IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE / ORIGINAL / INHERENT JURISDICTION
UDAY UMESH LALIT; CJI. ANIRUDDHA BOSE; J., SUDHANSHU DHULIA; J.
November 04, 2022

THE EMPLOYEES PROVIDENT FUND ORGANISATION & ANR. ETC.
versus
SUNIL KUMAR B. & ORS. ETC.

Employees Provident Fund Act - Employees Pension Scheme - Supreme Court holds Employees Pension (Amendment) Scheme 2014 as legal and valid- Extends cut-off date to exercise option by four months- Holds condition for additional contribution by employees as ultra vires the EPF Act.

Constitution of India, 1950; Article 14 - Reasonable Classification - It is well within the power and authority of the statutory authorities to reasonably classify different sets of employees and categorise them for the nature of benefits they might get from an existing scheme-classification of the employees made by the authorities on the basis of the salary drawn in the 2014 amendment meets the test of reasonable classification contemplated in Article 14 of the Constitution of India. *(Para 30, 32)*

Employees Pension Amendment Scheme - The amendment was made in exercise of power otherwise vested in the authority making such amendment and the amendments were made on the basis of certain relevant materials and not whimsically. *(Para 32)*

Judicial Review - Limited scope of judicial review over policy matters of executive- we do not think in exercise of judicial power we can require the State to operate a pension scheme in a particular manner. These factors would be for the policy makers to examine and prescribe. We cannot issue directions on the Central Government to work out statutory scheme in a particular fashion. *(Para 32)*

Civil Appeal Nos.....of 2022 (Arising out of the Special Leave Petition (C) Nos. 8658•8659 of 2019) with Civil Appeal Nos…….. of 2022 (Arising out of Special Leave Petition (C) Nos. 16721•16722 of 2019) Civil Appeal No…….. of 2022 (Arising out of Special Leave Petition (C) No. 3289 of 2021) Civil Appeal No…..... of 2022 (Arising out of Special Leave Petition (C) No. 3287 of 2021) Civil Appeal No…….. of 2022 (Arising out of Special Leave Petition (C) No. 1701 of 2021) Civil Appeal No…….. of 2022 (Arising out of Special Leave Petition (C) No. 8547 of 2021) Civil Appeal Nos..... of 2022 (Arising out of Special Leave Petition (C) Nos.15063•15064 of 2022 @ Diary No.46219 of 2019) Civil Appeal No…….. of 2022 (Arising out of Special Leave Petition (C) No. 1366 of 2021) Civil Appeal No…..... of 2022 (Arising out of Special Leave Petition (C) No. 2465 of 2021) Civil Appeal No…..... of 2022 (Arising out of Special Leave Petition (C) No. 3290 of 2021) Civil Appeal No…….. of 2022 (Arising out of Special Leave Petition (C) No. 1738 of 2021) Writ Petition (C) No.318 of 2022, Writ Petition (C) No.1218 of 2020, Writ Petition (C) No.1332 of 2020, Writ Petition (C) No.1312 of 2019, Writ Petition (C) No.875 of 2019, Writ Petition (C) No.832 of 2019, Writ Petition (C) No.601 of 2019, Writ Petition (C) No.500 of 2019, Writ Petition (C) No.512 of 2019, Writ Petition (C) No.466 of 2019, Writ Petition (C) No.86 of 2021, Writ Petition (C) No.1356 of 2021, Writ Petition (C) No.1379 of 2021, Writ Petition (C) No.767 of 2021, Writ Petition (C) No.477 of 2021, Writ Petition (C) No.414 of 2021, Writ Petition (C) No.1134 of 2018, Writ Petition (C) No.390 of 2019, Writ Petition (C) No.511 of 2019, Writ Petition (C) No.1459 of 2020, Writ Petition (C) No.349 of 2019, Writ Petition (C) No.372 of 2018, Writ Petition (C) No.360 of 2018, Writ Petition (C) No.233 of 2018, Writ Petition (C) No.141 of 2018, Writ Petition (C) No.118 of 2018, Writ Petition (C) No.250 of 2018, Writ Petition (C) No.406 of 2018, Writ Petition (C) No.368 of 2018, Writ Petition (C) No.393 of 2018, Writ Petition (C) No.395 of 2018, Writ Petition (C) No.371 of 2018, Writ Petition (C) No.374 of 2018, Writ Petition (C) No.385 of 2018, Writ Petition (C) No.367 of 2018, Writ Petition (C) No.369 of 2018, Writ Petition (C) No.411 of 2018, Writ Petition (C) No.466 of 2018, Writ Petition (C) No.269 of 2019, Writ Petition (C) No.327 of 2019, Writ Petition (C) No.352 of 2019, Writ Petition (C) No.69 of 2018, Writ Petition (C) No.804 of 2018, Writ Petition (C) No.594 of 2018, Writ Petition (C) No.884 of 2018, Writ Petition (C) No.778 of 2018, Writ Petition (C) No.874 of 2018, Writ Petition (C) No.1149 of 2018, Writ Petition (C) No.1167 of 2018, Writ Petition (C) No.1430 of 2018, Writ Petition (C) No.1433 of 2018, Writ Petition (C) No.1428 of 2018, Writ Petition (C) No.380 of 2018, Writ Petition (C) No.498 of 2022, Contempt Petition (C) Nos.19171918 of 2018 in Civil Appeal Nos.10013•10014 of 2016 and Contempt Petition (C) Nos.619•620 of 2019 in Civil Appeal Nos.10013•10014 of 2016

(Arising out of impugned final judgment and orders dated 12-10-2018 in WPC No. 602/2015 & 12-10-2018 in WPC No. 13120/2015 passed by the High Court of Kerala at Ernakulam)

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JUDGMENT

ANIRUDDHA BOSE, J.

Leave granted.

2. In this judgment, we shall deal with the legality of certain amendments and modifications made by the Central Government to the Employees' Pension Scheme, 1995 ("1995 Scheme"). Such scheme has been made in pursuance of, inter•alia, Section 6A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act"). Such changes, inter•alia, are sought be effected in paragraphs 3, 6, 11, 12 and 14 of the 1995 scheme. The Act originally did not provide for any pension scheme and Section 6A was introduced to the said Act by way of an amendment made in 1995. The amendment of 1995 contemplated formulation of a scheme for employees' pension and the pension fund was to comprise of deposit of 8.33 per cent of the employers' contribution made towards provident fund corpus as per the prevailing Statue. Paragraph 11 of the scheme dealt with determination of pensionable salary. At that point of time, maximum pensionable salary was Rs.5000/• and this sum had been enhanced subsequently to Rs.6500/•. Pensionable salary was raised to Rs.15000/• by a notification dated 22nd August 2014 [numbered G.S.R. 609 (E)], which was to be effective from 1st September 2014. This notification brought certain other modifications in the scheme mainly restricting its coverage and we shall discuss these modifications later in this judgment.

