HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

W.P.Nos.19671, 19450, 20479, 20521, 20826, 20955, 22207, 22791, 22809, 23304, 23356, 23815, 24380, 24717 and 25151 of 2020 and W.P. Nos.1852, 2402, 2490, 2618, 2702, 3083, 3127, 2743, 2764, 566, 3654, 3699, 3266, 4499, 4958, 4881 and 4882 of 2021

W.P.No.19671 of 2020

Between:

G.V.Seshamamba and 8 others.

... Petitioners

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Finance (HR III – Pension) Department,
Secretariat Buildings, Velagapudi,
Guntur District and 10 others

... Respondents.

JUDGMENT PRONOUNCED ON 05.03.2021

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

* **THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ **W.P.Nos.19671, 19450, 20479, 20521, 20826, 20955, 22207, 22791, 22809, 23304, 23356, 23815, 24380, 24717 and 25151 of 2020 and W.P. Nos.1852, 2402, 2490, 2618, 2702, 3083, 3127, 2743, 2764, 566, 3654, 3699, 3266, 4499, 4958, 4881 and 4882 of 2021**

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v.

$ The State of Andhra Pradesh,
Represented by its Principal Secretary,
Finance (HR III – Pension) Department,
Secretariat Buildings, Velagapudi,
Guntur District and 10 others

.... Respondents

! Counsel for the Petitioners : Sri Karanam Ramesh

Counsel for Respondents: Sri Aswartha Narayana.
Government Pleader for Services - I

<Gist :

>Head Note:

? Cases referred:

1. 1971 (2) SCC 330
2. (1976) II LLJ 377 SC
3. (2006) 10 SCC 337
4. (2016) 6 SCC 408
5. (2003) 12 SCC 293

6. AIR 1985 SC 356
7. AIR 2006 SC 2145
8. (1978) 2 SCC 196
9. (2007) 5 SCC 437
10. AIR (1968) 1 SCR 111
11. AIR 1988 SC 1681
12. AIR 1980 Karnt 207
13. 1999(3)SLR372
14. AIR 1959 SC 896
15. AIR 1991 SC 1933
16. AIR 1989 SC 989
17. AIR 1981 SC 411
18. (1967)ILLJ698SC
19. [1977]2SCR28
20. AIR 1989 SC 1133
21. 1961CriLJ773
22. [1981]2SCR742
23. AIR 1988 SC 2255
24. [2001]2SCR927
25. [2001]3SCR641
26. AIR1997SC1446
27. [2001]252ITR1(SC)
28. AIR2003SC4355
29. AIR2004SC1559
30. [1982]1SCR1137
31. [2002]3SCR948
32. 1971CriLJ680
33. 2000 (2) WLN 574
34. 2005 (2) AWC 1191
35. (1976) IILLJ 377 SC
36. ILR 1967 Punj & Har 278
37. AIR 1983 SC 130
38. Civil Appeal No.1677-1678 of 2020 dated 18.02.2020
39. (2013) 12 SCC 210
40. (2006) 7 SCC 651
41. Civil Appeal No.6156 of 2013 dated 07.08.2020
42. W.P.No.2630 of 2014 dated 16.02.2016
43. W.P.No.352 of 2014 dated 27.11.2015
44. AIR 1960 SC 932
45. AIR 1978 SC 597
46. AIR1986SC180
47. (1991)ILLJ395SC
48. AIR 1999 SC 1416

49. (2012) 3 Mah.L.J 126
50. W.P.No.3208 of 2011 dated 08.12.2014
51. 1993 (0) MPLJ 663
52. AIR 1956 SC 479
53. AIR 1955 SC 25
54. 1955 (1) SCR 599
55. AIR 1959 SC 149
56. AIR 1967 SC 52
57. AIR 1982 SC 33
58. AIR 2003 SC 250
59. AIR 2013 SC 565
60. (2003)1SCC184
61. (1991) 1 SCC 725
62. 2020 (5) ALT77
63. 2017 (2) ALT 485 (D.B)
64. (1993) 3 Supreme Court Cases 259
65. [1978] 2 SCR 272 at 308F
66. AIR 1967 SC 1269
67. AIR2016SC33
68. (1974)ILLJ172SC
69. AIR1951SC41
70. AIR1958SC538
71. (2012) 11 SCC 1
72. (2015) 1 SCC 1
73. (1975) 2 SCC 840
74. AIR 1994 SC 2623
75. [1994] 1 AC 486 (HL)
76. (2003) 4 SCC 289
77. 1997(7) SCC 592
78. (2001) 3 SCC 635
79. (2000) 5 SCC 471
80. (2000) 8 SCC 262
81. (1949) 338 US 604 (617)
82. (2011) 1 SCC 640

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.Nos.19671, 19450, 20479, 20521, 20826, 20955, 22207, 22791, 22809, 23304, 23356, 23815, 24380, 24717 and 25151 of 2020 and W.P. Nos.1852, 2402, 2490, 2618, 2702, 3083, 3127, 2743, 2764, 566, 3654, 3699, 3266, 4499, 4958, 4881 and 4882 of 2021

COMMON ORDER:

In all the writ petitions either widowed daughter or divorced daughter of deceased retired Government Servant are the petitioners, filed these petitions under Article 226 of the Constitution of India for issue of Writ of Mandamus to declare the G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 in so far as amendment made to G.O.Ms.No.315 Finance (Pension-I) Department, dated 07.10.2010 under Para No.5 of the said G.O. prescribing the eligibility to receive family pension up to the date of their children becoming majors and up to 45 years w.e.f issuance of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 as illegal, arbitrary, capricious, whimsical, resulting in violation of Article 14, 21 and 300-A of the Constitution of India and consequently set aside the said G.O.Ms.No.152 Finance (HR-III Pension) Department dated 25.11.2019 in so far as amendment made to G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 under Para No.5 of the said G.O prescribing the eligibility to receive family pension up to the date of their children becoming majors and up to 45 years w.e.f issuance of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010.

In all these petitions, the plea of the petitioners and the respondents is one and the same. Therefore, I find that it is

expedient to decide all these petitions by common order treating the Writ Petition No.19671 of 2020 as leading case.

The petitioners impugned G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 in all the writ petitions. The petitioners in Writ Petition No.19671 of 2020 and other petitioners are dependents on their parents due to divorce dissolving the marriage between the petitioners and their husbands or due to demise of their husbands. They were receiving family pension being the dependents on father/mother, who served as Government Servant and retired from service, as per their eligibility in terms of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010. While the matter stood thus, an arbitrary decision as taken by the State and issued G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 amending G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 disabling the widowed/divorced daughter being family pensioners, who attained the age of 45 years or whose children became majors. By virtue of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 all the petitioners became eligible for family pension being dependents on their parents, who died after their retirement as government servant on fulfilment of various other conditions as prescribed in the G.O.Ms.No.315 dated 07.10.2010. All the petitioners drawing family pension basing on the recommendations of the concerned department, in which their parents served and retired thereafter. The details of grant of pension in writ petition No.19671 of 2020 are given hereunder in the table.

Sl. No.	Name	Authority Recommended F.P.	Date of grant of Pension	P.P.O No.	Date of Payment made w.e.f	Status
1	G.V.Sesham amba, D/o late G.Seshaiah (Retd. Teacher), aged about 62 years	Mandal Education Officer, M.P.D.O vide letter No.A5/17424/90 dated 14.10.2016	A.G.(A&E) A.P. vide letter No.PAG (A&E)/AP/P 18/II/S-2287/SP 1315/1991-01, dated 14.10.2016	P.P.O.No.17-0044/46/FP payable at Prakasam	FP payable; from 04.11.2015 up to NIL	Divorcee daughter
2.	T.Bargavi Devi, D/O Late P.Subbaraya Sarma, Retd. Telugu Pandit Gr.I, aged about 55 years	Commissioner, Ongole Municipality vide letter No.3556/C2/2010 dated 23.10.2012	A.G.(A&E) A.P. vide letter No.PAG (A&E)/AP/P 18/I/S-578/SP 3/7/1989-90/5789, dated 01.02.2015	P.P.O.No.17-004014//FP – STO, Ongole	Payable from 07.10.2010 up to NIL	Widowed daughter
3	B.Venkata Lakshmi, D/O Late D.Venkatamma, Retd.Theater Assistant, aged about 51 years	PPU, Govt. Hospital, Giddaluru letter MNp./SPL/PLEN/2016, dated 13.10.2016	A.G. vide letter AG (A&E) A.P./P5/IV/V-1389/SP/769/2010-11/2672 dated 19.12.2016	PPO No.17 – 024458/FP Prakasam	Payable from 17.06.2014	Widowed daughter
4	P.Sailaja, D/o I.Subba Rao, Retd.Gr.I Telugu Pandit, aged about 57 years	Head Master, ZPH school, Marella, Undlamru Mandal, Prakasam District Vide latter No.NIL dated NIL	A.G. Vide letter No.AG (A&E)/AP/P18/II/ S-2187/SP 1293/d 1989-90 / 4879, dated 05.03.2015	PPO No.17-004270FP STO Addanki	Payable from 05.05.2013	Widowed daughter
5	Revu Dhanalakshmi D/o.Late P.Venkateswarlu, Retd. Secondary Gr. Teacher, Aged about 49 years	MEO, Kothapatnam, vide letter NO.SP/MEO/80 dated 08.05.2018	A.G. (A&E) AP vide letter No.PAG (A&E)/AP/P18/II/V-682/SP1100/88-89/872, dated 01.06.2018	PPO.No.17-004657/FP – STO Ongole	FP payable from 12.02.2017	Widowed Daughter
6	N.Prameela D/o Late Sriramulu, Rtd.Dy.Forest Range Officer, aged about 46 years	Dy.Conservator of Forest, Markapur (WL) DVN letter No.106/2017/A3 dated 24.05.2018	A.G. (A&E) A.P/P7/IV/S-2983/SP 1017/1992-03 2219, dated 27.06.2018	PPO NO.17 – 004674/FP STO Markapur	FP payable from 25.11.2015	Widowed daughter
7	N.Naga Vasundhara D/o Late Nagaprasad Retd.Lecturer in P.Ed., aged about 50 years	Commissioner and Director of College Education, Hyderabad vide letter No.520/A3/2014 dated 24.04.2014	AG Vide letter No.PAG (A&E)/AP P16/IV/N-706/SP 537/2008-09/377 dated 22.05.2014	PPO No.17 – 004179/FP /STO Ongole	FP Payable from 07.12.2012	Widowed Daughter
8	K.Rajeswari D/o A.Krishna	Commissioner, Ongole Municipality	AG vide letter No.AG (A&E)/AP/P	PPO No.17 – 004579/FP	Payable from 23.06.2	Widowed daugh

	Murthy, Retd. Teacher aged about 56 years	vide letter No.2546/2016, dated 17.07.2017	18/HK/K-998/SP 473/1994-12/2243, dated 27.09.2017	/SBI Ongole	015	ter
9	P.Sashikala D/o Late B.Mary, Retd. Teacher, aged about 59 years	Dy.Educational Officer, Partur Letter No.NIL, dated 22.12.2014	AG Vide letter No.AG (A&kE) AP/P.18/II/M-44/SP 766/1984-85/3755 dated 29.01.2015	PPO No.17 – 004257/FP STO – Chirala	Payable from 17.08.2013	Divorcee daughter

Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980 contemplates the scheme of family pension payable to the family members of the retired Government Servant. Rule 50 (12) (b) defines family in relation to the Government Servant. As per the said scheme, the family of the deceased Government Employee either retired or in service entitled to monthly family pension as prescribed under the Rules. The said Rule contemplates various types of family members eligible for Family Pension. While it is so, the Government of Andhra Pradesh vide G.O.Ms.No.438 GA (Spl A) Department, dated 07.07.2008 was pleased to constitute Ninth Pay Revision Commission. The said commission after due consideration of the existing Family Pension Rules and orders of Government of India vide O.M.F No.38/37/2008-P&PW(A), dated 02.09.2008 of Ministry of Personal and Public Grievances and Pensions, Department of Pension and Pensioners welfare, New Delhi and requests of various associations has made certain recommendations in respect of sanction of family pension. The said recommendations are reproduced in Para No.3 of G.O.Ms No.315, Finance (Pension-1) Department, dated 07.10.2010.

