

(2019) 01 OHC CK 0106

In the Orissa High Court

Case No : W.P.(C) Nos. 1018, 8554 Of 2014, 18578 Of 2015

Rabinarayan Das & Others

APPELLANT

Vs

State Of Odisha & Another

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 166, 166(3), 226, 227

Employees' Provident Funds & Miscellaneous Provisions Act, 1952 — Section 17, 17(1)

Citation : (2019) 01 OHC CK 0106

Hon'ble Judges : Dr. B. R. Sarangi, J

Bench : Single Bench

Advocate : Budhadev Routray, D.Routray, P.K. Sahoo, R.P.Dalai, S.Jena, S.K.Samal, S.C.Das, S.D. Routray, S.Mishra, P.R.Dash, S.Mohapatra, K.Raj,

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. In all the above mentioned three writ petitions, the petitioners, who are the employees of Orissa Mining Corporation Limited, have claimed to extend

the pension scheme at par with the employees of similarly situated Public Sector Undertakings. Therefore, these writ petitions have been heard

analogously and are disposed of by this common judgment. For just and proper adjudication of the matter, the facts of W.P.(C) No.1018 of 2014 have

been taken into consideration.

2. The Orissa Mining Corporation Limited (for short "OMC Ltd") is a Public Sector Undertaking (PSU) being controlled, managed and financed

by the State Government. The petitioners, who were appointed to different posts of the OMC Ltd, have retired from services, after rendering

continuous and uninterrupted services, on attaining the age of superannuation.

While they were in service, the Board of Directors of OMC Ltd in its 268th meeting dated 25.03.1989 decided in principle on the proposal for introduction of pension scheme for the employees of the Corporation at par with the benefit extended to the State Government employees with effect from 01.04.1989. A committee was accordingly constituted comprising of Chairman, Managing Director; Joint Secretary, Finance, Govt. of Orissa; and Secretary & Financial Advisor, OMC Ltd to examine and submit a report in the matter of introduction of pension scheme for the employees of the OMC Ltd so as to take a decision by the OMC Ltd. A report was accordingly prepared and placed before the Board of Directors in its 282nd meeting dated 25.06.1991, who, on consideration of the same, unanimously resolved to approve the introduction of pension scheme for the employees of the OMC Ltd. Consequentially, a memorandum was prepared to obtain approval of the State Government and the Central Provident Fund Commissioner before implementation of such scheme. The said decision of the Board of Directors, on being forwarded, was approved by the State Government, after due consideration. Accordingly, on 05.10.1991, Under Secretary to the Government in the Department of Steel and Mines addressed a letter to the Chairman-cum-Managing Director, OMC Ltd indicating therein that the proposal for introduction of pension scheme for the employees of the OMC Ltd was approved by the Government with due concurrence of the Finance Department, w.e.f. 01.04.1989 subject to modification to the effect that the age of superannuation of the employees of the Corporation shall be 58 years except in case of Class-IV employees where it is 60 years.

2.1 So far as grant of exemption of Section 17 (1)(a) of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short â??EPF & MP Act, 1952â?) is concerned, the Regional Provident Fund Commissioner communicated a letter to the State Government indicating that the State Government is the appropriate authority to grant exemption and to issue necessary notification in exercise of power conferred on it by Clause-(a) of Sub-Section (1) of Section 17 of the Act. Consequentially, the State Government in Labour and Employment Department granted exemption in exercise of power conferred on it. All the conditions enumerated by the State Government, while granting exemption in the notification dated

01.06.1985, were complied with by the OMC Ltd.

2.2 Despite approval of the State Government with due concurrence of the Finance Department, the decision taken by the Board of Directors for

introduction of pension scheme for the employees of OMC Ltd, was not implemented from 1991 to 2000. When several demands were raised by the

employees of the Corporation, the Board of Directors, on 30.03.2000, again issued a memorandum for introduction of pension scheme for the

employees of the OMC Ltd wherein it was stated that it would be given effect to after receiving approval from the competent authority, which was

not necessary at the relevant point of time, as the same was duly approved and concurred by the competent authority.

