



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWPs No. 1147, 1439 and 3134 of
2016 and CWP No. 2007 of 2017**

Reserved on: 09.04.2019.

Date of decision: 25th April, 2019.

1. CWP No. 1147 of 2016

Rajesh Kumar Thakur and others ...Petitioners

Versus

State of H.P. and others ..Respondents

2. CWP No. 1439 of 2016

Devender Kumar Tandon and others ...Petitioners

Versus

Himachal Pradesh Urban Development Authority and others
...Respondents

3. CWP No. 3134 of 2016

H.P.Housing and Urban Development Authority (HIMUDA)
....Petitioner

Versus

L.I.C. of India and another ...Respondents

4. CWP No. 2007 of 2017

Ashwani Kumar Kalta and others ...Petitioners

Versus

Himachal Pradesh Housing & Urban Development Authority and
others
...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting ?¹ Yes

For the Petitioner(s) :

Mr. Shrawan Dogra, Senior Advocate, with Mr. Harsh Kalta, Advocate, for petitioners in CWP No. 1147 of 2016.

Mr. Sunil Mohan Goel, Advocate, for petitioners in CWPs No. 1439 of 2016 and CWP No. 2007 of 2017.

Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate, for petitioner in CWP No. 3134 of 2016.

For the Respondents :

Mr. Vinod Thakur and Mr. Sudhir Bhatnagar, Addl. A.Gs., with Mr. Bhupinder Thakur, Ms. Svaneel Jaswal, Dy.A.Gs., and Mr. Ram Lal Thakur, Asstt. A.G., for respondents-State.

Mr. C.N. Singh, Advocate, for respondents -HIMUDA.

Mr. Narender Sharma, Advocate, for the LIC, in all the petitions.

Tarlok Singh Chauhan, Judge

Since common question of law and facts are involved in all these petitions, therefore, they are taken up together for consideration and are being disposed of by a common judgment.

2. For the sake of convenience, pleadings and documents filed and the material available in the record of CWP No.3134 of 2016, is being made the basis of decision. However, in order to maintain clarity, it needs to be observed that CWPs No.1147 , 1439 and CWP

¹ Whether reporters of Local Papers may be allowed to see the Judgment ? Yes

No. 2007 of 2017 have been filed by the serving or retired employees of the Himachal Pradesh Housing and Urban Development Authority pertaining to the grant of pensionary benefits and assailing the action of the LIC in refusal to pay pension/family pension to the petitioners or to the family(s) of the deceased member(s), who have retired or died w.e.f. April, 2014 onwards and have further assailed the consideration order passed by the LIC on 23.11.2015 pursuant to the orders passed by this Court in earlier writ petition filed by some of the petitioners being CWP No.8821 of 2014 alongwith connected writ petitions.

3. Whereas, CWP No. 3134 of 2016 has been filed by the employer i.e. H.P. Housing and Urban Development Authority (for short 'HIMUDA') against the Life Insurance Corporation of India (for short 'LIC') with the following reliefs:

- “1. Directing the respondents to pay the pension and upto date DA to the retirees of the petitioner as per the scheme without any delay.*
- 2. Directing the respondents not to withhold any amount of pension and DA in future which is payable to the present and prospective retirees as well.*
- 3. Directing the respondents to pay amount of pension and upto date DA, wrongly and illegally withhold by the respondents from the date of stoppage till the entire amount is paid with interest @ 18% per annum.*
- 4. Restraining the respondents from raising illegal demand for paying the additional amount which is not payable under the scheme with further directions not to insist the application of*

the terms and conditions of the master policy and to strictly follow pension scheme as has been mutually agreed in accordance with the scheme annexed at Annexure P-8.”

4. The State of Himachal Pradesh had earlier framed the “H.P. Corporate Sector Employees Pension, Family Pension and Commutation of Pension, Gratuity Scheme, 1999” and the same was applicable to the Corporate Employees of the State of Himachal Pradesh including HIMUDA. This scheme was applicable w.e.f. 1.4.1999. However, vide notification dated 2.12.2004, the State of Himachal Pradesh repealed the Pension Scheme with immediate effect. Nonetheless, the operation of the said scheme was saved qua those corporate sector employees, who had retired till the date of issuance of the said notification.

5. Since the State of Himachal Pradesh showed its inability to arrange for funds of pension liabilities and after repeal of the scheme, the HIMUDA considered the matter for creating a Pension Fund of its own by constituted a six Members Committee vide letters dated 31.10.2005 and 16.11.2005. The Committee so constituted, considered the question of Pension Scheme and it was found that there were two sets of employees of the petitioner, some of them were covered under CPF Scheme and some of the employees were contributing to EPF. However, it was found that on account of length of service, CPF employees could not qualify for EPF Pension Scheme,

therefore, the matter was sent to the Government for approval vide letter dated 5.10.2006. However, this proposal was returned back by the Finance Department expressing its inability to concur to the proposal. The Pension Scheme was thereafter examined by the HIMUDA with EPF Organization. However, it was found that the EPF Pension Scheme which came into existence w.e.f. 15.11.1995 could not be made applicable to the employees of the HIMUDA (erstwhile H.P. Housing Board) as most of the employees were having less than 10 years of service left. The issue of daily waged employees covered under CPF Scheme was also referred to EPF Organization, but the same was declined on the ground that such case cannot be considered favourably. This led the HIMUDA to take up the matter with the LIC for exploring possibilities of implementing any Pension Scheme.

6. The LIC represented to the HIMUDA that it has a Scheme known as "LIC Group Superannuation Cash Cumulative (Defined Beneficiary) Scheme". The HIMUDA considered the Scheme and calculated the liability with respect to 485 members + daily wagers and sent a communication dated 28.6.2005 to the LIC. Thereafter deliberations took place between the HIMUDA and the LIC and ultimately the LIC submitted revised Scheme vide letter dated 13.3.2008 and in terms thereof, the value of the past service benefits

of the employees covered under this Scheme was calculated at Rs.29.10 crores. Another communication dated 28.7.2008 regarding 12 retired employees having service benefit of DA linked pension was also calculated by the LIC which was worked out at Rs.2,27,15,000/-. The LIC vide its communication dated 25.3.2009 informed the HIMUDA that the valuation of the Scheme at the rate of 12% annual wage bill was calculated and the deficit in initial contribution was asked to be made good by the HIMUDA within a specified period.

