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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th May, 2026

+ W.P.(C) 4346/2022

JAYANTI PRASAD VAJPEI

.....Petitioner

Through: Mr. Pardeep Gupta, Mr. Parinav
Gupta and Ms. Mansi Gupta,
Advocates.

versus

ORIENTAL INSURANCE COMPANY LIMITED AND ORS.

.....Respondents

Through: Mr. Rahul Ranjan Verma, Mr. Vivek
Malik and Mr. Vivek Sinha,
Advocates for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, a retired officer of the Oriental Insurance Company Limited, seeks entry into the pension fold under the General Insurance (Employees') Pension Scheme, 1995,¹ as amended by the General Insurance (Employees') Pension Amendment Scheme, 2019.² The controversy lies at the intersection of three matters: a resignation accepted in 1996, a subsequent appointment expressly described as a fresh appointment, and a later statutory amendment of 2019 which reopened pension option for a

¹ "1995 Scheme"



defined class of employees.

2. The Petitioner does not dispute that his earlier service stood interrupted by resignation. Nor can he avoid the document dated 20th November, 1996, by which, after his fresh appointment, he opted not to be governed by the 1995 Pension Scheme. He submits that even on treating his appointment of September 1996 as a fresh appointment, he was still an employee to whom the 1995 Scheme applied. Paragraph 3(4) of the scheme and the very fact that the company required him to fill an option form, according to him, proves that he was within the reach of the 1995 Scheme. His grievance is that when the Central Government, by the 2019 Amendment, reopened the pension option, the benefit was arbitrarily confined to employees who had joined service before 28th June, 1995, while employees like him, who had joined on or after that date and had served till superannuation, were denied the same opportunity.

3. The Respondents answer this by saying that the Petitioner cannot take both positions at once. Having resigned from service in May 1996, having accepted re-employment on the express condition that it would be a fresh appointment and that past service would not count for any purpose, and having thereafter exercised a final option to stay outside the 1995 Pension Scheme, he cannot claim a fresh statutory opportunity in 2019 which was never meant for his class. The Respondents state that the 2019 Amendment was a special window for employees who had joined service before the original notification of the Pension Scheme, namely before 28th June, 1995.

Facts

4. The Petitioner first joined the services of the Respondent company in

² “2019 amendment”



1986. At that stage, the 1995 Pension Scheme had not yet been notified. He continued in service until he tendered resignation by letter dated 9th May, 1996. The competent authority accepted the resignation by letter dated 20th May, 1996 with effect from 15th May, 1996 and his relationship of employment came to an end by acceptance of resignation.

5. Shortly thereafter, the Petitioner sought re-employment. By letter dated 8th August, 1996, the company agreed to consider re-employment in the cadre of Assistant Manager, subject to specific terms. One of those terms was that the re-employment would be treated as a fresh appointment and that the past service rendered by the Petitioner would not be counted for any purpose whatsoever. The Petitioner accepted these terms by letter dated 18th August, 1996.

6. The formal appointment letter dated 20th September, 1996 offered the Petitioner appointment on probation to the post of Assistant Manager. The appointment was to take effect from the date of joining. The Petitioner was required to join by 30th September, 1996. The letter also required execution of a service bond. It stated, in terms, that the Petitioner would be governed by the 1995 Scheme in lieu of the company's contribution to provident fund. It then made an important stipulation. If the Petitioner was 35 years of age or more on the date of joining, he could elect to forego his right to pension by submitting such option within 90 days of appointment, whereupon the Pension Scheme would not apply to him. The same appointment letter also recorded that the engagement would be treated as a fresh appointment and that the Petitioner would not claim, nor be entitled to, any benefit of past service.

7. The Petitioner joined pursuant to the said letter. He was confirmed in



the rank of Assistant Manager with effect from 24th September, 1997 by communication dated 4th November, 1997.

8. The decisive document, for the present controversy, is Annexure R-3. It is an option form under paragraph 4 of the 1995 Scheme, meant to be filled by an employee appointed on or after the date of notification of the Pension Scheme, namely 28th June, 1995, and aged 35 years or above at the time of appointment. In that form, the Petitioner declared that he had read and understood the 1995 Scheme and that he did not opt to be governed by the said Pension Scheme. He further declared that the option exercised by him was final and undertook that he would at no time revoke the option so exercised. The form bears the date 20th November, 1996.

9. The Petitioner thereafter continued in service and superannuated on 31st January, 2019. The company issued a communication on the same date recording settlement of terminal dues on retirement on reaching superannuation.

