IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1107 OF 2023
WITH
ORIGINAL APPLICATION NO.1021 OF 2023
WITH
ORIGINAL APPLICATION NO.761 OF 2023
WITH
ORIGINAL APPLICATION NO.1059 OF 2023
WITH
ORIGINAL APPLICATION NO.1121 OF 2023
WITH
ORIGINAL APPLICATION NO.1297 OF 2023
WITH
ORIGINAL APPLICATION NO.1370 OF 2023

DISTRICT : MUMBAI
Sub.:- Extension in Age

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ORIGINAL APPLICATION NO.1107 OF 2023

Dr. Nandakumar P. Banage.)
Age : 57 Yrs, Medical Superintendent at)
Public Health, R/o. Flat no.403, 4th Floor,)
Shiv Nanda Heights, Ramanmala,)
District : Kolhapur – 416 003.)**...Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)
Maharashtra, Mantralaya, Mumbai-32.)

2. The State of Maharashtra,)
Through its Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

3. The Commissioner of Health &)
Mission Director, National Health Mission,)
Maharashtra State, Arogya Bhawan,)
St. George Hospital Compound,)
Near C.S.T. Mumbai.)

4. The State of Maharashtra,)
Through its Commissioner, Employee State)
Insurance Services, Panchadeep Bhavan,)
Bhavan, 6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai - 400030.)

5. The Under Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Mantralaya,)
Mumbai.)

6. The Finance Department,)
Through it Secretary, 5th Floor,)
Mantralaya, Hutatma Rajguru Chowk,)
Madam Kama Road, Mumbai - 400 032.)**...Respondents**

WITH

ORIGINAL APPLICATION NO.1021 OF 2023

1. Dr. Rajani Karhade,)
Age : 58, Medical Officer of ESIS,)
R/O. Bunglow No.25, Shreesh Hsg. Soc.)
Hajuri Dargah Road, Thane (W) - 400604.)

2. Dr. Rajeshree Rajendra Patil,)
Age : 58, Medical Officer of ESIS,)
R/O-7, Geetanjali Society, Gangapur Road,)
Opp. Wagh Guruji School, Satpur,)
Nashik – 422 005.)

3. Dr. Abhay Waman Vaidya,)
Age : 58, Medical Officer of ESIS,)
R/O Flat No.9, Near Shani Mandir,)
208, South Kasaba Sanyukta Appt.,)
Solapur - 413007.)

4. Dr. Raghunath Dada Bhoye,)
Age : 58, at Public Health,)
R/O Pushpanjali Apartment, B-6, Anand)
Nagar, Akashwani Kendra,)
Ganagapur Road, Nashik - 422007.)

5. Dr. Suvarna Mane (Shirke),)
Age: 58, Medical Officer Public Health)
Health, R/O Mouni-Vihar Apartment)
Flat No.S-1, Takala Chowk, Kolhapur,)
Karvir, Rajaeampuri, Kolhapur - 416008.)**...Applicants**

Versus

1. The State of Maharashtra & 5 Ors.)**...Respondents**

WITH

ORIGINAL APPLICATION NO.761 OF 2023

1. Dr. (Mrs.) Shobhana Kanhaiya singh)
Tehra, Age: 58, Deputy Director of Health)
Services, Addl. Charge of JDHS,)
R/O 2nd Floor, Cama Building, Cama &)
Albless Hospital, Fort, Mumbai.)

2. Dr. Sunil Panalal Pokharna,)
Age : 57 Years, Medical Officer,)
Assistant Director Health Services)
(leprosy) Pune, W/O Rural Hospital.)
Shirur, Taluka, District – Pune.)**...Applicants**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)

2. The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)
Maharashtra, Mantralaya, Mumbai - 32.)

3. The State of Maharashtra,)
Through its Secretary, Public Health)

Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

4. The Commissioner of Health &)
Mission Director, National Health Mission,)
Maharashtra State, Arogya Bhawan,)
St. George Hospital) Compound,)
Near C.S.T, Mumbai.)