3. In the appeals before us, judgments of the High Courts of Kerala, Rajasthan and Delhi are assailed. In the case of **P. Sasikumar & Others vs. Union of India (UOI) Represented by the Secretary to Govt. of India Ministry of Labour & Department of Employment and Others** [in Writ Petition (C) No. 13120 of 2015], a Division Bench of the Kerala High Court in its judgment delivered on 12th October 2018 set aside the Employees' Pension Amendment (Scheme), 2014 conceived in G.S.R. 609 (E). The Delhi High Court in its judgment delivered on 22nd May 2019 in the case of **Bhartiya Khadya Nigam Karamchari Sangh and Anr. vs. Union of India and Ors.** [in Writ Petition (C) No. 5678 of 2018] followed the view expressed by the Kerala High Court and quashed a circular issued by the provident fund authorities on 31st May 2017 precluding exempted establishments from the benefits of higher pension. In a decision delivered on 28th August 2019 in the case of **Union of India and Others vs. Jale Singh and Others** [in D.B. Special Appeal Writ No. 436 of 2019] a Division Bench of the Rajasthan High Court also expressed the same opinion. Appeals arising out of SLP (C) No. 3289 of 2021, SLP (C) No. 3290 of 2021, SLP (C) No. 2465 of 2021 and SLP (C) No. 3287 of 2021 are directed against the aforesaid judgment of the Rajasthan High Court and a subsequent decision of a Bench of equal strength delivered on 24th September 2019 in the same line. The appeals originating from SLP (C) Nos. 15063•15064 of 2022 are against the judgment of the Delhi High Court delivered on 22nd May 2019, whereas in appeals having their roots in SLP (C) No. 1366 of 2021, SLP (C) No. 1738 of 2021, judgments of the Delhi High Court delivered following the case of **Bhartiya Khadya Nigam Karamchari Sangh** (supra) have been assailed. In another judgment delivered by the same Bench of the Kerala High Court in the case of **Sunil Kumar and Ors. vs. Union of India & Ors.** [in Writ Petition (C) No. 602 of 2015] on the same day, i.e. 12th October 2018, the aforesaid notification of 22nd August 2014 was invalidated. That judgment is under challenge in the appeals in connection with SLP (C) Nos. 16721•16722 of 2019. In a contempt action brought before the Kerala High Court by aspiring beneficiaries of the pension scheme for implementation of the directions issued in the judgment dated 12th October 2018, certain directions have been issued by the Kerala High Court. The judgment to that effect delivered on 6th November 2020 is impugned in SLP (C) No. 8547 of 2021.

4. Fifty•four writ petitions have been filed by the employees themselves or on their behalf under Article 32 of the Constitution of India seeking invalidation of the notification

dated 22nd August 2014. The writ petitioners are members of both exempted and unexempted establishments. We shall address these writ petitions as well in this judgment, as they involve the same questions of law. We find that notices are yet to be issued in W.P. (C) No. 1356 of 2021, W.P. (C) No. 1379 of 2021, W.P. (C) No. 767 of 2021 and W.P. (C) No. 477 of 2021 but these petitions also involve the same questions of law and the main respondents have participated in addressing us on these points. As such, these writ petitions shall also be dealt with in this judgment. We have also heard the intervenors, most of whom support the employees. In addition, there are contempt petitions (Contempt Petition (C) Nos. 1917•1918 of 2018 and Contempt Petition (C) No. 619•620 of 2019) in which implementation of a judgment of this Court in the case of **R.C. Gupta and Others vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and Other** [(2018) 14 SCC 809] delivered on 4th October 2016 has been asked for. This judgment dealt with the question of entitlement of members of the pension scheme, whose pensionable salary exceeded Rs.6500/• per month to exercise option in terms of proviso to paragraph 11 (3) of the scheme. In this judgment, a Division Bench of this Court repelled the contention of the provident fund authorities that the said proviso contemplated exercise of option within a specified time. The said proviso has been omitted by the amendment of 2014. Rs.6500/• was the maximum pensionable salary prior to 1st September 2014. We shall discuss this judgment in greater detail later.

5. With effect from 16th March 1996, the proviso was added to paragraph 11(3) of the scheme giving an option to the employer and employee for contribution on salary exceeding the aforesaid ceiling of Rs.6500/•, (which was Rs.5000/• per month prior to 8th October 2001) to retain the right to pension as per the scheme. 8.33 per cent of employer's contribution of salary of an employee out of the deductible amount towards provident fund had to be remitted to the pension fund. Stand of the authorities was that there were certain restrictions as regards the time for exercising such option. A set of employees had approached the provident fund authorities much beyond such perceived specified date, mostly on the eve of their retirement, seeking to be included in the pension scheme. The point urged by them was that the amendment of 1996 was not within their knowledge, the same not having been widely publicised. The provident fund authorities had rejected their plea. One set of employees successfully brought action before a Single Judge of the High Court of Himachal Pradesh. Their right to exercise such option beyond the time of their salary exceeding the pensionable limit was in question. According to the authorities, that was the cut•off limit. The Division Bench of the High Court, however, accepted the stand of the provident fund authorities holding that paragraph 11(3) of the pension scheme, as it prevailed then, stipulated a cut•off limit. The matter ultimately came to this Court and in the case of **R.C. Gupta** (supra), a Division Bench of this Court accepted the employees' stand and, inter•alia, held:•

*"**7.** Reading the proviso, we find that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut•off dates to determine the eligibility of the employer•employee to indicate their option under the proviso to Clause 11(3) of the Pension Scheme. A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court [Union of India v. A. Majeed Kunju, Writ Appeal No. 1135 of 2012, order dated 5•3•2013 (Ker)] , wherein Special Leave Petition (C) No. 7074 of 2014 filed by the Regional Provident Fund Commissioner was rejected by this Court by order dated 31•3•2016 [Regl. Provident Fund Commr. v. A. Majeed Kunju, 2016 SCC OnLine SC 1744, wherein it was directed: "SLPs (C) Nos. 7074•76, 7107•108, 7224 of 2014 and 697 of 2016 Heard the learned counsel for the parties and perused the relevant material. We do not find any legal*

and valid ground for interference. The special leave petitions are dismissed SLPs (C) Nos. 19954 and 33032•33 of 2015 List these special leave petitions on 26•4•2016. As prayed for, liberty is granted to file additional documents."]. A beneficial scheme, in our considered view, ought not to be allowed to be defeated by reference to a cut•off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs 5000 or Rs 6500 per month, as the case may be.