10. On 23rd April, 2019, the Central Government notified the 2019 Amendment in exercise of powers conferred by Section 17A of the General Insurance Business (Nationalisation) Act, 1972. The 2019 Amendment inserted, among others, sub-paragraphs 10 to 13 in paragraph 3 of the 1995 Scheme.

11. The Petitioner submitted an option form dated 27th May, 2019 seeking to join the Pension Scheme in the light of the 2019 Amendment. The Respondents rejected his request by letter dated 2nd July, 2019. The rejection stated that the 2019 Amendment was applicable only to retired employees who had joined the service of the company before 28th June, 1995 and had retired before 23rd April, 2019. It further stated that, as per the records, the



Petitioner had been re-employed and the re-employment was a fresh appointment, with past service not to count for any purpose. On that basis, the Petitioner was held ineligible under the 2019 Amendment.

12. The Petitioner made further representations. The company reiterated its decision on 19th August, 2019. The matter was again examined and, by letter dated 4th November, 2019, the earlier view was maintained.

13. The Petitioner earlier filed W.P.(C) No. 7807 of 2021. In that petition, he moved an application seeking amendment in order to challenge the pension scheme as discriminatory. Since notice had not been issued in that writ petition, this Court, by order dated 6th October, 2021, permitted the Petitioner to withdraw the petition with liberty to file a fresh writ petition incorporating the proposed challenge. The present petition has thereafter been filed.

Statutory and scheme framework

14. The General Insurance Business (Nationalisation) Act, 1972 empowers the Central Government, under Section 17A, to regulate the terms and conditions of service of officers and other employees of the Corporation and the acquiring companies. The 1995 Scheme and the subsequent amendments, including the 2019 Amendment, have been made in exercise of that power.

15. The General Insurance (Employees') Pension Scheme, 1995 was notified on 28th June, 1995. It was deemed to have come into force on 1st November, 1993, except where the Scheme provided otherwise. Paragraph 2(k) defines "employee" to mean a person employed in the service of the Corporation or a company on full-time work on permanent basis and who opts and is governed by the Scheme. Paragraph 2(o) defines "notified date"



to mean the date on which the Scheme is published in the Official Gazette.

16. Paragraph 3 falls under Chapter II, which deals with application and eligibility. The provision sets out several categories of employees to whom the Scheme applies. Paragraph 3(3) covers employees who were in service before the notified date and continued in service on or after the notified date, subject to exercise of option and transfer or refund of provident fund related amounts. Paragraph 3(4), on which the Petitioner places reliance, covers employees who “join the service of the Corporation or a Company as the case may be, on or after the notified date”.

17. Paragraph 4 of the 1995 Scheme deals with the option to subscribe to the provident fund. Sub-paragraph (1) provides that, notwithstanding paragraph 3(4), an employee who joins service on or after the notified date at the age of thirty-five years or more may, within ninety days from the date of appointment, elect to forego his right to pension, whereupon the Scheme shall not apply to him. Sub-paragraph (2) further provides that the option so exercised shall be final.

18. The scheme was subsequently amended by the General Insurance (Employees’) Pension (Amendment) Scheme, 1997.³ By that amendment, an additional category was inserted in paragraph 3 extending a further option to employees who had joined service before 28th June, 1995 and were in service on the notified date of the 1997 Amendment, subject to exercise of option and transfer or refund of provident fund related amounts. For the purpose of that inserted provision, the expression “notified date” was specially defined to mean the date of publication of the 1997 Amendment Scheme.



19. The 2010 Amendment later modified paragraph 3(4) by substituting the words “after the notified date” with “after the notified date but before the 1st day of January, 2004”. This shows that the scheme continued to recognise a class of post-notified-date entrants.

20. The 2019 Amendment, by contrast, inserted new categories into paragraph 3. Sub-paragraph 10 deals with employees who joined service before 28th June, 1995 and continued in service on the date of publication of the 2019 Amendment. Sub-paragraph 11 deals with employees who joined before 28th June, 1995 but had retired before the said date. Sub-paragraphs 12 and 13 deal with family pension in respect of employees who had joined before 28th June, 1995 and died either while in service or after retirement before the said date. Each of these inserted provisions proceeds on the same threshold fact: joining service before 28th June, 1995. The Petitioner’s argument is that this limitation is arbitrary. The Respondents say that it is a rational legislative classification.

Submissions on behalf of the Petitioner

21. Mr. Pardeep Gupta, appearing for the Petitioner, submits that the Petitioner is not asking the Court to ignore the appointment letter dated 20th September, 1996. He accepts, for the purpose of his principal argument, that the said appointment may be treated as a fresh appointment. His submission, however, is that even as a fresh appointee of September 1996, the Petitioner fell within paragraph 3(4) of the 1995 Scheme, since that provision expressly applies to employees who joined the service of the Corporation or a company on or after the notified date.