5. The Director of Health Services,)
Arogya Bhawan, St. George Hospital)
Compound, Near CST, Mumbai.)

6. The Under Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

7. Department of Finance 503 (Main),)
5th Floor Mantralaya, Hutatma Rajguru)
Chowk, Madam Kama Road, Mumbai – 32.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.1059 OF 2023

1. Dr Sharayu Arun Humne (Bhagat),)
Age : 57, Medical Officer of ESIS,)
R/O Building no.4, Flat No- 1305,)
Anthiea, Nehru Nagar, Pimpri, Pune City,)
Pimpri P F, Pune – 411 018.)

2. Dr. Shrikant Balkrishna Saroda,)
Age : 58, Medical officer at ESIS,)
R/O. A/604, Suyog Shivalaya, Dattawadi)
Singhgad Road, behind Nirmiti Showroom,)
Pune – 411 030.)

3. Dr. Manoj Baburao Bansode,)
Age : 58, Medical Officer Public Health,)
R/O Neminath CHS, 1st Floor,)
Room No. 103, Mudre Karjat,)
District : Raigad.) **...Applicants**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)

Public Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)
Maharashtra Mantralaya, Mumbai - 32.)

2. The State of Maharashtra,)
Through its Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

3. The Commissioner of Health &)
Mission Director, National Health Mission,)
Maharashtra State, Arogya Bhawan,)
St. George Hospital Compound,)
Near C.S.T, Mumbai.)

4. The State of Maharashtra,)
Through its Commissioner, Employee State)
Insurance Services, Panchadeep Bhavan,)
6th Floor, N.M. Joshi Marg, Lower Parel,)
Mumbai - 400030.)

5. The Under Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

6. The Finance Department,)
Through it Secretary, 5th Floor,)
Mantralaya, Hutatma Rajguru Chowk,)
Madam Kama Road, Mumbai - 400 032.)**...Respondents**

WITH

ORIGINAL APPLICATION NO.1121 OF 2023

1. Dr Taddeo Sakharamji Uike,)
Age : 58, Medical Officer of ESIS,)
R/O T-5,B-1, R-2 ESIS Hospital Complex,)
Veena Nagar, LBS Road, Mulund West,)
Mumbai - 400080.)
2. Dr. Vimal Prakash Bhosale,)
Age : 58, Medical Officer at Public Health)
R/O Amit Bloomfield, A-1302,)
Near Express Highway, Ambegaon Bk,)
Pune - 411046.)**...Applicants**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary, Public)
Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)
Maharashtra, Mantralaya, Mumbai - 32.)

2. The State of Maharashtra,)
Through its Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

3. The Commissioner of Health &)
Mission Director, National Health Mission,)
Mission, Maharashtra State,)
Arogya Bhawan, St. George Hospital)
Compound, Near C.S.T, Mumbai.)

4. The State of Maharashtra,)
Through its Commissioner, Employee)
State Insurance Services, Panchadeep)
Bhavan, 6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai - 400030.)

5. The Under Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Mantralaya,)
Mumbai.)

6. The Finance Department)
Through its Secretary, 5th Floor,)
Mantralaya, Hutatma Rajguru Chowk,)
Madam Kama Road, Mumbai – 400 032.)**...Respondents**

WITH

ORIGINAL APPLICATION NO.1297 OF 2023

Dr Alankar Laxman Khanvikar,)
Age : 57, Medical Officer of ESIS,)
R/O Kannamwar Nagar, 197/7748,)
Vikroli (East), Mumbai - 400083.)**...Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department, 10th Floor,)

G.T. Hospital Compound, Government of)
Maharashtra, Mantralaya, Mumbai - 32.)

2. The State of Maharashtra,)
Through its Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

3. The Commissioner of Health &)
Mission Director, National Health Mission,)
Maharashtra State, Arogya Bhawan,)
St. George Hospital Compound,)
Near C.S.T, Mumbai.)

4. The State of Maharashtra,)
Through its Commissioner, Employee State)
Insurance Services, Panchadeep Bhavan,)
6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai - 400030.)

5. The Under Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

6. The Finance Department,)
Through it Secretary, 5th Floor,)
Mantralaya, Hutatma Rajguru Chowk,)
Madam Kama Road, Mumbai – 400 032.)**...Respondents**

WITH

ORIGINAL APPLICATION NO.1370 OF 2023

1. Dr. Devidas Lachmana Charke,)
Age : 57, Medical Officer at Public Health)
R/O Mandagad, Ratnagiri - 415203.)**...Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department, 10th Floor,)
G.T. Hospital Compound, Government of)
Maharashtra, Mantralaya, Mumbai - 32.)

