

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO(S). 88 OF 2015

FEDERATION OF COAL INDUSTRIES RETIRED
EMPLOYEES ASSOCIATION AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

O R D E R

This Writ Petition has been filed under Article 32 of the Constitution of India. We think that it would be more appropriate for the Petitioners to approach the High Court so that this Court may have the benefit of a judgment on the matter. It is contended by learned Senior Counsel that several High Courts may have jurisdiction on the subject matter. He further contends that the principal relief is directed towards the Union of India.

In these circumstances, we transfer the present Writ Petition to the High Court of Delhi to be heard in accordance with law.

.....J
(VIKRAMAJIT SEN)

.....J
(SHIVA KIRTI SINGH)

NEW DELHI
FEBRUARY 27, 2015

ITEM NO.11

COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 88/2015

FEDERATION OF COAL INDUSTRIES RETIRED
EMPLOYEES ASSOCIATION AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(with appln. (s) for directions)

Date : 27/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Ravindra Shrivastava, Sr. Adv.
Mr. Navin Prakash, Adv.
Ms. Pulkit Tare, Adv.
Ms. Medha Srivastava, Adv.
Mr. Anshuman Shrivastava, adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This Writ Petition is transferred to the High Court of
Delhi in terms of Signed Order.

(NEELAM GULATI)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No. of 2015

In

WRIT PETITION (CIVIL) NO. OF 2015

IN THE MATTER OF:

Federation of Coal Industries

Retired Employees Association & Ors.

.. Petitioners/ Applicants

Versus

Union of India & Ors.

.. Respondents

APPLICATION FOR DIRECTIONS

To

Hon'ble the Chief Justice of India and his other Companion Justices of the Hon'ble Supreme Court of India.

The humble Application on behalf of the
petitioners/applicants abovenamed

MOST RESPECTFULLY SHOWETH:

1. That the petitioners/applicants, both in individual and representative capacity, have this day filed the aforesaid writ petition under Article 32 of the Constitution of India for, inter alia, upward revision of pension payable to the retirees of the Coal Industry under the Coal Mines Pension Scheme, 1998 (hereinafter referred to as 'the Pension Scheme') framed under the provisions of Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as 'the CMPF Act'). The petitioners have also prayed for a declaration of cut off date of 01.04.1994 (that is, those employees of Coal Industry who have retired prior to 01.04.1994 do not get pension) as unconstitutional, illegal and contrary to the law declared by this Hon'ble Court.
2. That facts and circumstances giving rise to the aforesaid petition have mentioned in detail therein and for the sake of brevity and to avoid repetition, the same are not repeated herein. However, the petitioners crave leave of this Hon'ble Court to refer to and rely upon the same at the time of hearing of this Application.
3. That inspite of upward revision in wages, there is no corresponding revision of pension for the retirees of the Coal Industry. It is submitted that denial of upward revision of pension to the retirees who retired before revision of the wages is highly unjust, arbitrary and discriminatory. Pension of those retirees who have retired prior to wage revisions has remained static, that is, they are getting the same pension amount which was fixed at the time of their retirement even though there has been upward wage revisions and the price index has gone up. This has resulted into a situation where an old retiree is getting far less pension than a new retiree from the same post and/or grade. Not only that, an old retiree who might have held post much higher to a new retiree retiring from a lower post, the new retiree is getting higher pension than the old retiree. Even the lowest category of worker say Category I Mazdoor gets much higher Pension than the Chairman Coal India Ltd. Retiring in 1994.

4. That one of the grievances of the petitioners is that the pension of the retirees of the Coal Industry has not been revised ever since inception of the said Pension Scheme in 1998. The other grievance is that the contribution of the Central Government to the Pension Fund created for the purposes of paying pension under the Pension Scheme is meagre and has remained static ever since 1971. The Central Government is required to make its contribution to the Pension Fund under Clause 3(e) of the Pension Scheme. Proviso to sub-clause (e) of Clause 3 of the scheme (which has also been impugned in the writ petition) puts a ceiling on the contribution made by the Central Government to the Pension Fund. It provides that the contribution payable by the Central Government shall be equal to two third percent of maximum salary of rupees one thousand six hundred per month only. The said ceiling as prescribed in the impugned Proviso has not been revised; it has remained Rs.1600/- per month ever since 1971 which was fixed for Family Pension Scheme whereas in respect of similar pension scheme under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'), the said ceiling as on date is Rs.15,000/- per month (Annexure P-10 which also ensures minimum monthly pension of Rs.1000/-). It is submitted that because of the said impugned Proviso, monthly contribution of the Central Government in respect of an employee is only Rs.26.56 per month which has remained constant since 1971 till date whereas for a similar pension scheme under the provisions of the EPF Act, monthly contribution of the Central Government has been revised and raised from Rs.11.60 to Rs.174.00 between 1971 and 2014. Revision similar to the pension scheme under the EPF Act has not been carried out in respect of Pension Scheme under the CMPF Act.

5. That it is further stated and submitted that failure to revise pension for the Petitioners is also in breach of the policy of the Government of India expressed through an Office Memorandum of the Government of India, being No. 45/10/98- P&PW(A), dated 17.12.1998 (Annexure P-9), which, inter alia, states that "The President is now pleased to decide that with effect from 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner...."(1.1.1996 is the date of revision of pay based on Fifth Pay Commission recommendations). It is submitted that the said directive incorporates doctrine of equality and ensures minimum pension in a fair manner.

6. That in the circumstances aforesaid, it is submitted that this Hon'ble Court may be kind enough to direct the respondents to work out a method whereby immediate relief of upward revised pension by way of interim relief be granted to the petitioners. One of such just and equitable methods without bringing any change in the Pension Scheme and without much arithmetical jugglery could be to revise the pensionable amount of each of the retiree by taking into consideration the rise in Price Index from the day the retired employees are entitled to the monthly Pension from a particular base year, say at 1960 base, and, by way of interim relief, additionally pay only 50% of the enhanced amount on account of rise in Price Index. This would provide great succour and relief to the retirees of the Coal Industry of the country. However, by way of interim measure, any other method may be evolved or any other suitable directions may be made by this Hon'ble Court.

7. That the present Application is made bonafide and in the interest of justice.

PRAYER

In the premise, it is most respectfully prayed that this Hon'ble Court may be pleased to pass

(i) an ex parte ad interim order directing the respondents to raise the pensionary benefits by neutralizing 50% rise in Price Index from the day the retired employees are entitled to the monthly Pension under the Coal Mines Pension Scheme, 1998; or, in the alternative,

(ii) an ex parte ad interim order directing the respondents to additionally pay such amount, in addition to the pensionable amount, as this Hon'ble Court may deem fit and proper;

(iii) an ex parte ad interim order and/or direction staying operation of the impugned cut off date of 01.04.1994 so as to make the Coal Mines Pension Scheme, 1998 applicable to all retired employees of the Coal Industry irrespective of date of their retirement and the respondents be further directed to pay pension to all such retired employees under the provisions of the Coal Mines Pension Scheme, 1998 with immediate effect; and

(iv) such other order and/or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE PETITIONERS, AS IN DUTY BOUND,
SHALL EVER PRAY.

