SUPREME COURT OF INDIA

OTIS Elevator Employees' Union S. Reg

Vs.

Union of India

(S. Rajendra Babu and K.G. Balakrishnan JJ.)

11.11.2003

JUDGMENT

RAJENDRA BABU, J.:

Retiral benefits such as provident fund, gratuity and pension schemes have been common in Government establishments. Such schemes were also introduced for the employees by certain enlightened employers. In addition to such benefits, the Industrial Disputes Act also makes statutory provisions of compensation on the termination of the service of an employee by way of retrenchment, on transfer or closure of an undertaking. Such social security measures have introduced an element of stability and protection in the midst of stress and strains of modern industrial life. As observed by the National Commission on Labour-Social Security, the concept of 'social security' is based on human dignity and social justice. The underlying idea being that, social security measures would allow a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards.

The provision of provident fund has been recognised as a term of condition of employment of industrial workmen. Legislative measures have also imposed the requirements of provident fund on the employers and employees statutorily. But in respect of industries to which the statutes do not apply, the provident fund schemes are being worked out by collective bargaining on certain principles.

Gratuity was treated in the early stages of industrial adjudication as a gift of payment gratuitously made by an employer to his employees at his pleasure and the workman had no right to claim it. But in course of time it came to be treated as a term of employment and the industrial adjudication started treating it as a reward paid to the workman for good, efficient, faithful and meritorious service rendered by them to the employer for a fairly substantial and long period intended to help workmen after retirement on superannuation, death, retirement, physical incapacity, disability or otherwise.

Likewise, pension is also a measure of security for old age, inability and death of the bread-winner. The provident fund is not an adequate cover for the contingencies of death and inability.

A scheme of pension is different in scope and content from a scheme for provident fund and a scheme for gratuity. A provident fund scheme postulates a certain amount of contribution by the employer and equivalent amount of contribution by the employee, payable on his retirement or death. A pension is a periodic payment of a stated sum. However, these schemes have common objectives to achieve efficiency, orderly and humane elimination from industry of superannuated or disabled employees.

Prior to 1952, there was no provision or obligation cast upon the employers or employees to organise any post service or retiral support. In the year 1952, the Employees' Provident Fund Act, 1952 was enacted, which has since been renamed as 'the Employees' Provident Funds & Miscellaneous Provisions Act, 1952' [hereinafter referred to as 'the Act'], which provides for a system of provident fund compulsorily on contributory basis by the employer and employees jointly to begin with in a modest manner and thereafter enlarged gradually over the period. The contribution was initially at the rate of Rs. 6.25% of wages, later raised to 8.33% in 1988, to 10% from May 1977 and subsequently to 12% from 1997. Accumulations in the said Provident Fund together with interest were payable to employee at retirement or to the nominee or legal heir of the employee in case of death. The employee could also partially withdraw from the Provident Fund during employment for specified purposes.

In the year 1971, family pension scheme was introduced by amending the Act, providing for payment of family pension only in the event of death of the member while in service and refund of contribution with nominal interest in lump sum to member on retirement or leaving the job. Contribution @ 2.33 per cent from provident fund and the Central Government contribution @ 1.16 per cent [total 3.5 per cent] contribution support for financing the scheme was introduced.

In the year 1976, a deposit linked insurance scheme was introduced providing for lump sum insurance benefit linked to provident fund accumulation additionally upon death of the member

while in service with a ceiling limit initially at Rs.10,000/- and raised from time to time to Rs.60,000/-. In this scheme, there was no contribution by the employees. Additional contribution of employer was to the extent of @ 0.5 per cent and by the Central Government to the extent of 0.25 per cent for financing the scheme. However, the Central Government contribution ceased with effect from November 1995. The validity of the this Scheme was challenged before this Court in Mafatlal Group Staff Association & Ors. vs. Regional Commissioner Provident Fund & Ors., 1994 (4) SCC 58, on the ground that retiral benefits under the Scheme were very meagre and did not match the contribution of employees to the Fund. However, the challenge was rejected.