Basing on such recommendations, the Government of Andhra Pradesh has divided the eligible beneficiaries of family pension into two categories as mentioned in Para No.5 of the above mentioned G.O. Now, in the present cases, the petitioners herein fall under

Category-II, Clause-I and were securing family pension granted under various orders.

The Government of Andhra Pradesh while issuing G.O.Ms.No.315, Finance (Pension-1) Department, dated 07.10.2010 has prescribed a condition to the effect that the family pension will be paid up to the date of marriage or re-marriage or till the date she starts earning or up to the date of death whichever is the earliest, subject to fulfilment of various other conditions mentioned therein and fulfilment of procedural requirements. In order to grant family pension to all the categories of pensioners as contemplated under Para No.4 of the said G.O, the definition of family as contemplated under Rule 50(12)(b) was also substituted with an amendment brining all the categories of persons mentioned above under the definition of family.

In pursuance of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 the petitioners herein were drawing pension as per the Rules applicable. While it is so, respondent No.1 herein issued impugned G.O.MsNo.152 Finance (HR III - Pension) Department, dated 25.11.2019 brining certain amendments to the eligibility criteria to the persons falling under Category-Il prescribing the age limit up to 45 years and also children of pensioners becoming majors on completion of 18 years as bar for drawing pension, the said amendment is given retrospective effect from issue of G.O.Ms No. 315, Finance (Pension-1) Department, dated 07.10.2010. The said amendment prescribing the age limit and also children attaining majority as on the date of eligibility as bar for drawing pension with retrospective effect is without any rationale basis and whimsical. Most of the petitioners were granted family

pension as per G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 even after completion of 45 years as there was no such condition prescribed in the said G.O. Any statutory benefits cannot be given retrospective effect as held by various decisions of the High Court as well as Supreme Court of India from time to time for the reason that the rights accrued under a particular statute cannot be taken away by amending the statute with retrospective effect. All the amendments to the statues are presumed to be effective prospectively unless it is specifically made retrospectively. G.O.Ms.No.152 dated 25.11.2019 was issued amending the eligibility criteria with retrospective effect specifically under para No.7 of the said G.O. is beyond the amending powers of the Government as it takes away the right accrued under G.O.Ms.No.315 dated 07.10.2010. The retrospective amendments to the statues can only be made with regard to procedural laws but not the substantial laws which confer certain rights to the citizens. Therefore, the said G.O. is nothing but whimsical and capricious apart from highly arbitrary and beyond the amending power of the State, resulting in violation of Article 14 and 21 of the Constitution of India.

G.O.Ms.No.152, dated 25.11.2019 is also illegal and arbitrary for yet another reason that, it also result in unreasonable classification of the dependant widowed or divorced daughters of retired employees basing on the age without any rational basis or object sought to be achieved. In fact such classification goes contrary to very object of the scheme without any intelligible differentia. It is necessary to mention here that, a widowed or divorced daughter of a retired servant who are dependents on their parents cannot be

classified on the basis of age or on the basis of age of their children, unless such dependents become self sufficient for their livelihood either by way of self earnings or earnings of their children. However, the G.O.Ms No.152, dated 25.11.2019 has been issued brining an amendment to G.O.Ms.No.315 debarring category-II of the family pensioners by prescribing age limit for drawing family pension as 45 years and their children completing 18 years. Both the conditions are not only irrational and illogical but also whimsical and arbitrary. Therefore, classification of divorced/widowed daughters of retired public servants who are dependents of their parents into two classes without any nexus to the object sought to be achieved and without any basis is forbidden by Article 14 of the Constitution of India.

Even assuming but not admitting that amendment brought into force prescribing the age limit of the family pensioners as 45 years and their children who becomes majors on crossing 18 years as on the date of eligibility as bar for drawing pension with retrospective effect by issuing impugned G.O.Ms No. 152, dated 25.11.2019 without amending the definition of "Family" as defined under Clause-b of Rule 12 of Andhra Pradesh Revised Pension Rules, 1980 is also erroneous for the reason that so long as all the widowed/divorced daughters comes under the said definition, cannot be denied family pension subject to fulfilment of various other conditions. Therefore, the impugned G.O is unsustainable.

In all these petitions, the respondents have issued notices in the month of December, 2019/January, 2020 asking the petitioners herein to furnish the particulars to regularize the payment of family pension as per the above mentioned G.O.Ms.No.152, dated 25.11.2019. On receipt of such notice, all the petitioners are

furnished all the particulars along with necessary documents. After receiving the information and documents furnished by the petitioners, the respondents No.8, 10, 11 have only given an intimation vide proceedings dated 03.10.2020, stopping the payment of family pension with cyclostyled notice to all the petitioners herein without even issuing a show cause notice or an opportunity and without examining the issue with objectivity. Therefore, the stoppage of payment of family pension made under G.O.Ms No. 152, dated 25.11.2019 is unsustainable.

Pension is not a bounty payable on the sweet will and pleasure of the Government. The said term is not defined in Andhra Pradesh Revised Pension Rule, 1980 and as such necessarily the petitioners will have to fall back on Article 366(17) of Constitution of India which defines the terms "Pension" as follows.

> "Pension" means, whether contributory or not, of any kind whatsoever, payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund".

Therefore, the pension is being paid out of such subscription and as such it is a right and its payment does not depend on discretion of the Government as held by Hon'ble Apex Court as well as High Courts in catena of decisions right from "***Deoki Nandan Prasad v State of Bihar***[1]". The said aspect has been reaffirmed in "***State of Panjab v Iqbal Singh***[2]". Therefore, the Government cannot debar the petitioners herein from availing family pension on unreasonable and irrational grounds.

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[1] 1971 (2) SCC 330
[2] (1976) II LLJ 377 SC

The respondents have not issued any show cause notice or provided an opportunity before stopping the payment of family pension for the month of September, 2020 intimating the same by proceedings dated 03.10.2020 stating that payment of family pension is being stopped in view of amendment made to G.O.Ms.No.315 dated 07.10.2010 by issuing G.O.Ms.No.152 dated 25.11.2019 prescribing the age limit for family pensioners as 45 years with children crossing 18 years. It is also necessary to state here that a memo dated 17.03.2020 was also issued by respondent No.1 clarifying that family pension shall not be discontinued merely an account of attaining age of 45 years. It is necessary to mention here most of the petitioners have no children and living alone without any source of income for their livelihood, having lost their parents on whom they were dependents and family pension of their late parents is the only source of their livelihood. However, without having due regard to the said clarification, respondents Nos.8 to 11 have stopped payment of family pension for the month of September, 2020 which was due to be paid on 1st October, 2020, as such stoppage of pension to the petitioners is in violation of principles of natural justice and also contrary to clarification issued by the Government under Para 3(111) of Memo No.1074035/FINO 1HROMisc/3/2020-HR-3, dated 17.08.2020.

The family pension to the members of Government servants is being paid out of contributions made by the public servant during his service towards Provident Fund as can be ascertained from the definition given under Article 366(17) of the Constitution of India and to mitigate the hardship caused to family members of the retired government servant on their demise. Therefore, prescribing age limit

for the family pensioners and to their children do not indicate, how such prescription would sub-serve the purpose for which the family pension is being paid. Therefore, stoppage of family pension to those persons who crossed 45 years of age would be ridiculous and meaningless for the reason that the need for resources would increase once they get older by age, in view of increase in the personal needs and also various health issues. Hence, stoppage of payment of family pension has virtually driven the petitioners to serious fiscal crisis to lead their day to day life with human dignity. However, without having any regard or concern for various aspects of the human life, the impugned G.O.Ms.No.152 dated 25.11.2019 was issued and the same is quite whimsical and capricious, requested to set aside same.

Respondents filed counter denying the material allegations while admitting issuance of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010, and amendment to Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980 and issuance of G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 imposing certain restrictions on the eligibility of children of deceased employees to claim family pension etc.

In the process of implementing the above orders certain ambiguity has risen in respect of eligibility of Family Pension under category -II and the Principal Accountant General (A & E) has requested to clarify whether 45 years of age limit to be reckoned

(a) On the date of the pension/Family Pensioner under Category -1,

(b) On the date of application by Widowed/Divorced

daughter since the number of family pension cases have been received before the issue of Government Memo No. 34021/70/HR.V/2018, dated 11.07.2018 and the cases which are received prior to the date of revised guidelines are to be finalized in exception of above order.

At this juncture, the Government issued clarificatory orders vide G.O.Ms. No.152, Finance (HR. III- Pension) Department, dated 25.11.2019, providing the procedural guidelines to sanction family pension to the Widowed/divorced and unmarried daughter under category - II as amendment to G.O.Ms.No.315 Finance (Pension -I) department dated 07.10.2010 and G.O.Ms.No.231 Finance (Pension-I) Department dated 08.08.2008.

As per para 5 (1) of the G.O.Ms.No.152 dated 25-11-2019, the restriction of age limit upto 45 years is applicable to the Widowed/Divorced daughter under category - II as on the eligibility commences on or after the date of ceasing the eligible family pension to the family members in the category -I, having no children or with minor children is eligible to receive family pension upto the date of remarriage/till the date she starts earning/anyone of her children become Major or upto the date of death whichever is the earliest, provided they are wholly dependent on the employee/pensioner and these clarifications are issued to G.O.Ms. No.315 Finance (Pension-I) Department dated 07-10-2010 read with the procedural guidelines issued in G.O.Ms.No. 353, Finance (P.S.C) Department dated 04-12-2010 and applicability of the above clarification is with effect from the date of issue of G.O.Ms.No.315, Finance (Pension-I) Department dated 07.10.2010.

The Government issued further clarification that the Family pension shall not be discontinued merely on account of attaining the age of 45 years nonetheless once the Family Pension under Category -II become eligible fulfilling the criteria, the family pension shall be continued till they become non- eligible (remarriage/starts earning/children become major) and further, no recovery to be imposed for the past cases on detection of over payment, if any vide Memo No.1074035/FINO1-HR0MISC/3/2020-HR-III dated 17-08-2020.

The petitioners herein were sanctioned family pension in terms of the G.O.Ms.No.315 dated 07.10.2010 and further, competent authority reviewed the Family Pension in terms of the clarification issued vide G.O.Ms.No.152 dated 25.11.2019 read with Memo No.1074035/FIN0I-HROMISC/3/2020-HR-III, dated 17.08.2020. The concerned Assistant/Sub-Treasury Officers have issued notices to the petitioners herein requesting for submission of the documents as per GO.Ms.No.152 dated 25.11.2019 from the pensioners sanctioned for the widowed/ divorced daughter/unmarried daughter as per G.O.Ms.No.315, dated 07.10.2010 and after scrutiny in terms of the Memo dated 17.08.2020, stopped family pension to the ineligible pensioners in accordance with the above Government Orders.

