

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SHARAVANA, 1942

WA.No.469 OF 2018

**AGAINST THE JUDGMENT IN WPC 6897/2011 DATED 26-10-2017 OF HIGH COURT
OF KERALA**

APPELLANTS/RESPONDENTS 1 TO 6 &8:

- 1 THE CHAIRMAN STATE BANK OF INDIA
CORPORATE CENTRE, MADAME CAMA ROAD,MUMBAI 400 021**
- 2 THE CHIEF GENERAL MANAGER
HUMAN RESOURCES DEPARTMENT,STATE BANK OF
INDIA,CORPORATE CENTRE, MUMBAI 400 021**
- 3 CHIEF GENERAL MANAGER
RURALBUSINESS,STATE BANK OF INDIA,CORPORATE
CENTRE, MUMBAI 400 021**
- 4 THE CHIEF GENERAL MANAGER
STATE BANK OF INDIA,LOCAL HEAD OFFICE, KOVIL ROAD,
THAMPANOR,THIRUVANANTHAPURAM, PIN 695 001**
- 5 THE GENERAL MANAGER
HUMAN RESOURCES DEPARTMENT,STATE BANK OF
INDIA,LOCAL HEAD OFFICE, KOVIL ROAD,THAMPANOR,
THIRUVANANTHAPURAM, PIN 695 001(CORRECTED)**
- 6 THE DEPUTY GENERAL MANAGER
RURAL BUSINESS UNIT,LOCAL HEAD OFFICE,STATE BANK OF
INDIA, KOVIL ROAD,THAMPANOR,
THIRUVANANTHAPURAM, PIN 695 001(CORRECTED)**
- 7 TRUSTEES OF STATE BANK OF INDIA PENSION FUND
C/O. STATE BANK OF INDIA,CORPORATE CENTRE, MADAME
CAMA ROAD,MUMBAI 400 021**

BY ADVS.

SRI.GEORGE THOMAS (MEVADA)(SR.)

SRI.AMAL GEORGE, SC, SBI

RESPONDENTS/PETITIONERS/7TH RESPONDENT:

- 1 UNNIKRISHNAN P.C.
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA, AMRITHAPURI, KOLLAM.**
- 2 VIJOSH K.V
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,AMRITHAPURI,KOLLAM**
- 3 RENEVEE RAJ R
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA, PALAGHAT ADB, PALAGHAT**
- 4 PINCHU RAJAN
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KAINADY, ALAPPUZHA**
- 5 SABITHA S
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA, KODENCHERY, CALICUT**
- 6 REHANESH N.P
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA, MUKKAM, CALICUT**
- 7 AJAN V.P
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,QUILANDY,CALICUT**
- 8 SHAJI K.C
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,TIRUR TOWN,MALAPPURAM.**
- 9 DIYASREE
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,HARIPPAD, ALAPPUZHA.**
- 10 SREEJITH S
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MAVELIKKARA, ALAPPUZHA**
- 11 JINESH K.J
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KOOTTAR,KOTTAYAM**
- 12 ASWATHY V.U
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,RAMAPURAM, KOTTAYAM**
- 13 ROBIN KOSHY VARGEESAN
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KUTHIYATHODE, KOTTAYAM**

- 14 **ELIZABETH VARGHESE**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,ULLALA,KOTTAYAM
- 15 **SUMANGALA**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KAIPUZHA, KOTTAYAM
- 16 **STALIN T**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,ALUVA, ERNAKULAM
- 17 **SANEESH S**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,CHEKKIYAD, CALICUT
- 18 **PRIMA C.P**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,VADAKKANCHERY, THRISSUR
- 19 **RATHEESH K.R**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,PAYYANNUR, KANNUR
- 20 **SUBEER N**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,THALIPARAMBU, KANNUR
- 21 **AJAY K. ABRAHAM**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KOOTHUPARAMBA, KANNUR
- 22 **AJAYANA T.T**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,IRINJALAKUDA, THRISSUR
- 23 **SANIL RAJ**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,AVOLI, ERNAKULAM
- 24 **SMITHA U.B**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,PATTAMBI, PALAGHAT
- 25 **ANEESHA ARUN**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,VALLAPUZHA, PALAGHAT
- 26 **DHANYA E.C**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,CHERPULASSERRY, PALAGHAT
- 27 **SARIN GEORGE**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,QUILANDY, CALICUT