Petitioners/Applicants

Drawn and Filed by

(Navin Prakash)
Advocate for the petitioners

New Delhi
Date: 20.01.2015

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2015

IN THE MATTER OF:

1. Federation of Coal Industries Retired
Employees Association,
Having its office at Shakuntla Villa, Plot No. 185
Nari Ring Road, Jaripatka, Nagpur- 440014
(Through its President,
Jagdish Narayan Singh)
2. Jagdish Narayan Singh
Retired Director (Personnel)
South Eastern Coalfields Limited
Resident of 104, Uma Shanti Apartment
Kanke Road
Ranchi-834 008 (Jharkhand)
3. Nandkishore Mishra
Son of Late Shri Jamuna Mishra,
Resident of Vidyapati Nagar, Kanke Road,
Ranchi, Post-Ranchi University,
P.S.-Gonda, District Ranchi, Jharkhand
4. Naresh Chandra Mishra
Son of Late Shri Dwarka Prasad Mishra
Resident of 104, Ganga Kaveri, Raj Nagar
Nagpur.
5. Shyam Kishore Chowdhary,
Son of Late Jaybhadra Chowdhary,
Resident of 7, Paschimi Marg, Vasant Vihar,
New Delhi-110057.
6. Mangudi Panchapakesa Narayan,
Son of Late Shri M.K. Panchapakesa Iyer,
Resident of S-56A, Panchshila Park,
New Delhi-17.
7. Bhikhan Singh,
Son of Late Shri Camtu Singh
Sakin Damodar, Post-Khariyo,
P.S.-Topchanci, District-Dhanbad,
Jharkhand.
8. Damsani Sanjeeva Reddy,
Son of Late Ramaiah@Rami Reddy,
Resident of H.No. 7-1-13, Post Office-Basthi,
Near I-Town Police Station, Bellampalli
Pin-504251, Adilbad, Telangana State.

IN THE SUPREME COURT OF INDIA
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IN THE MATTER OF:

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Employees Association,
Having its office at Shakuntla Villa, Plot No. 185
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(Through its President,
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Resident of 104, Uma Shanti Apartment
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Ranchi-834 008 (Jharkhand)
3. Nandkishore Mishra
Son of Late Shri Jamuna Mishra,
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Near I-Town Police Station, Bellampalli
Pin-504251, Adilbad, Telangana State.

9. Easampelli Posham,
Son of Mallaiah, Resident of
H.No. 21.02.87/12, Near Shivalayam Temple,
Markandeya Colony, Godavarikhani,
Ramagundam Mandal,
Karimnagar District, PIN-505209, Telangana State.

--PETITIONERS

-Versus-

1. Union of India
Ministry of Coal
Through its Secretary
3rd Floor, Shashtri Bhavan
New Delhi.
2. Chairman
Board of Trustees of Coal Mines Provident Fund,
3rd Floor, Shashtri Bhavan,
New Delhi.
3. Commissioner
Coal Mines Provident Fund
Post Box No. 58,
Police Line Hirapur
Dhanbad- 8216001
Jharkhand.

... RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF, INTER ALIA, WRIT OF MANDAMUS AND/OR ANY ORDER AND/OR DIRECTION TO THE RESPONDENTS TO REVISE THE PENSION OF THE RETIRED EMPLOYEES OF COAL INDUSTRY AND ALSO FOR QUASHING OF CERTAIN PROVISIONS OF THE COAL MINES PENSION SCHEME, 1998 BEING ARBITRARY, DISCRIMINATORY AND ULTRA VIRES OF THE COAL MINES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1948

To

Hon'ble the Chief Justice of India and his other Companion Justices of the Hon'ble Supreme Court of India.

The humble petition on behalf of the petitioners
abovenamed

MOST RESPECTFULLY SHOWETH:

9. Easampelli Posham,
Son of Mallaiah, Resident of
H.No. 21.02.87/12, Near Shivalayam Temple,
Markandeya Colony, Godavarikhani,
Ramagundam Mandal,
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1. Union of India
Ministry of Coal
Through its Secretary
3rd Floor, Shashtri Bhavan
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Board of Trustees of Coal Mines Provident Fund,
3rd Floor, Shashtri Bhavan,
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To

Hon'ble the Chief Justice of India and his other Companion Justices of the Hon'ble Supreme Court of India.

The humble petition on behalf of the petitioners abovenamed

MOST RESPECTFULLY SHOWETH:

1. The Petitioners, both in representative as well as individual capacity, are constrained to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution for protection of their Fundamental Rights under Article 21 of the Constitution against continuous and persistent violation by the Respondents and in the nature of Petitioners' right to receive pension after retirement. The Petitioners respectfully submit that pension payable to them under Coal Mines Pension Scheme, 1998 (hereinafter referred to as 'the Pension Scheme') has not been revised even once since inception in the year 1998 in complete dereliction of duty resulting in a payment of pension of very meagre amount in complete negation of rising price index rendering the Pension Scheme to the Petitioners wholly illusory and arbitrary. It virtually results in denial of pension. The Petitioners are also aggrieved by fixation of an arbitrary cut-off date (01.04.1994) as coverage of the retirees under Coal Mine Pension Scheme, which is unconstitutional and in violation of law laid down by this Hon'ble Court. The serious injustice to the Petitioners and similarly situated retirees would be evident from the facts stated in the following table which are only illustrative:

Petitioner No.	Post from which retired	Date of retirement	Years of service put in	Monthly pension payable
2	Director (Personnel) from South Eastern Coalfield Ltd.	31.01.2004	36	Rs.8187/-
3	General Manager (Finance) from Central Coalfield Ltd.	28.02.1997	37	Rs.2426/-
4	General Manager (Legal)	28.02.1994	25	Nil.
5	Chairman-cum-Managing Director of Coal India Ltd.	31.12.1994	35	Rs.2344/-
6	Chairman-cum-Managing Director of Coal India Ltd.	31.07.1991	36	Nil.
7	Worker from BCCL	31.01.2008	42	Rs.178/-
8	Hauler Operator from Singareni Collieries Co. Ltd.	31.10.1994	37	Rs.496/-
9	Coal Cutter from Singareni Collieries Co. Ltd.	30.04.1990	39	Nil.