7. The HIMUDA after approval of the Scheme from its Board of Directors requested the State of Himachal Pradesh to approve the implementation of the Group Superannuation Scheme for its 477 existing employees as on 1.4.2008 + 12 retirees and 58 daily waged employees and the same was approved by the Government vide communication dated 10.11.2008. This brought about an agreement duly agreed and signed by the LIC with HIMUDA, this led to letter dated 10.11.2008 (Annexure P-8). For the management of the aforesaid Scheme, the HIMUDA constituted a Trust with the LIC for administration and implementation of the Scheme vide Trust Deed dated 31.3.2008 (Annexure P-9). The LIC thereafter, on its own sent a sample of Master Policy to the HIMUDA, which however was never accepted, much less approved by the HIMUDA and rather the HIMUDA requested the LIC to reframe the Master Policy as per agreed

terms and conditions, but the fact of the matter is that the LIC neither replied to those communications nor revised the policy as per the agreed terms and conditions. It is the specific case of the HIMUDA that for all intents and purposes, the parties had accepted the proposal as given by the LIC vide letter dated 13.3.2008 (Annexure P-5) which thereafter culminated into a Scheme dated 10.11.2008 (Annexure P-8) and, therefore, the LIC of its own could not alter or change the terms and conditions agreed upon by the parties and, as such, the HIMUDA was not bound by the proposed Master Policy which was issued by the LIC during February, 2010 i.e. after lapse of nearly two years. It is further the case of the HIMUDA that the LIC had been disbursing the pension to the members of the Pension Scheme, who retired w.e.f. 2004 onwards. However, the LIC did not disburse any amount to the members of the Pension Scheme, who retired after March, 2014 onwards and the D.A. was not paid w.e.f. 7/2013 on the ground of insufficient funds.

8. The HIMUDA repeatedly requested the LIC to supply the details of the accounts, but the same were not supplied. Thereafter, a meeting of Pension Trust was held on 22.8.2012 wherein the issue of insufficient fund, as raised by the LIC was taken up. The HIMUDA found that the LIC as per the terms and conditions of the Scheme and the agreement was not maintaining running account and had in fact

segregated the initial contribution on highly unjustifiable grounds. The HIMUDA thereafter sent various communications to the LIC to rectify its record and calculations as the funds were not properly managed by the LIC as according to it, withdrawal of lumpsum amount segregated for payment of pension without maintaining the running account was wholly unjustified. However, the LIC instead of rectifying its illegal action in not maintaining the running account as agreed continued to maintain the accounts arbitrarily, compelling the HIMUDA to address a communication dated 13.8.2014 to Grievance Redressal Officer of the LIC. This was followed by another communication dated 20.8.2014. It is further the case of the HIMUDA that despite various communications and meetings held between the parties from time to time, the LIC only insisted on the additional amount of money which was not at all justified as per the proposal made by it to the HIMUDA prior to the implementation of the Scheme and ultimately, the LIC stopped the payment of Pension to the retirees of the HIMUDA, which led to the filing of the various writ petitions before this Court. All these writ petitions were clubbed together and vide order dated 6.10.2015 passed in bunch of writ petitions, the lead being CWP No. 8821 of 2014, titled Devender Kumar Tandon vs. H.P. Housing and Urban Development Authority and others, this Court directed the LIC to

examine the recommendations made by HIMUDA and take a decision after hearing the parties.

9. It was pursuant to the aforesaid order that the LIC has now rejected the claim of the HIMUDA in its meeting held on 23.11.2015 (Annexure P-18) as communicated to the HIMUDA. It is the specific case of the HIMUDA as also the other petitioners that the action of the LIC in rejecting the claim of the HIMUDA and its employees is highly arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution on the ground that the LIC of its own could not have altered the terms and conditions agreed between the parties wherein total amount of past service was calculated at a particular sum and, therefore, no additional contribution was required to be paid either by the HIMUDA or its employees to the LIC except as contained in revised Scheme dated 13.3.2008 (Annexure P-5) and Pension Scheme duly agreed and signed by the parties on 10.11.2008 (Annexure P-8). The LIC could not have varied the terms and conditions initially agreed on the basis of the alleged Master Policy which had never come into existence with the concurrence of the parties. The LIC is otherwise bound by the principles of promissory estoppel. Moreover, the purchase of annuities was never accepted by the HIMUDA and the LIC at no point of time had revealed to the HIMUDA that the payment of the pension was subject to the purchase

of annuities. The action of the LIC is further assailed on the ground that the LIC of its own had not been maintaining the running account as per the scheme and terms and conditions agreed upon between the parties and had withdrawn larger sum from the contributions thereby drastically reducing the balance without paying any interest upon the amount so withdrawn, which amounted to high-handed action on the part of the LIC without there being any lawful justification for the same. The LIC was bound to maintain the running account and pay the requisite interest as agreed upon. Had the LIC adhered strictly to the maintenance of true and faithful accounts, which the LIC miserably failed to do. There could not have been a question of any deficit of the amount in the pension fund. Thus, there was gross negligence and mis-management of the pension fund by the LIC to the detriment and dis-advantage of the HIMUDA and its employees.

10. The LIC has contested the petition by filing reply wherein preliminary submissions have been made to the effect that the contract of insurance is regulated strictly as per the terms of the contract. HIMUDA Employees Group Pension Trust (for short 'Trust') opted to purchase an Employees Superannuation (DA Linked) Scheme from the LIC, covering its members/employees for pension (personal as well as family pension). The pension is payable as per the Rules applicable to other State Government Employees (as per CCS

Pension Rules). Hence, the liability of the LIC to pay pension (personal or family) would increase with the increase in the salary of the member i.e. last pay drawn on the date of superannuation. Therefore, in order to keep the policy effective, it was incumbent upon the Trust (Master Policy Holder) to pay premium so calculated by the LIC on the basis of wage data made available every year (w.r.t. the pay drawn by the members in respective year) of members covered under Master Policy. It was specifically made clear to the representatives of the Trust that the premium would be calculated on the basis of wage data for the respective year/salary drawn by the members in the year. The rate of premium chargeable is roughly @ 12% of the annual salary received by the members in a year (as per wage data to be provided by the Trust). However, there can be a variation maximum upto 25% on either side of 12% depending on various factors. Therefore, due to enhancement of salary on account of release of increments, DA and pay revisions and other factors as well as induction of new members and purchase of annuities for creating provisions for releasing pension to the members superannuated, the wage data would be changed and as such the premium would definitely change. As such, the premium is to be calculated as per actuarial basis valuation. The policy was sold in the year 2008 and it was specifically made clear to the policy holder that