2.3 In the categorization of State Public Sector Enterprises, the OMC Ltd has been placed under "Gold Category", as per the decision taken by

the Government of Orissa in Public Enterprises Department in Annexure-6 dated 20.12.2011, along with other Public Sector Undertakings, i.e., Orissa

Power Generation Corporation (OPGC), Orissa Hydro Power Corporation (OHPC) and Industrial Development Corporation Limited (IDCO). In case

of OHPC Ltd, which is also coming under the "Gold Category", the pensionary benefit was extended to its employees, way back on 11.07.2012.

But for some plea or other the said benefit has not been extended to the employees of the OMC Ltd. Therefore, some of the ex-employees of the

OMC Ltd, namely, Durga Charan Das and others filed W.P.(C) No.19405 of 2009 seeking direction to the State Government and OMC Ltd to

implement the pension scheme for the employees of OMC Ltd at par with the provision of pension followed by the State Government for their

employees. This Court, vide order dated 08.10.2012, directed to the State Government to take a decision on the matter within a period of four months.

Consequently, the OMC Ltd, on 09.04.2013, submitted a proposal on the basis of resolution passed by the Board of Directors seeking direction of

the Government. But the Government, vide order dated 28.04.2014 in Annexure-9, refused the proposal of the OMC Ltd submitted on 09.04.2013,

meaning thereby denied the pensionary benefit to its employees, hence this application.

3. Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.K. Samal, learned counsel for the petitioners in W.P.(C) No.1018 of 2014

contended that denial of pension to the employees of the OMC Ltd, vide order dated 28.04.2014 in Annexure-9, which was passed in response to letter dated 09.04.2013 issued by the Chief Managing Director, OMC Ltd, is not only arbitrary, unreasonable and contrary to the provisions of law, but also discriminatory, and such order has been issued by opposite party no.2 without modifying, revoking or superseding the Government approval accorded vide letter No.12610 dated 05.10.1991, as well as the Public Enterprises Department, Government of Orissa Resolution no. 3169 dated 16.08.1995 notified in the official gazette. Thereby, the order impugned cannot sustain in the eye of law and is liable to be quashed and the petitioners are entitled to pensionary benefit as was approved by the Government with due concurrence of the Finance Department.

4. Mr. R.K. Rath, learned Senior Counsel appearing along with Mr. B. Mohanty, learned counsel for the petitioner in W.P.(C) No.8554 of 2014

contended that Steel and Mines Department is the administrative department of the OMC Ltd., as per Government of Orissa Rules of Business made

under Article 166 of the Constitution of India. Chapter XII of the Rules of Business deals with Steel and Mines Department. Under the heading

“State subjects” name of the OMC Ltd has been indicated in Clause-6. Therefore, under the Rules of Business if the Steel and Mines

Department is the competent department, which had taken a decision to extend the pensionary benefit to the employees of the OMC Ltd, unless the

same is modified or clarified or nullified, the denial of pensionary benefits under Annexure-9 dated 28.04.2014, on consideration of the grievance made

by the employees, cannot sustain in the eye of law. It is further contended that the OMC Ltd has been categorized as “Gold”, as per notification

of the Public Enterprise Department dated 20.12.2011, relying upon the profit statement of the PSUs. The employees of similarly situated PSUs,

namely, OPGC and OHPC, having been extended the pensionary benefit, their counter parts in the OMC Ltd have been denied such benefit, which

amounts to discrimination and violates Article 14 of the Constitution of India. It is further contended that echoing the voice of Public Enterprises

Department, the Steel and Mines Department passed the impugned order dated 28.04.2014 in Annexure-9, as under the Rules of Business the Steel

and Mines Department is competent to take such a decision. Therefore, denial of pensionary benefit to the employees of OMC Ltd., pursuant to order

dated 28.04.2014, cannot sustain in the eye of law and the same is liable to be quashed. To substantiate his contention, he has relied upon the

judgments of the apex Court rendered in Prafulla Kumar Swain v. Prakash Chandra Misra, 1993 Supp (3) SCC 181; and Samsher Singh v. State of

Punjab, AIR 1974 SC 2192.

