

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.18486/2012 (L-PF)

C/W

WRIT PETITION No.11/2012 (L-PF)

C/W

WRIT PETITION No.1939/2010 (L-PF),

WRIT PETITION No.4051/2012 (L-PF),

WRIT PETITION No.8545/2012 (L-PF),

WRIT PETITION No.9188/2012 (L-PF),

WRIT PETITION No.27064/2012 (L-PF),

WRIT PETITION No.28000/2012 (L-PF),

WRIT PETITION No.36160/2012 (L-PF),

WRIT PETITION No.37835/2012 (L-PF),

WRIT PETITION No.39016/2012 (L-PF),

WRIT PETITION No.39185/2012 (L-PF),

WRIT PETITION No.39570/2012 (L-PF),

WRIT PETITION No.42364/2012 (L-PF),

WRIT PETITION No.45706/2012 (L-PF),

WRIT PETITION No.45770/2012 (L-PF),

WRIT PETITION No.46029/2012 (L-PF),

WRIT PETITION No.47926/2012 (L-PF),

WRIT PETITION No.56837/2013 (L-PF),

WRIT PETITION No.22507/2015 (L-PF),

WRIT PETITION No.15839/2019 (L-PF),

WRIT PETITION No.19464/2021 (L-PF),

WRIT PETITION No.20560/2012 (L-PF)

IN W.P. No.18486/2012

BETWEEN:

STONE HILL EDUCATION FOUNDATION,
EMBASSY POINT, NO.150,
INFANTRY ROAD,
BANGALORE – 560 001,
REPRESENTED BY ITS
PRESIDENT FINANCE.

... PETITIONER

(BY SRI K.N. VASUKI, ADVOCATE AND
SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER-I
BHAVISHYANIDHI BHAVAN, NO.13,
RAJA RAM MOHAN ROY ROAD,
BANGALORE - 560 025.
3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
CENTRAL PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN,
HUDCO COMPLEX, BHIKAJI CAMA PLACE,
NEW DELHI - 110 061. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 & 43-A
OF THE EMPLOYEES PF SCHEME, 1952, AS UNCONSTITUTIONAL AND
HIT BY ARTICLE 14 OF THE CONSTITUTION OF INDIA AND ALSO AS
ILLEGAL BEING OPPOSED TO THE VERY OBJECTION OF THE EPF & MP
ACT 1952 AND STRIKE DOWN THE SAME ANNEXURE-B & ANNEXURE-C;
QUASH THE NOTICE OF ENQUIRY DATED 21.03.2012 RECEIVED FROM
THE R-2 VIDE ANNEXURE-D AND ETC.

IN W.P. No.11/2012

BETWEEN:

UE DEVELOPMENT INDIA PVT. LTD.,
QUORUM, #85, 7TH CROSS,
4TH BLOCK, KORAMANGALA,
BANGALORE - 560 034
REP. BY ITS HEAD OF LEGAL
MISS GAY SAW GHIN LYE. ... PETITIONER

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE A/W
SRI M.V. SUNDARARAMAN, ADVOCATE AND
SRI KRISHAR SOMAIAH, ADVOCATE)

AND:

1. THE UNION OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKATHI BHAVAN
TAFI MARG, NEW DELHI - 110 001.
REPRESENTED BY THE SECRETARY.
2. EMPLOYEES PROVIDENT FUND ORGANIZATION
MINISTRY OF LABOUR,
GOVERNMENT OF INDIA, REGIONAL OFFICE,
KARNATAKA BHAVISHY NIDHI BHAVAN,
POST BOX NO.20146, NO.13,
RAJARAMMOHANROY ROAD,
BANGALORE - 560 025
REPRESENTED BY ITS ADDL. CENTRAL
PROVIDENT FUND COMMISSIONER
(KARNATAKA & GOA).
3. ASSISTANT PROVIDENT FUND COMMISSIONER (COMP.)
BHAVISHY NIDHI BHAVAN
POST BOX NO.20146, NO.13,
RAJARAMMOHANROY ROAD,
BANGALORE - 560 025. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO DECLARE THE EMPLOYEES
PROVIDENT FUND (AMENDMENT) SCHEME, 2010 NOTIFICATION DATED
03.09.2010 PUBLISHED IN THE OFFICIAL GAZETTE DATED 11.09.2010
VIDE ANNEXURE-A, AS DISCRIMINATORY ARBITRARY, VIOLATIVE OF
ARTICLE 14 OF THE CONSTITUTION OF INDIA AND INCAPABLE OF
ENFORCEMENT AND ETC.

IN W.P. No.1939/2010

BETWEEN:

DECCAN CARGO & EXPRESS
LOGISTICS PRIVATE LIMITED
4TH & 5TH FLOOR, RAHEJA PARAMOUNT,

138, RESIDENCY ROAD,
BANGALORE - 560 025
REPRESENTED BY ITS HEAD-LEGAL
MRS. VALLABA G. VASANTHA.

... PETITIONER

(BY SMT. LAKSHMI IYENGAR, SENIOR ADVOCATE A/W
SMT. REVATHY ADINATH NARDE AND
SRI K.S. MAHADEVAN, ADVOCATE)

AND:

1. THE UNION OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKTHI BHAVAN,
TAFI MARG, NEW DELHI - 110 001
REPTD. BY THE SECRETARY.
2. EMPLOYEES PROVIDENT FUND ORGANIZATION
MINISTRY OF LABOUR,
GOVERNMENT OF INDIA,
REGIONAL OFFICER,
KARNATAKA BHAVISHY NIDHI BHAVAN,
POST BOX NO.20146, NO.13,
RAJARAMMOHANROY ROAD,
BANGALORE - 560 025
REPRESENTED BY ITS ADDL. CENTRAL
PROVIDENT FUND COMMISSIONER
(KARNATAKA & GOA).
3. MR. MEHABOOB GANIYAR,
ASSISTANT PROVIDENT FUND COMMISSIONER (COMP.),
BHAVISHY NIDHI BHAVAN,
POST BOX NO.20146, NO.13,
RAJARAMMOHANROY ROAD,
BANGALORE - 560 025. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO DECLARE THE EMPLOYEES
PROVIDENT FUND (THIRD AMENDMENT) SCHEME, 2008 VIDE
ANNEXURE-A AS DISCRIMINATORY, ARBITRARY, VIOLATIVE OF
ARTICLE 14 OF THE CONSTITUTION OF INDIA BY ISSUING A WRIT OF
CERTIORARI OR ANY OTHER WRIT OR DIRECTION IN THE NATURE OF

WRIT; QUASH THE NOTICE DATED 14.12.2009 ISSUED BY SECOND RESPONDENT VIDE ANNEXURE-C AND ETC.

IN W.P. No.4051/2012

BETWEEN:

1. CANADIAN INTERNATIONAL SCHOOL,
NO.4 & 20, MANCHENAHALLI,
YELAHANKA, BANGALORE - 560 064,
REPRESENTED BY ITS EXECUTIVE DIRECTOR,
MRS. SHWETA SASTRI.
2. MR. SHANE KELLS
49 YEARS,
HEAD OF SCHOOL,
CANADIAN INTERNATIONAL SCHOOL,
NO.4 & 20, MANCHENAHALLI,
YELAHANKA, BANGALORE - 560 064.
3. MR. JOHN NIGEL GLEAVE
54 YEARS,
TEACHER, CANADIAN INTERNATIONAL SCHOOL,
NO.4 & 20, MANCHENAHALLI,
YELAHANKA, BANGALORE - 560 064.
4. MR. SCOTT ZEUCH
41 YEARS,
MUSIC TEACHER,
CANADIAN INTERNATIONAL SCHOOL,
NO.4 & 20, MANCHENAHALLI,
YELAHANKA, BANGALORE - 560 064. ... PETITIONERS

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE A/W
SRI RAJENDRA M.S., ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LABOUR & EMPLOYMENT,
SHRAM SHAKTI BHAVAN, RAFI MARG,
NEW DELHI - 110 001.

2. REGIONAL PROVIDENT FUND COMMISSION,
NO.10, RAJARAM MOHAN ROY ROAD,
BANGALORE.

(CAUSE TITLE AMENDED CARRIED
OUT V.C.O. DATED 10/02/2012)

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83
OF THE EMPLOYEES PROVIDENT FUND SCHEME, 1952 AS
UNCONSTITUTIONAL AND STRIKE DOWN THE SAME AND ETC.

IN W.P. No.8545/2012

BETWEEN:

1. CPG CONSULTANTS INDIA PVT. LTD.,
#21/30, PRESTIGE CRAIG HOUSE
CRAIG PARK LAYOUT,
M.G. ROAD, BANGALORE- 01,
REPRESENTED BY MANAGING DIRECTOR
MR. RAIMI BIN A RAHIM.
2. MR. RAIMI BIN A RAHIM
S/O. MR. A. RAHIM BIN HASHIM,
AGED 50 YEARS,
CPG CONSULTANTS INDIA PVT. LTD.,
#21/30, PRESTIGE CRAIG HOUSE,
CRAIG PARK LAYOUT, M.G. ROAD,
BANGALORE - 560 001.

