(2016) 10 Supreme Court Cases 77

(BEFORE JAGDISH SINGH KHEHAR AND CHOCKALINGAM NAGAPPAN, JJ.)

STATE OF HIMACHAL PRADESH
AND OTHERS .. Appellants;

Versus

RAJESH CHANDER SOOD AND OTHERS .. Respondents.

Civil Appeals Nos. 9750-9819 of 2016†, decided on September 28, 2016

A. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Pension Scheme introduced by Government, not in capacity of employer but as a welfare measure for respondent employees of Government-controlled independent corporate bodies to be operated on self-sustaining basis — But pursuant to subsequent administrative review, Government finding scheme to be financially non-viable, sought to revoke the same prospectively by fixing a cut-off date — Legality and constitutionality of, upheld**

— Held, although as soon as employees came to be governed by Pension Scheme a contingent right vested in them which was to crystallise upon their acquiring qualifying service for claim of pension, but such contingent right is not irrevocable in instant case — In absence of any employer-employee relationship between appellant State Government and respondent employees of corporate bodies, employees' challenge to withdrawal of Pension Scheme by Government in exercise of its administrative review power and their claim for pension under that Scheme was not based on any right or obligation between the parties — Once Pension Scheme had become operational administrative review by Government was permissible and such review was based on due considerations — No right of respondent employees under Arts. 14, 16, 21 and 300-A of the Constitution violated — Legality and constitutionality of government notification revoking Pension Scheme, upheld — Public Sector — Employment and Service matters — Pension Scheme — Constitution of India, Arts. 14, 16, 21 and 300-A

Consequent upon the creation of the State of Himachal Pradesh, employees engaged by the corporate sector, on their retirement, were being paid provident fund, under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Central Government framed the Employees' Provident Funds Scheme, 1995, whereby, it replaced the earlier statutory schemes, framed under the Provident Fund Act. This scheme was adopted for the corporate sector employees, engaged in the State of Himachal Pradesh. In order to extend better retiral benefits to these employees, the Himachal Pradesh Government framed another scheme on 29-10-1999 — the Himachal Pradesh Corporate Sector Employees Pension (Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 (the 1999 Scheme). Its application extended to employees of some of the corporate bodies functioning as independent entities, under the Departments

† Arising from SLPs (C) Nos. 10864-10933 of 2014. From the Judgment and Order dated 19-12-2013 of the High Court of Himachal Pradesh at Shimla in CWP No. 1577 of 2009

of Industries, Welfare, Horticulture, Forest, Food and Supplies, Tourism, Town and Country Planning, Housing and General Administration. Out of the corporate bodies concerned, almost all were fully owned by the State or the Central Government, and the share capital of the general public in the remaining, was less than one per cent. Therefore, the corporate bodies concerned were found to be eligible for the exemption, and were accordingly exempted from the applicability of the Provident Fund Act. The 1999 Scheme was made operational w.e.f. 1-4-1999.

The 1999 Scheme provided that it would apply to such of the employees who opted or deemed to have opted for the benefits under the Scheme upon their failure to exercise their option within the prescribed period. It was imperative for all employees concerned, to express their option, to be governed by the Employees' Provident Funds Scheme, 1995, in case the employees concerned, desired to avoid the 1999 Scheme. The 1999 Scheme further provided that those regular employees, who were entitled to the benefits postulated by the 1999 Scheme, would automatically forfeit their claim, to the employer's contribution in their provident fund account (including interest thereon), under the prevailing Employees' Provident Funds Scheme, 1995, to the Government. The forfeited amount would include the amount due and payable, under the Employees' Provident Funds Scheme, 1995, up to 31-3-1999. The forfeited amount was to be transferred to a corpus fund, to be administered and managed by the Government of Himachal Pradesh. The corpus fund, was to be treated as the pension fund, for payment of pension under the 1999 Scheme. A claim for pension by an employee governed by the above Scheme, would arise only at the time of the employee's retirement, on attaining the age of superannuation, or when he was retired from service by the employer, or in case of his death in harness.

After the implementation of the 1999 Scheme, a High-Level Committee was constituted by the Finance Department of the State Government, on 21-1-2003. The Committee was comprised of four Managing Directors of State public sector undertakings and corporations. The Committee was entrusted with the task of examining the financial viability of the 1999 Scheme. The Committee submitted its report on 15-11-2003. It arrived at the conclusion that the 1999 Scheme, would not be financially viable on a self-sustaining basis. After considering the report of the High-Level Committee, the State Government took a decision on 29-11-2004 to repeal the 1999 Scheme. While repealing the 1999 Scheme, it was decided that regular employees who had retired from corporate bodies, during the period of the subsistence of the 1999 Scheme from 1999 to 2004, would not be affected. For the implementation of the decision of the State Government dated 29-11-2004, a Notification dated 2-12-2004 was issued, repealing the 1999 Scheme. A number of employees who had been deprived of the benefit of the 1999 Scheme by the Notification dated 2-12-2004, challenged the repeal notification, by filing a number of writ petitions, before the High Court of Himachal Pradesh.