- 28 LATHA P.S**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KUNNAMKULAM, THRISSUR
- 29 ANITHA CHEERIYAN**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MANIMOOLI,CALICUT
- 30 JAYAPRAKASH M**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,PERINTHALAMANNA, CALICUT
- 31 REHANESH N.P**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MUKKAM, CALICUT
- 32 RAKESH CHANDRAN**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,OTTAPALAM, PALAGHAT
- 33 REJITH J**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,AGALI, PALAGHAT
- 34 MOHAMMED ISMAIL**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KONDOTTY,CALICUT
- 35 SOFIALAIOUS S.P**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MANNARKAD, PALAGHAT
- 36 BETTY BABU**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,VADAKKANTHARA, PALAGHAT
- 37 SALOMY ANTONY**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,VALANCHERY,CALICUT
- 38 RENJITH R**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MEENAKSHIPURAM, PALAGHAT
- 39 JIJITH R.S**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,CHERIYAPILLY, ERNAKULAM
- 40 SHAIN T**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,MALAPPURAM, CALICUT
- 41 AJEESH KRISHNAN**
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,PARAPPANANGADI, CALICUT

- 42 ASHA DEVI K.G
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KOTTARAKKARA, KOLLAM
- 43 SURIYA
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,BHARANIKKAVU, KOLLAM
- 44 DEEPA VIJAYAN
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,ELAMANNUR, ALAPPUZHA
- 45 ASHI SUSAN NINAN
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KUMBANAD, ALAPPUZHA
- 46 E.K SURAJ KIRAN
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,PALAKKAD
- 47 K.P GANESH
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,ADB PALAKKAD, PALAKKAD
- 48 RENJITH J
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KOOTTANAD, PALAKKAD
- 49 SHIMLAL P.T
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,KOOTHUPARAMBA, KANNUR
- 50 DANI K
RURAL MARKETING AND RECOVERY OFFICERS,STATE
BANK OF INDIA,NORTH PARAVUR, ERNAKULAM
- 51 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,FINANCIAL
SERVICES,MINISTRY OF FINANCE, DEPARTMENT OF
ECONOMIC AFFAIRS,NORTH BLOCK, NEW DELHI 110 001

R1 TO R50 SRI. P.N. MOHANAN
R51 BY SRI. P.VIJAYAKUMAR - ASSISTANT SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2020, ALONG WITH WA.1729/2019, WA.483/2020, THE COURT ON 17-08-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SHARAVANA, 1942

WA.No.1729 OF 2019

AGAINST THE JUDGMENT IN WP(C) 5105/2013 DATED 12.04.2019 OF HIGH COURT OF KERALA

APPELLANTS:

- 1 THE CHAIRMAN
STATE BANK OF INDIA, CORPORATE CENTRE, MADAME
CAMA ROAD, MUMBAI-400021.**
- 2 STATE BANK OF INDIA,
REP. BY ITS DY.MANAGING DIRECTOR AND CORPORATE
DEVELOPMENT OFFICER, CORPORATE CENTRE, MADAME
CAMA ROAD, MUMBAI-400021.**
- 3 THE CHIEF GENERAL MANAGER,
STATE BANK OF INDIA, LOCAL HEAD OFFICE,
THIRUVANANTHAPURAM-695001.**
- 4 THE DY.GENERAL MANAGER AND CIRCLE DEVELOPMENT
OFFICER,
STATE BANK OF INDIA, LOCAL HEAD OFFICE,
THIRUVANANTHAPURAM-695001.**
- 5 TRUSTEES OF STATE BANK OF INDIA PENSION FUND,
C/O.STATE BANK OF INDIA, CORPORATE CENTRE, MADAME
CAMA ROAD, MUMBAI-400021.**
- 6 THE CHAIRMAN AND MANAGING DIRECTOR,
STATE BANK OF INDIA, STAR HOUSE, C5, G BLOCK BANDRA
KURLA COMPLEX, BANDRA EAST MUMBAI-400051.**

BY ADVS.

SRI.GEORGE THOMAS (MEVADA)(SR.)

SRI.MANU GEORGE KURUVILLA

RESPONDENT/S:

- 1 STATE BANKS STAFF UNION(KERALA CIRCLE),
REGN.NO.01-36-2000,, REP. BY ITS GENERAL SECRETARY,**

STATE BANKS STAFF UNION (KERALA CIRCLE), C/O.STATE BANK OF INDIA, LOCAL HEAD OFFICE, THAMPANNOOR, TRIVANDRUM-1.