... PETITIONERS

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER-1
BHAVISHYANIDHI BHAVAN, NO.13,
RAJARAM MOHAN ROY ROAD,
BANGALORE - 560 025. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME, 1952, AND PARA 43-A OF THE EMPLOYEES' PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952.

IN W.P. No.9188/2012

BETWEEN:

1. MANTRI DEVELOPERS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
NO.41, MANTRI HOUSE,
VITTAL MALLYA ROAD,
BANGALORE - 560 001.
2. JONATHAN YACH
S/O. MR. SOLM YACH,
AGED 48 YEARS,
R/AT 260/9, PALM MEADOWS,
HAL ROAD, VARTHUR, WHITEFIELD,
BENGALURU - 560 006. ... PETITIONERS

(BY SRI H. SRINIVAS RAO, ADVOCATE AND
SMT. DEEPTHI C.R., ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENTS
HRAM SHAKTHI BHAVAN,
TAFI MARG, NEW DELHI.

2. EMPLOYEES PROVIDENT FUND ORGANISATION
(MINISTRY OF LABOUR,
GOVERNMENT OF INDIA),
REGIONAL OFFICE, BANGALORE REGION
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD,
BANGALORE - 560 002
REPRESENTED BY ITS REGIONAL
PROVIDENT FUND COMMISSIONER. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THE EMPLOYEES PROVIDENT FUND (3RD AMENDMENT) SCHEME 2008 AS DISCRIMINATORY, ARBITRARY & UNSUSTAINABLE IN LAW AND STRIKE DOWN THE SAME; QUASH THE NOTICE DATED 28.12.2011 VIDE ANNEXURE-D ISSUED BY 2ND RESPONDENT AND ETC.

IN W.P. No.27064/2012

BETWEEN:

ARM EMBEDDED TECHNOLOGIES PVT. LTD.,
LEVEL-II & III, SALARPURAI TOUCHSTONE,
MARATHHALLI,
SARJAPUR OUTER RING ROAD,
VARTHUR HOBLI, BANGALORE - 560 103.
REPRESENTED BY
VENUGOPALAN VENKATARAMAN
DIRECTOR. ... PETITIONER

(BY SRI K.N. VASUKI, ADVOCATE AND
SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER-I
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD,
BANGALORE – 560 025.
3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
CENTRAL PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN,
HUDCO COMPLEX, BHIKAJI CAMA PLACE,
NEW DELHI – 110 061. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 OF THE EMPLOYEES PROVIDENT FUND SCHEME, 1952, AS UNCONSTITUTIONAL AND HIT BY ARTICLE 14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF & MP ACT, 1952 AND STRIKE DOWN THE SAME; QUASH THE ORDER DATED 18.06.2012 PASSED BY THE SECOND RESPONDENT VIDE ANNEXURE-L AND ETC.

IN W.P. No.28000/2012

BETWEEN:

SOBHA DEVELOPERS LTD.,
REGISTERED & CORPORATE OFFICE
SARJAUR-MARTHAHALLI OUTER RING ROAD,
DEVARABISANAHALLI, BELLANDUR POST,
BANGALORE – 560 103
REPRESENTED BY ITS
SENIOR VICE PRESIDENT
SATISH .J KAMATH. ... PETITIONER

(BY SRI K.N. VASUKI, ADVOCATE AND
SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY-LABOUR,

SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER I,
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD,
BANGALORE - 560 025.
3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
CENTRAL PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN,
HUDCO COMPLEX, BHIKAJI CAMA PLACE,
NEW DELHI - 110 061. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 OF THE EPF SCHEME, 1952, AS UNCONSTITUTIONAL AND HIT BY ARTICLE 14 OF CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF & MP ACT 1952 AND STRIKE DOWN THE SAME VIDE ANNEXURE-B; QUASH THE NOTICE OF ENQUIRY DATED 22.06.2012 RECEIVED FROM THE SECOND RESPONDENT VIDE ANNEXURE-C AND ETC.

IN W.P. No.36160/2012

BETWEEN:

1. M/S. TOYOTA TSUSHO INDIA PVT. LTD.,
PLOT NO.33 & 34, BIDADI INDUSTRIAL AREA,
BIDADI, RAMANAGARA DIST. - 562 109.
REPRESENTED BY ITS MANAGING DIRECTOR
MR. YASUNORI WATANABE.
2. MR. A. MURALI
S/O. MR. R. ATHMANATHAN
AGED ABOUT 41 YEARS,
R/AT NO.24, 'SHREE MANGALADEVI',
2ND MAIN, 2ND CROSS, EWS LAYOUT,
KATHRIGUPPE EAST,
BANASHANKARI 3RD STAGE,
BANGALORE - 560 085. ... PETITIONERS

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER-1
BHAVISHYANIDHI BHAVAN,
NO.13, RAJARAM MOHAN ROY ROAD,
BANGALORE - 560 025. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE SUMMONS DATED 07.08.2012, AT ANNEXURE-J ISSUED BY THE SECOND RESPONDENT; DECLARE THAT THE SECOND RESPONDENT HAS NO AUTHORITY & JURISDICTION TO SUMMON THE DETAILS OF GLOBAL SALARY OF THE INTERNATIONAL WORKERS (SALARY PAID ABROAD, IF ANY); QUASH PARA-83 OF THE EPF SCHEME 1952 & PARA 43-A OF THE EMPLOYEES' PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA & ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AND ETC.

IN W.P. No.37835/2012

BETWEEN:

M/S. TOYOTETSU INDIA AUTO PARTS PVT. LTD.,
ON SITE SUPPLIER PARK,
BUILDING NO.7,
TOYOTA KIRLOSAKAR MOTORS PVT. LTD.,
PLOT NO.1, BIDADI INDUSTRIAL AREA,
BIDADI,
RAMANAGARA DISTRICT - 562 109
REPRESENTED BY ITS DIRECTOR,
MR. M. YAMAMOTO. ... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTHI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER I
BHAVISHYANIDHI BHAVAN,
NO.13, RAJARAM MOHAN ROY ROAD,
BANGALORE - 560 025. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE PARA-83 OF THE
EPF SCHEME 1952 AND PARA 43-A OF THE EMPLOYEES' PENSION
SCHEME 1995 AS UNCONSTITUTIONAL BEING HIT BY ARTICLE-14 OF
THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED
TO THE VERY OBJECT OF THE EPF ACT, 1952 AND ETC.

IN W.P. No.39016/2012

BETWEEN:

OZONE PROPEX PRIVATE LIMITED,
51/7-2, RATHNA AVENUE,
CIVIL STATION, OFF: RICHMOND ROAD,
BANGALORE - 560 025
REPRESENTED BY ITS
VICE PRESIDENT-HR. ... PETITIONER

(BY SRI K.N. VASUKI, ADVOCATE AND
SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY-LABOUR,

SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER-I,
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD
BANGALORE - 560 025.

3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
CENTRAL PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN,
HUDCO COMPLEX, BHIKAJI CAMA PLACE,
NEW DELHI - 110 061.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 OF
THE EMPLOYEES PROVIDENT FUND SCHEME, 1952, AS
UNCONSTITUTIONAL & HIT BY ARTICLE 14 OF THE CONSTITUTION OF
INDIA & ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF
THE EPF & MP ACT, 1952 & STRIKE DOWN THE SAME; QUASH THE
ORDER DATED 05.09.2012 PASSED BY THE R2, VIDE ANNEXURE-K AND
ETC.

IN W.P. No.39185/2012

BETWEEN:

VALUE AND BUDGET HOUSING
CORPORATION PVT. LTD.,
HM STRAFFORD HOUSE,
29/4, 3RD FLOOR, 7TH CROSS,
VASANTHAGAR EXTN.,
OFF MILLERS ROAD,
BANGALORE - 560 052
REPRESENTED BY ITS
COMPANY SECRETARY.

... PETITIONER

(BY SRI K.N. VASUKI, ADVOCATE AND
SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 003.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER-I,
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD,
BANGALORE - 560 025.
3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
CENTRAL PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN,
HUDCO COMPLEX, BHIKAJI CAMA PLACE,
NEW DELHI - 110 061. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 OF THE EMPLOYEES PROVIDENT FUND SCHEME, 1952 AS UNCONSTITUTIONAL AND HIT BY ARTICLE 14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF & MP ACT 1952 AND STRIKE DOWN THE SAME; QUASH THE SET ASIDE THE ORDER DATED 12.09.2012 PASSED BY THE SECOND RESPONDENT VIDE ANNEXURE-K AND ETC.