The High Court concluded that there was no merit in the contention that the 1999 Scheme could not be implemented due to financial crunch. It observed that the State was aware of the financial implication at the time of issuance of Notification dated 29-10-1999 and that it was the sovereign responsibility of the State to garner revenue to take welfare measures, including payment of pensionary/retiral benefits. Accordingly the High Court allowed the writ petition and declared the cut-off date

2-12-2004 as ultra vires. It also held that the Notification dated 2-12-2004 required to be "read down to save it from unconstitutionality, irrationality, arbitrariness or unreasonableness by including the petitioners and similarly situated employees also, who had become members of the Scheme notified on 29-10-1999 and have retired after 2-12-2004 and those employees who were already in service when the Pension Scheme was notified on 29-10-1999 and had become members of that Scheme and shall retire hereinafter, for the purpose of pensionary benefits after applying the principles of severability.".

Allowing the appeals preferred by the State of Himachal Pradesh, the Supreme Court

Held :

The respondent employees comprise of all those employees of corporate bodies, who had opted for the 1999 Scheme, immediately on its having been introduced; all those, who were deemed to have opted for the 1999 Scheme by not having exercised any option; and all those who were appointed after the introduction of the 1999 Scheme. Although the 1999 Scheme created a contingent right in the respondent employees, the first issue that arises is, whether any express right or obligation existed between the respondent employees and the State Government. One can understand such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo — a trade-off based on a relationship (as between, an employer and employee). But there was no such relationship between the State Government, and the respondent employees. All the corporate bodies in which the respondent employees were/are engaged, are independent juristic entities. It is, therefore, apparent that the claim raised by the respondent employees, is not based on any right or obligation between the parties. Further, having examined the submissions of the respondents premised on various constitutional provisions i.e. Articles 14, 16, 21 and 300-A of the Constitution of India, it is clear that no right can be stated to have been violated thereunder. The administrative review was permissible after the 1999 Scheme had become operational. The exercise of such power, while issuing the repeal notification, was based on due consideration. Therefore, the legality and constitutionality of the Notification dated 2-12-2004 is hereby upheld. (Para 95)

Rajesh Chander Sood v. *State of H.P.*, 2013 SCC OnLine HP 5151, *reversed*

B. **Property Law — Transfer of Property Act, 1882 — Ss. 19 and 21 — Pension — Pension Scheme — Nature of rights in respect of, held by employee concerned — A contingent right to claim pension vests in employee on very day he comes to be governed by Pension Scheme — From that day his qualifying service for claiming pension starts accumulating — His right to receive pension crystallises thereby raising a cause to claim pension upon his acquiring minimum prescribed qualifying service or his attaining age of superannuation, as per Pension Scheme — Such employee cannot be prevented from fulfilling postulated conditions to claim pension, as per Pension Scheme — Constitution of India, Arts. 300-A, 14, 16 and 21**

It was contended that no vested right was created by the time the Repeal Notification dated 2-12-2004 was issued. It was argued that under Para 4 of the 1999 Scheme, a right to draw pension would emerge, only when an employee concerned attained the age of superannuation, subject to the condition that he

had rendered the postulated qualifying service. It was submitted that prior to the fulfilment of the aforesaid condition, no employee under the 1999 Scheme, could be considered as being possessed of a vested right, to receive pension.

Held :

Such of the 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 to the above, all such employees who did not exercise any option (whether to be governed, by the Employees' Provident Funds Scheme, 1995, or by the 1999 Scheme), would automatically be deemed to have opted for the 1999 Scheme. With effect from 1-4-1999, the employees who had opted for the 1999 Scheme (or, who were deemed to have opted for the same) were no longer governed by the provisions of the Provident Fund Act (under which they had statutory protection, for the payment of provident fund). Consequent upon an exemption having been granted to the corporate bodies concerned by the competent authority under the Provident Fund Act, the Employees' Provident Funds Scheme, 1995, was replaced, by the 1999 Scheme. All direct entrants after 1-4-1999, were also entitled to the rights and privileges of the 1999 Scheme. All new entrants would naturally be governed by the 1999 Scheme. All those who had moved from the provident fund scheme to the pension scheme, would be deemed to have consciously, foregone all their rights under the Employees' Provident Funds Scheme, 1995. All the employees concerned by moving to the 1999 Scheme, accepted that the employer's contribution to their provident fund account (and the accrued interest thereon, up to 31-3-1999), should be transferred to the corpus, out of which their pensionary claims, under the 1999 Scheme would be met. It is not, therefore, possible to accept that the employees concerned would be governed by the 1999 Scheme only from the date on which they attained the age of superannuation, and that too, subject to the condition that they fulfilled the prescribed qualifying service, entitling them to claim pension. (Paras 69 and 70)

