
(2010) 03 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4318 of 2002

R.S. Shastri and Others

APPELLANT

Vs

M.P. State Ware House Corporation and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Madhya Pradesh State Warehousing Employees Pension Rules, 1996 — Rule 14, 9(2)
Warehousing Corporations Act, 1962 — Section 42

Citation : (2010) ILR (MP) 1386

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Judgement

Rajendra Menon, J.—As common questions are involved in all these writ petitions and as claim made by each of the Petitioner herein pertains to grant of pensionary benefit after retirement from the services of Madhya Pradesh State Ware Housing Corporation, all these petitions are being decided by this common order.

2. For the sake of convenience, pleadings made, documents filed and the material available in the record of Writ Petition No. 4318/2002 is reflected in the order.

3. Petitioners herein were employees, who were working with the Madhya Pradesh State Ware Housing Corporation (for short referred to as "MPSWHC or Ware Housing Corporation"). They have retired from service and a detailed chart showing the particulars of the Petitioners, the post held by them, their date of retirement, the particulars of the pension payment orders issued to each of them and various other particulars are available in the charts annexed to each of the petitions.

4. It is the case of the Petitioners that a pension scheme was formulated by the MPSWHC on the basis of the powers conferred on it u/s 42 of the Ware Housing Corporation Act, 1962. Pension scheme is known as the M.P. State Ware-housing Corporation Employees Pension Scheme 1996 (for short referred to as

"Scheme"). The said Scheme came into force with effect from 1.4.1996. Various provisions are made in the said Scheme and according to the Petitioners they were being paid pension under the aforesaid Scheme right from 1.1.1996 or from the date of their retirement upto 2002, when the dispute in question had arisen. Facts that, have come on record indicates that in the year 1994 a decision was taken by the Management of MPSWHC to explore the possibility of introducing a pension scheme and for the said purpose it is stated that the Branch Manager of Life Insurance Corporation of India (for short referred to as "LIC"), approached the Management of Ware Housing Corporation vide letter-dated 22.5.96, after certain initial negotiation. It was stated so in this letter that the pension scheme if introduced by the MPSWHC, would be viable and the total liability of the Ware Housing Corporation would not exceed 10% of the basic salary + DA allowance payable to the employees. This was the amount, which was already being paid towards contributory provident fund. Thereafter, two further letters making similar representations were made as is evident from Annexures R/2 and R/3 dated 11.7.96 and 14.8.96. Negotiations as are evident from the material available on record proceeded and keeping in view the representations in this regard made by the LIC to the Ware Housing Corporation, the Scheme for pension was formulated and accordingly a trust on the basis of a deed was brought into existence and in pursuance to the same the Ware Housing Corporation paid a sum of Rs. 160 Lacs vide covering letter - Annexure R/5 dated 24.10.96.

5. On a request made by Branch Manager of LIC, the management of Ware Housing Corporation signed a formal proposal to enable issuance of a policy vide Annexure R/6. Acting on the basis of the said proposal, the earlier communications and verbal assurance, the Managing Director of the Ware Housing Corporation signed the proposal form on 20.11.96 and as per the policy requirement, the trust was constituted by the Management for implementation of the Scheme and a trust deed was duly executed in this regard on 20.2.1997 vide Annexure R/7. This deed of trust contained rules relating to implementation of the pension scheme. A copy of the trust deed according to the records was handed over to the concerned Branch Manager of the LIC, which was acknowledged. After receipt of the trust deed, LIC handed over the master policy on 15.3.97 - Annexure R/9. According to the Petitioner, the pension scheme was implemented with effect from 1.4.99 and it worked smoothly without any hindrance till 2002 when pension was being paid to the Petitioners in accordance to the said Scheme.

6. It is the case of the Petitioners that under this Scheme a corpus was created, which was an amount equivalent to 1.8% of the month's salary for each qualifying year of service, subject to a maximum equivalent of 45 months salary. This corpus could exceed 45 months salary due to excess income that may be generated from the investment of the fund by the Corporation. For the purpose of creation of this fund, the employees and employer's contribution was computed @ 10% of the basic pay with DA and keeping in view the aforesaid,

the premium was fixed. At the time of retirement of each employee, Pension Payment Order (PPO) was issued, which contained the relevant details with regard to the corpus fund of an employee, his date of retirement, last pay drawn, pension payable and the amount of commutation, if opted. According to the Petitioners, in each of this petition, after the Scheme was brought into existence and after their retirement, PPO were issued in the case of each of the Petitioners and in the chart filed by the Petitioners alongwith the petitions, the particulars of the PPO, the corpus amount in each case, commuted amount, if any, and the monthly pension payable are indicated. It is further the case of the Petitioners that after their retirement, pension as envisaged in the PPO were paid to them directly through cheques issued by LIC. There was no difficulty in receiving pension by each of the employee from 1.4.96 or after their date of retirement till March 2002, when the pension payment to the Petitioners were stopped. On representations made by the Petitioners to the LiC so also to the Ware Housing Corporation, it was informed by the LIC that the management of the Ware Housing Corporation vide letter-dated 17.4.2002 - Annexure P/2 has stopped the pension to the Petitioners and in this regard the communication issued by LIC is Annexure P/7.