In the year 1995, a comprehensive family pension scheme has been introduced replacing the family pension scheme of 1971. The pension scheme is funded by diversion of 8.33% employer's share in the Provident Fund and contribution of the Central Government was @ 1.6 per cent totally 9.5%. Assets and liabilities of ceased family pension fund was taken over by the new scheme and family pension fund as on 15.11.1995 forms the initial corpus of the pension fund and all accumulations to Provident Fund upto 15.11.1995 remain intact and likewise the employees' contribution to the Provident Fund remains untouched.

Similarly, balance of 1.67% employer's share of contribution to Provident Fund will continue to be part of the Fund. The salient features of the scheme are:

[1] pension payment for life to member on superannuation or retirement and in the event of becoming totally and permanently invalid during employment period;

[2] family pension payment upon death of the member irrespective of death occurring while in service, away from employment or after retirement as a pensioner;

[3] facility for commutation of pension upto 1/3rd by member and also return of capital on option formula basis.

Introduction of the scheme necessitated the amendment of the Act.

Sections 6A and 6B of the Act which were being inserted by Act 61 of 1971 with effect from 23.4.1971 stood completely modified by Act 25 of 1996 with effect from 16.11.1995. The said provisions and the consequent pension scheme introduced which came into force from 16.11.1995 are under challenge before us in these proceedings. Main challenge is to the Employees' Provident Funds & Miscellaneous Provisions (Amendment) Act, 1996 and the Employees' Pension Scheme,

1995, as unreasonable, arbitrary and discriminatory inasmuch as existing benefits from the Provident Fund have been depleted to a great extent by diversion of 8.33% employer's share and pension payable under the new scheme is far below the accruals in the pension fund. Such challenge was made in the High Courts of Madras, Kerala and Karnataka in a batch of cases.

Appeals against those said orders passed by the High Courts are filed. Several writ petitions filed before the High Courts are sought to be transferred to this Court by filing the Transfer Petitions some of which have been allowed. Some of the employers have also filed petitions or appeals before us as their applications for grant of exemption from the operation of the pension scheme have been rejected by the respective Regional Provident Fund Commissioners or by the concerned Governments.

The three High Courts are of the uniform view that the scheme framed by the Government impugned herein is reasonable and rejected the contentions to the contrary. The line of reasoning adopted by them is that there is no excessive delegation under the Act and it cannot also be said that there is lack of proper statutory guidelines in the statute by the legislature to the executive in the matter of formulation of the pension scheme. They adverted to the provisions contained in Section 6A of the Act, which indicate clearly the objectives and policy of the legislation and the broad basis and outlines as also the core and frame of the pension scheme delineated in Section 6A of the Act itself and Schedule III to the Act and, therefore, that contention deserves to be rejected. They further noticed that the obligation to lay the scheme, as soon as it is formulated, before each House of Parliament is a further safeguard in the matter of delegated legislation.

On the charge of arbitrariness and unreasonableness of the impugned provisions of the Act and the Scheme is on the ground that the pension scheme introduced is not profitable to the employees and subscribers and there is no proper equitable return to the subscriptions or contributions made to their account inasmuch as the return which employees received by way of interest on the contribution to the statutory provident fund was much higher than the return which the employees may receive under the impugned Pension Scheme. Apart from the denial of benefits arising out of the employers' share of contribution to the employees that the employees had no vested rights over the contributions made by the employers and this aspect was considered by this Court in Mafatlal Group Staff Association's case (supra) wherein it was observed that courts should also bear in mind that the Government have to keep in mind the cost of totality of the benefits that accrue under the Scheme and the employees cannot insist that they are entitled to the entire return to be calculated on the basis of the interest which accrues on the contributions to the provident fund. The questions concerning the volume, and extent of benefits arising to at old age by way of old age pension when the bread winner of the family dies and at what rate the same should be given are matters of policy over which the State and the Legislature should be allowed a liberal latitude to achieve the ultimate goal of effectively implementing the various social security and social insurance schemes. The fact that a particular pattern of these schemes prevailed at a particular point of time is not to be viewed as a matter of any vested right in any one for the continuance forever of such pattern so as to constitute an embargo for all times in future on the power of the State and the Legislature to introduce innovations and undertake/overhauling and reorientation of the existing schemes in the