22. Mr. Gupta submits that the Respondents cannot deny the applicability

³ “1997 Amendment”



of the 1995 Scheme to the Petitioner. The appointment letter itself stated that, on confirmation, the Petitioner would be governed by the 1995 Pension Scheme in lieu of the company's contribution to provident fund. The Petitioner was also required to fill the option form meant for employees appointed on or after 28th June, 1995 and aged 35 years or more. Annexure R-3 therefore supports the Petitioner's case that he belonged to the class of employees covered by the 1995 Scheme.

23. He submits that the Petitioner may have opted out in 1996, but that does not answer the challenge to the later amendment. Once the Central Government, in 2019, decided to reopen pension option by amending paragraph 3 of the parent Scheme, it could not extend that reopened option only to employees who had joined before 28th June, 1995. The Petitioner states that the parent Scheme contained both, employees who had joined before the notified date, and those who joined thereafter. If the Central Government chose to create a fresh opportunity to enter the pension fund, that opportunity had to be made available to all employees who were otherwise within the scheme structure and who had rendered qualifying service.

24. He also places reliance on the 1997 Amendment to the Scheme, and particularly the special definition of "notified date" introduced therein for certain categories under paragraph 3. According to the Petitioner, since he continued in service after his reappointment in September 1996 and remained in service when the 1997 Amendment was notified, he could not be excluded from the pension framework merely because his fresh appointment was after 28th June, 1995.

25. The Petitioner completed more than 22 years of service even from the



date of fresh appointment and served until superannuation on 31st January, 2019. Pension is earned by service and the Respondents cannot withhold it by a narrow reading of a beneficial scheme.

26. It is further argued that the impugned communications are non-speaking and mechanical. The communication dated 2nd July, 2019 proceeds on the premise that the Petitioner had not joined before 28th June, 1995. It does not consider the distinct submission that, even as a post-notified-date appointee, he was covered by paragraph 3(4) of the 1995 Scheme. Nor does it examine whether excluding employees who joined after the notified date but before 1st January, 2004 bears any rational nexus with the object of the 2019 Amendment.

27. Mr. Gupta submits that the 2019 Amendment creates a class within a class. Employees who were covered by the 1995 Scheme are divided between employees who joined before and after 28th June, 1995. The former are given a fresh opportunity to opt for pension, while the latter, though equally governed by the Scheme and having rendered long service, are denied such opportunity. This, according to him, offends Articles 14 and 16 of the Constitution.

28. He places reliance on *D.S. Nakara v. Union of India*,⁴ and *All Manipur Pensioners Association v. State of Manipur*,⁵ to submit that pensioners or pension-eligible employees cannot be divided by an artificial cut-off date when the object is to extend pensionary benefit. In *All Manipur Pensioners Association v. State of Manipur*,⁶ the Supreme Court held that all government employees who had completed qualifying service formed

⁴ (1983) 1 SCC 305

⁵ (2020) 14 SCC 625



one homogeneous class for pension, and that a cut-off date which had no nexus with the object of revised pension violated Article 14.

29. Reference is also made to similarly placed employees, including P.K. Mehrotra and Rakesh Kumar Monga, who, according to the Petitioner, were extended the benefit of the 2019 Amendment. He submits that the Respondents, being an instrumentality of the State, cannot pick and choose among retired employees. If the object was to secure a pensionary option to employees who had remained outside the pension fund, the Petitioner could not have been denied that opportunity.

30. The Petitioner accordingly prays that the rejection letters dated 2nd July, 2019, 19th August, 2019 and 4th November, 2019 be quashed; that the restrictive part of the 2019 Amendment be read down or declared discriminatory to the extent it excludes employees such as the Petitioner; and that the Respondents be directed to permit the Petitioner to join the Pension Scheme.

Submissions on behalf of the Respondents

31. Mr. Rahul Ranjan Verma, counsel for the Respondents, submits that the petition proceeds on a misconception. The Petitioner originally joined the company in 1986, but that service came to an end when his resignation was accepted on 20th May, 1996 with effect from 15th May, 1996. He thereafter sought re-employment. The company agreed to consider him only on specific terms that the re-employment would be a fresh appointment and the past service would not be counted for any purpose whatsoever. The Petitioner accepted those terms and cannot now avoid their effect.

32. Mr. Verma submits that the appointment letter dated 20th September,

⁶ (2020) 14 SCC 625



1996 is consistent with that position. It offered appointment on probation, required the Petitioner to report for duty, made the appointment effective from the date of joining and further stated that the appointment would be treated as a fresh appointment and that the Petitioner would not be entitled to any benefit of the past.