2. The State of Maharashtra,)
Through its Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)

Compound, Mantralaya, Mumbai.)

3. The Commissioner of Health &)
Mission Director, National Health Mission,)
Maharashtra State, Arogya Bhawan,)
St. George Hospital Compound,)
Near C.S.T, Mumbai.)

4. The State of Maharashtra,)
Through its Commissioner, Employee State)
Insurance Services, Panchadeep Bhawan,)
6th Floor, N.M. Joshi Marg, Lower Parel,)
Mumbai – 400 030.)

5. The Under Secretary, Public Health)
Department, 10th Floor, G.T. Hospital)
Compound, Mantralaya, Mumbai.)

6. The Finance Department,)
Through it Secretary, 5th Floor,)
Mantralaya, Hutatma Rajguru Chowk,)
Madam Kama Road, Mumbai – 400 032.)**...Respondents**

Shri A.A. Desai, Advocate for Applicants.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member-A

RESERVED ON : 03.07.2024

PRONOUNCED ON : 11.10.2024

PER : Shri Debashish Chakrabarty, Member-A

JUDGMENT

1. The Applicants have challenged the validity of 'Notification' dated 23.2.2022 of Finance Department by which 'Rule 10(1)' of MCS (Pension) Rules, 1982 was amended to extend the 'Age of Superannuation' of officers of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 to 60 Years but its applicability was limited upto 31.5.2023. The

primary contention of Applicants was that the very last 'Proviso' of the amendment to Rule 10(1) of 'MCS (Pension) Rules 1982 has resulted in Applicants being made to retire at age of 58 years which was violative of Article 14, Article 16 & Article 19 of the Constitution of India because certain others amongst of officers of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 have got in the past benefit of extended 'Age of Superannuation' upto 60 Years and even 62 Years.

2. The learned Advocate for Applicants contended that as 'Rule 10 (1)' of 'MCS (Pension) Rules 1982' amended by 'Notification' dated 23.2.2022 of Finance Department was made applicable to certain others from amongst officers of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 to give benefit to them of extended 'Age of Superannuation' of 60 years beyond 31.05.2023 by very last 'Proviso' be declared as invalid on grounds of not being based on 'Doctrine of Reasonable Classification'.

3. The learned Advocate for Applicants contended that Applicants were thus discriminated against and will have to retire at age of 58 years as per very last 'Proviso' introduced in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules, 1982' by 'Notification' dated 23.02.2022 of Finance Department by misinterpretation of executive decision taken by Government Resolution dated 29.08.2018 of Public Health Department which did not ever held that extension in 'Age of Superannuation' granted to those serving in various cadres of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 were to be applicable only upto 31.05.2023. Further, it was the contention of Applicants that the very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' violates the 'Doctrine of Reasonable Classification' due to its arbitrary nature when by various Government Resolutions of Public Health

Department, the 'Age of Superannuation' of officer of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 had been consciously had been initially extended from 58 Years to 60 Years and then from 60 Years to 62 Years, but was suddenly brought back arbitrarily to 58 Years with effect from 31.05.2023.

4. The learned Advocate for Applicants further contended that the 'Age of Superannuation' of 'Medical Officers' was initially extended from 58 years to 60 years. To that extent, the Public Health Department had issued GRs dated 30.05.2015, 30.06.2015 and 03.09.2015 and thereafter GRs dated 29.08.2018, 01.07.2019 and 09.08.2021 were issued to raise 'Age of Superannuation' even upto 62 Years against the backdrop of 'Covid Pandemic'. However, as 'Age of Superannuation' was extended by way of executive decisions and implemented by way of GRs of Public Health Department, these were quashed and set aside when they were challenged in Hon'ble Bombay High Court in Writ Petition No. 5402/2018 by Judgment dated 20.3.2020.

5. The learned Advocate for Applicants then mentioned that the Public Health Department was still finding it very difficult to have experienced and qualified hands to provide 'Citizen Services' and as such it was imperative to extend the 'Age of Superannuation' not only beyond 31.5.2023 up to 60 Years.