Basing on the guidelines of G.O.Ms.No.315 dated 07.10.2010 and other Government Orders issued from time to time the family pension to the pensioners has been extended as they are under category-Il of the said G.O. Further, G.O.Ms.No.315 dated 07.10.2010 made applicable to the pensioners who retired prior to 22.06.2004 i.e. retrospectively and the eligible pensioners have got sanction of family pensions. In

G.O.Ms.No.152 dated 25.11.2019, the age limit of 45 years and other conditions are also ordered with effect from the date of issue of GOMs.No.315 dated 07.10.2010. However, the respondents reiterated that the Family pension shall not be discontinued merely on account of attaining the age of 45 years, nonetheless once the Family Pensioner under Category -II become eligible fulfilling all the criteria, the family pension shall be continued till they become non-eligible (remarriage/starts earning/Children become major) and, no recovery to be imposed for the past cases on detection of over payment, if any vide Memo No. 1074035/FIN01-HR0MISC/3/2020-HR-III, dated 17.08.2020.

The Government have issued instructions and clarification vide Memo.No.1074035/FIN01-HROMISC/3/2020/HR-iii, dated 17.08.2020 to the effect that

i) Family pension to the widowed/divorced daughters shall be stopped to those who were authorized family pension after 45 years of their age. However no recovery to be imposed for the past cases on detection of over payment, if any.

ii) All the cases of family pension authorized to all widowed/divorced daughters are to be reviewed for the parameters of non-eligibility (remarriage/starts earning lively hood/children become major). Once they become non eligible, family pension shall be stopped immediately. However, no recovery to imposed for the past cases on detection of overpayments, if any.

iii) Family Pension shall not be discontinued merely on account of attaining the age of 45 years.

iv) The eligible applicant should apply within a period of one year from the date of death of family pensioner in category (One)-1 as per G.O.Ms.No.152 dated 07.10.2010. In the absence of date of application in the proposals, the date of forwarding of the proposals by the pension sanctioning authority should be taken as date of application.

Finally, it is contended that the Government have provided the benefit of payment of family pension to the widowed and divorced daughters also vide G.O.Ms.No.315 dated 07.10.2010 as a

policy decision. Taking a lenient view all the widowed/divorced who 1ead their lives peacefully till the date of issue of the G.O.Ms.315 have also applied for the benefit. Basing on the G.O. all such person have got sanctioned and authorized the family pension. To stop ineligible payment of pensions, the age restriction of 45 years has been fixed vide G.O.Ms.No.152 dated 25.11.2019 subject to condition with effect from the date of G.O.Ms.No.315 Finance (Pension-I) Department, dated 07.10.2010. In the instant case, the orders for stopping of pension to the ineligible family pensioner (remarriage/starts earning/children become major/commenced after crossing 45 years of age) have been received in the last week of August, 2020 and pension stopped from September, 2020 payable in October, 2020 in terms of G.O.Ms.No.l52 Finance (HR.III- Pension) Department dated 25.11.2019 read with Memo .No.1074035/FINOI-HR0MISC/3/2020-HR-III dated 17.08.2020. Therefore, the impugned Government Order to the extent of imposing restrictions, cannot be set aside declaring the same as illegal and arbitrary, requested to dismiss the writ petitions.

During hearing, Sri G.Vidya Sagar, learned senior counsel for the petitioners, contended that the impugned Government Order is only executive instructions issued in exercise of power under Article 162 of the Constitution of India, whereas G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010, which enabled the petitioners to claim family pension being widowed/divorced daughter was issued by exercising power under Article 309 of the Constitution of India. When a statutory guidelines were issued by G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010, by issuing executive instructions, the said G.O.Ms.No.315 dated 07.10.2010 cannot be amended and such executive instructions will

not prevail over the statutory guidelines issued by exercising power under Article 309 of the Constitution of India. Thereby, the G.O.Ms.No.152 dated 25.11.2019 impugned in the writ petition to the extent of invalidity stated in the writ petition is arbitrary and illegal. He further contended that issuing Government Order giving retrospective effect from the date of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 takes away the valuable vested right that accrued to the family pensioners i.e. widowed daughter and divorced daughter of the deceased government servant, is a serious illegality since the guidelines issued in G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010 are substantive, not procedural.

Learned senior counsel further contended that the right to receive family pension is a right in property and the petitioners cannot be deprived of their right to enjoy the property except under authority of law. The law means a law made by the parliament or the State legislature. The executive instructions cannot be construed as law made by parliament or State legislature. Therefore, taking away such right to enjoy the property is violative of Article 300-A of the Constitution of India, thereby the impugned Government order is liable to be declared as illegal, arbitrary and set aside on this ground also.

It is further contended that no opportunity was afforded to the petitioners before stoppage of pension except calling for details by the Treasury department and stoppage of payment of family pension to the petitioners without affording reasonable opportunity to explain their difficulties is vioaltive of principles of natural justice. Issue of G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 without taking into consideration, the difficulties being

faced by the widowed or divorced daughters of the deceased employees at the advanced age and increase of necessities due to old age ailments or otherwise is illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India besides irrational and not based on any reasonable classification since the family pensioners, who are aged 45 years and above the age of 45 years were divided into two separate classes without any rationale. Therefore, discrimination of family pensioners based on age is not based on any intelligible differentia and such discrimination is hit by Article 14 of the Constitution of India. He relied on certain judgments of Apex Court, which will be referred at appropriate stage.

Learned Government Pleader for Services-I totally supported the action taken by the State in issuing G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 while contending that the issue of G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is only clarification of certain issues sought by the Treasury Department, clarifying issues regarding payment of family pension to the persons, who crossed 45 years of age and it is not an amendment to the subsisting rules and guidelines issued under G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010. Apart from that, the policy decision taken by the State cannot be lightly interfered with, while this Court exercising power under Article 226 of the Constitution of India. In support of his contentions, he placed reliance on two judgments of the Apex Court viz. "***Ekta Shakti Foundation v. Government of NCT, Delhi***[3]" and "***Centre for Public Interest Litigation v. Union***

[3] (2006) 10 SCC 337

of India[4]".

On the strength of those judgments, it is contended that this Court cannot interfere with the policy decision taken by the State vide G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019, requested to dismiss the writ petitions.

Considering rival contentions, perusing the material available on record, the points that arose for consideration are:

(1) Whether the executive instructions will prevail over the statutory rules? If so, whether the disability created by paragraph No.5 of G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 to claim family pension by the widowed daughter/divorced daughter is legal? If not, liable to be set aside?

(2) Whether the State is entitled to deny the family pension to the widowed daughter/divorced daughter, who are entitled to claim pension under Rule 50, Category II of the Andhra Pradesh Revised Pension Rules, 1980 by issuing G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019? If so, whether such restrictions would amount to violation of fundamental right guaranteed under Article 14 and 21 of the Constitution of India and the Constitutional right guaranteed under Article 300-A of the Constitution of India, so also human right of a citizen under Article 25 (1) of the Universal Declaration of Human Rights?

(3) Whether the discrimination of widowed daughter/divorced daughter who did not attain the age of 45 years and the persons who attained age of 45 years is based on any rationale and intelligible differentia and if not, whether such discrimination is hit by Article 14 of the Constitution of India and the G.O.Ms.No.152 Finance (HR.III - Pension) Department

[4] (2016) 6 SCC 408

dated 25.11.2019 is liable to be set aside?

P O I N T No.1:

The word 'pension' is not defined anywhere in the Andhra Pradesh Revised Pension Rules, 1980 or any other rules relating to payment of pension except under Article 366 (17) of the Constitution of India.

In view of the undisputed facts, it is relevant to refer to various provisions of Constitution and other allied laws.

The word "Pension" is defined under Article 366(17) of the Constitution of India and it reads as follows:

> *"pension means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund"*

The definition of "pension:" as given in Article 366(17) is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life. *(vide* ***Kerala State Road Transport Corporation v. K.O. Varghese***[5]***)***

Though Revised Pension Rules are in force in the State of Andhra Pradesh, the word "Pension" is not defined in the Rules.

Thus, in view of the definition of "Pension", it is an amount payable to a retired employee for the past service rendered by him to the State. Such pension is the livelihood to a person who is in twilight or at the dawn of life. If, for any reason, the pension is not paid, it is hardly difficult to survive for the rest of the life, incurring

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5 (2003) 12 SCC 293

various expenditures at the old age whose health becomes deteriorated on account of advanced age and thereby it is imperative to incur substantial amount for their medical necessities and maintenance. However, the State is competent to stop payment or deduct pension of the state employees or their dependents by authority of law for the public purpose. On account of stoppage of payment of pension to divorced/widowed daughter *en masse* without any ground mentioned in the counter affidavit filed by the State is not justifiable action.

'Pension' can be deferred/withheld or stopped only in certain circumstances enumerated under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 and it reads as follows:

> 9. Right of Government to withhold or withdraw pension :-
> 1 (1) The Government reserves to themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specific period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement :
>
> Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed. 1 ["However, consultation with Andhra Pradesh Public Service Commission is not necessary, when the pensioner is found guilty in any judicial proceedings".]
> Provided further that a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45]
> Provided also that the penalty of withholding of entire pension or gratuity or both may be imposed against the retired Government servant upon being found guilty or upon conviction in a court of law for the offences of grave charges namely proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women and misconduct."
>
> (2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
> Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

The Central Civil Services Conduct Rules are also provides payment of pension to the widowed daughter and divorced daughter. But the rules are silent as to what is the meaning of pension. However, a bare look at the definition of pension under Article 366 (17) of the Constitution of India, it is an amount payable by an employer to an employee or in respect of any person, and includes retired pay so payable. The word employed in the definition "in respect of any person" assumes importance for interpreting the word "family pension". Pension is being paid on retirement to a Government servant for the services he rendered, but in view of the language employed in clause (17) of Article 366 of the Constitution of India, the amount whatever payable to any person includes pension payable to the deceased pensioner. 'Any person' refers to dependents on deceased pensioner. Therefore, the inclusive definition of pension under Article 366 (17) of the Constitution of India covers family pension also.

The definition of pension under Article 366(17) of the Constitution of India is not pervasive. It is essentially a payment to a person in consideration of past services rendered by him/her or to his/her dependents. It is a payment to a person who has rendered service for the employer, when he is almost in the twilight zone of his life. Pension is not only compensation for loyal service rendered in the past, but it has also a broader significance, in that, it is a measure of socio-economic justice which inheres economic security in the field of life when physical and mental powers start ebbing corresponding to the ageing progress, and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer for which in days of

invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. Pension is not a bounty nor a matter of grace depending upon the sweet will of the employer and it creates a vested right subject to the statute, if any, holding the field. Pension is not an ex gratia payment, but is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. (See: "***Kerala State Road Transport Corporation v. K.O.Varghese***" (referred above)

It was also held in the said judgment that in a strict sense, pension is not a matter of contract and is not founded on any legal liability; it is a mere bounty or gratuity 'springing from the appreciation and consciousness of the sovereign' and it may be given or withheld at the discretion by the sovereign.

It may be bestowed on such persons and on such terms as the law-making body of the Government prescribes and it is, at the most, an expectancy granted by the law (See: ***State of Kerala v. M.Padmanabhan Nair***[6])

Pension is akin to right to property and it is correlated and has a nexus with the salary payable to the employee as on the date of retirement. (Vide: ***Raghavendra Acharya v. State of***

[6] AIR 1985 SC 356

Karnataka[7]")

Though, the word 'pension' is not defined in any rules, on relying on the inclusive definition of pension, it can be said that the family pension is also part of pension.