best possible manner as the Legislature proposes by adjusting equities and rights to achieve the ultimate goal of social security and insurance in the form of old age pension and other benefits. The High Courts also noticed that the provident fund scheme when it was initially introduced was only a step towards the ultimate goal of providing a social welfare scheme to protect the workers and the members of their families not only during the period of employment but even after superannuation as also at times of calamities in the family resulting in the loss of bread winner. Thus they concluded that if the State as a matter of policy considered that the stage to have reached for implementation of a pension scheme which was ambitious goal towards social welfare security measure to be achieved, it is not for the courts to weigh the propriety of the scheme with microscopical examination and determine whether there is any distinction or discrimination to find loopholes to annihilate the same even at the threshold without allowing a trial to be made even to gain and reform further for better advantage of the experience in the process. The High Courts also rejected the contention that there is deprivation of right to property and benefits. The impugned scheme had visualised for family pension under the provisions of the impugned Act and The Employees Pension Fund Scheme 1995 and they provide a process by which the social need of securing a kind of insurance to the employees during old age and at other occasions such as loss of the bread winner of the family. It is only an alternative or modification of the scheme that has been introduced earlier and cannot be termed as depriving the rights of a party. The High Courts felt that it is not for the court to weigh in golden scales and to impose the view of the courts so that the scheme as prepared is not on a proper hypothesis and found that the contentions in this regard to be baseless.

On the question where certain exemptions have been claimed by certain managements had not been disposed of the same was directed to be disposed of expeditiously. We are broadly in agreement with the view of the High Courts.

The High Court of Kerala merely adverted to various averments in the matter and disposed of the matter. The Karnataka High Court basically followed the decision of the High Court of Madras in the case of Ashok Leyland Employees' Union vs. Union of India, in W.P.Nos. 17208/95 etc., and placed very heavy reliance on the decision of this Court in Mafatlal Group Staff Association's case [supra] and did not set out any fresh reasoning in the course of its order.

The challenge to the validity of the provisions in the Act are not in serious challenge and we accept the view of the High Courts in this regard.

Some of the learned counsel who appeared in the case insisted that this Court should hold an enquiry as to the correctness or otherwise of the rival contentions and particulars furnished by the parties to arrive at a conclusion whether there is a broad correspondence between what employees contribute and what they get in return. Placing reliance on Mafatlal Group Staff Association's case [supra], it is contended that it is the statutory duty of the respondents to ensure that both the contributions by the employees and the benefits flowing to them must be broadly commensurate and actuarial appraisal done on the part of the respondents not being satisfactory in the light of the

materials supplied by the petitioners or the appellants, we have been called upon to institute an enquiry into the matter and decide the same. The stand of the respondents in this regard is that the petitioners/appellants have picked and chosen paragraphs, observations and comments out of context without referring to the preceding and the concluding portions of the paragraph of the relevant observation of the Report which contain the conclusions and recommendations and which conclusions and recommendations are not adverse. Therefore, they submitted that these contentions should not be accepted.

The main contention advanced on behalf of the petitioners is on the basis of certain observations made by this Court in Mafatlal Group Staff Association's case (supra). In that case, this Court was concerned with the scope and effect of Employees' Family Pension Scheme, 1971 framed under Section 6A of the Act. The Staff Association contended before this Court that the manner in which the scheme was being operated was in effect prejudicial to the employees inasmuch as the amount collected from them was far in excess of the benefits occurring to them. The other side having contradicted this argument, this Court, without examining the correctness of the data on which the parties have placed reliance for their arguments, held that the conclusion should be drawn by taking an overall view of the scheme and not by taking separate instances. A direction was, however, given for ensuring a broad correspondence between contribution made by the employees and the benefits made available to the employees. This Court stated that in view of the conflicting versions put forth before the Court, it was noticed that the facts and figures and particulars furnished by the parties are in serious dispute. Each of the parties had furnished their own separate facts and figures and this Court adverted to the statement made in C.A.5159/93 in which it was stated as follows:

"The rates are so designed as to ensure that the employee gets back the amount of his own contribution with certain additional amount of interest.

