



2025:DHC:4098



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21st May, 2025

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W.P.(C) 6357/2019 & C.M. APPL. 13912/2021

NTPC RETIRED EMPLOYEES WELFARE ASSOCIATION AND
ORS. Petitioners

versus

NTPC LTD. AND ORS.

.... Respondents

+

W.P.(C) 108/2011 & C.M. APPL.14413/2017

ANIL KUMAR

.... Petitioner

versus

NATIONAL THERMAL POWER CORPORATION & ORS

.... Respondents

+

W.P.(C) 109/2011 & C.M. APPL. 14417/2017

RAJKUMAR MISHRA

.... Petitioner

versus

NTPC & ORS

.... Respondents

+

W.P.(C) 1259/2013

VEENA CHARAN PAHARI

.... Petitioner

versus

NTPC LTD AND ORS

.... Respondents

+

W.P.(C) 2010/2016

ADITYA N. SHUKLA

.... Petitioner

versus

NATIONAL THERMAL POWER CORPORATION
LTD. & ORS

.... Respondents

+

W.P.(C) 2289/2016

JALESHWAR NATH SINHA

.... Petitioner

versus

NATIONAL THERMAL POWER CORPORATION LTD AND
ANR

.... Respondents



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- + W.P.(C) 2327/2016
NARENDRA KUMAR AGGARWAL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD & ANR
..... Respondents
- + W.P.(C) 4839/2016
DEEPAK KUMAR GOEL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND
ANR Respondents
- + W.P.(C) 6125/2016
HARISH CHANDRA GOEL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ANR
..... Respondents
- + W.P.(C) 6595/2016
RAJVEER SHARMA Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ANR
..... Respondents
- + W.P.(C) 671/2016 & C.M. APPL. 2775/2016
MAHESH CHANDER GULATI Petitioner
versus
NTPC LTD. SELF CONTRIBUTORY SUPERANNUATION
BENEFIT (PENSION) TRUST & ANR Respondents
- + W.P.(C) 8101/2016
DHARAM PAL GUPTA Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents



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- + W.P.(C) 6179/2016
BALDEV RAJ MADAN Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND
ANR Respondents
- + W.P.(C) 6930/2016
SHEO NARAYNA RAM Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ANR.
..... Respondents
- + W.P.(C) 6931/2016
MAHENDRA PRASAD Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ANR
..... Respondents
- + W.P.(C) 7076/2016
SHREE NARAIN SINGH Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ORS.
..... Respondents
- + W.P.(C) 8094/2016
K K VARSHNEY Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 10022/2016
MK SAMUEL KUTTY Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8105/2016
RAKESH KUMAR GARG Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents



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- + W.P.(C) 8107/2016
IQBAL SINGH PARSWAL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8112/2016
KAMAL SHER SINGH AJJAN Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8116/2016
DEV PRAKASH SINGH CHAUHAN Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8117/2016
SHIVA PUJAN LAL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8119/2016
MAN MOHAN SINGH ARORA Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 8146/2016
SATYENDRA NATH PANDEY Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9513/2016
SAROJ KUMAR DE Petitioner



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- versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9536/2016
KULDIP KUMAR DADA Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9538/2016
SUJIT KUMAR DATTA Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9539/2016
RAM NARAYAN CHOUDHARY Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9848/2016
MARKANDEY Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 9963/2016
PREM KRISHNA Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD. & ORS.
..... Respondents
- + W.P.(C) 9974/2016
ASHOK KUMAR GUPTA Petitioner
- versus
NATIONAL THERMAL POWER CORPORATION LTD. & ORS.
..... Respondents



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- + W.P.(C) 10113/2016
RAMPAL Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ORS.
..... Respondents
- + W.P.(C) 1093/2017
HARI DUTT SHARMA Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND ORS
..... Respondents
- + W.P.(C) 1414/2017
VINOD PURI Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ANR
..... Respondents
- + W.P.(C) 1848/2017
S G SHARMA Petitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD AND
ANR Respondents
- + W.P.(C) 2092/2016
SPS CHAUHANPetitioner
versus
NATIONAL THERMAL POWER CORPORATION LTD. & ORS
.....Respondents

Counsel for Petitioners:

Ms. S. Janani, Senior Advocate with Ms. Sharika Rai, Advocate.

Mr. P.C. Shukla, Advocate for Petitioner in W.P.(C) 671/2016.

Ms. Unni Maya S., Advocate for Petitioner in W.P.(C) 1259/2013.

Counsel for Respondents:

Mr. Sanjay Rawat, Advocate for Respondent No.2 in W.P.(C) 1259/2013, W.P.(C) 8117/2016, W.P.(C) 8119/2016 and W.P.(C) 1093/2017.



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Mr. Aman Lekhi, Senior Advocate with Mr. Vikram Singh Baid and Mr. Ritwiz Rishabh, Advocates for R2 in W.P.(C) 2010/2016, W.P.(C) 6357/2019 and W.P.(C) 1093/2017.

Mr. Vikram Singh Baid, Advocate in W.P.(C) 2092/2016.

Mr. Adarsh Tripathi and Mr. Ajitesh Garg, Advocates for Respondent No.1 NTPC in W.P.(C) 2010/2016, W.P.(C) 6125/2016, W.P.(C) 6357/2019, W.P.(C) 8101/2016, W.P.(C) 6930/2016, W.P.(C), 8094/2016, W.P.(C) 8112/2016, W.P.(C) 8116/2016, W.P.(C) 8119/2016, 9513/2016, 9536/2016, W.P.(C) 1093/2017, W.P.(C) 1414/2017 and W.P.(C) 1848/2017.

Mr. J.S. Lamba, Advocate for Respondent No.1 NTPC in W.P.(C) 4839/2016, W.P.(C) 7076/2016, W.P.(C) 8105/2016, W.P.(C) 8107/2016, W.P.(C) 8117/2016 and W.P.(C) 8146/2016.

Mr. Puneet Taneja, Mr. Anil Kumar and Mr. Manmohan Singh Narula, Advocates for Respondent / NTPC in W.P.(C) 108/2011, W.P.(C) 109/2011, W.P.(C) 1259/2013, W.P.(C) 6595/2016, W.P.(C) 671/2016 and 6931/2016.

Mr. Debesh Panda, Senior Standing Counsel with Ms. Zehra Khan and Mr. Vikramaditya Singh, Mr. Kanishk Aggrawal, Ms. Anauntta Shankar, Advocates for Respondent No.3 in W.P.(C) 9513/2016.

Mr. Kaustabh Anshuraj, Advocate for R3 in W.P.(C) 109/2011.

Mr. Roshan Lal Goel, Advocate for applicant in W.P.(C) 1259/2013 and W.P.(C) 2010/2016.

Mr. Ranjan Sardana, Advocate for Respondent No. 2 (NTPC Trust) in Item No. 91, 92, 100, 102, 104 and 118.

Mr. Ram Singh Bisht, Advocate for Respondent No. 2 in W.P.(C) 10022/2016, W.P.(C) 9513/2016, W.P.(C) 9538/2016, W.P.(C) 9539/2016, W.P.(C) 9848/2016, W.P.(C) 9963/2016, W.P.(C) 9974/2016, W.P.(C) 10113/2016 and W.P.(C) 1848/2017.

Ms. Meghha Katari, Ms Ishita Nagpaul & Ms Krati Somvanshi, Advocates for the Respondent No.1 in W.P.(C) 9513/2016, W.P.(C) 9848/2016, W.P.(C) 9963/2016 and W.P.(C) 10113/2016.



**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JUDGEMENT

JYOTI SINGH, J.

1. These writ petitions are filed by the Petitioners under Article 226 of the Constitution of India seeking quashing of Circular No. 17/2003 dated 03.02.2003 issued by Pension Trust as also Supplementary Trust Deed dated 09.08.2011 and Approvals dated 03.02.2003 and 06.02.2013. Writ of *mandamus* is sought to National Thermal Power Corporation Limited ('NTPC') to pay post-retirement benefits including pension and commuted value of pension to the Petitioners as per erstwhile '*Self-contributory Superannuation Benefit (Pension) Scheme for NTPC Employees, 1995*' ('1995 Scheme'), amongst other reliefs. Since common questions of law are raised in these petitions, they were heard together and are being decided by this common judgment. Be it also noted that with the consent of the parties, writ petition being W.P. (C) No. 6357/2019 was treated as a lead matter and hence, facts narrated hereinafter are from the said writ petition and counter affidavits filed in response thereto.

2. Factual matrix to the extent necessary and as averred in the writ petition is:

A. Petitioner No.1 is NTPC Retired Employees Welfare Association of Ramagundam, Telangana and is duly registered. Petitioner No.2 is an individual who joined NTPC on 24.12.1982 as Assistant Administrative Officer and retired as Additional General Manager on 30.06.2008. Petitioner No.3 joined on 06.06.1981 as Senior Engineer and retired as General Manager on 30.06.2012 while



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Petitioner No.4 joined on 25.04.1981 as Assistant Grade-IV and retired on 28.02.2017 as Deputy Manager. Petitioner No.5 joined NTPC on 13.11.1981 as Junior Supervisor and retired on 30.06.2006 as Deputy Manager.

B. In order to take care of post-retirement needs and contingencies of death or permanent disablement while in service, in 141st Meeting of the Board of Directors of NTPC held on 18.03.1994, it was decided to introduce a Self-Contributory Superannuation Benefit (Pension) Scheme to be administered through an irrevocable Trust recognised under the Income Tax Act, 1961 (hereinafter referred to as the '1961 Act'). Memorandum of Agreement ('MoU') was executed on 07.03.1997 between NTPC and NTPC Executives' Federation of India ('NEFI') and Supervisory Employees' Joint Committee ('SEJC'), representing the Executives and Supervisors of NTPC, respectively. As per the MoU, a Trust was to be created to manage and administer the Pension Scheme and NTPC's contribution was limited to Rs.100/- per annum for all employees taken together and rest of the contribution was to be made by the employees to make the Scheme financially viable. Contributions were to be deducted from the salaries of the employees each month as per Rules framed from time to time by the Board of Trustees. It was also agreed that Executives and Supervisors working in NTPC on the date of signing of the MoU as also those who joined in future shall compulsorily become members of the Scheme. As per the MoU, members were to contribute their prescribed Percentage Salary Contributions along with some Additional Contributions to the Pension Fund. Additional



Contributions were to be recovered from the monthly pay of the individual members. It was specifically agreed that income tax exemption will be obtained to the effect that income of the Trust will not be chargeable to income tax and necessary legal formalities/ approvals for proper implementation of the Scheme will be promptly taken. Clause D.4.5 provided that MoU shall be irrevocable and shall remain operative and effective in perpetuity till the Pension Scheme continued to be in operation. Salient features of the Pension Scheme were enumerated in Annexure-I and formed integral part of the MoU. MoU was to become effective from 01.04.1995 and recoveries/ contributions were to start from the said date. Relevant Clauses from the MoU are as follows:-

- A. WHEREAS** it is mutually agreed between the parties to formulate a Self Contributory Superannuation Benefit (Pension) Scheme for the benefit of all Employees of NTPC here-in -after referred to as 'Pension scheme'. And whereas it has been specifically agreed to create a Trust to manage and administer aforesaid Pension scheme.
- B. WHEREAS** it has also been agreed between the parties that NTPC Contribution in establishing the Pension Scheme shall be limited to Rs. 100/- per annum only for all employees taken together and the rest of the Contribution shall be made by the employees in order to make the Scheme financially viable. The employees' Contribution in the Fund shall be deducted from their salary each month as per the Pension Scheme Rules framed from time to time by the Board of Trustees.
- C. WHEREAS** the Associations have specifically agreed that all employees in categories of Executives and Supervisors working as on date of signing of this MOU and those who join in these categories of Executives & Supervisors in NTPC in future shall compulsorily become member of the Scheme, and have further agreed that the Members' Percentage Salary Contribution and Members' Additional Contribution to Pension Fund shall be as under.



C.1. Percentage Salary Contribution:-

Member's Age at the time of entry in the Scheme	Percentage Contribution as Percentage of Salary
33 years and below	1.0 %
Above 33 <= 38 years	1.5%
Above 38 <= 43 years	2.0%
Above 43 <= 48 years	3.0%
Above 48 <= 53 years	4.0 %
Above 53 years	5.0%

C.2 Members' Additional Contribution:- will be as advised by the Trustees from time to time in consultation with Actuaries. For the present Actuaries have advised the following -

C.2.1 Rs. 375/- per month per employee for Supervisors & Executives to be escalated @ 8% per annum.

