IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 20055 of 2016
With
CAN 1 of 2019 (Old No.CAN 12225 of 2019)

Sankar Kumar Pal
-Vs-
Indian Statistical Institute & Ors.

For the Petitioner	: Mr. Soumya Majumder Mr. Mainak Ganguly
For the Respondent Nos.1 to 3	: Mr. Debapriya Gupta
For the Respondent No.4	: Mr. Rajdeep Mazumder,
Heard on	: 11.09.2024, 03.10.2024, 25.11.2024
Judgment on	: 16.05.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. The petitioner, a former employee of the Indian Statistical Institute (ISI), had preferred the instant writ petition seeking issuance of a writ in the nature of mandamus commanding the respondent authorities to rescind and revoke the sanction memorandum dated 30.11.2015, the subsequent communication dated 07.12.2015, and the circular issued on 12.05.2016. In essence, the petitioner prayed for the release of gratuity in terms of the computation made by the Retirement Benefit Cell of ISI on 11.04.2016,

amounting to Rs.38,92,725/-, along with interest from 01.10.2015 til the date of actual disbursal.

2. The petitioner joined ISI pursuant to an appointment letter dated 27.12.1976 under the terms and conditions governed by the Standing Service Orders (SSO), 1963. Through successive promotions based on merit, the petitioner rose from the post of Associate Professor (1983) to Professor (1988), and ultimately to Distinguished Scientist and Director (1998 and 2005 respectively), before retiring on superannuation on 30.09.2015.
3. The petitioner had opted for the CPF-cum-Gratuity Scheme in 1983, which entitled him to prospective terms of gratuity under the applicable Standing Service Orders. The respondent ISI, by a memorandum dated 24.01.1980, had adopted a method of calculating gratuity at the rate of 26 days per month, without imposing any statutory ceiling under the Payment of Gratuity Act, 1972.
4. According to the petitioner, the practice of paying gratuity without ceiling continued uniformly for decades and formed an integral part of the service conditions under the SSO, 1963. Communications dated 26.08.1996 and 20.11.1996 from ISI to the Central Government had sought approval of CPF Gratuity Rules. However, by a letter dated 15.01.1998, the Ministry concerned indicated non-interference with ISI's internal gratuity structure, and clarified its non-concern with ISI employees opting between CPF and GPF.
5. Post-retirement, the petitioner received Rs.10 lakhs as gratuity in his salary account on 04.12.2015, significantly less than the sum calculated by ISI's

own Retirement Benefit Cell on 11.04.2016. The petitioner was later informed that deductions were made due to an audit query raised by the Comptroller and Auditor General (CAG) on 08.05.2015, suggesting ISI had paid gratuity in excess of the statutory ceiling fixed under the Payment of Gratuity Act, 1972.

6. Subsequent correspondence between ISI and the Central Government revolved around whether ISI employees governed by the SSO, 1963, could lawfully be paid gratuity exceeding the ceiling prescribed under the 1972 Act. The consistent practice of ISI, it was submitted, was to pay gratuity as per SSO norms, without imposing any cap. The petitioner alleges that this sudden departure from a longstanding practice amounted to alteration of vested service conditions.

7. It was also urged that Section 4(5) of the Payment of Gratuity Act, 1972 clearly safeguarded the right of an employee to receive superior terms of gratuity under an award, agreement, or contract. The petitioner asserted the SSO constituted such a binding contract and he had consciously chosen gratuity over pension, based on the understanding that he would receive higher and finer benefits under the CPF-cum-Gratuity scheme.

8. The petitioner contended that ISI's own conduct to be remarkable acknowledging its internal rules, making prior payments to similarly situated employees in excess of the statutory ceiling, and issuing calculations indicating higher entitlement which substantiated his claim. Judicial precedents, including (2006) 8 SCC 514 and 2007 (4) CHN 191, to support the enforceability of a better gratuity term under Section 4(5) were relied on.

9. Per contra, the respondents contended that ISI had been an autonomous institution under the administrative control of the Ministry of Statistics and Programme Implementation (MoSPI), Government of India, and was bound to comply with the Government's financial regulations. While ISI retained academic autonomy under Section 4 of the ISI Act, 1959, it must adhere to Government rules in financial matters, including employee benefits.

10. The respondents contended ISI's gratuity payments had been aligned with the ceiling under the Payment of Gratuity (Amendment) Act, 2010, which raised the gratuity limit to Rs.10 lakhs, effective from 24.05.2010. The CAG audits for 2013–14 and 2014–15 objected to gratuity disbursements exceeding this limit. Consequently, ISI, in its Council meeting held on 23.01.2016, resolved to restrict gratuity payments to Rs.10 lakhs pending Government clarification. MoSPI, by letter dated 27.01.2017, rejected ISI's proposal to delay implementation and directed strict adherence to statutory limits.

11. The respondents asserted no discrimination had been meted out to the petitioner, as all employees retiring post-August 2015 had been uniformly paid gratuity within the statutory limit. Any prior overpayments were described as erroneous and unrecoverable due to the Supreme Court's ruling in State of Punjab v. Rafiq Masih (2014), prohibiting post-retirement recoveries.

12. The respondents mentioned the SSO could not override the statute. They affirmed that the adoption of the Payment of Gratuity Act, 1972 by ISI's Council in 1978 and issuance of an internal memorandum to that effect had

the legal consequence of modifying the service conditions to the extent of gratuity entitlement. Thus, ISI could not have lawfully continued the practice of paying gratuity without a ceiling. Any contrary representation or internal communication could not operate as promissory estoppel against a statutory mandate.

13. Judicial precedents such as Gitashree Dutta [(2022) LiveLaw SC 527] and Rishabh Kumar & Sons v. State of UP [AIR 1987 SC 1576] were relied upon to submit that there can be no estoppel against statute and that contractual terms inconsistent with statutory law become void.

14. In essence, the petitioner pleaded the inviolability of vested service rights accrued under the SSO, 1963, whereas the respondents maintained the supremacy of statutory compliance over contractual commitments in financial matters involving public funds.