The assertion that no vested right accrued to the employees of the corporate bodies concerned, on the date when the 1999 Scheme became operational (with effect from 1-4-1999), or to the direct entrants who entered service thereafter, cannot be accepted. As soon as the employees concerned came to be governed by the 1999 Scheme, a contingent right came to be vested in them. The said contingent right created a right in the employees to claim pension, at the time of their retirement. The seeds of the right to receive pension, emerge from the very day an employee enters a pensionable service. From that very date the employee commences to accumulate qualifying service. Every such employee must be deemed to have commenced to invest in his eventual claim for pension, from the very day he enters service. More so, in the present controversy, by having expressly chosen to forego his rights, under the Employees' Provident Funds Scheme, 1995. The aforesaid contingent right would crystallise only upon the fulfilment of the postulated conditions, expressed on behalf of the appellants (on having rendered the postulated qualifying service). In other words, his claim for pension would crystallise, when he acquires the minimum prescribed qualifying service, and also, does not suffer a disqualification, disentitling him to a claim for pension. The cause of action to raise a claim for pension, would arise on the date when an employee concerned actually retires from service. However, once such a contingent right

was created, every employee in whom the said right was created, could not be prevented or forestalled, from fulfilling the postulated conditions, to claim pension. Any action pre-empting the right to pension, emerging out of the conscious option exercised by the employees, to be governed by the 1999 Scheme (or to the direct entrants after the introduction of the 1999 Scheme), most definitely did vest a right in the respondent employees. (Paras 70 to 72)

CIT v. *L.W. Russel*, (1964) 7 SCR 569 : AIR 1965 SC 49; *Krishena Kumar* v. *Union of India*, (1990) 4 SCC 207 : 1991 SCC (L&S) 112; *Howrah Municipal Corpn.* v. *Ganges Rope Co. Ltd.*, (2004) 1 SCC 663; *U.P. Raghavendra Acharya* v. *State of Karnataka*, (2006) 9 SCC 630 : 2006 SCC (L&S) 1948; *Railway Board* v. *C.R. Rangadhamaiah*, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527; *D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145; *State of M.P.* v. *Yogendra Shrivastava*, (2010) 12 SCC 538 : (2011) 1 SCC (L&S) 251; *Asger Ibrahim Amin* v. *LIC*, (2016) 13 SCC 797, *referred to*

Deokinandan Prasad v. *State of Bihar*, (1971) 2 SCC 330; *State of Punjab* v. *Iqbal Singh*, (1976) 2 SCC 1 : 1976 SCC (L&S) 172; *Salabuddin Mohamed Yunus* v. *State of A.P.*, 1984 Supp SCC 399 : 1985 SCC (L&S) 53; *Asger Ibrahim Amin* v. *LIC*, 2012 SCC OnLine Guj 5379; *Asger Ibrahim Amin* v. *LIC*, 2013 SCC OnLine Guj 661 : (2013) 138 FLR 142; *Union of India* v. *Tarsem Singh*, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765; *Kapila Hingorani (2)* v. *State of Bihar*, (2005) 2 SCC 262 : 2005 SCC (L&S) 206; *Kapila Hingorani (1)* v. *State of Bihar*, (2003) 6 SCC 1 : 2004 SCC (L&S) 586; *Roshan Lal Tandon* v. *Union of India*, AIR 1967 SC 1889; *B.S. Vedera* v. *Union of India*, AIR 1969 SC 118; *State of Gujarat* v. *Raman Lal Keshav Lal Soni*, (1983) 2 SCC 33 : 1983 SCC (L&S) 231; *Dodge* v. *Board of Education*, 82 L Ed 57 : 302 US 74 (1937) : 1937 SCC OnLine US SC 144; *M.R. Gupta* v. *Union of India*, (1995) 5 SCC 628 : 1995 SCC (L&S) 1273; *Ganges Rope Co. Ltd.* v. *State of W.B.*, 1997 SCC OnLine Cal 298 : (1998) 1 CHN 286, *cited*

Thomas M. Cooley: *A Treatise on the Constitutional Limitations* (Indian Reprint of 2005, Hindustan Law Book Company, Calcutta) Chapter XI, Of The Protection To Property By 'The Law Of The Land', *referred to*

C. Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Proper exercise of power in respect of — Principles for, summarised — Cut-off date/point for extending better and higher pensionary benefits under prevailing Pension Scheme only up to that date, held, can be fixed by Government in exercise of its inherent power of administrative review of its earlier policy decision having regard to financial viability — But such power being based on reasonable consideration, should be exercised for good and valid reason and should not be violative of any legal right i.e. statutory or constitutional right — Administrative Law — Administrative Appeal, Review or Revision — Constitution of India — Art. 14 — Public Sector — Employment and Service matters

A question arose as to whether or not 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 prior to 2-12-2004) were entitled to draw pension under the 1999 Scheme, whereas others, who had not retired by the time the Repeal Notification was issued on 2-12-2004, were deprived of such benefits. In this behalf, the contention of the respondent employees was that all those who had opted (or deemed to have opted) for the 1999 Scheme, and all the new entrants after the introduction of the 1999 Scheme, constituted a homogeneous class, and it was impermissible for the State Government, to have treated them differently. It was submitted that the aforesaid classification was invidious, inasmuch as there was no reasonable basis for such classification, nor was there any discernible object,

for bifurcating the homogeneous class of pensioners. It was submitted that whilst those who had retired on the date of the repeal notification, would be entitled to pensionary benefits, those who retired on the following day, would be deprived of the same.