8. xxx xxx xxx

9. *We do not see how exercise of option under Para 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under Para 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under Para 26 of the Provident Scheme is inevitable. Exercise of the option under Para 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.*

10. *The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the LPA before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the employees concerned may have taken or withdrawn from their provident fund account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees."*

6. Further modification to the scheme, as we have already indicated, came on 22nd August 2014 to be effective from 1st September 2014. Paragraph 11 of the scheme, before such modification by G.S.R. No. 609 (E) of 22nd August 2014 was introduced, and subsequent to the said G.S.R. becoming operational, read:•

Before Modification	***After Modification***
11.Determination of Pensionable Salary. • (1) The pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during contributory period of service in the span of 12 months preceding the date of exit from the membership of the Employees' Pension Fund. Provided that if a member was not in receipt of full pay during the period of twelve months preceding the day he ceased to be the member of the Pension Fund, the average of previous 12 months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension. *(2) If during the said spanof 12 months there are noncontributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the 12 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.*	*11. Determination of Pensionable Salary. • (1) The pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on prorata ·basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month, and for the period thereafter at the maximum of fifteen thousand rupees per month:* *Provided that if a member was not in receipt of full pay during the period of sixty months preceding the day he ceased to be the member of the Pension Fund, the average of previous sixty months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension.* *(2) If during the said spanof 60 months there are noncontributory periods of service including*

(3) The maximum pensionable salary shall be limited to Rupees Six thousand five hundred per month. *Provided that if at the option of the employer and employee, contribution paid on salary exceeding Rupees six thousand and five hundred per month from the date of commencement of this Scheme or from the date salary exceeds Rupees Six thousand five hundred, whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.*	*cases where the member has drawn salary for a part of the month, the total wages during the 60 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.* *(3) The maximum pensionable salary shall be limited to fifteen thousand rupees per month.* *The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary:* *Provided that the aforesaid members have to contribute at the rate of 1.16 per cent. on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder: Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014: Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:* *Provided also if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as*

7. The legality of the modified scheme was questioned in different writ petitions in different High Courts. The Bench decisions of the High Courts of Kerala, Rajasthan and Delhi went in favour of the employees. The appeals which we shall be dealing with in this judgment arise out of the decisions of the said High Courts. We shall mainly be addressing the judgment of the Division Bench of the Kerala High Court delivered on 12th October 2018 [in Writ Petition (C) No. 13120 of 2015] which sustained the employees' contentions and invalidated the notification of 22nd August 2014. The Division Benches of the Rajasthan and Delhi High Court followed the ratio of the decision in the case of **R. C. Gupta** (supra) broadly on the same reasoning forming foundation of the judgment of the Kerala High Court. The petitions for special leave to appeal filed by the Employees Provident Fund Organization ("EPFO") [SLP (Civil) Nos. 8658•59 of 2019] assailing the judgment of the Division Bench of the Kerala High Court was initially dismissed by a Coordinate Bench of this Court on 1st April 2019. In SLP (C) Nos. 16721•16722 of 2019, the Union of India also appealed against the same judgment. A Review Petition was filed by the EPFO in respect of the order dated 1st April 2019 dismissing their Special Leave

Petition. On 12th July 2019, this Court directed listing of the SLPs filed by the Union of India along with the Review Petitions in open Court. On 29th January 2021, this Court allowed the Review Petitions and the order of 1st April 2019 was recalled. A point has been taken on behalf of the employees that the Employees Provident Fund Organisation has no locus standi to maintain these appeals. This objection is technical in nature and having regard to the fact that we are also hearing writ petitions challenging the legality of the 2014 amendments, we do not consider it necessary to dilate on this issue. Moreover, in the appeals arising out of SLP (C) Nos.16721•16722 of 2019, the Union of India is the appellant. Since the amendment made by the Central Government has been quashed, the locus of Union of India remains undisputed.

8. The pension scheme was conceived by way of introduction of Section 6A to the 1952 Act, under Act 25 of 1996, with effect from 16th November 1995. The said Section stipulates: •

"6A. Employees' Pension Scheme —

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of

establishments to which this Act applies; and (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums from the employer's contribution under section 6, not exceeding eight and one•third per cent, of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

(b) such sums as are payable by the employers of exempted establishments under sub•section (6) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any ofits provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub•section (1),shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.]"

9. Under the same Amendment Act, Sections 2(kA) and 2(kB) were introduced to the Act. These provisions specify: •

"*2. **Definitions.—In this Act, unless the context otherwise requires,—***

[(kA) "Pension Fund" means the Employees' Pension

Fund established under sub•section (2) of section 6A;]

[(kB) "Pension Scheme" means the Employees' Pension Scheme framed under sub•section (1) of section 6A;]"

10. The pension scheme was framed in terms of Section 6A of the Act and brought into operation by G.S.R. 748(E) dated 16th November 1995. The crucial paragraph, so far as these proceedings are concerned, is paragraph 11 thereof. We have already quoted this paragraph. The quantum of pension is to be fixed as per the formula specified in paragraph 12 of the scheme, which contemplates, interalia, superannuation pension for a member of the Scheme after service of 10 years and retiring on attaining the age of 58 years. Subclause (2) of paragraph 12 as sought to be amended by the 2014 amendment stipulates the methodology of computation of monthly member's pension. Sub•clauses (1) and (2) of this paragraph are reproduced below:•

"12. Monthly Member's Pension. • (1) A member shall be entitled to : •

(a) superannuation pension if he has rendered eligibleservice of 10 years or more and retires on attaining the age of 58 years;

(b) early pension, if he has rendered eligible service of10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

12 (2). In the case of a new entrant, the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely:•

Monthly member's pension= Pensionable Salary x Pensionable Service

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Provided that the members' monthly pension shall be determined on a pro•rata basis for the pensionable service up to the 1st day of September, 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month."