15. Learned Advocate representing the petitioner submitted as follows:-

    i. The issue in hand involves release of gratuity amount to the petitioner in terms of the ISI Standing Service Orders, 1963 which provide for a better term of gratuity. Such provisions for better terms of gratuity are contained in Appendix VI of the Standing Orders with the Schedule thereunder. Such Appendix and Schedule are enclosed for ready reference.

    ii. The writ petitioner's a distinguished scientist had even discharged his functions to the tenure post of Director and then retired on attaining the age of superannuation on 30th September, 2015 from the substantive post of Distinguished Scientist which is even higher than the post of Professor. He had rendered about 39 years of service.

iii. The writ petitioner's appointment letter (Clause V) and his election for CPF-cum-Gratuity in 1983 had conferred upon him a vested right to get better term of gratuity.

iv. The petitioner not being an employee of the Central Government; the latter expressed in 1998 that it was not concerned with ISI employees' switch over from CPF to GPF.

v. The writ petitioner was entitled to a gratuity amount of Rs.38.92 lacs on superannuation as per the calculation made by ISI itself. However, he had received Rs.10,00,000/- only.

vi. The employer/I.S.I. had all along unequivocally supported the case of the petitioner by contending that it was justified in giving higher gratuity amount to its employees.

vii. The only ground for withholding the higher gratuity amount is the objection raised by the Audit. However, in previous years no such Audit objection was made despite the same practice being prevalent in ISI.

viii. Petitioner submits that even with the applicability of the Payment of Gratuity Act, 1972 to the establishment of ISI, the petitioner is entitled to higher gratuity. In fact, even from 1972 to 2015, many employees had received higher gratuity amount notwithstanding the ceiling of gratuity under the Payment of Gratuity Act, 1972.

ix. Petitioner has been made the sole sufferer in that regard.

x. Petitioner submited that service conditions of employees of an Autonomous Body could not be unilaterally altered. The service conditions of the writ petitioner have all along been governed by the I.S.I. Standing Service Orders, 1963 (SSO). On the basis on representation held out by the relevant provisions of SSO contemplating grant of gratuity without ceiling limit, he had elected for CPF by abandoning his right for pension on the understanding and legitimate expectation that he would be entitled to higher gratuity amount on his superannuation. In fact, had he opted for Pension, in the present scenario he would have received higher amount towards pension. An autonomous body could not unilaterally alter service conditions of its employee by unilateral novation.

xi. Although Section 4(3) of the Payment of Gratuity Act, 1972 prescribes a ceiling limit for gratuity entitlement of an employee; however, by the interplay of the non-obstante clause such ceiling limit is overridden by Section 4(5) of the Payment of Gratuity Act, 1972.

xii. Section 4(5) of the Payment of Gratuity Act, 1972 reads as follows: -

"Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

The clear legislative intent of Section 4(5) of the Act is therefore to protect the better term of gratuity as contractually agreed between the employer and the employee, and law does not stand in the way of a higher benefit payable to an employee on contractual basis. This is the scheme of any labour welfare legislation. Any interpretation was required to be given, both in fact and law must always be in favour of the weaker section i.e. the employees. Moreover, that was not a case of opting for the best of both worlds. Rather the writ petitioner consciously opted for gratuity without ceiling on the basis of specific promise of the employer and in terms of the applicable SSO.

xiii. The aforesaid principle has received further judicial sanction or flowering through decisions pronounced in the context of the Payment of Gratuity Act, 1972 itself. The same are reported at-

(2006) 8 SCC 514

2007 (4) CHN 191

xiv. Section 4(5) of the Payment of Gratuity Act, 1972 is a provision which contains an inbuilt overriding power or confers entitlement on an employee to receive better terms of gratuity notwithstanding the ceiling of gratuity contained in the Payment of Gratuity Act, 1972.

Thus, the right to receive gratuity without ceiling is also statutorily recognized.

xv. The argument advanced behalf of I.S.I. that with the on promulgation of the Payment of Gratuity Act, 1972. The provisions of the I.S.I. Standing Service Orders, 1963 ceased to have effect only in the area of gratuity was thus not supported either by the clear language of Section 4(5) of the Payment of Gratuity Act, 1972 or by the necessary intendment thereof. Evidently, the legislative intent to protect the right to receive better term of gratuity was apparent from a plain reading of Section 4 (5) of the Act of 1972.

xvi. The second argument of I.S.I. was that apart from academic affairs as mentioned in Section 4 of the ISI Act, 1959, it was bound and governed by Central Government directives issued from time to time in all other matters. Such an argument was not supported by the plain reading of Section 7 of the I.S.I. Act, 1959. The said Section 7 provides for specific areas where the institute was debarred from acting without the previous approval of the Central Government. In Section 7(a)-(d) of the I.S.I. Act, 1959, there was a specific instance of powers which the I.S.I. could not exercise without the previous approval of the Central Government. Thus, the statutory provisions specifically mention the areas for which the Central Government can exercise control over the affairs of I.S.I.

xvii. Applying the principle of "express mention" of one thing necessarily excludes the implied" [expressio unius est exclusio alterius] it could be safely inferred that the legislative intent was not to interfere with the autonomy of I.S.I. in the matter of employees' service conditions.

xviii. The argument advanced by the learned counsel for ISI is that having adopted the Payment of Gratuity Act, 1972, it could not have granted the higher gratuity to the petitioner and that granting of higher gratuity to the other employees from 1972 to 2015 (till the raising of Audit query) was a wrong on the part of the establishment. This argument is fallacious or self-demolishing. If by law, a vested right had been taken away for an employee, then there would not have been any requirement for adoption of the law by the Council of ISI. In fact, the submission advanced on behalf of ISI is contrary to the stand taken in the affidavit-in-opposition as well as in the reply letter to the Ministry. Therefore, reliance on Section 56 of the Indian Contract Act is also misplaced in the facts of the case.

xix. When a statute protects a better right derivable contractually, then the said legislative intention cannot be curtailed.

xx. In the aforesaid circumstances, the balance amount of gratuity of Rs.28.92 lacs along with interest is released immediately in favour of the petitioner. As per Section 7(3A) of the Payment of Gratuity Act, 1972, the Central Government notified rate of interest as 10%. The said amount of interest should be calculated from the expiry of 30 days of the date of superannuation i.e. from 01.11.2015 till the date of judgment/date of payment of the balance amount of gratuity.