the premium cannot be calculated in advance and the representatives of the Trust were informed and advised specifically that due to change of various factors, it is not possible to calculate the premium in advance and as such, the policy holder/trustees were advised that the premiums shall be calculated on actuarial valuation basis, inasmuch as due to pay revision and other enhancements the salaries of the members escalated manifold about 3-5 times as a result pension liabilities would increase automatically. It is further averred that the LIC merely acts as Fund Manager and as such, manages the pension fund which is formulated strictly and adhering to the respective legal provisions of the Income Tax Act and Rules. As such, on receipt of claim for pension, the Fund Manager has to purchase annuity out of pension fund and to create provision for pension and to clear other liabilities. The LIC adhered to the provisions and had purchased annuities for clearing pension etc. However, since the Trust was not paying premium on actuarial basis (as per escalation in salary) and, therefore was not justified in seeking pension on the basis of enhanced pay drawn by the member. The method of calculation of annual premium and other queries were made clear to the Trust (HIMUDA) vide communication dated 19.3.2008. On the basis of data provided for 477 employees, initially valuation was done as per past service and it was assessed for Rs.29.10 crore against in-service

members and Rs.2.27 crore in respect of retired employees and hence total Rs.31.37 crores was assessed as initial valuation. Besides this, the Trustees are bound to pay annual premium as per calculations so done by the LIC on the basis of wage bill data provided every year. It is further averred that the LIC had provided the calculations/ statements every year clarifying each and everything, but due to non-payment of due premiums, there are inadequate funds to purchase annuity so as to clear the pension liability and, as such, the same could not be released. In reply to the merits of the petition, the averments made in the preliminary submissions have been reiterated and re-affirmed and in addition thereto, in para-7 of the reply, it has been mentioned that it was after many interactive sessions that the contract agreement was entered into between the parties and thereafter Master Policy was sold to the Trust i.e. HIMUDA.

I have heard learned counsel for the parties and have also gone through the records of the case carefully.

11. At the outset, it needs to be noticed and is otherwise fairly conceded by learned counsel for the LIC that the Master Policy in fact was never executed between the parties and the same was in fact submitted to the HIMUDA for the first time on 16.12.2009 as is evident from page-329 of CWP No. 1147 of 2016. Once that be so, obviously then the LIC cannot fall back to any terms and conditions of the Master

Policy and the instant lis shall now essentially have to be decided on the basis of the revised scheme submitted by the LIC to HIMUDA vide its letter dated 13.3.2008 (Annexure P-5), agreement duly signed by the parties on 10.11.2008 (Annexure P-8) and the provisions of the Trust Deed dated 31.3.2008 (Annexure P-9).

12. Here it shall be apposite to reproduce in verbatim the proposal sent by the LIC vide its letter dated 13.3.2008 (Annexure P-5) and the same reads as under:

“Life Insurance Corporation of India,
Branch Office, P&GS Old SBI Building, Nr. Hotel
Auckland, Lakkar Bazar, Shimla-171001

Ref: SML/P&GS

Dated: 13/03/2008

The Chief Executive-cum-Secretary,
HIMUDA, Shimla.

Respected Sir,

RE: Proposal for implementation of Group
Superannuation Scheme for your Present &
Retired Employees.

This has the reference of our earlier meeting with your good self on 12/03/2008, in this connection we are proposing revised Scheme. The Scheme is as under:

1. Name of Fund : HP Housing Board Shimla
GSCA NEW
2. Benefits Value : As per email dated 23.02.08.

3. Membership data:

Number of members : 477
Average age : 47 years.
Average Monthly salary : Rs.10400/-
Average past service : 18 years.

- NRA : 58 yrs (cat. 1) & 60 yrs (cat. 2).
4. Valuation method : Attained age method.
5. Actuarial assumption
Mortality : LIC 1994-96 (Ultimate)
Withdrawal rate : 1% to 3% depending on age
6. Results of valuation :
Value of past service benefits: Rs.29.10 crores
7. Recommended Contribution :
Annual Contribution : Rs.12% of Annual wage Bill.

The other conditions are:

1. Minimum age for eligibility of pension is 50 years
2. Pension for spouse 50% of Pension till life.
3. In case of death minimum 10 years service required.
4. Pension Formulae:

$$\frac{\text{Last Drawn Salary (Basic + DP) (years of service)}}{66}$$

5. Maximum credit for service is 33 years.
6. The pension is DA linked.
7. The pension for two children up to the age of 25 years.
8. Commutation is 33% of Pension (Basic)

PENSION FOR RETIRED EMPLOYEES:

Only one lump sum amount of Rs.2.11 crores is required and is payable in one installment. No further contribution is required. It will be NON DA linked pension.

We are enclosing list of our few clients where pension scheme is running and also enclosing commutation chart for calculation of 1/3rd of pension.

Thanking you,

With regards,

Sd/-
Sr. Branch Manager,
Shimla(P&GS)"

13. As a matter of fact, the LIC itself vide letter dated 19.3.2008 (Annexure R/1) wrote to the HIMUDA in continuation of the proposal dated 13.3.2008 (Annexure P-5) and held out as under:

"Ref. NZ/P&GS

19.03.2008

The CEO-cum-Secretary,
HIMUDA,
Shimla-2.

Dear Sir,

Re: Proposal for implementation of Group Superannuation Pension Scheme for HIMUDA Employees.

We acknowledge the receipt of your letter regarding above. We thank you for reposing confidence in us. We understand that HIMUDA is considering a superannuation scheme for their employees with the following features:

1. It is a defined benefit scheme on the pattern of other autonomous bodies of the State like yours and rules applicable to the employees of Himachal State Government Employees.
2. It is to be an index linked pension.
3. All types of pension like normal, family, invalid etc. are on the pattern of rules applicable to Himachal State Government Employees.

In this context, we would like to inform you that the valuation provided by us was done on the above parameters and our clarifications on the points raised in your letter on the above lines are as under:

I) & II) Emoluments will mean basic pay (including stagnation increment) drawn immediately before retirement or on the date of his death. An average emolument is the average of emoluments drawn by the employer during the last 10 months of his service.

III) The dearness relief for pensioner is same as dearness allowance for serving employees and it is revised every six month i.e. 1st Jan. & 1st July.

IV) Family Pension: - as per rule 54(2), Family pension shall not be less than 30% of the minimum pay.

As per rule 54(3), the enhanced pension is payable:-

a) When an employee dies while in service after having rendered at least 7 years continuous service – 50% of last pay drawn or twice the normal family pensions, whichever is less.

b) When the employee dies after retirement – 50% of the last pay drawn or twice the normal family pension or retirement pension, whichever is less.

V) Same as (IV) and (IV) a.

VI) An amount not exceeding 40% of monthly pension can be computed. The commuted pension will be restored after 15 years.

VII) The pension may be remitted by way of six post dated cheques, through Ecs wherever this facility is available or by availing direct credit facility.