33. It is further submitted that the Petitioner, upon fresh appointment, was treated as a post-notified-date entrant under the 1995 Scheme. Because he was more than 35 years of age on the date of appointment, he had the option to forego pension. He exercised that option by Annexure R-3 on 20th November, 1996. He declared that he had read and understood the 1995 Pension Scheme, that he did not opt to be governed by it, and that his option was final and would not be revoked.

34. Mr. Verma contends that the Petitioner is therefore neither a pensioner, nor a pension scheme member. He consciously chose the provident fund route. Having obtained the benefits of that choice over the years, he cannot now seek to enter the pension fund merely because a special window was opened in 2019 for another class.

35. Mr. Verma further submits that the 2019 Amendment has a defined scope. It applies to employees who had joined before 28th June, 1995. Sub-paragraphs 10 to 13, inserted in paragraph 3, repeatedly use that threshold. The Petitioner does not satisfy that threshold if his appointment of September 1996 is treated as the relevant appointment for pension purposes.

36. Mr. Verma emphasises there is no arbitrariness in confining the 2019 option to pre-28th June, 1995 employees. Those employees had entered service before the pension scheme came into existence. They belonged to a transitional class. The scheme had to provide windows for them to migrate



from the provident fund regime to the pension fund. In contrast, employees appointed after the notified date entered service when the pension regime already existed. They were aware of the scheme at the point of appointment and, if eligible to exercise an option, could make their choice then. The Petitioner did precisely that. The Constitution does not require the same treatment for employees who stand in materially different positions.

37. Counsel submits that *All Manipur Pensioners Association* and *D.S. Nakara* do not assist the Petitioner. Those cases concern differential treatment among pensioners or pension-eligible employees forming one homogeneous class. The present case concerns a person who opted out of the pension scheme at inception. The issue is not revision of pension within a class, but re-entry into a scheme after a final statutory option.

38. As to parity with P.K. Mehrotra and Rakesh Kumar Monga, the Respondents submit that neither person has been impleaded. More importantly, the Petitioner has not shown that those employees had resigned, accepted fresh appointment on terms excluding past service, and opted out of the pension scheme in the same manner as the Petitioner. Without establishing identity of legal position, Article 14 cannot be invoked merely by naming other employees.

39. The Respondents also raise delay and laches. It is submitted that the Petitioner's real grievance traces back to 1996, when he accepted fresh appointment and opted out of the Pension Scheme. He cannot revive that concluded position more than two decades later through a challenge to the 2019 Amendment. The Respondents accordingly seek dismissal of the writ petition.

Issues



40. Having heard counsel and examined the record, the following issues arise for consideration:

(i) What is the legal effect of the Petitioner's resignation accepted with effect from 15th May, 1996 and his subsequent appointment dated 20th September, 1996?

(ii) Whether the Petitioner's appointment of September 1996 must be treated, for pension purposes, as a fresh appointment excluding his earlier service?

(iii) Whether paragraph 3(4) of the 1995 Scheme, which applies to employees joining on or after the notified date, entitled the Petitioner to claim pension notwithstanding his option dated 20th November, 1996 not to be governed by the Scheme?

(iv) Whether the option exercised by the Petitioner on 20th November, 1996 was final and binding, and whether it foreclosed his claim to be governed by the 1995 Pension Scheme?

(v) Whether the 2019 Amendment, in confining the fresh option to employees who joined service before 28th June, 1995, creates an arbitrary or unconstitutional classification violative of Articles 14 and 16 of the Constitution?

(vi) Whether the Petitioner can claim parity with employees such as P.K. Mehrotra and Rakesh Kumar Monga in the absence of proof that they were similarly situated in all material respects?

(vii) Whether the impugned communications dated 2nd July, 2019, 19th August, 2019 and 4th November, 2019 call for interference under Article 226 of the Constitution?

Analysis and findings



41. The Petitioner's case rests on a short submission: if, after September 1996, he is to be treated as a fresh appointee, he falls within paragraph 3(4) of the 1995 Scheme as an employee who joined service "on or after the notified date"; if such employees were within the parent scheme, the 2019 Amendment could not, without offending Article 14, confine the reopened pension option only to employees who joined before 28th June, 1995.

42. The argument has surface appeal. It accepts the difficulty created by the Petitioner's resignation and fresh appointment, and shifts the challenge to the classification introduced by the 2019 Amendment. But after examining the scheme, the appointment documents and the Petitioner's own option, the Court is unable to accept it.