The aforesaid anomaly, disparity and discrimination are prevalent amongst retirees from different posts throughout the country. The Petitioners are, therefore, seeking directions against the respondents for upward revision of pension in terms of Clause 22 of the Pension Scheme published vide G.S.R. 123(E) dated 05.03.1998 and brought into force with effect from 31.03.1998 vide Notification No. S.O. No. 233(E) dated 20th March 1998, issued by the Respondent No. 1; for declaration that Provision to sub-clause (e) of Clause 3 of the Pension Scheme, which puts a ceiling on contribution of the Central Government to the Pension Fund under the Pension Scheme, is discriminatory and ultra vires the parent Act, viz., The Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as 'the CMPF Act') which provides for grant of pension to the retired employees of the Coal

1. The Petitioners, both in representative as well as individual capacity, are constrained to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution for protection of their Fundamental Rights under Article 21 of the Constitution against continuous and persistent violation by the Respondents and in the nature of Petitioners' right to receive pension after retirement. The Petitioners respectfully submit that pension payable to them under Coal Mines Pension Scheme, 1998 (hereinafter referred to as 'the Pension Scheme') has not been revised even once since inception in the year 1998 in complete dereliction of duty resulting in a payment of pension of very meagre amount in complete negation of rising price index rendering the Pension Scheme to the Petitioners wholly illusory and arbitrary. It virtually results in denial of pension. The Petitioners are also aggrieved by fixation of an arbitrary cut-off date (01.04.1994) as coverage of the retirees under Coal Mine Pension Scheme, which is unconstitutional and in violation of law laid down by this Hon'ble Court. The serious injustice to the Petitioners and similarly situated retirees would be evident from the facts stated in the following table which are only illustrative:

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Industry; and for quashing of Definition Clause 2(fa) which defines "date of retirement" as beginning on or after 01.04.1994 and that part of sub-clause (4) of Clause 4 of the said Pension Scheme which denies pension to those employees of the Coal Industry who have retired prior to 01.04.1994. The petitioners are also seeking a direction against the respondents to pay old retirees a monthly pension not less than 50% of the pension drawn by a new retiree in the same rank/grade. A true copy of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 is filed as **Appendix 'A'**. A true copy of the said Pension Scheme is annexed hereto and marked as **Annexure P-1**.

2. That the Petitioner no. 1 is a Federation of various Associations of Coal Mines pensioners/retired / superannuated employees from the services of M/s Coal India Limited and its various subsidiary companies and M/s Singareni Collieries Company Limited, the former being a Government of India Undertaking and the latter one is a Government Company. The Petitioner no. 1 Federation is a Society registered under the provisions of Societies Registration Act, 1860 bearing No. Mah-91/14 (Nag). The petitioner Federation is also registered as a Public Trust under the provisions of the Bombay Public Trust Act, 1950 bearing No. F-31966 (Nag). True translated copies of the Certificate dated 11.02.2014 issued by the Assistant Registrar, Nagpur and Certificate dated 12.04.2014 issued by the Assistant Trust Commissioner, Nagpur and true copy of the Resolution dated 11.05.2014 of the Executive Committee of the petitioner Federation authorising its President to file and pursue the present Writ Petition have been filed along with Vakalatnama. The petitioner no. 2 was working in various Coal Companies and retired as Director (Personnel) on 31.01.2004 at South Eastern Coalfields Ltd. The petitioner no. 2 is also the President of the petitioner no. 1 Federation and, as stated above, is authorised and competent to represent the petitioner no. 1. The petitioner nos. 3 to 9 are also retirees and the respective details have been given in the Table contained in the preceding paragraph. It can be seen that some of the petitioners are not getting pension at all, some are getting only pittance and some of them who have retired from senior posts are getting no or lesser pension than those who have retired from junior posts.

3. That the respondent no. 1 is the Ministry of Coal under the Government of India. The respondent no. 2 is the Chairman of the Board of Trustees as constituted under the provisions of Section 3A of the CMPF Act. At present the Secretary, Ministry of Coal, Government of India is also the Chairman of the Board of Trustees of Coal Mines Provident Fund. The respondent no. 3 is a statutory creation under Section 3C of the CMPF Act and is the Chief Executive Officer of the Board of Trustees. The respondents are amenable to the writ jurisdiction of this Hon'ble Court.

4. That it is stated that ever since inception of the Pension Scheme in 1998, which is a contributory pension scheme but without being linked with price index, implemented with effective from 31st March, 1998, the constituents of Petitioner no. 1 federation have been making representations highlighting the anomalies in the Pension Scheme and for revision of pension to various authorities since pension of the retirees of Coal Industry has never been reviewed and/or revised till now despite revision in the wages on three occasions and the cost of living having gone up several times. It is submitted that non-revision of the Pension Scheme has led to many anomalies. Some of the retirees are still getting a paltry sum ranging between Rs. 49 to Rs. 168 monthly pension during the period 2009 to 2014. This is revealed under the information furnished by Office of the C.M.P.F. Commissioner, Respondent no. 2, by a letter dated 03.11.2014, a copy of which is annexed hereto and marked as **Annexure P-2**. An ex-Chairman (petitioner no. 3) Coal India Ltd. (CIL), who retired on 31.12.1994, continues to receive a monthly pension of Rs. 2344/- without any revision, whereas another ex-Chairman (Shri P.S. Bhattacharyya) who retired on 28.02.2011 gets a monthly pension of Rs. 29607/-, that is, 12.6 times more than the said earlier retiree Chairman. Any Chairman of C.I.L. retiring on and after 30.09.2014 would receive monthly pension of Rs. 59781/- or more, i.e., 25.5 times than Rs. 2344/-. Such anomalies are present in all categories of retired employees. Minimum Pension of an employee retiring on 01-04-94 would be Rs.330/- against Rs. 5224/- who is retiring on 01.09.2014.

5. That it is submitted that in view of the dictum of this Hon'ble Court that pension is not a matter of bounty or grace payable at the sweet will, pleasure and discretion of the Government, the respondents are obliged to revise the pension Scheme so that the retirees of the Coal Industry get respectable amount of pension commensurate with the requirement of present days living, rising price index and old age.

6. That the Petitioner no. 1 and/or its constituent members, from time to time, for almost a decade, have made several representations, sent legal notices and held meetings with the officials of the Respondents, but no tangible action has been taken by the Respondents to revise the pension. In order to avoid repetitions and not to make the present writ petition bulky, the Petitioners are annexing hereto one of the latest representation dated 31.05.2014, reminder letter dated 04.08.2014, reply letter dated 12.08.2014 (with a better typed copy) of the Hon'ble Minister of State for Coal and further letter dated 11.10.2014 of the petitioner Federation which are marked as Annexures P-3, P-4, P-5 and P-6 respectively. It is pertinent to mention here that one of the constituents viz., Coal Mines Retired Executives Association of the petitioner Federation addressed 11 letters to the Respondent No.1, the first one dated 30.11.2006 and the last one on 17.9.2012. Seven letters were addressed to the Hon'ble Minister right from the year 2008 to 2011, in addition to the aforesaid letter dated 31.5.2014 (Annexure P-3). Representation to the Hon'ble Prime Minister was also made by a letter dated 09.01.2013. Likewise several letters were addressed to the Respondent No. 3, the C.M.P.F. Commissioner right from 25.7.2005 onwards, but of no consequence.

LEGAL PROVISIONS

7. That the matters of grant of benefits of Provident Fund and Pension to the retired employees of the Coal Industry in the country are governed under the provisions of the CMPF Act and the schemes framed thereunder. Section 3 of the said CMPF Act provides of framing of a scheme, namely, The Coal Mines Provident Fund Scheme, by the Central Government for establishment of Provident Fund for employees of coal mines and said Fund is to be administered by a Board to be constituted under the said Act. Section-3E which was first inserted in 1971 in the CMPF Act, provided for framing of a scheme to be called the Coal Mines Family Pension Scheme for the purposes of providing family pension and life assurance benefit to such employees who were covered under Coal Mines Provident Fund Scheme. Section 3E of the CMPF Act as it stood in 1971 reads as follows:

"3E. Coal Mines Family Pension Scheme. (1) The Central Government may, by notification in the Official Gazette frame a scheme to be called the Coal Mines Family Pension Scheme for the purpose of providing family pension and life assurance benefit to such employees as are covered by the Coal Mines Provident Fund Scheme.