7. It was the case of the Petitioners that their pension could not be stopped in the manner done either by the Ware Housing Corporation or by LIC and the conditions, which were made available to them on their date of superannuation and payments which were made to them with regard to their pension as per the PPO, could not be unilaterally changed to their detriment. It was the case of the Petitioners that the LIC failed to honour their commitment and from the communications made by the Corporation, it seems that it had made excess payment in regard to commutation of pension and their had been reduction in the annuity rate due to lowering of interest in the financial market. It is the case of the Petitioners that once the payment of pension was made and when as per the scheme they were getting the pension, then on the ground of reduction in the annuity rate or interest rate prevalent in the market, action taken for withdrawing their pension is unsustainable.

8. Accordingly, challenging the action of the Respondents in acting in a manner detrimental to their interest in the matter of payment of their pension, these petitions were filed by the Petitioners.

9. On notice being issued, Respondents 1 to 3, the management of the Ware Housing Corporation, contending that under the pension scheme, the liability and responsibility to make payment of pension lies with the LIC and the management of the Ware Housing Corporation is not required to take action nor have they withheld the pension. They blame the LIC for the default. It has been further put forth by Respondents 1 to 3 that initially Petitioners were covered under the contributory provident fund scheme, but on representations made by LIC and its officials initially in the year 1994, negotiations and communications took place and finally the trust deed and the master policy as indicated hereinabove, were

finalized and the pension scheme implemented with effect from 1.4.1996. According to the Ware Housing Corporation, the pension scheme worked satisfactorily without any hindrance right from 1.4.1996 till sometime in the financial year 1999-2000, when interest rates in the financial circuit were cut down, decreasing the interest rates to the LIC on the amount of corpus deposited with them, it is alleged that the LIC invented a novel method of blaming the Ware Housing Corporation and in this regard a communication was made to them on 17.8.1999 vide Annexure R/10. Thereafter, vide Annexure R/11 dated 14.11.99, it was suggested by the LIC that the rules and the Scheme contained in the trust deed were perused by them and it has come to light that Sections I and II of the Rules, pertained to "defined contributory scheme" and not to the "defined benefit scheme" to which the management of the Ware Housing Corporation had opted for. It was stated that the mistake has to be rectified and necessary amendment should be made in the Scheme and rules by a deed of variation as such according to the trust deed a variation deed has to be executed by the management and three of the trustees. In addition, approval of the Commissioner of Income Tax was to be taken. However, it is the case of the Ware Housing Corporation that without following the due process contemplated in the trust deed for modification or variation of the trust and without concurrence and approval of the management of the Ware Housing Corporation and without due approval of the Commissioner of Income Tax, a deed of variation was entered into by some of the trustees with the LIC in an illegal manner, vide Annexure R/2. It is the case of the Ware Housing Corporation that this variation deed did not have the sanction of law, as it was signed by only three of the trustees and some officials of the LIC.

10. It is the case of the Ware Housing Corporation that LIC was under a statutory and contractual obligation to provide benefit to the retired members and LIC had no authority to unilaterally change any of the conditions in the master policy. It is the case of the Ware Housing Corporation that the deed of variation was illegally created, and as LIC had granted some undue benefits to 137 retired employees as a result of which the corpus was adversely affected, reducing it consequently to the detriment of the retired employees. Under such circumstances, the management of the Ware Housing Corporation, on 18.1.2001, pointing out that they were making contribution of 10% of the basic salary, eligibility of some of the benefits is reduced from 15-20 years and they wanted to know if any extra burden would be incurred. The Branch Manager of LIC vide Annexure R/4 dated 19.1.2001 indicated that in such a event some additional one time contribution will be required to be made to get the annual contribution at 10%. Further communications took place and it is the case of the Ware Housing Corporation that LIC stopped the pension payment without any authority on the ground of nonpayment of premium and other breach on the part of the Ware Housing Corporation, which is illegal. By attributing malafides to the LIC, the management of Ware Housing Corporation have refuted each and every contentions of the LIC. Various details in this regard are contained in the return

and for the present it is not necessary to go into the details.