C.2.2 The aforesaid Additional Contributions shall be recovered from the monthly pay of individual members and credited to the Pension Scheme as Member's Contribution for which Associations of the Employees authorize NTPC to do so.



D.4.3 That it has been specifically agreed between the parties that Income Tax exemption will be obtained to the effect that the income of the Trust will not be chargeable to income tax. It is also agreed that the necessary legal formalities/approvals required for the proper implementation of the Scheme will be promptly taken.

D.4.4 That it has been agreed that no undertaking of any kind whatsoever shall be required from the employees.

D.4.5 That this MOU shall be irrevocable and shall remain operative and effective in perpetuity till the Pension Scheme continues to be in operation.

D.4.6 The salient features of the Pension Scheme duly approved by the NTPC Board of Directors and Govt. of India are enumerated at Annexure-I which shall be an integral part of this MOU.

D.4.7 That this MOU shall become effective for all purposes and intents from 01.04.1995, and recoveries / Contributions shall start from 1.4.1995, and all employees who were on the rolls of the Company as on 1.4.1995 shall be covered under the Scheme on specific option and on payment of Contributions as required even though they may have retired / died after 1.4.1995. Suitable provisions should be kept in the Trust Rules in this regard by the Board of Trustees. In witness whereof the parties hereof through their authorized representative have signed this MOU on Seventh day of March, 1997 at New Delhi.

C. Pursuant to the MoU, NTPC executed a Trust Deed on 12.03.1997 called National Thermal Power Corporation Ltd. Self Contributory Superannuation Benefit (Pension) Trust (hereinafter referred to as the 'Trust Deed'). It was provided in the Trust Deed that



the Trust shall be irrevocable and Trustees shall hold monies of the Trust for the benefit of the members and beneficiaries and Trust shall be administered, managed and controlled in accordance with the provisions of the Trust Deed and the Rules framed at the time of executing the Trust Deed and as amended from time to time. Clause 8 of the Trust Deed provided that Trustees may at any time with the consent of NTPC or on recommendation by NTPC, through a Supplementary Deed, amend or add to the provisions of the Trust Deed or the Rules, provided that such alteration does not adversely affect the benefits being paid from the Trust or the benefits accrued upto the date of such amendment or the object of the Trust, provided further that no alteration shall be made without prior approval of the Commissioner of Income Tax (hereinafter referred to as the 'CIT'). The moneys of the Pension Scheme, being the Trust property, would consist of the accumulations of the contribution being the total of Contributions received by the Trustees in accordance with the Rules, as also interest, dividend, securities and other accretions arising from the assets of the Trust as reduced by payments and disbursements to the members and other Beneficiaries, such credits and debits being made in accordance with the Rules. Trust Deed was deemed to take effect on and from 01.04.1995 for all intents and purposes. Rules were also framed for regulating the Trust and the Scheme on 12.03.1997. Relevant Clauses of the Trust Deed are as follows:-

“B. The Corporation do hereby constituted an irrevocable Trust for the management and administration of the aforesaid Pension Scheme and has nominated the aforesaid persons as Trustees of the Trust. The Trustees have agreed, to act as the "First Trustees" hereof on the terms and conditions contained in Rules of the Trust annexed hereto,



which shall be integral part of the these Presents.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

1. The name of the Pension Trust shall be 'National Thermal Power Corporation Ltd. Self Contributory Superannuation Benefit (Pension) Trust' or such other name or title as the Trustees may from time to time determine with the prior approval of the Commissioner of Income Tax having jurisdiction over the Trust (hereinafter referred to as 'the Commissioner').

2. These presents shall constitute a Trust established in India which Trust shall be irrevocable and the Trustees shall hold the moneys of the Trust upon trust for the benefit of the Members or other Beneficiaries more particularly set forth in the Rules and no money belonging to the Trust in the hands of Trustees shall be recoverable by the Corporation under any pretext whatsoever, nor shall be Corporation have any lien or charge or encumbrance of any description on the same.

3. It shall be obligatory on the part of the Trustees to pay to the Members or other Beneficiaries the benefits according to the Trust Rules.

4. The Trust shall be administered, managed and controlled in accordance n with provisions of these presents and the Rules. The decision of the Board of Trustees shall be final and binding upon the Members and/or Beneficiaries in all respects or matters arising out of these presents and the Rules.

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8. The Trustees may at any time with the consent of the Corporation or on a recommendation from the Corporation by a Supplementary Deed amend or add to the provision of the Trust Deed or the Rules provided, that such alteration does not adversely affect the benefits being paid from the Trust or the benefits accrued upto the date or such amendment or the object of the Trust provided that no alteration in the Trust Deed, Rules, Constitution or Conditions of the Trust shall be made without the prior approval of the Commissioner.

9. The moneys of the Trust shall be vested in the Trustees who shall have the entire control of the moneys of the Trust and shall administer the Pension Scheme in accordance with the provisions of these presents and the Rules which shall be binding on the Corporation, the Trustees and the Members or other Beneficiaries. The Trustees shall arrange for the Investment of the trust moneys and payment of the amounts due to the Members and other eligible Beneficiaries in



accordance with the Rules.

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11. The moneys of the Pension Scheme, being the Trust property, shall consist of the accumulations of the contribution being the total of Contributions received by the Trustees in accordance with the Rules, Interest, dividend, securities and other accretions arising from the assets of the Trust as reduced by payments and disbursements to the Members and other Beneficiaries such credits and debits being made in accordance with the Rules.

12. In the event of the Corporation being wound up reconstructed, reconstituted or amalgamated with any other Corporation, the Trustees may make such arrangement or enter into such agreements as they in their sole discretion shall think fit and proper for the continuance of the Pension Scheme by such reconstructed, reconstituted and amalgamated Corporation as if such reconstructed, reconstituted and amalgamated Corporations were the Corporation within the meaning of these presents provided that no arrangements or agreements under this Clause shall be entered into without the previous approval of the Commissioner. Such arrangements or agreements, shall be subject to such conditions as may be imposed by the Commissioner.

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14. This deed of Trust shall be deemed to have take effect on and from 01.04.1995 for all intents and purposes.”

D. On 09.10.1997, NTPC issued Corporate Personnel Circular No.354/97 (hereinafter referred to as the ‘CPC’) introducing 1995 Scheme and providing that the Scheme will be totally self-contributory by contributions from the employees directly deducted from their salaries and sent to the Pension Trust. Salient features of the Scheme were separately provided as an enclosure to the CPR which provided that all existing employees in the pay scales applicable to Supervisors and Executive categories, who were on roll of NTPC as on 01.04.1995 shall be deemed to be the members of the Scheme from the said date. Those employees who were on roll of



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NTPC as on 01.04.1995 and superannuated during 01.04.1995 to the date of issue of the CPR, had the option to become members of the Scheme. All employees appointed/promoted in the said categories in future were to become members of the Scheme compulsorily, from the dates of such appointments/promotions. Clause 6 stipulated the modes of Contributions viz.: (a) Fixed monthly Percentage Salary based on age of the member on the date of entry to the Pension Scheme; (b) Past Service Contribution; and (c) Monthly Additional Contribution. NTPC was required to contribute only Rs.100/- per annum for all employees taken together.

E. Board of Trustees were empowered by Para 6.3 of the Scheme to review the availability of the monies of the Trust annually or at such interval as may be deemed fit by them to decide any revision in the members' contribution under the 1995 Scheme. Defined benefits that were to accrue to the members were prescribed in para 7. Para 7.1.1 provided minimum of 10 years of continuous service from the date of joining the Pension Scheme as Qualifying Service. Under para 7.1.2, it was provided that subject to provisions of the Rules, a member on superannuation will be entitled to superannuation benefit (pension) commencing from the month following the month of superannuation, pension at the rate of 1.25% per year of Reckonable Service, limited to 50% of salary last drawn and for Reckonable Service of less than 40 years benefit was to reduce proportionately. On the death of a member, beneficiary was entitled to get Pension at the rate of 50% of last drawn salary of the member from the month following the date of death of the member. Similar provision was



provided in case of Permanent Disablement or Incapacity of a member while in service under para 7.3. Member was entitled at his or her sole discretion to commute a part of the eligible pension as per provisions of annuity purchased from Life Insurance Corporation of India (hereinafter referred to as the 'LIC') by the Trust and as per applicable laws. Pension was payable during the lifetime of the member.

F. It was further provided that consequent upon death of the pensioner, nominee of the pensioner shall be paid the cost of Annuity by LIC. 1995 Scheme was in addition to Employees' Pension Scheme, 1996 operated by Regional Provident Fund Commissioner, pending exemption from Government of India. Salient features of 1995 Scheme for Executive and Supervisory categories are as follows:-

“1.0 OBJECTIVES:-

In order to take care of post retirement needs and contingencies of death or permanent disablement while in service of the Corporation a, 'Self Contributory Superannuation Benefit (Pension) Scheme (herein after called the 'Scheme') has been introduced. In the first stage the Scheme shall be applicable for NTPC employees in the pay scales applicable to Executives & Supervisors categories.

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5.1.1 Employees who were on the roll of the Corporation as on 01.04.1995 and during the period from 01.04.1995 to date of issue of this circular have Superannuated will have the option to become the Member of the Scheme for which a separate communication will be issued by the Trust.

5.1.2 All Employees who are appointed / promoted in the Supervisor on Executives scale of pay in future will compulsorily become the Member of the Scheme from the date of such appointments/ promotions. In the event of any dispute as to the eligibility of any Employee to become Member, decision of the Employer shall be final.

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6.1 CONTRIBUTION TO THE TRUST BY THE CORPORATION

The Corporation shall contribute to the Trust an amount of Rs. 100/- per annum for all the Employees taken together and such Contribution shall be made over the Trust before the end of the accounting year of the Corporation.

6.2. CONTRIBUTION TO THE TRUST BY THE MEMBERS-

Every Member shall make following contributions to the Trust by way of deduction from his salary.

(a) FIXED PERCENTAGE SALARY CONTRIBUTION PAYABLE MONTHLY:

A fixed Percentage of monthly Salary based on age of Member on the date of his entry to the Pension scheme determined as under:-

<u>AGE</u>	<u>PERCENTAGE OF SALARY</u>
33 Yrs and below	1.0%
Above 33 <= 38 Yrs	1.5%
Above 38 <= 43 Yrs	2.0%
Above 43 <= 48 Yrs	3.0 %
Above 48 <= 53 Yrs	4.0%
Above 53 Yrs	5.0%

The above mentioned Percentage shall remain same till he actually leaves the service of the Corporation unless otherwise revised by the Board of Trustees.

(b) PAST SERVICE CONTRIBUTION:-

Every Member shall contribute at the rate determined in para (a) above as based on age & Salary as on 01.04.95 as Contribution for Past Service rendered by him with the Corporation. This Contribution for Past Service shall be payable at the time of becoming Member of the Pension Scheme or maximum 10 (ten) years in annual or 120 monthly instalments together with compound interest @ 12% per annum. A detailed communication in this regard shall be notified by the Trust separately.

(c) ADDITIONAL CONTRIBUTION, PAYABLE MONTHLY:-

Additional Contribution to be made by a member to the Trust shall be decided by the Board of Trustees from time to time and such Contribution shall be realized by the Corporation as deduction from the Salary of the Member every month or by such other mode as the Board of Trustees may decide upon in consultation with the Corporation / Actuary. The Board of Trustees shall have power and authority to determine Additional Contribution amount from time to time in consultation with the Corporation / Actuary (Presently this



amount works out to be Rs.375/- per month per Member w.e.f. 01.04.1995. This amount will be escalated @ 8% per annum for subsequent financial years)

6.3 REVIEW OF CONTRIBUTION BY TRUST:-

The Board of Trustees shall review the availability of the moneys of the Trust annually or at such interval as may be deemed fit by the Board of Trustees to decide any revision in the Members' Contribution under the Pension Scheme

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7.1 PENSION ON SUPERANNUATION OF MEMBER:-

7.1.1 Qualifying Service

As on date of Superannuation a Member should have completed a minimum of 10(Ten) years of Continuous service from the date of his joining the Pension Scheme. Provide that in case of Members who are on the rolls of NTPC as on 1495, the minimum qualifying service will be five (5) years (i.e. Past Service Future Service).

7.1.2 Rate of Pension:-

Subject to the provisions of these Rules, a Member on Superannuation will be entitled to Superannuation benefit (Pension) commencing from the month following the month of Superannuation, Pension at the rate of 1.25% Per year, of Reckonable Service limited to 50% of salary last drawn. For Reckonable Service of less than 40 years the benefit shall be proportionately reduced.