Effect of resignation and fresh appointment

43. The Petitioner's first spell of service cannot be treated as a continuing thread for pension purposes. His resignation was accepted by letter dated 20th May, 1996 with effect from 15th May, 1996, thereby severing the jural relationship of employment. The subsequent correspondence leaves no ambiguity that the later engagement was not a continuation of service. By the re-employment offer dated 8th August, 1996, the company stipulated that the appointment would be treated as a fresh appointment and that the Petitioner's past service would not count for any purpose whatsoever. The Petitioner accepted those terms by letter dated 18th August, 1996.

44. The formal appointment letter dated 20th September, 1996 is entirely consistent with that position. It offered appointment on probation to the post of Assistant Manager, to take effect from the date of joining, subject to satisfactory completion of probation and execution of a service bond. These are incidents of a fresh appointment, not reinstatement into continuing



service. The Petitioner's original entry into service in 1986, therefore, cannot be relied upon to satisfy the requirement under the 2019 Amendment that the employee must have joined service before 28th June, 1995. The relevant date for pension purposes is the fresh appointment of 20th September, 1996.

45. This, however, does not mean that the Petitioner stood wholly outside the 1995 Scheme. As a post-notified-date entrant, he fell within the category of employees to whom the scheme applied, which is precisely why he was required to exercise an option. The difficulty for the Petitioner is not that the scheme was inapplicable to him, but that he expressly elected not to be governed by it.

The scheme, the option, and the Petitioner's attempt to rely on paragraph 3(4)

46. Paragraph 2(k) of the 1995 Scheme defines "employee" to mean a person employed in the service of the Corporation or a company on full-time work on permanent basis "and who opts and is governed by this scheme". Paragraph 2(o) defines "notified date" as the date on which the scheme was published in the Official Gazette. The notified date, for present purposes, is 28th June, 1995.

47. Paragraph 3 falls under Chapter II, titled "Application and Eligibility". Paragraph 3(3) covers employees who were in service before the notified date and continued in service on or after that date, subject to written option and transfer or refund of provident fund related amounts. Paragraph 3(4), on which the Petitioner places reliance, applies to employees who join the service of the Corporation or a company "on or after the notified date".



48. The Petitioner is right to this limited extent: a person appointed after 28th June, 1995 was not outside the application of the 1995 Scheme. The scheme did apply to post-notified-date entrants. The appointment letter also acknowledged that position when it stated that, on confirmation, the Petitioner would be governed by the 1995 Scheme in lieu of the company's contribution to provident fund. The same clause, however, immediately recognised that if the Petitioner was aged 35 years or more on the date of joining, he could elect to forego his right to pension by submitting an option within 90 days, whereupon the Pension Scheme would not apply to him.

49. This stipulation in the appointment letter was not an independent contractual condition but reflected paragraph 4 of the 1995 Scheme itself. Paragraph 4(1), which opens with a non obstante clause overriding paragraph 3(4), specifically permits an employee joining service on or after the notified date, and aged thirty-five years or more, to elect within ninety days to forego pension, whereupon the Scheme "shall not apply to him". Paragraph 4(2) further provides that the option once exercised shall be final.

50. The Petitioner did exactly that. In the option form prescribed for an employee appointed on or after the notified date and aged 35 years or above at the time of appointment, the Petitioner declared that he had read and understood the 1995 Pension Scheme, and did not opt to be governed by it. He further declared that the option exercised by him was final and undertook that he would at no time revoke it.

51. This document is fatal to the Petitioner's claim. No plea of fraud, coercion, misrepresentation, incapacity or statutory invalidity has been substantiated. The Petitioner does not say that he did not sign it. Nor does he show that the company acted on a wrong date of birth or a wrong date of



appointment. The option was attested and verified. It was allowed to operate for more than two decades.

52. Paragraph 3(4) cannot be read in isolation. The very category of post-notified-date entrants brought within the scheme by paragraph 3(4) is made expressly subject to paragraph 4, which permits employees aged thirty-five years or more to elect not to be governed by the scheme. The scheme architecture therefore recognises both inclusion and exclusion through the statutory option mechanism. It does not create an indefeasible right to pension independent of what option may be exercised by the employee. It does not override the definition of “employee” in paragraph 2(k), which requires that the person must opt and be governed by the scheme. Nor does it render a final opt-out revocable whenever a later amendment opens a special window for a different class.

53. The words “on or after the notified date” cannot be detached from the framework in which they appear. A provision which brought post-notified-date entrants within the reach of the pension framework cannot be converted into a perpetual right to reopen an option already declined. The Petitioner was not excluded from the 1995 Scheme by the employer. He was afforded the option to be governed by the scheme, but expressly elected not to do so.