6. The learned Advocate for Applicants reiterated that they have to compulsorily retire upon attaining age of 58 years, if the very last 'Proviso' remains in operation after 31.05.2023 although it was kept applicable till 31.5.2023 to selectively benefit other groups of officers of Public Health Department by granting them an extension in 'Age of Superannuation' of 60 years. The Applicant contend that as they belong to same cadre of (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 under Public Health

Department, so Applicants should be entitled for same Service Benefit and can be allowed to retire only on attaining age of 60 years. The very last proviso is discriminatory to the extent that it was kept in force only till 31.05.2023.

7. The learned Advocate for Applicants emphasized that the bare reading of the very last ' Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.2.2022 of Finance Department implies that all the officers of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 who were due for retirement between 01.06.2022 and 31.05.2023 only shall get Service Benefit of extension of 'Age of Superannuation' of 60 Years. However, the 'Finance Department' and 'Health Department' have grossly misinterpreted the very last 'Proviso' of 'Notification' dated 23.2.2022 of Public Health Department by fixing 'Age of Superannuation' of 60 Years only up to 31.05.2023.

8. The learned C.P.O on the other hand emphasized that very last 'Proviso' of amended 'Rule 10(1)' of 'MCS (Pension) Rules, 1982 by 'Notification' dated 23.2.2022 of Finance Department was in consonance with stringent observation about 'Rule 12' of 'MCS (Pension) Rules 1982' in Judgment dated 20.3.2020 in W.P 540/2022 of Hon'ble Bombay High Court, Aurangabad Bench.

9. The learned CPO thereafter explained at length why the very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' in 'Notification' dated 20.3.2022 of the Finance Department had to be incorporated so as to bring to an end the improvised phase of increase in 'Age of Superannuation' beyond 58 Years of officers serving in Public Health Department following distinct improvement in filling up of vacant posts especially of (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23 who served at the foundational level to provide 'Citizen Services' by Public Health

Department. She further mentioned that there were sufficient justification for the well-considered decision taken by Public Health Department.

ASSESSMENT

10. The contention of Applicants in this batch of OA No.1107/2023 & Ors. is principally about reduction of their 'Age of Superannuation' from 60 Years to 58 Years with effect from 31.05.2023 which stands delicately balanced on interpretation of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules, 1982' by 'Notification' dated 23.02.2022 of 'Finance Department'. The very last 'Proviso' reads as follows :-

> "Provided also that, the above provisos shall be in force till the 31st May 2023."

11. The genesis of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules, 1982' which are essentially series of 'Provisos' included by 'Notification' dated 23.2.2022 of Finance Department lies in the 'Judgment' of ***Hon'ble Bombay High Court, Aurangabad Bench dated 20.3.2020 in W.P 5402 of 2018 [Dr. Sanjay S/o R. Kadam Vs. The State of Maharashtra & Ors.]*** The pertinent observations are as under:-

> 50. To tide over unforeseen exigencies, the grant of extension or to increase the age of superannuation of some employee may be permissible but, by way of executive instructions increasing the age of superannuation of all District Health Officers, Civil Surgeons and Superior Officers working in the Public Health Department from 58 years to 60 years, is not permissible without express authority and power under the Rules.
>
> 51. It is well settled law that what cannot be done directly cannot be done indirectly. When any alteration is to be brought about by legislation, the same purpose cannot be achieved by taking recourse to Government Resolutions or Executive instructions which do not have the force of law.
>
> 52. In the present matter, the Government is not able to point out any provision under any statute, under which the State Government can issue such executive instructions by the way of Government Resolutions,

increasing the age of superannuation from 58 years to 60 years, except Rule 12 of the Rules, 1982 which
we have already discussed herein above and held that its application is limited to an individual Public Servant and not in an unrestricted and general manner.

53. In view of the above discussions, we have no hesitation to hold that the impugned Government Resolutions dated 30th May, 2015, 30th June, 2015 and 3rd September, 2015 are illegal and issued without any express authority or power under the statute. Thus, the said Government Resolutions are arbitrary in nature and are liable to be set aside.

54. Since, we have already held that the impugned Government Resolutions, increasing the age of superannuation, are illegal and the same have been issued without authority or power, we reject the plea of alternate remedy raised by the respondents. More over there is no complete bar to exercise writ jurisdiction. Looking to the illegality involved in the present matter we are of the opinion that the said objection is liable to be rejected.