**2 UNION OF INDIA,
REP. BY ITS SECRETARY, FINANCIAL SERVICES, MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC AFFAIRS, NORTH BLOCK, NEW DELHI-110001.**

R1 BY ADV. SRI.JIMMI GEORGE (B/O)

BY ADV.K.M. RAMESH

R2 BY ADV. MR.K.K.SETHUKUMAR, CGC

BY P. VIJAYAKUMAR -ASG

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2020, ALONG WITH WA.469/2018, WA.483/2020, THE COURT ON 17-08-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SHARAVANA, 1942

WA.No.483 OF 2020

AGAINST THE JUDGMENT IN WP(C) 5105/2013(K) OF HIGH COURT OF KERALA

APPELLANT:

**STATE BANKS' STAFF UNION (KERALA CIRCLE)
REGN.NO.01-36-2000,REP.BY ITS GENERAL
SECRETARY,C/O.STATE BANK OF INDIA,
LOCAL HEAD OFFICE,POOJAPPURA,
TRIVANDRUM-695 012.**

**BY ADVS.
SRI.JIMMY GEORGE
SRI.PEARL K.DAVIS
SRI.M.R.SURESH
SRI.K.M. RAMESH**

RESPONDENTS:

- 1 UNION OF INDIA,
REP.BY ITS SECRETARY,FINANCIAL SERVICES,MINISTRY OF
FINANCE,DEPARTMENT OF ECONOMIC AFFAIRS,NORTH
BLOCK,NEW DELHI-110 001.**
- 2 THE CHAIRMAN,
STATE BANK OF INDIA,CORPORATE CENTRE,MADAME
CAMA ROAD,
MUMBAI-400 021.**
- 3 STATE BANK OF INDIA,
REP.BY ITS DY.MANAGING DIRECTOR AND CORPORATE
DEVELOPMENT OFFICER,CORPORATE CENTRE,MADAME
CAMA ROAD,MUMBAI-499 021.**
- 4 THE CHIEF GENERAL MANAGER,
STATE BANK OF INDIA,LOCAL HEAD OFFICE,POOJAPPURA,
TRIVANDRUM-695 012.**
- 5 THE DY.GENERAL MANAGER AND CIRCLE DEVELOPMENT
OFFICER,
STATE BANK OF INDIA,LOCAL HEAL**

OFFICE,POOJAPPURA,TRIVANDRUM-695 012.

**6 TRUSTEES OF STATE BANK OF INDIA PENSION FUND,
C/O. STATE BANK OF INDIA,CORPORATE CENTRE,MADAME
CAMA ROAD,MUMBAI-400 021.**

**7 THE CHAIRMAN AND MANAGING DIRECTOR,
STATE BANK OF INDIA,STAR HOUSE,C5, G BLOCK,BANDRA
KURLA COMPLEX,BANDRA EAST,MUMBAI-400 021.**

**R1 BY SRI. P. VIJAYAKUMAR ASSISTANT SOLICITOR
GENERAL OF INDIA(B/O)**

**R2-7 BY ADV. SRI.AMAL GEORGE, SC (B/O)
BY ADV. GEORGE THOMAS MEVADA (SR)**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2020, ALONG
WITH WA.469/2018, WA.1729/2019, THE COURT ON 17-08-2020 DELIVERED
THE FOLLOWING:**

CR

JUDGMENT**[WA.469/2018, WA.1729/2019, WA.483/2020]****Dated this the 17th day of August 2020****Gopinath, J.**

In these Writ Appeals, we are called upon to examine the validity of the application of the 'State Bank of India Employees Defined Contribution Pension Scheme' (hereinafter referred to as '*the contributory pension scheme*' or '*the new pension scheme*') in respect of all categories of officers and employees who joined service of the State Bank of India on or after 1.8.2010. Incidentally, a question arises as to whether such employees are also entitled to a pension under the State Bank of India Employees Pension Fund Rules, 1965 (hereinafter referred to as '*the 1965 Rules*') which have been repealed and replaced by the State Bank of India Employees Pension Fund Regulations, 2014 (hereinafter referred to as '*the 2014 Regulations*'). The pension payable under the 1965 Rules/2014 Regulations is also referred to as '*the old pension scheme*' or the '*non-contributory pension scheme*'. The relevant facts may be briefly noticed.