IN W.P. No.39570/2012

BETWEEN:

1. METRO CASH & CARRY INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO.26/3, INDUSTRIAL SUBURBS,
'A' BLOCK, SUBRAMANYANAGAR,
WARD NO.9,
BANGALORE - 560 055.
REPRESENTED BY ITS SENIOR MANAGER,

COMPENSATION & BENEFITS
MS. P. NAGA KUMARI.

2. ALEC JOHN BOOTH,
S/O. MR. BRAIN BOOTH,
AGED ABOUT 47 YEARS,
RESIDING AT NO.5/5 - 5/5-1,
1ST MAIN ROAD,
JAYAMAHAL EXTENSION,
BANGALORE - 560 046.

3. GUENTER KARI REDTENBACHER,
S/O. KARI REDTENBACHER,
AGED ABOUT 53 YEARS,
UNIT 8A, 9TH FLOOR,
BEARYS ACACIA LAKEVIEW,
1 OSBORNE ROAD,
BANGALORE - 560 042.

... PETITIONERS

(BY SRI ADITYA V. BHAT, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF LABOUR & EMPLOYMENT
SHRAM SHAKTI BHAVAN,
RAFI MARG,
NEW DELHI - 110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER-1
REGIONAL OFFICE, BANGALORE
BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN ROY ROAD,
BANGALORE - 560 025.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH 83 OF THE EMPLOYEES' PROVIDENT FUND SCHEME, 1952 AS UNCONSTITUTIONAL AND STRIKE DOWN THE SAME; DECLARE PARAGRAPH 43A OF THE EMPLOYEES' PENSION SCHEME, 1995 AS

UNCONSTITUTIONAL AND STRIKE DOWN THE SAME; QUASH THE IMPUGNED ORDER DATED 05.09.2012 VIDE ANNEXURE-A PASSED BY RESPONDENT NO.2 AND ETC.

IN W.P. No.42364/2012

BETWEEN:

M/S. TOYOTA KIRLOS KAR MOTOR PRIVATE LIMITED
PLOT NO.1, BIDADI INDUSTRIAL AREA,
BIDADI, RAMANAGARA DIST.
REPRESENTED BY ITS
SENIOR VICE PRESIDENT,
CORPORATE GOVERNANCE, LEGAL,
CSR & EXTERNAL AFFAIRS,
MR. K. SRIKANTH.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER-1
BHAVISHYANIDHI BHAVAN,
NO.13, RAJARAM MOHAN ROY ROAD,
BANGALORE - 560 025.
3. THE REGIONAL PF COMMISSIONER-II
#570, RAJARAJESHWARI REGENCY
26TH CROSS, IDEAL HOME
CO-OP. SOCIETY LAYOUT,
RAJARAJESHWARI NAGAR,
BANGALORE - 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952 AND PARA 43-A OF THE EMPLOYEES' PENSION

SCHEME 1995 AS UNCONSTITUTIONAL BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT 1952 AT ANNEXURE-C & D, ANNEXURE-A & B.

IN W.P. No.45706/2012

BETWEEN:

M/S TOYOTA KIRLOSKAR AUTO PARTS PVT. LTD.,
PLOT NO.21, BIDADI INDUSTRIAL AREA,
BIDADI, RAMANAGARA DISTRICT - 562 109
REPRESENTED BY ITS
SENIOR VICE PRESIDENT
HUMAN RESOURCE & ADMINISTRATION,
MR. T.R. PARASURAMAN.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTI BHAVAN,
RAFI MARG,
NEW DELHI - 110 001.

2. THE REGIONAL PF COMMISSIONER-II
#570, RAJARAJESHWARI REGENCY,
26TH CROSS, IDEAL HOME
CO-OP., SOCIETY LAYOUT,
RAJARAJESHWARI NAGAR,
BANGALORE - 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952 & PARA 43-A OF THE EMPLOYEES PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA & ALSO AS BEING ARBITRARY & ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AT

ANNEXURE-A, B, C & D DATED 01-10-2008, 01-10-2008 AND 03.09.2010 AND ETC.

IN W.P. No.45770/2012

BETWEEN:

M/S. TRANSYSTEM LOGISTICS INTERNATIONAL PVT. LTD.,
NO.20, TOYOTA TECHNO PARK,
BIDADI INDUSTRIAL AREA, BIDADI
RAMANAGARA DISTRICT - 562 109
REPRESENTED BY ITS MANAGER-HR
MR. ARUN A.C.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER-II
SRO, MYSORE ROAD
NO.570, 26TH CROSS, IDEAL
HOME CO-OPERATIVE SOCIETY LAYOUT,
RAJARAJESHWARI NAGAR,
BANGALORE - 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE PROCEEDINGS INITIATED AGAINST THE PETITIONER COMPANY BY THE SECOND RESPONDENT UNDER SECTION 7-A OF THE EPF ACT, AS PER ANNEXURE-E TO THIS PETITION; DECLARE THAT R2 HAS NO AUTHORITY & JURISDICTION TO SUMMON THE DETAILS OF GLOBAL SALARY OF THE INTERNATIONAL WORKERS (SALARY PAID ABROAD, IF ANY); QUASH PARA-83 OF THE EPF SCHEME 1952, & PARA 43-A OF THE EMPLOYEES' PENSION SCHEME, 1995 AS UNCONSTITUTIONAL BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA & ALSO AS

ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952
AND ETC.

IN W.P. No.46029/2012

BETWEEN:

M/S. TOYOTA LOGISTIC KISHOR INDIA PRIVATE LIMITED
TOYOTA TECHNO PARK, PLOT NO.20,
BIDADI INDUSTRIAL AREA, BIDADI,
RAMANAGARA DIST. - 562 109
(PRESENTLY SHIFTED TO NEW PREMISES)
"TLKI YARD", TOYOTA KIRLOS KAR MOTORS
GATE NO.5, PLOT NO.1,
BIDADI INDL. AREA, BIDADI,
RAMANAGAR (DISTRICT) BANGALORE,
KARNATAKA, INDIA - 562 109
REPRESENTED BY ITS
WHOLE TIME DIRECTOR
MR. NAOHISA HOMMA.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL PF COMMISSIONER- II
#570, RAJARAJESHWARI REGENCY,
26TH CROSS, IDEAL HOME
CO-OP. SOCIETY LAYOUT,
RAJARAJESHWARI NAGAR,
BANGALORE - 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA 83 OF THE
EPF SCHEME, 1952 AND PARA 43-A OF THE EMPLOYEES PENSION
SCHEME, 1995 AS UNCONSTITUTIONAL BEING HIT BY ARTICLE-14 OF

THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AT ANNEXURE-A, B, C & D DATED 01.10.2008 AND 03.09.2010.

IN W.P. No.47926/2012

BETWEEN:

M/S. TOYOTA TECHNO PARK (I) PVT. LTD.
PLOT NO.20,
BIDADI INDUSTRIAL AREA, BIDADI,
RAMANAGARA DIST. – 562 109,
REPRESENTED BY ITS
MANAGING DIRECTOR,
MR.TAKAYUKI TATSUTA.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY
SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI – 110 001.
2. THE REGIONAL PF COMMISSIONER-II
#570, RAJARAJESHWARI REGENCY,
26TH CROSS, IDEAL HOME
CO-OP. SOCIETY LAYOUT,
RAJARAJESHWARI NAGAR,
BANGALORE – 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952 AND PARA 43-A OF THE EMPLOYEES' PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY AIRTEL 14 OF THE CONSTITUTION OF INDIA AND ALSO AS BEING ARBITRARY AND ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AT ANNEXURES-A, B, C & D AND ETC.

IN W.P. No.56837/2013

BETWEEN:

M/S. SUNCHIRIN AUTOPARTS INDIA PVT. LTD.
PLOT #25, NEW MUNICIPAL #5,
KIADB, 3RD MAIN ROAD,
I PHASE, PEENYA INDUSTRIAL AREA,
BANGALORE – 560 058.
REPRESENTED BY ITS
MANAGING DIRECTOR,
MR. HIDEKAZU YOSHITAKA.