16. Learned Advocate representing the respondent nos.1,2 and 3 submitted as follows:-

    i. Indian Statistical Institute (ISI) is a Registered Society under the Societies Registration Act, 1860 and is governed by the Indian Statistical Institute Act, 1959, ISI is an autonomous Institution under the administrative control of the Ministry of Statistics and Programme Implementation (MOSPI), Government of India and almost fully funded by the Government of India. Being under the administrative control of the Government, ISI is bound by the rules and regulations issued by the Government from time to time. As ISI is founded by the Government of India, ISI needs to comply with all the rules, regulations and guidelines issued by the Government of India on financial matters.

    ii. The respondent Institute (ISI) has autonomy on academic matters since the ISI ACT, 1959 grants power to the Institute to hold examinations and grant degrees and diplomas in subjects as may be determined by the Institute from time to time (section 4 of the Indian Statistical Institute Act, 1959). Therefore, the employment of the petitioner cannot be coined to be a private employment.

iii. As far as the financial matters are concerned, ISI Act provides that for the purpose of enabling the Institute to discharge its functions efficiently, the Central Government may pay to the Institute in each financial year such sums of money as the Government considers necessary by way of grant, loan or otherwise. Since ISI operates with funds obtained from the Government of India, none of the service conditions of the employees of I.S.I. could be framed in a manner that it exceeds the benefits already admissible to the Central Government employees. The maximum gratuity payable to the retiring Central Government employees is limited to the statutory ceiling as notified by the Government of India. Therefore, there was no question of granting unlimited gratuity to the retiring employees of ISI.

iv. Since I.S.I., did not have its own financial rules approved by the Government, the General Financial Rules (G.F.R.) notified by the Government of India are also applicable to ISI. The Nodal Ministry (MoSPI) vide letter under ref. 1- 12011/5/2016-ISI dated 27.01.2017 had clarified that I.S.I. being a fully funded autonomous body of the Ministry, the Institute has to follow the procedures laid down by Government of India. As such, I.S.I. follows the Government of India, in the matter of grant of pay and allowances, fixation of pay, annual increment and grant of retirement benefits like PF, Pension, and Gratuity and leave encashment.

v. The CAG audit of I.S.I., during the years 2013-14 and 2014-15 revealed that the Council of Indian Statistical Institute in May 1978 noted that payment of Gratuity Act, 1972 and the rules made therein by the government of India were applicable to the employees of the Institute. An office memorandum was issued internally at ISI to this effect in June 1978. The audit scrutiny further revealed that the Institute computed the gratuity in respect of its employees (CPF subscribers) as per the procedure laid down in the said Act but did not limit the payable amount to the maximum ceiling of Rs.10 lakhs, as laid down in the Payment of Gratuity (Amendment) Act, 2010.

vi. It was submitted that the Payment of Gratuity (Amendment) Act, 2010 was issued by the Government of India vide Gazette notification dated 18.05.2010, wherein the ceiling for gratuity amount was revised from Rs.3.5 lakhs to Rs.10 lakhs. The revised ceiling became effective from 24.05.2010 onward.

vii. The deviation from the statutory provision was pointed out by the auditors during its audit for the year 2013-14 and again in 2014-15, which was received by the Institute in May 2015. ISI took the corrective measure and limited the gratuity amount to the statutory ceiling of Rs.10 lakhs. The petitioner retired from the service of I.S.I. on 30.09.2015 and his payable gratuity was restricted to the statutory ceiling of Rs.10 lakhs.

viii. During the course of the hearings, the petitioner had brought to the kind notice of the Hon'ble Court a letter of the Director of the respondent Institute/I.S.I. dated 07.12.2015, addressed to the petitioner, wherein she had stated that if the Institute was able to successfully justify its position with respect to gratuity payment to the CPF subscribers, the cases of the affected employees can be revisited. In that regard, it was humbly submitted that the inspection report of the CAG Audit regarding gratuity payment made to CPF subscribers beyond the ceiling of Rs.10 lakhs was placed for deliberations in the I.S.I. Council meeting held on 23.01.2016. The Council resolved that payment of gratuity to the retired employees should be restricted to Rs.10 lakhs till the settlement of the Audit Observation. Subsequently, I.S.I. had written to the Nodal Ministry (MoSPI) on 08.03.2013 requesting for consideration of payment of gratuity under CPF Scheme without any ceiling limit. Thereafter, the Director I.S.I. informed to the Nodal Ministry by letter dated 07.07.2016 about the resolution of the Council to restrict the maximum payable amount of gratuity to Rs.10 lakhs pending further clarification. The Ministry was requested to accord approval to restrict the said payment with effect from the date of the Council meeting, i.e. 23.01.2016. After a few correspondences between the Ministry and ISI, the Nodal Ministry by letter dated 27.01.2017 clarified that I.S.I., being a fully funded autonomous body of the Ministry, the Institute has to follow the procedures laid down by the

Government of India. The Ministry advised I.S.I. to adhere to the provisions of payment of Gratuity Act and rejected ISI's proposal on effective date of implementing the ceiling of gratuity. Therefore, I.S.I. had no other option but to continue with the restriction on payment of gratuity and hence, no relief could be provided to the petitioner by the Director of the respondent institute (I.S.I.).

ix. No discrimination had been made by I.S.I. against the petitioner by restricting his admissible amount of gratuity to the statutory ceiling of Rs.10 lakhs. After the audit objections were raised and appropriately examined by the Institute, none of the retiring employees since August 2015 had been paid gratuity beyond the statutory limit. So the question of discrimination did not arise as the maximum amount of payable gratuity in respect of all the employees who have retired after August 2015 was limited to the statutory ceiling as notified by the Government from time to time.