11. As far as Respondent LIC i.e... Respondents 4 and 5 are concerned, it was their case that the master policy, the trust deed and the Scheme was based on Employees Group Superannuation Benefit Purchase Scheme, which is otherwise known as "defined benefit scheme" or "benefit purchase scheme". According to the LIC, the management of Ware Housing Corporation had in fact made a proposal for purchasing this Scheme, but inadvertently with the trust deed certain annexures namely Sections II and III, of a different Scheme known as "defined contribution scheme" was annexed in place of Sections II and III of the "defined benefit scheme". It was in order to rectify this mistake that the deed of variation - Annexure R/2 dated 18.7.2000 was executed between the parties. It is the case of LIC that the entire dispute is a result of this mistake. It was emphasized by LIC that the management of the Ware Housing Corporation had availed of the "defined benefit scheme" and, therefore, the employees like the Petitioners could only get the benefit as enumerated under the said scheme i.e... "defined benefit scheme" and as by mistake the benefit under the "defined contribution scheme" was annexed and granted, the deed of variation dated 18.7.2000 only corrected this mistake. After elaborating in detail the error so detected and the benefit granted inadvertently to many of the retired employees, it is the case of LIC that the deed of variation has been created in accordance to law and LIC further makes an averment blaming the Ware Housing Corporation for the same. It was the case of the LIC that if the management of the Ware Housing Corporation chose to change the "defined benefit scheme" into a "defined contribution scheme", it could be permissible only prospectively as per Rule 9(2) of the trust deed. It was further the case of LIC that the Scheme in question also got affected on account of the fall in the annuity rate from 12% to approximately 10% and they have tried to justify their action on this count. It is asserted by them that at the commencement of the Scheme, when the rate of annuity was 12%, the corpus amount matched the claim of salary for 45 months, but with the fall in the annuity rate from 12% to 10%, sometime in the year 2000, the benefit applicable to the Petitioners became less. For payment of pension at the earlier rate, it is stated by the LIC that more corpus was required and due to some inadvertence the earlier rate of interest was applied to each of the Petitioners in spite of fall in the rate of annuity and, therefore, it became necessary to recover certain excess amount which was paid to some of the Petitioners. The stand of the LIC is that under the group "defined benefit scheme", they do not deal with individual employees in respect of premium. It is the Ware Housing Corporation, which has to pay the premium on behalf of its employees for which LIC is not concerned and has no control. The actuarial valuation of premium is done on the basis of information and data supplied by Ware Housing Corporation. The actuarial valuation from 1.4.99 to 31.4.2001 was done as per the data supplied by Ware Housing Corporation and by filing detailed calculation and charts, LIC has tried to point out the error committed by the Ware Housing Corporation. It is further the case of the LIC that they are not

concerned that the M.P. State Ware Housing Employees Pension Rules 1996, this was not binding on LIC, they are only bound by the policy issued and the scheme formulated under the "defined benefit scheme".

12. Accordingly, contending that they are acting in accordance to the policy of insurance obtained by the Ware Housing Corporation and it is the Ware Housing Corporation, which has not paid the premium amount and, therefore, they cannot be held responsible, LIC has resisted the claim of the Petitioner.

13. A detailed written submission is made pointing out the difference between "defined benefit scheme" and "defined contribution scheme" and it is stated that the deed of variation is properly executed. Additional return and returns were filed and after analyzing the totality of the circumstances, a Bench of this Court disposed of the Writ Petition by an order passed on 8.4.2004, and issued various directions. Aggrieved by the order passed on 8.4.2004, some of the employees and the Ware Housing Corporation filed Writ Appeal"s and vide order-dated 13.8.2008, all the Writ Appeals were allowed, the orders earlier passed by this Court on 8.4.2004 was set aside and the matter has been remanded back with a direction to consider certain principles laid down in a judgment rendered by the Supreme Court, in the case of Air India Employees Self Contributory Superannuation Pension Scheme Vs. Kuriakose V. Cherian and Others, and decide the matter. Accordingly, now this Court is required to consider the dispute in question in the light of the law laid down by the Supreme Court in the case of Air India Employees (supra) and decide the matter.

14. On the basis of the pleadings as indicated hereinabove Shri Rohit Arya, learned Senior Advocate, and Shri Sujoy Paul, learned Counsel for the Petitioners, emphasized that in the return filed by the LIC, the basic objection raised by them is based on their disability to continue with the payment of pension as was done between 1.4.1996 upto March 2002, due to fall in the interest rate resulting in subsequent decrease in the corpus. Referring to certain averments made by the LIC In paragraphs 23, 24, 25 of their return and again in paragraphs 37 to 39, Shri Sujoy Paul emphasized that now the entire matter stands concluded by the judgment rendered in the case of Air India Employees (supra) and by taking me through the said judgment, particularly the facts contained in paragraph 2 and the observations made in paragraphs 7, 8, 13, 26, 27, 34, 39, 40, 41 and finally in paragraphs 46, 47, 48 and 50, Shri Sujoy Paul argued that the stand of LIC cannot be accepted. On retirement of each of the Petitioners herein, their right gets crystallized. It is stated by Shri Sujoy Paul that the right of the employees to receive the pension and the quantum of the annuity gets crystallized at the time of purchase of the annuity and after their retirement now in the light of the law laid down by the Supreme Court, LIC cannot refuse to pay pension. It is argued by him that the LIC is obliged to fulfil the promise given to each of the Petitioners, who are assured of the annuity under the Scheme in question. Contending that the deed of variation has the effect of amending the entire Scheme, which is impermissible, Shri Sujoy Paul

seeks for interference into the matter.