... PETITIONER

(BY SRI ANAND K.R., ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI – 110 001.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER-1
EMPLOYEES' PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN,
13, RAJARAM MOHAN ROY ROAD,
BANGALORE – 560 025.
3. THE ASSISTANT PROVIDENT FUND COMMISSIONER
EMPLOYEES' PROVIDENT FUND ORGANIZATION,
SRO:S(1) F, 1ST CROSS,
1ST STAGE, PEENYA,
BANGALORE – 560 058. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2 & R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952, AND PARA 43-A OF THE EMPLOYEES' PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA AND ALSO AS BEING ARBITRARY AND ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AT ANNEXURE-G; CONSEQUENTLY, HOLD THAT THE ANNEX-G DATED

28.11.2013 PASSED BY THE THIRD RESPONDENT TO BE ILLEGAL AND CONTRARY TO LAW AND ETC.

IN W.P. No.22507/2015

BETWEEN:

1. M/S. MAHINDRA REVA ELECTRIC VEHICLES LTD.,
NO.112-E, BOMMASANDRA INDL. AREA,
OFF. HOSUR ROAD,
BENGALURU - 560 099,
REPRESENTED BY ITS
CHIEF OPERATING OFFICER,
SRI MAHESH BABU.
2. SRI MAHESH BABU
S/O. SRI SUBRAMANIAN,
AGED 43 YEARS,
R/.AT FLAT NO.2D, JAINS SURABHI,
NO.8, VASU STREET, KILPAUK,
CHENNAI - 600 010. ... PETITIONERS

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR
SHARM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE,
BHAVISHYANIDHI BHAVANA,
ANNAPOONESHWARI COMPLEX,
NO.37/1, 6TH MAIN,
SINGASANDRA, HOSUR MAIN ROAD,
BENGALURU - 560 068. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. SHWETHA ANAND, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952, AND PARA 43-A OF THE EMPLOYEES' PENSION SCHEME

1995, AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE -1 4 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952; SET ASIDE THE ORDER DATED 28.01.2014 (FORWARDING DATE 04.02.2014) VIDE ANNEXURE-G PASSED BY THE 2ND RESPONDENT; DIRECT THE 2ND RESPONDENT TO REFUND OR ADJUST ADDITIONAL PAYMENT OF RS.5,37,372/- MADE IN EXCESS AS REQUESTED IN ANNEXURE-M & N RESPECTIVELY AND ETC.

IN W.P. No.15839/2019

BETWEEN:

1. M/S. RECAERO INDIA PRIVATE LIMITED,
#28-C, BIDADI INDUSTRIAL AREA,
BIDADI-HAROHALLI MAIN ROAD,
ABBANAKUPPE,
BANGALORE - 562 109

REPRESENTED BY IS HEAD HR & LEGAL
K.G. POOVANNA.

2. SRI SANDESH SHETTY,
S/O. SRI KARUNAKAR SHETTY,
AGED ABOUT 35 YEARS,
#28-C, BIDADI INDUSTRIAL AREA,
BIDADI-HAROHALLI MAIN ROAD,
ABBANAKUPPE, BANGALORE - 562 109.

WORKING AS EXECUTIVE IN
THE COMPANY FOR P1.

... PETITIONERS

(BY SRI S. SANTHOSH NARAYAN, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY-LABOUR,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI - 110 001.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES' PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE-RAJAJINAGAR,
#570, RAJARAJESHWARI REGENCY,
26TH CROSS, IDEAL HOME

CO-OPERATIVE SOCIETY LAYOUT,
RAJARAJESHWARI,
BANGALORE – 560 098.

... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. NANDITA HALDIPUR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME, 1952, AND PARA 43-A OF THE EMPLOYEES' PENSION SCHEME 1995, AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952 AND ETC.

IN W.P. No.19464/2021

BETWEEN:

1. M/S. GOKALDAS IMAGES PRIVATE LIMITED
NO.7-12, INDUSTRIAL SUBURB,
2ND STAGE, GORGUNTEPALYA,
YESHWANTHPUR, TUMKUR ROAD,
BENGALURU – 560 022.
REPRESENTED BY ITS
VICE PRESIDENT–HR
MR. ANTONY PEREIRA.

2. MR. ANTONY PEREIRA
S/O. MR. THOMAS PEREIRA
AGED ABOUT 52 YEARS,
VICE PRESIDENT–HR
M/S. GOKALDAS IMAGES
NO.7-12, INDUSTRIAL SUBURB,
2ND STAGE, GORGUNTEPALYA,
YESHWANTHPUR, TUMKUR,
BENGALURU – 560 022.

... PETITIONERS

(BY SRI S.N. MURTHY, SENIOR ADVOCATE A/W
SRI SOMASHEKAR, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY SECRETARY–LABOUR

SHRAM SHAKI BHAWAN,
RAFI MARG,
NEW DELHI - 110 001.

2. THE REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND
REGIONAL OFFICE,
NO.62, 3RD CROSS,
INDUSTRIAL SUBURB
II STAGE, YESHWANTHPUR,
BENGALURU - 560 022. ... RESPONDENTS

(BY SRI M.N. KUMAR, CGSPC FOR R-1;
SMT. SHWETHA ANAND, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH PARA-83 OF THE EPF SCHEME 1952, AND PARA 43-A OF THE EMPLOYEES PENSION SCHEME 1995 AS UNCONSTITUTIONAL, BEING HIT BY ARTICLE-14 OF THE CONSTITUTION OF INDIA AND ALSO AS ILLEGAL BEING OPPOSED TO THE VERY OBJECT OF THE EPF ACT, 1952; QUASH SHOW CAUSE NOTICE DATED 09.09.2021 VIDE ANNEXURE-H AND ETC.

IN W.P. No.20560/2012

BETWEEN:

1. NAFL'S TRUST,
NAFL VALLEY, WHITEFIELD-SARJAPUR ROAD,
NEAR DOMMASANDRA CIRCLE,
BANGALORE - 562 125,
REPT. BY ITS CHAIRMAN.
2. THE INTERNATIONAL SCHOOL BANGALORE,
NAFL VALLEY,
WHITEFIELD-SARJAPUR ROAD,
NEAR DOMMASANDRA CIRCLE,
BANGALORE - 562 125,
REPTD. BY ITS CHAIRMAN.
3. MR. JOSEPH ANTONY DE METRO,
ART TEACHER, AMERICAN CITIZEN,
R/O. OF NEW YORK,
UNITED STATES OF AMERICA,
AGED ABOUT 39 YEARS,

4. MR. ALAIN ANDRE ALFRED FAURE
GERMAN FACULTY MEMBER
BRITISH CITIZEN,
AGED ABOUT 54 YEARS,
5. MR. DARREN JONES,
HEAD & COORDINATOR CREATIVE ARTS,
AGED ABOUT 43 YEARS,
6. MR. JONKHEER EUGENE FRANCOIS,
NETHERLANDS CITIZEN,
AGED ABOUT 54 YEARS,

THE PETITIONER NOS.3 TO 6 ARE
NOW RESIDING AT NAFL VALLEY,
WHITEFIELD-SARJAPUR ROAD,
NEAR DOMMASANDRA CIRCLE,
BANGALORE - 562 125.

... PETITIONERS

(BY SRI GIRISH G.N., ADVOCATE AND
SRI S.M. CHANDRASHEKAR, ADVOCATE)

AND:

EMPLOYEE'S PROVIDENT FUND ORGANIZATION (EPFO),
MINISTRY OF LABOUR,
BHAVISHA NIDHI BHAVAN,
NO.14, BHIKAIJI CAMA PLACE,
NEW DELHI - 110 066.

... RESPONDENT

(BY SMT. B.V. VIDYULATHA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO DECLARE PARAGRAPH
(SECTION) 83 OF EMPLOYEES PROVIDENT FUND SCHEME, 1952 AS,
ULTRA VIRUS OF CONSTITUTION OF INDIA AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED
ON 12/02/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

In all these petitions, petitioners who are the employers and the employees questioning the vires of para 83 introduced in the Employees Provident Fund Scheme, 1952 ("EPF Scheme" for short) and para 43A in Employees Pension Scheme, 1995 ("Pension Scheme" for short), as wholly arbitrary and unconstitutional, basic ground on which the vires questioned is the same, as the order to be pronounced applies to all the petitions and hence, common order is passed.

2. The Union of India, vide notification dated 01.10.2008, introduced para 83 in the EPF Scheme and further para 43A under the Pension Scheme covering international workers with effect from 01.10.2008. The prayer sought in all the writ petitions is to declare para 83 of the EPF Scheme and para 43A of the Pension Scheme, as unconstitutional and hit by Article 14 of the Constitution of India, and also as illegal opposed to the very object of the

Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF & MP Act, 1952" for the sake of convenience) and consequently, to quash the orders passed by respondent No.2, seeking payment of contributions and in default to pay charges under the Act.

3. Writ Petition Nos.11/2012, 1939/2010, 18486/2012, 27064/2012, 28000/2012, 36160/2012, 37835/2012, 39016/2012, 39185/2012, 42364/2012, 45706/2012, 45770/2012, 46029/2012, 47926/2012 and 56837/2013 are filed by the employers.

4. Writ Petition Nos.4051/2012, 8545/2012, 9188/2012, 39570/2012, 22507/2015, 15839/2019, 19464/2021 and 20560/2012 are filed by the employers as well as employees.

5. The grievance of the petitioners is that, under para 83 of the EPF Scheme, "international workers" are covered under the Act and Scheme, irrespective of their salary drawn by them. The employees other than the international workers, who draw exceeding Rs.15,000/- per

month is outside the purview of the Scheme. The international workers do not work till retirement, they work only for a limited period and thus, requiring them to pay PF contribution on their entire global salary would cause irreparable injury. According to the petitioners, international workers required to pay EPF contributions is arbitrary and hit by Article 14 of the Constitution of India. According to the petitioners - the employers and the employees, the provisions introduced in the Scheme are arbitrary and discriminatory.