x. The gratuity calculation of Rs.38,92,725/- relied upon by the petitioner in his writ petition, was an internal document generated by the officials of the Institution in October, 2015, in which the calculation was done as per the practice prevalent at that time. However, the Institution had already received an audit objection by that time regarding payment of gratuity to the retiring employees without maintaining the statutory ceiling. The observation of the auditors was under the consideration of the Institute and hence, the amount was not paid to the petitioner and subsequently, the Gratuity admissible to the petitioner was restricted to the statutory ceiling of Rs.10 lakhs as notified by the Government of India under the Payment of Gratuity Act. In any event, when the statute was in force and enforceable, then any documents contrary thereto cannot act as a promissory estoppel.

xi. Some CPF employees who retired from the service prior to the petitioner were paid gratuity at rates higher than the statutory ceiling. Since one wrong could not be perpetrated with the commission of other wrongs, the petitioner has no legal right to claim gratuity over and above the ceiling notified by the Government. Once the error on the part of the Institute was detected by the auditors, the Institute immediately took corrective action to restrict the maximum amount of retirement gratuity to the statutory ceiling of Rs.10 lakhs.

xii. Overpayment of gratuity beyond the statutory ceiling, which was made to the employees who had retired prior to the audit objection, was done erroneously. However, the excess gratuity paid to them could not be recovered as the Hon'ble Supreme Court, vide its judgment dated 18.12.2014 in the matter of State of Punjab & Ors Vs Rafiq Masih in Civil Appeal No.11527 of 2014, had declared recoveries by employees from retied employees are impermissible in law. Therefore, no effort was made by the Institute to recover the excess gratuity which was already paid to the retired employees.

xiii. It was alleged by the petitioner that his service condition was altered by the respondent Institute/ I.S.I. to his prejudice. In that regard, it was submitted that the service conditions of an employee are guided by terms stipulated in the appointment letter, which was a contract between the employer and employee. The employee needs to accept the terms of the contract before taking up employment with the employer. Section 56 of the Indian Contract Act, 1872 specifies that a contract to do an act which, after the contract was made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In the instant case, the appointment letter dated 27.12.1976 issued to the petitioner inter alia stated that he would be entitled to the benefits of gratuity as provided for in the relevant rules of the Institute. However, later in the year 1978, the I.S.I. Council adopted the Payment of Gratuity Act, 1972 for its employees and an office Memorandum was issued by the Institute in that respect. Consequently, the applicable rules for payment of gratuity changed for the employees of the institute including the petitioner. The Payment of Gratuity Act specifies a maximum ceiling of gratuity payment which was revised by the Government of India from time to time. Therefore, payment of gratuity without any ceiling limit became impossible or unlawful on the part of the institute and hence, the relevant part of the contract (appointment letter) became inoperative due to change in the rule position.

xiv. In the course of hearings, the answering respondents relied on the following reported judgment:-

a) In **State of W.B. Vs. Gitashree Dutta**[1] it was observed as follows:-

“28. *It is trite law that there can be no estoppel against a statute. This Court has settled this principle in a catena of judgments, starting as early as 1955. A Constitution Bench of this Court in Amar Singhji v. State of Rajasthan [Amar Singhji v. State of Rajasthan, 1955 SCC OnLine SC 27 : (1955) 2 SCR 303 : AIR 1955 SC 504] held as follows : (AIR p. 534, para 74)*

i. “74. … We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28-11-1953 was not addressed to the petitioner; nor does it amount to an assurance or undertaking not to resume the jagir. And even if such assurance had been given, it would certainly not have been binding on the Government, because its powers of resumption are regulated by the statute, and must be exercised in accordance with its provisions. The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and there can be no estoppel against a statute.”

29. *A Constitution of Bench of this Court in Electronics Corpn. of India Ltd. v. State of A.P. [Electronics Corpn. of India Ltd. v. State of A.P., (1999) 4 SCC 458] also upheld this principle and held as follows : (SCC p. 465, para 21)*

“21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute.”

30. *This Court in A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy [A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy, (2011) 9 SCC 286] , has held that when the actions of the Government are not in conformity with law, the doctrine of estoppel would not apply. This Court observed : (SCC p. 306, para 40)*

[1] (2022) 19 SCC 388

> *"40. … The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply."*

31. *It is clear that this Court in several judgments has also upheld that the plea of promissory estoppel would stand negated when the mandate of a statute is followed. This Court in A.P. Pollution Control Board v. M.V. Nayudu [A.P. Pollution Control Board v. M.V. Nayudu, (2001) 2 SCC 62] , held as under : (SCC p. 84, para 69)*

> *"69. The learned appellate authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute."*

b) In ***Rishabh Kumar & Sons -Vs- State of UP & Ors.***, the Hon'ble Supreme Court.

xv. From the text and tenor of the aforesaid judgment, it flows that, there can be no estoppel against a statute as; plea of promissory estoppel would stand negated when the mandate of a statute is followed. The standing service order (SSO) is in the nature of a private contract executed by and between the petitioner and the answering respondents being the employees and the employer respectively. It loses its legal enforceability as and when enacted and since, agreement could not over side a statute, the ceiling limit of gratuity will have its presence left. The citation and judgments relied on by the petitioner is not applicable in the instant case as. Those deals with the cases "where two views are possible" but in the instant case, only one view of the payments of Gratuity Act is applicable since, the S.S.O being an agreement and was in contradiction to the statute has no legal enforceability.

xvi. Finally, it was humbly submitted that I.S.I. was bound by the Government rules and regulations in financial matters and does not have any authority to pay retirement benefit to the retiring employees beyond the limit fixed by the Government. The retirement gratuity of Rs.10 lakhs was paid to the petitioner in compliance with the Government directive issued in the matter of maximum amount of retirement gratuity payable as per the Payment of Gratuity Act. Therefore, I.S.I. had merely acted as per the Government guidelines and has not violated any of the Constitutional provisions in the process. There was no scope for reconsideration of the gratuity amount paid to the petitioner and hence, this Writ petition was fit for disposal without any relief to the petitioner.

17. The Learned Advocate representing the Respondent No.4 adopted the submissions of the Learned Advocate representing the Respondent Nos.1, 2 and 3.