2. There shall be established, as soon as may be after framing of the aforesaid scheme, a Family Pension Fund into which shall be paid from time to time in respect of every such employee—

(a) such portion, not exceeding one-fourth, of the amount payable under sub-section (1) of section 10D as the employer's contribution as well as the employee's contribution, as may be specified in the said Scheme, and

(b) such sums, being not less than the aggregate of the amount payable in pursuance of clause (a) out of the employer's contribution under sub-section (1) of section 10D and an amount equivalent to one-sixteenth of the employer's contribution under that sub-section in respect of such employee, as the Central Government may after due appropriation made by Parliament by law in this behalf, specify.

(3) The Family Pension Fund shall vest in and be administered by the Board.

(4) Any scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule.”

8. That pursuant to the aforesaid provisions of Section 3E (as it stood in 1971), the Central Government had framed a Scheme known as Family Pension Scheme, 1971 which envisaged pension of negligible amount and limited to the dependents of the deceased employees. It was, therefore, felt necessary to carry out amendments in the Family Pension Scheme to provide livelihood after retirement of coal workers. An amendment to the principal CMPF Act was carried out in the year 1996 and the old Section-3E was substituted by a new Section-3E (which came in to force with effect from 31.03.1998 vide Notification No. S.O. 232 (E) dated 20.03.1998) whereby the Family Pension Scheme of 1971 ceased to operate and the Central Government framed a new Scheme known as the Coal Mines Pension Scheme, 1998 for the purposes of providing pension to the retired employees of coal mines and also to the dependants after the death of the Pensioner. The new section-3E as inserted in 1996 reads as follows:

“3-E. Coal Mines Pension Scheme.—(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for-

(a) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(b) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums, not exceeding one-fourth, of the amount payable to the Fund under sub-section (1) of section 10-D as the employer’s contribution as well as the employee’s contribution, as may be specified in the Pension Scheme;

(b) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify;

(c) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and

(d) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Board in such manner as may be specified in the Pension Scheme.

(5) A scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule.”

9. That it may be noted that under the provisions of Section 3E, as it stood in 1971 and amended in 1996, a Pension Fund has been created, corpus of which has been created from the Provident Fund established under the CMPF Act. As such, Pension Fund is largely dependent upon the Provident Fund; it is not that the Government or the employer exclusively contributes to the Pension Fund.

10. That under the provisions of Section 3F, a duty has been cast upon the Central Government to meet all the expenses in connection with the administration of Coal Mines Pension Scheme to be framed under Section 3E. Section 3F reads as follows:

“3-F. Special grant by Central Government.—The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay such further sums as may be determined by it into the Pension Fund to meet all the expenses in connection with the administration of the Coal Mines Pension Scheme other than the expenses towards the cost of any benefits provided by or under the said Scheme.”

THE COAL MINES PENSION SCHEME, 1998

11. That as per the provisions of Section 3E, the Central Government in 1996 framed The Coal Mines Pension Scheme (in short, the Pension Scheme) which was published on 05th March, 1998 [Vide G.S.R. 123 (E)] and came to be implemented with effect from 31st March, 1998 vide Notification No. 233(E) dated 20.03.1998. A true copy of the said Pension Scheme has already been annexed as Annexure P-1.

The relevant Paragraphs/Clauses of the Pension Scheme are reproduced hereinbelow:

“2. Definitions.—In this Scheme, unless the context otherwise requires,—

(fa) “date of retirement” means the date of retirement beginning on or after the first day of April, 1994;

(g) “employee” means an employee of the coal mines in respect of which the Coal Mines Provident Fund Scheme have been made applicable;

...

(o) “pensionable service” means—

(i) the two-third of the period of actual service rendered by an employee from the date of opting for the Coal Mines Family Pension Scheme, 1971 and up to the 31st day of March, 1989, except the period for which no contribution has been made to the Family Pension Fund, and

(ii) the actual service rendered by an employee from the first day of April, 1989 or the date of joining the service, whichever is later, to the date of retirement or the death in service except the period for which no contribution has been made to the Family Pension Fund or the Pension Fund, as the case may be;

...

3. Establishment of the pension fund.—From the appointed day the pension fund shall stand established which shall have the sole purpose of the provision of the payment of pension in accordance with the Scheme to the employee or his family or the payment of any amount which may have accrued under the provisions of the Coal Mines Family Pension Scheme, 1971, immediately before the appointed day. The pension fund shall consist of the following:—

(a) net assets of the Coal Mines Family Pension Scheme, 1971 as on the appointed day;

(b) an amount equivalent to two and one-third per cent. of the salary of the employee, being the aggregate of equal shares of the employee and the employer from their respective contributions to the fund, to be transferred from the appointed day from the fund of the employee;

(c) an amount equivalent to two percent of Basic and dearness allowance paid to the employee from the first day of April, 1989 or the date of joining, whichever is later, up to the 31st day of March, 1996, and two per cent. of the notional salary of the employee from the 1st day of April, 1996 or the date of joining, whichever is later, to be transferred from his salary;

(d) an amount equivalent to one increment to be calculated on the basis of the salary of the employee as on the first day of July, 1995 or the date of joining, whichever is later, to be transferred from the first day of July, 1995 or the date of joining, whichever is later, from the salary of the employee; and

(e) an amount equivalent to one and two-third per cent. of the salary of the employee to be contributed by the Central Government from the appointed day:

Provided that in the case of an employee whose salary exceeds rupees one thousand six hundred per month, the contribution payable by the Central Government shall be equal to the maximum of the amount payable on the salary of rupees one thousand six hundred per month only;

(f) amount to be deposited in terms the provisions of the proviso to sub-paragraph (2) and (4) of paragraph 4.

4. Eligibility for Pension:

.....

(4) An employee who was a member of the Coal Mines Family Pension Scheme, 1971 on the date of his superannuation or date of his retirement, on or after the first day of April, 1994, may also opt for the pension under the provisions of this Scheme.....”

.....

10. Monthly pension.—(1) An employee after completion of thirty years of pensionable service and on attaining the age of superannuation, shall be eligible to receive monthly pension at the rate of twenty-five per cent. of the average emoluments or not less than rupees three hundred and fifty from the date following the date of superannuation till the date of his death.

.....

22. Valuation and review of the Pension Fund:

(1) The Commissioner shall be responsible for valuation of the Pension Fund every third year by an Actuary to be approved by the Board. The recommendations of the Actuary shall be placed by the Commissioner before the Board.

(2) The Commissioner may initiate action for enhancement and revision of the amount of Family Pension admissible under the Coal Mines Family Pension, 1971 and

after approval of the Board may recommend to the Central Government for amendment in the provisions of this Scheme.