Held :

The Supreme 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. Therefore, 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 2-12-2004) 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, which is vested with inherent power of review. 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 the exercise of such power should be in consonance with all legal and statutory obligations. The power of administrative review can only be exercised, for a good and valid justification. Such justification besides being founded on reasonable consideration, should also not be violative of any legal right — statutory or constitutional, vested in the affected employees. (Paras 75 and 76)

D.S. Nakara v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145; *U.P. Raghavendra Acharya* v. *State of Karnataka*, (2006) 9 SCC 630 : 2006 SCC (L&S) 1948, *distinguished*

Union of India v. *P.N. Menon*, (1994) 4 SCC 68 : 1994 SCC (L&S) 860; *State of W.B.* v. *Ratan Behari Dey*, (1993) 4 SCC 62 : 1993 SCC (L&S) 1123; *State of Rajasthan* v. *Amrit Lal Gandhi*, (1997) 2 SCC 342 : 1997 SCC (L&S) 512; *D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145; *Union of India* v. *SPS Vains*, (2008) 9 SCC 125 : (2008) 2 SCC (L&S) 838; *Railway Board* v. *C.R. Rangadhamaiah*, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527, *referred to*

D.R. Nim v. *Union of India*, AIR 1967 SC 1301; *Sushma Sharma* v. *State of Rajasthan*, 1985 Supp SCC 45 : 1985 SCC (L&S) 565; *R.R. Verma* v. *Union of India*, (1980) 3 SCC 402 : 1980 SCC (L&S) 423; *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844; *D.N. Roy* v. *State of Bihar*, (1970) 3 SCC 119; *State of Assam* v. *J.N. Roy Biswas*, (1976) 1 SCC 234 : 1976 SCC (L&S) 10; *C.R. Rangadhamaiah* v. *Railway Board*, (1994) 27 ATC 129 (Tri), *cited*

D. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Promissory estoppel — Applicability — Test for — Need to establish that party asserting the estoppel was induced to act to its detriment — Not applicable where Government introduced Pension Scheme, in place of Employees' Provident Fund Scheme, for employees of Government-controlled corporate bodies on self-financing basis, not in Government's capacity as employer but as a welfare measure for employees of those corporate bodies and withdrew it finding the measure to be financially non-viable — Also not applicable when original position which employees enjoyed prior to introduction of Pension Scheme was restored — Applicable where Government makes representation giving any assurance whereby inducing representee to act on that basis so as to alter his position to his detriment — None of these requirements were met in the present case — Administrative**

Law — Promissory Estoppel — Applicability — Test for — Principles summarised — Public Sector — Employment and Service matters

a It was asserted that the respondent employees had altered their position to their detriment, on their having opted (or deemed to have opted) to be governed by the 1999 Scheme. It was submitted that the entire employer's contribution towards provident fund (along with the accumulated interest thereon), was foregone by the respondent employees. The said amount unquestionably belonged to the respondent employees, and their right over the same was protected under the b Provident Fund Act. It was submitted that the aforesaid option was exercised by the respondent employees, only when the offer to extend pensionary benefits, was voluntarily made to the employees by the State Government. It was contended that the promise to pay pensionary benefits, which was contained in the offer of the State Government, could not be unilaterally revoked, under the principle of estoppel/promissory estoppel. It was submitted that the instant action of the State c Government (taken by way of issuing the Repeal Notification dated 2-12-2004), would seriously impair the financial benefits which had accrued to the respondent employees, under the 1999 Scheme. It was pointed out that all that the respondent employees had gained, by foregoing the employer's contribution (and the accrued interest, thereon), has been lost, consequent upon the issuance of the impugned Notification dated 2-12-2004.

d *Held* :

The doctrine of promissory estoppel has been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule is that where one by his words or conduct wilfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at e the same time. In short, the party asserting the estoppel must have been induced to act to his detriment. The test of detriment has been stated to be whether it appears unjust or unequitable that the representor should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation. (Para 80)

Bhagwati Vanaspati Traders v. *Supt. of Post Offices*, (2015) 1 SCC 617 : (2015) 1 SCC (Civ) 620, *relied on* f

Tisco Ltd. v. *Union of India*, (2001) 2 SCC 41; *Pickard* v. *Sears*, (1837) 6 Ad & El 469 : 112 ER 179; *Sarat Chunder Dey* v. *Gopal Chunder Laha*, (1891-92) 19 IA 203 : 1892 SCC OnLine PC 21; *Seton, Laing & Co.* v. *Lafone*, (1887) LR 19 QBD 68 (CA); *Craine* v. *Colonial Mutual Fire Insurance Co. Ltd.*, (1920) 28 CLR 305 (Aust); *Grundt* v. *Great Boulder Pty. Gold Mines Ltd.*, (1938) 59 CLR 641 (Aust); *Central Newbury Car Auctions Ltd.* v. *Unity Finance Ltd.*, (1957) 1 QB 371 : (1956) 3 WLR 1068 : (1956) 3 All ER 905 g (CA); *Lyon* v. *Reed*, (1844) 13 M & W 285 : 153 ER 118; *Freeman* v. *Cooke*, (1848) 2 Exch 654 : 154 ER 652; *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.*, 1938 AC 287 (PC); *National Westminster Bank Ltd.* v. *Barclays Bank International Ltd.*, 1975 QB 654 : (1975) 2 WLR 12; *Moorgate Mercantile Co. Ltd.* v. *Twitchings*, 1977 AC 890 : (1976) 3 WLR 66 (HL); *Square* v. *Square*, 1935 P 120; *Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P.*, (1979) 2 SCC 409 : 1979 SCC (Tax) 144, *cited*