18. Petitioner was appointed in the respondent no.1 by letter dated 27.12.1976, where under his terms and conditions of service were to be governed by the Standing Service Orders, 1963. By reason of petitioner's meritorious service, he had been subsequently appointed as Associate Professor by letter dated 29.04.1983 and then promoted as a Professor by order dated

22/26.09.1988. Petitioner was also appointed as a Distinguished Scientist by order dated 25.06.1998/29.06.1998 and then as a Director vide order dated 14.06.2005. Petitioner retired from the service of the respondent No.1 on September 30, 2015. All along, petitioner continued to be governed by the Standing Service Orders, 1963.

19. During his tenure of service in the respondent No.1 had opted on 07.06.1983 to come under CPF-cum-Gratuity Scheme and accordingly, such option having been exercised, petitioner's pay was appropriately fixed in the pay scale granted to optees under clause(a) of Scheme for retrial benefits. Such option was exercised in terms of the respondent No.1 having introduced two alternative schemes for retirement benefits.

20. The respondent No.1, by a Memorandum dated 24.01.1980 had decided to calculate gratuity at the rate of 26 days' in a month.

21. Petitioner further stated that the Standing Service Orders, 1963, applicable to the petitioner provided for better benefits towards gratuity dues of an employee of I.S.I. governed by such Standing Service Orders, 1963.

22. On 26.08.1996 and 20.11.1996, the respondent No.1 had pursued with the Central Government for approval of CPF Gratuity Rules that it had framed for application to its employees.

23. In turn, the Government of India through the concerned department wrote to the respondent No.1 on 15.01.1998 that the Ministry was not concerned about switching over of ISI Employees from CPF Gratuity to GPF Rules. As stated earlier, the petitioner being an optee under CPF-cum-Gratuity Scheme was not governed by GPF Rules, and resultantly, he was not entitled to

pension. After he had retired from the service of the respondent No.1 on 30th September, 2015, he found that on 04.12.2015 his salary account had been credited by Rs.10,00,000/- towards gratuity, from which certain amount had been deducted by the respondent no. 1. On query, he came to know that the respondent No.1 was in dilemma in determination of the quantum of gratuity payable by the respondent no.1 to the petitioner. Then, he came to know that there had been audit query from the Central Government on 8th May, 2015 and a report thereto had been forwarded to I.S.I. by the Central Government on 15.06.2015 for reply thereto.

24. Further correspondences had been exchanged by and between the Central Government and the respondent No.1 in that regard on the basis of audit query, hinging on the issue as to whether employees of I.S.I. governed by Standing Service Orders, 1963 were entitled to receive gratuity amount over and above the ceiling limit of gratuity under the Payment of Gratuity Act, 1972 or not; and as to whether ISI had made excess payment to its employees on account of gratuity. In fact, previously also there had been ceiling limit of gratuity under the Payment of Gratuity Act, 1972 in the past, but all along, the respondent no. 1 has paid gratuity to its eligible employees in accordance with the Standing Service Orders, and in excess of the ceiling limit under the Payment of Gratuity Act, 1972.

25. Under the provisions of Standing Service Orders there was no ceiling in gratuity amount in I.S.I. That uniform practice had been followed till the petitioner's retirement and the same had formed a part of petitioner's service condition. Acting on the representation that the petitioner was entitled to

gratuity without ceiling limit, on superannuation, he did not opt for pension. A perusal of the aforesaid correspondences, which petitioner was not aware of during the tenure of his office, will reveal that the Central Government had been duly clarified by the respondent No.1 that the Institute has its own Gratuity Rules and the employees governed by the Standing Service Orders are entitled to either retirement gratuity or death gratuity; and not both.

26. Petitioner admissible gratuity under the Standing Service Orders would come to Rs.38,92,725/- by taking into consideration the length of service as 39 years and pay for the purpose of calculating gratuity to be the summation of his basic pay and dearness allowance as on the date of superannuation.

27. Curiously, the same Retirement Benefit Cell, on 13.10.2015 had calculated the admissible gratuity of petitioner as Rs.10,00,000/-.

28. On 07.10.2015, the respondent No.1 had written to the Central Government in its Audit Section that the Standing Service Orders governed gratuity payment of the employees of I.S.I.

29. The respondent No.1, by sanction memo dated 30.11.2015 and the letter dated 07.12, 2015 had informed the petitioner about admissible amount of gratuity of the petitioner being restricted to Rs.10,00,000/- which was the ceiling limit under the Payment of Gratuity Act, 1972. Subsequently, on 12.05.2016, the respondent No.1 had issued a circular restricting gratuity entitlement of the employees to Rs.10,00,000/- till Central Government resolves the issue.

30. In the meantime, the petitioner had made demand for justice to the Chairman of the Council of the respondent No.1 and the same had been

replied to by the Chairman on 25.02.2016. Inasmuch as the respondents themselves had been in dilemma and were unable to clarify as to what would be the admissible gratuity entitlement of the petitioner, could not approach that Hon'ble Court immediately after his superannuation. In fact, the dispute as regards gratuity entitlement of the petitioner vis-à-vis other employees of ISI governed by Standing Service Orders, 1963 had not yet been resolved at the end of the Central Government.

31. To assess the petitioner's grievance from the inception, the following orders are worthy of consideration.

32. The office order being No.CAF/30/031 of 25th January, 1982 passed by the Director of the Indian Statistical Institute stated as follows:-

> *"As a part of the retirement benefit of the workers of the institute, a proposal to introduce the General Provident Prevalent Fund-cum-Pension-cum-Gratuity scheme, as an alternative to the prevalent contributory Provident Fund-cum-Gratuity scheme has been under consideration of the Council for quite some time and the Council had resolved that such an alternative scheme be introduced after obtaining approval from Government of India, such approval having been obtained with effect from 1 January 1982, it has now been decided to introduce the GPF-cum-Pension-cum-Gratuity scheme as an alternative to the existing retirement benefits scheme with effect from 1 January 1982. Thus the retirement benefit rules of the Institute shall henceforth constitute of the two alternative schemes:-*
>
> *1) GPF-cum-Pension-cum-Gratuity scheme*
>
> *2) GPF-cum-Gratuity scheme.*
>
> *The draft rules on GPF-cum-Pension-cum-Gratuity presented before the Council of the Institute are being revised in the light of the decision*

of the Government of India and the latest amendments made in the rules by the Government for its employees. The salient features of the scheme will be circulated among the workers of the Institute soon. The benefits under the existing GPF-cum-Gratuity scheme will remain unchanged.