VIII) The valuation will be done by us at the end of every year and annual contribution will be demanded accordingly. The pooled fund will be maintained by us and interest at the prevailing rate will be credited at the end of every financial year. The purchase price will be debited to it at the time of vesting of annuity on retirement or at the start of family pension. Further the purchase price will depend upon the prevailing security rates on the date of vesting of annuity.

IX) HIMUDA will have to be in close liaison with us for finalizing the trust deed and rules. Further, we would advise you to frame the rules as per the existing pension scheme applicable to Himachal

State Government. At the time of vesting of annuity, the prescribed claim forms signed by trustees will be required to be submitted to us. HIMUDA will be at liberty to manage the funding as per the financial planning. However, it is advised that valuation of liabilities should be investigated every year and any shortfall is to be determined and provided for. We will be informing you from time to time about the position of fund.

Illustration:

a) Basic pension =

$$(16350+8175+1226)/2*(33/33)=25751/2=12875.5=12876/-$$

$$DA = (12876*.41) = 5279$$

$$\text{Total pension} = 18155.$$

b) Value of commutation - (Assuming 40%)

$$\text{Ref. Age 58} - 10.46*12*12876*4 = 646478$$

$$\text{Ref. Age 60} - 9.81*12*12876*4 = 606305$$

$$\text{c) Pension after commutation} = 12876*.6+5279 = 7726+5279 = 13005$$

d) Family pension – 50% of (a)

We hope above queries will suffice your purpose. Kindly also make study of the pension rules applicable to the employees of Himachal State Government employees.

Yours faithfully,

Secretary (P&GS).

14. It was only thereafter that the parties entered into Agreement (Annexure P-8), some of its salient features are as under:

‘EFFECTIVE DATE’ is defined in Clause-xi of the Scheme and reads as under:

“xi) “EFFECTIVE DATE” in relation to the Scheme shall mean the 31st of March, 2008 the date as from which the Scheme takes effect.”

‘CONTRIBUTIONS AND SCHEME OF INSURANCE’ is dealt with in SECTION -II of the Scheme and the provisions of Clause 6-A

and 6-B are relevant for the adjudication of this writ petition and are reproduced as under:

“6. CONTRIBUTION:

A) These shall be paid by the HIMUDA to the Trustees in respect of each Member, the contributions hereinafter mentioned in sub-paragraph (i) annually in advance on the date of entry into the Scheme and on the relevant Annual Renewal Dates and the contributions in sub-paragraph (ii) in lump sum as stipulated hereinbelow and the Trustees shall pay the same to the Corporation for the purpose of the Scheme of Insurance.

i) Annual Contribution:

The Annual Contribution in respect of each Member would be such as is determined by LIC of India every year on the basis of valuation, which will be 12% of Annual Wage Bill (emoluments) subject to 25% variation on either side of 12% annual contribution. (It includes pay revision etc., to manage pension for HIMUDA employees).

ii) Initial Contribution for Past Service:

In respect of the Member who at the time of his entry into the Scheme has past service to his credit, lump sum contribution relating to past service may be payable as is determined by LIC on the basis of valuation on the date of entry into the Scheme. It shall be 29.10 Crores in respect of existing 477 employees of the authority as on 31.03.2008 (Letter No.SML/P&GS dated 13.03.2008 annexed A & B).

B) Scheme not contributory:

The HIMUDA shall be liable to pay contribution as per Sub-para (i) & (ii) of Para-6 above and the same shall

be paid to the Trustees and trustees in turn shall transfer the funds to LIC under the Scheme.”

15. Clause-7 provides for ‘Group pension scheme’ and reads as under:

“7. Group Pension Scheme.

For the purpose of providing pensions to the Members, the Trustees shall enter into a Scheme of pension with the Corporation where under the Corporation will issue a Master Policy. In terms of the Master Policy, the Corporation will maintain a running account in favour of the Trustees to which will be credited the contributions paid by the Trustees in respect of all the members. Every year, the Corporation will allow interest on the balances standing to the credit of the running account at the rate to be determined by the Corporation as at the close of each financial year. When a pension becomes payable to the member on his retirement or cessation of service or to his beneficiary in the event of his death, the Corporation shall on the advice of the Trustees, appropriate the accumulations of the member’s concerned to provide for payment of the pension as under:

- I) For the pension payable to the employees pensioners on retirement, voluntary retirement, disablement etc.*
- ii) For the family pension payable to the widows/widowers and/or children of the employees on their death while in service.*
- lii) For the family pension payable to the widows/widowers and/or children of the employee pensioners on their death.*
- iv) For increase in pension amount as a result of rise in DA.*

- v) *For the reversion of the commuted pension after 15 years, if any, as per Rules of the Scheme.*
- vi) *For the reversion of share of one of the widows/twin children to other widow/child.*

However, in the following circumstances the trustees will be entitled for the special commuted value:

- i) *For the decrease in pension amount due to fall in DA.*
- ii) *On remarriage of widow/widower.*
- lii) *On getting married (in case of female child), death of the child before the terminal age (say 25 years).*

16. Section – III of the Scheme deals with the 'Benefits' and specific provides for amount of pension and reads as under:

"BENEFITS.

1) Amount of Pension.

All pensionary benefits will be determined in accordance with CCS (Pension) Rules, 1972 as adopted by the State Government of H.P. for its employees and as amended from time to time, except commutation which shall be 33% of basic pension."

17. Section – V deals with 'Pension to retirees of HIMUDA' and reads as under:

"Pension to retirees of HIMUDA.

The Government of H.P. Department of Finance vides notification No. Fin.IF(c) 1-9/97 dated 29th October, 1999 formulated a pension scheme for HP Corporate Sector Employees namely HP Corporate Sector Employees (Pension, Family Pension, Commutation of Pension & Gratuity) Scheme, 1999, which stands repealed on 02.12.2004. The Authority

has considered the case into two parts viz., retirees between period 01.04.1999 – 02.12.2004 will be considered separately after decision of the court and those who have been retired between 03.12.2004 – 31.03.2008 shall be provided pension under Group Superannuation Pension Scheme of LIC as under:

- i) Pension shall be payable w.e.f. 01.04.2008 & no past arrears of pension components shall be payable.*
- ii) No commutation shall be paid.*
- lii) Pension shall be DA-Linked with family pension w.e.f. 1.4.2008.*

As far as the retirees between the period 1.4.99 to 2.12.2004 are concerned the decision will be taken after the verdict of the Hon'ble Court as matter is subjudiced and negotiation with such retirees of the Authority.”