5. Mr. S.S. Das, learned Senior Counsel appearing along with Mr. B. Mohanty, learned counsel for the petitioners in W.P.(C) No.8554 of 2014 and

Mr. N.C. Das, learned counsel for the petitioners in W.P.(C) No. 18578 of 2015 supported the arguments advanced by Mr. B. Routray, and Mr. R.K.

Rath, learned Senior Counsels appearing for the petitioners in the two writ petitions mentioned above.

6. Mr. S. Mishra, learned Additional Government Advocate also admitted that the State Government in its Steel and Mines Department had approved

the recommendation made by the OMC Ltd for introduction of pension scheme with effect from 01.04.1989 subject to modification of item No.6 of

the draft rules, i.e., the age of superannuation of the employees of the OMC Ltd. would be 58 years except in case of Class-IV where it was 60

years. He also contended that the same had got concurrence of the Finance Department, vide G.O.R. No.392/CS.III dated 09.08.1991. It is further

contended that the Public Enterprises Department notified on 16.08.1995, by way of resolution, in relation to rationalized scale of pay and allowances

structure of the employees in the management cadres in the State Public Sector Enterprises where under the heading "retirement benefit" it has

been provided that the management of enterprises may formulate suitable pension schemes applicable to the new recruits and the existing employees

may be asked to exercise their option either for continuance under the existing CPF scheme or come over to the pension scheme to be devised by the

management. But before issuance of this resolution, the OMC Ltd had already taken a decision and approved in principle for introduction of pension

scheme for its employees, which had also got approval of the State Government and concurrence of the Finance Department. But at the same time

the OMC Ltd in its 355th meeting held on 23.03.2006 introduced a new scheme "OMC Retiring Employees Benefit Scheme" which was duly

approved by the Board of Directors to be implemented prospectively after approval of the Government. Though it was moved, vide communication

dated 03.04.2006, to accord approval for implementation of the scheme and concurrence was sought for from the Finance Department, in reply

thereto certain observations were made by the Addl. Secretary to the Govt. in the Department of Steel and Mines vide letter dated 30.10.2006.

Therefore, grant of pensionary benefit to the employees of OMC Ltd does not arise. Thereby, the authorities are justified in rejecting the claim of the

petitioners in extending such benefit of pension scheme to the employees of the OMC Ltd.

7. Mr. P.R. Dash, learned counsel appearing for the OMC Ltd unequivocally contended that the Board of Directors of the OMC Ltd had approved

the extension of pensionary benefit to its employees, which was duly recommended by it to the State Government, and the State Government in its

turn approved the same and the Finance Department also granted concurrence, but for the reasons best known to the authorities such benefit has not

been extended to the employees of the OMC Ltd, though similarly situated PSUs, such as OHPC and OPGC have granted such benefit to their

employees. It is further contended that the decision taken by the Administrative Department, with regard to extension of retirement benefit, which was

duly approved, has neither been modified nor nullified and the same still holds good and governing the field. Consequentially, the impugned order

refusing to grant pensionary benefit to the employees of OMC Ltd, having been passed without application of mind, cannot sustain in the eye of law

and is liable to be quashed.

8. This Court heard Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.K. Samal, learned counsel for the petitioners in W.P.(C)

No.1018 of 2014; Mr. R.K. Rath and Mr. S.S. Das, learned Senior Counsels appearing along with Mr. B. Mohanty, learned counsel for the petitioner

in W.P.(C) No.8554 of 2014; and Mr. N.C. Das, learned counsel for the petitioners in W.P.(C) No.18578 of 2015; Mr. S. Mishra, learned Additional

Government Advocate appearing for the State opposite parties; and Mr. P.R. Dash, learned counsel appearing for the Orissa Mining Corporation Ltd.

Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, all the three writ petitions are being

disposed of finally at the stage of admission.

9. Admittedly, the petitioners are employees of the OMC Ltd, a PSU of the

Government of Orissa. Its Board of Directors in its 268th meeting held on 25.03.1989 proposed in principle to introduce a pension scheme for the employees of the OMC Ltd. Needless to mention, the OMC Ltd, which is an oldest State Government undertaking in the public sector for exploration and exploitation of mineral resources of the State, has already completed 32 years of its existence. Initially, its office and field establishments were organized with a small number of officers and staff. With the passage of time and increase in activities in all areas, the number of employees has increased substantially. Of-late, the employees have started retiring after rendering continuous service over a long period of time. As provided under the Rules of the OMC Ltd, the employees, at the time of retirement would receive benefit of gratuity and also employer's contribution to provident fund provided under the statute. These benefits are very meager to take care of the liabilities of an employee after retirement. Hence, the employees face acute financial difficulties. Such situation becomes more acute when the employees die prematurely during service. Keeping the above in view, some of the reputed organizations, as a matter of policy, diverted from their earnings/profits a certain percentage to extend superannuation benefits to the retired employees to enable them to lead a peaceful life after retirement. Provision for such benefit is considered progressive and attracts better talent and motivates them to retain their services with the organization, which improves profitability and customer satisfaction. Therefore, the Central Public Sector Undertakings, Statutory Corporations and other Boards have introduced pension scheme in one form or other.

10. The OMC Ltd is a stable PSU in the State and has been making profits continuously since 1976 after wiping out all its past accumulated losses. Therefore, the Board of Directors in its 268th meeting held on 25.03.1989 proposed to introduce a pension scheme for the employees of the OMC Ltd. Taking into consideration such proposal, for introduction of pension scheme for the employees of OMC Ltd at par with the State Government employees, w.e.f. 01.04.1989, the Board of Directors, pursuant to 282nd meeting held on 25.06.1991, took into consideration the recommendation made by a committee consisting of Chairman, Managing Director; Joint Secretary, Finance, Government of Orissa; and Secretary and FA, OMC Ltd and resolved as follows:-

Item No. 20(d) : Introduction of the Pension Scheme for the employees of Orissa Mining Corporation Ltd.

The Board of Directors approved the proposal contained in the Memorandum and desired that the approval of State Government and the Central Provident Fund

Commissioner be obtained before implementation of the same.

11. The Government of Orissa in the Department of Steel and Mines, while considering the draft proposal for introduction of pension scheme for the

employees of the OMC Ltd, granted approval with due concurrence of the Finance Department, vide communication dated 05.10.1991, which reads

as under:-

Government of Orissa

Department of Steel and Mines

!

No. 12610 /SM. Bhubaneswar, the

DMC.62/91

From

Sri G.P. Satpathy, O.A.S.(I)

Under Secretary to Government

To

The Chairman-cum-Managing Director,

O.M.C. Ltd., Orissa, Bhubaneswar

Sub. : Introduction of pension scheme for the

employees of O.M.C.Ltd.

Sir,

In inviting a reference to your D.O. letter No. 17777/OMC/91, dated 25.07.1991 on the subject mentioned above, I am directed to inform you that your draft

proposal for introduction of pension scheme for the employees of O.M.C. Ltd. With effect from 1.4.89 have been approved by the Government subject to

modification of Item-6 of the draft rule as follows :

The age of superannuation of the employees of the Corporation shall be 58 years except in case of Class-IV where it is 60 years.

This has been concurred in by the Finance Department vide their OOR. No. 392/

CS. III, dated 9.8.91.

Yours faithfully,

Under Secretary to Government??

