicable to petitioners. In that view of the matter, adopting liberal approach by the Court does not arise.

34. When statutory provisions are explicit and there is clear cut legislative mandate governing the field, stretching the benefit on the basis of benevolent nature of the legislation is impermissible. The computation of the pension of the petitioner is clearly covered by statutory formula laid down in para 12 (4) and (5) of the Scheme. The petitioners are being already conferred with the statutory benefits, their claim is extraneous and *de hors* the legal sanctity. The respondents have been already extended what is permissible in law and we find no illegality in the same. Therefore, no interference is called for in the impugned order. The petitioners are not entitled to any benefits just because the Act and Schemes in question are

benevolent in nature.

35. It is also submitted by the petitioners that similarly placed employees were given benefits after the decision of another District Consumer Forum, Solapur. This submission cannot be countenanced. There can be no estoppel against law. If the computation and disbursement of the pension of similarly situated employees is not in accordance with the statutory frame work then we are not prepared to extend the benefits on the ground of parity.

36. For the reasons assigned above, we find that the petition sans merit and is liable to be dismissed. Therefore, we dismiss this petition without any cost. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

bsb/July 23