The amount of contribution by the employer and the Central Government and interest of employees' contribution is retained and utilised to provide payment of other two benefits, namely, monthly family pension fund and life assurance benefit, to the widows or minor sons or unmarried daughters of those unfortunate members who die prematurely during employment. Thus the entire amount of contributions to the family pension fund is utilised for giving benefits to the member of the fund himself or to his destitute surviving family members in case of his death in one of the aforesaid four ways and no part of it is utilised for any other purpose.

Thereafter, this Court observed as follows:

"While it is not possible for us to embark upon an enquiry into the correctness or otherwise of the rival statements and particulars furnished by the parties, the fact remains which we should emphasise that there should be a broad correspondence between what the employees contribute and what they get in return. We have already expressed ourselves on this aspect while dealing with the

plea of discrimination, which we do not think it necessary to repeat here. The benefits to be provided to them under the several schemes should broadly approximate to and be commensurate with what they contribute. This is what clause 34-D of pension scheme provides, in particular sub-clause (2) thereof.

Though, worded as an enabling provision, it contains a salutary and an obligatory principle which the Government should always keep in view.

We agree, as already emphasized hereinbefore, that no conclusions should be drawn by taking any single instance and that the matter must be decided taking an overall view, yet the inescapable test remains, viz., there must be a broad correspondence between what the employees pay and what they and their families get ultimately. It cannot be that while the Fund accumulates, the employees and their families decay. The scheme is one conceived in their interest and for their benefit and it should prove so in practice. It is the statutory duty of the respondents to ensure that both the contributions by employees and the benefits flowing to them must be broadly commensurate. Since actuarial appraisal is done every three years, as provided by the statutory scheme itself, we are sure that the observations made herein will be kept in mind and necessary adjustments made." The whole case turns on the observations made by this Court in Mafatlal Group Staff Association's case (supra) and the effect thereof. We must not forget that the Act provides for framing of appropriate schemes and that power is given to the Government. This Court will not examine the Scheme framed by the Government as if it is an appeal, but if the return obtained by the families of the employees pursuant to such scheme is such that the contribution of the employees is substantially high and the return is negligible, then an inference can be drawn that such scheme results in arbitrariness. It is only in the context of testing the validity of the scheme with reference to Article 14, the observations by this Court have been made in Mafatlal Group Staff Association's case (supra) to which we have adverted to.

The Act is a social welfare legislation to "provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments." If the legislation is not patently arbitrary, this Court will not monitor implementation of such policy unless the same is discriminatory or arbitrary. Since the Scheme is for the welfare of employees, the same cannot be held to be violative of the Constitution.

Some learned counsel made detailed reference to different tables in the Scheme and submitted that if similar amount is invested in Term/Fixed Deposits the same would earn more. This approach cannot be accepted for the Scheme that is similar to what was considered and approved by this Court in Mafatlal Group Staff Association's case (supra) and hence does not require detailed examination. But what we have to bear in mind is unless this Court can definitely say that there is a great difference between the contributions made by the employees and the return to their families which will amount to a kind of deprivation. The monies meant for family pension scheme are diverted from the Provident Fund Scheme which represents equal contributions of employees and

employers, to which certain amount is added by the Government also because such a scheme subserves a social purpose. It cannot be stated that each and every employee must get back not only what he contributes and the contributions of the employees and the Government put together because the scheme provides for provision in relation to employees dying before retirement or before attaining the age of 60 years or in certain cases when an employee sustains injuries or is otherwise not employed. Hence, it is not possible to hold that the Scheme provides for exorbitant contribution with negligible return. The grievance that the Scheme is discriminatory as between the daughters and sons marrying before the age of 25 years and as between the widows and widowers in the event of their marriage or remaining unmarried has also been taken care of. The Respondents have taken steps to remove this anomalies and hence no further consideration is required on this aspect. Thus, the grievance of discrimination or arbitrariness on account of attracting the wrath of Article 14 cannot be sustained and hence, we cannot interfere with the Scheme framed by the Government.