In spite of approval granted by the State Government and the concurrence given by the Finance Department for introduction of pension scheme for

the employees of the OMC Ltd, vide communication dated 05.10.1991, for the reason best known to the authorities, the same has not been

implemented. But subsequently, after revision of the scale of pay of the State Government employees in 1989, a resolution was passed by Public

Enterprises Department on 16.08.1995, with regard to rationalization of the scale of pay and allowances structure of the employees in the

management cadres of the State Public Sector Enterprises, wherein under the heading ??retirement benefit?? it has been stated thus:-

??Retirement benefit :

Management of the Enterprises may formulate suitable pension schemes to be applicable to new recruits and the existing employees may be asked to exercise their

option either for continuance under the existing CPF scheme or come over to the pension scheme to be devised by the management.??

Even though the recommendation made by the Board of Directors was duly approved for introduction of pension scheme for the employees of the

OMC Ltd. and concurrence was also granted on 05.10.1991, the same has not been implemented for the reasons best known to the authorities and on

the contrary a resolution was passed on 16.08.1995 for consideration of retirement benefit asking for option from the person concerned.

12. It is worthwhile to mention, under Article 166 of the Constitution of India, the conduct of business of the Government on State subjects has been

prescribed. As per Rule-4, the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified

and distributed between those departments and their branches as laid down therein. Chapter XII, which was substituted by notification no.15116-Gen.

dated 28.05.1990, deals with Steel and Mines Department. Clause-6 of the State subjects indicates Orissa Mining Corporation Limited. Therefore, the

administrative department of OMC Ltd is Steel and Mines Department. The letter dated 05.10.1991, reference to which has been made above, was

issued by the Department of Steel and Mines, which is the administrative department of OMC Ltd. As such, as a matter of principle the State

Government had already approved the draft proposal for introduction of pension scheme for the employees of OMC Ltd w.e.f. 01.04.1989 subject to

modification of item No.6 of the draft rules to the extent that "the age of superannuation of the employees of the Corporation shall be 58 years

except in case of Class-IV where it is 60 years", which got concurrence of the Finance Department vide G.O.R. No.392/C.S.III dated 09.08.1991.

Therefore, if the Government of Orissa in the Department of Steel and Mines has approved the benefit of pension scheme for the employees of the

OMC Ltd, which has also got concurrence of the Finance Department, unless the same is annulled, or modified, or clarified, or withdrawn, the same

has to remain in force. Merely because a resolution was passed by the Public Enterprises Department seeking exercise of option either for

continuance under the existing CPF scheme or coming over to the pension scheme, which is of general nature and not a specific one, that will not

have any effect on the letter dated 05.10.1991 in Annexure-4 issued by the Department of Steel and Mines.

13. In Prafulla Kumar Swain (supra), the apex Court has taken into consideration what constitute a Government order. It has been categorically

mentioned that proceedings of a departmental promotion committee will not constitute the Government order. All Government orders must be issued

under the signature of the Minister according to the Rules of Business.

14. In Samsher Singh (supra), the apex Court has taken into consideration the effect of the Rules of Business where it is held as follows:-

"35. The Scheme was upheld for these reasons. The Governor makes rules under Article 166 (3) for the more convenient transaction of business of the

Government of the State. The Governor can not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to

discharge any particular function. But that could be done on the advice of the Council of Ministers. The essence of Cabinet System of Government responsible to

the Legislature is that an individual Minister is responsible for every action taken or omitted to be taken in his Ministry. In every administration decisions are

taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the major policies. When a Civil Servant takes a decision, he does

not do it as a delegate of his Minister. He does it on behalf of the Government. The offices are the limbs of the Government and not its delegates. Where functions

are entrusted to a Minister and these are performed by an official employed in the Ministry's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister.â??