2. W.A.No.469/2018 arises out of the judgment in W.P.(C)No.6897/2011. That Writ Petition was filed by respondents 1 to 50 in W.A.No.469/2018, claiming that though they entered service after 1.8.2010, they are entitled to be members and to receive a pension upon

retirement in terms of the 1965 Rules. They had challenged various Circulars, instructions etc., issued by the State Bank of India introducing the contributory pension scheme. On a consideration of the matter, the learned Single Judge came to the conclusion that the respondents are not entitled to any order directing that they are entitled to receive a pension in terms of the 1965 Rules. This finding was essentially on the basis that the terms of their appointment clearly specified that they would be governed by the provisions of a new Pension Scheme and that there was no challenge to that condition and further that the respondents had accepted the said condition and joined the services of the bank. However, the learned Single Judge found that the contributory pension scheme was not brought into operation in the manner prescribed by the provisions contained in Section 50 of the State Bank of India Act, 1955 and therefore declared the said Scheme to be non-operational. This Court also found that the terms regarding payment of pension to respondents 1 to 50 will have to be decided by the Central Board of the State Bank of India. The State Bank of India and its officers have therefore filed W.A.No.469/2018 challenging the Judgment.

3. W.A.No.1729/2019 and W.A.No.483/2020 arise out of the judgment in W.P.(C)No.5105/2013. That Writ Petition was filed by the State Banks' Staff Union, Kerala Circle (hereinafter referred to as 'the Union') challenging the introduction of the contributory pension scheme

on grounds which are essentially similar to the grounds raised in W.P. (C)No.6897/2011. In W.P.(C)No.5105/2013, it was also contended that the introduction of the new Pension Scheme is contrary to binding industrial settlements and therefore, it is in violation of the provisions in the Industrial Disputes Act. The learned Single Judge disposed of W.P. (C)No.5105/2013 essentially following the judgment in W.P. (C)No.6897/2011 and holding that if and when the new Pension Scheme is validated in the manner observed in the judgment in W.P. (C)No.6897/2011, it will be open to the petitioners in W.P. (C)No.5105/2013 to challenge the same. In other words, it was held that since the validity of the new Pension Scheme has already been examined in W.P.(C)No.6897/2011 and found to be illegal, nothing further survives for consideration in the Writ Petition. Aggrieved by the judgment in W.P. (C)No.5105/2013, the State Bank of India and its Officers have filed W.A.No.1729/2019. The Union has filed W.A.No.483/2020 challenging the very same judgment to the extent it does not grant all the reliefs sought.

3. We have heard Sri. George Thomas Mevada, learned Senior Counsel appearing for the State Bank of India and its Officers on the instructions of Sri. Amal George Mevada, Sri. K.M. Ramesh (through Video Conferencing) and Sri. Jimmy George for the Union, Sri. P.N. Mohanan, learned counsel appearing for the petitioners in W.P.(C)No.6897/2011 and the learned Asst. Solicitor General Sri. P.Vijayakumar for the Union of

India.

4. The State Bank of India is constituted under the *State Bank of India Act, 1955* (hereinafter referred to as 'the Act'). A few provisions of the Act which, are relevant for the purposes of this case, may be briefly noticed. Section 17 of the Act vests the general superintendence and direction of the affairs and business of the State Bank with the Central Board. Section 18 of the Act provides that the Central Board will be guided by directions of the Central Government. Section 43 provides that the State Bank may appoint officers and other employees as it considers necessary or desirable and also determine the terms and conditions of their appointment and service. Section 50 deals with the power of the Central Board to make Regulations. Section 50(2)(o) provides that the Regulations may provide for establishment and maintenance of superannuation pension, provident or other funds for the benefit of the employees of the State Bank or of the State Bank or of the dependents of such employees or for the purposes of the State Bank, and for the granting of superannuation allowances, annuities and pensions payable out of any such fund. The 1965 Rules were framed under Section 50(2)(o) of the Act. The 1965 Rules have been repealed and replaced by the 2014 Regulations which have also been issued in terms of Section 50(2)(o) of the Act. The State Bank of India Officer's Service Rules, 1992 (hereinafter referred to as 'the 1992 Staff Rules') were framed in exercise of the power under

Section 43.