State of Andhra Pradesh initially did not include family pension under the rules for payment of pension to the dependents consequent upon the death of pensioner, but by introducing Rule 50 in the Andhra Pradesh Revised Pension Rules, the persons entitled to family pension is categorised into two. The petitioners in all these petitions would fall within category-II. Under clause 12 (b) of Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980 the word 'family' is defined as follows:

> *12 (b) "family" in relation to a Government servant means-*
>
> *Category – I*
>
> *(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.*
>
> *Note 1 :- Wife and husband shall include respectively judicially separated wife and husband.*
>
> *Note 2 :- Where the appointing authority decides that for reasons to be recorded in writing a child or children from a judicially separated deceased female Government servant should receive the family pension in preference to judicially separated husband of the deceased Government servant such husband shall not be regarded as covered by the expression 'family'.*
>
> *(ii) Sons/daughters including such son/daughter adopted legally before retirement or son/daughter born after retirement, and also including physically/mentally disabled son/daughter.*
>
> *Category – II:*
>
> *(i) Unmarried/widowed/divorced daughter, not covered by Category – I above,*
>
> *(ii) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee has left behind neither a widow nor a child.*
>
> *Note: The period of payment of Family Pension and conditions subject to which the family pension is payable, shall be as specified in sub-rule (5) above.*

Thus, unmarried daughter, widowed/divorced daughters are

[7] AIR 2006 SC 2145

deemed to be members of the part of the family and their entitlement is subject to category-I. Payment of family pension is always subject to clause (5) of Rule 50. According to clause (5), the period for which family pension is payable is as follows:

"(5) The period for which family pension is payable shall be as follows:-

Category-I:

A. (i) In the case of a widow or widower, upto the date of death or remarriage whichever is earlier.

(ii) However, in the case of Childless widow of a deceased Government employee, the family pension shall continue to be paid even after her remarriage subject to the condition that the family pension shall cease once her independent income from all other sources becomes equally or higher than the minimum family pension prescribed in the State Government from time to time. The Family pensioner in such case would be required to give a declaration regarding her income from other sources to the pension disbursing authority once in every six months.

B. (i) In the case of a son until he attains the age of 25 years or starts earning whichever is earlier,

(ii) In the case of daughter until she attains the age of 25 years or she gets married or starts earning, whichever is the earliest,

(iii) In the case of a son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the ages of Son/Daughter as specified in clause (i) and (ii) above the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:

(a) If such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the Children in the order set out in clause (ii) of sub rule (7) of this rule, until the last child attains the ages of Son/Daughter as specified in clauses (i) and Gil above and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life;

(b) If there are more than one such child suffering from disorder or disability of mind, or who are physically crippled or disabled, the family pension shall be paid in the order of their births and younger of them will get the family pension only after the elder next above him/her ceases to be eligible;

(c) 'The benefit of family pension to physically crippled or mentally disabled children, however, is only admissible in respect of Government employees who are entitled to family pension under this rule or under the rules specified in part II of these rules:

(d) where the family pension is payable to such twin children, it shall be paid to such twin children in equal shares:

Provided that when one such child ceases to be eligible, his/her share shall revert to the other child and when both of them cease to be eligible, the family pension shall be payable to the next eligible single child/twin children.

[(e) the family pension shall be paid to such son or daughter through the guardian as if he or she were minor except in the case of the physically crippled son or daughter who has attained the age of majority.;

(f) the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board. The pension sanctioning authority has to endorse the earning capacity of claimant based on the certificate issued by the Medical Board while sanctioning the pension.;)

(g) the person receiving the family pension as guardian of such son or daughter, shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

Explanations -

(i) The family pension payable to such son or daughter under this sub-rule shall be stopped if he/she starts earning his/her livelihood.

(ii) The family pension payable to such daughter under this sub rule shall be stopped from the date she gets married;

(iii) In such cases, it shall be the duty of the guardian to furnish a certificate to the treasury or bank, as the case may be, every month to the effect that :

a. He/she has not started earning his/her livelihood;
b. In the case of a daughter, that she has not yet married

Category-II :

A. In the case of Unmarried/ widowed/ divorced daughter, not covered by Category-1 above, upto the date of marriage/ remarriage or till the date she starts earning or upto the date of death whichever is the earliest, provided they are wholly dependent on the employee/pensioner.

B. In the case of Parents who were wholly dependent on the Government servant when he/ she was alive, upto the date of death, provided the deceased employee has left behind neither a widow nor a child.

NOTE (1):-Family Pension to unmarried/widowed/divorced daughters and dependent parents specified in Category-II, shall be payable only after the other eligible family members in Category-I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension.

NOTE (2):-Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category.

NOTE (3) :-The income criteria for dependency will be the minimum family pension along with dearness relief thereon."

The Rules specifies the persons who are entitled and who are part of family. Those rules are framed by exercising power under Article 309 of the Constitution of India. Similarly, in CCS (Pension) Rules, 1972 permits payment of family pension to unmarried, widowed/divorced daughters until she gets married or remarried or until she starts earning her livelihood, whichever is earlier. The family pension is payable to the unmarried/widowed/divorced daughters above the age of 25 years, after all unmarried children have attained the 25 years of age or started earning their livelihood whichever is earlier. If the deceased government servant/pensioner has survived by any disabled child, the widowed/divorced/unmarried daughter will be eligible to receive

family pension only after the turn of disabled child (vide: DoP and PW OM 1/13/09-P&PW dated 11.09.2013).

Thus, the divorced or widowed daughters are eligible for family pension.

As seen from the material on record, the Andhra Pradesh Revised Pension Rules were framed only by exercising power under Article 309 of the Constitution of India as these rules pertaining to service conditions of Government employees to claim pension after retirement since family pension is now welfare scheme framed to provide relief to the widowed spouse and children of deceased employee or pensioner, including widowed or divorced daughter.

The eligibility to claim family pension and the procedure for payment of family pension is totally governed by the rules framed by the State legislature known as the Andhra Pradesh Revised Pension Rules 1980. These rules are statutory in nature.

There is no dispute in adopting the rules for payment of family pension since both the petitioners and respondents explained in their respective pleadings as to how the rules for payment of pension to widowed daughter and divorced daughter came into force. However, by issuing the present impugned G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 exercising power under Article 162 of the Constitution of India disabling the widowed daughters/divorced daughters to claim family pension by imposing certain restrictions. Therefore, it is necessary to extract the G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019, which is as follows:

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

PENSIONS - Family Pension to the Widowed/Divorced Daughter in Category-II - Restriction of Age Limit of 45 Years - Unmarried Daughter in Category-II - Clarificatory Orders - Issued.

FINANCE (HR.III - Pension)
DEPARTMENT

G.O.MS.No. 152 **Dated: 25-11-2019**
Read the following:-

1. G.O.Ms.No.315, Finance (PENSION-I) Department, Dated: 07.10.2010.
2. G.O.Ms.No.353, Finance (P.S.C.) Department, Dated: 04.12.2010.
3. Government Memo No.34021/70/ HR.V/2018, Dated: 11.07.2018.

ORDER:

In the G.O.1st read above Government have issued orders duly amending and substituting the Rule 50 (5) & (12) of A.P. Revised Pension Rules 1980 by categorizing the eligibility of beneficiaries to receive family pension into Category-I & Category-II.

2. Detailed procedure has been laid down in G.O.2nd read above for effective implementation of the orders issued in the G.O.1st read above.

3. In the reference 3rd read above, Government have restricted the age limit of 45 years as eligibility of the family pension to the widowed/divorced daughter under Category-II.

4. The Principal Accountant General (A&E) has requested to clarify whether the 45 years of age limit to be reckoned (a) On the date of death of pensioner/Family Pensioner under Category-I (b) On the date of application by Widowed/Divorced daughter since the number of family pension cases have been received before the issue of Government Memo No.34021/70/HR-5/2018, Finance (HR-3-Pension-I) Department, dt.11.07.2018 and the cases which are received prior to the date of revised guidelines are to be finalized in exception of above order, vide their letter dated 2018. Further, on the process of implementing the above orders certain ambiguity are arisen by Director of Treasuries and Accounts, Director of State Audit and Pensioner's association in respect of eligibility of Family Pension under Category - II.

5. Government after careful examination, hereby issuing the following procedural guidelines to sanction family pension to the Widowed/Divorced and unmarried Daughter under Category - II as amendment to G.O.Ms.No.315 Finance (Pension-I) Department, dt.7.10.2010 and G.O.Ms.No.231 Finance (Pension-I) Department, dt.8.8.2008.

(i) In respect of Widowed/ Divorced daughter the point at Category-II (A) under para 7 in G.O.Ms.No.315 Finance (Pension-I) Department, dt.7.10.2010 is amended as follows:

For	Read
In the case of Unmarried/ widowed/ divorced daughter, not covered by Category-I above, upto the date of marriage/ remarriage or till the date she starts earning or upto the date of death whichever is the earliest, provided they are wholly dependent on the employee/pensioner	In case of family pension to the Widowed/Divorced daughter not covered by Category-I above, having no children or with Minor children, is eligible to receive family pension upto the date of remarriage/ till the date she starts earning /anyone of her children become Major or up to the date of death whichever is the earliest, provided they are wholly dependent on the employee/pensioner. Such family pension shall be payable only after the other eligible family members in Category-I have ceased to be eligible to receive family pension and there is no disabled child to receive the

	family pension. If any person found drawing pension after re-marriage/starts earning is liable for Criminal prosecution. (i) The restriction of age limit up to 45 years is applicable to the Widowed/ Divorced Daughter under Category-II as on the date of eligibility. The date of eligibility commences on or after the date of ceasing the eligible family pension tothe family members in the Category-I.

(ii) In respect of unmarried Daughter, the point at Category- II (A) under para 7 in G.O.Ms.No.315 Finance (Pension-I) Department, dt.7.10.2010 is amended as follows:

For	Read
In the case of Unmarried/ widowed/ divorced daughter, not covered by Category-I above, up to the date of marriage/ remarriage or till the date she starts earning or up to the date of death whichever is the earliest, provided they are wholly dependent on the employee/pensioner.	In case of the unmarried daughter beyond the age of 25 years also family pension will be sanctioned subject to **no other eligible Family Pensioner under Category-I is available.** The said family pension is subject to her marriage or starts earning equal to the minimum family pension as fixed by the Government from time to time. The status of Marriage shall be produced once in 6 months as certified by the Gazetted Officer from the concerned Revenue Department. If any person found drawing pension after marriage/starts earning is liable to Criminal prosecution.

(iii) If the claimant is a Widowed /Divorced family pensioner with

a. Childless, the Family Pension will be eligible till she starts earning equal to the minimum family pension as fixed by the Government from time to time OR till she gets Re-marriage.

b. Minor Children, the Family Pension will be eligible till the children become Major (attaining the age of 18 years). At no point of time the family pension will be paid to the Minor children of the above pensioner, in case of death of above pensioner before the children become Major i.e, the family pension will be ceased with her death itself.

(iv) Further w.r.t para 9(v) (iii) of G.O.Ms.No.353, Finance (P.S.C.) Department, Dated 04.12.2010, if the claimant is a widowed daughter, the Death Certificate of her husband together with a certificate from the concerned M.R.O., to the effect that the person, specified in the Death Certificate, was not an employee anywhere, not doing pensionable job, have to be furnished along with the Certificate of Family Members issued by the competent authority.

(v) In respect of sanction of Family Pension to the Divorced daughter, eligibility is subject to non receipt of properties/amount as compensation/ Permanent alimony from her ex-spouse/in-laws as certified by the judicial authority shall be furnished.