55. Accordingly, we declare that the impugned Government Resolutions dated 30th May, 2015, 30th June, 2015 and 3rd September, 2015 are illegal and are hereby set aside. However, we are not inclined to unsettle the Medical Officers, Civil Surgeons and Superior Officers in Public Health Department who are benefited by the said Government Resolutions, in view of the fact that they are not party before us and in view of present situation which has arisen because of COVID-19. However, we make it clear that the State Government shall not grant further extension by way of executive instruction without the authority and power under the statute."

12. The series of 'Provisos' included in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department' were thus required to be made applicable with retrospective effect from 31.05.2015 onwards as well as prospective effect upto 31.05.2023 in respect of those serving in various cadres of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23. The series of 'Provisos' included in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' refer to different periods of time between 31.05.2015 upto 31.05.2023 so as to capture the essence of executive decisions taken earlier through GR's of Public Health Department. The series of 'Provisos' included in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 are reproduced below :-

"2. In 'Rule 10' of the Maharashtra Civil Services (Pension) Rules, 2022, in sub-rule (1)-

(i) The following provisos shall be added and shall be deemed to have been added with effect from the 31st May 2015, namely:-

> "Provided that the Officers in District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group-A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group-A (In Pay Band Rs 15600-39100; Grade Pay Rs. 5400 and above as per Sixth Pay Commission and in Pay Level in Pay Matrix S-20 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years;
>
> Provided further that, the Officers in Director, Additional Director, Joint Director, Deputy Director and District Health Officer Cadres in Maharashtra Medical and Health Services, Group-A and Officers in Director (Medical), Deputy Director (Medical) and Medical Superintendent Cadres in Maharashtra Medical Insurance Services, Group-A (In Pay Band Rs.15600-39100; Grade Pay Rs. 6600 and above as per Sixth Pay Commission and in Pay Level and Pay Matrix S-23 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years;

(ii) for the first proviso as so added, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 31st May 2019, namely:-

> "Provided that, the Officers in District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group-A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group-A (In Pay Level in Pay Matrix S-20 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 62 years.";

(iii) for the second proviso as so added, the following provision shall be substituted and shall be deemed to have been substituted with effect from the 31st May, 2021, namely:-

> "Provided further that, the Officers in Director, Additional Director, Joint Director, Deputy Director and District Health Officer Cadres in Maharashtra Medical and Health Services, Group-A and Officers in Director (Medical), Deputy Director (Medical) and Medical Superintendent Cadres in Maharashtra Medical Insurance Services, Group-A (In Pay Level Matrix S-23 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 62 years;

"(iv) for both the provisos as so added, the following provisos shall be substituted and shall be deemed to have been substituted with effect from the 1st June 2022, namely:-

"Provided that, the Officers in District Civil Surgeon, Specialist, Police Surgeon and Medical Officers Cadres in Maharashtra Medical and Health Services, Group A and Medical Officers Cadre in Maharashtra Medical Insurance Services, Group A (In Pay Level in Pay Matrix S-20 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years:

Provided further that, the Officers in Director, Additional Director, Joint Director, Deputy Director and District Health officer Cadres in Maharashtra Medical and Health Services, Group- A and Officers in Director (Medical), Deputy Director (Medical) and Medical Superintendent Cadres in Maharashtra Medical and Insurance Services, Group-A (In Pay Level and Pay Matrix S-23 and above as per Seventh Pay Commission) shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years:

Provided also that, the above provisos shall be in force till the 31st May 2023."

13. The 'Age of Superannuation' of those serving in various cadres of Public Health Department including (i) 'Medical Officers Group-A' Pay Scale S-20 & (ii) 'Medical Officers Group-A' S-23 from 60 to 62 was increased by Public Health Department GR dated 31.05.2021 but it came to be challenged in OA No.639/2021 before 'MAT, Aurangabad Bench'. The OA No.639/2021 was decided on 04.01.2022 by 'MAT, Aurangabad Bench'. The stringent observations made in 'Judgment' dated 04.01.2022 in OA No.639/2021 are required to be recapitulated for better understanding of underlying issues relating to present batch of OA No.1107/2023 & Ors. The stringent observations recorded by 'MAT, Aurangabad Bench' in its 'Judgment' dated 04.01.2022 in OA No.639/2021 were as follows :-

"***18.*** The information on record shows that after 2015 no due steps have been taken for effecting the promotions. In the circumstances, if the Government is suffering a shortage of Medical Officers, we reiterate that it is a matter of introspection for the Government. We regret to state that instead of addressing aforesaid genuine bottleneck and making amends to remove the same by giving timely promotions to the aspiring eligible candidates, the Government has chosen the impermissible and illegal

way of enhancing the retirement age of existing Medical Officers working on the higher posts.