5. Sri. George Thomas Mevada, learned Senior Counsel appearing for the State Bank of India would contend that the Central Government had introduced a scheme providing for a contributory pension for its employees and had suggested to entities like the State Bank of India also to switch over to a contributory pension scheme in place of the old Pension Scheme which, was non-contributory. It is submitted that by virtue of the provisions contained in Section 18 of the Act, the State Bank of India was bound by such directions and that though the Central Government introduced such a Scheme in 2004 itself for its employees, the State Bank of India had introduced the contributory pension scheme only with effect from 1.8.2010. He would submit that the employees in question, who joined service after 1.8.2010 can have no grievance on account of the fact that all of them had accepted the condition in the appointment order that they would be governed by the new Scheme and not by the provisions of the old Pension Scheme. He also referred to the provisions contained in Rule 8 of the 1965 Rules which, is produced as Ext.P10 in W.P. (C)No.5105/2013) and state that even under those Rules it was open to the Bank to provide, at the time of appointment, that the service would be non-pensionable. He would also refer to Ext.R2(a) recruitment notification and state that in respect of every recruitment during the period in question, it was clearly provided that the Pension Scheme is under review. He would

also refer to the proforma letter of offer issued in respect of employees, who were recruited and joined service on or after 1.8.2010 and state that it was clearly provided that the employees would be entitled only to pension under the new Pension Scheme, which is contributory. He would also state that the introduction of the contributory pension scheme is not under challenge in any circle other than in the Kerala Circle. He would also refer to the 2014 Regulations which have been issued in supersession of the 1965 Rules, under Section 50(2)(o) of the Act and state that the Regulations have also been suitably amended and issued providing that no person, who joined service of the Bank on or after 1.8.2010 will be entitled to pension under the previous Pension Scheme which, was non-contributory.

6. Sri. P.N. Mohanan, learned counsel appearing for the individual employees, who have filed W.P.(C)No.6897/2011 and Sri. K.M. Ramesh and Sri. Jimmy George for the union would contend *inter alia* that the introduction of Rule 45(ii) through an amendment to the 1992 Staff Rules, on 8.11.2010, with retrospective effect from 1.10.2010 introducing a provision for a contributory Pension Scheme in place of the old Pension Scheme in respect of all Officers, who joined services of the Bank on or after 1.8.2010 is illegal for non-compliance with the procedure under Section 50 of the Act. It is also contended that the classification of

employees, who joined after 1.8.2010 into a separate class amounted to hostile discrimination. They also contend that the 2014 Regulations, which is produced as Ext.P5(a) in W.P.(C)No.6897/2011 was never placed before the Parliament as required under Sub-Section (4) of Section 50 and consequently, that they have no legal force or effect. Sri. K.M. Ramesh would contend on the basis of the judgment in ***Ramana Dayaram Shetty v. International Airport Authority of India***¹, that "*.....an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.*" He refers to ***Union of India v. Indusind Bank Ltd.***², and states that the amendment of the Service Rules retrospectively from 1.10.2010 is bad in law. The learned Counsel for the Union would submit that the 1992 Staff Rules relate only to officers and in so far as other employees are concerned, the applicability of the old Pension Scheme cannot be limited or modified in view of the fact that the provision for pension under the old Pension Scheme was a subject matter of industrial settlement, which was binding in terms of the provisions of the Industrial Disputes Act, 1947. He would refer to the provisions of Section 9A of the Industrial Disputes Act and state that the right to receive pension was a condition of service and the same could not have been modified without notice of the change. He would also

1 (1979) 3 SCC 489

2 (2016) 9 SCC 720

contend that since the right to receive pension was protected by the terms of an industrial settlement ('Desai Award' and the 'Sasthri Award'), the same was binding on the employer under Section 18 (3) of the Industrial Disputes Act.

7. We have considered the contentions of both sides and perused the records as well as the judgments impugned before us. It is not in dispute that the respondents in WA No.469/2018 and the employees whose claim is being projected by the Union are those who entered service after 01.08.2010. As observed by the learned Single Judge in the judgment in W.P (C) No.6897/2011, such persons have entered service knowing fully well that they are not eligible to become members of the non-contributory pension scheme under the 1965 Rules / the 2014 Regulations. They have accepted the appointment on such terms and cannot turn around and challenge the decision of the State Bank of India to introduce a contributory pension scheme for all employees joining service of the Bank after 01-08-2010. The Government of India had issued letters dated 12-07-2006 and 07-12-2007, to the State Bank of India to consider the introduction of contributory pension scheme in the State Bank of India as has been done in the case of Central Government Employees with effect from 01-04-2004. Under Section 18 of the Act the Central Government is empowered to issue directions to the Central Board of the State Bank of India. The Central Board of the State Bank of India, after due deliberation,