The workers of the Institute who have retired from the services of the Institute on 31 December 1981 and those who continue to be in the service on and from 1 January 1982, shall be eligible to opt for one of the two alternative schemes mentioned above, and they must exercise their option on or before 30th June 1982. Those workers who have retired on 31 December 1981 and those who arte due to retire before 30th June 1982 must exercise their option earlier, but in any case before the settlement their dues regarding Provident Fund and Gratuity. In case option is exercised by the worker before the due date, it will be deemed that he has exercised his option in favour of the existing GPF-cum-Gratuity scheme.

Option exercised once shall be final, and final and it should communicated to the Officer-on-Special Duty (Administration & Finance) on or before the due date.

(B.P. Adhikari)
Director

Copy to:

1) All Heads of Department/ Divisions/ Units for circulation to the workers.
2) All Notice Boards.
3) All Centres of the Institute.
4) All Branches and outlying offices."

33. The declaration of the petitioner dated 07.06.1983 electing to opt for the ISI GPF-cum-Gratuity Scheme is stated as follows:-

"INDIAN STATISTICAL INSTITUTE

DECLARATION

(For those electing the ISI CPF-cum-Gratuity Scheme)

I, Sankar Kr. Pal, Roll No.3369, an employee of the Indian Statistical Institute, hereby elect the Indian Statistical Institute Contributory Provident Fund-cum-Gratuity Scheme. I agree to abide by the provisions of the said Scheme.

I am also aware of the fact that this election is final."

34. The communication No. CAF/10-2-1/267 dated 26th August, 1996 of the Chief Administrative Officer addressing to Shri K.N. Singh, Deputy Secretary, Ministry of Planning and Programme Implementation, Department of Statistics, New Delhi stated as follows:-

"*No. CAF/ 10-2-1/267*
26 August 1996
Shri K.N. Singh Deputy Secretary
Ministry of Planning and Programme Implementation
Dept. of Statistics
New Delhi.

Sub: Enhancement of Employees and company's contribution towards contributory provident Fund for CPF members of the Institute

Sir,

The CPF Board of Trustees recommended raising of employees and employer's contribution to CPF from 8.33% to 10% of salary per month with effect from 1 March 1992 as per G.I., Dept. of Pen. & Pen. Welfare O.M. No.20(15), P&PW/ 90-F dated 10.09.92. The Council of the

Institute in its meeting held on 24th June 1996 resolved that the present rate of 8.33% of salary contribution by employees and the employer (for ISI CPT) may be raised to 10% and ISI FP Fund Gratuity rules be followed for ISI CPT Gratuity also with effect from 1 March 1992. It was further resolved that the existing CPF Subscribes may be given an option either to remain in the old scheme contributing 8.33% of salary and be under ISI CPF Gratuity rules, or to switch over to new scheme from an appropriate date between 1.3.92 and 1.4.96 and be under ISI GPF gratuity rules. It was further resolved that further the proposal may be sent to the Government for their approval.

Accordingly the proposal as details above is placed before the department for approval. A copy of the resolute as adopted in the Council is enclosed for information.

Yours faithfully

Enclo: as stated.

(G.H. Mandal)
Chief Administrative Officer"

35. The communication of the Chief Administrative Officer being No. CAF / 10-2-1/503 dated 20th November, 1996 addressing to Shri N.K. Sharma, Under Secretary, Government of India, Ministry of Planning & P.T., Department of Statistics, Sansad Marg, New Delhi - 110001 is stated as follows:-

"No. CAF/ 10-2-1/503
20 November 1996

Shri N.K. Sharma
Under Secretary
Government of India
Ministry of Planning & P.T.
Department of Statistics,
Sansad Marg,
NEW DELHI 110001

Dear Shri Sharma,

I am to invite a reference to your letter no.M-17001/20/96-Coord dated 15 November 1996 and to send herewith Xerox copy of the GPF Gratuity rules applicable to workers under GPF Scheme of the Institute for your information and necessary action.

Your sincerely,
(G.H. Mandal)
Chief Administrative Officer

Enclo: as stated.

Copy to : Council Section."

36. The communication No.M.17011/20/96-600Ld. Dated 15.01.1998 of the Under Secretary to the Government of India addressing to Shri G. H. Mandal, Chief Administrative Officer is stated as follows:-

"No. M17011/20/96-600Ld.
No.M. 17011/20/96-600Ld.
Government of India
Ministry of Planning &
Programme Implementation
Department of Statistics
....
Sardar Patel Bhavaty Sansad Marg,
New Delhi, dated 15.1.1998

To,
Shri G.H. Mandal,
Chief Administrative Officer, Indian Statistical Institute,
203, B.T. Road,
Calcutta-700035

Sub:- Enhancement of Employees and Employer's contribution towards Contributory Provident Fund for CPF members of the Institute

....

Sir, I am directed to refer to ISI's letter No. CAF/ 10-a-1 Part IV/720 dated 1st January 1998 on the above mentioned subject and to say that the matter regarding switching over by ISI from ISI CPF Gratuity rules to ISI GPF rules was referred to the Department of Pension & Pensioner's Welfare for obtaining their views/ comments. They have now informed that the Department of Pension & Pensioners Welfare deals with the matters concerning to the Central Government Employees only and is not concerned with the matter regarding switching over by ISI from CPF Gratuity Rules to ISI GPF rules.

ISI is, therefore, requested to take action according the existing provision under ISI Act, 1959.

Yours faithfully,

(N.K. Sharma)

UNDER SECRETARY TO THE GOVT. OF INDIA

Tele No.3363152"

37. The petitioner, a distinguished academic and former Director of the Indian Statistical Institute (ISI), approached this Court seeking issuance of a writ of mandamus to compel the respondent authorities to withdraw certain administrative communications and to release the balance gratuity amount of Rs. 38,92,725/- with interest. Having served ISI for nearly four decades under the Standing Service Orders (SSO), 1963, and having opted for the CPF-cum-Gratuity Scheme in 1983, the petitioner claims entitlement to gratuity calculated at a rate consistently followed by ISI over the years—specifically, 26 days of wages per month without statutory ceiling, as was the institutional practice. ISI's sudden deviation from this practice, based on a Comptroller and Auditor General audit objection and subsequent Ministry directives, undermined vested service rights and contravened Section 4(5) of

the Payment of Gratuity Act, 1972, which permitted superior terms of gratuity under a contract or agreement.