Phipson on Evidence (14th Edn.), *adopted as law on this point*

h The principle of estoppel/promissory estoppel cannot be invoked at the hands of the respondent employees, in the facts and circumstances of this case. It is not as

if the rights which had accrued to the respondent employees under the Employees' Provident Funds Scheme, 1995 (under which the respondent employees were governed, prior to their being governed by the 1999 Scheme) have in any manner been altered to their disadvantage. All that was taken away, and given up by the respondent employees by way of foregoing the employer's contribution up to 31-3-1999 (including the accrued interest thereon), by way of transfer to the corpus fund, was restored to the respondent employees. All the respondent employees, who have been deprived of their pensionary claims by the Repeal Notification dated 2-12-2004, would be entitled to all the rights which had accrued to them, under the Employees' Provident Funds Scheme, 1995. It is, therefore, not possible to accept that the respondent employees can be stated to have been made to irretrievably alter their position, to their detriment. (Para 79)

Furthermore, all the corporate bodies (with which the respondent employees, are engaged) are independent juristic entities. The mere fact that the corporate bodies under reference, are fully controlled by the State Government, and the State Government is the ultimate authority to determine their conditions of service, under their articles of association, is inconsequential. Undoubtedly, the respondent employees are not government employees. The State Government, as a welfare measure, had ventured to honestly extend some post-retiral benefits to employees of such independent legal entities, on the mistaken belief, arising out of a miscalculation, that the same can be catered to, out of the available resources. This measure was adopted by the State Government, not in its capacity as the employer of the respondent employees, but as a welfare measure. When it became apparent that the welfare measure extended by the State Government, could not be sustained as originally understood, the same was sought to be withdrawn. (Para 79)

The original action of the State Government was bona fide, and for the welfare of the respondent employees. The State Government cannot be accused of having misrepresented to the respondent employees in any manner. The provisions of the 1999 Scheme, clearly bring out that the pension scheme would be self-financing, and would be administered from the corpus fund created out of the employer's contribution to their CPF account (along with the accrued interest thereon). When the above foundational basis for introducing the pension scheme was found to be an incorrect determination/calculation, the same was withdrawn. In the above view of the matter, it would not be possible to infer that the State Government induced the respondent employees, to move to the 1999 Scheme. (Para 81)

The principle of estoppel/promissory estoppel, is not applicable in a situation, where the original position, which the individual enjoyed before altering his position (by opting, or deemingly opting—for being governed by the 1999 Scheme) can be restored. The original position (the rights enjoyed by the respondent employees, under the Employees' Provident Fund Scheme, 1995) available before the 1999 Scheme was given effect to, has actually been restored. The principle sought to be invoked on behalf of the respondent employees, cannot augur in a favourable determination for them, because it is not possible to conclude that it would be unfair to restore them to their original position. In fact, in view of the financial incapacity to continue the 1999 Scheme, the only fair action would be to restore the employees to the Employees' Provident Funds Scheme, 1995. This has actually been done by the State Government. It is, therefore, not possible in law,

to apply the principle of estoppel/promissory estoppel, to the facts of the present controversy. (Paras 82 and 83)

Pratima Chowdhury v. *Kalpana Mukherjee*, (2014) 4 SCC 196 : (2014) 2 SCC (Civ) 504, *relied on*

Excise Commr. v. *Ram Kumar*, (1976) 3 SCC 540 : 1976 SCC (Tax) 360; *Union of India* v. *Godfrey Philips India Ltd.*, (1985) 4 SCC 369 : 1986 SCC (Tax) 11, *referred to*

E. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Government doing so due to financial non-viability — Validity — Government's assessment of financial non-viability of Pension Scheme — Rebuttal of, by affected employees by merely producing certain calculations made casually and on generalised basis lacks authenticity, hence unacceptable — Rebuttal must have fundamental basis, showing withdrawal to be arbitrary, unreasonable or irrational — In absence thereof, withdrawal of Pension Scheme cannot be held to be violative of Art. 14 of the Constitution — Constitution of India — Art. 14 — Public Sector — Employment and Service matters**

F. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Financial liability — Government cannot be obliged to bear financial burden of non-viable Pension Scheme, introduced not as employer but as welfare measure for employees of Government-controlled corporate bodies as self-financing scheme — Government in exercise of its review power, finding that Pension Scheme was based on incorrect calculations and its operation would not be financially viable, sought to withdraw the same prospectively without affecting those employees who had already commenced to draw pensionary benefits under the Scheme — No arbitrariness, unreasonableness or irrationality shown — Government's decision to allow those who had already started earning pensionary benefits under the Scheme, held, is based on legitimate classification — Held, Government cannot be obligated to take over financial liability instead of withdrawing the Scheme in exercise of its review power — Court's interference with Government's decision not called for — Constitution of India — Arts. 14, 136 and 116 — Administrative Law — Administrative Appeal, Review or Revision — Public Sector — Employment and Service matters**