decided that all employees who entered service after 01-08-2010 will not be permitted to become members of the existing pension scheme which was non-contributory. It is not disputed before us that even in the recruitment notifications issued in respect of all appointments made on or after 01-08-2010, the candidates were made aware that the pension scheme of the Bank is under review and the terms on which pension would be available will be decided by the Bank (see Ext.R2 (a) in W.P (C) No.5105/2013). The proforma letter of offer issued to the selected candidates, which has been placed on record as Ext.R2 (b) in W.P (C) No.5105/2013 also clearly indicated that the candidate in question would be, on appointment, governed by the terms of a contributory pension scheme.

8. Persons who accepted the appointment on specific terms cannot be allowed to turn around and challenge the terms/conditions of such appointment. They cannot be allowed to approbate and reprobate. The rule is to be found in the opinion of Scrutton L.J in ***Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.***³, in the following words:-

"A plaintiff is not permitted to "approbate and reprobate." The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument: Ker v. Wauchope⁽³⁾; Douglas-Menzies v. Umphelby. ⁽⁴⁾ The doctrine of election is not however confined to instruments. A person cannot

³ [1921] 2 K.B. 608

say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction."{3.(1819) 1 Bli. 1, 21; 4. [1908] A. C. 224}

In *Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation*⁴, it was held:-

11. *In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683 : AIR 1993 SC 352] this Court observed as under: (SCC pp. 687-88, para 10)*

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

12. *The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong*

⁴ (2011) 5 SCC 435

proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358] , P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422 : (2010) 4 SCC (Civ) 195]

9. The 1992 Staff Rules were amended on 08-11-2010 with retrospective effect from 01-08-2010 by inserting a new provision as sub-rule (ii) of Rule 45. The Rule, after the said amendment, reads as follows:-

"45. Unless otherwise directed by the competent authority and subject to the provisions of the rules of the State Bank of India Employees' Provident Fund and the State Bank of India Employees' Pension Fund, every officer shall become a member of each of the said funds, if he is not already a member, and shall subscribe and agree to be bound by the rules of these funds."

(ii) Notwithstanding anything contained in Rule 45 (1) above any officer who joins the service of the Bank on or after 1st August, 2010 shall not become and shall not be entitled to become member of the State Bank of India Employees' Pension Fund. Such officer shall be eligible to become member of the Defined Contribution Pension Scheme or any other person scheme as may be decided by the Executive Committee of Central Board subject to such terms and conditions as may be stipulated."

The contention that this amounts to a retrospective amendment which, is clearly impermissible cannot be accepted in the light of the fact that the employees who joined service after 01-08-2010 were clearly aware of the fact that they were entitled only to pension under a contributory scheme

and not under the old scheme. Thus even if Rule 45 were not amended, the persons who joined service after 01-08-2010 will clearly not be entitled to receive a pension under a non-contributory scheme. Further, on a reading of Rule 8 (d) of the 1965 Rules, we find that it was open to the Bank to provide, at the time of appointment, that the service would be non-pensionable. Thus nothing turns on the fact that the 1992 Staff Rules were amended only in November 2010 with effect from 01-08-2010.

10. Now, is the failure to follow the procedure prescribed under Section 50 (4) of the Act (i) while amending Rule 45 of the 1992 Staff Rules and (ii) while promulgating the 2014 Regulations a defect which would render them illegal and inoperative? We have already noticed the amendment to Rule 45 of the 1992 Staff Rules. The 2014 Regulations which replaced the 1965 Rules clearly incorporated a condition as follows:-

7. Eligibility.—(1) Save as provided in regulation 8, every permanent employee in the service of the Bank, including a permanent part-time employee who is required by the Bank to work for more than six hours a week, under the terms and conditions of his service shall become a member of the Fund from—
(a) the date from which he is confirmed in the service of the Bank,
or (b) the date from which he may be required to become a member of the Fund under the terms and conditions of his service.