6. **Statement of objections filed by the Union of India - respondent No.1:**

It is contended that, the Union of India has effected changes to the Act by making special provisions for different types of workers. The following are the special provisions made by the respondent for different types of workers from time to time:

(I) With effect from 31.12.1956 para 80 was inserted in the Scheme to make a special provision in the Scheme in

the case of ***Newspaper Establishment and Newspaper Employees***. The said Scheme shall, in its application to ***Newspaper Establishments and Newspaper Employees***, as defined in Section 2 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

(II) In the year 1981, para 81 was inserted in the Scheme to make special provisions in the case of ***Cine-Workers***. The Scheme Shall, in its application to ***Cine-Workers*** as defined in clause (c) of Section 2 of the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50/1981) ("Cine-Workers Act" for short).

(III) In the year 1999, para 82 was inserted in the Scheme to make special provisions in respect of an employee, who is a person with a disability under the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (1/1996) and under

the National Trust for Welfare of a person with Artisan Cerebral Palsy Mental Retardation and Multiple Disabilities Act, 1999 (44/1999) respectively.

(IV) It is contended that the EPF Act was duly amended in the year 2008 under which, para 83 was inserted into the EPF Scheme to extend the coverage of international workers under the EPF Scheme and further introduced para 43A under the Employees Pension Scheme and the Scheme was given effect from 11.09.2010, insofar as it relates to international workers. According to the respondent, the Government of India finalized a bilateral Social Security Agreement ("SSA") with Belgium, Germany, Switzerland, Denmark, Luxemburg, France, South Korea, and the Netherlands effective on several dates respectively. As a result of the said reciprocal agreements with the above countries, the Government of India extended the provisions of the EPF & MP Act, 1952, and the Scheme to the international workers.

(V) According to the Union of India, keeping in view the interest of international workers, in order to honour bilateral agreements with foreign countries, the Scheme has been amended. According to them, the intention of the Parliament to amend the Scheme is to ensure that no person can be deprived of social security benefits and also no Indian deputed to work outside the country should not be deprived of the benefits. It is further stated that, to protect the rights of the Indian workers on their posting in the overseas countries for a limited period were required to make mandatory social security contributions in accordance with the laws of those countries. The contribution so deducted from the salaries of Indians was a loss for every worker as the benefits, according to the laws of the countries of their posting, are generally payable on completion of the minimum qualifying period of contribution or residence, which is normally ten years or more. An Indian worker deputed for a limited period of five years or so is generally less than the minimum qualifying period. Therefore, Indian workers, ever

after remittance of social security contribution in the host countries, are not entitled to any social security benefits and with a view to protecting such rights of such migrant workers, the Government of India decided to introduce the statutory provisions in the EPF Scheme and the Pension Scheme in respect of the international workers and as per the amended provisions, an international worker from an SSA country is entitled to withdraw his provident fund accumulation on ceasing to be an employee in an establishment covered under the Act.

(VI) It is further submitted that the grievance of the petitioner that international workers can withdraw the full amount standing to their credit in the fund only on attaining the age of 58 years or on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity has been resolved in respect of international workers being deployed in India from SSA countries, further stating that, an international worker from an SSA country is entitled to withdraw his provident fund accumulation on

ceasing to be an employee in an establishment covered under the Act.

(VII) It is further stated that the Union of India took several steps in negotiating bilateral agreements on social security - SSA with other countries and the benefits available to the international workers on Indian soil and the benefits enjoyed by the Indian workers on foreign soil are generally negotiated based on the reciprocity and these can be broadly understood from the provisions of bilateral SSAs between the countries. Thus, it is contended by the Union of India that international workers being a special class, and in order to fulfill international obligations, the Government of India has made special provisions for international workers, which is distinct from employees covered under the Act and that the classification made is intelligible differentia which has rational relations to the object sought to be achieved, the Constitutional validity of the Act based on Article 14 is unsustainable, more so, as Article 14 applies to Indian Citizens and not for foreigners in general.

7. **Statement of objections filed by respondent No.2:**

The statement of objections filed by respondent No.2 - the authority who has passed an order under Section 7A of the EPF & MP Act, 1952 is similar to that of respondent No.1- Union of India.

8. Sri S.N.Murthy, learned senior counsel along with Sri Somashekar, learned counsel; Sri Udaya Holla, learned senior counsel along with Sri Rajendra M.S., learned counsel; Sri Dhyan Chinnappa, learned senior counsel along with Sri M.V. Sundararaman and Sri Krishar Somaiah, learned counsel; Smt. Lakshmi Iyengar, learned senior counsel along with Smt. Revathy Adinath Narde and Sri K.S.Mahadevan, learned counsel; Sri H.Srinivasa Rao and Smt. Deepthi C.R., learned counsel; Sri K.N.Vasuki, learned counsel and Sri C.K.Subrahmanya for Sri B.C.Prabhakar, learned counsel; Sri Anand K.R., learned counsel; Sri Santosh Narayan S., learned counsel; Sri Adithya Vikram Bhat, learned counsel for the petitioners and

Sri M.N. Kumar, learned Central Government Senior Panel Counsel for respondent No.1 - Union of India; Smt. Nandita Haldipur, learned counsel for respondent No.2 and 3 (EPF), Smt.Shwetha Anand, learned counsel for respondent No.2 (in W.P.Nos.22507/2015 and 19464/2021) have been heard.

9. **Arguments advanced by the petitioners' counsel:**

(I) Introduction of para 83 and para 43A is opposed to the object and intendment of the Act

(II) There is manifest arbitrariness while introducing para 83 and para 43A.

(III) Para 83 introduced in the Scheme is violative of para 2(f) of the Act "excluded employee" and violative of the Act, for the reasons that:

- (i) The Act provides for coverage of the weaker sections where there is a ceiling limit;
- (ii) No salary ceiling limit for international workers which is in contravention to the Act;
- (iii) Heavy burden is on the employer;

(iv) Para 83 and para 43A are unconstitutional and hit by Article 14 of the Constitution of India and also illegal being opposed to the object of the EPF & MP Act, 1952.

(v) Implications of amendment pertaining to insertion of para 83 and the international worker may be an Indian worker or foreign national:

(a) An Indian employee working or having worked abroad in a country with which India has entered into SSA or any foreigner working in India in an establishment where the EPF & MP Act is applicable;

(b) There is no cap on the salary on which the contribution is payable by the employer as well as the employee unlike Rs.15,000/- ceiling prescribed under the Act of "excluded employee";

(c) There is no cap on the salary to which the employee's share of contribution has to be diverted to the EPF Scheme and the same is payable on the salary of the employee;

(d) The SSA is a bilateral instrument to protect the social security interest of the workers posted in another country;

(e) As on 01.04.2011, only three SSAs have been made effective from 01.09.2009, 01.10.2009 and 29.01.2011 in respect of Belgium, Germany, and Switzerland respectively.

(f) Apart from the above, the SSAs have already been signed with France, Denmark, Hungary, Norway, Luxemburg and Republic of Korea, but have not yet been made effective;

(g) The amendment is opposed to the very purpose and object of the EPF & MP Act, 1952;

(h) The object of the legislature is to ensure for compulsory institution of contributory provident funds for weaker sections of the workers working in industrial undertakings;

(i) At no point of time, the Act was intended to cover high-ranking officials and therefore, any amendment to the

Scheme must be done within the framework of statutory provisions of the Act amended to the Scheme pertaining to international workers;

(j) Majority of the Indian employees excluded from the purview of the Act as in the entry level itself are not entitled to be recovered on reaching the salary of Rs.15,000/- per month;

(k) Though the amendment is termed as an international worker, only foreign nationals, who are holding higher positions like consultants and technicians drawing several lakhs of salary per month with high perks are brought under the Scheme, which is not only arbitrary, illegal, but also unconstitutional as it is opposed to the very intendment and the object of the Act;

(l) The Act under the Scheme provides for a ceiling limit of Rs.15,000/-, any person who crosses the salary of Rs.15,000/- per month is an excluded employee, but in the case of an international worker, such limit is not prescribed. The employer is required to pay a contribution on the gross

salary of several lakhs of rupees per month, which is in total contravention of the Act;

(m) The Scheme framed under Section 5 of the EPF & MP Act, 1952 cannot go beyond the definition of "employee" under the application and object of the Act under the definition of "excluded employee";

(n) Para 83 is contrary to Section 6 of the EPF Act and higher interest over and above the ceiling limit is not entitled and the huge burden is on the employer;

(o) Article 14 is applicable to foreign citizens, even non-citizens have to be protected under Articles 14 and 21. The introduction of para 83 is a violation of fundamental rights;

(p) Central Government has given a go-bye to the Act, no application of mind by the Government;

(q) While bringing Para 83 into force, the Central Government has not looked into the objects of the Act;