11. The initial entry into the pension scheme is contemplated in paragraph 26(6) of Employees Provident Funds Scheme, 1952 read with paragraph 6 of the pension scheme. Paragraph 6 of the pension scheme as it stood prior to the amendment of 22nd August 2014 and thereafter reads:•

Before 22nd August 2014	**After 22nd August 2014**
"6. Membership of the Employees' Pension Scheme. Subject to sub•paragraph (3) of paragraph 1, the Scheme shall apply to every employee –	*"6. Membership of the Employees' Pension Scheme. • Subject to sub•paragraph (3) of paragraph 1, the Scheme shall apply to every employee –*

(a) who on or after the 16thNovember, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952, or of the Provident Funds of the factories and other establishments exempted by the appropriate Government under section 17 of the Act, or in whose case exemption has been granted under paragraph 27 or 27•A of the Employees' Provident Fund Scheme, 1952 from the date of such membership; *(b) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995;* *(c) who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under Paragraph 7;"*	*(a) who on or after the 16thNovember, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952, or of the Provident Funds of the factories and other establishments exempted by the appropriate Government under section 17 of the Act, or in whose case exemption has been granted under paragraph 27 or 27•A of the Employees' Provident Fund Scheme, 1952 and whose pay on such date is less than or equal to fifteen thousand rupees, from the date of such membership; who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995;* *(c) who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under Paragraph 7;* *(d) who has been a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted by the appropriate Government under section 17 of the Act or in whose case exemption has been granted under Paragraph 27 or 27 A of the Employees' Provident Fund Scheme, 1952, on 15th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7. Explanation. An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier."*

12. Section 7 of the 1952 Act empowers the Central Government to amend the said scheme both prospectively and retrospectively, subject to certain procedural compliances, as outlined in the said provision. This provision specifies:•

"***7. Modification of scheme**.—*

(1) The Central Government may, by notification in the Official Gazette, add to [amend or vary, either prospectively or retrospectively, the Scheme, the [Pension] Scheme or the Insurance Scheme, as the case may be].

[(2) Every notification issued under sub•section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.]"

13. The judgment of this Court in **R.C. Gupta** (supra) was delivered examining the provisions of paragraph 11 of the scheme as it stood prior to issue of the 2014 notification. The changes brought by the amended provision altered the methodology of computing pensionable salary, which ultimately would have an impact on the quantum of monthly pension. Instead of taking twelve months of average pay in the year preceding the date of

a member's exit from the pension fund, computation was contemplated on the basis of average monthly pay drawn during the contributory period of service in the span of 60 months preceding the date of exit.

14. In the post amendment context, the maximum pensionable salary was to be kept to Rs.15000/• per month, raising the earlier ceiling of Rs.6500/• per month. It was also provided that an existing member who, at the option of the employer and employee as on 1st September 2014, had been contributing on a salary exceeding Rs.6500/• per month could exercise fresh option jointly with the employer to continue to remain in the fund even if the salary went beyond Rs.15000/• per month and the pensionable salary for the existing member exercising such an option was to be based on the higher salary.

15. As per paragraph 3(ii) of the pension scheme, the Central Government was to contribute to the fund at the rate of 1.16 per cent of the pay of the members. Employees within the changed pension regime drawing more than Rs.15000/• per month have to also contribute at the rate of 1.16 per cent on salary exceeding Rs.15000/• as additional contribution each month under the amended provisions. Further, fresh option was to be exercised by the member within a period of six months from the 1st day of September 2014, which was extendable up to about 6 months on sufficient cause shown by the member.

16. Under the post•2014 regime, the fourth proviso to sub•clause (4) of paragraph 11 specifies that if no option is exercised by a member within the aforesaid period, it would be deemed that the concerned member has not opted for contribution over the wage ceiling. In such a case, the contributions to the pension fund made beyond the wage limit in respect of such a member is to be diverted to the provident fund account of the member along with interest, as declared under the provident fund scheme from time to time.

17. It was held in the case of **R. C. Gupta** (supra), dealing with pre2014 position of the scheme that the dates or time•limit specified in clause 11(3) of the pension scheme were not cut•off dates. The said time•limit determined the eligibility of the employer and employee to exercise their option under the proviso to the said paragraph. It was also observed in this judgment that a beneficial scheme ought not to be allowed to be defeated by refence to a cut•off date in a situation where the employer was not following the ceiling limit of Rs.5000/• or Rs.6500/• and had deposited 12 per cent of the actual salary.

18. Main submission of the employees in support of the judgments under appeal has been that there was no additional burden imposed on the provident fund authorities or the Central Government if the earlier system continued and no cut•off date was factored in, as entry into the hybrid regime of provident fund plus pension beyond the ceiling limit only entailed switching of funds. The authorities had to remit the 8.33 per cent from the employer's share of the contribution lying in the provident fund corpus to the corpus of the pension fund. It has been argued before us that the pattern of investment that was permissible under both the schemes were broadly the same and hence interest generated by such investment ought to correspond to in each situation.

19. The Division Bench of the Kerala High Court examined the impact of the amendment to the pension scheme in respect of the following classes of pensioners or potential pensioners: •

"(i) Employees who had exercised option under the proviso to para 11 (3) of the 1995 Scheme and continued to be in service as on 1st September 2014.

(ii) Employees who had not exercised their option under the proviso to paragraph 11(3) of the 1995 Scheme and were continuing in service as on 1st September 2014.

(iii) Employees who had retired prior to 1st September 2014 without exercising an option under paragraph 11(3) of the 1995 Act scheme.

(iv) Employees who had retired prior to 1st September 2014 after exercising of an option under the paragraph 11(3) of the 1995 Scheme."