The contention that the opinion survey report does not support the Government's claim for demand of pension by majority of employees' pension fund subscribers and that the members were happy with the provident fund scheme, may not be accurate. The Report states "finally, the members would also like to have the security of some protective umbrella to maintain the intrinsic value of their savings, which is otherwise eroded by the effects of inflation". It further states that:

"6.17.1 While there is a need to continue the provident fund scheme, a mandatory pension scheme should also be introduced due to, among other reasons, the emergence of nuclear families, increase in longevity and the use of the provident fund accumulations to meet periodic family responsibilities in favour of the younger generation. A pension scheme, most importantly, will lead to a degree of intergenerational transfer between those who toiled yesterday for what we have attained today and from those who benefit today, and will benefit tomorrow, from the investments made yesterday." The next contention that the actuarial liability for ceased Employees' Family Pension Scheme, 1971 has been assessed at Rs.1605 crores only by the Actuary upon value of the said fund on 15.11.1995, corpus accretion of the fund was Rs.8,419.54 crores for the year 1994-95 and the fund thus accumulated much more than the liability requirement and hence the benefit was not commensurate with the contribution quantum collected as also that the surplus has been taken over by the new fund depriving the outgoing members of the ceased scheme. The actuarial liability of Rs.1605 crores indicated in the valuation report as on 15.11.1995 represents the liability for payment of family pension only payable under the ceased scheme as clearly indicated in the report itself. Pension was payable under the old Family Pension Scheme of 1971 only in the event of member's death while in service vide para 28 of the ceased scheme, which numbered around 1.70 lakhs and the remaining surviving members on leaving the job upon retirement or otherwise were entitled for retirement-cum-withdrawal benefit payment in lumpsum as per provisions contained in para 32 of the ceased Employees' Family Pension Scheme, 1971.

The balance amount of corpus primarily covered the said retirement-cum- withdrawal benefit liability and not the surplus contribution and hence the allegation of deprivation is, therefore, factually incorrect. Upon introduction of Employees' Pension Scheme, 1995 the corpus and

membership of the ceased Employees' Family Pension Scheme, 1971 have been carried over to the new pension scheme of 1995 with benefit of pensionary entitlement to the said members against their membership in the ceased Employees' Family Pension Scheme, 1971 period lieu of retirement-cum-withdrawal benefit vide provisions contained in para 12(3)(b) of the new pension scheme of 1995. Thus corpus along with its liability has been merged with the pension fund. The amount of actual surplus that was noticed by the Actuaries as indicated in the analysis contained in the said report has already been allowed as additional pension relief to the respective Family Pension Scheme pensioners.

The next contention urged is that analysis of member movement indicated in the value report suggests very small percentage of persons deriving the benefit of pension on superannuation in view of cases of exit on retirement prior to superannuation age or voluntary retirement at younger age of cessation. The scheme contemplates payment of pension benefit to the members as under:

(i) superannuation pension on attaining the age of 58 years;

(ii) retirement pension on leaving the job before attaining the age of 58 years but not before 50 years of age;

(iii) invalidity pension without any eligibility requirement and age bar.

In addition to the above, the member on leaving the service before becoming entitled for pension payment is entitled for following benefits vide para 14 of the scheme:

(i) Withdrawal benefit as per Table D if the member leaves the service on attaining the age of 58 years without putting in 10 years eligible service.

(ii) In case of leaving the service before attaining the age of 58 years without putting in eligible period of service entitling pension, the member has the option of either obtaining the scheme certificate and retaining the membership for adding future entitlement or avail the withdrawal benefit and quit the membership of the scheme.

In the event member obtains a scheme certificate he retains his membership and remains covered for pensionary benefit to the family in case of his death. As such, every member and all family

members dependent upon the member are entitled for either pensionary or withdrawal benefit and no one is left with no benefit at all as alleged.