(3) At any time, when the Pension Fund so permits, the Board on the recommendation of the Actuary may recommend to the Central Government and with its approval may amend the rates of contributions payable under the Scheme or the scale of any benefits admissible or the period for which such benefit may be allowed”.

GRIEVANCES AND SUBMISSIONS:

A. Non - Revision of Pension

12. That the first and foremost grievance of the petitioners is that the Pension Scheme has never been revised upwardly ever since its inception in the year 1998. It is submitted that Clause 22 of the Pension Scheme, which has statutory force, casts a duty upon the respondents for revision of Pension Fund once in three years. This duty has not been discharged by the respondents.

13. That it is submitted that it was expected that with increase in production of coal (which has undoubtedly increased from 1998 onwards) the number of contributing members to CMPF will increase along with rise in wages, which would ensure “upward revision of pension” every third year as detailed under clause 22 of the Pension Scheme, 1998. The 1st, 2nd, 3rd, 4th and 5th revisions were due in 2001, 2004, 2007, 2010 and 2013 respectively. However, pension has not been revised despite several representations, notices and reminders to the respondents for upward revision of pension. The respondents have been denying upward revision of the pension mainly on the ground of inadequacy and/or depletion of the Pension Fund and at the same time giving false assurance to the pensioners that they would carry out Actuarial study as provided in Clause 22 of the Coal Mines Pension Scheme, 1998.

14. That it is submitted that after introduction of the Pension Scheme in 1998, the pay of the Coal workers were revised upward as detailed below :

TABLE

Computation Based on Minimum Wage of the Lowest category employee

National Coal Wage Agreement (NCWA)	NCWA – VI	NCWA- VII	NCWA-VIII	NCWA- IX	
	1.7.96 to 3.6.2001	1.7.2001 to 30.06.2006	1.7.2006 to 30.6.2011	1.7.2011 to 30.6.2016	
	As on 1.7.96 As on 1.4.98	As on 1.7.2001	As on 1.7.2006	As on 1.7.2011	As on 1.4.2014
Minimum wages	Rs. 3689.23 Rs. 4220.53	Rs. 6204.62	Rs. 9346.06	Rs.17565	22216
AICPI (1960 = 100)	1562 1813	2191	2716	4245	5501
Corresponding Minimum Pension	1055	1550	2337	4391	5554
Ratio (times)	(1)	(1.5)	(2.2)	(4.16)	(5.26)

15. That inspite of such steep rise in wages, there is no revision of pension for the Petitioners. It is submitted that denial of upward revision of pension to the retirees who retired before such revision of the wages is highly unjust, arbitrary and discriminatory. Pension of those retirees who have retired prior to wage revisions has remained static, that is, they are getting the same pension amount which was fixed at the time of their retirement even though there has been upward wage revisions and the price index has gone up. This has resulted into a situation where an old retiree is getting far less pension than a new retiree from the same post and/or grade. Not only that, an old retiree who might have held post much higher to a new retiree retiring from a lower post, the new retiree is getting higher pension than the old retiree. Even the lowest category of worker say Category I Mazdoor gets much higher Pension than the Chairman Coal India Ltd. Retiring in 1994.

16. That non-revision of pension with the revision of wages has resulted into serious discrimination amongst the retirees with reference to date of retirement. For example, if an employee who retired on 01.04.1994 and whose pensionable service would not be more than 17 years was entitled to a monthly pension of Rs.330.59 whereas another employee working in the same grade who retires on 01.07.2006 on 3rd wage revision and whose pensionable service is computed as 30 years, is entitled to get monthly pension of Rs.2337/- and yet a third employee of the same post/grade, who retires on 01.04.2014 on 4th wage revision and whose pensionable service is also computed as 30 years, would be entitled to get a monthly pension of Rs.5554/-. Thus, only because of three different dates of retirement, three employees of the same post/grade would be getting different amounts by way of pension. This applies to all categories of employees. This discrimination could be avoided, if not fully but to a large extent, if pension is also revised with revision of wages. This is depicted from the contents of Tables which are annexed hereto and marked as **Annexure P-7**. The computation depicted under this Annexure is for the lowest category of Coal Workers. Similar computation has been indicated for highest grade of executive and Chairman (Schedule A Director) of Coal India Ltd under **Annexure-P8**.

17. That it is further submitted that failure to revise pension for the Petitioners as aforesaid is also in breach of the policy of the Government of India expressed through an Office Memorandum of the Government of India, being No. 45/10/98- P&PW(A), dated 17.12.1998, which, inter alia, states that "The President is now pleased to decide that with effect from 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner...."(1.1.1996 is the date of revision of pay based on Fifth Pay Commission recommendations). It is submitted that the said directive incorporates doctrine of equality and ensures minimum pension in a fair manner. A true copy of the said Office Memorandum dated 17.12.1998 is annexed hereto and marked as **Annexure P-9**.

18. That the petitioners are hereby also seeking relief for old retirees that not less than 50% of pension that new retirees from the same post/grade receive, be paid to them on the parity of the aforesaid Memorandum dated 17.12.1998. It is submitted that even otherwise, pension of the old retirees deserves to be revised upwardly. The then Chairman Coal India in his letter dated 25.01.2011 addressed to the Secretary (Coal), Respondent No.1, had mentioned about such upward revision. The said letter has been referred to and deliberated hereinafter.

19. That it may be noted that the criteria of 'pensionable service' and 'eligibility for pension' are very stringent, unreasonable and discriminatory. There is no justification or rationale for reckoning only 2/3rd of the service period from the date of opting for Coal Mines Family Pension, 1971 till 31st day of March, 1989 and not the full period of service. Further, if a retiree falls short of 30 years of pensionable service, his pension would be proportionally reduced and may be even less than Rs. 350/- as provided

in Clause 10. The minimum pension of Rs. 350/- is guaranteed to only those who have pensionable service of 30 years. Those who did not complete pensionable service of 30 years, they got less pension than Rs. 350/- per month. The determination of pensionable service dependent on the service rendered in coal mines against service rendered between 1971 to 31.3.89 was only to the extent of 2/3rd of the service, that is to say that service of 18 years was reduced to 12 years of pensionable service period, and no weightage of service was given beyond 30 years. There are many retirees who do not have pensionable service of 30 years to their credit and their pension has been accordingly reduced to as low as Rs.49/- per month. The respondent no. 2 in his communication dated 03-11-2014 (Annexure P-2 hereto) has informed the same.

B. Arbitrary Cut-off Date (01.04.1994) for coverage of Coal Mines Pension Scheme

20. That it is further submitted that the Pension Scheme is ex facie arbitrary and discriminatory inasmuch as it does not take within its ambit those retirees who have retired prior to 01.04.1994 as has been provided in Clause 4(4) and as defined in Clause 2(fa) of the Pension Scheme. It is pertinent to state here that The Family Pension Scheme, 1971 did not restrict any employee member based on enrolling as the members of CMPF whereas the Coal Mines Pension Scheme, 1998 covers only those employees who have retired on or after 01.04.1994. It is submitted that there is no rationale and justification behind choosing cut off date of 01.04.1994, i.e., excluding those who have retired prior to 01.04.1994. This is in clear violation of the law laid down by this Hon'ble Court in D.S. Nakara and Ors. V. Union of India – AIR 1983 SC 130 [(1983) 1 SCC 305], wherein it has been, inter alia, held as follows:

“..... If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory.”