21. While praying for setting aside the G.R. dated 31.5.2021, the applicants have also prayed for directing the respondents for taking immediate steps to fill in the vacancies as on today in the Public Health Department of the State. According to us, the applicants are fully justified in making such prayers which deserve to be granted.

22. For the reasons stated above, we quash and set aside the G.R. dated 31.5.2021 issued under the signature of respondent no.5. Further, we direct the respondents to take all prompt steps to fill in the vacancies existing as on today in the Public Health Department and complete the entire process as expeditiously as possible.

23. Though we have allowed both the prayers made in the O.A., we may not unsettle the Medical Officers, who are benefitted by the impugned G.R. dated 31.5.2021 in view of the fact that they are not party before us. We leave it to wisdom of the respondents to take appropriate decision in that regard in view of the observations made by us in the body of the order and in light of the fact that the G.R. on the basis of which the said Officers are presently holding the respective posts has been set aside by us.

24. Before concluding our order, we deem it necessary to caution the respondents that they should take serious note of the unrest amongst the Medical Officers, who are eligible for promotions to the higher posts, but have not been promoted or else the "Health" of the Health Department is likely to deteriorate fast. To tide over the present situation, the more preferable way would be to promote the aspiring eligible candidates to the higher posts and simultaneously expedite the fresh recruitment."

14. The contention of Applicants in this batch of OA No.1107/2023 & Ors. is similar to those raised earlier by Applicants in batch of OA No.683/2023 & Ors. which was decided by 'MAT, Principal Bench, Mumbai'. The contentions of Applicants therein related to meaning to be assigned to the very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2023 of 'Finance Department' was heard at length and thereupon relying principally on 'Judgment' of ***Hon'ble Supreme Court in Civil Appeal No.7580 of 2012 [Dr. Prakasan M.P. & Ors. Vs. State of Kerala& Anr.***, the batch of OA No.683/2023 & Ors. came to be dismissed by 'Judgment' dated 31.08.2023. The diligently arrived at conclusions recorded by 'MAT,

Principal Bench, Mumbai' in its 'Judgment' dated 31.08.2023 in OA No.683/2023 were as follows :-

> "***20.*** In our considered view, the erstwhile compelling circumstances of 70% vacancies subsequently COVID-19 Pandemic led to the legislature to issue the Notification dated 23.2.2022. On our query, learned C.P.O furnished the information that now the Public Health Department is in the process of filling up the vacancies and now the percentage of vacancies has dropped down and will reduce considerably in future as fresh posts of Medical Officers are advertised.
>
> ***21.*** In view of this, we say that no Doctors at the regular age of retirement of 58 years is entitled to get benefits of extended age and can remain in service after 31.5.2023.
>
> ***22.*** Hence, we hold that all these Original Applications deserve to be dismissed. All the above Original Applications are dismissed. Interim relief is discharged. No orders as to cost."

14-A. The 'MAT, Principal Bench, Mumbai' during course of hearing of batch of OA No.683/2023 & Ors. had on 15.06.2023 sought the views of 'Additional Chief Secretary, Finance Department' regarding interpretation and applicability of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department'. The 'Additional Chief Secretary, Finance Department' by 'Affidavit-in-Reply' dated 24.07.2023 filed in batch of OA 683/2023 & Ors. had affirmed as under:-

> "***8.*** Hence, Medical Officers who do not attain the age of 60 years during the period from 1.6.2022 to 31.5.2023 shall be deemed to retire on the last date of the month in which the Medical Officers attains the age of 60 years e.g. Medical Officers who will complete 58 years of age on 24.4.2023 will retire on 30.4.2025 instead of retiring on 31.5.2023 as per the above provision. Also Medical Officers who will complete 58 years of age on 24.6.2023 will however retire on 30.6.2023 as per original provision of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982."