It was next contended that the Panel of Actuaries was not allowed to do the revaluation of the Fund. Paragraph 1.2.4 of the report reads as under:

"1.2.4 During the discussions leading to appointment of the panel and in the first meeting of the panel held on 28.4.1998 Shri A.N.Roy, Addl. CPFC (Pension) had clarified that the panel was not required to carry out re-valuation and panel's opinion was wanted based on and in respect of the FVR. However, it was agreed that relevant approximate calculations and analysis of supplementary data will be needed so as to form basis of panel's conclusions. All such data/information was agreed to be supplied and for the sake of convenience it was arranged that all the work, analysis of data, secretarial etc. will be carried out in the office of Shri Liyaquat Khan. The work of the panel and conclusions arrived at are accordingly based on analysis of necessary data and study of relevant material duly provided by the office of Shri A.N.Roy, Addl. CPFC (Pension) and EPFO Actuary Shri Bhudev Chatterjee." If the aforesaid paragraph is read in totality, the criticism is belied.

On the question of outgo for pension under the 1971 Scheme need be paid from public account accretions and not from the current receipts depleting the pension fund, it was submitted that the action on the recommendations has already been initiated by EPFO. On reference made by the Ministry of Labour the matter is under actual consideration of the Ministry of Finance.

The petitioners/appellants next contended that there has been inconsistency in membership position indicated from annual report for 1996-97 and it was pointed out that in the Valuation Report:

(i) inadequate data was made available and that representative character of sample data could not be verified;

(ii) crediting of Government contribution to pension fund in public account is notional than actual; and (iii) input from EPFO actuary on exemption applications be encouraged in processing the exemption cases and disposal accelerated.

As rightly clarified by the respondents, the figure of 1,87,24,000 reported for the period ending 31.3.1995 as per Annual Report is the total membership of the provident fund and in respect of ceased Employees' Family Pension Scheme the membership as on 15.11.1995 is 1,63,81,000 and the balance represents the number of provident fund members who did not opt for and joined the old

family pension scheme of 1971. There is thus no inconsistency as regards the membership position as alleged by the petitioners/appellants.

It is clear that the report while referring to certain difficulties in the working of the scheme during initial growing period has noticed operational limitations.

However, the panel of actuaries on being satisfied endorsed the valuation result and the Government announced a raise of 4% in the pension payment. At any rate these difficulties do not constitute a legal challenge to the validity of the scheme.

The Government makes its contribution on an annual basis by crediting its contribution to the public account as per statutory provision. Deposit in public account is an investment and earns interest at the rate decided by the Government at the relevant time. It is, therefore, incorrect to say that the Government contribution is notional only.

It was submitted that investment in PSU bonds and State Government securities of States with poor fiscal States like those of Bihar and Uttar Pradesh raises doubt about its soundness. However, inasmuch as the relevant investments are done as per statutory provision, there is no substance in this contention.

On the question that the actuary has assumed higher rate of interest earning in developing the scheme and the interest rates are falling substantially endangering sustainability of the fund position and that the Actuary has already cautioned as to the possible reduction in pension relief quantum in future years due to reduction in interest earning. Inasmuch as vagaries in interest rate was considered by the Actuary at the time of formulation of the Scheme and necessary cushion provided to take care of such contingencies, the matter need not be examined further. The scheme is successful and solvent which is apparent from successive valuation reports and the fact that in every consecutive year a raise has been given and is being given.

SLP (C) No. 22316/1997, 962/1998, 204-205/1999 and 13161/1998 Employees' Writ Petitions challenging the validity of Employees Provident Fund and Miscellaneous Provisions (Amendment) Act 1996 and Employees' Pensions Scheme, 1995 were dismissed by the High Court and their claims for exemption from the Scheme were also rejected. The High Court also observed that the dismissal of the Writ Petitions shall not stand in the way of the managements concerned approaching the competent authorities for according exemption from the scheme by satisfying such authorities with particulars relating to their own scheme and substantiating that such benefits on the whole are not less favourable to the employees than the benefit provided under the Act or the Family Pension Scheme relating to employees in any other similar establishment.

We uphold the view taken by the High Courts and dismiss these petitions.