54. The Petitioner’s argument based on length of service also misses the central point. Even if his service from September 1996 to January 2019 is taken into account, the question is not whether he served long enough. The question is whether he was a member of the pension regime, or an employee governed by the pension scheme, during that service. Qualifying service becomes relevant only after the employee is within the pension scheme.

55. Paragraph 29 deals with superannuation pension, and paragraph 34



deals with computation where an employee retires after completing qualifying service, including cases where such service is less than 33 years but more than ten years. However, these provisions operate after the anterior condition is met, namely that the person is an employee governed by the pension scheme. The Petitioner failed at that anterior stage because he opted out. For the same reason, the repeated reference to “20 years” does not advance the matter.

The 2019 Amendment: its language and object

56. The Petitioner’s next submission is that even if he opted out in 1996, the 2019 Amendment reopened pension option, and such reopening could not be confined to pre-28th June, 1995 employees.

57. The 2019 Amendment was notified on 23rd April, 2019. It inserted sub-paragraphs 10 to 13 in paragraph 3 of the 1995 Scheme. Sub-paragraph 10 applies to employees who joined the service of the Corporation or a company before 28th June, 1995 and continued in service on the date of publication of the 2019 Amendment. Such employees were required, within the prescribed period, to exercise an option in writing to become members of the fund and to authorise transfer of provident fund contributions.

58. Sub-paragraph 11 applies to employees who joined the service before 28th June, 1995 but retired before the said date, namely before the publication of the 2019 Amendment. They too were required to exercise an option within 120 days and refund the employer’s provident fund contribution and other amounts as specified. Sub-paragraphs 12 and 13 deal with family pension in respect of deceased employees. They also proceed on the same statutory threshold: the employee must have joined service before 28th June, 1995.



59. The Explanatory Memorandum puts the matter beyond doubt. It records that it had been decided to give one more option to employees of the Corporation or a company who were in service prior to 28th June, 1995 to join the Scheme. The design of the amendment is therefore not accidental but deliberate. It does not use the language of paragraph 3(4). It does not say that all employees who joined before 1st January, 2004, or all employees who were governed by the 1995 Scheme at any point, or all employees who had opted out earlier, would receive another option. It repeatedly returns to one condition: entry into service before 28th June, 1995.

60. The Court cannot rewrite the text of the amendment. Where the rule-making authority has used a particular date as the threshold of eligibility, and the structure of the provision repeats that threshold across serving employees, retired employees and family pension cases, the provision must ordinarily be read as it stands. Interpretation cannot be used to substitute “on or after 28th June, 1995” for “before 28th June, 1995”. The Petitioner, therefore, cannot succeed merely by invoking the wider language of paragraph 3(4) of the parent Scheme. His challenge must stand or fall on whether the classification made by the 2019 Amendment fails the test of Article 14.

61. Before turning to Article 14, one further feature of the scheme deserves notice. By the 2010 Amendment, paragraph 3(4) was modified by substituting the words “after the notified date; or” with “after the notified date but before the 1st day of January, 2004; or”. The amendment is significant because it shows that the scheme separately recognised post-notified-date entrants and fixed the outer limit for that category. The 2019 Amendment, when it later conferred one further option, did not draw from



that category. It confined the benefit to employees who had joined service before 28th June, 1995. The classification, therefore, was not made in a vacuum. It was introduced in a scheme which already treated pre-notified-date entrants and post-notified-date entrants as distinct classes.

62. The legislative history preceding the 2019 Amendment also assumes significance. By the General Insurance (Employees’) Pension (Amendment) Scheme, 1997, an additional option was extended to employees who had joined service before 28th June, 1995 and were in service on the notified date of the 1997 Amendment. The amendment therefore continued the same distinction between employees who had entered service before the notified pension regime and employees who entered thereafter. The 2019 Amendment did not create that distinction for the first time; it carried forward a classification already embedded in the statutory scheme.

63. The Petitioner’s reliance on the special definition of “notified date” introduced by the 1997 Amendment is also misplaced. That definition operated only for the purpose of the inserted provision introduced by the 1997 Amendment and did not eliminate the basic distinction between employees who had joined service before 28th June, 1995 and employees appointed thereafter. In any event, even assuming the Petitioner continued in service on the date of the 1997 Amendment, he had already, by then, exercised the statutory option under paragraph 4 not to be governed by the pension scheme.

64. It is also significant that the Petitioner did not challenge the scheme structure when the 1997 Amendment similarly confined the additional pension option to employees who had joined service before 28th June, 1995. The Petitioner continued in service thereafter for more than two decades



without assailing either the validity of that distinction or the finality attached to his option dated 20th November, 1996. The constitutional challenge has arisen only after the 2019 Amendment declined to extend a further reopening to employees situated like the Petitioner.