20. It was held by the Kerala High Court, following the judgment of this Court in the case of **R.C. Gupta** (supra), that paragraph 11 of the pension scheme did not stipulate a cut•off date at all. Any such stipulation, in the opinion of the High Court, would have the effect of defeating the purpose of a beneficial scheme. After the relevant date, that is 1st September 2014, on the question of capping the salary to Rs.15000/• per month for continuing in the pension scheme, it was, inter•alia, held by the High Court:•

"33. As per the amendments, the maximum pensionable salary has been fixed at Rs.15,000/• thereby disentitling the persons who have contributed on the basis of their actual salaries to any benefits on the basis of the excess contributions made by them. The said provision is arbitrary and cannot be sustained. The employees, who have been making contributions on the basis of their actual salaries after submitting a joint option with their employers as required by the Pension Scheme, are denied the benefits of their contributions by the said amendments without any justification. Apart from the above, to cap the salary at Rs. 15,000/• for quantifying pension is absolutely unrealistic. A monthly salary of Rs.15,000/works out only to about Rs.500/• per day. It is common knowledge that, even a manual labourer is paid more than the said amounts as daily wages. Therefore, to limit the maximum salary at Rs.15,000/• for pension would deprive most of the employees of a decent pension in their old age. Since the pension scheme is intended to provide succour to the retired employees, the said object would be defeated by capping the salary. The duty of the trustees of the Fund is to administer the same for the benefit of the employees • by wise investments and efficient management. They have no right to deny the pension legitimately due to them on the ground that the fund would get depleted. The demand of additional payment of 1.16% of their salaries exceeding Rs.15,000/• is unsustainable for the reason that, Section 6A does not require the employees to make any additional contribution to constitute the Pension Fund. Nor does it empower the authorities to demand additional contribution. In the absence of any statutory backing, the said provision in the Pension Scheme is ultra vires. The amendment in so far as it stipulates the average monthly pay drawn over a span of 60 months preceding the date of exit as the pensionable service is also arbitrary for the reason that it deprives the employees of a substantial portion of the pension to which they would have been eligible had it not been for the amendment. The provision as it originally stood stipulated computation of pensionable salary on the basis of the monthly pay drawn over a period of 12 months prior to their exit. The reason for the amendments as disclosed by the counter affidavit filed is that payment of pension on the basis of the Scheme as it stood prior to the amendment would result in depletion of the Fund. Absolutely no material or data to support the above contention has been placed before us. On the contrary, placing reliance on a news report carried by "The Hindu" newspaper on 17.8.2014, it is contended by the petitioners that, a staggering amount of Rs.32,000 Crores of unclaimed amount is lying in various inoperative accounts across the country, as unclaimed pension as disclosed by the Central Provident Fund Commissioner at an interactive session with employees at Hyderabad. In the absence of any material to support the contention that the fund is likely to be depleted, we reject the said contention. Apart from the above, there is no provision in the Act that stipulates the pension payments to commensurate with the amounts actually remitted by an employee and his employer. It is also a fact that the administrators of the Fund invest the amounts and generate profit from such investments."

21. The High Court made its assessment of ground realities on the wage structures in the economy and found capping of Rs.15000/• per month as pensionable salary would deprive most of the employees of decent pension in their old age.

22. As regards requirement of an employee to contribute 1.16 per cent of their pay under the amended scheme, the High Court found that there is no statutory basis under which an employee can be made to make additional contribution to the pension fund. On the aspect of altering the basis of calculation of average monthly pay, the High Court held such alteration to be arbitrary as it deprived the employees of a substantial portion of the pension to which they would have been entitled to under the scheme as it originally prevailed. On justification of the amendment on potential depletion of fund, a point which has also been argued before us by the EPFO, it was observed by the High Court that there was no material or data to support this contention taken by the fund organisation. The High Court also referred to the growing number of workforce in our country, which, as per this judgment, was constantly adding to the base of the fund by accumulation to fund contribution. In paragraphs 37 and 38 of the judgment under appeal, the reasoning of the High Court was summarised:•

"37. The stated objective of the amendments is to prevent depletion of the fund. The said apprehension is absolutely baseless for the reasons stated above. The number of persons who are contributing to the Provident Fund as well as the Pension Fund have only grown over the years. The work force in our country would only grow further in the future. It has to be stated here that in view of the increase in the number of workers over the years, the contributions would also grow. The phenomenon is only bound to continue in future. Therefore, even when payments of pension are made to the retired employees, the pension fund would continue to get replenished with the contributions of the new entrants. The said ongoing process would maintain the Fund in a stable condition. If at all, a situation where the Fund base gets eroded occurs, the situation could be remedied at that time by enhancing the rates of contributions of persons contributing to the Fund through a legislative exercise. The attempt to maintain the stability of the fund by reducing the pension would only be counter productive and would defeat the very purpose of the enactment.

38. As rightly contended by the counsel appearing for the petitioners, the effect of the amendments to the Pension Scheme is to create different classes of pensioners on the basis of the date, 1.9.2014, the date on which the amended Scheme came into force. Consequently, there would be •

(i) employees who have exercised option under theproviso to paragraph 11(3) of the 1995 Scheme and continuing in service as on 1.9.2014;

(ii) employees who have not exercised their optionunder the proviso to paragraph 11(3) of the 1995 Scheme, and continuing in service as on 1.9.2014;

(iii) employees who have retired prior to 1.9.2014 without exercising an option under paragraph 11(3) of the 1995 Scheme; (iv) employees who have retired prior to 1.9.2014 after exercising the option under paragraph 11(3) of 1995 Scheme. The rationale in so classifying the employees covered by the Pension Scheme on the basis of the above date is not forthcoming. The object sought to be achieved is stated to be prevention of depletion of the Pension Fund, which cannot be accepted as a justification to support the classification. Inasmuch as the statutory scheme is to make the Pension Fund ensure to the benefit of the homogeneous class of the totality of employees covered by the Provident Fund, a further classification of the said class by formulating a Scheme is ultra vires the power available to the Central Government under Sections 5 and 7 of the EPF Act. Therefore, it has to be held that, the impugned amendments are arbitrary, ultra vires the EPF Act and unsustainable. For the foregoing reasons, the petitioners are entitled to succeed. The writ petitions are all allowed as follows:

i) The Employee's Pension (Amendment) Scheme, 2014 brought into force by Notification No. GSR. 609(E) dated 22.8.2014 evidenced by Ext.P8 in W.P. (C) No. 13120 of 2015 is set aside;

ii) All consequential orders and proceedings issued by the Provident Fund authorities/respondents on the basis of the impugned amendments shall also stand set aside.

iii) The various proceedings issued by the Employees Provident Fund Organisation declining to grant opportunities to the petitioners to exercise a joint option along with other employees to remit contributions to the Employees Pension Scheme on the basis of the actual salaries drawn by them are set aside.

iv) The employees shall be entitled to exercise theoption stipulated by paragraph 26 of the EPF Scheme without being restricted in doing so by the insistence on a date.

v) There will be no order as to costs."

For these reasons, the High Court quashed the Employees' Pension (Amendment) Scheme 2014 sought to be brought into force by notification no. G.S.R. 609(E) dated 22nd August 2014.