7.2 PENSION ON DEATH OF A MEMBER WHILE IN SERVICE:-

On death of a Member the Beneficiary will be entitled to get Pension at the rate of 50% of last drawn Salary of the Member. The Pension being payable from the month following the date of the death of the Member.

7.3 PENSION ON TOTAL PERMANENT DISABLEMENT / INCAPACITY WHILE IN SERVICE:-

On the discharge of a Member from the service of the Corporation due to his Total Permanent Disablement / Incapacity while in service, such Member will be entitled to Pension at the rate of 50% of his last drawn Salary. The Pension being payable from the month following the date of discharge from service.

7.4 COMMUTATION OF PENSION:-

The Member may at his sole discretion commute a part of the eligible Pension as per the provisions of Annuity purchased from the LIC by the Trust and as per applicable laws.”



G. On 11.06.1997, approval was granted by CIT to the Pension Trust under Rule 2(1) of Part 'B' of 4th Schedule of 1961 Act to take effect from 01.04.1995. Subsequently, MoU was executed on 10.01.1998 for employees of NTPC in the workmen category. Meetings were held by Board of Trustees on 05.12.1997 and 22.01.1998 regarding investment of the Trust Funds, recovery of contributions, authorization to investment committee for purchase of annuities etc. Pension Trust Communication (PTC) 03/98 was issued on 06.02.1998 for deduction of Past Service Contribution for Executives and Supervisors from February, 1998 onwards in maximum 120 installments.

H. Petitioners were members of the 1995 Scheme and having made contributions, they were entitled to continue to receive benefits thereunder. However, illegally and arbitrarily, the Board of Trustees introduced a new restructured scheme on 03.02.2003, which was a 'Defined Contribution' Scheme ('2003 Scheme') instead of the earlier 'Defined Benefit' Scheme and adversely affected the rights of the Petitioners to higher pension. The Scheme was arbitrarily made applicable retrospectively from 01.04.2002, taking away vested and accrued rights of even those who had retired prior to the introduction of the Scheme.

I. Aggrieved with the 2003 Scheme, one Mohd. Yunus, an ex-employee of NTPC who retired as a Senior Materials Officer on 31.07.2002 filed a Writ Petition (Civil) No. 740/2004, before the Allahabad High Court. His pension was not sanctioned, as according to NTPC, annuities from LIC were kept in abeyance on the ground



that there was steep hike in annuity prices affecting the viability of the Pension Scheme. Upon restructuring, pension of Mohd. Yunus was fixed at Rs.1,015/- whereas under the 1995 Scheme, he would have been entitled to Rs.8,078/-.

J. The writ petition was allowed by Allahabad High Court vide judgment dated 17.12.2009 holding that since Mohd. Yunus had retired on 31.07.2002, he was entitled for pension under the 1995 Scheme. This judgment was challenged by the Pension Trust before the Supreme Court and Civil Appeal No. 8054/2011 was dismissed on 09.12.2015. Supreme Court observed that retiral benefits of Mohd. Yunus stood crystalized on the date of his retirement i.e. 31.07.2002 and any rules/guidelines notified thereafter including Circular dated 03.02.2003 could not be made applicable to him.

K. While the matter was pending in the Supreme Court, the judgment of Allahabad High Court possibly paved the way for the Trustees to carry out an amendment to the Trust Deed dated 12.03.1997, invoking para 8 of the Deed and a Supplementary Trust Deed was executed on 09.08.2011 and the CIT granted approval vide order dated 06.02.2013, retrospectively from 01.04.2002.

3. Owing to the amendment in the 1995 Scheme, three writ petitions being W.P. (C) Nos. 108/2011, 109/2011 and 1259/2013 were filed in this Court challenging the amendment and the consequential reduction in the pension. The remaining writ petitions referred to above were filed post the judgment of the Supreme Court in the case of *Secretary, NTPC Pension Trust v. Mohd. Yunus and Others, Civil Appeal No. 8054/2011*, dated 09.12.2015, seeking similar reliefs. The second batch of writ petitions was



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dismissed by learned Single Judge of this Court vide judgment dated 28.02.2017 on ground of maintainability. The judgment was challenged before the Division Bench of this Court and the appeals were disposed of vide judgment dated 01.11.2018. The Division Bench held that after the judgment of the Supreme Court in *Mohd. Yunus (supra)*, it was no longer open to NTPC/Pension Trust to contend that writ petitions were not maintainable against them. During the course of hearing of the appeals, NTPC/Pension Trust also raised an objection that the writ petitions were barred by delay and laches. This contention was also negated by the Division Bench observing that the Petitioners were awaiting the outcome of the decision of the Supreme Court with regard to the correctness of the judgment of Allahabad High Court in *Mohd. Yunus (supra)* and could not be faulted for filing petitions after the decision was pronounced. It also needs mention at this stage that the Division Bench segregated the appeals into two categories based on the dates of retirement of the Petitioners i.e. those who retired prior to 03.02.2003 and those who retired post thereto. In the former category were the Appellants in appeals being LPA Nos. 200, 229, 230, 233, 241, 242 and 253/2017. In the case of these Appellants, the Division Bench additionally observed that they were similarly placed as Mohd. Yunus, who had retired prior to the said date and deserved to be placed on the same pedestal. This judgment was taken up in appeal by NTPC Pension Trust and by order dated 29.09.2022, in Civil Appeal Nos. 4695-4726/2019, the Supreme Court remitted the matter back to the learned Single Judge of this Court for examining the writ petitions on merits upholding the judgment of the Division Bench on the issue of maintainability. All rights and contentions of the parties were kept open.



Subsequently, the earlier three writ petitions were also tagged with the batch of petitions remanded by the Supreme Court and all were heard together.

4. From a holistic reading of the documents filed by the Pension Trust, further chronology of events is:

A. On 18.01.1999, PTC 07/99 was issued with respect to options with regard to change in the number of installments for recovery of Past Service Contributions due to change in retirement age from 58 to 60 years. By letter dated 16.08.1999, clarification was given by the Actuary, M/s. K.A. Pandit, on Annuity and Resignation Rates in actuarial valuation. Meeting of the Board of Trustees was held on 20.08.1999 to discuss actuarial valuation of 1995 Scheme to assess the impact of increase in retirement age.

B. On 06.07.2000, CPR No. 444/2000 was issued by NTPC revising the pay scales and allowances for employees in the Executive category below scheduled posts at the Board level. Revision was to take effect from 01.01.1997 and basis this revision, meeting of the Board of Trustees was convened on 02.08.2000 to assess the impact of the pay revision. It was felt that an increase in contributions was required to keep the Trust economically viable and presentation was made by the Actuary giving various options toward the viability including increase in contributions. Actual data of revised pay was called from all the Units to be provided to the Actuaries to enable them to make realistic estimates of increase required in the contributions and it was decided that for the time being, pension would be paid on pre-revised salaries and decision to pay pension on revised pay, including in cases already settled, was to be taken along



with decision regarding increase in Contributions.

C. Various meetings were held thereafter as brought forth by Pension Trust, including presentations and discussions by and with the Actuaries on enhancement of additional contributions and provisional recovery of lumpsum amounts from all categories of employees. Finally, in the 20th Meeting of the Board of Trustees held on 19.12.2002, decision was taken to restructure the 1995 Scheme from 'Defined Benefit' to 'Defined Contribution' Scheme. Under the restructured Scheme, contribution structure was changed for Executives by contribution of 1% of Basic Pay w.e.f. September, 2002 as Monthly Percentage Salary and Additional Contribution at Rs.788/- per month escalating at 8% per annum. The Defined Benefit was also changed to payment of pension based on actual contribution of the principal amount with interest at the rate not exceeding pro rata earnings on the investment by the Trust. It was decided that all cases of superannuation after 01.04.2002 and cases of death while in service or of incapacitation after 31.08.2002, except cases already settled, will be settled based on the new principles. Resolution was subject to approval by NTPC and CIT as per Clause 8 of the Trust Deed. Pending the final decision, pension payable to employees who retired w.e.f. 01.04.2002 was kept in abeyance.

D. Following the aforesaid decision, PTC No. 16/2002 was issued on 19.12.2002, restructuring the 1995 Scheme for Executives both in respect of contributions and the benefits. The changes can be encapsulated as follows:-



“2.0 The contribution structure has been changed as under for executives:

a) Monthly Percentage salary contribution in case of Executives shall be 1% of Basic Pay w.e.f. September, 2002.

b) Additional contribution for executives shall be Rs. 788/- p.m. escalating 8% pa, w.e.f. the month of September, 2002. Actual monthly recovery of Additional Contribution will be separately communicated by the TRUST.

c) Excess contributions paid by members for the month of September, October and November, 2002 will be adjusted against contributions payable in future months.

3.0 For the purpose of this adjustment, Accounting Units of NTPC will not deduct any contribution from the salary of December, 2002 for Executive categories of Employees.

4.0 Detailed communication about revised rates of contribution deduction's, adjustment of excess contributions, if any, and about benefit structure is being issued by the Trust separately.

This is for necessary action at the end of Accounting Units.”

E. In the 107th meeting of NBC held on 27.12.2003, it was decided that 1995 Scheme shall continue to operate as a Defined Contribution Scheme. PTC 17/2003 was issued on 03.02.2003 formulating the restructured Defined Benefit Scheme as Defined Contribution Scheme (hereinafter referred to as the ‘2003 Scheme’). This meant that purchase value of pension annuity was limited to ‘Actual Accumulated Contribution’ made by a member to the Pension Trust. The methodology of working out Accumulated Contribution was as follows:-

“2.1 Computation of 'Accumulated Contribution' as stated in para 2.0 above in case of Executives (Except in case of those Executives who have specifically opted out as at para 3.1.1 below):-

2.1.1 The contributions paid by each Member till September 2002 along with pro-rata earnings after adjustment of amount



paid by Trust for purchase of pension annuities till date, will be credited to the individual's accounts. Plus

2.1.2 Amount of Contribution paid w.e.f. October 2002 for executives as per para 3.1 (ii). Plus

2.1.3 Residual amount after purchases of Pension Annuities in case of death as stated in para 3.1 (i) for Executives. Plus

2.1.4 Interest earned by the Trust on the total amount in the credit of each individual as stated in para 2.1.1, 2.1.2 and 2.1.3 above will also be credited to the individual account on pro-rata basis during the financial year.

2.1.5 The effective rate of earning will be determined and notified to the Members from time to time by the Trust.

2.1.6 The sum of total amount as above at para 2.1.1, 2.1.2, 2.1.3 and 2.1.4 will here in after will be called "Accumulated Contribution".

2.2 Computation of 'Accumulated Contribution' as stated in para 2.0 above in case of specified Executives as mentioned in para 3.1.1 below:-

2.2.1 The contributions paid by each Member till September 2002 in case of Specified Executives along with pro-rata earnings after adjustment of amount paid by Trust for purchase of pension annuities till date, will be credited to the individual's accounts, Plus

2.2.2 Amount of Contribution paid w.e.f. October 2002 for Specified Executives as per para 3.1.1. Plus

2.2.3 Interest earned by the Trust on the total amount in the credit of each individual as stated in para 2.2.1 and 3.1.1 for Specified Executives will also be credited to the individual account on pro-rata basis during the financial year.

2.2.4 The effective rate of earning will be determined and notified to the Members from time to time by the Trust.

2.2.5 The sum of total amount as above at para 2.2.1, 2.2.2, and 2.2.3 will here in after will be called "Accumulated Contribution".

3.1.1 Contributions (To be called category 'B')

In case of those specified Executives who have specifically opted out of the decision of the Trust as paragraph 3.1 (i) and 3.1 (ii) le. category 'A' above, will be required to contribute as per the existing rate of Percentage Salary Contribution plus Additional



Contribution at the rate of Rs. 1067/- p.m., which includes Rs. 360/- as referred to para 3.1 (ii) (c) above, to be escalated at the rate of 8% every year w.e.f. month of April 2003. Plus surrender value of summer and winter liveries as at para 3.1 (ii) (a) and para 3.1 (ii) (b) respectively as above. This will work out to Rs. 788/-pm considering escalations at specified rates.

(Percentile contribution at the rate of 1% to 4% depending upon age as on 1.4.95 in accordance with the Trust Circular No. PTC-01/97 dated 21-10-1997.)

The deficiency / shortfall in the common death pool account in category 'A' Executives in any financial year shall be debited to such category of 'A' Executives only. Under no circumstances it will be debited to the accounts of category 'B' Executives."