*(2) Notwithstanding anything contained in sub-regulation (1) above **any employee who joins the service of the Bank on or after 1st August, 2010 shall not become and shall not be entitled to become a member of the Fund.** (Emphasis is ours)*

The pension payable to employees other than those who entered service after 01-08-2010 were governed by the 1965 Rules until its repeal and replacement by the 2014 Regulations. We must notice that there is no challenge raised to the 2014 Regulations. However, we have examined the question as to whether the amendment to Rule 45 of the 1992 Staff Rules and the introduction of the 2014 Regulations are bad for non-compliance with the procedure under Section 50 (4) of the Act which, reads as follows:-

"50 (4) Every regulation shall, as soon as may be after it is made under this Act by the Central Board, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid 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 regulation or both Houses agree that the regulation should not be made, the regulation 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 regulation"

The learned Single Judge has found, in judgment dated 26-10-2017 in W.P (C) No.6897/2011 that the contributory pension scheme could not have been introduced except after following the procedure contemplated by Section 50 of the Act. In view of the provisions in Section 50(1) of the Act,

the 1992 Staff Rules, though stated to have been framed under Section 43 of the Act are actually framed under Section 43 read with Section 50(1) of the Act. Similarly, the 2014 Regulations can only be in the exercise of power relatable to Section 50 (2)(o) of the Act.

11. The petitioners allege that neither the amendment to Rule 45 of the 1992 Staff Rules nor the 2014 Regulations can have any legal force for the reason that they have not been placed before Parliament in the manner prescribed in Section 50(4) of the Act. It is in this context that Shri.K.M.Ramesh refers to paragraph 11 of ***R.D. Shetty v. International Airport Authority***⁵, wherein it was held:-

"10. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Saton [359 US 535 : Law Ed (Second series) 1012] where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

⁵ 1979 (2) LLJ 217 (paragraph 10 of (1979) 3 SCC 489)

This Court accepted the rule as valid and applicable in India in A.S. Ahluwalia v. Punjab [(1975) 3 SCC 503, 504 : 1975 SCC (L&S) 27 : (1975) 3 SCR 82] and in subsequent decision given in Sukhdev v. Bhagatram [(1975) 1 SCC 421, 462 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , Mathew, J., quoted the above-referred observations of Mr Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pp. 540-41 in Prof Wade's "Administrative Law", 4th Edn. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the Rule of Law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or

the definition given by Hayek in his “Road to Serfdom” and “Constitution of Liberty” or the exposition set forth by Harry Jones in his “The Rule of Law and the Welfare State”, there is as pointed out by Mathew, J., in his article on “The Welfare State, Rule of Law and Natural Justice” in “Democracy, Equality and Freedom” [Upendra Baxi, Ed. : Eastern Book Co., Lucknow (1978) p. 28] “substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found”. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.”

There can be no doubt regarding the proposition laid down in the aforesaid judgment. Where the law requires something to be done in a particular manner it has to be done in that manner or not at all. In ***Dipak Babaria v. State of Gujarat***⁶, it was held:-

61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431.] was first adopted by the Judicial Committee in Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253] and then followed by a Bench of three Judges of this Court in Rao Shiv

6 (2014) 3 SCC 502

Bahadur Singh v. State of Vindhya Pradesh [AIR 1954 SC 322 : 1954 Cri LJ 910] . This proposition was further explained in para 8 of *State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)]* by a Bench of three Judges in the following words: (AIR p. 361)

“8. The rule adopted in *Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431.]* is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

This proposition has been later on reiterated in *Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266]* , *Dhanajaya Reddy v. State of Karnataka [(2001) 4 SCC 9 : 2001 SCC (Cri) 652]* and *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. [(2008) 4 SCC 755]*”

12. However, we are afraid that these principles have no application to the facts of the present case. The question to be considered is whether the failure to lay the amendment to the 1992 Staff Rules / the 2014 Regulations before Parliament as provided under Section 50 (4) of the Act would render the same illegal and unenforceable. The question is no longer *res integra*. In ***KT Plantations (P) Ltd. v. State of Karnataka***⁷, a bench of 5 Judges of the Supreme Court held :-

"49. This Court in *Atlas Cycle Industries Ltd. & Others v. State of Haryana (1979) 2 SCC 196* examined the question relating to the

⁷ (2011) 9 SCC 1

non-compliance with sub-section (6) of Section 3 of the Essential Commodities Act, 1955 which provides that every order made under the section shall be laid before both Houses of Parliament as soon as may be, after it is made. The Court held that non-compliance with the Laying Clause did not affect the validity of the order and make it void. In Quarry Owners' Association v. State of Bihar & Others (2000) 8 SCC 655, this court while examining the scope of Section 28(3) of the Mines and Minerals (Regulation and Development) Act 1957, stated that when a statute required the placement of a notification before the State Legislature it is the obligation of the state to place the same with the specific note before each House of State Legislature. Even if it had not been done, the State could place the same before the House at the earliest and the omission to comply with it would not affect the validity of the notifications and their coming into force. Direction was issued to the State Government to lay notifications at the earliest."