23. The first point on which argument has been made on behalf of the appellants before us is that the aforesaid amendment had been made in exercise of power under Section 7 of the 1952 Act read with entry 10 of the III Schedule of the Act. Thus, the legislative authorisation is there for modification of a scheme whether prospectively or retrospectively. Moreover, our attention has been drawn to paragraph 32 of the 1995 scheme, which stipulates :•

*"32. **Valuation of the Employees' Pension Fund and review of the rates of contributions and quantum of the pension and other benefits.** • (1) The Central Government shall have an annual valuation of the Employees' Pension Fund made by a Valuer appointed by it:*

Provided that it shall be open to the Central Government to direct a valuation to be made at such other times s it may consider necessary.

(2) At any time, when the Employees' Pension Fund so permits, the Central Government may alter the rate of contributions payable under this Scheme or the scale of any benefit admissible under this Scheme or the period for which such benefit may be given."

Entry 10 of the III Schedule to the Act, which refers to matters for which provision may be made in the pension scheme, provides:•

"10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees."

24. Stand of the appellants is that there has been no encroachment on any vested legal right of existing members. It has been highlighted that after the 2014 amendments, the option of the members to further opt to remain in the scheme beyond the ceiling limit has been taken away. But the existing option members who had chosen to contribute beyond the salary limit has been permitted to exercise fresh option to continue with such contribution upon payment of an additional 1.16 per cent of their salary beyond the said ceiling.

25. In assailing the said judgments, it has also been contended on behalf of the appellants that the membership of the pension scheme may have become a vested right for those opting under paragraph 26(6) of the EPFS before amendment to paragraph 6 of the pension scheme. Those who were yet to exercise option under paragraph 26(6) could not claim such vested right of membership to pension scheme. The omission of proviso 3 to paragraph 11 of the pension scheme also did not affect the membership of those who

had already come within the scheme by exercising option under paragraph 26(6), but to remain in the scheme beyond the ceiling limit an existing option member had to exercise fresh option.

26. Submission of the appellants is that all the employees of an establishment do not constitute a homogenous class. It is within the power and authority of the Central Government to differentiate between employees earning lower wages and those earning higher salary and offer improved social benefits for those in the lower wage bracket.

27. Arguments have been advanced on two other features of the post•amendment scheme. Legality of requirement of the employees who go beyond the salary threshold to contribute to the pension scheme at the rate of 1.16 per cent of their salary has been questioned. The other point in controversy is that for existing pensioners also the basis of computation of pensionable salary having changed, there could be reduction in the monthly pension. It is, however, contention of the appellants that the amendment had extended the period prescribed in paragraph 12(1) from 12 months prior to a member's exit from the pension scheme to 60 months. This, according to appellants, has been done to achieve a clearer picture of the pensionable salary to eliminate the possibility of fluctuations in pay drawn in the last 12 months for determining the quantum of pension. Illustration has been given of manual labourers and women who drawing low wages, who may suffer such fluctuation on account of ill health, incapacitation, etc., and in the case of such employees, if only 12 months' pay is accounted for, they may get reduced pension.

28. On behalf of the employees it has been urged that the decision of this Court in **R.C. Gupta** (supra) does not require any revisit as this decision has held good for almost six years. In support of this argument, following authorities have been relied upon:•

(i) **Bengal Immunity Company Limited v. State of Bihar and Others** [(1955) 2 SCR 603]

(ii) **Union of India and Another v. Raghubir Singh (Dead) by Lrs. Etc.** [(1989) 2 SCC 754]

(iii) Keshav Mills Co. Ltd. v. Commissioner of Income Tax Bombay North, Ahmedabad [(1965) 2 SCR 908]

(iv) **Waman Rao and Others v. Union of India and Others** [(1981) 2 SCC 362].

29. In the given context, however, this point may not hold good as what we are examining in this judgment is certain amendments to the scheme which were not before this Court based on which the judgment of **R.C. Gupta** (supra) was delivered. In the said judgment, the provisions of law as it subsisted prior to issue of the amendment notification was considered. Thus, the ratio of the four authorities referred to in the preceding paragraph would not be applicable in the given context.

30. The employees have argued that under the law, there is no requirement of exercising second option. In this regard, our attention has been drawn to paragraphs 3(1) and 3(2) of the scheme, which requires remittance of a part of contribution of the employer to the provident fund scheme. The employees' argument is that the obligation is only on the employer to remit the sum from one fund to the other. There is no ceiling limit and the remittance required to be made is of 8.33 per cent of the employee's pay. But this point also, in our opinion, does not aid the employees. While paragraphs 3 and 6 of the scheme have laid down what the fund would be constituted of and who would be the members of the pension scheme, paragraph 11, which is an integral part of the pension scheme, specifies the criteria for those who become mandatory members and, from among the existing members, who may be permitted to exercise option to remain in the scheme in

spite of drawing salary beyond the ceiling limit. It is a fact that those who are covered by paragraph 26(6) of the provident fund scheme automatically enters into the pension scheme as well. But this provision cannot be held to have precluded the Central Government from laying down conditions to remain eligible for the pension scheme and specify wage or salary ceiling for individual employees beyond which the scheme may not operate. We also do not accept the argument that the pension scheme considers employees as a homogenous group and no distinction can be made among different categories of employees based on their monthly salary to determine for whom the scheme shall operate in a particular manner. It is well within the power and authority of the statutory authorities to reasonably classify different sets of employees and categorise them for the nature of benefits they might get from an existing scheme. In fact, the scheme, at its inception was made applicable to those drawing wages upto Rs.5000/•. The provision relating to exercising option was introduced later, in the year 1996.

31. On behalf of the employees, argument was also advanced against the claim of negative financial impact on the corpus in response to the stand of the appellants that having a large scale of beneficiaries from higher salary earners may result in remitting asymmetrical sums from the corpus to them as pension. In this regard, learned senior counsel for the appellants (Provident Fund Organisation and Union of India) have made distinction between the provident fund scheme and pension scheme in their respective operation. While provident fund scheme entails a one•time settlement in favour of the member, the pension scheme carries, by its very nature, benefits for an unspecified time, which has to be based on actuarial calculation. This difference has been recognised in the judgments of this Court in the cases of **Otis Elevator Employees' Union S. Reg. and Ors. vs. Union of India & Others** [(2003) 12 SCC 68] and **Pepsu Road Transport Corporation, Patiala vs. Mangal Singh & Others** [(2011) 11 SCC 702]. In an actuarial report relied on by the appellants after delivery of the Kerala High Court judgment, the net liability of the fund is projected to be Rs.5,75,918.88/• crores for the pension fund, exclusive of the provident fund balance that might be transferred. This assessment has been made on 27th December 2018 and the report has been annexed to the Rejoinder Affidavit of the appellants in the appeals arising out of SLP (C) Nos.8658•8659 of 2019 filed on 20th March 2021 with I.A. No.43576 of 2021 at page 410 of that document. This projection is based on assumption that every person will opt for higher contribution and statutory salary is restored to Rs.6500/• per month.