F. As far as the benefits under 2003 Scheme were concerned, they were as follows:-

3.2 BENEFITS:

3.2.1 Pension in case of total incapacitation/ death while in service (Except in case of those as have specifically opted out as at para 3.1.1 above): -

The concerned executive/his nominee (except those specified Executives who opted out as at para 3.1.1. above) shall be entitled to pension of Rs.4,000 per month (on the annuity scheme of LIC for 15 years certain and life thereafter so long the annuitant is alive). For this purpose, Trust will deposit suitable amount with LIC. The same is subject to change from time to time as per rules of LIC. For this purpose the total Accumulated Amount available in the account of concerned member will be used.

Shortfall, if any will be met from the percentile contribution pooled together as at para 3.1 (i) above.

3.2.2 In case of executives who have specifically opted out of the method of the calculation stated at para 3.1 and who want to contribute in accordance with para 3.1.1 above, the total accumulated contribution in the credit of concerned specified executive as stated in para 2.2 above only will be utilised for purchase of pension annuity from Life Insurance Corporation of India.

3.2.3 All cases of death while in service / on total incapacitation of category 'A' executives after 31-08-02 (except the cases already settled by the TRUST) will be settled based on the principle as mentioned above.

The individual members / beneficiary will have option to choose the monthly amount of pension as per various schemes of LIC available at the time of superannuation. The details of the Scheme are given Annexure - 3.

3.2.4 Pension in case of Superannuation w.e.f April 2002: - For the purpose of computing the pension on superannuation in case of executive, the total Accumulated Contribution Amount in his credit as stated in para 2.1 above, or as at para 2.2 above will be deposited with LIC for purchase of pension annuity from LIC.

The individual members will have option to choose the monthly amount of pension as per various schemes of LIC available at the time of superannuation. The details of the Scheme are given Annexure - 3.



G. In the 21st meeting of the Board of Trustees held on 11.03.2003, the decision taken in the 20th meeting was confirmed along with confirmation of PTC 17/03 dated 03.02.2003 and PTC 18/03 dated 03.02.2003. As per the documents placed on record by Pension Trust, several attempts were made from time to time for revival of 1995 Scheme by looking into fresh actuary valuations etc. but no resolution could be found. By communication dated 28.10.2010, approval was sought from CMD, NTPC for amendment of 1995 Scheme w.e.f. 01.04.2002 and execution of Supplementary Trust Deed in accordance with provisions of Trust Deed and 1961 Act, as also approval from CIT.

H. Supplementary Trust Deed was executed on 09.08.2011 for restructuring the Pension Scheme as Defined Contribution Scheme with effect from 01.04.2002 and approval was received from Ministry of Power, Government of India on 01.12.2011. Ministry directed that administrative cost of the Scheme shall be borne by the Trust Fund and members' contribution should not be less than 1% of Basic Pay + DA as also that NTPC should immediately stop contribution to the existing 1995 Scheme. Admittedly, CIT, granted approval on 06.02.2013 under Rule 4 of Part 'B' of Fourth Schedule of 1961 Act, retrospectively from 01.04.2002.

SUBMISSIONS AND CONTENTIONS ON BEHALF OF THE PETITIONERS:

5. The action of the Respondents in not paying post-retirement benefits to the Petitioners as per 1995 Scheme is arbitrary, illegal and discriminatory. The Scheme was introduced in 1995 as a welfare measure for providing



social security to the employees, who at the relevant time were members as also those who were to join in the future. The 1995 Scheme was made operative from 01.04.1995 and was formulated with the prior approval of Government of India, Board of Directors of NTPC and CIT. As per MoU dated 07.03.1997, the 1995 Scheme was a Self-Contributory Scheme wherein NTPC's liability was limited only to Rs.100/- per annum for all employees taken together and the rest of the contribution was by the employees. Employees were made members of the Scheme compulsorily and had no option not to become members and/or contribute to this Scheme. In consonance with the salient features of the 1995 Scheme, members of the Scheme including the Petitioners were to contribute in three ways i.e. Monthly Fixed Percentage Salary Contribution, Past Service Contribution and Monthly Additional Contribution. The Scheme assured defined benefits on the date of superannuation providing that a member on superannuation will be entitled to pension commencing from the month following the month of superannuation at the rate of 1.25% per year of Reckonable Service limited to 50% of the salary last drawn and for Reckonable Service of less than 40 years, the benefit was proportionately reduced. It was thus assured that by contributing substantial parts of their earnings including for the past service, Petitioners would have a defined pension to cater for their post-retirement period for a life time. In case of death or disablement of an employee while in service, the Beneficiary was entitled to pension at the rate of 50% of the last drawn salary of the employee. There was thus no justification for the amendment in the Scheme and that too, resulting in considerable reduction in the quantum of monthly pension.

6. For management and administration of the 1995 Scheme, an



irrevocable Pension Trust was formed whereby the Trustees were to hold monies of the Trust for the benefit of the Members/Beneficiaries. *Albeit*, Clause 8 of the Trust Deed empowered the Trustees at any time with the consent of NTPC or on its recommendation to amend or add to the provisions of the Trust Deed by a Supplementary Deed but this was subject to two riders i.e. the alteration should not adversely affect the benefits paid under the Trust or the benefits accrued upto the date of such amendment or the object of the Trust and no alteration would be without ‘prior approval’ of the CIT. In the present case, both conditions have been violated inasmuch as firstly, there was no prior approval from the CIT which was admittedly granted on 06.02.2013 w.e.f. 01.04.2002 and secondly, the restructured Scheme was a Defined Contributory Scheme and the pension payable was considerably reduced. Thus, the amendment was illegal and invalid and cannot be sustained in law. Moreover, the amendment was sought to be made applicable retrospectively to those who had retired prior to 03.02.2003 i.e. to employees who retired on or after 01.04.2002 and whose pensions were kept in abeyance awaiting the restructuring of the pension. It is a settled law that any change in service condition of an employee and that too, the one which adversely effects his or her interest can only be prospective and with the consent of the employee.

7. Right of the Petitioners to receive retiral benefits under 1995 Scheme stood crystallized on the respective dates of their retirements prior to 03.02.2003 and therefore, 2003 Scheme could not be made applicable to take away vested rights that had accrued on retirement. The Supreme Court in *Mohd. Yunus* clearly held that retiral benefits of *Mohd. Yunus* stood crystalized on the date of his retirement i.e. 31.07.2002 and thus any



Rule/Guideline notified thereafter including the Scheme dated 03.02.2003 would not be applicable to him. Cases of Petitioners, who retired prior to 03.02.2003, are squarely covered by the said judgment of the Supreme Court and no differential treatment can be meted out to them.

8. Insofar as the Petitioners who retired post 03.02.2003 are concerned, they would also be governed by the 1995 Scheme and 2003 Scheme will be inapplicable. 1995 Scheme was regulated by Trust Deed dated 12.03.1997. Clause 8 of the Deed provided that any amendment could be with the prior approval of Board of NTPC and CIT. Therefore, any amendment could be valid only when the approval came. There is no dispute that in the present case, CIT gave his approval on 06.02.2013 *albeit* retrospectively from 01.04.2002. Therefore, there was no prior approval and post-facto approval cannot take the place of 'prior approval' in law. Therefore, at the highest, the 2003 Scheme could be valid and operate from on or after 06.02.2013, when the approval was granted and will be inapplicable to retirees before the said date. Additionally, even the Supplementary Trust Deed was executed only on 09.08.2011 and there is no gainsaying that a Trust Deed could be amended only by a Supplementary Deed and even on this score, the 2003 Scheme cannot apply retrospectively.

9. The employees of NTPC including the Petitioners had no option but to compulsorily become members of the Pension Scheme and their contributions were deducted directly from the pay. Petitioners contributed not only a percentage from their current salary and also made additional contribution on a monthly basis but the contributions extended to past service also. These contributions were on an assurance of a defined benefit in the form of monthly pension to the extent of 50% of the last drawn salary



to cater to the needs of their retired lives. Illustratively, Petitioner No. 2 joined NTPC on 24.12.1982 and after receiving six promotions retired as Additional General Manager on 30.06.2008. Thus, calculation under the 1995 Scheme taking the Reckonable Service, which includes past and escalated future service, said Petitioner was entitled to a sum of Rs.24,934/- as pension on the last drawn salary of Rs.75,121/- (Basic Pay + DA) whereas under the 2003 Scheme, he is getting Rs.583/-.

10. The cut-off date of 01.04.2002 for implementation of the restructured Pension Scheme has no nexus with the object sought to be achieved as the pensioners who retired prior to this date and those thereafter, were a homogenous class of retirees who had all contributed under the 1995 Scheme. Moreover, the justification given by the Pension Trust for restructuring the Pension Scheme is also without any basis and incorrect on facts. Trustees assert four reasons for restructuring the 1995 Scheme i.e. increase in wages, enhancement in age of retirement, increase in rates of purchase of annuities and reduction in returns from investments. If there was a revision in the salary, employees' contribution also increased since contributions were a fixed percentage of the salaries. If there was enhancement in age of retirement from 58 to 60 years, the employees contributed for two more years. It is Trust's own imagination that the Trust fund was unviable. The Actuaries were hired by the Trustees and rendered reports to suit their dictates. Neither were the reports shared with the employees and/or their representatives nor the basis of the reports were ever shared or made known. The income of the Trust, to the best of knowledge of the Petitioners, was manifold higher than the money invested in the purchase of pension annuity. Illustratively, for the Financial Year 2002-03, interest



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earning of the Trust was Rs.26.02 crores, whereas amounts spent on purchase of pension annuity was only Rs.2.48 crores. Similarly, for every preceding year, the interest income from the contributions of the Member was far more than the money spent on purchase of annuities. Moreover, as per Guidelines of Ministry of Finance, Government of India, Trust had to invest its investable funds in Central and State Governments securities and PSUs/Financial Institutions securities, but the Trustees never furnished any details of the investments of the funds and/or the quantum of returns against each investment. Additionally, the liveries, shoes and raincoats which were being given to all NTPC employees on yearly basis free of charge were also stopped and value of these items was added to pension contribution for each employee.

11. The prime reason sought to be brought forth by the Respondents for restructuring the Pension Scheme was increase in purchase price of annuities, which is nothing but a disguise to take away the defined benefits under 1995 Scheme. There can be no doubt that while formulating the 1995 Scheme, NTPC would have taken the assistance of Consultants and Accountants/Actuaries, who in turn would have taken into consideration factors such as price escalation, availability of funds in future etc. and catered for all the fluctuations. No details have been furnished by the Respondents with regard to investments of its investable funds in Central Government and State Governments Securities as well as in PSU/Financial Institutions Securities. No documents have been filed to show the alleged paucity of funds by the Pension Trust and in fact, strangely now the argument is taken that the 1995 Scheme had become unviable in the initial years, which *albeit* incorrect, only goes to show that all the while the 1995



Scheme was being operated by the Trust, they were not managing the same in the manner it should have been.

12. Contention of the Respondents that from time to time, decisions were taken in various meetings to ascertain the viability of the Trust and that too, in a transparent manner with the consent and in the presence of the Petitioners and the other employees, is of no aid to the Respondents. Petitioners and other similarly placed employees The amendment was carried out by the Board of Trustees without putting the Petitioners to notice and/or hearing them. Much emphasis was laid on the meeting held on 02.09.2002 but the fact is that only employees working in the Noida office attended the meeting, which was a miniscule percentage of the total employees. Petitioners or individual employees had no voice vote in these meetings. Even otherwise, in law the new restructured Scheme could not be made applicable retrospectively and therefore, their consent or knowledge is meaningless. Objection of delay and laches is misconceived. It is settled law that pension is a continuing cause of action and Courts have been always liberal in condoning delays in matters pertaining to retiral benefits.