15. Shri R.P. Agrawal, learned Senior Advocate, tried to emphasize that there was purchase by the Ware Housing Corporation of the Scheme known as the "defined benefit scheme" and not the "defined contribution scheme". It was argued by him and learned Counsel tried to demonstrate before this Court that LIC is only enforcing the policy as was purchased by the Ware Housing Corporation and it is the Ware Housing Corporation, which was refusing to pay the premium in accordance to the requirement of the policy and the "defined benefit scheme" as a result the dispute has arisen. Inter alia contending that the LIC cannot be held responsible for any such lapse as alleged, Shri R.P. Agrawal, learned Senior Advocate, resisted the claim of the Petitioners.

16. Shri R.N. Singh, learned Senior Advocate, argued at length and submitted that the deed of variation brought about by LIC is illegal, it is contrary to the procedure contemplated under the trust deed and, therefore, the same cannot be permitted. It was further argued by him that LIC has unnecessarily created a dispute even though the Ware Housing Corporation has paid all the premiums and other dues as per the Scheme and is not liable to pay any further amount with respect to the pension to be granted to the present Petitioners.

17. Placing reliance on the following two judgments, Shri R.N. Singh, learned Senior Advocate, submitted that the variation brought about in the deed is illegal. The judgments relied upon are: L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, ; and, Shanti Vijay and Co. and Ors. v. Princess Fatima Fouzia and Ors. (1974) 4 SCC 602.

18. I have heard learned Counsel for the parties at length and perused the record.

19. From the records, it is clear that after the pension scheme was brought into force, each of the Petitioners herein received benefit from the year 1.4.1996 or from the date of their retirement upto March 2003, when the dispute in question arose. According to the Petitioners, LIC has unilaterally changed the Scheme by introducing the change and are refusing payment of their pension, which is not permissible in view of the law laid down in the case of Air India Employees (supra). The Management of the Ware Housing Corporation also in fact supports the case of the employees and challenges the manner in which the deed of variation is brought into force. However, LIC contends that by the deed of variation they have only brought the Scheme in line with the purchase made by the Corporation and they have only tried to correct a mistake, which does not make any change in the Scheme subscribed to by the Ware Housing Corporation. According to the LIC, it was because of the non-payment of premium in accordance with the requirement of the Scheme by the Ware Housing Corporation that the entire dispute has arisen.

20. Even though Shri Rohit Arya, learned Senior Advocate, with Shri Sujoy Paul for the Petitioners; Shri R.N. Singh, Senior Advocate, for the Ware Housing

Corporation; and, Shri R.P. Agrawal, learned Senior Advocate for the LIC, argued at length and tried to justify their relevant claims by referring to various correspondences, calculations, charts and datas available on record, I am of the considered view that the question as to whether the benefit, which was granted to each of the Petitioners herein after their retirement and after the PPO is issued to them, can be withdrawn or changed in the manner done is no more in dispute and the entire law in this regard stands settled by the Supreme Court in the case of *Air India Employees* (supra). The case before the Supreme Court was also similar in nature and pertains to grant of benefit to employees retiring from service and amendment made by the LIC in a pension scheme, which was being enforced in the said case. In that case also, the Scheme under which pension was paid to the employees was known as the "defined benefit scheme or plan" and not the "definite contributory plan". In the case before the Supreme Court also, certain employees were getting the benefit, but the benefit of pension, which was being received by them under the Scheme was stopped/withdrawn and excess payment recovered on the basis of certain amendment to the Scheme, made retrospectively. The petitions filed by the employees before the High Court having been allowed, matter travelled to the Supreme Court and the Supreme Court considered the matter and after taking note of the benefits accruing to the employees under the "defined benefit scheme", it is held by the Supreme Court that a retired employee received what was receivable by them according to the existing Scheme on the date of their retirement. The scheme envisaged a "definite benefit scheme" and it provides for allotting funds at the time of retirement of employees, which included the amount for which the annuity is purchased and the sum of pension to be paid. In the case before the Supreme Court, the amendment was necessitated because of certain deficiency in the corpus, which was to a considerable extent and to take care of the same and to rectify the defect, the amendment in the Scheme was brought into force so that the gap gets bridged by making recovery from those, who had already retired. While considering the meaning of the word annuity as appearing in the Scheme, it was held by the Supreme Court that the expression annuity means an obligation to pay a stated sum usually monthly or annually to a stated recipient. It is held by the Supreme Court that annuity is a right to receive "de anno in annum" certain sum that may be given for life or for a series of year. It may be given either during a particular period or in perpetuity. It is held by the Supreme Court that the right of the employees to receive the annuity and the quantum of annuity gets crystallized at the time of purchase of the annuity. It is held that the moment the annuity is purchased the fund leaves the corpus and the relations between the two are snapped. The corpus to the extent required for purchase of annuity leaves the trust fund and all connections between the trust fund and the retirees are severed. It is held by the Supreme Court accordingly that once the annuity is purchased there remains no connection with the quantum of the fund and, therefore, the annuitants i.e. the retirees are in no way concerned with the financial position of the fund, for which the annuity was purchased. It is held that after their retirement and after the annuity is crystallized, no amount can be