65. The Petitioner is correct in submitting that the 2019 Amendment does not reproduce the words “on or after the notified date” found in paragraph 3(4) of the parent Scheme. But that textual omission does not, by itself, establish discrimination. The omission is not accidental; it marks the boundary of the class to which the further option was extended. The real question, therefore, is not whether the 2019 Amendment excluded post-notified-date entrants. It plainly did. The question is whether that exclusion rests on a constitutionally permissible classification.

Article 14 and the challenge to classification

66. Article 14 does not prohibit classification; it forbids hostile class legislation. A classification will withstand scrutiny if it rests on an intelligible differentia and if that differentia bears a rational nexus with the object sought to be achieved. In *All Manipur Pensioners Association* the Supreme Court applied that principle in the context of pensionary benefits. The Court held that government servants who had retired in accordance with the pension rules after completing qualifying service formed one homogeneous class, and that they could not be divided by a cut-off date for the purpose of revised pension when the object of the revision was to address the increase in the cost of living.

67. The Petitioner places considerable reliance on this principle. The difficulty, however, is that the present case does not concern a homogeneous class of existing pensioners being divided for the purpose of revised



pension. It concerns an employee who, at the threshold, exercised a final option not to be governed by the pension scheme, and who now seeks entry into the pension fund because a later amendment opened a further option for a different transitional class.

68. The distinction between the two classes is real. Employees who joined service before 28th June, 1995 entered before the 1995 Pension Scheme was notified and before the pension option was available in its notified statutory form. They were part of the earlier provident fund dispensation. Once the pension scheme came into force, their movement into the pension fund required a migration from that dispensation to the new pension framework. The scheme itself reflects this transition by requiring options, authorisations, transfer or refund of the employer's provident fund contribution, interest and non-refundable withdrawals.

69. Employees appointed after 28th June, 1995 stood on a different footing. They entered service when the pension scheme had already been notified. The Petitioner's own appointment letter demonstrates this. It expressly informed him that he would be governed by the 1995 Pension Scheme in lieu of the company's contribution to provident fund. In the same clause, it informed him that since he was 35 years of age or more on the date of joining, he could elect to forego pension by submitting an option within 90 days from the date of appointment, whereupon the Pension Scheme would not apply to him. He exercised that option.

70. A pre-notified-date employee who entered service before the pension scheme was notified and a post-notified-date employee who entered service with the pension scheme in place, and then consciously opted out, do not stand on the same legal footing. The former belongs to a transitional class.



The latter belongs to an election-at-entry class. The 2019 Amendment addressed the former. Article 14 does not compel the State to convert that special window into an unrestricted reopening for every employee who once had, and declined, the pension option.

71. The Petitioner's argument effectively asks the Court to hold that whenever the State reopens an option for employees who entered service before the pension scheme existed, it must also reopen the option for employees who entered later, knew the scheme, and signed a final opt-out. That is not what Article 14 requires. Equality is not an engine for undoing concluded elections merely because another class receives a later remedial opportunity.

72. The principle in *D.S. Nakara* has not been treated as an answer to every pension classification. In *Krishena Kumar v. Union of India*,⁷ the Court drew a clear distinction between pension retirees and provident fund retirees and held that they did not form one homogeneous class merely because they had served the same employer. The later decisions in *Indian Ex-Services League v. Union of India*,⁸ *Union of India v. P.N. Menon*,⁹ *T.N. Electricity Board v. R. Veerasamy*,¹⁰ *State of Punjab v. Amar Nath Goyal*,¹¹ and *Kallakurichi Taluk Retired Officials Association v. State of Tamil Nadu*,¹² although in different contexts, also recognise that a cut-off date or a scheme-based classification is not unconstitutional merely because it excludes some employees from a later benefit. The validity of such a

⁷ (1990) 4 SCC 207

⁸ (1991) 2 SCC 104

⁹ (1994) 4 SCC 68

¹⁰ (1999) 3 SCC 414

¹¹ (2005) 6 SCC 754

¹² (2013) 2 SCC 772



classification depends on whether the distinction has a rational basis and whether it bears a reasonable nexus with the object of the scheme. *All Manipur Pensioners Association* noticed these authorities, but distinguished them on the facts before it, since the pensioners in that case had already retired under the same pension rules after completing qualifying service and therefore formed one homogeneous class.