6. The Pension/Family Pension sanctioning authorities/ Pension authorizing authorities shall follow the following instructions while processing the Widowed/ Divorced and Unmarried Daughter Family Pension under category-II.

a. Whether the name of the Widowed/Divorced and unmarried Daughter are mentioned at the time of retirement of the Pensioner/Family pensioner along with age, status of Education/Employment are tally with the Service Register / Pension Papers.

b. The applicant shall submit the Aadhar Card, Pan Card and Ration Card of Self and Family member's certificate as certified by the Judicial authorities.

c. The applicant shall submit the status of the children such as Education/Occupation issued by the competent authority and Earning status certificates issued by the Revenue authorities at the time of application for the Widow Family Pension/ Divorced Family Pension.

d. Death Certificate of her Husband in case of Widow Daughter and Divorce deed and copy of Divorce orders granted by competent Judicial authority in case of Divorced daughter.

e. Family member certificate issued by the competent authority after death of the Pensioner/Family Pensioner as in case of Category-I.

f. The eligible applicant should apply within a period of one year from the date of death of Family Pensioner in Category-I.

g. Along with the annual digital Life Certificate the status of the children Education/Employment along with updated Aadhar card and Pan Card shall be furnished.

h. The Certificate issued by the Revenue Department on the status of re-marriage of Widowed/Divorced Family Pensioner and Income Certificate shall be furnished along with the annual digital Life Certificate.

i. If any person found drawing pension after marriage/re-marriage/starts earning at later stage is liable to Criminal prosecution will be initiated besides stoppage of Family Pension sanctioned.

7. These clarifications are issued to G.O.Ms.No.315, Finance (Pen.I) Department, dt.07.10.2010 read with the procedural guidelines issued in G.O.Ms No.353, Finance (P.S.C) Department, dt.04.12.2010. The applicability of the above clarification is w.e.f the date of issue of G.O.Ms.No.315, Finance (Pen.I) Department, dt.07.10.2010.

8. All the Treasury Officers/Pension Payment Officers shall follow the above instructions and give periodical report on sanction of the cases, twice in a year to the Finance Department.

9. The G.O.is available on Internet and can be accessed at the address "http://www.ap.gov.in/goir" and http://www.apfinance.gov.in.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)
SHAMSHER SINGH RAWAT
PRINCIPAL FINANCE SECRETARY

From the beginning, the contention of the petitioners in all the petitions is that administrative or executive instructions will not override the statutory rules framed by exercising power under Article 309 of the Constitution of India.

Admittedly, impugned Government Order was not issued based on the decision taken by the State legislature amending the Andhra Pradesh Revised Pension Rules, 1980. Undisputedly, it is only Government order issued by exercising power under Article 162 of the Constitution of India. What is administrative order or executive order is not defined anywhere.

Administrative directions or executive directions are

instructions or regulations issued by the higher authorities to the lower authorities, in the absence of a rule or enactment pertaining to a specific issue or to compensate or fill the lacunas in the existing laws and thereby constructing better standards or platforms to tackle issues. Executive directions are otherwise designated as executive quasi-law or executive quasi-legislations. These directions can be specific, that is formulated and applied to a particular purpose, or a particular case; or it may be general in nature, laying down general principles, policies, practices, or procedures to be followed in similar cases. Further, these directions are issued in the form of orders published in Government Gazette.

In contemporary India, the government enjoys indefinite or boundless administrative powers, and therefore the areas of issuing administrative directions are quite ample. The concept of Administrative directions has its roots in Article 73 and Article 162 of the Constitution of India, they serve as the substratum. These Articles deals with administrative powers of Government and such directions are generally issued under it. According to Article 73 of the Constitution of India, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws. Similarly, according to Article 162 of the Constitution of India, the executive power of the State extends to the matters with respect to which State Legislative has power to make laws. These provisions exclusively deals with the executive power of government and do not confer any kind of legislative power. At times, statutory powers are granted to issue directions. A direction issued under statutory power prevails over a direction issued under general administrative power.

A rule can override an instruction but an instruction cannot

override a rule. This principle was well established in the case of "***Jagit singh v. State of Punjab***[8]", in this case, the state government had made a request to the Punjab public service commission to select and endorse six vacancies in the Punjab civil services (executive branch). The appellant secured third position amongst the scheduled caste (sc) candidates in the competitive exam that was consequently conducted. The reserved quota was 20% and appointment letters were issued to the first two candidates. However, one of the selected candidates resigned. The appellant being next in merit on the selection list, made an application for the vacancy. He based his claim on the instructions given by the State Government through a circular. The government came to reject this claim and a petition was filed in the High Court. On dismissal, it went on appeal to the Supreme Court; it was decided that the general practice was that if SC/ST candidate is terminated an eligible candidate belonging to the same community must be appointed on ad hoc basis. Instructions contrary to such a practice were held to be invalid. The court's opinion made it clear that instructions cannot contravene or supersede statutory rules but rather augment the rule or regulation. Further, in "***Mahadeo Bhau Khilare v. State of Maharashtra***[9]", it was deicided that a scheme framed by an administrative instruction in violation of statutory rules cannot be sustained. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed

[8] (1978) 2 SCC 196
[9] (2007) 5 SCC 437

and this principle was upheld in the case of "***Sant Ram Sharma v State of Rajasthan***[10]"

Administrative instructions are not enforceable as held in "***J.R.Raghupathy v State of Andhra Pradesh***[11]"

In the case of "***Prabhakar Reddy v State of Karnataka***[12]", it was laid down that, a direction is unenforceable in the Court against either a person or the Administration. A direction neither confers any enforceable right on a person, nor imposes an obligation or duty on the Administration.

In "***Suresh Chandra Singh v Fertilizers Corporation of India***[13]", the High Court of Allahabad held that administrative instructions are only advisory and no writ can be issued to enforce them. The principle was upheld in the case of "***Abdulla Rowther v STA Tribunal***[14]", it was held that the validity of an administrative action taken in breach of an administrative direction is not challengeable and the court will refuse to issue any writ even when there is a patent breach of an administrative direction.

This so called privilege granted to administrative bodies to formulate quintessential or circumstantially relevant notions or instructions is not absolute. It is a well channelled privilege to be used in the right way at circumstances for a right cause, should be compatible and in accord with the said limitations. Let us now consider the situations under which a direction can be rendered invalid or void. Like any other rule or law or principle, an administrative direction will be held void if it is against this principle of Natural Justice, the said principle being the heart and soul or

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[10] AIR (1968) 1 SCR 111
[11] AIR 1988 SC 1681
[12] AIR 1980 Karnt 207
[13] 1999(3)SLR372
[14] AIR 1959 SC 896

bedrock of administrative law, no direction can survive if it tries to override the principles of natural justice. That direction should be in accordance with the established principles and laws, and should be reasonable and relevant, a direction should not be the fruit of unreasonable, ulterior discretion of concerned authorities, if so, such a direction will be held invalid.

As discussed previously, a direction should not be inconsistent with other existing rules or laws. In legal hierarchy, directions occupy a place subordinate to other statues, or rules, and it is settled in the case of "***State of Sikkim v Dorjee Tshering Bhutia***[15]", that any order, instruction, direction, or notification issued in exercise of the executive power of the state which is contrary to any statutory provisions, is without jurisdiction and is a nullity.

A direction should not encroach into or adversely affect individual rights. Any restriction prejudicial to individual interest can be placed only by law, cannot be done through administrative directions. In the case of "***District Collector, Chittoor v Chittoor Groundnut Traders Association***[16]", the State Government issued a circular to its officer not to permit transport of groundnut seeds and oil outside the state by millers and traders unless they agreed to supply certain quantities of these products to the state at the price fixed by it. The circular thus placed restrictions on the right of traders. Supreme Court quashed the circular as illegal and void as the state government had no power to impose such restriction.

Similarly, a direction can stand only if it in congruence with Article 14 of the Constitution of India. Equality is one of the

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[15] AIR 1991 SC 1933
[16] AIR 1989 SC 989

imperative element of a democracy, any kind of divergence from this principle will result in arbitrariness and definitely steer down the essence of democracy. Therefore, administrative directions will be held invalid if it violated Article 14. In the case of "***S.L.Sachdev v Union of India***[17]", an administrative direction regarding the promotion of the upper division clerks to higher grades was quashed as it was unreasonable, arbitrary, illogical and violative of Article 14 of the Constitution of India.

Thus, from the law laid down by the other High Courts and the Apex Court in the judgments (referred supra), the administrative or executive instructions shall not be inconsistent with the statutory rules or provisions and not in violation of principles of natural justice or outcome of arbitrary power.

It is settled legal proposition that executive instructions cannot override the statutory provisions (Vide: "***B.N. Nagarajan v. State of Mysore***[18]" "***Union of India v. Majji Jangammyya***[19]" "***State of Maharashtra v. Jagannath Achyut Karandikar***[20]")

Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide: "***State of U. P. and Ors. v. Babu Ram Upadhyaya***[21]" and "***State of Tamil Nadu v. M/s. Hind Stone***[22]").

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[17] AIR 1981 SC 411
[18] (1967)ILLJ698SC
[19] [1977]2SCR28
[20] AIR 1989 SC 1133
[21] 1961CriLJ773
[22] [1981]2SCR742

In "***Union of India v. Sri Somasundaram Vishwanath***[23]", the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

Similar view has been reiterated in "***Union of India v. Rakesh Kumar***[24]" "***Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty***[25]" observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

In "***Ram Ganesh Tripathi v. State of U.P.***[26]", the Apex Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Apex Court observed as under :-

> "They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblique the respondents and similarly situated ad hoc appointees."

Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat.

In "***Commissioner of Income Tax, Mumbai v. Anjum M.H.***

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[23] AIR 1988 SC 2255
[24] [2001]2SCR927
[25] [2001]3SCR641
[26] AIR1997SC1446

Ghaswala[27]", the Apex Court held that circulars issued by the Central Board of Direct Taxes under the provisions of Section 119 of the Income Tax Act, 1961 have statutory force and any other instruction/circular not issued under the said provision, will not be of any assistance to anybody as the same would not have statutory force.

In "***Punit Rai v. Dinesh Chaudhaty***[28]" "***Union of India v. Naveen Jindal***[29]" the Apex Court held that executive instructions cannot be termed as law within the meaning of Article 13(3)(a) of the Constitution.

In "***M/s. Bishamber Dayal Chandra Mohan v. State of U.P.***[30]" the Apex Court explained the difference in a statutory order and an executive order observing that executive instruction issued under Article 162 of the Constitution does not amount to law. However, if an order can be referred to a statutory provision and held to have been passed under the said statutory provision, it would not be merely an executive fiat but an order under the Statute having statutory force for the reason that it would be a positive State made law. So, in order to examine as to whether an order has a statutory force, the Court has to find out and determine as to whether it can be referred to the provision of the Statute.

In "***Chandra Prakash Tiwari v. Shakuntala Shukla***[31]", the Apex Court held that police forces are to be guided by the provisions of the Police Act and no exception can be taken thereto. The Court while dealing with the provisions of U.P. Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 framed under

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[27] [2001]252ITR1(SC)
[28] AIR2003SC4355
[29] AIR2004SC1559
[30] [1982]1SCR1137
[31] [2002]3SCR948

the proviso to Article 309 of the Constitution, held as not applicable as the field stood occupied by a Government Order dated 5.11.1965 issued Under Section 2 of the Act, 1861. Service conditions referable to the Act, 1861 could not be replaced by general service conditions framed for other civilian-employees.

In "***Municipal Corporation of Delhi v. Sheo Shankar***[32]", the Apex Court considered the issue and scope of implied repeal and held that Court should not lean towards implied repealing in absence of express or implied legislative intent, observing as under:

> "As the legislature must be presumed in deference to the Rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The legislature which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The Courts, therefore, as a Rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment.....The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each Statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface."

In "***Ashok Kumar v. State of Rajasthan***[33]" the Rajasthan High Court held that the executive instructions cannot amend or supersede the statutory rules or add something therein.

In "***Vijay Singh v. State of Uttar Pradesh***[34]" the Allahabad High Court reiterated the same principle.