32. We find that the amendment was made in exercise of power otherwise vested in the authority making such amendment and the amendments were made on the basis of certain relevant materials and not whimsically. In this context, the scope of judicial scrutiny to test the constitutionality of the amendment provisions becomes narrow. This is the opinion of the Constitution Bench of this Court in the case of **Krishena Kumar vs. Union of India and Others** [(1990) 4 SCC 207]. In our view, classification of the employees made by the authorities on the basis of the salary drawn in the 2014 amendment meets the test of reasonable classification contemplated in Article 14 of the Constitution of India. The newspaper report quoted in the Kerala High Court judgment, in our opinion, would not give an effective guidance as regards position of the pension fund and it would be prudent for the Court leave such decisions to be made by the scheme framing body. This approach would be in line with the reasoning of the Constitution Bench in the case of **Krishena Kumar** (supra). In the case of **Mafatlal Group Staff Association and Others vs. Regional Commissioner Provident Fund and Ors.** [(1994) 4 SCC 58], it was held by a Coordinate Bench of this Court:•

"10. …Merely because the employees who were the members of the Employees Provident Fund Scheme before March 1, 1971 were given an option to become or not to become members of the Family Pension Scheme, it does not follow that the employees who become members of the Provident Fund Scheme after March 1, 1971, and who are not given such option are discriminated against…"

33. The Division Bench of the Kerala High Court, in coming to its finding that the amendment was arbitrary, mainly relied on various economic factors. The reasoning of the Bench was based on macroeconomic reasons like general increase in salary, addition to the base of the fund and the negative impact on denial of pension benefits for a large number of employees. The High Court rejected the argument based on depletion of fund on the ground that over the years, more and more persons are contributing to the provident fund and the corpus of the fund is growing. We are alive to the concern expressed by the High Court as regards impact on the economic stability of retired employees suddenly being deprived of pension. But, based on such macro•level social disparities, we do not think in exercise of judicial power we can require the State to operate a pension scheme in a particular manner. These factors would be for the policy makers to examine and prescribe. We cannot issue directions on the Central Government to work out statutory scheme in a particular fashion. So far as fixing of cut•off date is concerned, the 2014 amendment specifically provides for that. In the case of **R.C. Gupta** (supra), the wording of the scheme in paragraph 11(3) was different. Thus, the ratio of that judgment cannot be applied to the changed provision of the scheme. Fixing of cut•off date was considered in the case of **Mafatlal Group Staff Association** (supra) and held to be permissible. We have quoted earlier the relevant passage from that judgment.

34. The case of **Bank of Baroda and Another vs. G. Palani & Others** [(2022) 5 SCC 612] was cited in support of the proposition that pension is not a bounty but a right and such right cannot be taken away retrospectively. In the context of the provisions which we are examining in this judgment, existing members have been given option to remain in the scheme even if their salary go beyond the ceiling limit. Thus, the right of such members to draw pension is protected. The other area where the pension amount may get impacted is on determination of monthly pension on the basis of altered computation method. But this judgment is not the authority for the proposition that pension amount cannot be altered at all. The factual basis of this judgment was that a joint note/agreement in derogation of statutory regulations was giving retrospective effect. It was in that context the said decision was delivered. In the cases before us, amendment is contemplated of the scheme itself.

35. The requirement in the scheme for employee's contribution to the extent of 1.16 per cent for option members, in our opinion, is illegal. There is nothing in the 1952 Act which requires payment to the pension fund by an employee. Section 6A of the Act also does not have any such stipulation. Since the Act does not contemplate any contribution to be made by an employee to remain in the scheme, the Central Government under the scheme itself cannot mandate such a stipulation. What is to be considered here is that for the mandatory members, the Central Government continues to contribute the requisite 1.16 per cent of their salary. For option members, additional contribution by them is contemplated in order to remain in the scheme. In such a situation, in our opinion, a legislative amendment of the Act would have been necessary, providing for contribution to be made by an employee. To that extent, the provision of the scheme requiring contribution by an individual employee is ultra vires the parent act. At the same time, we cannot ignore the fact that the pension amount to be paid has been calculated on projections that the corpus would include the optionemployees' additional contribution of

1.16 per cent. We also cannot mandate the Central Government to contribute to a pension scheme, in absence of a legislative provision to that effect. It would be for the administrators to readjust the contribution pattern within the scope of the statute and one possible solution could be to raise the level of the employer's contribution in the scheme. We shall, however, suspend the operation of this part of our judgment for a period of six months so that the legislature may consider the necessity of bringing appropriate legislative amendment on this count. For the aforesaid period, the scheme as it stands shall continue. Till such time, if no such legislative exercise is undertaken, the duty to contribute 1.16 per cent of the salary shall apply on option members as well. This contribution shall be adjusted depending on any amendment that may be brought. For the period of six months, however, the opting employees shall make payment of 1.16 per cent contribution as stop gap measure. In the event no amendment to the statute or the scheme is made within such extended time, then the administrators of the fund will have to operate the pension fund for the option members from out of the existing corpus.

36. The other aspect of the controversy involves changing the method of computation of the pensionable salary. We have given the points and counter points articulated by the contesting parties pertaining to this feature of the controversy earlier in this judgment. In our opinion, this change of methodology comes within the power of the Central Government to modify a scheme under Section 7 of the 1952 Act read with item 10 of the Schedule III to the Act as also paragraph 32 of the scheme. This alteration of computation is ancillary to determination of scale of pension alongwith pensionary benefits and paragraph 32 of the pension scheme specifically authorises the Central Government to alter the rate of contribution payable under the Scheme or the scale of any benefit admissible under the scheme. There is a reasonable basis for effecting change in the computation methodology for determining pensionable salary and we do not find any illegality or unconstitutionality in effecting this amendment.