Thus, the law laid by this Hon'ble Court clearly mandates that old retirees cannot be ignored and they have to be treated at par with the new retirees. It is submitted that the fixation of cut-off date as aforesaid is wholly arbitrary, devoid of any intelligible and rational differentia and results in deprivation of a legal benefit constituting hostile discrimination and violates Articles 14 and 21 of the Constitution.

21. That it is submitted that the aforesaid cutoff date, which is impugned herein, is liable to be struck down. It is further submitted that the Pension Scheme be made applicable to all retirees of the Coal Industry irrespective of their date of retirement.

C. Dereliction of Statutory and Public Duty by Respondent no. 1 in failing to provide requisite funds

22. That for the purposes of granting benefits to the retirees under the said Pension Scheme, a Pension Fund has been created under Clause 3 of the Pension Scheme. It can be seen that the Pension Fund under the Pension Scheme is raised from the corpus of the Provident Fund established under the CMPF Act. Contribution to the Provident Fund is made by the employees and the employer as provided under Section 10D of the CMPF Act. There is no contribution by the employer exclusively for the Pension Fund. 2.32% of the salary is diverted from the Employees Provident Fund (out of 24% of salary) and such contribution should not be considered as contribution, even half of this amount, by the employer. The Central Government is required to make its contribution to the Pension Fund under Clause 3(e) of the Pension Scheme. There is virtually no contribution by the Central Government and

the fund has remained static ever since 1971. Further, Proviso to sub-clause (e) of Clause 3 of the scheme puts a ceiling on the contribution made by the Central Government to the Pension Fund. It provides that the contribution payable by the Central Government shall be equal to two third percent of maximum salary of rupees one thousand six hundred per month only.

23. The grievance of the Petitioners is that the ceiling prescribed in the aforesaid Proviso of the scheme, which is piece of subordinate legislation, and is impugned herein, is ultra vires the parent Act, namely, the CMPF Act. It is submitted that Section 3E(2)(b) of the CMPF Act which obligates the Central Government to contribute to the Pension Fund does not put any ceiling as has been provided in Proviso to Clause 3(e) of the Pension Scheme. As such, the impugned Proviso is in conflict with and restricts the scope of Section 3E(2)(b) and, therefore, ultra vires the CMPF Act. The said impugned Proviso of the Scheme is liable to be struck down by this Hon'ble Court as being violative of Article 14 of the Constitution as well as the parent act..

24. It is submitted that because of the aforesaid impugned Proviso, there is virtually no contribution of the Central Government to the Pension Fund and is an impediment in revision of the Pension Scheme. Even the said ceiling as prescribed in the impugned Proviso has not been revised; it has remained Rs.1600/- per month ever since 1971 which was fixed for Family Pension Scheme whereas in respect of similar pension scheme under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'), the said ceiling as on date is Rs.15,000/- per month. It is further stated that the salary which was Rs. 1600/- in 1971 has gone up to Rs. 62,000/-, but Central Government still contributes to the extent of 1.66% of Rs.1600/-. The minimum wages of Coal Workers for the lowest category of Worker is Rs. 17565.93 per month as on 01.07.2011 (the implementation day of the National Coal Wage Agreement-IX) which is rising every quarter based on rise in AICPI.

25. It is submitted that because of the said impugned Proviso, monthly contribution of the Central Government in respect of an employee is only Rs.26.56 per month which has remained constant since 1971 till date whereas for a similar pension scheme under the provisions of the EPF Act, monthly contribution of the Central Government has been revised and raised from Rs.11.60 to Rs.174.00 between 1971 and 2014. Revision similar to the pension scheme under the EPF Act has not been carried out in respect of Pension Scheme under the CMPF Act.

26. That it is stated that in respect of similar pension scheme under the EPF Act, there has been periodic revision. By way of a latest amendment vide Notification No. Co-ord/3(6)2011/Amendment Scheme dated 28.08.2014, a copy of which alongwith enclosures thereto (with better typed copy) is marked as Annexure P-10, the wage ceiling has been enhanced from Rs.6,500/- to Rs.15,000/- and thereby the contribution of the Central Government to the Pension Fund has increased. This Notification also ensures minimum monthly pension of Rs.1000/-. It is submitted that similarly the wage ceiling for the purposes of contribution by the Central Government in respect of Pension Scheme under the CMPF Act ought to be revised.

27. That a comparative feature of contributions made by the Central Government to the pension schemes under CMPF Act and EPF Act is shown in the following Table:

TABLE

**CENTRAL GOVERNMENT'S CONTRIBUTION TO PENSION FUNDS
(LIMIT OF PAY FOR CONTRIBUTION)**

Year	CMPF	EPF
Commencement	Family Pension Fund	Family Pension Fund

Date	Pension Fund			Pension Fund		
	Limit of pay (Rs)	Payment at the rate of	Annual (Rs.)	Limit of pay (Rs.)	Payment at the rate of	Amount (Rs.)
1971	1600	1.66% of pay	26.56	1000.00	1.16% of pay	11.60
11.12.1976 to 31.08.1995	Do	Do	Do	1600.00	Do	18.56
01.09.1985 to 31.10.1990	Do	Do	Do	2500.00	Do	29.00
1.11.1990 to 30.09.1994	Do	Do	Do	3500.00	Do	40.60
1.10.1994 to 31.05.2001	Do	Do	Do	5000.00	Do	58.00
01.06.2001 to 31.08.2014	Do	Do	Do	6500.00	Do	75.00
01.09.2014	Do	Do	Do	15000.00	Do	174.00

28. That it is submitted that because of meagre contribution of the Central Government to the Pension Fund there has been gradual depletion of the Pension Fund. The contribution of the Government has remained constant at the rate of Rs. 26.56 per month per employee, as brought out above, and there is gradual reduction in contribution by the Government in absolute terms also. It contributed a sum of Rs. 41.22 crores in 1998-99 which has come down to Rs. 15 crores in the year 2013-14. This is so because of reduction of membership of the CMPF mainly due to engagement of contractors for production of coal and removal of overburden (the stones and rubbish lying over coal seam). It is roughly estimated that more than 60% of production of CIL and Singareni Collieries Company Ltd. comes through contractual operation. Both of them produce about 90% of Coal in India. All the contract workers are entitled to be the members of the C.M.P.F. but only a few of them are enrolled as members of the CMPF. Even such contract workers who have been enrolled as members of the CMPF get much less pay than what is mandated under the Contract Labour (Regulation and Abolition) Central Rules, 1971. The Rule 25 (2-v-a) mandates equal pay to the contract workers as are paid to the principal employer's employees for the same or similar kind of work. Therefore, the contribution by such members to the Pension Fund is minimal. The Table below indicates the mammoth rise in production and at the same time huge reduction in the membership of the CMPF.