73. The present case is closer to the provident fund and pension-option line of cases than to *All Manipur Pensioners Association*. The Petitioner did not merely miss an administrative window, nor was he unaware of the scheme. He executed the prescribed option declaring that he did not wish to be governed by the 1995 Pension Scheme and that he would not revoke that option. The rule-making authority may, as a matter of policy, reopen such concluded choices. But unless the rule does so, the Court cannot create that reopening by invoking Article 14.

74. It is also material that the 2019 Amendment was not a pension revision measure. It did not enhance pension for all existing pensioners and then deny the enhancement to some of them. It created one further option to join the pension fund, subject to refund, transfer and other financial adjustments, for employees who had entered service before the original pension notification. The object was to address a defined historical class, namely employees who had joined before the Scheme was notified and before the option was available in its notified statutory form. The classification has a direct nexus with that object.

75. In *All Manipur Pensioners Association*, the vice lay in treating pensioners differently even though all of them had completed qualifying service, retired under the same pension rules and belonged to a single



pensioner class. The present Petitioner never became a pensioner under the 1995 Scheme. His claim is to become one after having opted out. That is a materially different legal position.

76. The Petitioner's reliance on the principle that pension is not a bounty is correct, but it does not decide the case. Pension is not a matter of grace once a person satisfies the governing rules. It is earned under the rules. That proposition, however, also requires the Court to apply the rules as they stand. A person who has chosen not to be governed by the pension scheme cannot claim pension outside the scheme.

77. The Court is conscious that the Petitioner served the company for a long period after 1996 and retired on superannuation. But length of service, by itself, cannot erase the legal consequence of his option. The 1995 Scheme is contributory in structure. The pension fund is constituted for payment of pension in accordance with the scheme, and the company is required to ensure sufficient funds for beneficiaries governed by it. Entry into such a fund cannot be treated as a matter of unilateral later choice when the employee had earlier elected to remain outside it.

Parity with P.K. Mehrotra and Rakesh Kumar Monga

78. The Petitioner has also invoked parity with P.K. Mehrotra and Rakesh Kumar Monga. The Petitioner states that the benefit of the 2019 Amendment was extended to them. It also refers to P.K. Mehrotra as having retired in 2011 and Rakesh Kumar Monga as having voluntarily retired in 2017. The letter dated 15th July, 2019 in respect of P.K. Mehrotra does show that he was called upon to deposit Rs.10,78,103 pursuant to his option form under the 2019 Pension Amendment Scheme.

79. This material does not establish parity. To invoke Article 14, the



Petitioner must show sameness in all legally material respects. It is not enough to show that another retired employee was permitted to enter the pension fund under the 2019 Amendment. The Petitioner must show that such employee had also resigned, had been reappointed on terms treating the later employment as fresh, had agreed that past service would not count, and had thereafter signed a final opt-out form in 1996. No such material is placed on record.

80. The Respondents have also objected that these persons have not been impleaded. While non-impleadment may not always defeat a general Article 14 challenge, the plea of individual parity becomes weak when the factual position of those employees is neither admitted nor fully proved. The Court cannot infer hostile discrimination from an incomplete comparison.

81. In any event, even if a benefit were wrongly extended to some other person, Article 14 does not require repetition of illegality. The Petitioner can succeed only by showing a legal right in himself. That right is absent.

Conclusion

82. In view of the above, the issues are answered as follows:

82.1 The resignation accepted with effect from 15th May, 1996 severed the Petitioner's earlier service. The subsequent appointment dated 20th September, 1996 was a fresh appointment.

82.2 The Petitioner cannot, for the purpose of pension, rely on the service rendered prior to his resignation.

82.3 Paragraph 3(4) of the 1995 Scheme brought post-notified-date entrants within the scope of the scheme, but did not confer an unconditional or irrevocable right to pension irrespective of the option exercised by such employee. The Petitioner's reliance on the words "on or after the notified



date” is therefore misplaced.

82.4 The Petitioner’s option dated 20th November, 1996 was final and binding. It foreclosed his claim to be governed by the 1995 Scheme unless a later statutory amendment expressly reopened the option for his class. No such reopening exists.

82.5 The 2019 Amendment does not create an arbitrary classification. Employees who joined before 28th June, 1995 and employees who joined thereafter with the pension scheme already in place, and thereafter opted out, do not constitute one homogeneous class for the purpose of a fresh pension option. The classification has an intelligible basis and a rational nexus with the object of the amendment.

82.6 The Petitioner has not established parity with P.K. Mehrotra or Rakesh Kumar Monga. Their essential service history, option position and legal status have not been shown to be identical to that of the Petitioner.

82.7 The impugned communications dated 2nd July, 2019, 19th August, 2019 and 4th November, 2019 do not call for interference.

83. The writ petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

MAY 12, 2026/hc