SUBMISSIONS AND CONTENTIONS ON BEHALF OF NTPC:

13. The writ petitions are not maintainable being barred by delay and laches. The cause of action was the restructuring in the 1995 Scheme and consequent reduction in pension, which happened in the year 2003 but the Petitioners approached the Court belatedly after several years. Delay and laches is a recognized doctrine and those who are not vigilant in pursuing their rights cannot be heard to claim that their vested rights are taken away and seek relief after several years. While exercising jurisdiction under Article 226 of the Constitution of India, the Constitutional Court must



consider delay as an important factor before examining the case on merits. ***[Ref.: U.P. Jal Nigam and Another v. Jaswant Singh and Another, (2006) 11 SCC 464]***

14. DPE issued O.M. dated 12.04.1991 permitting individual CPSEs at their discretion to work out a suitable annuity scheme through LIC based on purely voluntary contributions by the employees to the fund without any liability on the PSE or the Government of India and contribution of the Management to the superannuation fund was restricted to Rs.100/- per annum for all employees taken together. Board of Directors of NTPC in 141st meeting held on 18.03.1994 approved the proposal to formulate a self-contributory superannuation benefit pension scheme. Pursuant thereto, an MoU was executed on 07.03.1997 between NTPC, NEFI and SEJC, respectively envisaging formulation of a Trust to regulate the Pension Scheme. Another MoU was executed on 10.01.1998 with the Associations of workmen. Accordingly, Pension Trust was created and Trust Deed was executed on 12.03.1997. The Pension Trust comprised originally of four Trustees from NTPC Management and six from employees' representatives. Trust was irrevocable and governed by the rules framed in this regard. The effective date of the Pension Scheme was fixed as 01.04.1995.

15. The contributions made by the employees were directly deducted from the salary and sent to Pension Trust created for the purpose and the Trustees were solely responsible to administer the pension fund for employees of NTPC. Annuities were purchased from LIC and upon superannuation of an employee, cost of annuity was to be paid by the Trust to LIC after which the latter would start paying monthly pension to the retiree. Therefore, NTPC had no control over the affairs and day-to-day



administration of the Trust and contributions from the Petitioners and other employees were solely the domain of the Pension Trust.

16. Pension Scheme was introduced vide CPC dated 09.10.1997 for employees in the Executive and Supervisory categories w.e.f. 01.04.1995 and for administration of the Scheme, Trust had taken a Master Policy from LIC to pay the pension benefits as per the Scheme. Trust invested the funds in approved securities as per Government Guidelines and provisions of 1961 Act. 1995 Scheme was based on defined benefit pattern in which pension payable was already pre-defined as a percentage of last salary drawn and was paid based on length of service i.e. Reckonable Service which is total of Escalated Future Service and Past Continuous Service and salary included the Basic Pay and Dearness Allowance. For those in service before 01.04.1995, Past Service Contribution was to be made while for those who joined after 01.04.1995, contributions included Percentile Salary Contribution and Additional Contribution, which was a fixed lumpsum amount. The contributions were deposited in a Pool Account of the Trust to constitute the corpus.

17. Prior to introduction of the 1995 Scheme, Pension Trust had called for an Actuarial Report on the viability of the Scheme. Scheme was proposed based on certain assumptions such as: (a) rate of mortality in service; (b) cost of annuity; (c) rate of increase in salaries; and (d) return on investment. The Scheme was not etched in stone or immutable. Clause D.4.5 in the MoU contemplated discontinuation of the Scheme itself as is clear from the expression 'till the Pension Scheme continues' and thus, no permanency could be attached to the Scheme. Secondly, availability of money was subject to periodical review, which is clear from a reading of



Clause 6.3 of the salient features of the 1995 Scheme and Clause 3.3 of the Trust Rules and the Actuaries had to be engaged from time to time to scrutinize the availability of funds.

18. In 2000, there was a shift as changed circumstances transformed the basis of actuarial assumptions for the Scheme, necessitating restructuring of the same to make the Scheme workable. Increased additional contributions were required from members, but there was disinclination on the part of the members to do so. Other factors also contributed to the viability of the Scheme being: enhancement in age of superannuation from 58 to 60 years; revision in annuity rates by more than 50% by LIC w.e.f. 01.04.2002; increase in salaries w.e.f. 01.01.1997; and decline in the return on investments. The issue of age enhancement was considered by the Board of Trustees in 9th Meeting held on 20.08.1999 along with the issue of payment of pension on revised salaries and it was felt that actuarial valuation was required. The agenda was again considered in the 12th Board Meeting held on 02.08.2000, 13th Board Meeting held on 11.10.2000, 14th Board Meeting held on 16.02.2001 and 15th Board Meeting held on 08.06.2001. In the 14th and 15th meetings, there was discussion on the increase in annuity rates as also return on investments. Board of Trustees decided that since there was increase of about 20% in the cost of annuity purchased from LIC and reduction in interest rates on investment from 12.5% to 10.5% per annum, members' contributions should increase correspondingly. However, it was also decided that till actuarial valuation report was received regarding the impact of these factors on the 1995 Scheme, pension should continue on the pre-revised salaries.

19. In the subsequent meetings, it was brought forth by the Actuaries that



the increase in salaries and cost of purchase of annuity made it imperative that there was a substantial increase in the contributions by employees from 3% to 8% i.e. 2.75 times increase in Percentage Salary Contribution and increase upto Rs.730/- per month in Additional Contribution or if entire contribution was to be made from Percentage Salary Contribution then members were to pay at the rate 6% to 25% of the salary. However, employees did not agree to the increase in contributions. In the 18th meeting held on 28.12.2001, Actuary was asked to study various alternatives of the benefit and contribution structure and make a detailed presentation in the next meeting. Board of Trustees also took a second opinion from Mercer Human Resource Consulting ('Mercer'). It was highlighted by the Consultant that there was a deficit of Rs.1,443.82 crores as against total liability of Rs.2,226.02 crores.

20. A communication was issued by the then Senior Manager (HR) on 03.07.2002 to all Heads of HR in each project, highlighting the change in assumptions and informing that: (i) Pension Scheme was viable only if there was 50% increase in the members' contributions; (ii) private insurance companies when contacted for purchase of annuities were unable to offer anything in the near future; and (iii) Income Tax Authorities were contacted to modify the rules allowing a direct disbursement of pension by the Trust. Feedbacks were sought from the employees and meetings were held at different levels with the employees' association and in fact NEFI representing the Executive cadre sought closure of the 1995 Scheme. However, all efforts to continue the Scheme in its present form failed and hence, in the 20th Board Meeting held on 20.12.2002, Trustees decided to restructure the Pension Scheme and make payment of pension on the basis



of actual contributions by the members and pro rata interest earned by the Trust on such contributions. Thus, the nature of the Scheme changed from Defined Benefit to Defined Contribution and it was decided that in all cases of retirement on or after 01.04.2002, payment would be made as per the amended Scheme. Employee-wise account was created from earlier pool fund and contribution of the employee was utilized to pay pension only to that employee. Element of cross-subsidy amongst employees was eliminated. Under the restructured 2003 Scheme, there was no linkage either with last drawn salary of the member or the length of service.

21. Accordingly, PTC 17/2003 was issued implementing the 2003 Scheme and under the said Scheme purchase value of annuity remained limited to 'Actual Accumulated Contribution' of an employee. The Accumulated Contribution paid by each employee till September, 2002 along with *pro rata* earnings was credited into the individual account of the employee. Initially, for collection of contributions, Executive and Supervisors were divided into categories 'A' and 'B', however, pursuant to 25th Meeting of the Trustees on 23.07.2004, the categories were merged. Executives and Supervisors now contributed a Fixed Percentage of the Salary being 1% of the Basic Pay and Additional Contribution of Rs.388/- per month from April, 2003 along with a one-time lumpsum Contribution of Rs.3,401/- in the month of April, 2004.

22. In the 27th Board Meeting held on 29.04.2005, it was resolved that monthly Pension payable to all employees will be uniform and for Financial Year 2005-06, contribution will be Rs.453/- per month, which constituted surrender value of Washing Allowance of Rs.147/- per month, Tea Subsidy Component of cash and Canteen Compensation of Rs.306/-. Additionally, a



sum of Rs.3,967/- was payable in the month of April, 2005, which was reimbursement value of summer liveries for the year 2005. This was communicated earlier to all employees vide Circular dated 15.04.2005. Therefore, pension payable to an employee under 2003 Scheme was the contribution of the employee plus interest on it till the date of his superannuation. Where an employee decided to withdraw his contribution before superannuation to invest in other pension schemes, his contribution retained with the Trust was reduced according to withdrawal and interest continued to accumulate on the balance amount.

23. The fact the Scheme as originally conceived could not work was found in both the actuarial reports i.e. report dated 15.02.2007 by M/s. A.K. Pandit and report dated 10.06.2008 by M/s. Watson and Wyatt. The change in 1995 Scheme did not infringe any vested rights of the Petitioners as 1995 Scheme was never conceived as a never ending Scheme. Review of the working of the scheme was engrained in the Scheme as a continuous process and entitlement of pension was contingent upon revision of the contributions by members, which they refused to increase. If the Trust became unviable, there was no way the Scheme could have continued in its present form. It would be travesty of justice to remaining employees if the Scheme continued, as with the depletion of the Trust Fund there would be nothing remaining for the future employees.

24. The decision to restructure the 1995 Scheme was not a hasty decision and was taken after due deliberations and consideration. Process of review of contributions and benefit structure was started from the year 2000 itself. Consultative process was adopted and matter was discussed at length with stakeholders such as different unions, employees' associations, Actuaries,



Board of Trustees etc. It is not correct for the Petitioners to contend that they were not put to notice before allegedly adversely reducing the pensions as they were duly represented in most of the meetings through their Unions etc. and in fact, the Unions and Associations requested for the 1995 Scheme to be terminated forthwith as they were not willing to deposit extra contributions. It was neither feasible nor practical to expect NTPC or the Trust to take individual consent from each employee being thousands in numbers. In any case, mere amendment in a Pension Scheme does not and cannot tantamount to change in service conditions of the Petitioners as it is always open to an employer to fix a cut-off date, which in the present case was taken after weighing the pros and cons of continuing the 1995 Scheme and the viability of the Trust Fund and was not arbitrary.

25. It is clear from a reading of the Trust Deed dated 12.03.1997 that while the Trust was irrevocable, the Deed itself envisaged a provision for alteration, addition or amendment to the Deed and power to alter emanated from Clause 8 of the Deed, which provides that the Trustees may at any time with the consent of NTPC or on its recommendation by a Supplementary Deed amend or add to the provision of the Trust Deed or the Rules. Much was argued by the Petitioners that a condition precedent to amendment of the Deed was that there should be no adverse effect on the benefits being paid to the employees, overlooking the fact that 1995 Scheme was never intended for the benefit of an individual employee but was for the collective interest of the whole class of employees and once it could not address the larger interest, it had to be restructured. Petitioners have accepted the 1995 Scheme with all its terms and cannot question the change. [*Ref. Union of India and Others v. N. Murugesan and Others, (2022) 2 SCC 25*]. Insofar



as the requirement of prior approval of the CIT is concerned under Clause 8, the approval was given on 06.02.2013 w.e.f. 01.04.2002. In any case, the only effect of delayed approval would be that the Trustees shall be held liable for tax implications on the contributions received as per Rule 9 of Schedule 4, Part B of 1961 Act but this cannot invalidate the changes made in the Pension Scheme.

26. Petitioners have completely glossed over the fact that the 1995 Scheme was a purely, voluntary, self-contributory scheme and not a statutory pension scheme. The Scheme was not a part of the conditions of service of the Petitioners and was brought in as an added benefit and therefore, it is not open to the Petitioners to even argue that by the change in Scheme, there is an adverse effect on their service conditions. The Trust was created with a purpose of regulating and managing the Pension Scheme and NTPC/Trust cannot be saddled with any liability if the Trust became unviable.

27. Petitioners wrongly contend that they have paid full amount of Past Service Contributions with interest. Recovery with respect to Past Service Contribution was stopped from 01.09.2002. The Scheme itself envisaged recovery in 120 installments starting from October, 1997 and therefore, only 50% of the 120 installments was actually paid by the members and all contributions made were credited to their respective accounts along with due interest. From September, 2002, amount of Additional Contribution was reduced to Rs.360/- per month and lumpsum contribution of Rs.3,149/- was paid annually while Rs.5,508/- was payable once in three years. Moreover, Fixed Percentage Contribution payable at the rate of 1% to 5% of the salary depending upon of age of the member, was initially reduced to 1% for all



age groups from September, 2002 onwards and altogether stopped from December, 2003. From April, 2012 onwards, no contribution was recovered.

28. NTPC Trust has filed a plethora of financial documents during the hearing of the petitions but there were no substantive arguments by the Petitioners to controvert them. The viability of the 1995 Scheme was determined as per actuarial valuation by qualified Actuaries, who are experts in the field. Long term viability of the Pension Scheme is determined by an Actuary based on sources of contributions to the funds (contributions payable by the Member and earnings from investments) and total liability of pension payment for all members as per benefit structure of the Scheme; current and expected annuity rates; mortality and morbidity data; and employees' age profile etc. Before amendment of the Scheme to defined contribution pattern, expert Actuaries undertook a detailed exercise and deliberated on many alternatives: (a) payment of pension on notional salary with some assumed increase in the salary instead of calculation of pension on actual salary; (b) calculate pension in two parts i.e. separate pension calculation for service rendered upto 01.01.1997 (pension to be calculated based on salary drawn as on 31.12.1996) and second, to calculate pension based on service on or after 01.01.1997 till date of separation of an employee; (c) refund of annuity purchase price to the Trust instead of return to the nominee; and (d) multiple time increase in contribution payable by the employees. On a holistic exercise, it was found that only restructuring of the Scheme would be in the interest of the collective of the employees.