claimed from the retirees by making any amendment or retrospective change in the Scheme. It has been held by the Supreme Court that LIC having accepted the annuity and having effected monthly payments can neither reduce the annuity amount nor can refund it to the detriment of the retirees since the annuity has already crystallized and no change can be made in such annuity as stipulated by the impugned amendment. It is held that the LIC has an obligation under law to fulfil the promise given by it to the retirees, who are assured under the annuity scheme.

21. If the aforesaid principle laid down by the Supreme Court are analysed, it would be seen that in the case of each of the Petitioners, who have retired and on their retirement the PPO were issued, the annuity had crystallized and, therefore, now in the light of the law laid down by the Supreme Court, the LIC cannot refuse to fulfil the obligations which is finalized and which it has promised to pay by issuance of the PPO.

22. In the case of Air India Employees (supra), the Supreme Court after taking note of the factual aspects of the matter in paragraph 13, has indicated that the crucial question requiring consideration is whether the benefit which the retired employees are getting can be curtailed because of reduction of the fund amount. Thereafter, in paragraph 25, various provisions of the trust deed are taken note of, which are similar to the one contained in the present case. In paragraph 26, contentions of the LIC has been taken note of and in paragraphs 26 and 27, the matter is so dealt with:

26. Dealing now with the first contention as to the depletion of the fund amounts, case of the Appellants is that the scheme was based upon actuarial valuation carried out in the year 1993/1994 on assumptions as under:

- (1) Basic pay and DA were taken as pre-revised scales.
- (2) Assumption that the contribution will start flowing on monthly basis from April, 1994.
- (3) Rate of interest was assumed at 12 per cent.
- (4) Contribution of Rs. 350 per month was supposed to increase by 10% per annum.
- (5) Total number of members of the Scheme at any given time would remain constant i.e. retirees are replaced by recruits.

27. It is urged that when the Scheme was launched in 1996 none of the above assumptions were found to be in existence as evidenced from the following:

- (1) With the wage agreement in 1996, the salary scales were substantially revised.
- (2) Monthly deductions of contribution started only from September 1996 and arrears of contributions for the period April 1994 to August 1996 were received

by the Trust from March 2000 only.

(3) Rate of interest has been progressively declining.

(4) The contribution of Rs. 350 p.m. has not been escalated by 10% per annum.

(5) Number of employees contributing to the Scheme has progressively declined in view of non-recruitment since 1995.

(Emphasis supplied)

23. If the case in hand and the return submitted by the LIC is scanned, it would be seen that in the return filed Respondents 4 and 5, have so stated in paragraphs 23, 24 and 25 of their reply:

23. The answering Respondents are herewith enclosing a chart as regards pension which was payable prior to 1st July 2000 and which is payable after 1st July 2000. The variation shown is a result of the fall in the rate of annuity from 12% to 10% effective from 1st July 2000. A copy of such comparative chart is enclosed herewith as Document No. 10.

24. That as stated above the fall in the rate of pension per month as regards the Petitioner No. 2, 5, 6, 7 and 9 is on account of the fall in the rate of annuity with effect from 1st July 2000 in terms of Clause 6 of the Master Policy (Document No. 3) and Notes (i) of point No. 11 of Deed of Variation (Document No. 4).

25. It may further be stated here that at the commencement of the scheme when the rate of annuity was 12% per annum the corpus amount matched the quantum of salary of 45 months. With the fall of annuity from 12% per annum to 10% from 1st July 2000 to purchase the same amount of annuity, the required corpus exceeded 45 months salary. As the rules of the same restrict the corpus to 45 times, monthly pension payable to 2nd, 5th, 6th, 7th and 9th Petitioner should have been less than the pension amount which was being paid to earlier retirees. For payment of the pension at the earlier rate more corpus was required and since through sheer inadvertence the earlier pension rates were applied to the aforesaid Petitioners inspite of the fall in the rate of Annuities, it had become necessary to recover the excess amount which was so paid....

Again, in paragraphs 37, 38 and 39, it is so indicated by the LIC as under:

37. That the LIC has not stopped the payment of pension on its own. It was only pursuant to the direction of the Respondent No. 1 contained in Annexure P-2 that the pension was stopped. Whatever pension is payable under the Rules, the LIC has been paying and is still willing to pay.