15. Applying the above principle to the present context, since the order dated 05.10.1991 in Annexure-4 has been issued in adherence to the Rules of

Business, the same should have been given effect to in letter and spirit and subsequent resolution issued by the Public Enterprises Department calling

for option for retirement benefit have no consequence, when the administrative department of OMC Ltd in Annexure-4 dated 05.10.1991 has already

approved for introduction of pension scheme for the employees of OMC Ltd. and the Finance Department has concurred with the same.

16. The Public Enterprises Department, vide letter dated 20.12.2011, communicated categorization of Public Sector Enterprises, wherein the name of

OMC Ltd finds place under â??Goldâ?? category, along with OPGC, OHPC and IDCO. If the PSUs like OPGC and OHPC, which make profit and

for that matter have been categorized as â??Goldâ??, have introduced pension scheme for their employees and the same has been duly approved by

the State Government and concurred by the Finance Department and ultimately implemented, such scheme should not have been denied to the

employees of OMC Ltd, which amounts to discriminatory treatment by the authorities concerned.

17. When the matter stood thus, on 01.08.2012, the Chairman-cum-Managing Director wrote a letter to the Principal Secretary to the Government,

Steel and Mines Department requesting for extension of pensionary benefit to the employees of OMC Ltd. The relevant part of letter dated

01.08.2012 is extracted hereunder:-

â??The Govt. in PE Department has categorized the State Public Sector Undertakings/Enterprises, vide Lr. No. Cor-x(D)-07/2011/4733/PE, Bhubaneswar, dated

20.12.2011 (Copy enclosed). OMC has been placed in Gold Category along with OIPGC, OHPC and IDCO. The PE Department is also contemplating for

implementation of a Uniform Pension Scheme for the employees of the above PSUs. M/s. Deloitte, Bhubaneswar has also been entrusted with the task of

conducting a study of the existing Pension Scheme for them, develop a uniform Pension Scheme and submit the same to the department with 30 days i.e. from 25.05.2012. As the time is already over, M/s. Deloitte might have submitted its report to the Govt.

However, now, the Govt. has extended the pensionary benefit to the employees of OHPC, one of the Gold Category PSUs from the date of incorporation of OHPC i.e. 01.04.1996, vide Lr. No. 5449/En., Bhubaneswar dated 11.07.2012. As OMC has also been categorized as Gold Category PSU, fulfilling the prescribed criteria/norms, implementation of similar pensionary benefit/scheme for the employees of OMC may be considered in accordance with the rules and procedures of the OCS (Pension) Rules. It may be noted here that Govt. of Odisha had earlier approved implementation of Pension Scheme equivalent to Govt. Scheme which could not be implemented.â??

Once the proposal for implementation of pensionary scheme has been duly approved and concurrence has been granted, as indicated in letter dated 05.10.1991, there was no need for further reconsideration of the matter by the State and as such, such request could not have been made by the Chairman-cum-Managing Director of OMC Ltd. for reconsideration. Nothing has been placed on record by any of the parties to indicate that letter dated 05.10.1991 issued by the Department of Steel and Mines for introduction of pension scheme for the employees of OMC Ltd. has either been annulled, or clarified, or withdrawn at any point of time in between. But in the name of a decision taken in its 355th meeting held on 23.03.2006 for introduction of new pension scheme, namely, â??Orissa Mining corporation Retiring Benefitsâ? the board approved the said scheme to be implemented prospectively after approval of the Government and accordingly the Government of Odisha in Steel and Mines Department was moved, vide letter dated 03.04.2006, to accord approval to the said scheme and concurrence of the Finance Department was also sought. In reply thereto, Addl. Secretary to the Government in the Department of Steel and Mines wrote letter dated 30.10.2006 to the Managing Director, OMC Ltd to furnish a clear proposal after taking into account the observations made therein. But that itself is a separate consideration all together and that has got no nexus with the decision taken earlier on 05.10.1991.