38. Gratuity payments beyond the statutory limit had been a continuing process and practice under the CPF Scheme by the Central Government in prior correspondences. Indeed, ISI's own Retirement Benefit Cell calculated his gratuity on this basis post-retirement, only for the amount to be curtailed due to the audit objection and administrative circulars issued thereafter. The petitioner's claim invoking constitutional protections and contractual enforceability under the SSO, arguing that any retrospective alteration of benefits was impermissible and could not be refuted to be repugnant. The petitioner's contribution towards CPF Scheme to ensure profitable gratuity terms once codified and acted upon could not be arbitrarily curtailed, especially when such benefits formed the basis of informed career choices, including the decision to forgo pension, to his detriment to pursue his future expenditure for maintaining own life and discharging liabilities, if any.

39. A Contributory Provident Fund (CPF) Scheme constitutes of contribution by both the employer and the employee creating a savings or benefit corpus to devolve on the employee either on retirement or resignation. The accumulated fund of the employer's and employee's contribution grows with interest statutorily prescribed gratuity scheme contrarily is a reward-oriented lump-sum payment granted by the employer to the employee on completion of a certain tenure of service upon retirement, resignation or termination.

40. Moreover, the Contributory Provident Fund Scheme in general does not provide for a pension opportunity. The employee on his or her violation opts for the CPF Scheme explicitly and exercise of such option disentitles the employee to any favoural pension regime.

41. The petitioner being an employee had opted for the CPF Scheme and contributed accordingly as aforesaid and such contribution created a vested interest in favour of the employee, to the fund generated under the Scheme. The employee's right to claim the money, deposited in the CPF account is legally recognized and indisputable. The employee in anticipation of receiving a consolidated sum of money contributes a part of his or her own earning to secure future expenditure catering to various requirements and circumstances on retirement or resignation, willfully abrogating and/or invalidating the right to receive pension under the pension scheme promulgated under distinct and specific laws exercising his or her right of option to avail the CPF Scheme.

42. The respondent's refutation of the petitioner's claim by asserting that while ISI enjoyed academic autonomy, it remained bound by government regulations in fiscal matters violated the vested right of the petitioner. The argument that gratuity, being a financial benefit drawn from public funds, must conform to statutory ceilings introduced under the Payment of Gratuity (Amendment) Act, 2010 relying on audit findings and subsequent ministerial guidance, the respondent's claim that gratuity payments post-August 2015 had been uniformly capped at Rs. 10 lakhs and that previous overpayments, though now deemed irregular, were not recovered in light of the Supreme

Court's decision in *Rafiq Masih* could not be sustained. ISI's internal adoption of the Gratuity Act in 1978 effectively amended the SSO with respect to gratuity, thereby binding the Institute to statutory limits. Furthermore, they asserted that internal correspondence or earlier practices could not override the express provisions of law, and there can be no promissory estoppel against a statute could not be applicable in th;e instant case. Citing authoritative precedents, they maintained that contractual clauses inconsistent with statutory provisions are void, and ISI's past errors cannot create enforceable rights contrary to the legislative mandate.

43. The respondents have succumbed to the pressure of the Auditor General's report being oblivious of the distinct provisions governing CPF Scheme and the payment of gratuity conforming to a maximum ceiling limit.

44. The objective of the employee's contribution towards the CPF Scheme is to secure and protect the financial corpus to be generated through accumulation of interest as a mechanism of savings as a provision to serve societal and financial requirement post retirement or resignation. The right to the amassed or accrued of money creates vested interest of an employee in the CPF Scheme which legally enforceable and non-contingent. The employee adopts the CPF Scheme willfully being aware of the consequence abandoning the right to receive pension in future. Such vested right of the employee cannot be curtailed or forfeited since it's a contractual obligation involving both the employee and the employer and is governed by the provisions of the Employees' Provident Funds and Miscellaneous Provision Act, 1952, contrary to the conviction of the respondents to be non-statutory obligation.

45. The Auditor unilaterally cannot dictate to curb the right and vested interest of the petitioner to the CPF Scheme on the ground of palpable non-application of mind and consideration of the legally distinct intent and purport of the CPF Scheme and the gratuity to be disbursed subject to a certain ceiling limit where the obligation exclusively rests on the employer to pay a certain amount fixed statutorily on fulfillment of stipulated service conditions without mandatory contribution on the part of the employee.

46. The Hon'ble Supreme Court held the following in ***Satish Chander Sharma v. State of H.P.***[2]:-

> ***"21.*** *This decision of the High Court was challenged by the State Government before this Court in Rajesh Chander Sood (supra). This Court first posed the question as to whether a vested right came to be created in the employees of the corporate bodies when they came to be governed by the 1999 Scheme. On due consideration, this Court expressed the view that such employees who had exercised their option to be governed by the 1999 Scheme came to be regulated by the said scheme immediately on their having submitted their option. In addition, all those employees who did not exercise any option were automatically deemed to have opted for the 1999 Scheme. As soon as the concerned employees came to be governed by the 1999 Scheme, a contingent right stood vested in them. On the question as to whether such a contingent right was binding and irrevocable, this Court held that the same was not binding on the State Government. Before dealing with the said issue, this Court examined the question as to whether the State Government was justified in postulating a cut-off date by which some of the employees governed by the 1999 Scheme (those who had retired*

[2] 2025 SCC OnLine SC 792

prior to 02.12.2004 were entitled to draw pension under the 1999 Scheme whereas those who had not retired by the time the repeal notification was issued on 02.12.2004 were denied such benefit),the above question was answered by this Court in the following manner:

75. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can, therefore, legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are, therefore, satisfied to conclude that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned Repeal Notification dated 02-12-2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in R.R. Verma case

[R.R. Verma v. Union of India, (1980) 3 SCC 402 : 1980 SCC (L&S) 423], wherein this Court held that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the abovementioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power should be in consonance with all legal and statutory obligations."