38. That the Petitioners were duly informed the basis of reduction of the pension to which the LIC hereby strictly sticks. The reduction in the pension was a result of the reduction in the interest rates in the financial market which the LIC could give effect to under Clause 6 of the Master Policy and Notes I of Clause 11 of Document No. 4.

39. That according to the letter of Respondent itself dated 24th October 1996 the corpus to be debited to the pension fund account would not exceed the 45 times of the last drawn salary. Due to lowering of the interest rate in the financial market the LIC of India also reduced its annuity rates with effect from 1st July 2000 vide circular No. P and GS 699 dated 14th June 2000 Document No. 11. Due to reduction in annuity rates for making the same percentage as pension (45% last drawn salary or 1.8% of the last drawn salary x Number of completed years of service which ever is less) more amount of withdrawal from corpus fund was needed. During this process the condition given above (i.e. corpus should not exceed 45 times of last drawn salary) got omitted due to oversight. On discovery of the mistake of calculation the same needed to be rectified and accordingly the concerned Petitioners were informed vide letter dated 20th April 2002 (10 days before due date of 1st monthly pension of 2002-2003) to deposit the excess amount paid.

(Emphasis supplied)

If the reasons given by LIC for their action and change is evaluated in the light of the reasons given before the Supreme Court, it would be seen that both are more or less similar or rather identical.

24. As done in the case before the Supreme Court, both the parties, namely the Ware Housing Corporation and LIC, have given various calculations and have pointed out the flaws and irregularities in the calculation. Such calculation were put forth before the Supreme Court also and in paragraph 34, the Supreme Court has made certain observations with regard to the calculations, but took note of the fact that such fallacy in the scheme was never rectified from the very inception. In the present case, when the scheme was enforced in 1996 upto 2002, such fallacies and errors were not corrected. Thereafter, in paragraph 39, the distinction between the "defined benefit plan" and the "defined contributory plan" is taken note of and in paragraph 40, it is so held by the Supreme Court:

40. The scheme envisages a defined benefit plan and not a defined contribution plan. It also envisages allocating funds at the time of retirement of employees, i.e. the amount for which the annuity is purchased. None has questioned the power of the trustees to amend the scheme prospectively from the date of amendment. We would also assume that there is a corpus deficiency which, to a considerable extent has taken place as a result of gap between contribution and amount of annuity purchased. All the same, the basic question is whether by the amendment of the Scheme, this gap can be bridged by making recoveries from those who have already retired and are getting benefit from LIC as a result of purchase of annuity and/or from their heirs who would otherwise receive annuity amount after the demise of the retiree. This necessarily takes us to the second question as to the power to amend the Scheme retrospectively.

(Emphasis supplied)

Thereafter, the matter is so dealt with in paragraphs 46 to 48, as under:

46. Besides the aforesaid clauses, learned Counsel for the Appellant have placed strong reliance on Clause 32 and Clause 33 of the Trust Deed. Clause 32 provides the power of the Trustee to review the availability of Funds of the Scheme annually or at such intervals as may be deemed fit by the Trustees and to decide any revision as to the rate of the member's contribution under the Scheme. Clause 33 i.e. power of review of benefits stipulates the Trustees right to review any limit the benefits payable to the beneficiaries including the right to reduce the benefits payable in accordance with the rules in the event of any or all the members ceasing or reducing to make contribution to the Fund.

47. None of the aforesaid clauses render any assistance to the Appellants. The relied upon clauses deal with the members who continue to contribute to the Fund. The liability of the retiring member to make any such contribution ceases on retirement. It is nobody's case that after the retirement any contribution is made or required to be made by retired employees. The aforesaid clauses only show the right and power to review the Fund and the benefits payable to the continuing members/employees. Likewise, reliance on Rule 14 which stipulates that the member or his beneficiary shall not have any interest in the master policy taken out in respect of the members in accordance with the Rules of the Scheme but shall be entitled to superannuation benefits in accordance with the Rules, has no applicability. The retired employees are not claiming any interest in the master policy but are claiming right flowing from the annuity purchased on their retirement.

48. The rights of the employees to receive the annuity and quantum of the annuity get crystallized at the time of purchase of the annuity.

(Emphasis supplied)

Thereafter the law laid down in the case of Sasadhar Chakravarty and Another Vs. Union of India and Others, is considered, the ratio determined and the principle laid down reads as under:

50. The decision was sought to be distinguished on the ground that in the said case, this Court was concerned with the scheme financed by the employer unlike the present scheme where employer's contribution was almost nil and that it was self- contributing scheme. We are, however, unable to accept this contention. The ratio decidendi of the case is that the moment annuity is purchased, the fund leaves the corpus and the relations between the two are snapped. The corpus to the extent required for purchase of annuity leaves the trust fund and all connections between trust fund and retirees are severed. Thus, once the annuity is purchased, there remained no connection with the quantum of the fund. Therefore, annuitants are in no way concerned with the financial position of the fund for which annuity was purchased. They cannot be asked to further contribute. That is the basic question in the present case. It matters little that the present case is of reverse position inasmuch as in the case of Sasadhar Chakravarty, this Court was considering the case of a retired employee who was

seeking right in the improvement whereas in the present case the question is about reducing the benefits or rights of the retired employees?.