G. **Administrative Law — Administrative Appeal, Review or Revision — Power of, can be exercised by Government to review its decision considered to be based on incorrect premise — Constitution of India, Art. 14**

H. **Constitution of India — Arts. 136 and 226 — Policy decision of Government — Court's interference — Scope — Budgetary allocation is a matter of Government's policy decision — Court has no jurisdiction to fasten financial liability on Government where Government is not obliged to take up such liability — Pension Scheme introduced by State Government as a welfare measure and as self-financing scheme for employees of State-controlled corporate bodies but later pursuant to exercise of review power, Scheme withdrawn by Government in view of its financial non-viability — Held, it being a policy decision of Government, court's interference not called**

for — Administrative Law — Administrative Action — Policy decision of Government — Budgetary allocation — Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme

I. Administrative Law — Administrative Action — Policy decision — Financial viability and sustainability of Government-controlled corporate bodies and whether, when and how such bodies require to be wound up are policy matters of Government — Likewise, conditions of service, where and how much wages to be paid, as also post-retiral benefits payable to employees of such corporate bodies are also policy matters of Government — Service Law — Conditions of Service — Policy decision of Government for Government-controlled corporate bodies

J. Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Entitlement to — Discrimination alleged — Employees of State-controlled corporate bodies cannot claim to be treated on a par with government employees — State Government introduced Pension Scheme for employees of State-controlled corporate bodies as self-financing scheme but later revoked the same in view of its financial non-viability — State Government also extended similar benefits to government servants under CCS (Pension) Rules, 1972 but while withdrawing the same, it protected all existing government employees who had entered into Government service till the revocation of Pension Scheme — Held, employees of Government-controlled corporate bodies cannot allege discriminatory treatment by Government in violation of Art. 16 of the Constitution — Constitution of India — Arts. 14 and 16 — Public Sector — Employment and Service matters

K. Service Law — Government Servant — Employees of State-controlled corporate bodies, held, are not Government servants — Hence they cannot claim parity in respect of conditions of service with Government servants — Constitution of India — Arts. 12, 14, 16 and 311 — Public Sector — Employment and Service matters

It was submitted that the State Government must be deemed to have examined the financial viability of the Scheme, before the 1999 Scheme was given effect to. And that, it does not lie in the mouth of the State Government, after giving effect to the 1999 Scheme, to assert that the 1999 Scheme was not financially viable. It was insisted that even if data pertaining to the financial viability of the Scheme, as was sought to be relied upon was correct, financial deficiencies, if any, could be catered to by the State Government, from the vast financial resources available to it. And further, that the 1999 Scheme in terms of the determination rendered by the High Court, even if permitted to be repealed, should not impact the rights of the respondent employees, towards pensionary benefits.

Moreover, the action of the State Government, in revoking the 1999 Scheme vide Notification dated 2-12-2004, was also assailed as being discriminatory. And as such, violative of Article 16 of the Constitution of India. In this behalf, the submission advanced on behalf of the respondent employees was that the State Government extended similar benefits to government employees under the Central Civil Services (Pension) Rules, 1972. The said pensionary benefits extended to government servants, were also sought to be withdrawn. It was, however,

pointed out that while withdrawing the pensionary benefits from the government employees, the State Government had taken a decision to protect all existing employees, who had entered into government service, till the revocation of the pension scheme. It was submitted that the High Court had, by the impugned order, similarly protected only the existing employees, who were in service, as on the date of issuance of the Repeal Notification dated 2-12-2004. It was contended that the State Government's action, in not treating the employees of corporate bodies, governed by the 1999 Scheme, similarly as it had treated employees in government service, was clearly discriminatory. It was submitted that two sets of employees similarly situated, were treated differently. It was pointed out that whilst protection was extended to one set of employees, similar benefits were denied to the other set of employees.

Held :

The position projected by the State Government that the Pension Scheme was self-financing cannot be considered to have been effectively rebutted. Certain facts and figures, have indeed been projected, on behalf of the respondent employees. Financial calculations cannot be made casually, on a generalised basis. In the absence of any authenticity, and that too with reference to all the 20 corporate entities specified in Schedule I of the 1999 Scheme, the projections made on behalf of the respondent employees, cannot be accepted, as constituting a legitimate basis, for a favourable legal determination. Since the respondent employees have not been able to demonstrate that the foundational basis for withdrawing the 1999 Scheme, was not premised on any arbitrary consideration, or alternatively, was not founded on any irrelevant consideration, it is not possible to accept the contention that the withdrawal of the 1999 Scheme, was not based on due consideration, or that, it was irrational or arbitrary or unreasonable. Further, the action of the State Government, in allowing those who had already started earning pensionary benefits under the 1999 Scheme, was based on a legitimate classification, acceptable in law. In the above view of the matter, the action of the State Government cannot be described as arbitrary, and as such, violative of Article 14 of the Constitution of India. The understanding of the State Government (which had resulted in introducing the 1999 Scheme) on being found to be based on an incorrect calculation, with reference to the viability of the corpus fund (to operate the 1999 Scheme), had to be administratively reviewed. Therefore, the State Government's determination in exercising its power of review, was well founded. (Para 87)