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[32] 1971CriLJ680
[33] 2000 (2) WLN 574
[34] 2005 (2) AWC 1191

Thus, in view of catena of perspective pronouncements, it is clear that executive instructions will not override or prevail over statutory rules.

In the present case, the Andhra Pradesh Revised Pension Rules, 1980 are statutory in nature as those rules were framed by exercising power under Article 309 of the Constitution of India, whereas the impugned G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 was issued by exercising power under Article 162 of the Constitution of India by way of executive clarification.

Turning to the facts of the present cases, the Andhra Pradesh Revised Pension Rules, 1980 did not impose any restriction to claim family pension by widowed/divorced daughter of the deceased retired employee under Rule 50, but based on clarification sought by Treasury department, executive instructions came to be issued vide G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019, which is impugned in the present writ petitions. According to learned Government Pleader for Services-I, it is only a clarification by the executive, in view of the request made by the Director of Treasuries and it is not a law passed by the State legislature. When the impugned Government Order is analysed, there is any amount of inconsistency in different paragraphs. At one stage, it is stated that it is clarification and in another paragraph it is stated that it is an amendment. It appears that the administrative authority, who passed the Government Order, is not sure whether it is a clarification or amendment proposed to the Andhra Pradesh Revised Pension Rules, 1980. The G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 was totally ill drafted by the authorities by exercising power under Article 162 of the Constitution

of India. By way of clarification or by way of proposed amendment to the rules in view of the inconsistency pointed before this Court, the widowed daughter/divorced daughter, who are entitled to claim family pension without any restriction, except restrictions mentioned in Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980, disability is created by executive instructions is a serious illegality and by the executive instructions impugned in the writ petition, the widowed daughter/divorced daughter of the deceased retired government servant, cannot be deprived of their right to property. As discussed above, executive instructions i.e. G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 will not override or prevail over the Andhra Pradesh Revised Pension Rules, 1980, issued by exercising power under Article 309 of the Constitution of India. Accordingly, the point is answered against the respondents and in favour of the petitioners.

P O I N T No.2:

One of the contentions of the petitioners is that non-payment of family pension is violative of Article 14, 21 and 300-A of the Constitution of India, whereas the contention of the respondents is that the G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is clarificatory in nature and not depriving any person before attaining age of 45 years and children attaining age of 18 years and it does not amount to depriving any person from enjoying the property or violation of fundamental right guaranteed under the Constitution of India.

The issue relating to non-payment of pension is no more *res integra*, in view of the law declared by the Apex Court in various judgments commencing from "***Deoki Nandan Prasad v. State of Bihar***" **(referred supra)** wherein the Apex Court authoritatively

ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in "***State of Punjab v. Iqbal Singh***[35]**".**

A Full Bench of the Punjab and Haryana High Court in "***K.R. Erry v. State of Punjab***[36]**"** considered the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the

35 (1976) IILLJ 377 SC
36 ILR 1967 Punj & Har 278

basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence no opinion is expressed regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. The Apex Court did not agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

Having due regard to the above decisions, Apex Court was of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order, the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1)

of the Constitution, and as such the writ petition under Article 32 is maintainable..."

In "***D.S Nakara v. Union of India***[37]**"**, Justice D.A. Desai, who spoke for the Constitutional Bench, in his inimitable style, considered the right of pension framing various issues, particularly defining pension and whether it is a property or not etc, concluded that pension cannot be withheld except by authority under law. The same principle is reiterated in "***Dr. Hira Lal v. State of Bihar***[38]**".**

In "***State of Jharkhand v. Jitendra Kumar Srivastava***[39]**",** while dealing with Rule 43(b) of Bihar Pension Rules with regard to claim of the petitioner for payment of provisional pension, gratuity etc. in terms of Resolution No. 3014 dated 31.7.1980, the Division Bench of the Apex Court held that the State had no authority or power to withhold pension or gratuity of a government servant during pendency of the departmental proceedings.

In "***State of West Bengal v. Haresh C. Banerjee***[40]**"**, the Apex Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution, the same is reiterated by Division Bench of Apex Court in "***Hari Krishna Mandir Trust v. State of Maharashtra***[41]**"**. Right to receive pension was treated as right to property. The High Court of Judicature of Bombay in "***Purushottam Kashinath Kulkarni and***

37 AIR 1983 SC 130
38 Civil Appeal No.1677-1678 of 2020 dated 18.02.2020
39 (2013) 12 SCC 210
40 (2006) 7 SCC 651
41 Civil Appeal No.6156 of 2013 dated 07.08.2020

others v. The State of Maharashtra[42]**"** and The High court of Chattisgarh in "***Ramlal Sharma v. State of Chattisgarh***[43]**"** relying on ***D.S Nakara v. Union of India*** (referred supra), concluded that payment of pension cannot be deferred. It is thus a hard earned benefit of an employee in the nature of property.

Salary is paid to the employees to eke out their livelihood during their service and pension is paid after retirement. If, payment of pension or family pension is denied, it amounts to denial of right to life guaranteed under Article 21 of the Constitution of India. Initially, right to livelihood was not recognized as fundamental right under Article 21 of the Constitution of India. But, later it was recognized as Fundamental Right by judicial interpretation to Article 21 of the Constitution of India.

Article 21 of the Constitution of India guarantees right to life. The right to life includes the right to livelihood. Time and again the Courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Article 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

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42 W.P.No.2630 of 2014 dated 16.02.2016
43 W.P.No.352 of 2014 dated 27.11.2015

In ***Re: Sant Ram***[44] a case which arose before "***Maneka Gandhi v. Union of India***[45]", the Supreme Court ruled that the right to livelihood would not fall within the expression "life" in Article 21. The Court observed:

> "The argument that the word "life" in Article 21 of the Constitution includes "livelihood" has only to be rejected. The question of livelihood has not in terms been dealt with by Article 21."

In "***Olga Tellis Vs. Bombay Municipal Corporation***[46]" the Apex Court held as follows:

> "If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21."
>
> (Emphasis is supplied).

The right to live with human dignity, free from exploitation is enshrined in Article 21 and derives its life breadth from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the right to live with human dignity, the right to take any action which will deprive a person of enjoyment of basic right to live with dignity as an integral part of the constitutional right guaranteed under Article 21 of the Constitution of India.

In "***Delhi Transport Corporation v. D.T.C. Mazdoor Congress***[47]", the Supreme Court while reiterating the principle observed that the right to life includes right to livelihood. The right to

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44 AIR 1960 SC 932
45 AIR 1978 SC 597
46 AIR1986SC180
47 (1991)ILLJ395SC

livelihood therefore cannot hang on to the fancies of individuals in authority. Income is the foundation of many fundamental rights. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

The Apex Court in various judgments interpreted the right to livelihood is a part of right to life under Article 21 of the Constitution of India and it is relevant to refer the principle in **"*M. Paul Anthony v. Bharat Gold Mines Limited*[48]**, the Apex Court held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasized that a government servant does not loose his right to life. However, if a person is deprived of such a right according to the procedure established by law which must be fair, just and reasonable and which is in the larger interest of people, the plea of deprivation of the right to livelihood under Article 21 is unsustainable.

Thus, in view of the law laid down by the Apex Court in various judgments (referred supra), widening the meaning of word 'right to life' includes 'right to livelihood', right to livelihood is a fundamental right, and it is an integral part of right to life guaranteed under Article 21 of the Constitution of India.

The major contention of the petitioners from the beginning is that, non-payment of pension as stated above, is contravention of Article 300-A of the Constitution of India. No doubt, as per Article 300-A of the Constitution of India, no citizen of India be deprived of

48 AIR 1999 SC 1416

his/her right to property, except by authority of law. As pension or family pension form part of property of an individual to attract Article 300-A of the Constitution of India, such right cannot be taken away except by authority of law.

On a bare look at Article 300-A of the Constitution of India, any citizen of India cannot be deprived of their right to property, except by authority under law. That means a property of any citizen of India cannot be taken unless the State is authorized to do so. In "***Shapoor M. Mehra v Allahabad Bank***[49]**"**, wherein Bombay High Court opined that retiral benefits including pension and gratuity constitute a valuable right in property.

In "***Deoki Nandan Prasad v. State of Bihar*** (referred supra), the Apex Court held as follows:

> "(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable."
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> 11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues..."

Thus, pension payable to the employees in service or retired from service falls within the definition of property under in Article 300-A of the Constitution of India.

Though the Constitution of India permits the State to deprive any person's right in property by authority of law, the respondents were unable to show any provision which authorized the State to cancel the payment of payment of family pension payable to the dependents of the employees, who are retired from service. In the

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49 (2012) 3 Mah.L.J 126

absence of any statute governing stoppage of family pension, deprivation of right to property by dependents of retired employees would amount to violation of constitutional right guaranteed under Article 300-A of the Constitution of India. In this regard, it is profitable to mention few judgments of the Apex Court and other Courts with regard to right of the state to deny payment of family pension etc.

In "***Dr.Smt. Manmohan Kaur v. The State of M.P.***[50]**"** the Gwalior Bench of Madhya Pradesh High Court had an occasion to deal with non-payment of pensionary benefits, held that deferment or non-payment of salary or part of it is illegal. In another judgment of High Court of Madhya Pradesh in "***Suresh Kumar Dwivedi and others v. State of Madhya Pradesh***[51]**"** held that the dignity of a man is inviolable, as enshrined in Article 21, which cannot assured unless his personality is developed, and the only way to do that is to educate him. Thus, the Directive Principles which are fundamental in the governance of the Country, cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution. These principles have to be read into the fundamental rights. Both are supplementary to each other.

Therefore, in the absence of any authority of law, stoppage of family pension amount to violation of constitutional right guaranteed under Article 300-A of the Constitution of India, since such stoppage is without any authority of law.

At this stage, it is relevant to refer the meaning of 'authority of law'. The Apex Court while considering the word used 'law' under Article 13 and 300-A of the Constitution of India, construed the

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50 W.P.No.3208 of 2011 dated 08.12.2014
51 1993 (0) MPLJ 663

meaning of word "Law" not only with reference to Article 13 of the Constitution of India, but also with reference to Article 300-A and 31C of the Constitution of India. The Apex Court in "***Bidi Supply Co. Vs. Union of India***[52]" and "***Edward Mills Co.Ltd. Vs. State of Ajmer***[53]" held that the law, in this Article, means the law made by the legislature and includes *intra vires* statutory orders. The orders made in exercise of power conferred by statutory rules also deemed to be law. (Vide: ***State of M.P. Vs. Madawar G.C.***[54]") The Law does not, however, mean that an administrative order which offends against a fundamental right will, nevertheless, be valid because it is not a "law" within the meaning of Article 13 (3) of the Constitution of India (Vide: ***Basheshar Nath Vs. C.I.T.***[55] and "***Mervyn Coutindo Vs. Collector, Customs Bombay***[56]")

Therefore, whatever legislation made by the Legislature or Parliament alone can be said to be law within the meaning Article 13 (3) of the Constitution of India. At the same time, the Apex Court in "***Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh***[57]" while deciding the issue with reference to Article 300-A of the Constitution of India defined the word "authority of law", held that Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to

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52 AIR 1956 SC 479
53 AIR 1955 SC 25
54 1955 (1) SCR 599
55 AIR 1959 SC 149
56 AIR 1967 SC 52
57 AIR 1982 SC 33

other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law.

In "***Hindustan Times v. State of U.P.***[58]" the Apex Court while referring to "***Bishambhar Dayal Chandra Mohan vs. State of Uttar Pradesh***" (referred supra) held as follows:

> *"By reason of the impugned directives of the State the petitioners have been deprived of their right to property. The expression 'law', within the meaning Article 300A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law."*

Thus, in view of the law laid down by the Apex Court in the judgments (referred supra), law means the legislation passed by the parliament or State Legislation or Statutory rules or orders.