(Emphasis supplied)

Again, it is so held by the Supreme Court, in paragraph 50, as under:

50 . ., In view of what we have said above there is neither any substance in the contention that contract was between LIC and the trustees nor is it of any consequence in view of our conclusion that the amount, on retirement of employees, leaves the fund for purchase of annuity and the rights of the retirees are crystallized on their retirement by purchase of annuity and thus no amount can be claimed from them by making applicable amendment dated 3rd April, 2002 with retrospective effect. Therefore, we find no substance in the second contention.

and, finally in paragraph 52, the matter is so dealt with:

52. The LIC having accepted the annuity and having effected monthly payments can neither reduce the annuity amount nor refund it to the trust to the detriment of the retirees since the annuity has already crystallized and no change can be made in such annuity as stipulated by the impugned amendments. LIC has obligation to fulfil the promise given by it to the retirees, who are assured under the annuity scheme.

(Emphasis supplied)

25. If the law laid down by the Supreme Court is scanned, I am of the considered view that once the PPO were prepared and benefit under the scheme was extended to the employees, who had retired, then LIC for the reasons as indicated by them herein cannot wriggle out of their liability to make the payment as per the promise made in the PPO and they are bound to make the payment. There is no iota of doubt in this regard as the Supreme Court has clearly held that the right of the employees to receive the annuity and the quantum of the annuity gets crystallized at the time of purchase of the annuity and once they have retired the connection between the trust and the fund of the retirees are severed and the LIC under law is obliged to make payment as promised.

26. In that view of the matter, none of the grounds raised by the LIC for refusing to pay pension to the Petitioners can be accepted now. The changes proposed or the question of non-payment of premium etc by the management of Ware Housing Corporation may be taken as a ground for effecting changes prospectively in the case of other employees, but in the case of present Petitioners, who have retired and in whose cases, the pensions were paid as per the PP Os prepared, LIC cannot refuse to make further payment on the grounds as are raised in this petition.

27. In the light of the law laid down by the Supreme Court and in view of the

findings that are recorded hereinabove, it is not necessary now for this Court to go into various aspects of the matter, which were canvassed by Shri R.P. Agrawal, learned Senior Advocate, at the time of hearing. Once the PP Os were issued to the Petitioners and once they started receiving the pension, then on the ground of non-payment of premium etc, LIC cannot take an about turn and refuse to fulfil their promise, which was made to the Petitioners and which gets crystallized on the date of their retirement. All the objections raised and the arguments advanced by Shri R.P. Agrawal, learned Senior Advocate, for refusing to make payment of pension to the present Petitioners cannot be accepted now in the light of the settled law, as indicated hereinabove as laid down by the Supreme Court in the case of Air India Employees (supra).

28. Apart from the above, it may be taken note of that the deed of variation in question is made by the LIC in a manner, which is contrary to the procedure contemplated under the trust deed i.e.. Clause 8 thereof. Clause 8 of the trust deed deals with the power to amend the scheme, and in the present case it is an admitted position that the scheme is amended without the Ware Housing Corporation having approved the amendment and prior permission of the Commissioner of Income Tax. It was argued that the change was necessary to bring it in conformity with the master policy. Be that as it may, it has to be held that the deed of variation is not in accordance to law and has not been enforced in accordance to the requirement of law.

29. Apart from the above, detailed arguments were advanced by Shri R.P. Agrawal, learned Senior Advocate for LIC, with regard to non-payment of premium by the Ware Housing Corporation and their conduct in not paying the premium as per the policy. A perusal of the master policy and the annexures thereof would indicate that in the said master policy the portions pertaining to premium are kept blank. In the reply, LIC admits the same to be inadvertence and mistake. On a complete scrutiny of the scheme, the master policy, the proposal, the correspondence and the provisions for payment of premium therein* there seems to be various ambiguity in the matter of indicating the premium to be paid and various other aspects. It is clear from an analysis of the documents that in the master proposal form, it is clearly mentioned that the employees were under no obligation to contribute towards the premium. In the policy documents there is no clear stipulation with regard to the premium of the policy. There is serious ambiguity in the matter of indicating the premium payable in the master policy and the other documents available on record. That apart, once the question with regard to entitlement of the Petitioners is found to be settled by the Supreme Court in the light of the facts as stated hereinabove, it is not necessary now for this Court to go into all these questions. Suffice it to say that the grounds raised by Shri R.P. Agrawal, learned Senior Advocate on behalf of the LIC, during the course of hearing justifying the action of the LIC now, in respect to the present Petitioners, cannot be accepted in view of the principle of law, well settled by the Supreme Court as indicated hereinabove.