(r) The Scheme is oppressive and there is manifest arbitrariness while issuing notification by the Central Government and introducing para 83;

(s) There is no intelligible differentia between the Indian employee and an international worker who is not covered under the Social Security Agreement or Bilateral Comprehensive Economic Agreement. There is no nexus between the object sought to be achieved under the EPF & MP Act, 1952 and the Schemes framed thereunder the classification made;

(t) There is no legislative competence to modify the EPF Scheme, 1952 and the Employees' Pension Scheme, 1995 in respect of an international worker who is not covered under the Social Security Agreement or Bilateral Comprehensive Economic Agreement;

(u) A foreign citizen has a right to challenge the constitutional validity of a plenary legislation or subordinate legislation under Article 14 of the Constitution of India on the

ground of discrimination and under Article 21 of the Constitution of India on the ground of right to life;

(v) A separate legislation shall be enacted for an international worker who is not covered under the Social Security Agreement or Bilateral Comprehensive Economic Agreement containing a clause on social security prior to 01.10.2008;

(w) There is no thought process in inserting para 83 into the Employees' Provident Scheme, 1952, and para 43A into the Employees' Pension Scheme, 1995;

10. Learned counsel for the petitioners have placed reliance on the following decisions in support of their respective cases:

(I) Sri Udaya Holla, learned senior counsel along with Sri Rajendra M.S., learned counsel for the petitioners has produced the following judgments:

(a) *Chairman, Railway Board and others vs. Chandrima Das (MRS) and others*¹

¹ (2000) 2 SCC 465

- (b) *Mafatlal Group Staff Association and others vs. Regional Commissioner Provident Fund and others*²
- (c) *Otis Elevator Employees' Union S.Reg and others vs. Union of India and others*³
- (d) *The Karnataka Bank Ltd. and others vs. Union of India (UOI)* ⁴
- (e) *Orissa Cement Ltd. and others vs. Union of India and others*⁵
- (f) *Nikesh Tarachand Shah vs. Union of India and another*⁶
- (g) *Dental Council of India vs. Biyani Shikshan Samiti and another*⁷
- (h) *V. Verghese vs. Deputy Commissioner of Income-tax*⁸

(II) Sri S.N.Murthy, learned senior counsel along with Sri Somashekar, learned counsel:

- (a) *In re the Special Courts Bill, 1978*⁹
- (b) *Ajoy Kumar Banerjee and others vs. Union of India (UOI) and others*¹⁰
- (c) *Harakchand Ratanchand Banthia and others vs. Union of India (UOI) and others*¹¹

² (1994) 4 SCC 58

³ (2003) 12 SCC 68

⁴ W.P.No.30578 of 2000 D.D. on 30/05/2006

⁵ 1962 Supp (3) SCR 837

⁶ (2018) 11 SCC 1

⁷ (2022) 6 SCC 65

⁸ I.L.R. 1994 KAR 2185

⁹ (1979) 1 SCC 380

¹⁰ AIR 1984 SC 1130

¹¹ AIR 1970 SC 1453

(III) Sri Dhyan Chinnappa, learned senior counsel along with Sri M.V. Sundara Raman, learned counsel and Sri Krishar Somaiah, learned counsel:

- (a) *Lakshman and others vs. State of Madhya Pradesh*¹²
- (b) *Food Corporation of India and others vs. Ashis Kumar Ganguly and others*¹³
- (c) *K.T. Veerappa and others vs. State of Karnataka and others*¹⁴
- (d) *Ameerunissa Begum and others vs. Mahboob Begum and others*¹⁵
- (e) *Ram Prasad Narayan Sahi and another vs. State of Bihar and others*¹⁶
- (f) *Namit Sharma vs. Union of India*¹⁷
- (g) *Subramaniyan Swamy vs. Director, CBI*¹⁸
- (h) *State of Rajasthan vs. Basant Nahata*¹⁹
- (i) *State of Tamil Nadu vs. P. Krishnamurthy*²⁰
- (j) *Global Energy Ltd. vs. Central Electricity Regulatory Commission*²¹

¹² (1983) 3 SCC 275

¹³ (2009) 7 SCC 734

¹⁴ (2006) 9 SCC 406

¹⁵ AIR 1953 SC 91

¹⁶ AIR 1953 SC 215

¹⁷ (2013) 1 SCC 745

¹⁸ (2014) 8 SCC 682

¹⁹ (2005) 12 SCC 77

²⁰ (2006) 4 SCC 517

²¹ (2009) 10 SCC 570

(IV) Sri Vasuki, learned senior counsel along with Sri C.K.Subrahmanya, learned counsel for Sri B.C.Prabhakar, learned counsel:

(a) *Sri Sudarshan v. Biradar vs. State of Karnataka and others*²²

11. *Per contra*, learned Central Government Senior Panel Counsel, Sri M.N.Kumar appearing for respondent No.1 – authority would contend that:

(i) The Central Government in exercise of its power under Section 5 of EPF & MP Act, 1952, by notification in the Official Gazette, framed a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for the employees of any class and specify the (establishments) or class of (establishments) to which the said Scheme shall apply.

(ii) According to the learned counsel, international workers form a separate class and the international workers

²² W.P. No.15800/2022 D.D. on 17/04/2023

encompasses an Indian employee having worked or working or going to work in a foreign country with which India has entered into a Social Security Agreement and being eligible to avail the benefits under the social security programme of that country, by virtue of eligibility gained or going to gain, under the said agreement.

(iii) The Scheme is neither discriminative nor violative of Article 14 of the Constitution and by the process of classification, the State has the power to determine who should be regarded as a class for the purpose of legislation and in relation to law enacted on a particular subject.

(iv) The classification is not arbitrary and is rational and it is based on some qualities, and characteristics which are found in all persons grouped together and not in others who are let out. There is a nexus between the differentia which is the basis of classification and the object of the Act.

(v) The international workers considering their special status, in order to fulfil the international obligations, the

Government of India has made special provisions for international workers, which is distinct from the employees covered under the Act. The attack of the petitioners on the constitutional validity of the Act based on Article 14 is, therefore, unsustainable. As the classification held to be based on intelligible differentia, which had a rational relation to the object sought to be achieved viz., the amelioration of the condition of service of international workers and therefore, the provisions made in the scheme are neither arbitrary nor discriminatory.

12. In support of his case, Sri M.N.Kumar, learned Central Government Standing Panel Counsel appearing for respondent No.1 - Union of India has relied upon the following decisions of the Apex Court and various High Courts:

(1) *State of West Bengal vs. Anwar Ali Sarkar*²³

(2) *Kathi Raning Rawat vs. State of Saurashtra*²⁴

²³ (1952) 1 SCC 1

²⁴ (1952) 1 SCC 215

- (3) *Lachmandas Kewalram Ahuja and another vs. State of Bombay*²⁵
- (4) *Shamarao v. Parulekar vs. District Magistrate, Thana, Bombay and others*²⁶
- (5) *State of Punjab vs. Ajaib Singh and another*²⁷
- (6) *Budhan choudhry vs. State of Bihar*²⁸
- (7) *State of Kerala and another vs. N.M. Thomas and others*²⁹
- (8) *The Bihar Eastern Gangetic Fisherman Co-Operative Society Ltd. vs. Sipahi Singh and others*³⁰
- (9) *Pathumma and others vs. State of Kerala and others*³¹
- (10) *Jolly George Varghese and another vs. The Bank of Cochin*³²
- (11) *M/s. P.M. Patel and sons and others vs. Union of India and others*³³
- (12) *State of Kerala vs. Smt. A. Lakshmikutty and others*³⁴
- (13) *Louis De Raedt vs. Union of India and others*³⁵
- (14) *State of Arunachal Pradesh vs. Khudiram Chakma*³⁶

²⁵ (1952) 1 SCC 726

²⁶ (1952) 2 SCC 1

²⁷ (1952) 2 SCC 421

²⁸ (1954) SCC Online SC 19

²⁹ (1976) 2 SCC 310

³⁰ (1977) 4 SCC 145

³¹ (1978) 2 SCC 1

³² (1980) 2 SCC 360

³³ (1986) 1 SCC 32

³⁴ (1986) 4 SCC 632

³⁵ (1991) 3 SCC 554

³⁶ 1994 Supp (1) SCC 615

- (15) *Chairman Railway Board and others vs. Chandrima das (MRS) and others*³⁷
- (16) *K. Thimmappa and others vs. Chairman, Central Board of Directors, State Bank of India and another*³⁸
- (17) *Director General, Central Reserve Police Force and others vs. Janardan Singh and others*³⁹
- (18) *Employees Provident Fund Organization vs. Rollwell Forge Ltd.*,⁴⁰
- (19) *Battula Veeraswamy vs. The Regional Provident Fund Commissioner, Barkathpura, Hyderabad and others*⁴¹
- (20) *Kay Iron Works Private Ltd., Satara Vs. Union of India, Ministry of Labour, through its Secretary and another*⁴²
- (21) *Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others*⁴³
- (22) *Ashok Leyland Employees' Union (Reg. No.2286) rep. by its General Secretary and another vs. Union of India, rep. by the Secretary, Ministry of Law, New Delhi and others*⁴⁴
- (23) *Viswanatha Pal and others vs. Regional Provident Fund Commissioner*⁴⁵