29. Petitioners wrongly rely on the judgment of the Supreme Court in Mohd. Yunus. Firstly, the judgment is not a judgment in *rem*. Secondly, validity of Circular dated 03.02.2003, impugned in the present petition was



never challenged and thirdly, most of the members of Petitioner No.1 have superannuated much after the 2003 Scheme being notified while Mohd. Yunus retired prior to the notification of the 2003 Scheme. Moreover, the Trust had not provided complete details of the Actuary reports and financial impact on the Trust Fund before the Allahabad High Court. The judgment does not decide the workability of the pension Trust or the legality of the 2003 Scheme and it is for this reason that the Supreme Court remanded the present writ petitions for a hearing on merits. Reliance was placed on the following judgments:-

(A) *Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Others*, (2021) 4 SCC 786.

(B) *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others*, (2015) 1 SCC 347

(C) *State of Orissa and Another v. Orissa Khadi and Village Industries Board Karmachari Sangh and Another*, 2023 SCC OnLine SC 281.

(D) *Manish Kumar v. Union of India and Another*, (2021) 5 SCC 1.

ANALYSIS AND FINDINGS:-

30. Coming first to the objection raised by Pension Trust that these writ petitions are barred by delay and laches. There can be no dispute with the legal proposition that doctrine of delay and laches is a well-recognized doctrine and from time to time, the Supreme Court has held that doctrine of delay and laches or for that matter limitation are statutes of repose and peace and rest on foundations of greater public interest. It is, however, equally settled that if in every case an argument against relief, which is otherwise available to a party and just, is founded on mere delay, validity of that defence must be tried on principles of equity, save and except, where there is



a statutory bar to condone the delay. It is also settled that law recognizes a continuing cause of action which may give rise to a recurring cause of action as in the case of salary or pension. Relying on the judgment of the Supreme Court in *M.R. Gupta v. Union of India and Others*, (1995) 5 SCC 628, in *Union of India and Others v. Tarsem Singh*, (2008) 8 SCC 648, the Supreme Court held that it is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for continuance of the injury. If the wrongful act is of such a character that injury caused continues then the act constitutes a continuing wrong. It was further held that normally, a belated service related claim will be rejected on ground of delay and laches in a writ petition but one of the exceptions to the rule is in cases relating to continuing wrong and where the claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking the remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. Of-course, there is an exception to the exception where the grievance affects rights of third parties which in the meantime have crystallized such as in cases of seniority or promotion. The Supreme Court observed that if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect rights of third parties.

31. By these writ petitions, Petitioners ventilate their grievances with respect to re-fixation of their pension on account of restructuring in a Pension Scheme, which has impacted their monthly pension and thus there can be little doubt that their cause is a continuous cause arising out of a continuing injury and the judgment in *Tarsem Singh (supra)*, will apply in



all four corners. Be that as it may, I am of the view that there is no inordinate delay in filing the writ petitions and the reason is not far to seek. It is true that the restructured 2003 Scheme was introduced on 03.02.2003. However, it cannot be overlooked that having introduced the Scheme, the Pension Trust was continuing to have deliberations and discussions on the revival of the 1995 Scheme and in fact, the original Trust Deed was amended by the Supplementary Trust Deed only on 09.08.2011 and significantly, even the approval by the CIT was given on 06.02.2013. All this while, Petitioners were hopeful that the 1995 Scheme may be restored. Pertinently, a categorical stand is taken in most of the writ petitions that whenever Petitioners represented, orally or in writing, protesting against the restructuring of the Pension Scheme, they were asked to await the outcome of the decision of the Supreme Court in the case of *Mohd. Yunus (supra)* as even the Respondents lacked clarity on the validity and applicability of 2003 Scheme. This argument is even otherwise without any basis for the singular reason that the Supreme Court remanded these writ petitions to be heard on merits conscious of when the writ petitions were filed. The order does not indicate that the issue of delay and laches was left open to be decided by this Court considering that the Supreme Court was examining the judgment of the Division Bench dated 01.11.2018, where Pension Trust had categorically raised an objection qua some of the writ petitions that they were barred by delay and laches. In light of this, the preliminary objection raised by the Pension Trust is rejected.

32. Genesis of the disputes between the parties in the present writ petitions lies in 1995 Scheme introduced by NTPC vide CPC No. 354/1997 dated 09.10.1997. Background to introduction of the 1995 Scheme was



persistent demands from various Unions and Associations of the employees of all categories in different PSEs of Government of India to introduce a scheme, in addition to statutory schemes such as Contributory Provident Fund and Employees' Pension Scheme, 1995 under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Gratuity, for payment of retirement benefits in case of superannuation, death or permanent disability of an employee. Looking into these demands, Ministry of Programme Implementation, DPE, Government of India, vide O.M. dated 12.04.1991, issued a directive that individual PSEs may 'work out a suitable Annuity Scheme through LIC, based on purely voluntary contributions made by the employees to a fund outside the PSE without any liability on the PSE/Government'. It was also decided that Management contribution to the Superannuation Fund would be restricted to Rs.100/- per annum for all employees of the PSE, taken together.

33. Pursuant to the said O.M., Board of Directors of NTPC in the 141st meeting held on 18.03.1994, approved the introduction of a Self-contributory Superannuation Benefit (Pension) Scheme to be administered through a Pension Trust. Ministry of Power, Government of India gave its in-principle approval for introduction of a pension scheme, vide letter dated 18.05.1995. NTPC appointed M/s. K.A. Pandit as an Actuary and Actuarial Valuation Report dated 28.04.1993, formulating salient features of the pension scheme, was received from the Actuary, wherein the assumptions considered for valuation were: (a) Future Salary increase @ 7% p.a.; (b) Return on Investment of Trust Fund @ 12%; and (c) Annuity rate of LIC-100 times of monthly pension under Pension for Life with Return of Capital to Nominee option, Mortality in service @ LIC table of 1970-73



(3.45 death per 1000).

34. Subsequently, a revised Actuarial Valuation Report dated 16.03.1994 was received, as per which total value of pension liability at that time was assessed at Rs.154.66 crores, to be funded by Percentage Salary Contribution ranging from 1% to 5% depending on the age of the employee along with Additional Contribution of Rs.280/- per month per employee, escalated at the rate of 8% per annum. An MoU was executed on 07.03.1997 between NTPC and NEFI and SEJC, wherein it was mutually agreed to formulate a Self-Contributory Superannuation Benefit (Pension) Scheme for benefit of all NTPC employees and to create a Pension Trust to manage and administer the Scheme. It was also agreed that NTPC's contribution shall be limited to Rs.100/- per annum for all employees taken together and rest of contribution will be by employees to make the Scheme financially viable and the contributions were to be deducted from the salaries of the employees on a monthly basis. Executives and the Supervisors, who were on roll of NTPC on the date of signing of the MoU as also those who joined in future, were to compulsorily become members of the Scheme. The percentage of contributions as also Additional Contribution were prescribed in the MoU. Clause D.4.1 provided that three Trustees would be from Executives' Association and three from Supervisors' Association as nominated and seven were to be nominated by the Management including the Chairman of the Trust for managing the Trust properties. It was decided that NTPC shall execute a Trust Deed and frame Rules for proper implementation of the Pension Scheme with the approval of CMD, NTPC or any other authorized officer. Trust was to be registered with the Registrar of Assurances.

35. Clause D.4.3 provided that income tax exemption will be obtained to



the effect that income of the Trust will not be chargeable to income tax. Clause D.4.5 stipulated that MoU shall be irrevocable and remain operative and effective in perpetuity till the Pension Scheme continues to be in operation. Salient features of the Scheme were enumerated in Annexure-1 to the MoU and were integral part of the MoU. Clause D.4.7 categorically provided that MoU shall become effective for all purposes and intents from 01.04.1995 and recoveries/contributions shall start from 01.04.1995 and all employees on the rolls of NTPC as on 01.04.1995 shall make contributions.

36. Trust Deed was executed on 12.03.1997 and Rules were framed. Soon thereafter, the 1995 Scheme was introduced on 09.10.1997 with approval of CIT on 11.06.1997. The Scheme became operational and several Circulars were issued thereafter from time to time regulating the deductions made from the employees towards contributions from past as well as present service.

37. The 1995 Scheme was a defined benefit scheme and the corpus of the Trust Fund was funded by contributions from the members through: (a) monthly Percentage Salary Contributions fixed as per the employee's age; (b) Past Service Contributions; and (c) Monthly Additional Contributions. Being in the nature of a 'Defined Benefit' Scheme, the 1995 Scheme assured pension at the rate of 1.25% per annum per year of Reckonable Service, limited to 50% of last drawn salary and for Reckonable Service less than 40 years, benefit was proportionately reduced. Therefore, the 1995 Scheme had a direct linkage to the last drawn salary and Reckonable Service and clearly, the pension was pre-defined. Reckonable Service as defined in the Rules was total of Escalated Future Service + Past



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Continuous Service and Salary included Basic Pay + Dearness Allowance. The sum of three contributions was deposited in a Pool Account of the Pension Trust to make a corpus and the money in the corpus was to be utilized by the Trust to buy annuities from LIC, as and when an employee superannuated, died etc. The Trust invested the contributions in approved securities as per Government Guidelines and provisions of 1961 Act.

38. There was a paradigm shift in 2000 with respect to the working of the 1995 Scheme and viability of the Trust Fund and the trigger, as brought forth by the Respondents, was revision in salaries of the NTPC employees w.e.f. 01.01.1997, following the ten years wage revision pattern in PSEs. This and several other factors, as brought out above, eventually led to introduction of the 2003 Scheme, which was a 'Defined Contribution' Scheme in contrast to the 1995 Scheme, which was a 'Defined Benefit' Scheme. Under the restructured 2003 Scheme, pension was to be calculated based on actual contributions by the members and interest credited by the Trust on such contributions with no linkage to last drawn salary or length of service and the purchase value of annuity remained limited to the 'Actual Accumulated Contribution' of an employee. Aggrieved by the restructuring of the 1995 Scheme, one Mohd. Yunus, an ex-employee of NTPC who retired on 31.07.2002, approached the Allahabad High Court and vide judgment dated 17.12.2009, the Court held that he was entitled for pension under the 1995 Scheme. The judgment was challenged by Pension Trust before the Supreme Court but the Civil Appeal was dismissed on 09.12.2015 on the ground that rights of Mohd. Yunus crystalized on the date of his retirement and any future Scheme, Rules or Guidelines, including 2003 Scheme, would be inapplicable to him.



39. At the cost of repetition, I may note that in the present batch of petitions, in writ petitions, bearing W.P. (C) Nos. 2327/2016, 2092/2016, 9539/2016, 6179/2016, 2289/2016, 4839/2016 and 2010/2016, Petitioners are those members of the 1995 Scheme who retired prior to 03.02.2003 while Petitioners in the other writ petitions, save and except one, are those who retired post 03.02.2003, the date on which the 2003 Scheme was introduced *albeit* retrospectively to apply to all cases of superannuation after 01.04.2002 and to cases of death while in service/total incapacitation after 31.08.2002, except cases already settled by the Trust. Some members of Petitioner No. 1 in W.P.(C) 6357/2019 are also retirees prior to 03.02.2003.

40. The moot question that arises for consideration before this Court is whether the Petitioners will be governed by 1995 Scheme or the restructured 2003 Scheme. But before examining the said questions, it is important to segregate the Petitioners in two categories. In my view, cases of Petitioners who retired prior to 03.02.2003 cannot be placed on the same pedestal as those who retired post the said date as they are squarely covered by the judgment of the Supreme Court in *Mohd. Yunus (supra)*. Therefore, in these cases, this Court need not enter into deciding the vexed question of validity of the 2003 Scheme, which cannot be made applicable to them retrospectively.