47. The Hon'ble Supreme Court held the following in ***The Punjab State Cooperative Agricultural Development Bank Ltd. Versus The Registrar, Cooperative Societies And Others[3]:-***

> *"55. In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socioeconomic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour."*

48. The following was held by the Hon'ble Supreme Court in ***PEPSU RTC v. Mangal Singh[4]:-***

> ***"34.*** *Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, (sic whether) the retired employee is entitled to pension or not depends on the provisions and interpretation of the rules and regulations. The contributory provident fund appears to be a simple mechanism where an employee is paid the total amount which he has contributed along with the equal contribution made by the employer ordinarily at the time of retirement of an employee. In*

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[3] **2022 AIR(SC) 1349**

[4] (2011) 11 SCC 702

short, we quote what was repeatedly said by this Court that "pension is payable periodically as long as the pensioner is alive whereas CPF is paid only once on retirement". Therefore, conceptually, pension and CPF are separate and distinct.

35. *Now we will try to explain the essential distinction between these two retirement benefits that an employee may derive at the time of his retirement from service. CPF was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. CPF was instituted as a Compulsory Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act"). The employee registered under the Provident Fund Act shall be entitled to claim all the benefits available under the CPF Scheme framed under the Act. This CPF Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government's/employer's contribution into his CPF account finally crystallises. After retirement, this entire CPF amount is paid to the employee as a retiral benefit. On the receipt of CPF amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other.*

36. *In Committee for Protection of Rights of ONGC Employees v. Oil and Natural Gas Commission [(1990) 2 SCC 472 : 1990 SCC (L&S) 305 : (1990) 12 ATC 918] this Court has stated: (SCC p. 479, paras 12-13)*

"12. [Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Provident Fund Act')] has been

enacted with the object of providing social security to the employees in factories and other establishments covered by the said Act, after their retirement. In the Statement of Objects and Reasons for the said enactment it was mentioned as under:

'The question of making some provision for the future of the industrial worker after he retires or for his dependants in case of his early death, has been under consideration for some years. The ideal way would have been provision through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that amount paid to a worker or his dependants would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly.'

13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits."

37. *In Krishena Kumar v. Union of India [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] , this Court has held: (SCC p. 232, para 32)*

"32. … The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under the CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallised and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter."

38. *In All India Reserve Bank Retired Officers Assn. v. Union of India [1992 Supp (1) SCC 664 : 1992 SCC (L&S) 517 : (1992) 19 ATC 865] , this Court, while considering the case of the Pension Scheme and Contributory Provident Fund Scheme, has held: (SCC p. 678, para 10)*

"10. … in the case of an employee governed by the [Contributory Provident Fund] Scheme his relations with the employer come to an end on his retirement and receipt of the [contributory provident fund] amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether."

39. *Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependants of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. Like CPF,* *the object of providing pensionary benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from the service. The Government's/employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee."*

49. The Hon'ble Supreme Court held the following in ***Krishena Kumar v. Union of India***[5]***:-***

"31. *The argument of Mr Shanti Bhushan is that the State's obligation towards pension retirees is the same as that towards PF retirees. That may be morally so. But that was not the ratio decidendi of Nakara. [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] Legislation has not said so. To say so legally would amount to legislation by enlarging the circumference of the obligation and converting a moral obligation into a legal obligation. It reminds us of the distinction between law and morality and limits which separate morals from legislation. Bentham in his Theory of Legislation, Chapter XII, page 60 said:*

"Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which

[5] (1990) 4 SCC 207

legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumference."

32. *In Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering* *the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] cannot, therefore, be an authority for this case.*

33.*Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] it was never required to be decided that all the retirees formed a class and no further classification was permissible.”*

50. The Hon'ble Court held the following in ***V.K. Ramamurthy v. Union of India*[6]*:-***

> ***"4.*** *In State of Rajasthan v. Rajasthan Pensioner Samaj [1991 Supp (2) SCC 141 : 1991 SCC (L&S) 1176 : (1991) 17 ATC 342] this Court also came to hold that the contributory provident fund retirees form a different class from those who had opted for Pension Scheme according to the decision in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the pension retirees. In yet another case of All India Reserve Bank Retired Officers' Assn. v. Union of India [1992 Supp (1) SCC 664 : 1992 SCC (L&S) 517 : (1992) 19 ATC 865] the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those*

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[6](1996) 10 SCC 73

belonging to the Pension Scheme and those belonging to the Contributory Provident Fund Scheme has been rightly emphasised by this Court in Krishena Kumar case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846].”

51. The following was held by the Hon’ble Supreme Court in ***All India Reserve Bank Retired Officers Assn. v. Union of India***[7] ***:-***

> ***“10.****Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara*

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[7] 1992 Supp (1) SCC 664

case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care

> *of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in Krishena case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] ."*

52. The Office of the Director General of Audit, Kolkata had no legal authority or sanction to decline and repudiate the legal right and claim of the petitioner to be entitled to the sum of Rs.38,92,725/- accrued through a part of his contribution to the CPF Scheme on superannuation. The claim of the respondent nos.1, 2 and 3 on the issue of law of estoppel is not applicable in the instant case as the CPF Scheme itself is statutorily approved and the same cannot be discredited and/or disavowed on the ground of exercising law of estoppel since the petitioner's right is statutorily protected by the provisions of the Employees' Provident Fund Act of 1952 as aforesaid.
53. The memorandum dated 30.11.2015 and 07.12.2015 are set aside. The balance amount of gratuity of Rs.28.92 lakhs along with interest at the rate of 6% per annum be released in favour of the petitioner within 3 months of passing of this order. The interest amount is to be calculated from the date of the superannuation of the petitioner till the date of disbursement in compliance of the instant order.
54. In view of the above discussions, the instant writ petition being WPA 20055 of 2016 is allowed.
55. Accordingly, WPA 20055 of 2016 is disposed of. Connected application, if any, also stands disposed of.
56. There is no order as to costs.

57. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)