³⁷ (2000) 2 SCC 465

³⁸ (2001) 2 SCC 259

³⁹ (2018) 7 SCC 656

⁴⁰ (2011) SCC Online Guj 2846

⁴¹ (2009) SCC Online AP 572

⁴² (2007) (1) L.L.N 919 Bombay

⁴³ (2001) 7 SCC 1

⁴⁴ (1997) (III) CTC 660 High Court of Madras

⁴⁵ (1987) SCC Online Ker 575

- (24) *S. Kothandaraman vs. Union of India (by Secretary to Government, Ministry of Law, New Delhi) and others*⁴⁶
- (25) *Provident Fund Inspector, Quilon vs. Kerala Janatha Printers and Publishers (P) Ltd., Trivandrum and another*⁴⁷
- (27) *Kay Iron Works Pvt. Ltd. A Company vs. Union of India (UOI) Ministry of Labour, through its Secretary and another*⁴⁸
- (28) *Sachin Vijay Desai vs. Union of India and others*⁴⁹
- (29) *Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner and others*⁵⁰
- (30) *Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Limited*⁵¹
- (31) *Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and others vs. State of Tamil Nadu*⁵²
- (32) *Pepsu Road Transport Corporation Patiala vs. Mangal Singh and others*⁵³
- (33) *Mafatlal Group Staff Association and others vs. Regional Commissioner Provident Fund and others*⁵⁴

⁴⁶ W.A.No.122 & 589/1981 etc. DD 02.12.1982 High Court of Madras

⁴⁷ (1964) SCC Online Ker 191

⁴⁸ (2007) (1) L.L.N. 919 Bombay

⁴⁹ SLP No.24867/2019

⁵⁰ (2009) 10 SCC 123

⁵¹ (2011) 10 SCC 727

⁵² (2013) 2 SCC 772

⁵³ (2011) 11 SCC 702

⁵⁴ (1994) 4 SCC 58

(34) *Sachin Vijay Desai vs. Union of India and others*⁵⁵

(35) *Sachin Vijay Desai vs. Union of India and others*⁵⁶

13. This Court has carefully considered the contentions urged by the learned counsel for the parties and perused the material on record, having heard the point that arises for consideration is,

"Whether introduction of para 83 of EPF Scheme and para 43A of EP Scheme is unconstitutional hit by Article 14 of Constitution of India?"

14. In order to appreciate the points that have been canvassed before this Court, it is necessary to refer to the provision of Article 14 of the Constitution with a view to determine the nature and scope of the guarantee that is implied in it. Article 14 reads as under:

"14. Equality before law.—*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*"

⁵⁵ W.P.No.1846/2018 D.D. on 07/08/2019

⁵⁶ W.P.No.1846/2018 D.D. on 07/08/2019

15. Article 14 in Indian Constitution guarantees the right to equality for every citizen of the country. It encompasses the general principles of equality before the law and prohibits unreasonable discrimination between the two persons. It incorporates the idea of equality expressed in the preamble. The well settled principles of law underlining the guarantee in Article 14 are that:

(a) Presumption always lies in favour of the constitutionality of a statute, unless it is shown that the classification made thereunder is neither reasonable nor rational and does not have any nexus with the object sought to be achieved by the Act.

(b) That the classification made is on an intelligible differentia which distinguishes those that are grouped from others.

(c) Guarantee given under Article 14 is not that, the same rule of law should apply to all persons within the Indian territory or that the same remedies should be made available

to them irrespective of differences of circumstances as stated in ***Charanjitlal Chaudhary vs. Union of India***⁵⁷.

(d) All persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed as per the decision in ***Old Dearborn Distributing Company vs. Seagram Distillers Corpn.***⁵⁸

(e) Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another, if as regards the subject matter of the legislation their position is substantially the same which brings in the question of classification.

(f) Classification made without any reasonable basis should be regarded as invalid as held by the apex Court in ***Southern Railway Co. Greene***⁵⁹

(g) Distinction should be drawn between "discrimination without reason" and "discrimination with reason". The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances

⁵⁷ 1950 SCR 869

⁵⁸ 1936 SCC online US SC 145

⁵⁹ 1910 SCC US SC 59

which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not arise as between persons governed by different conditions and different sets of circumstances.

(h) While Article 14 prohibits class legislation, it does not prohibit reasonable classification for the purposes of legislation. However, in order to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification should be founded on a different basis, namely, geographical or according to the objects or occupations or the like.

(i) What is necessary to be seen is that, there must be a nexus between the basis of the classification and the object sought to be achieved under the Act.

16. These principles were formulated in the ***State of Bombay vs. F.N.Balsara***⁶⁰. The Apex Court, later in ***State of West Bengal vs. Anwar Ali Sarkarhabib Mohamed***⁶¹ and ***Lachmandas Kawalram Ahuja vs. State of Bombay***⁶², gave deliberate consideration to the well settled principles underlying the guarantee in Article 14 of the Constitution.

17. The petitioners have challenged the constitutional validity of para 83 of the EPF Scheme and para 43A of the Pension Scheme as being unconstitutional is hit by Article 14 of the Constitution of India, and also as illegal being opposed to the very object of the EPF & MP Act, 1952. The EPF Scheme was introduced on 01.10.2008 to start with, and later it was amended on 03.09.2010 and the modified

⁶⁰ (1951) SCC 860

⁶¹ (1952) 1 SCC 1

⁶² (1952) 1 SCC 725

version was brought into effect from 11.09.2010. Para 83 introduced with special provisions in respect of international workers. Para 83(2) of the EPF Scheme defines "international workers" as under:

"(ja) "International Worker" means-

- (a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;*
- (b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in Indian to which the Act applies:*

Provided that the worker who is a Nepalese national on account of Treaty of Peace and Friendship of 1950 and the worker who is a Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be an Indian worker."

Para 83(1) defines "excluded employees" as under:

"(1) For clause (f) of paragraph 2, the following clause shall be substituted, namely:-

(f) "excluded employee" means-

(i) an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement ; or

(ii) an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1st October, 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country;

18. With the introduction of para 83, international workers came to be covered under the EPF Scheme and the salient features of para 83 are:

(i) An international worker is required to be covered on his entire salary.

- (ii) The amount at the credit of the international worker when he leaves India would be payable to him, only upon his attaining the age of 58 years.

19. The special provisions of EPFS and EPS made applicable to international workers with effect from 01.10.2004 are as follows:

- (i) An Indian employee having worked or going to work in a foreign country with which India has entered into a bilateral agreement being eligible to avail the benefits under the social security programme of that country, by virtue of eligibility gained or going to gain under the said agreement.
- (ii) An employee other than an Indian employee, holding other than an Indian passport working for an establishment in India to which EPF & MP Act, 1952 applies.
- (iii) The provisions of the EPF Act and Scheme have been extended to international workers with effect from 01.10.2008.

- (iv) A detached international worker contributing to the social security of the home country and certified as such by the detachment certificate for a specified period in terms of the bilateral SSA signed between that country and India is an "excluded employee" under these provisions.
- (v) Contribution is payable on total salary payable on account of the employment of the employee for the wages by an establishment covered in India even for responsibility outside India.
- (vi) There is no cap on the salary on which contributions are payable by the employer as well as the employee.
- (vii) There is no cap on the salary upto which the employer's share of contribution has to be diverted to EPS 1995 and the same is payable on the total salary of the employee.
- (viii) Applies to employees sent on posting in another country provided their/compliance under the social security system of the home country.

- (ix) The period of service rendered by an employee in a foreign country is counted for determining the "eligibility" for benefits, but the quantum of payment is restricted to the length of service on a pro rata basis.
- (x) If an Indian employee is employed in any covered establishment in India and sent abroad on posting, he is liable to be a member in India as a domestic Indian employee if otherwise eligible. He is not an international worker.
- (xi) An Indian employee attains the status of international worker only when he becomes eligible to avail benefits under the social security programme of another country by virtue of eligibility gained or going to gain under the said agreement on account of employment in a country with which India has signed SSA. He/she shall remain in that status till the time he/she avails the benefit under the EPF Scheme.
- (xi) Since the provisions of inoperative accounts are not applicable in the case of international workers,

continuing the restriction of earning interest will not apply. The international worker shall contribute to earn interest upto the age of 58 years or otherwise become eligible for withdrawal.