18. It is thereafter clearly provided that in case there is anything contained in these Rules or in any alteration or amendment thereof, which is inconsistent with the objects or provisions of the Trust Deed, the provisions of the Trust Deed shall prevail. The Trust Deed between the HIMUDA and the LIC was signed on 31.3.2008 and 'Trust Fund' as mentioned in Clause-5 reads as under:

“5. Trust Fund: *The sum in cash and other assets retained by the Trustees in the Surplus Account as provided for in the Rules and the Master Policy to be issued by the Corporation shall constitute the funds of the Scheme and the Trustees shall hold and employ the said funds in accordance with these presents and the Rules. The funds shall be vested in the Trustees. The Trustees shall have the entire custody, management and control of the Trust Fund. The Trustees shall*

decide all difference and disputes which may arise under these presents or under the Rules either as to the interpretation thereof or as to the rights and objections of the Employer or of the Members or their Beneficiaries and the decision of the Trustees, shall in all cases be final and binding on all parties concerned. PROVIDED THAT if the decision has any bearing on the provision of the Income Tax Act, 1961 or the Income Tax Rules, 1962, it shall be forthwith reported to the Commissioner of Income Tax and if so required by him the Trustees shall review the decision."

19. Clause – 13 deals with 'Surplus Account' and reads as under:

"13. Surplus Account. *Any sums forfeited by the Trustees under the Rules shall be credited to a separate account called the 'Surplus Account' and may be utilised for the purpose of investment in accordance with Rule 85 of Income Tax Rules, 1962."*

20. Clause – 25 deals with 'Investments of Fund Moneys' and reads as under:

"25. Investments of Fund Moneys. *All moneys contributed to the Fund or received or accruing by way of interest or otherwise to the Fund may be deposited in a Post Office Savings Bank Account in India or in Current Account in a Saving Account with any Scheduled bank or utilised in accordance with Rule 89 of the Income Tax Rules, 1962 for making payments under a Scheme of Insurance or for purchase of Annuities referred to in the rule and to the extent such moneys as are not deposited or utilised shall be invested in the manner prescribed from time to time in Rule 85 read with Rule 67(2) of the Income Tax Rules, 1962."*

21. It would be noticed that in terms of Clause 25 of the Trust Deed dated 31.3.2008 (Annexure P-9), all moneys contributed to the fund or received or accruing by way of interest or otherwise to the fund could be deposited: (i) In a Post Office Savings Bank Account in India or; (ii) In Current Account in a Saving Account with any Scheduled Bank or; (iii) Rule 89 of the Income Tax Rules, 1962 for making payments under a Scheme of Insurance or for purchase of Annuities referred to in the rule and to the extent such moneys as are not deposited or utilised were to be invested in the manner prescribed from time to time in Rule 85 read with Rule 67(2) of the Income Tax Rules, 1962.

22. Then why it (LIC) had chosen to invest the same in annuities is not difficult to guess as the purchasing of an annuity from the Life Insurance Corporation of India is not comparable to any kinds of investments because all contracts of insurance entered into by the LIC are backed by a government guarantee which is provided by Section 37 of the Life Insurance Corporation Act, 1956. Therefore, from the point of view of safety and security of the moneys of the superannuation fund, an investment in an annuity through the LIC, provides valuable security to a beneficiary. By ensuring that the investment is made in a manner which ensures the safety of the fund

and the payment of an annuity. (Refer: **Sasadhar Chakravarty and another vs. Union of India and others (1996) 11 SCC 1**).

23. Even otherwise, Rules 85 and 89 of the Income Tax Rules, 1962, are meant to safeguard the moneys deposited in the superannuation fund and to secure to the annuitant the annuity amount. Undoubtedly, Rule 89 requires the trustees to purchase an annuity from the Life Insurance Corporation of India to the exclusion of anyone else. But this provision must be judged in the context of the fact that the contracts of life insurance which are entered into by the Life Insurance Corporation of India are backed by a Government guarantee which is provided by Section 37 of the Life Insurance Corporation Act, 1956. The payment of annuity is thus properly secured. **(Para-8 of Sasadhar Chakravarty's case (supra)).**

24. All pensionary benefits were to be determined in accordance with CCS (Pension) Rules, 1972 as adopted by the State Government of Himachal Pradesh for its employees. The pension was payable w.e.f. 1.4.2008 and no past arrears of pension components were payable. No commutation was required to be paid and pension was to be DA-linked with family pension w.e.f. 1.4.2008. The Scheme was non-contributory and the annual contribution in respect of each member would be such as is determined by the LIC every year on the basis of valuation, which would be 12% of the Annual Wage Bill

(emoluments) subject to 25% variation on either side of 12% of annual contribution. This would include pay revision etc., to manage pension for HIMUDA employees. The Scheme allowing non-contributory, the employees of the HIMUDA or for that matter the HIMUDA was not required to contribute any amount save and except the one mentioned above, as the right to get pension was came to be crystallized at the time of entering into the Scheme.

25. It is more than settled that an insurance contract is a species of commercial transactions and must be construed like any other contract on its own terms and by itself albeit subject to the additional requirement of uberrima fides i.e. good faith on the part of the insured except that the other respects, there is no difference between the contract of insurance and any other contract. In order to determine the extent of liability of insurer, terms of insurance contract have to be strictly construed without venturing into extra liberalism that might result in rewriting of the contract or substituting the terms which were not intended by the parties. (Refer: **Vikram Greentech India Limited and another vs. New India Assurance Company Limited (2009) 5 SCC 599**).

26. Equally it is settled law that the terms of the contract have to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous. (Refer: **United**

India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal (2004) 8 SCC 644).

27. Words in an insurance contract must be given paramount importance and interpreted as expressed without any addition, deletion or substitution. (Refer: **Suraj Mal Ram Niwas Oil Mills Private Limited vs. United India Insurance Company Limited and another (2010) 10 SCC 567.**

28. It would be noticed that as per the Scheme entered into between the parties, the amount to be calculated on superannuation of employee and the annuity to be purchased from LIC so as to ensure the payment by the LIC a fixed monthly sum to the retired employee or payment of annuity amount to LRs on his demise had already been worked out and it was on this basis that the LIC initially demanded a sum of Rs.29.10 crores for 477 existing employees as on 1.4.2008 and a sum of Rs.2.11 crores for retired employees as lumpsum payment (corpus fund) and were required to contribute and the Scheme being a non-contributory Scheme, the members thereof are only required to make an annual contribution which was to be 12% of the Annual Wage Bill (emoluments) subject to 25% variation on either side of 12% of annual contribution. This was to include pay revision etc. to manage pension for HIMUDA employees.

29. The LIC has claimed itself to be a Fund Manager on behalf of the HIMUDA and, hence it would be absolutely necessary or rather legitimate to assume and presume that the Scheme was signed by the LIC after working out all financial implications. Therefore, it does not lie in the mouth of the LIC to claim that since there was a manifold increase in the salary, therefore, there was a deficit in the corpus making the Scheme un-viable.