No doubt, as discussed above, right to livelihood of a person can be deprived by authority of law. Article 300-A of the Constitution of India, protects right of an individual, but such right in the property can be deprived of save by authority of law.

The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very

58 AIR 2003 SC 250

much to be a part of such new dimension (Vide: ***Tukaram Kanna Joshi Vs. M.I.D.C.***[59])

Right to property of a private individual, though, permitted to be deprived of, it must be by authority of law. Still, Article 25 (1) of the Universal Declaration of Human Rights recognized such right in property as human right, which reads as follows:

> "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

India is a State Party to the declaration, but the right to property is not being considered as human right till date by many Courts. Right to property in India at present protected not only under Article 300-A of the Constitution of India, but also recognized as human right under Article 25 (1) of the Universal Declaration of Human Rights. A liberal reading of these two provisions, the intention to protect the owners of either movable or immovable only from Executive fiat, imposing minimal restrictions on the power of the State. This is in sharp contrast to the language adopted in the Indian Constitution.

Though the principles laid down in most of the judgments pertaining to non-payment of pension, the same principle can be applied to the present facts of the case as the issue relates to denial of family pension. In "***S.K.Mastan Bee v. The General Manger, South Central Railway***[60]**"** the Apex Court held that the very denial of right to family pension in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the

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59 AIR 2013 SC 565
60 (2003)1SCC184

Constitution. It is an obligation of the authority to compute the family pension and offer the same to the widow of its employee as soon as it became due to her, which is the date of the death of her husband not from the date of application.

The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of welfare scheme framed to provide relief to the widow and minor children of the deceased employee. (Vide: ***Violet Issac v. Union of India***[61]").

Relying on the said principles, the Division Bench of this Court in "***Dinavahi Lakshmi Kameswari v. The State of Andhra Pradesh***[62]" (to which I am a member) held that non-payment of pension, if not authorised by law, is violation of Article 300-A of the Constitution of India and awarded interest 12% per annum on the deferred pension.

In view of the law declared in the judgments (referred supra), it is clear that stoppage of pension to the petitioners by issuing executive instructions is illegal and arbitrary, violative of Article 14, 21 and 300-A of the Constitution of India and Article 25 (1) of the Universal Declaration of Human Rights. Accordingly, the point is answered in favour of the petitioners and against the respondents.

P O I N T No.3:

One of the major contentions of the petitioners before this Court is that the executive instructions of the State are not based on any rationale or intelligible differentia, thereby it is arbitrary. The

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[61] (1991) 1 SCC 725
[62] 2020 (5) ALT77

specific pleading of the petitioners is that the stoppage of pension without issuing any show-cause notice or providing opportunity before stoppage of payment of family pension for the month of September, 2020 intimating the same by proceedings dated 03.10.2020 stating that payment of family pension is being stopped in view of amendment made to G.O.Ms.No.315 dated 07.10.2010 by issuing G.O.Ms.No.152 dated 25.11.2019 prescribing the age limit for family pensioners as 45 years with children aged more than 18 years is contrary to principles of natural justice. A memo dated 17.03.2020 was also issued by respondent No.1 clarifying that family pension shall not be discontinued merely an account of attaining age of 45 years. It is specifically contended that most of the petitioners have no children and living alone without any source of income for their livelihood having lost their parents on whom they were dependents and family pension of their late parents is the only source of their livelihood. However, without having due regard to the said clarification, respondents Nos.8 to 11 have stopped payment of family pension for the month September, 2020 which was due to be paid on 1st October, 2020, as such stoppage of pension to the petitioners is in violation of principles of natural justice.

It is further contended that prescribing age limit for the family pensioners and to their children do not indicate, how such prescription would sub-serve the purpose for which the family pension is being paid. Therefore, stoppage of family pension to those persons who crossed 45 years of age would be ridiculous and meaningless for the reason that the need for resources would increase once they get older by age in view of increase in the personal needs and also various health issues. In fact, some of the

petitioners crossed 60 years, without any source of livelihood and unable to meet the medical needs, besides suffering from starvation, thereby, stoppage of payment of family pension has virtually driven the petitioners to serious fiscal crisis to lead their day to day life with human dignity. Thus, the impugned G.O.Ms.No.152 dated 25.11.2019 was issued without any rationale and not based on any intelligible differentia, besides arbitrary, thereby it is liable to be set aside.

Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

The respondents did not raise any specific defence for this contention in the Counter.

In general, any order passed by the State executive must be supported by reason and affording opportunity to the affected party. In the instant case, details were called for from the family pensioners by the Treasury officers and based on those details, pension payable to the petitioners was stopped/discontinued. No show-cause notice was issued to the petitioners to ascertain the financial condition of the children after attaining the age of majority or afforded any opportunity to explain their financial distress. Such Government Order without affording any opportunity to the petitioners and without issuing any notice is nothing but denial of opportunity, which amounts to violation of principles of natural justice. Therefore, such stoppage of pension to the family pensioners based on G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is illegal and arbitrary.

In "***Gangikuntal Sridhar and others v. State of Andhra Pradesh***[63]**"** Aarogya Mitras who were working under the deed of trust namely, Aarogyasri Health Care Trust were removed on the ground of misconduct without issuing any notice prior before removal and the same was questioned before the High Court on various grounds, including violation of principles of natural justice. The Division Bench held that, if anyone of the appellants therein is found committing any misconduct or their services are found not satisfactory, the Trust shall be free to proceed against them by following the principles of natural justice.

[63] 2017 (2) ALT 485 (D.B)

In "***D.K. Yadav v. J.M.A. Industries Limited***[64]**"**, the Full Bench of Supreme Court held as follows:

> *"The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.*
>
> *It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In* ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors***[65] *the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In* ***State of Orissa v. Dr. (Miss) Binapani Dei & Ors.***[66]*, this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice."*

In view of the law declared by various Courts (referred above), the order passed by the respondents stopping pension based on G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is violative of principles of natural justice. On this ground also, the impugned order is liable to be set aside.

On of the major contentions of the petitioners, as extracted above, is that the G.O.Ms.No.152 Finance (HR.III - Pension)

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[64] (1993) 3 Supreme Court Cases 259
[65] [1978] 2 SCR 272 at 308F
[66] AIR 1967 SC 1269

Department dated 25.11.2019 itself is discriminatory and without any rational basis.

Rational basis means there must be a reason for issuing administrative instructions, otherwise it amounts arbitrariness. Indian Constitution protected its citizens from arbitrary actions of the State and its subordinates by incorporating Article 14 of the Constitution of India providing equality before law and protection from unreasonable discrimination.

The latest judgment of a Supreme Court division bench in "***Rajbala v. State of Haryana***[67]" has rejuvenated the discussion in the renowned "***E.P.Royappa v State of Tamil Nadu***[68]" on the scope and content of the "arbitrary" doctrine advocated by a constitutional bench of the apex court. Arbitrariness continues to be a beleaguered doctrine since its founding.

The nexus between non-arbitrariness and Article 14 of the Constitution of India though a component of non-arbitrariness is included in the test of rational classification. In the second and third parts, the article points out that this connection, which has often been neglected in comments and decisions, could assist to address certain conceptual problems that have arisen under Article 14 of the Constitution of India in the judicial review of the state action.

The point of arbitrariness is enshrined in some Constitutions. In our Constitution, Article 14 of the Constitution of India is relevant Article. Text of Article 14 of the Constitution is both logical and intuitive. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of

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[67] AIR2016SC33
[68] (1974)ILLJ172SC

India. The Court's earliest judgments had a relatively coherent perspective of Article 14. It is widely accepted that the first part of the article which speaks of equality is a guarantee that no individual is above the law. This guarantee is affected by its corollary in the second part which provides equal protection of the legislation to individuals.

The presumption that individuals are essentially equal is a moral principle that is the anchor of this equality comprehension. However, it also includes a rule of rationality in relation to this moral principle. Any exception to equality is only permissible if the State has reasonable grounds for different treatment of individuals. Therefore, the validity of state action relies on an assessment of the reasons for state action. This is the vital connection in Article 14 of the Constitution of India between equality and rationality.

Reviewing state action pursuant to Article 14 is a sensitive classification. Its "intelligible differential" and "reasonable nexus" components are well known for the sort of experiment. What it checks at the heart of the test is whether, by evaluating why individuals are treated differently, the law makes an arbitrary classification. Therefore, the test involves both the moral principle that all people are basically equal and the rule of rationality that any classification must be justified by the State.

This point is often ignored in the discussion on the evaluation of Article 14 of the Constitution of India. In reaction to the statement made by the Supreme Court in "***E.P.Royappa v State of Tamil Nadu***" (referred supra) discovering a fresh dimension of equality based on non-arbitrariness. In "***Charanjit Lal Chowdhury***

v. Union of India[69]", the Apex Court observed as follows:

> "The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary."

Turning to the present facts of the case, by applying the test referred above, it is necessary to examine the discrimination in the common man's perception. As seen from G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 irrespective of age of the children, widowed daughter/divorced daughter are entitled to claim family pension, if they are below 45 years subject to re-marriage, proof of their living in financial distress. Whereas, widowed daughter/divorced daughter of deceased government employee, who crossed 45 years, subject to children attaining 18 years of age are disqualified to claim family pension. Thus, the State treating differently two classes of people. Such classification is not provided in the Andhra Pradesh Revised Pension Rules, more particularly, clause 12 of Rule 50 or 59 of the said Rules, but by way of executive instructions, this classification was done as if the State clarified the anomalies in the rule, but referred it as an amendment. The Government Order is neither clarification nor amendment to the existing rule. An amendment cannot be made to the rules framed by State legislature exercising power under Article 309 of the Constitution of India, by issuing executive instruction as discussed above. If it is an amendment to the existing rule 50 of the Andhra Pradesh Revised Pension Rules, 1980, *ex facie* it is illegal. If it is treated as clarification, various paragraphs in the Government Order are inconsistent with one another. Therefore, such impugned Government Order cannot be sustained. However, at this stage this

[69] AIR1951SC41

Court is concerned with rational classification. When the widowed or divorced daughter with or without children below the age, may enjoy better health than the widowed/divorced daughter, who crossed 45 years, when they become older, they will face different problems i.e. biological problems including health condition. When they become old, their health condition will deteriorate on account of their mental distress due to the death of their husbands at early age or divorce of their husbands. Therefore, the ill-effects at the advanced age are more severe than the ill-effects on the divorced or widowed daughter below 45 years. Sometimes, children of widowed/divorced daughter, may attain majority, in case of early marriages, but still they are entitled to claim family pension in view of the impugned Government Order. Even if, the children attained majority, if child is a female, the widowed daughter/divorced daughter has to perform marriage to the female child and send her to matrimonial house. It is a common man's understanding in our State, mother is not totally dependent on the family of her daughter after her marriage. In the present society, mostly in rural areas, females are not employed, but they are depending upon their husbands, who are employed or earning in different fields. In such case, the daughters are not expected to provide maintenance to their mothers, who are widowed or divorced. Besides this anomaly, on account of their age, they are being deprived of their livelihood and it is difficult for them to lead their life with dignity. Therefore, discrimination of widowed/divorced daughter below 45 years of age and above 45 years is not based on any reasonable classification and there is no rationale behind such classification. On the other hand, the present executive instructions denied equal treatment to equals. Therefore, executive instructions of the State amounts to denial of equality before law as enshrined

under Article 14 of the Constitution of India.