Union of India v. *R. Sarangapani*, (2000) 4 SCC 335 : 2000 SCC (L&S) 647, *referred to*

It is not possible to accept that any court has the jurisdiction to fasten a monetary liability on the State Government, as is the natural consequence, of the impugned order passed by the High Court, unless it emerges from the rights and liabilities canvassed in the lis itself. Budgetary allocations, are a matter of policy decisions. The State Government while promoting the 1999 Scheme, felt that the same would be self-financing. The State Government never intended to allocate financial resources out of State funds, to run the pension scheme. The State Government, in the instant view of the matter, could not have been burdened with the liability, which it never contemplated, in the first place. Moreover, it is the case of the respondent employees themselves, that a similar pension scheme, floated for civil servants in the State of Himachal Pradesh, has also been withdrawn. The

State Government has demonstrated its incapacity, to provide the required financial resources. Therefore, the High Court should not (as it could not) have transferred the financial liability to run the 1999 Scheme, to the State Government. Similar suggestions made by the corporate bodies concerned, cannot constitute a basis for fastening the residuary liability on the Government. (Para 88)

U.P. Raghavendra Acharya v. *State of Karnataka*, (2006) 9 SCC 630 : 2006 SCC (L&S) 1948; *PEPSU RTC* v. *Mangal Singh*, (2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322, *referred to*

It is not possible to accept that the employees of corporate bodies, can demand as of right, to be similarly treated as government employees. Whilst it can be stated that government employees of the State of Himachal Pradesh are civil servants, the same is not true for employees of corporate bodies. Corporate bodies are independent entities, and their employees cannot claim parity with employees of the State Government. The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with the employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay scales and retiral benefits to civil servants. It may disagree to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. It is common knowledge that when pay scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government. And similarly, not even to employees of government companies. Likewise, there cannot be parity with government employees, in respect of allowances. So also, of retiral benefits. The claim for parity with government employees is, therefore, wholly misconceived. It is, therefore, not possible to accept the contention advanced on behalf of the respondent employees, that the action of the State Government was discriminatory. (Para 90)

Moreover, despite having revoked the 1999 Scheme through the Notification dated 2-12-2004, the State Government had permitted such of the Government-owned corporations in the State of Himachal Pradesh, which were not suffering any losses, to promote their own pension schemes, and to extend pensionary benefits to their employees, on an individual basis, in the same/similar fashion as had been attempted by the State Government, through the 1999 Scheme. Therefore, the action of the State Government cannot be assailed, on the ground of discrimination. (Paras 90 and 91)

State of Punjab v. *Amar Nath Goyal*, (2005) 6 SCC 754 : 2005 SCC (L&S) 910; *State of Assam* v. *Barak Upatyaka D.U. Karmachari Sanstha*, (2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109; *A.K. Bindal* v. *Union of India*, (2003) 5 SCC 163 : 2003 SCC (L&S) 620; *Officers & Supervisors of I.D.P.L.* v. *I.D.P.L.*, (2003) 6 SCC 490 : 2003 SCC (L&S) 916, *referred to*

Pyare Lal Sharma v. *J&K Industries Ltd.*, (1989) 3 SCC 448 : 1989 SCC (L&S) 484; *State of Maharashtra* v. *Chandrabhan Tale*, (1983) 3 SCC 387 : 1983 SCC (Cri) 667 : 1983 SCC (L&S) 391; *People's Union for Democratic Rights* v. *Union of India*, (1982) 3 SCC 235 : 1982 SCC (L&S) 275; *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545; *South Malabar Gramin Bank* v. *Coordination Committee of S.M.G.B. Employees' Union and Officers' Federation*, (2001) 4 SCC 101 : 2001 SCC (L&S) 669; *All India Regional Rural Bank Officers Federation* v. *Union of India*, (2002) 3 SCC 554 : 2002 SCC (L&S) 449; *Associate Banks Officers' Assn.* v. *SBI*, (1998) 1 SCC 428 : 1998 SCC (L&S) 293, *cited*