Table *

Element	Year 1998-99	Year 2013-14	% Increase/decrease (+)/ (-)
Number of CMPF members	793936	<u>413959</u>	(-) 47.86%
All India Coal Production	296.5 Million Tonnes	565.77 Million Tonnes	(+) 90.82%
No. of Pensioners	896	<u>435065</u>	No. of pensioners is more than the Live members of the CMPF.

*The figure related to CMPF is as per the information furnished by the Office of the Commissioner of the CMPF which is annexed as Annexure P-2. The figure on production is known through reliable source.

29. That in the circumstances aforesaid, it has become imperative that the Pension Scheme be revised and the other reliefs, as prayed for, be granted to the petitioners.

D. INACTION ON THE RECOMMENDATION OF CHAIRMAN, COAL INDIA LIMITED

30. That it is pertinent to state that the then Chairman, Coal India Limited Shri P.S. Bhattacharyya vide his letter dated 25.01.2011 addressed to the Respondent no.1, Secretary to the Government of India, Ministry of Coal appreciating the grievances of Coal India retirees, made categorical recommendations for revision and enhancement of pension. It would be apt here to quote the relevant part of that letter:

“4. Admittedly, the pension of old retirees is paltry by to day’s standard since the pay on retirement of those employees was significantly lower than those in the same scale/grade retiring currently. While inflation indexation of pension may not be possible in this case, one may consider a provision that allows upward adjustment of pension to retirees pursuant to pay revision of workmen/officers such that old retirees in the same scale/grade shall not draw pension lower than 50% of the pension drawn by the current retirees. In other words, if a supervisory staff at the end of scale A1, after putting in pensionable service of 30 years or so, retiring today gets a pension of about Rs. 8000/- per month, the supervisor who retired ten years ago shall draw @ 50% of that i.e. Rs. 4000/- per month. As against Rs. 2000/- (Approx) that he currently draws under the Scheme.

5. If such a decision is taken in principle, it will protect the interest of the old pensioners. This may be done only after proper actuarial valuation of the fund is carried out after implementing other measures to strengthen it besides considering the suggestions mentioned at Para 3 above. These measures could be as follows:-

a) 1-1/6% of the basic pay is paid by the Government to the Fund. However, for this purpose, the maximum basic pay considered is only Rs. 1600/-. It is substantially lower than the highest basic pay prevailing to day. CIL may be advised to consider supplementing this amount to the extent of 1-1/6% of the current basic pay minus the amount being paid by the Government to the Fund.

(1-1/6% is an inadvertent mistake. Instead of 1-1/6% it is 1-2/3%)

b) An increment is notionally paid to the employees and recovered for onward transmission to the fund. However, this increment continues to be on the old pay scale. This payment made by the coal companies, may be revised and increment at the current scale may be notionally paid to the employees and recovered for onward transmission to the pension fund. This will enhance the financial burden of CIL to some extent, but it will strengthen the fund to a great extent.

c) NCWA-VIII is due to expire in June 2011 and NCWA-IX shall be in force from 01.07.2011. CIL may be advised to create a consensus in the JBCCI that out of the increase in pay and perks, at least 2% of the pre-revised pay or 10% of the increase in pay, whichever is higher shall be diverted to the CMPF Pension Fund.

6. A decision may be taken at the appropriate level to get the CMPF Pension Fund evaluated actuarially after the above modifications are carried out. This will enable the BoT to take such decision as may be required for arriving at a long term solution to the problem."

A true copy of the said letter dated 25.01.2011 (alongwith better typed copy) is annexed hereto and marked as Annexure P-11. This letter was addressed after a prolonged meeting on 6th July 2010 in the Ministry of Coal. The meeting was taken by the Additional Secretary (Coal) and attended by the Chairman C.I.L. and other officials from C.M.P.F organisation and the representatives of one of the constituents of the Federation, namely by Coal Mines Retired Executives Association, who also attended as they were invited by the Ministry to attend the said meeting. A consensus was reached during that day's meeting as brought out under para 4 of the letter marked as Annexure P-11 hereto.

34. The recommendation of the Chairman, Coal India Limited as aforesaid has fallen on deaf ears of the Respondent no. 1 which has failed to take any action and redress the grievances of the Petitioners. Such an inaction of the Respondent no. 1 is wholly callous and arbitrary and shows complete apathy.

35. That in view of the aforesaid, the petitioner Federation and/or its constituents having represented to the Respondents in persuading them to revise the pensionary benefits, as demonstrated and submitted above, and the Respondents having failed to discharge their constitutional, statutory and social responsibility in providing and revising the pension benefits, the Petitioners are left with no alternative but to invoke Article 32 of the Constitution of India to approach this Hon'ble Court, in directing and commanding the Respondents with appropriate writ or writs, order(s) and or directions on the following grounds, amongst others, that may be urged at the time of hearing and which are without prejudice to each other:

G R O U N D S

(1) BECAUSE the impugned Pension Scheme as existing today in application to the Petitioners, is ex-facie discriminatory and violates Articles 14 and 21 of the Constitution of India. The pension being paid to the Petitioners under the impugned Scheme at present is completely bereft of all the attributes of a just, fair and reasonable pension. The pension is being offered to the Petitioners under the impugned Scheme by way of pittance rather than a legal right of the Petitioners who have retired from services after completion of full service and as such have earned a right to pension in a non-discriminatory manner.

(2) BECAUSE the inaction on part of the Respondents to perform their legal duty of public nature in revising and upgrading the pension periodically commensurate with rising price index, is callous, negligent and arbitrary dereliction of duty, violating Petitioners' Fundamental Rights under Articles 14 and 21 of the Constitution of India. The pension payable at present to the Petitioners does not even accord to them minimum dignity to which they are entitled as retirees under Article 21 of the Constitution of India.

(3) BECAUSE in the provision for pension, as laid down under the CMPF Act, 1948 and the Pension Scheme, 1998, there is an implicit legal duty on the Respondents to timely and periodically revise the pension, which having not been done, despite several representations and also the recommendation of the Chairman, Coal India Limited vide his letter dated 25.01.2011, is grossly arbitrary and results in virtual denial of pension to the Petitioners in a just, fair and reasonable manner.

(4) BECAUSE the cut-off date (01.04.1994) imposed by Clause 2(fa) read with Clause 4(4) of the Pension Scheme for the purposes of granting pension to the retirees of the Coal Industry, is grossly

arbitrary and discriminatory. The cut-off date creating hostile classification amongst same class of persons equally situated as retirees is without any reasonable, permissible and intelligible differentia, and as such is per se discriminatory violating Article 14 of the Constitution of India. There is no rational basis for fixation of the cutoff date as 01.04.1994, due to which a class of retirees who retired prior to 01.04.1994, and in particular Petitioners nos. 4, 6 and 9 herein, have been totally denied the benefit of the Pension Scheme. Such denial and discrimination is totally unjustified. The discriminatory provisions of the impugned Scheme i.e. Coal Mines Pension Scheme, 1998, is accordingly liable to be struck down as unconstitutional.