This question was again considered by a Bench of 7 Judges in **Krishna Kumar Singh v. State of Bihar**,⁸. Dr. Justice D.Y. Chandrachud, speaking for the majority held:-

"98. The failure to place an Ordinance before the legislature constitutes a serious infraction of a constitutional obligation which the executive has to discharge by placing the Ordinance before the legislature. The laying of an Ordinance facilitates the constitutional process by which the legislature is enabled to exercise its control. Failure to lay an Ordinance before the legislature amounts to an abuse of the constitutional process and is a serious dereliction of the constitutional obligation. In the case of delegated legislation, parliamentary or State enactments may provide a requirement of laying subordinate legislation before the legislature. It is well

settled that a requirement of merely laying subordinate legislation before the House of the legislature is directory. But where a disapproval of subordinate legislation is contemplated, such a requirement is mandatory."

In Justice G.P Singh's, Principles of Statutory Interpretation⁹, the learned author states:-

"Laying clauses may be expressed in different forms depending upon the degree of control which the Legislature wants to keep in its hands. Broadly, these clauses are of three varieties providing - (1) laying which requires no further procedure, (2) laying allied with an affirmative procedure, and (3) laying allied with negative procedure."

Where the laying requirement is of the 1st category, the failure to follow that procedure does not affect the validity or operation of the delegated legislation for the simple reason that the Legislature did not deem it necessary to make the delegated legislation operational only upon its approval. Further, as held in ***K.T. Planatations (supra)*** "... a requirement of merely laying subordinate legislation before the House of the legislature is directory". We are unable to see in Section 50 any further requirement other than mere laying. In the light of the law declared by the Supreme Court in ***K.T. Planatations (supra)*** and in ***Krishna Kumar Singh (supra)*** we have no hesitation to hold that the failure to lay the amendment to the Service Rules and / or the 2014 Regulations before

Parliament as prescribed in Section 50 (4) does not render them illegal or inoperative.

13. The only remaining question is regarding the effect of the industrial settlements which, according to the learned counsel appearing for the Union establishes a right in the employees falling under the category of 'workmen' under the Industrial Disputes Act, 1947, to receive pension without having to pay any contribution. The 2014 Regulations clearly provide that no person who enters service after 01-08-2010 will be entitled to become members of the non-contributory pension fund. We do not deem it necessary to examine as to whether the industrial settlements referred to by the learned counsel for the Union, in fact, provide for or recognize a right to receive a pension under a non-contributory scheme. It is settled law that the terms of an industrial settlement will always be subject to statutory prescription vide *U. Unichoyi v. State of Kerala*¹⁰ and *Oswal Agro Furane Ltd. v. Workers Union*¹¹. The industrial settlements referred to, even if they provide that the employees concerned will be entitled to a pension under a non-contributory scheme, cannot operate against the clear stipulation in the 2014 Regulations which, are statutory.

14. We, therefore, hold that the introduction of the contributory pension scheme in respect of all employees who entered service of the State

10 (1962) 1 SCR 946

11 (2005) 3 SCC 224

Bank of India after 01-08-2010 is legal and valid and the same does not suffer from any legal infirmity. There is no hostile discrimination. The officers/employees who joined after 01-08-2010 clearly formed a separate class. Thus we allow W.A. No .469/2018 and W.A. No. 1729/2019 by setting aside the judgment dated 26-10-2017 in W.P(C) No. 6897/2011 and the judgment dated 12-04-2019 in W.P(C) No. 5105/2013. W.A. No.483/2020 will stand dismissed. Consequently, W.P(C) No. 6897/2011 and W.P(C) No. 5105/2013 will stand dismissed. In the facts and circumstances of these cases, we make no order as to costs.

sd/-

A.M.SHAFIQU, JUDGE

sd/-

GOPINATH. P. , JUDGE

AMG