- (xii) Foreign nationals drawing salary in any currency and in any manner are to be covered as international workers.
- (xiii) Foreigners employed directly by Indian establishments would be covered under the EPF & MP Act, 1952 as international workers.
- (xiv) Only those employees covered by SSA will be eligible for withdrawal benefit under the EPF, 1995, who have not rendered the eligible service i.e., ten years even after including the tantalization benefit, if any, as may be provided in the said agreement.
- (xv) In all other cases of international workers not covered under SSA withdrawal benefit under EPF, 1995 will not be available.
- (xvi) The cap on the salary upto which the contribution has been made under EDLI Scheme, 1976 is Rs.6,500/-.

According to the Union of India, keeping in view the interest of international workers, in order to honour bilateral agreements with foreign countries, the Scheme has been amended. The intention of the Parliament to amend the Scheme is to ensure that no person can be deprived of social security benefits and also known Indians deputed to work outside should not be deprived of the benefits.

20. Section 5 of the EPF & MP Act states that the Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for the employees or for any class of employees and specify establishments or class of establishments to which the said Scheme shall apply and they shall be established, as soon as, may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the Scheme. The fund shall vest in, and be administered by the Central Board constituted under

Section 5A and the Scheme so framed may provide for all or any of the matters specified in Schedule II, subject to the provisions of the Act. A Scheme framed may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme. The Scheme framed under Section 5 of the EPF & MP Act has been amended from time to time. This power of amendment of the Scheme is pursuant to the power conferred under Section 7 of the EPF & MP Act. Section 7 reads as under:

"7. Modification of Scheme.- (1) *The Central Government may, by notification in the Official Gazette, add to amend or vary, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be.*

(2) *Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive*

sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

21. On reading of Section 7 of the said Act, it is thus clear that the modification of the Scheme is a statutory power which the Central Government initially exercises and then the notification is placed before each of the houses of the parliament for its ratification. In the instant case, the Government of India has the power under Section 7(1) of the EPF & MP Act to modify the Scheme from time to time and the competence of the Central Government to introduce or modify the Scheme is apparent from Section 7 of the EPF & MP Act. However, even assuming that there is a power conferred under the provisions of Section 7 of the EPF & MP Act, it has to be exercised to meet the objects of the

enactment and thus, the object and reasons of the enactment of EPF & MP Act need to be looked into.

22. **Statement of objects and reasons for introducing EPF & MP Act, 1952:**

When the question of making some provision for the future of the industrial worker, after he retires or his dependants in case of his early death, has been under consideration for some years. The ideal way would be provision through old age and survivors' pensions as has been done in the industrially advanced countries, but in the prevailing conditions, in India, the institution of a pension scheme cannot be visualized in the near future is another alternative way for the provisions of gratuities after the prescribed period of service. The main defect of a gratuity Scheme, however, is that the amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account various difficulties, financial and administrative, the most

appropriate course appears to be the institution of compulsory or contributory provident funds in which both the worker and employer would contribute. Apart from the advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of provident fund of this type would also encourage the stabilization of a steady labour force in the industrial centers. The EPF & MP Act, 1952 is a social welfare legislation meant for the protection of industrial workers to enable them to have an alternative to the pension. The Act is also meant to inculcate savings for their future, especially for the period subsequent to their retirement. It is nowhere mentioned in the objects of the enactment i.e., EPF & MP Act, 1952 with regard to covering employees irrespective of the salary drawn by them. In fact, to start with, only those employees who drew a salary of Rs.3,500/- and less were to be covered. Later on, it was raised to Rs.6,500/- per month and then to Rs.15,000/- per month indicating that the EPF & MP Act was enacted with a view to see that those in lower

salary brackets get retirement benefits and by no stretch of imagination, could it be said that the employees who draw lakhs of rupees per month should be given the benefit under the enactment. In order to ensure strict compliance with the Act, stringent provisions of 7A, 14B, and 7Q have been provided and personnel of the EPF & MP Act, 1952 are exclusively employed to ensure the imposition of heavy cost in terms of interest and damages in case of non-compliance. Such personnel cannot be diverted to cater to the needs of rich international workers who earn huge amounts of money.

23. The aims and objects of introducing para 83 of the EPF Scheme as could be seen is, to protect the Indian employees going abroad to work from being subjected to the social security and the retirement clause of their post-country which are prejudicial to their interest and to motivate these countries for entering into such agreements with India and to make it happen is to provide for reciprocal treatment to the nationals of these countries while they work in India.

Para 83 of the EPF Scheme is in the nature of subordinate legislation and therefore, the subordinate legislation cannot travel beyond the scope of the mother Act. Keeping in view the aims and objects of the main EPF & MP Act, when a ceiling amount of Rs.15,000/- per month has been placed as a threshold for an employee to be a member to the scheme, para 83 of the EPF Scheme ought not to have an unlimited threshold for international workers while denying the same benefit to Indian workers. There being no commonality of interest of the aims and objectives of EPF & MP Act, 1952 and para 83 of EPF Scheme, para 43A of EP Scheme to be struck down as incompatible, arbitrary, unconstitutional and ultra vires.

24. An Indian employee working in a foreign country with SSA who is a member of EPF & MP Act, 1952 continues to contribute on meager sum of Rs.15,000/- whereas, a foreign worker from SSA country, without a certificate of coverage, is made to contribute PF on his entire salary although both are by definition of international workers. The

Government of India is unable to substantiate any nexus with the object sought to be achieved, para 83 is clearly discriminatory in treating the international workers of Indian origin and foreign origin differently and thus violative of Article 14 of the Constitution of India. The distinction in the amount of contribution between an employee going to a non-SSA country and an employee from a non-SSA country coming to India is clearly discriminatory and violative of Article 14. The demand for contribution on global salary i.e., salary earned by an international worker or remuneration received by an international worker from some other country or in home country should also be computed for the purpose of the contribution is on the face of it, arbitrary and hit by Article 14 of the Constitution of India.

25. The respondents in their statement of objections have claimed that para 83 has been introduced as a measure of reciprocity in order to honour social security agreements between India and other countries. Wherever the Government of India has entered into a social security

agreement with another country, as a matter of reciprocity, the international workers of such SSA countries are considered as either excluding employees meaning that such excluded employees need not be members of the fund or if they are not excluding employees, they are free to withdraw accumulation of cessation of employment in India. It is relevant to note that, such benefit has not been extended under para 83 to international workers from non-SSA countries as it is clear from the following:

(I) An international worker from a non-SSA country is not allowed to withdraw accumulation until he reaches the age of 58 years. Therefore, para 83 eventually applies to international workers from countries with which the Government of India does not have SSA, and therefore, the claim of reciprocity does not arise and thus the claim of the Government that the obligation of reciprocity has made the Government of India to enact para 83 is unsustainable.

(II) The claim of reciprocity falls flat and has no legs to stand in respect of international workers from non-SSA countries. It is also brought to the notice of this Court that as of now, only twenty countries have entered into SSA agreement with India although para 83 was introduced long back in the year 2008 i.e., sixteen years ago. The only concern is petitioners are international workers whose country of origin has not entered into a bilateral treaty with the Union of India with regard to the social security scheme. There is no material to show what is social security scheme available for such international workers whose country of origin has not entered into a bilateral agreement with the Union of India.

26. Thus, it is clear from the above analysis that there is discrimination between the Indian employees working in a non-SSA country (who are not international workers as per definition) and foreign employees from a non-SSA working in India who are classified as international workers. There is no rational basis for this classification nor there is reciprocity

that compels to classify foreign employees from non-SSA countries as international workers. The respondents neither have stated whether the Indian employees working in non-SSA countries nor required to contribute their entire pay without statutory limit towards PF of that country. In the absence of parity and also in the absence of reciprocity, there is no justification to demand a contribution on the entire pay of a foreign employee from a non-SSA country.

27. The introduction of para 80 and 81 under the Scheme in respect of working journalists and the cine employees cannot be equated with bringing international workers under the EPF Scheme. In the case of working journalists, considering the fact that they undergo a lot of risk on duty, the said amendment was made.

28. Non-citizen employees working in India and employees who are citizens of India are two different classes for some reason, when working in India are equal and equals are treated differently and hence, violates Article 14. The law

must be enforced and administered equally among those who are equal. Article 14 applies to foreigners meaning to say, they want to give equal protection to foreigners, the classification made is unreasonable, does not have intelligible differentia and there is no presence of nexus between the object of the Act and the basis of classification.

29. The legislation has arbitrarily and unreasonably enacted para 83, the Government of India introducing para 83 of EPF Scheme and para 43A of EP Scheme is violative of Article 14 and the classification made is unreasonable and would defeat the very intent of the Act. The legislation cannot run beyond the parameters of the Parent Act and always there must be some principles to guide the exercise of discretion and for the foregoing reasons, the point framed for consideration is answered accordingly, and this Court pass the following:

ORDER

(i) Writ Petitions are ***allowed.***

- (ii) The introduction of para 83 of Employees' Provident Fund Scheme and para 43A of Employees' Pension Scheme are hereby struck down as unconstitutional and arbitrary and consequently, all the orders passed thereof are unenforceable.

**SD/-
JUDGE**

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