41. The case of Mohd. Yunus before the Allahabad High Court was that since he had attained the age of superannuation on 31.07.2002, he was entitled for payment of pension under the 1995 Scheme. Agreeing with Mohd. Yunus, Allahabad High Court held that he would be entitled for payment of post-retiral dues in accordance with the 1995 Scheme, existing on the date of his retirement and any change made subsequently shall not



affect his rights and accordingly, direction was issued to pay his post-retiral dues as per the 1995 Scheme. The judgment was carried in appeal, which was dismissed by the Supreme Court on 09.12.2015, holding that retiral benefits of Mohd. Yunus crystallized on the date of his retirement i.e. 31.07.2002 and any rules or guidelines notified thereafter including the 2003 Scheme could not be made applicable to him. Applying the aforesaid judgment, cases of Petitioners who retired prior to 03.02.2003, will be governed by the 1995 Scheme and the 2003 Scheme, which was introduced post their retirement will be inapplicable. The action of the Pension Trust to make the scheme retrospectively applicable to retirees from 01.04.2002 to take away their vested rights which crystallised on the dates of their respective retirements, cannot be sustained.

42. The argument made on behalf of the Pension Trust that the judgment is not a judgment *in rem* has no force. Supreme Court dismissed the appeal holding that settled and crystallised right of Mohd. Yunus to receive pension at the time of retirement cannot be adversely affected by any subsequent change in a scheme or policy by giving it a retrospective effect. The ratio is certainly applicable to the present cases and binding. Even otherwise, it is a well settled proposition of law that once an employee retires under the existing pension scheme, his right crystallizes on the said date and subsequent change in the pension scheme cannot take away the said vested right, retrospectively. Amendment if any, can only operate prospectively. **[Ref.: Punjab State Cooperative Agricultural Development Bank Limited v. Registrar, Cooperative Societies and Others, (2022) 4 SCC 363 and Bank of Baroda and Another v. G. Palani and Others, (2022) 5 SCC 612].**

43. The next question that arises is as to what relief can be given to these



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Petitioners considering that many years have elapsed from the respective dates of their retirements as also considering that the 1995 Scheme was a Self-Contributory Scheme requiring the members to contribute Fixed Percentage Monthly Salaries, Monthly Additional Contributions and Past Service Contributions. To answer this question, I am guided by the judgment of the Supreme Court in *University of Delhi v. Shashi Kiran and Others*, (2022) 15 SCC 325. In the said case, the primary issue before the Supreme Court in the Shashi Kiran batch of cases was whether having opted for CPF while in service upto the cut off date consciously, the employees could exercise an option to switch over to GPF for grant of pension. The Supreme Court upheld the judgment of the Division Bench permitting the Appellants in the said batch to switch over so that they could receive pension. Since the litigation took many years to conclude, the second question that arose before the Supreme Court was as to the financial impact of the decision of the Division Bench. In this context, the Supreme Court examined that the Shashi Kiran batch of cases involved only 75 persons and the shift of those employees from CPF to GPF would not in any manner affect the strength and character of the Fund as also considering that the original Petitioners had approached the Court in 2010. It was further held that at this length of time, it is not as if any floodgates would be opened or there will be a drain on the resources of the State. In this light, the Supreme Court held that the decision of the Division Bench did not warrant interference with the caveat that original Petitioner would recoup the contribution under CPF with interest. Mindful of the fact that years had elapsed in the litigation and some of the employees may not be interested in switching over to GPF since it entailed recouping the contribution under CPF, the Supreme Court directed



that option must be given to them to decide if they wanted to switch over to GPF at that point of time.

44. In the present case, Trust has taken a stand in the counter affidavit, which is uncontroverted, that recoveries with respect to Past Service Contribution were stopped from 01.09.2002 and Additional Contributions payable monthly were reduced to Rs.360/-. Therefore, wherever part contributions were not made till the date of retirements, the contributions as envisaged in the 1995 Scheme shall have to be made to recoup the corpus of the Trust Fund. However, with the passage of over two decades and at this distant point in time, it may be possible that some of these Petitioners or their beneficiaries may not be interested in recouping the balance contributions under the 1995 Scheme. The only way to resolve this issue will be to direct the Pension Trust to give an option to these Petitioners or their beneficiaries, as the case may be, to contribute to the corpus and wherever the option is favourably exercised, the member shall make the required contribution, upon which the 1995 Scheme will apply and Defined Benefits envisaged under the said Scheme will be granted along with arrears. Be it ingeminated that the total number of these Petitioners is miniscule and therefore, in any event, there is no apprehension of opening floodgates or any significant financial impact on the Pension Trust Fund.

45. Coming now to the Petitioners who retired post 03.02.2003. The submissions of the Petitioners, eloquently articulated by their learned Senior Counsel can be encapsulated as: (a) 2003 Scheme cannot apply retrospectively to those who were members of the 1995 Scheme when the same was introduced and had contributed to the corpus of the Trust; (b) the restructured Scheme adversely affected the pension of the members of the



1995 Scheme and therefore, the alteration/amendment was wholly illegal in light of the embargo in Clause 8 of the Trust Deed dated 12.03.1997; and (c) *albeit* there is no quarrel with respect to the powers of the Trustees to amend or add to the provisions of the Trust Deed dated 12.03.1997, but the same could only be done by the mechanism and procedure provided in Clause 8 of the said Deed, which stipulated that any alteration or addition to the Trust Deed will be with the consent of NTPC or on its recommendation by a Supplementary Deed and with the prior approval of the CIT and in the present case, there was no prior approval, as admittedly CIT gave his approval on 06.02.2013 retrospectively from 01.04.2002 and the Supplementary Deed was executed on 09.08.2011 and therefore, at the highest, 2003 Scheme would take effect from 06.02.2013.

46. Indisputably, the 1995 Scheme was introduced by NTPC in furtherance of the Directive of the Government in O.M. dated 12.04.1991, whereby individual PSEs were to work out a suitable Annuity Scheme through LIC on purely voluntary contributions by the employees and the Scheme was to be administered through a Trust by constituting a Pension Fund. The liability of NTPC as a PSE was limited to Rs.100/- per annum for the total employees taken together and remaining contribution was by the employees. It needs emphasis that there are no allegations of mismanagement or maladministration of the Trust Fund or misfeasance or embezzlement by the Trustees. In fact, no serious arguments were canvassed on behalf of the Petitioners to controvert the financial documents, including actuarial reports or balance sheets etc., placed on record by the Trust, despite hearings post the filing of these documents.

47. The main plank of the argument of the Pension Trust is that the 1995



Scheme was not one etched in stone or immutable and by the very nature of the Scheme it was vulnerable to discontinuation and to say the least subject to periodic reviews for which purpose Actuaries had to be kept engaged in order to scrutinize the availability of funds and consequently the viability of the Trust and the Scheme.

48. One thing that comes out clearly from a close perusal of the documents on record as also arguments of the respective parties is that in less than 3 years from when the 1995 Scheme was introduced in the year 1997 *albeit* with effect from 01.04.1995, serious issues started cropping up with respect to the viability of the Scheme. Respondents attribute this to various factors such as enhancement in the age of retirement of employees from 58 to 60 years; increase in the salaries first of the Executives and then of the Supervisors followed by the workmen from 01.01.1997; increase in rates of purchase of annuities from LIC; and decline in return on investments. Plethora of financial documents have been placed on record by the Respondents jointly which include minutes of several meetings of Board of Trustees, balance sheets, communications with LIC and the representatives of Unions and Associations of the employees, the main stakeholders, as also Actuarial Reports by different Actuaries, being experts in their field, with the purpose of showing that the Scheme was not viable in its present form with the contemplated incoming contributions as also to show the *bona fides* in making every possible attempt to keep the 1995 Scheme viable and ongoing. It would be pertinent to refer to some of these documents in order to examine whether there is any force in the submissions of the Respondents.

49. Documents evidence that prior to the introduction of the 1995



Scheme, Actuarial Reports were called for to assess the viability of the 1995 Scheme. Both the reports dated 28.04.1993 and 16.03.1994 indicate that the assumptions considered during the actuarial valuation were: (a) Future Salary increase @ 7% p.a.; (b) Return on Investment of Trust Fund @ 12%; and (c) Annuity rate of LIC-100 times of monthly pension under Pension for Life with Return of Capital to Nominee option. The total liability was assessed at Rs.154.66 crore to be funded by Percentage Salary Contribution ranging from 1 to 5% and Additional Contribution of Rs.280/- per month escalated at the rate of 8% per annum.

50. After the age of retirement was enhanced and salaries were revised in NTPC in 2000, Board of Trustees held a meeting on 21.08.2000 to assess the impact of the changed circumstances and to see if the Trust was economically viable. Presentation was called for from the Actuary and as suggested, actual data of revised pay was called for while deciding that for the time being, pension will be paid on pre-revised salaries. In the 13th meeting held on 11.10.2000, it was felt that increase in employees' contribution will be required to keep the Trust viable and the rate of Additional Contribution was revised to Rs.915/- from 01.04.2000. Circular dated 15.11.2000 was issued for increase in Additional Contribution for Financial Year 2000-01 for Executives. In the 14th meeting held on 16.02.2001, the impact of wage revision of workmen and Supervisors as also increase in purchase price of annuity by LIC and lower rate of return on investment was discussed again. Details of investments made during the year 2000-01 was also circulated for consideration.

51. Actuarial Valuation Report for Executives dated 17.03.2001 with cash flow and data summary was received, which indicated that as on 31.12.2000,



the pension liability was Rs.348.45 crores while the corpus of the Trust was only Rs.63.61 crores with a deficit to be funded by Additional Contribution being Rs.1,400/- per month by Executives and Percentage Salary Contribution at the then prevailing rate. These issues were again deliberated upon extensively in the 15th meeting of the Board of Trustees held on 08.06.2001. It was brought forth in the meeting by the Secretary of the Trust that increase in annuity rates of LIC was about 19 to 20% and reduction in interest rates was approximately from 12.5 to 11% in one year. In the same meeting, Trustees also discussed various alternate modules to make the fund viable such as: (a) determination of rate of contribution based on single percentile contribution rate varying with age group; (b) payment of pension on fixed salary escalation instead of last drawn salary; and (c) return of capital amount to the Trust instead of going to individual nominee. Possibility of giving loans to the Trust against bonds for good investment was also discussed.

52. In the 18th meeting held on 28.12.2001 elaborate discussions took place on the Pension Scheme and views were expressed by Trustees nominated by NEFI and Supervisory Associations and Unions as also views of Management Trustees. After taking the respective views, it was decided that the Actuary would study the various alternatives of benefit and contribution structures to suggest alternatives including one with which basic benefit structure does not change and in the meantime, pension was to be paid treating the salary as $2/3^{\text{rd}}$ of the salary drawn as an *ad hoc* measure.

53. Documents show that on 01.05.2002, CMD, Pension Trust wrote to Chairman, LIC, requesting for reduction in annuity rates pointing out that in the Self-Contributory Scheme of NTPC, entire corpus of the Fund was



generated by the employees and till March, 2002, for a pension of Rs.1,000/- per month, the annuity purchase price used to be approximately Rs.1,13,852/- on annuity factor of 105.4, however, w.e.f. 01.04.2002 LIC had substantially increased the price to Rs.1,71,184/- on annuity factor of 70.10 i.e. more than 50.36%, which was a huge burden on the Trust. In furtherance thereof, efforts were made to explore any alternate agency for purchasing the annuity, however, inter-office Memo dated 03.07.2002 shows that none of the agencies contacted was in a position to offer the services.

54. Respondents have also placed on record the report by Mercer indicating the detailed exercise undertaken to study the impact of rise in annuity rates, salaries and reduction in interest regime as also to analyse the way forward. It was *inter alia* recommended that: (a) under current circumstances, it may be necessary to buy annuity from LIC; (b) annuity with return of corpus would be a costly proposition and life annuity with a ten years guarantee period was more feasible option being cost effective with a return of significant portion of purchase price; (c) accrual rate of pension at 1.25% was difficult to sustain unless the option of frozen past service pension was adopted; and (d) accrual rate of pension of 1% was feasible if contribution rates were enhanced as suggested.

55. Another significant document relied upon by the Trust is a communication dated 10.09.2002 from Secretary General, NEFI addressed to CMD, NTPC wherein it is stated that during the course of NEFI's interaction with the Management on 07.08.2002, a presentation was made proposing 3 models as alternatives, as suggested by the Actuaries, however, as discussed in the subsequent meeting held on 10.09.2002, it was resolved



after due deliberations that since none of the three models inspire confidence, the Scheme be foreclosed and recovery from salaries of the Executives on this count be stopped forthwith.