18. In view of Section 17 of the EPF and MP Act, 1952, the State Government has exempted OMC Ltd. and the impugned order dated 28.04.2014 in

Annexure-9 refusing to extend the pensionary benefits to the employees of OMC Ltd. is arbitrary and without any authority of law. Needless to say

that in similar circumstances the Orissa State Electricity Board, as it was then, was exempted from the ambit of EPF and MP Act, 1952, which was

subject matter of consideration in a batch of cases in SLP (Civil) No. 1983 of 1994, and SLP (Civil) Nos. 3078, 3080, 3084, 3025 and 3086 of 1995

and the apex Court held that the EPF and MP Act, 1952 on introduction of pension scheme in April, 1965 is a matter which has to be determined and

the same can be implemented by the State under Section 17. Therefore, if the State has already exercised its power under Section 17 of the EPF and

MP Act, 1952 granting exemption, in that case subsequent non-extension of pensionary benefit to the employees of the OMC Ltd. amounts to

arbitrary and unreasonable exercise of powers by the authorities concerned.

19. In *Praveen Singh v. State of Punjab*, (200) 8 SCC 633: AIR 2001 SC 152, the apex Court held the arbitrariness, being opposed to reasonableness,

is an antithesis to law. There cannot, however, be any exact definition of arbitrariness neither can there be any strait-jacket formula evolved therefor,

since the same is dependent on the varying facts and circumstances of each case.

20. In *Om Kumar v. Union of India*, (2001) 2 SCC 386 : AIR 2000 SC 3689 the apex Court held that arbitrary action is described as one that is

irrational and not based on sound reason or as one that is unreasonable.

21. In *Union of India v. Dinesh Engineering Corporation*, (2001) 8 SCC 491 : AIR 2001 SC 3887 the apex Court held that any decision, be it a simple

administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision and violative of

the mandate of Article 14 of the Constitution.

22. In the case of *Praveen Singh* (supra), the apex Court further held as follows:-

“The administrative or quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural

aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fair play, good conscience and equity.”

23. In *M.Nagaraj v. Union of India*, (2006) 8 SCC 212 : AIR 2007 SC 71, the apex Court held that the constitutional principle of equality is inherent in

the rule of law. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational

distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified.

24. In *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34 : AIR 2002 SC 1533 the apex Court held that the doctrine of equality before law is a necessary corollary to the concept of the rule of law of the constitution.

25. In *Indra Sawhney v. Union of India*, (1992) Supp.3 SCC 217 : AIR 1993 SC 477 the apex Court held that the doctrine of equality is a dynamic and

evolving concept. The concept of equality before law means that among equals the law should be equal and should be equally administered and the

likes should be treated alike. All that Article 14 guarantees is a similarity of treatment and not identical treatment.

26. In view of the law laid down by the apex Court and applying to the present context, since the similarly situated PSUs, such as, OPGC and OHPC,

having come within the Gold category, have extended pensionary benefit to their employees, non-extension of such benefit to the similarly situated

PSU like OMC Ltd., even though as a matter of principle the State Government has approved the same which has received the concurrence of the

Finance Department, amounts to violation of Article 14 of the Constitution of India. As the equality is the basic feature of the Constitution and the

concept of Article 14 was interpreted by the Supreme Court as a concept of equality confined to the aspects of discrimination and classification, this

Court is of the considered view that in the order impugned dated 28.04.2014, which has been passed while complying with the order dated 08.10.2012

passed in W.P.(C) No. 19405 of 2009, this basic principles have been lost sight of. Therefore, the order impugned dated 28.04.2014 in Annexure-9

cannot sustain in the eye of law and accordingly the same is liable to be quashed and is hereby quashed. This Court directs the opposite parties to

reconsider the extension of pensionary benefit, as per the pension scheme approved by the State Government and concurred by the Finance

Department in letter dated 05.10.1991 in Annexure-4, as expeditiously as possible, preferably within a period of four months from the date of

communication of the judgment.

27. The writ petitions are thus allowed. However, there shall be no order as to

costs.