SLP (c) 11823-11825/1997 This special leave petition has been filed by the Union of India. Writ Petition filed by the Employees challenging the validity of Employees' Provident Fund and Miscellaneous Provisions (Amendment) Act 1996 and Employees' Pension Scheme, 1995 are pending in the Calcutta High Court. The Division Bench of the High Court directed to maintain status quo regarding implementation of the Employees Pension Scheme limited to the establishments who are respondents before the High Court in the Writ Petitions.

This petition is against interim order. In the light of the orders made by us above, it is unnecessary to give any particular direction since this petition has now become infructuous and shall stand disposed of. The High Court of Calcutta is directed to disposed of the same in accordance with the orders made by us.

W.P. (C) No. 612/97, 570/98, 56/99, 152/99, 266/99, 428/99, 490/99, 378/2000, T.C. No. 15/98, 4/99, 11-12/99, 514/98, 29/98, 31/98, 32/98, 33/98, 56/98, 61/98, 51/99, 57/99 (1) Validity of the Employees' Provident Fund and Miscellaneous Provisions (Amendment) Act 1996 and Employees' Pension Scheme, 1995 has been challenged by the employees/unions.

In the light of the orders made by us above, the validity of the schemes is upheld.

(2) Excepting in the establishment concerned in T.C. 15/98, all other concerned establishments have their own Pension Schemes.

Writ Petition No. 490/99 is filed by the management of ONGC Limited. The management adopted its own scheme called "Post Retirement and Death in Service Benefit Scheme" and sought exemption from Employees' Pension Scheme, 1995. The exemption has been rejected by the Government. The management has prayed for exemption from operation of Employees' Pension Scheme, 1995.

If the establishments which have their own Pension Schemes apply to the concerned authorities, the concerned authorities shall examine the same in the light of what we have stated above.

These writ petitions and transferred cases are disposed of accordingly.

W.P. (C) 544/98 and 651/98 Writ Petition 544/98 has been filed by the management of Centre for Women Development Studies and Writ Petition 651/98 has been filed by the management of Machine Tools (India) Ltd. wherein validity of the Employees' Provident Fund and Miscellaneous Provisions (Amendment) Act 1996 and Employees' Pension Scheme, 1995 has been challenged.

In view of the orders made by us above, the validity of the scheme is upheld. These writ petitions are dismissed accordingly.

W.P.(C) Nos. 372/98, 379/98, 412/93, 591/98, 690/98, 486/99, 354/99, T.C. Nos.10/98, 13/98, 14/98, 16/98, 17/98, 18/98, 19/98, 20/98, 26/98, 27/98, 28/98, 34/98, 35/98, 36/98, 39/98, 41/98, 42/98, 43/98, 44/98, 45/98, 46/98, 47/98, 48/98, 49/98, 50/98, 51/98, 52/98,53/98, 54/98, 57/98, 58/98, 59/98, 60/98, 62/98, 2/99, 3/99, 5/99, 6/99, 7/99, 14/99, 50/99, 52/99, 53/99, 54/99, 55/99, 58/99, 21/2000, 22/2000, T.P.(C) Nos. 575-584/98, 759/98, 775/98, 900/98, 903/98, 359/99 Validity of the Employees' Provident Fund and Miscellaneous Provisions (Amendment) Act, 1996 and Employees' Pension Scheme, 1995 has been challenged by the Employees/Unions.

In view of the orders made by us above, the validity of the scheme is upheld. These writ petitions and transferred cases are dismissed accordingly.

Rest of the Transfer Petitions shall stand dismissed.

In some of the petitions and transferred cases, the question raised, in addition to the validity of the schemes which we have now upheld, is as regards the exemption claimed by them on the basis that the schemes framed in the respective establishments are better than the schemes available under the Acts.

We have perused the orders made by the concerned authorities and have found that they have not taken into consideration the necessary facts which require to be considered in a matter of this nature. Therefore, we set aside all those orders whether affirmed by the High Courts or not in writ proceedings and remit the same to the concerned authorities for fresh disposal in accordance with law after giving due opportunity to all parties concerned.

These cases and petitions shall stand dismissed, except those in which claim is made with respect to exemption and they are allowed to the extent indicated herein.