The necessity for a reasonable classification under Article 14 in the earlier components. Nevertheless, this was never considered a sufficient condition for guaranteeing equality. This is evident from the judgment of the Apex Court in ***"Ramkrishna Dalmia v. Justice Tendolkar***[70]", wherein it is held as follows:

1. "Where a statute itself makes the classification and the Court finds that the classification satisfies the test of reasonable classification, the court will uphold the validity of the law.
2. In cases where the statute does not make any classification but leaves it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply, the statute must be shown to contain the principles that guide this discretion. If the law fails in this regard, the court will strike down both the law as well as the executive action taken under such law.
3. Lastly, where the statute lays down such principles, but the executive action fails to adhere to these principles, the executive action but not the statute should be condemned as unconstitutional."

As is evident from the above, the guarantee of equality is not exhausted by a mere statement of classification validity. If the executive fails to behave in accordance with the law, Article 14 by its express words makes such activities unlawful. This is the impact of Article 14's clause "Equal Law Protection". In other words, a law is required under Article 14 to be non-arbitrary and, subsequently, each person is entitled to the fullest protection of the law in its application. Faced with an instance of classification that deviates from the fundamental principle of equality, the objective must be to judge on the grounds of deviation state action. The reasonable classification test is best suited for doing the job since there is no normative justification for examining any other reason behind the state action. In such a situation, judicial review is limited to the

[70] AIR1958SC538

factors supporting the classification in so far as non-arbitrariness is concerned. Where judicial review concerns the application of a law or executive policy to a class of individuals to whom it refers, the Court shall have the right to review such state action in complete to ensure that the person concerned is fully protected by the law.

As discussed in the earlier paragraphs, there is absolutely no rationale or reasonableness in the classification of widowed/divorced daughters below and above 45 years of age and the State executive while issuing instructions did not look into common man's thinking and ground realities in the State and the decision taken by the executive while issuing G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is contrary to the circumstances prevailing in the State mostly in the families of widowed/divorced daughters of the deceased employees in the gross root level. If the test of rationale or unreasonableness or arbitrariness is applied to the present Government Order impugned in this case, the said Government Order is totally arbitrary and violative of Article 14 of the Constitution of India as it is unreasonable and the executive instructions are not based on any rationale. Hence, on this ground also the impugned Government Order is liable to be struck down as it is violative of Article 14 of the Constitution of India. Accordingly, the point is held against the respondents in favour of the petitioners.

One of the major contentions urged by the petitioners in all these petitions is that the impugned Government Order cannot be given retrospective effect from the date of issue of G.O.Ms.No.315 Finance (Pension-I) Department dated 07.10.2010.

Normally, any Government Order will be given prospective effect, but in certain circumstances the Courts by interpretation of amended provisions of the Act concluded that such amendments be given retrospective effect if the amended provision deals with procedure to be followed. There are two views under Interpretation of Statues. One is "the law looks forward, not backward" based on the maxim "***Lex Prospicit non respicit***", which means that laws are generally deemed or presumed not to have retroactive. Similarly, there is another maxim i.e. "***Lex De Futuro, Judex De Praeterito***", that means the law provides for the future.

Therefore, Ex Post Facto Law, which deals with substantive rights of the parties have to be given prospective effect, but in case of procedural laws, there are conflicting views. Another legal maxim "***Nova Constitution futuris formam imponere debet non praeteritis***", which means new law ought to regulate what is to follow, not the past. The same view point has been taken in "***Monnet Ispat and Energy Limited v. Union of India and others***[71]", where the Supreme Court held that this principle operates until and unless there is an express provision in the statute stating/indicating retrospective applicability of the statutes.

In the recent judgment of constitutional bench in "***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited***[72]" the Supreme Court held that if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the

[71] (2012) 11 SCC 1
[72] (2015) 1 SCC 1

legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

The law which enacted subsequent to an act done can be said to be Ex post Facto Law, that means law which enacted after the act. An ex post facto law or retroactive law is a law that retroactively changes the legal consequences of acts committed or the legal status of facts and relationships that existed prior to the enactment of the law. Such laws can be given prospective or retrospective effect is the question to be decided by the Court and the same depending upon the intention of law and language used in the newly enacted law.

In "***New India Insurance Co.Ltd. v. Smt.Shanti Misra, Adult***[73]" the Full Bench of Apex Court considered the effect of amendment based on principle of limitation and held that the change in law was merely a change of forum i. e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or

[73] (1975) 2 SCC 840

right of action accrued prior to the change of forum and the person will have a vested right of action but not a vested right of forum.

In "***Hitendra Vishnu Thakur v. State of Maharashtra***[74]" the Apex Court laid down certain guidelines with regard to interpretation of laws, which are as follows:

> ***"(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.***
>
> ***(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.***
>
> ***(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.***
>
> ***(iv) A procedural Statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.***
>
> ***(v) A Statute which not only changes the procedure but also creates a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."***

The Apex Court in "***Hitendra Vishnu Thakur v. State of Maharashtra***" (referred supra) laid down certain guidelines. As per guideline Nos. (iv) and (v), the amended provision, which creates new right or imposes new obligation on any of the parties, cannot be given retrospective effect.

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[74] AIR 1994 SC 2623

In "***L'Office Cherifien des Phosphates v. Yamashita-Shinnih on Steamship Company Ltd.***[75]" it is clarified that the legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect.

In view of the law laid down by the Apex Court in catena of perspective pronouncements, the impugned G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019, which takes away the right of the petitioners in all these petitions to claim family pension cannot be given retrospective effect. There is no vested right to the petitioners to claim family pension as the legislature is competent to make amendments to the rules by exercising power under Article 309 of the Constitution of India. However, no further discussion is necessary on this aspect.

One of the major contentions of the respondents before this Court is that limiting payment of pension subject to certain conditions envisaged in G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is a policy decision of the State and the Court cannot interfere with such policy decision, placed reliance on the judgments of the Apex Court in "***Ekta Shakti Foundation v. Government of NCT, Delhi***" and "***Centre for Public Interest Litigation v. Union of India***" (referred supra).

There is no dispute regarding the law laid down by the Apex Court in the said two judgments. Merely because it is branding as policy decision, it cannot be interfered with by this Court is contrary to the law laid down by the Apex Court in various judgements

[75] [1994] 1 AC 486 (HL)

(referred supra). When executive action is contrary to the constitutional principles or against any statute or it violates the principles of natural justice, certainly, the Court can interfere with such policy decisions. Merely because such power is vested on the State to take policy decisions, the State is not at liberty to take any decision in the name of policy decision, which takes away the available rights of the citizenry of the State or contrary constitutional principles or law enacted by the State legislature or Parliament. Such unbridled power is not vested with the executive of the State. If interference of the Courts is restricted totally, it is difficult to control the acts of the State executive though executive orders are contrary to the constitutional principles or law enacted by the State legislature or Parliament. Therefore, no such unbridled power is vested on the State to take any decision to cause substantial damage to the fundamental rights of the citizens of the State.

It is true that the judicial review of the policy, evolved by the government, is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. In matters, affecting policy and requiring technical expertise the Court would leave the matters for decision of those who are qualified to address the issues. Unless, the policy or action is inconsistent with the Constitution and the laws are arbitrary, irrational and abuse of power, the Court will not interfere with such matters. (Vide: ***Federation of Railway Officers Association v. Union of India***[76])

When the decision taken by the Executive is tainted by mala

[76] (2003) 4 SCC 289

fide or politically motivated, the Court may interfere with such administrative decisions.

Though the State has every right to regulate its affairs, the manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of the Government, so long as, the discretion is not exercised mala fide, unreasonably or arbitrarily. However, the basis for determination is not only relevant but also fair. No direction can be given or expected from the Court regarding the 'correctness' of an executive policy, but if there is infringement or violation of any constitutional or **"statutory provision"**, the Court must interfere with such decision.

In "***M.P. Oil Extraction v. State of M.P.***[77]" the Hon'ble Apex Court observed that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State and unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive function of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same

[77] 1997(7) SCC 592

does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of the judiciary in out-stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

The same view was taken by the Apex Court in "***Ugar Sugar Works Limited v. Delhi Administration and Others***[78]" "***Bhavesh D. Parish and Others v. Union of India and Another***[79]", "***Netai Bag and Other v. State of West Bengal and Others***[80]"

Thus, the catena of decisions (referred above) directly cautioned the Courts not to interfere in the policy decisions of the State unless they are tainted by mala fide and contrary to the Statute or provisions of Constitution.

In "***Secretary of Agriculture v. Central Roig Refining Co.***[81]" Mr. Justice Frankfurter of the U.S. Supreme Court observed:

> "Congress was confronted with the formulation of policy peculiarly within its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate, restrictions upon the formulation of such an economic policy from those deeply rooted notions of

[78] (2001) 3 SCC 635
[79] (2000) 5 SCC 471
[80] (2000) 8 SCC 262
[81] (1949) 338 US 604 (617)

justice which the Due Process Clause expresses."

The Apex Court in "***M/s Bajaj Hindustan Ltd. vs. Sir Shadi Lal Enterprises Limited and Others***[82]" held that the judiciary should never interfere with administrative decisions. However, such interference should be only within narrow limits e.g. when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal.

In view of the law declared by the Apex Court, the Courts must be slow in interfering with the policy decisions of the State, but the power of the Court is not taken away in interfering with the policy decisions when they are contrary to the provisions of the Constitution or against any statute.

In the present case, as discussed in the earlier paragraphs, provisions of the Andhra Pradesh Revised Pension Rules, 1980 more particularly Rule 50 was not amended by the State legislature, but executive instructions were issued in the name of clarification and included amendment to rule. Therefore, it is neither clarification nor amendment to the Andhra Pradesh Revised Pension Rules. The State executive in utmost haste appears to have passed such serendipitous impugned Government Order even without examining the impact on the family pensioners, more particularly divorced daughter/widowed daughters of the deceased government servants and its consequences. State executive did not examine rationale

[82] (2011) 1 SCC 640

behind such classification while issuing such instructions. Therefore, executive instructions in the impugned G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is violative of Articles 14, 21 and 300-A of the Constitution of India and the Andhra Pradesh Revised Pension Rules. Therefore, this Court can interfere with such policy decision as it is violative of Articles 14, 21 and 300-A of the Constitution of India. Hence, the contention of learned Government Pleader for Services – I is hereby rejected.

Some of the petitioners also claimed interest on the arrears of family pension. In fact, the Division bench of this Court has ordered payment of interest at the rate of 12% per annum on pension in "***Dinavahi Lakshmi Kameswari v. The State of Andhra Pradesh***" (to which I am a member) (referred supra), but the Apex Court in "State of Andhra Pradesh v. Dinavahi Lakshmi Kameswari" (Special Leave to Appeal (c) No.12553 of 2020) scaled down the interest to 6% from 12% while conforming the order of this Court, the same is applicable to the present facts of the case. Therefore, based on the judgment of the Apex Court in the judgment referred supra, interest at the rate of 6% on the arrears of family pension payable to the petitioner is hereby awarded directing the respondents to pay arrears of family pension together with interest at 6% per annum.

In view of my discussion in earlier paragraphs, I find that the executive instructions will not override or prevail over the statute or statutory rules framed exercising power under Article 309 of the Constitution of India and that the G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 is violative of Articles 14, 21 and 300-A of the Constitution of India.

In the result, the writ petitions are allowed setting aside the G.O.Ms.No.152 Finance (HR.III - Pension) Department dated 25.11.2019 making it clear that the respondents shall continue to pay the family pension to the petitioners as paid to them earlier. Further, the State Government/respondents are directed to pay the arrears of family pension to the petitioners with interest at the rate of 6% per annum, from the day on which the family pension was stopped to them, within two (2) months from today. No costs.

Consequently, miscellaneous petitions pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

05.03.2021
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