30. It has specifically been acknowledged by learned counsel for the LIC that the Scheme so formulated was designed by the employees of the LIC, who very well knew that there could be a rise in the salary as they themselves being public sector employees are presumed would be knowing or legitimately expected to know about the periodic increase in the pay scales especially after the recommendation that are made in the public sector after the receipt of the report of the Pay Commission. Therefore, the employees of the LIC could not be so naive so as to feign ignorance regarding the periodic rise in pay scale of public sector employees.

31. In such circumstances, the deficiency in the 'corpus' if any, is only and solely attributable to the lapses of the LIC and therefore, it cannot obtain any dis-advantage for their own lapse. The rights in favour of the employees of the HIMUDA and HIMUDA itself crystallized on the date of entering into the Scheme and the terms of

the Scheme because it is clearly stipulated in the Scheme that terms thereof would not be subject to any alteration/amendment especially unilaterally by the LIC.

32. In taking this view this Court is fortified by the decision of the Hon'ble Supreme Court in **Air India Employees Self-contributory Superannuation Pension Scheme vs. Kuriakose V. Cherian and others (2005) 8 SCC 404**. In that case, the Hon'ble Supreme Court took note of the factual aspects of the matter in paragraph 13 that the crucial question requiring consideration is whether the benefit, which the retired employees are getting, can be curtailed because of reduction of the fund amount. Thereafter, in para-25, various provisions of the Trust Deed were taken note of and are so dealt with in paragraphs 26 and 27.

33. Like in the case before the Hon'ble Supreme Court, the Scheme in the present case envisages a defined benefit plan and are not defined contribution plan. It also envisages allocating funds at the time of retirement of employees i.e. the amount for which the annuity is purchased. No doubt, it can be true that corpus deficiency has taken place as a result of gap between contribution and amount of annuity purchased. All the same, the basic question is whether by stopping the pension or providing the D.A. the gap can be abridged by demanding more amount from the HIMUDA or its retired employees.

34. As observed above, similar issue has been squarely answered by the Hon'ble Supreme Court in paragraphs 34 to 52 of its judgment in **Air India Employees Self-contributory Superannuation Pension Scheme's** case (supra) which read thus:

"34. It is not necessary to go into detail calculations. It does appear that there is shortfall in the Fund though a lot can be said in respect of calculation submitted by both sides. No doubt, the amount which went out of the fund for purchase of annuity for retiring employee was considerably more than what was contributed by the outgoing employee but it is also true, at the same time, that the huge amounts did not come to the fund from Air India and some of assumptions on which Scheme was formulated did not hold good on commencement of the Scheme. The reason for the position of the fund which necessitated the amendment cannot be attributed entirely on account of the gap between the amount contributed by the retiring employee and the amount used for purchase of annuity. It may also be noted that the appellant's own case is that there was basic fallacy in the Scheme from its inception. The Scheme, as originally conceived was flawed, is the stand of the appellants in CA No.4267 of 2003. It is further their own stand that concept of granting annuities on a defined benefit basis in a self-contributory fund is inherently fallacious as in the self-contributory scheme the only consideration is the contributions made by the members and hence the benefit has to necessarily flow from their contributions and the interest accrued thereon. As against this, the present is a case of defined benefit Scheme. This basic fallacy in the Scheme was never rectified from inception. It is the own case of the appellants that in addition to this inherent fallacy in the

formation of the Scheme, the situation was aggravated by various factors noticed above.

35. We would assume that there were several contributory factors as a result of which the fund position became quite bad. The factors included the non-receipt of huge funds in time from Air India, lack of proper investment by the trust resulting in loss of interest in addition to the fallacy in the scheme being gap between the contribution and the amount required for purchase of annuity to ensure return of specified amount to the retirees.

36. It may be that the last of the aforesaid factor contributed most in the depleted financial position of the fund requiring the trustees to make the amendments in the scheme on 3rd April, 2002, but it has to be borne in mind that the original scheme was a 'Benefit Defined Scheme' as opposed to a 'Contribution Defined Scheme'. It has now been conceded on behalf of the appellants that there was no fraud in formulation or implementation of the scheme. Besides aforesaid factor, there were other factors, such as, considerable delay in Air India remitting arrears of pension contribution amounting to Rs.23 crores to the trust, non-payment of interest by Air India on late payments etc.

37. The retirees received what was receivable by them according to the existing scheme on the date of retirement. The pension scheme, as originally conceived and formulated, was a rolling scheme postulating outgoing employees on retirement and their place being taken by induction of new employees whose contributions would add to the fund.

38. According to the figures given above, the shortfall in the fund was in the sum of Rs.41.83 crores which was sought to be made up from 1852 retirees. According to the retirees, if they are asked to make good that amount, on average each pensioner will have to repay a sum of Rs.2,25,863/-. At the

same time, if the amount is contributed by the existing over 16,500 employees to make good the aforesaid differential amount of Rs.41.83 crore, they would be required to pay about Rs.25,000/- each which can be split into convenient installments.

39. On distinction between 'Defined Benefit Plan' and 'Defined Contribution Plan' Mr. Arun S. Murlidhar in 'Innovations in Pension Fund Management' states :

"Defined Benefit Plans. - In the DB pension plan, participants and/or sponsors make contributions, and these contributions could change over time. The scheme then provides a defined benefit prescribed annuity in either absolute currency or as a fraction of a measure of salary (e.g., 50 per cent of final salary or the average the last five years of salary. The guaranteed pension benefit could be in either real or nominal terms. The ratio of annuity or benefit to a measure of salary is known as the replacement rate.

Defined Contribution Plans. - Under the DC scheme, participants and/or sponsors make prespecified contributions. These contributions could be specified in either absolute currency or as a fraction of a measure of salary (e.g. 5 per cent of annual pretax salary). The participants invest the contributions in assets. However, the pension depends entirely on the asset performance of accumulated contributions. As a result, two individuals with identical contributions could receive very different pensions. Bader (1995), Bodie, Marcus, and Merton (1988), and Blake (2000) provide more detailed descriptions of DB and DC plans."

(Emphasis supplied by

us)

According to learned author, there are several ways in which the aforesaid plans can be funded. In general, country's social security systems are pay-as-you-go (PAYG), defined benefit schemes which tax current participants to pay retiree benefits. However, corporate or occupational defined benefit or defined contribution schemes tend to be funded both partially and fully. Funding requires allocating funds prior to retirement in order to service future liabilities.