37. We shall now address the question as to whether the members from an exempted establishment under the 1952 Act would be entitled to the benefits of enrolling in the scheme beyond the ceiling limit. We would point out here that before us no argument has been advanced as regards members of the pension scheme of exempted establishments in terms of paragraph 39 of the said scheme. Thus, in this judgment, we are not addressing the cases of that category of members. We find from Section 17 (A) of the Act that the investment of the provident fund for the trust fund are also to be as per the directions of the Central Government. In quashing the circular dated 31st May 2017, the Delhi High Court has held that the employees of unexempted establishments and exempted establishments form a homogenous group. Section 6A of the Act also envisages coverage of employees of exempted establishments under Section 17(6) of the Act within the pension scheme. Section 17(6) of the Act stipulates: •

"(6) Subject to the provisions of sub•section [(1C)] the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the [Pension] Scheme apply, shall, notwithstanding any exemption granted under sub•section (1) or sub•section (2), pay to the [Pension] Fund such portion of the employer's contribution to its provident fund within such time and in such manner as may be specified in the [Pension] Scheme."

38. Further, Clause 1(3) of the pension scheme contemplates keeping within its fold the establishments to which the 1952 Act applies. These establishments would include exempted establishments as well. The employees of exempted establishments are integrated into the pension scheme and we are of the opinion that the employees of an exempted establishment should not be deprived of the benefit of getting option to remain

in the pension scheme while drawing salary beyond the ceiling limit, in situations where similarly situated employees of unexempted establishments can exercise such option. In the event the scheme is construed in a way which would exclude them, that would lead to artificial classification of otherwise same categories of employees. Thus, the pension scheme ought to apply to the employees of the exempted establishments in the same manner as this scheme applies to the employees of unexempted or regular establishments.

39. One of the arguments against their inclusion into the scheme by exercising option is that the corpus of the contribution for exempted establishments have been kept in separate coffers maintained by the trust created for such purpose and not with the authorities specified under the Act. Taking that factor into account, we are of the view that in order to be entitled to the benefits of the pension fund, the employer and the employee, simultaneously with exercising option in terms of the order of this Court, shall also have to give an undertaking of transferring the employers' contribution at the stipulated rate maintained by the trusts, which shall be equivalent to and not lower than the sum which would have been transferable, had such fund been maintained by the provident fund authorities. Such transfer shall take place, immediately after exercise of such option, within such period as may be directed by the administrators of the pension fund.

40. We shall now deal with argument of the appellants that no vested legal right of the employees has been encroached upon by the 2014 amendment. For this purpose, amended paragraph 11(4) needs to be analysed. The said paragraph 11(4) provides for extending the pension coverage in respect of individual employees drawing salary more than Rs. 15000/• per month. This paragraph however, is subject to two conditions:•

(i) The first one is that to be eligible for the benefits of extended coverage, the existing members as on 1st September 2014 must contribute at the rate of 1.16 per cent on salary exceeding Rs. 15,000/• per month.

(ii) The second one is that a fresh option should be exercised within a period of six months from the first day of September 2014. The scheme contemplates that those members of the fund who had exercised option to remain in the scheme as per the requirement of proviso to paragraph 11(3) of the scheme, as it stood prior to the 2014 amendment, would be able to give fresh option with the employer if their salary cross the ceiling limit. In respect of that provision, this Court in the Case of **R.C. Gupta** (supra) had held that the said proviso did not contemplate a cut•off date.

41. So far as the first condition is concerned, we have expressed our views earlier in this judgment as regards legality of having such a provision. In relation to the second condition, our opinion is that the eligibility for enhancement cannot be restricted to those employees only who had exercised the option to remain in the scheme once their salary went beyond the capping of Rs. 6500/• per month. As we have already discussed, in case of **R.C. Gupta** (supra), it has been specifically held that there was no cut•off date in proviso to paragraph 11(3) as it stood before the 2014 amendment. In our opinion, the interpretation given to the proviso to paragraph 11(3) prior to 2014 amendment does not require any reconsideration. We agree with the reasoning of the two•judge Bench of this Court on this point, as expressed in the said judgment. As there was no cut•off date to be contemplated prior to the 2014 amendment, limiting the entitlement of enhanced pension coverage to those employees only who had already exercised an option under Clause 11(3) of the unamended scheme would be contrary to the ratio of the decision of this Court held in the case of **R.C. Gupta** (supra). We are not holding that no option was required to

be exercised as per proviso to paragraph 11(3) of the scheme, as it stood prior to 2014 amendment. As held in the case of **R.C. Gupta** (supra), there was no time•limit for exercising such option.

42. The dual option, as is contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment), has to be merged into one. In the event the employer and employee jointly opt for coverage beyond the salary limit of Rs. 15000/•, without giving an earlier option under the unamended Clause 11(3) of the pension scheme, they would not be automatically excluded from their right to exercise option under paragraph 11(4) of the scheme, post amendment.

43. The other condition for enhanced coverage relates to the date within which such fresh option is to be exercised by a member, which is stipulated to be within a period of six months from 1st September 2014. It would be legitimate to proceed on the basis that several members did not exercise such option earlier because of the stand taken by the Provident Fund authorities that option under proviso to paragraph 11(3) of the scheme (prior to 2014 amendment) has to be exercised within a specified date, which stand was negated in the decision of **R.C. Gupta** (supra). We are of the view that the time limit for coverage beyond the ceiling amount should be extended by a further period of four months from today to enable all the members of the pension fund drawing more than Rs.6500/• to exercise the joint option as contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment). Once such joint option is exercised, the transfer of fund from the provident fund corpus to the pension fund shall be effected in terms of the scheme.

44. We accordingly hold and direct:•

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent sub•paragraphs.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of **R.C. Gupta** (supra). The scheme as it stood before 1st September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre•amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees

who did not exercise option but were entitled to do so but could not due to the interpretation on cut•off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India. Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre•amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/• per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) We do not find any flaw in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of **R.C. Gupta** (supra) so far as interpretation of the proviso to paragraph 11(3) (pre•amendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos.1917•1918 of 2018 and Contempt Petition (C) Nos. 619•620 of 2019 in Civil Appeal Nos. 10013•10014 of 2016 are disposed of in the above terms.

45. All the appeals which we have heard simultaneously are allowed in the above terms and the judgments impugned are modified accordingly. The writ petitions brought by employees or their representatives shall also stand disposed of in the same terms.

46. Pending application(s), if any, shall also stand disposed of.

47. There shall be no order as to costs.