The employees of corporate bodies, who were extended the benefits of the 1999 Scheme, were not employees of the State Government. The 1999 Scheme was, therefore, just a welfare scheme introduced by the State Government, with the object of ameliorating the financial condition of employees, who had rendered valuable service in State-owned corporations. The sustenance of the organisation itself, is of paramount importance. The claim of employees who have been engaged by the organisation, to run the activities of the organisation, is of secondary importance. If an organisation does not remain financially viable, the same cannot be required to remain functional, only for the reason that its employees, are not adversely impacted. When and how a decision to wind up an organisation is to be taken, is a policy decision. The decision to wind up a corporation may be based on several factors, including the nature of activities rendered by it. In a given organisation, sometimes small losses may be sufficient to order its closure, as its activities may have no vital bearing on the residents of the State. Where, an organisation is raised to support activities on which a large number of people in the State are dependent, the same may have to be sustained, despite the fact that there are substantial losses. The situations are unlimited. Each situation has to be regulated administratively, in terms of the policy of the State Government. Whether a corporate body can no longer be sustained, because its activities are no longer workable, practicable, useable, or effective, either for the State itself, or for the welfare of the residents of the State, is for the State Government to decide. Similarly, when and how much, is to be paid as wages (or allowances) to employees of an organisation, is also a policy decision. So also, post-retiral benefits. All these issues fall in the realm of executive determination. No court has any role therein. The conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, will necessarily have to be determined administratively, on the basis of relevant factors. Financial viability, is an important factor, in such consideration. In the facts and circumstances of the present case, it is not possible to accept the contention advanced on behalf of the respondent employees, that the State Government should provide financial support for sustaining the 1999 Scheme, at least for such of the employees, who were engaged on or before the date of issuance of the repeal Notification (4-12-2004). Therefore, the respondent employees have not been able to make out a case that the Notification dated 2-12-2004, repealing the 1999 Scheme, was in any manner, capricious, arbitrary, illegal or uninformed. Therefore, the respondent employees cannot be considered as being entitled, to any relief, through judicial process. (Para 92)

BALCO Employees' Union v. *Union of India*, (2002) 2 SCC 333; *State of Rajasthan* v. *Amrit Lal Gandhi*, (1997) 2 SCC 342 : 1997 SCC (L&S) 512; *R.R. Verma* v. *Union of India*, (1980) 3 SCC 402 : 1980 SCC (L&S) 423; *M. Ramanatha Pillai* v. *State of Kerala*, (1973) 2 SCC 650 : 1973 SCC (L&S) 560, *referred to*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664, *cited*

L. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — By Government — Whether violative of Art. 21 of the Constitution — If welfare measure, such as Pension Scheme, is introduced by Government by replacing Employees' Provident Fund Scheme, with a view to provide better retiral benefits to employees, subsequent withdrawal of Pension Scheme by Government because of its financial non-viability would not be violative**

of Art. 21 — But if welfare measure is introduced by Government to alleviate basic human rights of employees so as to sustain their human dignity, unilateral withdrawal thereof would result in violation of Art. 21 — Constitution of India, Art. 21

M. **Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Pension Scheme having better retiral benefits than Employees' Provident Funds Scheme, 1995 introduced by Government as a welfare measure for Government-controlled independent corporate bodies — Subsequent withdrawal thereof by Government by exercising review power, while protecting employees who had retired during subsistence of 1999 Pension Scheme — Held, not violative of Art. 300-A of the Constitution (see also *Shortnote B*) — Constitution of India, Art. 300-A**

Held :

The submission of the respondent employees that the action of the State Government, in issuing the Repeal Notification dated 2-12-2004, would violate Article 21 of the Constitution of India cannot be accepted. It is true that the fundamental rights enshrined in the Constitution, do not extend to merely, providing for survival or animal existence. Article 21, has been interpreted by the Supreme Court, as extending the right to life and liberty—as the right to live, with human dignity. A welfare scheme, may or may not aim at providing the very basic rights to sustain human dignity. In situations where a scheme targets to alleviate basic human rights, the same may possibly constitute an irreversible position, as withdrawal of the same would violate Article 21 of the Constitution. Not so, otherwise. Herein, the Employees' Provident Funds Scheme, 1995, sponsored under the Provident Fund Act, is in place. The same was sought to be replaced, by the 1999 Scheme. The 1999 Scheme was an effort at the behest of the State Government, to provide still better retiral benefits. The 1999 Scheme was not a measure, aimed at providing basic human rights. Therefore, the 1999 Scheme cannot be treated as irreversible. The same would not violate Article 21 of the Constitution, on its being withdrawn. It is not in dispute that after the Repeal Notification dated 2-12-2004, the erstwhile Employees' Provident Funds Scheme, 1995, has been restored to such of the employees, who were impacted by the said repeal notification. Therefore, the repealing of the 1999 Scheme, in the facts and circumstances of this case, cannot be deemed to have in any manner, violated the right of the respondent employees, under Article 21 of the Constitution. (Para 93)

The action of the State Government has already been held to be within its authority and based on due consideration. The assertion of the respondent employees, that the impugned Notification dated 2-12-2004, was unconstitutional, irrational, arbitrary or unreasonable has also been rejected. It is accordingly not possible to accept the challenge raised by the respondent employees that they had been deprived of their right to pensionary benefits, without the authority in law. Therefore, the claim raised on behalf of the respondent employees, by placing reliance on Article 300-A of the Constitution of India, is misconceived. (Para 94)

State of Jharkhand v. *Jitendra Kumar Srivastava*, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570; *U.P. Raghavendra Acharya* v. *State of Karnataka*, (2006) 9 SCC 630 : 2006 SCC (L&S) 1948, *referred to*