56. In light of all this, 20th meeting of the Board of Trustees was held on 19.12.2002. It is recorded in the minutes of the meeting that restructuring of the 1995 Scheme was under review for quite some time as review was needed in light of changes in the economic scenario in the country as well as downward changes in the interest rates. Consequently, certain assumptions made by formulating this Scheme by Actuaries also underwent substantial changes. Detailed discussions held in various Trust meetings yielded no useful solutions and no consensus could be reached on either the change in benefit structure or contributions. It is also noted that pending the decision, pension payments to employees retired after 01.04.2002 had been kept in abeyance. After deliberation, it was resolved that the Self-Contributory Defined Benefit Scheme must give way to the Defined Contributory Scheme and pension would be then payable on the actual contribution of the employee. In furtherance thereof, PTC 16/2002 was issued circulating the change in the contribution structure for the Executive as follows:-

"NTPC LTD. SELF CONTRIBUTORY SUPERANNUATION BENEFIT (PENSION) TRUST"

Ref: pension: trust/ptc-16

Date: 19/12/2002

Pension Trust Communication (PTC) – 16/2002

Sub: Restructuring of contribution structure for Executives for the Self Contributory Superannuation Benefit (Pension) Scheme.

1.0 The Board of Trustees in its 20th meeting held on 19/12/02 has decided to change the contribution and benefit structure in respect of executive categories of employees as under w.e.f. September, 2002.

2.0 The contribution structure has been changed as under for



executives:

- a) *Monthly Percentage salary contribution in case of Executives shall be 1% of Basic Pay w.e.f. September, 2002.*
- b) *Additional contribution for executives shall be Rs. 788/- p.m. escalating @ 8% pa, w.e.f. the month of September, 2002. Actual monthly recovery of Additional Contribution will be separately communicated by the TRUST.*
- c) *Excess contributions paid by members for the month of September, October and November, 2002 will be adjusted against contributions payable in future months.*
- 3.0 *For the purpose of this adjustment, Accounting Units of NTPC will not deduct any contribution from the salary of December, 2002 for Executive categories of Employees.*
- 4.0 *Detailed communication about revised rates of contribution, deduction's adjustment of excess contributions, if any, and about benefit structure is being issued by the Trust separately.*

This is for necessary action at the end of Accounting Units.

*Sd/-
(R.K. RUSTAGI)
SECRETARY (TRUST)''*

57. On 03.02.2003, PTC 17/2003 was issued i.e. the 2003 Scheme postulating the salient features of the restructured contributions and the benefits accruing thereon. From the aforementioned documents, it is palpably clear that the decision to restructure the 1995 Scheme was not a hasty or an overnight decision. Serious attempts and efforts were made by the Respondents to continue the existing Scheme and to explore all possibilities to make the same viable. Actuarial Reports were sought with recommendations to work the Scheme. Request was made to LIC to reduce the purchase price of annuities as that was a major factor impacting the working of the Scheme financially. Several agencies were contacted to sell the annuities on low price but none of the agencies were able to offer the annuities being new in the field. Three alternatives were suggested by the



Actuaries to continue the Scheme with some variations but neither of them could be enforced. It is also pertinent to mention that at all stages, the Employees' Associations and Unions were kept in the loop. They were informed of the reasons for which the 1995 Scheme was no longer viable and that enhanced contributions from them could work towards making the Scheme viable, however, as the Minutes of the Meetings indicate the employees expressed their disinclination to enhance the contributions as sought and/or as recommended by the Actuaries. In fact, NEFI had sent a written communication to CMD, NTPC to foreclose the Scheme as they were unable to enhance the contribution. Finally, a decision was taken to restructure the Scheme with a different structure of contribution as also benefits to the employees.

58. The actuarial reports show that to maintain the existing pension benefits Percentage Salary Contribution would have to be increased from 3 to 8% or 2.75 times with an Additional Contribution of Rs.730/- per month escalated by 8% for Non-Executive or else if entire contribution was met from Percentage Salary Contribution, then it will be 6% to 25% i.e. 7.25 times of the present rate with no Additional Contribution. For Executives, Actuary informed that if only Percentage Salary Contribution was recovered it had to be 6% to 25% or 7 times of present rate with no Additional Contribution or Additional Contribution at Rs.988/- per month with 8% per annum escalation etc. However, the employees were not willing to enhance the contributions and pertinently on 07.02.2003, Supervisory Services Associations sent a letter to Chairman of the Trust to implement the restructured Pension Scheme with a rider that 1% of the Basic Pay deposited in the accounts of the individuals should not be diverted in the Death Pool



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Account and Additional Contribution should be only kept on surrender items which was Rs.788/- per month with escalation at 8% and no additional deduction for Additional Contribution should be made. None of the Associations were inclined to increase the Additional Contribution any further.

59. Holistically seen, the restructuring was in the larger interest of all the members and based on the availability of Funds with the Trust. Several factors cumulatively resulted in the decision to restructure the 1995 Scheme such as more than 50% increase in annuity rates by LIC of India, the annuity service provider from 01.04.2002; salary revisions from 01.01.1997, Actuary Reports suggesting manifold increase in contributions to sustain the Scheme; employees and their representative bodies not agreeing to pay revised contributions as suggested by the Actuaries. It was rightly flagged by the Respondents that long term viability of the Pension Scheme is determined by the Actuary Valuations based on sources of contributions to the Funds by members and/or earnings from investments and total liability of pension for all members as per the Defined Benefit structure of the Scheme, current and expected annuity rates, mortality and morbidity data, employees' age profile etc. As noted above, before restructuring the 1995 Scheme, Actuaries had undertaken a detailed exercise of actuarial valuation deliberating over several alternatives such as payment of pension on notional salary with some assumed increase in salary instead of calculations of pension on actual salary. In fact, at some stage, it was also suggested to calculate pension in two parts i.e. separate pension for service rendered prior to 01.01.1997 (pension to be calculated based on salary drawn as on 31.12.1996) and second part to be calculated based on service on or after



01.01.1997 till date of separation of employees. Refund of annuity purchase price to the Trust instead of return to nominee etc. was also discussed. In fact, even prior to introduction of the 1995 Scheme, actuarial valuations were carried out on certain assumptions as these valuations form the basis of formulating any Pension Scheme. Mr. Lekhi, learned Senior Counsel appearing for the Pension Trust rightly contended that even in the earlier Actuary Report dated 16.03.1994, the Actuary had indicated present value of pension as Rs.154.66 crore with the value of Percentage Salary Contribution being Rs.29.33 crore and the resultant deficit as Rs.125.33 crores. It was recommended that the Actuarial valuation of the Scheme should be carried out every five years to monitor the Fund as this was how the viability could be tested. The financial difficulties experienced by the Trust in operating the 1995 Scheme is duly supported by detailed actuarial reports indicating a deficit which would have made the Scheme unviable. Having analysed the documents and the financials, I am unable to come to a conclusion that the action of restructuring the 1995 Scheme was *malafide* or arbitrary or perverse.

60. Petitioners are right in arguing that Clause 8 of the Trust Deed while empowering the Trustees to amend or add to the provision of the Trust Deed placed two caveats on the Trustees. The first was that the amendment should not adversely affect the benefits being paid from the Trust or accruing upto the date of such amendment or the object of the Trust and the second being the requirement of prior approval of the CIT. In fact, reading of Clause 8 of the Trust Deed itself shows that the Pension Scheme was not cast in stone and the Trustees had the power to amend, alter or add to the Scheme. Insofar as the first condition is concerned, it is amply clear from the documents on



record that had the Scheme continued in its present form of contributions and defined benefits, it was unviable to run the Trust. Therefore, benefit of few would have possibly resulted in discontinuing the Scheme totally and this would have been detrimental to the larger interest of the collective of employees and thus by restructuring and continuing the Scheme with a different structure, the pension scheme could be sustained *albeit* with a different structure. Insofar as the prior approval of the CIT is concerned, Pension Trust has taken a stand, and in my view rightly so that at best, the delayed approval would result in tax liabilities but this cannot invalidate the Scheme and in this view, I am fortified by a judgment of the Co-ordinate Bench of this Court in *A.K. Saini & Ors. v. Union of India & Ors., 2015 SCC OnLine Del 13637*, where a similar contention was raised by the Petitioners that any amendment to the Trust Deed was permissible only with the prior written approval of the Corporation and CIT. This contention was negated by the Court by holding that the third amendment was brought in to bring parity amongst the employees and the mere fact that it was not approved by CIT will not render the amendment void and at best it would only deprive the Trust of tax benefits. In the present case, NTPC has stated in its separate affidavit that it had approved the restructuring of the Scheme and insofar as the CIT is concerned, approval was granted on 06.02.2013 from 01.04.2002 and at the highest, the impact of the delayed approval would be in the tax regime but this cannot be a reason to invalidate the 2003 Scheme brought in after due deliberations and considerations, taking into account actuarial reports as also keeping all stakeholders in loop. Execution of the Supplementary Deed was only a ministerial act and no mileage can be drawn by the Petitioners from its execution in 2011.



61. It is a settled law that judicial review is concerned not with the decision but with the decision-making process and a petition under Article 226 of the Constitution of India is for judicial review and not an appeal. Supreme Court has from time to time held that judicial review is not concerned with the merits of the decision but the manner in which it was taken. In *R v. Panel on Take-overs and Mergers, ex parte Guinness Plc*, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or longstop jurisdiction and held that unless the restriction is observed, the Court, under the guise of preventing abuse of power will be guilty of usurping the power. In *Tata Cellular v. Union of India, (1994) 6 SCC 651*, the Supreme Court held that the duty of the Court is to confine itself to question of legality. Its concern should be: (a) whether the decision-making authority exceeds its powers; (b) commits an error of law; (c) commits a breach of rules of natural justice; (d) reaches a decision which no reasonable authority would have reached; or (e) abused its power. Applying these principles, in matters like the present one, this Court has only to see if the restructuring of the Scheme is so irrational, arbitrary or perverse that it cannot be sustained in law. For all the aforesaid reasons, this Court is unable to reach a conclusion that the restructuring was irrational or perverse or that the decision-making process was flawed or arbitrary.

62. Insofar as the argument of the Petitioners that individual notices were not given to the Petitioners before restructuring the Scheme which had an adverse impact on their pensions which were considerably reduced, suffice would it be to hold that the representatives of the employees through various Unions and Associations were also associated with the process of restructuring and their suggestions on the actuarial reports including the



advise to increase the contributions to keep the Scheme viable were invited. It was neither practical nor feasible for the Respondents to serve individual notices on the Petitioners and in my view, there is no legal requirement for serving individual notices in matters of policy decisions pertaining to restructuring of Pension Schemes.

63. Before parting, it is pertinent to mention that the 1995 Scheme was introduced on 09.10.1997 and within a short span of less than 3 years, questions were raised on the viability of the Scheme and the Trustees started the process of actuarial valuations. Therefore, the Scheme did not run for more than five years *albeit* the deductions/recoveries were made from 01.04.1995. Petitioners were completely aware of this process and the possible unviability of the Scheme and as per the uncontroverted stand of the Respondents, recovery with respect to Past Service Contribution was stopped from 01.09.2002 and from the same date, amount of Additional Contribution was also reduced to Rs.360/- per month. When the restructuring took place, the Accumulated Contribution paid by each employee till September, 2002 along with *pro rata* earnings was credited into the individual account of the employee as under the 2003 Scheme, purchase value of annuity was limited to 'Actual Accumulated Contribution' of an employee. The present is not a case where the 1995 Scheme had a long span giving rise to legitimate expectations and thus even on equity, Petitioners have no case to assert that this Court should direct the Respondents to restore the 1995 Scheme for retirees post 03.02.2003.

64. In light of the above findings, W.P. (C) Nos. 2327/2016, 2092/2016, 9539/2016, 6179/2016, 2289/2016, 4839/2016 and 2010/2016, are allowed directing that the Petitioners therein will be entitled to pension under the



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1995 Scheme. However, keeping in view the long passage of time that has elapsed since their retirements, Respondents shall within six weeks from today give an option to these Petitioners/Beneficiaries, if they wish to receive pension under the 1995 Scheme. Wherever the Petitioners choose to be governed by the 1995 Scheme, they will make the requisite balance contributions, if any, as envisaged under the Scheme and pension shall resume. Arrears will be paid within 4 months from today. This direction will apply to all those Petitioners in the other writ petitions who retired prior to 03.02.2003.

65. All other writ petitions, where the Petitioners have retired post 03.02.2003, are dismissed for the aforesaid reasons.

66. Pending applications also stand disposed of.

JYOTI SINGH, J

MAY 21, 2025/Shivam