(5) BECAUSE the action and inaction of the Respondents in not providing contribution to the pension fund as obligated by the provision of the CMPF Act of the Parliament in a manner and to the extent it is necessary to ensure payment of pension to the Petitioners under the Pension Scheme is unjust, arbitrary and discriminatory, besides it amounts to serious dereliction of duty. It is submitted that the Respondents are under statutory obligation to provide contribution to the pension fund, which as demonstrated hereinabove, has not been done. Consequently, the Petitioners have been made to suffer irreparably in the matter of payment of pension to them. The contribution presently being made by the Respondent no. 1 to the pension fund is complete denial of the legal obligation of the Respondent no. 1 to make contribution to the pension fund. It is such a meagre and unrealistic amount that it cannot be described as contribution at all.

(6) BECAUSE proviso to sub-clause (e) of clause 3 of the Pension Scheme which imposes a ceiling on the contribution required to be made by Respondent no. 1 to the pension fund is arbitrary, discriminatory and also ultra vires the provisions of the parent Act. Under Section 3E of the CMPF Act, while the Legislature has cast a statutory obligation on the Respondent no. 1 to provide contribution to the pension fund for the purposes of payment of pension to the Petitioners, the Legislature has not imposed any ceiling or cap on the contribution to be made by the Respondent no. 1. The same is however, being done by the impugned proviso to sub-clause (e) of clause 3 of the Pension Scheme, which being in the nature of subordinate legislation cannot be inconsistent and in derogation of the provisions of the parent Act. It is submitted that the Legislature in not providing any cap on the duty of the Respondent no. 1 to provide contribution to the Pension Fund has recognized the role and duty of the Respondent no. 1 as parental authority under obligation to ensure that the amount of pension payable to the retirees at any given point of time is just fair and reasonable amount and not merely pittance. The impugned proviso to sub-clause (e) of Clause 3 of the Pension Scheme is therefore ultra vires the Constitution of India as well as Section 3E of the CMPF Act, 1948.

(7) BECAUSE it is well settled in law that it is the State's obligation to provide public assistance in old age to ensure to the citizens decent standard of life, medical aid, freedom from wants, freedom from fear and the enjoyable leisure, relieving the boredom and humility of dependence in old age, sickness and disablement. In the instant case, the State is failing to discharge its duty; hence, jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India is being invoked for issuance of appropriate writ of mandamus and/or orders and/or directions.

(8) BECAUSE pension is not a bounty payable at the sweet will and pleasure of the Government and, therefore, the petitioners have a right to claim reasonable pension, commensurate with the nature of the services they have put in, from the Government.

(9) BECAUSE the CMPF Act casts an obligation on the Central Government to provide pension to the retirees of the Coal Industry.

- (10) BECAUSE Clause 22 of the Pension Scheme framed under the CMPF Act, the respondents are obliged to revise the Pension once in every three years. The fifth revision was due in 2013 but has not been revised even once. The respondents have failed to discharge this obligation.
- (11) BECAUSE non-revision of the pension by the respondents has not only left the old retirees of Coal Industry on the verge of penury but also created wide disparity of pension between the old and new retirees. The old retirees must not get pension less than 50% of what the new retirees get
- (12) BECAUSE non-revision of pension of the retirees of the Coal Industry violates their Fundamental Right to life and liberty granted under Article 21 of the Constitution of India and is also violative of Article 14 of the Constitution of India.
- (13) BECAUSE the cut off date of 1st April, 1994 prescribed in the Pension Scheme, that is, pension payable only to those employees who have retired on or after 1st April, 1994, is wholly irrational, unjustified, arbitrary and discriminatory. Even such retirees who were members of the Family Pension Scheme but retired prior to 1-4-1994 have been denied coverage under the pension scheme.
- (14) BECAUSE Proviso to Clause 3(e) of the Pension Scheme is in conflict with and ultra vires the provisions of Section 3E(2)(b) of the CMPF Act under which the Pension Scheme has been framed.
- (15) BECAUSE it is not open to the Central Government to fix on its own a ceiling on its contribution to the Pension Fund while framing the Pension Scheme when the parent Act does not put such ceiling.
- (16) BECAUSE the Central Government has illegally not revised its contribution to the Pension Fund since 1971 when the Family Pension Scheme was introduced and despite several wage revisions ever since the Pension Scheme was introduced in 1998.
- (17) BECAUSE the Central Government is treating the Pension Fund under CMPF Act step-motherly and discriminately whereas similar pension fund under the EPF Act, Central Government's contribution has been enhanced from time to time and the ceiling of pay for the purposes of computation of Government's contribution has been enhanced upto Rs.15,000/- whereas in the case of Pension Fund under the CMPF Act, ceiling of Rs.1600/- has remained static since 1971.
- (18) BECAUSE under the provisions of the CMPF Act, it is the obligation of the Central Government to ensure that the retirees of Coal Industry are provided pension in terms of the Pension Scheme framed under the CMPF Act and to ensure that the pension is revised periodically. However, the respondents are failing to perform their statutory obligations.

36. The petitioners herein have not filed any other writ petition in this Hon'ble Court or any other court including any High Court for the reliefs which have been prayed for herein.

37. That the petitioners crave leave of this Hon'ble Court to amend their writ petition and/or to file further and/or additional affidavit or affidavits, if need be.

PRAYER

In the premise, it is most respectfully prayed that this Hon'ble Court may be pleased

- (a) to declare that the impugned Pension Scheme, viz., Coal Mines Pension Scheme, 1998, without revision of pension since inception, i.e., in 1998 with effect from 01.04.1994 and

as existing in its application to the Petitioners and the payment of pension to them as discriminatory, arbitrary and unconstitutional;

- (b) to issue a writ in nature of Mandamus and/or such other writ or direction or directions to command the Respondents to undertake revision of the Pension Scheme by providing upward enhancement of the pensionary benefits payable under the Coal Mines Pension Scheme, 1998 and further, direct the Respondents to pay pension on the basis of revision with all arrears with effect from 2001 when the first revision became due under Clause 22 of the Scheme and thereafter, upon expiry of every three years;
- (c) to issue a writ of certiorari and/or any other appropriate writ or order or direction quashing the cut-off date of 01.04.1994 as prescribed under Clause 2(fa) read with Clause 4(4) of the Coal Mines Pension Scheme, 1998 and to include the Coal Workers who have retired before April, 1994 under the purview of the Pension Scheme and further command the Respondents to pay to all such retirees who retired prior to 01.04.1994, pension at par with other retirees;
- (d) to issue an appropriate writ or order or direction declaring the Proviso to Clause 3(e) of the Coal Mines Pension Scheme, 1998 as ultra vires and unconstitutional;
- (e) to issue a writ of mandamus or any other appropriate writ or order or direction directing the respondents to revise the Pension Scheme so that no old retiree of the Coal Industry would get less than 50% of the pension which a new retiree gets after his retirement from the same post/grade;
- (f) Saddle the cost of this Petition on the Respondents.
- (g) Pass such other order or orders as may be deemed fit and proper in the circumstances of the case,

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

Drawn and Filed by

(Navin Prakash)
Advocate for the petitioners

Settled by
(Shri Ravindra Shrivastava,
Senior Advocate.)

Place: New Delhi
Filed on: 20.01.2015