30. During the course of hearing, it has been pointed out that after the earlier order was passed in the Writ Petition and when the Writ Appeals were pending before this Court, certain subsequent developments have taken place and an application I.A. No. 2901/2009 has been filed by the LIC in Writ Petition No. 880/2003, and an agreement entered into between the LIC and the Ware Housing Corporation is brought on record. On the basis of the aforesaid agreement, it is now tried to be canvassed that the master policy has been withdrawn and out of the 131 retired employees, who are agitating the matter in these cases, five have died and their Legal Heirs have taken the entire corpus. One Shri K.M. Parihar has also taken his entire corpus. Annexure R/4 is filed in this regard. Of the 125 remaining employees, it is stated that 57 employees, whose names are contained in Annexure R/5 are taking regular pension; and, out of 68 employees remaining, 15 have refused to accept pension as per the "defined contribution scheme". Out of remaining 53, it is stated that five employees are dead, letters were written to them, but their claim papers are awaited from their nominees of Legal Heirs. It is stated that out of the remaining 48, in respect of 10 employees pension cheques sent to have been returned undelivered and no one has come forward to receive their pension. And, out of the remaining 38, in 14 cases the amount remaining with the LIC is very small as they have already taken the commuted value and, therefore, they have been advised to take their corpus back, but they are not responding. 24 persons have taken their commuted value, which is more than the defined value and, therefore, no pension is payable to said 24 persons. Their names are given in Annexure R/10. It is stated that now of the 131 employees, only 15- 25 are contesting the matter and in view of the agreement, it is stated that now no further relief can be granted to them. The agreement in question is available on record and paragraphs 1 to 6 of the same reads as under:

1. The M.P. Warehousing and Logistics Corporation Bhopal and the Trustees do hereby surrender Master Policies No. GSCA 106880 to 106888 and the Life Insurance Corporation of India is agreeable to accept the proposal of surrender of the aforesaid Master Policy.

2. That, the Life Insurance Corporation of India will pay the pension to 131 retired employees of the Warehousing Corporation, the list of which is attached herewith as Annexure - A under the terms of Defined Contribution, as per balance available in their individual accounts and as per Court Order dated 08.04.2004 in W.P. No. 4318/2002 and other connecting petitions passed by learned Single Judge and the amount requisite for payment of such pension to 131 employees on Defined Contribution basis shall be retained and the remaining amount available in annuities shall be refunded to the M.P. Warehousing and Logistics Corporation alongwith interest without any exit load.

3. The excess payment made to the employees earlier shall be quantified and shall be placed before the Hon"ble Court for decision at a later date.

4. That on refund of the corpus as aforesaid, the Life Insurance Corporation of

India shall not be responsible to pay any pension to any of its employees except 131 employees as mentioned in Schedule A and the Master Policy referred above shall terminate for all practical and legal purpose. LIC will refund the entire corpus of rest of the employees alongwith interest to MPWLC without any exit load.

5. In case of ex-employees who have filed LP As in the High Court, the corpus on the basis of Defined Contribution shall be retained by LIC until court cases are settled.

6. This agreement is subject to the approval of High Court.

31. On a perusal of the agreement, it is clear that the agreement is subject to approval by this Court and infact the agreement is for the purpose of surrendering the master policy so that the future liability of existing employees and the employees other than the present Petitioners are taken care of. Once on the basis of the law laid down by the Supreme Court it is held by this Court that the employees like the Petitioners have a legal right to receive the benefit and the LIC cannot withdraw the benefit in the manner done, the right accruing to persons like the Petitioners cannot be frustrated or taken away by any such agreement. That being so, merely because of the subsequent developments or the agreement as pointed out, the directions given for extending the benefit to the Petitioners in the light of the law laid down by the Supreme Court in the case of Air India Employees (supra) cannot be refused. However, it is clarified that if any of the Petitioners or their Legal Heirs have agreed to receive any benefit other than the one to which they are entitled to in accordance to the orders passed in these cases, LIC shall be free to enforce the same with respect to such of the Petitioners in accordance with law. In the case of such Petitioners, who have not agreed to any concession or waiver, LIC will be obliged and duty bound to pay to them the entire pension as per their entitlement on the basis of the PP Os issued to them and the agreement n question entered into during the pendency of these proceedings shall come as deterrent to any of these employees in claiming the benefit. All such Petitioners or their Legal Heirs, who have not accepted the offer made by LIC either by their act or conduct, will be entitled to receive the benefits of this order.

32. Consequently, all the petitions stand allowed and disposed of with the aforesaid, without any order so as to costs.