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

41. At the outset, it may be noted that there is no merit in the contention, half-heartedly canvassed, that the amendment is not retrospective on the ground that the rights of the retirees only after the amendment of the scheme are being effected as the amount already

paid to them under the unamended scheme is not being asked to be returned. There is fallacy in the argument. It is evident that the retirees, as a result of amendment, are being asked to pay to make good the gap between the amount of annuity and the contributions made by them and, if not, either their monthly pension would be reduced or their heirs would not get the annuity amount at the relevant stage. The amounts already taken by the retirees have also been taken into consideration while working out the figures. Therefore, it cannot be said that the amendment is not retrospective. Various clauses on the basis whereof learned counsel for the appellants contend that it is permissible to amend the scheme with retrospective effect have already been noted hereinbefore. To consider the effect thereof and to appreciate contentions urged by learned counsel for the appellants, first let us examine the true meaning of expression 'Annuity'.

42. The expression 'annuity' has no statutory definition. However, according to Black's Law Dictionary, it means an obligation to pay a stated sum usually monthly or annually to a stated recipient.

43. An annuity is a right to receive de anno in annum a certain sum; that may be given for life, or for a series of years; it may be given during any particular period, or in perpetuity; and there is also this singularity about annuities, that, although payable out of the personal assets, they are capable of being, even, for the purpose of devolution, as real estate; they may be given to a man and his heirs, and may go to the heir as

real estate (see : Advanced Law Lexicon by P Ramanatha Aiyar, 3rd Edition 2005).

44. In Commissioner of Wealth Tax v. P.K.Benerjee [(1981) 1 SCC 63], the Hon'ble Supreme Court held that in order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon or on any ground relating to the general income of the fund or estate which is charged for such payment. The court cited with approval the observations of observations of Jenkins L. J in *In-re Duke of Norfolk Re, Public Trustee v. Inland Revenue Commr.* [(1950) Ch 467] which reads thus:

"An annuity charged on property is not, nor is it in any way equivalent to an interest in a proportion of the capital of the property charged sufficient to produce its yearly amount. It is nothing more or less than a right to receive the stipulated yearly sum out of the income of the whole of the property charged (and in many cases out of the capital in the event of a deficiency of income). It confers no interest in any particular part of the property charged, but simply a security extending over the whole. The annuitant is entitled to receive no less and no more than the stipulated sum. He neither gains by a rise nor loses by a fall in the amount of income produced by the property, except in so far as there may be a deficiency of income in a case in which recourse to capital is excluded."

45. Learned counsel for the appellants have, however, placed strong reliance on the Trust Deed and

the Rules to contend that the Trustees have full right to amend the Scheme with retrospective effect and that the members or beneficiaries have no right, title or interest in the fund or even in the annuities purchased from the fund on the retirement of beneficiary. In this respect, reliance is placed upon Clause 5 of the Trust Deed above reproduced stating that the Trustee may at any time with previous concurrence or approval in writing of the employer alter, vary or amend any of the provisions of the Trust Deed and the Rules. The first proviso to the aforesaid clause, however stipulates that no such alteration or variation shall be inconsistent with the main objects of the Trust thereby created. Reliance has also been placed to Clause 8 of the Trust Deed stipulating that except as provided for in this Deed or Rules, no member, beneficiary or other person claiming right from such member shall have any legal claim, right or interest in the Fund. But, the proviso to the said clause enjoins upon the Trust Deed to administer the Fund for the benefit of the members and/or their beneficiaries in accordance with the provisions of the Deed and the Rules. Reliance on Clause 24 has been strongly placed submitting, inter alia, that the members' Fund shall consist of contributions as specified in the Trust Deed and the Rules governing the Fund and contributions received by the Trustees from the Air India and of the accumulations thereof and of the securities and annuities purchased therewith and interest thereon and that the said Fund shall be established for the benefit of the members and/or their beneficiaries and shall be vested in the Trustees. Further, Clause 26 is relied

upon which stipulates that the trustees may enter into any scheme of insurance or contracts with the LIC to provide for all or any part of the benefits which shall be or may become payable under this deed and may pay out of the Fund all payments to be made by it under such scheme or contracts.

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

47. None of the aforesaid clauses render any assistance to the appellants. The relied upon clauses deal with the members who continue to contribute to the Fund. The liability of the retiring member to make any such contribution ceases on retirement. It is nobody's case that after the retirement any contribution is made or required to be made by retired employees. The aforesaid clauses only show the right and power to review the Fund and the benefits payable to the continuing members/employees. Likewise, reliance on Rule 14 which stipulates that the member or his

beneficiary shall not have any interest in the master policy taken out in respect of the members in accordance with the Rules of the Scheme but shall be entitled to superannuation benefits in accordance with the Rules, has no applicability. The retired employees are not claiming any interest in the master policy but are claiming right flowing from the annuity purchased on their retirement.

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

49. [In Sasadhar Chakravarty & Anr. v. Union of India & Ors.](#) [(1996) 11 SCC 1], the question arose as to when the right of an employee to receive annuity and the quantum thereof gets crystallized. In that case, the employer had set up a non-contributory superannuation fund under the provisions of [Income Tax Act](#), 1961. On retirement, under the rules of the fund, the retired employee was receiving an annuity under the policy purchased by the members of the fund from LIC. A writ petition was filed by retired employee contending that certain improvements have been effected in the executive staff fund to which the pensioners who had already retired were entitled and denial thereof was arbitrary and violative of [Article 14](#) of the Constitution. The retired employee claimed right to the larger benefits which though not available at the time of his retirement but were being given to the employees who retired after the improvements to the fund have been made. This Court held that the right of the employee to receive an annuity and the quantum thereof get crystallized at the time of purchase of the

annuity under the then existing scheme of the LIC and any subsequent improvements in a given pension fund scheme would not be available to those persons whose rights are already crystallized under the scheme by which they are governed because the amounts contributed by the employer in respect of such persons are already withdrawn from pension fund to purchase the annuity. With reference to Rules 85 and 89 of Income Tax Rules, this Court held that the same are meant to safeguard the monies deposited in the superannuation and to secure the annuitant annuity amount. Undoubtedly, Rule 89 requires the Trustee to purchase an annuity from the LIC to the exclusion of any one else but this provision must be judged in the context of the fact that the contracts of life insurance which are entered into by the LIC are backed by a government guarantee which is provided by [Section 37](#) of the Life Insurance Act, 1956. The Court observed right of an employee to receive the annuity and the quantum gets determined at the time when the annuity is purchased. Any subsequent improvement in a given pension fund will benefit only those whose moneys form part of the pension fund. As soon as an employee retires, an annuity is purchased for his benefit under Rule 89, there remains no scope for any fresh contribution on his account so as to entitle him to an increased pension prospectively on the basis of the improvements made subsequently in the pension scheme of a fund since the existing pensioners form a distinct class.

50. The decision was sought to be distinguished on the ground that in the said case, this Court was

concerned with the scheme financed by the employer unlike the present scheme where employer's contribution was almost nil and that it was self-contributing scheme. We are, however, unable to accept this contention. The ratio decidendi of the case is that the moment annuity is purchased, the fund leaves the corpus and the relations between the two are snapped. The corpus to the extent required for purchase of annuity leaves the trust fund and all connections between trust fund and retirees are severed. Thus, once the annuity is purchased, there remained no connection with the quantum of the fund. Therefore, annuitants are in no way concerned with the financial position of the fund for which annuity was purchased. They cannot be asked to further contribute. That is the basic question in the present case. It matters little that the present case is of reverse position inasmuch as in the case of Sasadhar Chakravarty this Court was considering the case of a retired employee who was seeking right in the improvement whereas in the present case the question is about reducing the benefits or rights of the retired employees. The question is about applicability of the principle. Applying the principle in Sasadhar Chakravarty's case to the present case, we have no doubt that after retirement retirees are not liable for any deficit in the fund which is sought to be made good by recovery from them which is the effect of retrospective amendment. Further, as already noted it was a benefit and rolling scheme as opposed to a contributory scheme. Neither clauses 32 and 33 or the Trust Deed nor Rule 14 has any applicability on

question of retrospective operation of amendment to the retired employees. It has been admitted that the form of insurance annuity policy with LIC was adopted as a result of mandate of the statute. Having done that, the appellants are bound by the consequences flowing from purchase of annuity. In view of what we have said above there is neither any substance in the contention that contract was between LIC and the trustees nor is it of any consequence in view of our conclusion that the amount, on retirement of employees, leaves the fund for purchase of annuity and the rights of the retirees are crystallized on their retirement by purchase of annuity and thus no amount can be claimed from them by making applicable amendment dated 3rd April, 2002 with retrospective effect. Therefore, we find no substance in the second contention.

51. The contention that there is no privity of contract between LIC and the retired employees as contract for purchase of annuities is between trust and LIC, has also no substance. In Chandulal Harjivandas v. Commissioner of Income-tax, Gujarat [AIR 1967 SC 816] insurance policy was purchased by the father of the assessee and the life assured was that of the assessee. The claim of assessee for rebate of insurance premium under Section 15(1) of the Income Tax Act, 1922 was rejected. On reference, the High Court upheld this view of the Revenue holding that contract of insurance with LIC was entered into by the father of the assessee and that the contracting parties were the father of the assessee and the LIC. This court reversing decision of the High Court held that the contract of insurance must be read as a whole; in

substance it is a contract of life insurance with regard to the life of the assessee and that the main intention of the contract was the insurance on the life of the assessee and other clauses are merely ancillary or subordinate to the main purpose, under [Section 2](#) (11) of the [Insurance Act](#), the purchase of annuity amounts to purchase of an insurance policy. It would make no difference, in the present case, as to who made the payment.

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

35. Apart from the above, this Court is of the considered view that the doctrine of promissory estoppel is clearly applicable to the facts of the instant case as there has been non-considerable departure of the subject matter by one party (LIC) which has been adopted by the other party (HIMUDA) and its employees which is the basis of relationship and it is more than settled that such departure cannot be allowed.

36. Reliance in this regard can conveniently be made to a celebrated decision of the Hon’ble Supreme Court in **Motilal**

Padampat Sugar Mills Co. Ltd. Vs. State of U.P. (1979) 2 SCC 409

and as followed in the **State of Punjab vs. Nestle India Ltd. (2004) 6**

SCC 465 and **Manuelsons Hotels Private Limited vs. State of**

Kerala and others (2016) 6 SCC 766. The appellant therein (Motilal

Padampat's case (supra) before the Hon'ble Supreme court was primarily engaged in the business of manufacture and sale of sugar.

An insurance was given by the State Government in that case that new vanaspati units in the State which go into commercial production

by 30.9.1970 would be given partial concession in sales tax for a period of three years. The appellant having set up such vanaspati unit

thereafter went into the production of vanaspati on 2.7.1970 and sought exemption. The Government apparently turned around and

rescinded its earlier decision of January, 1970 in August 1970, by which time the factory of the appellant had gone into commercial

production. The writ petition was filed in the High Court of Allahabad seeking exemption of sales of vanaspati manufacturer from sales tax

for a period of three years commencing 2.7.1970 as per the promise held out. The High Court turned down the plea which led to filing of an

appeal before the Hon'ble Supreme Court after discussing the authorities in detail, the Hon'ble Supreme Court held: (SCC pp. 442-

44, para 24)

"24.The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a

promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by [Article 299](#) of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in *Indo-Afghan Agencies*, AIR 1968 SC 718 and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive

action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public

interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisalment of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability.

This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Ajayi v. R.T. Briscoe (Nigeria) Ltd. (1964) 1 WLR 1326."

37. The Hon'ble Supreme Court further went on to hold that it was not necessary for the petitioner to show that it had suffered any detriment, and it was enough that the petitioner had relied upon the promise or representation held out, and altered its position relying upon such assurance. Importantly, the Hon'ble Supreme Court held in paragraph 33 as under:

"33. "Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by

its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant."

38. After having so held, the Hon'ble Supreme Court then went on to hold that since the Government is bound to exempt the appellant from payment of sales tax for a period of three years w.e.f. 2.7.1970, being the date of commencement of the production of vanaspati, the appellant would not be liable to pay any sales tax, subject only to the State's claim to retain any part of such amount under any provision of law. In the absence of such claim, the State would have to refund the amount of sales tax collected by it from the appellant with interest thereon.

39. In the present case too, after having entered into a Scheme and thereafter created a Trust with an eyes wide open, the LIC cannot back out from its promise and it is clearly doing so especially when the Master Policy has not been executed between the parties.

40. In view of the aforesaid discussion, I find merit in these petitions and the same are accordingly allowed and consequently the proceedings of the LIC held on 23.11.2015 (Annexure P-13) are quashed and set-aside and the LIC is directed to pay pension and uptodate D.A. to the retirees of the HIMUDA as per the Scheme without any delay and are further directed not to withhold any amount of pension and DA in future, which is payable to the present and prospective retirees. Lastly, the LIC is restrained from raising any illegal demand for paying any additional amount since the amount other than which was mutually agreed in accordance with Scheme (Annexure P-8) as admittedly the said amount already stands paid to the LIC.

41. These petitions are disposed of in the aforesaid terms, leaving the parties to bear their own costs. Pending applications, if any, also stand disposed of.

25th April, 2019
(GR)

(Tarlok Singh Chauhan)
Judge