14-B. The 'MAT, Principal Bench, Mumbai' thereupon during course of hearing of batch of OA No.1107/2023 & Ors. had on 31.07.2023 sought opinion of 'Chief Secretary, Government of Maharashtra' against backdrop of divergence of views expressed by 'Finance Department' and 'Public Health Department' about applicability and interpretation of very

last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' The 'Chief Secretary, Government of Maharashtra' had then conveyed the following opinion :-

> "As there was contrary view taken by the Finance Department and the Public Health Department regarding the interpretation of the amendment to 10 of 'MCS (Pension) Rules, 1982' by Notification date 23rd February, 2022, the Hon'ble MAT, Mumbai directed the Chief Secretary to find out correct decision and inform accordingly. I perused the relevant documents as well as the Notification dated 23rd February, 2022 issued by the Finance Department. I concur with the stand taken by the Finance Department in their affidavit dated 24th July 2023 as being the concerned Administrative Department in the matter."

15. The 'Hon'ble High Court of Bombay, Principal Bench, Bombay' while granting 'Interim Relief' on 05.10.2023 in Writ Petition No.11453 of 2023 & Ors. dealing with appeals filed against 'Judgment' dated 31.08.2023 in batch of OA No.683/2023 & Ors. had relied upon the stand taken by 'Chief Secretary, Government of Maharashtra'. The important observations recorded in 'Para 11' and 'Para 12' of 'Interim Order' passed on 05.10.2023 in Writ Petition No.11453 of 2024 & Ors. by 'Hon'ble Bombay High Court, Principal Bench, Bombay' were as reproduced below :-

> "**11.** It is pertinent to note that before the Tribunal, there was a divergence of views as regards the interpretation mentioned above of the amendment between the Health Department of the State and the Finance Department. The Health Department of the State had contended that irrespective of completion of the age of 60 years, the Petitioners would stand retired as of 31 May 2023. The Finance Department, however, through the Additional Chief General Secretary, had filed an affidavit before the Tribunal stating as under :-
>
> > "***4.*** I say and submit that in pursuance of above Cabinet decision dated 19.07.2018, the Public Health Department issued Government Resolution dated 29.08.2018 thereby increasing the age of retirement of abovesaid Medical Officers from age 58 to 60 years with retrospective effect from 31.05.2018 for period of five years i.e. dated 31.05.2023.
> >
> > ***8.*** Hence, medical Officers who do not attain ttain the age of 60 years during the period from 01.06.2022 to 31.05.2023 shall be deemed to retire on the last date of the month in which the Medical Officer attains the age of 60 ycars e.g. Medical Officers who will complete 58 years of age on 24.04.2023 will retire on

> 30.04.2025 instead of retiring on 31.05.2023 as per the above provision. Also Medical Officers who will complete 58 years of age on 24.06.2023 will however retire on 30.06.2023 as per original provision of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982."

Because of this divergence of views between the two departments, the Tribunal passed a specific order on 31 July 2023 directing the Chief Secretary to decide and inform the Tribunal. Thereafter, the Chief Secretary took the following decision:

> "As there was contrary view taken by the Finance Department and the Public Health Department regarding the interpretation of the amendment to 10 of MCS (Pension) Rules by Notification date 23rd February 2022, the Hon'ble MAT, Mumbai directed the Chief Secretary to find out correct decision and inform accordingly.
>
> I perused the relevant documents as well as the Notification dated 23rd February 2022 issued by the Finance Department. I concur with the stand taken by the Finance Department in their affidavit dated 24th July 2023 as being the concerned Administrative Department in the matter."

This decision was placed on record by way of an affidavit. Interestingly, the note of the Chief Secretary was placed on record by the Secretary of the Public Health Department. Therefore, it is clear that even this divergence did not exist.

12. The Tribunal, however, has not given credence to this stand taken by the State Government before it and has referred to the Cabinet note dated 19 July 2018. We have perused the said note. This note precedes the amendment. This note by itself does not throw light on the various Interpretations that arise regarding the amendment carried out thereafter. Though, it is correct that the interpretation given by the State Government to statutory Rule will not preclude from taking a different view, for the interim order, we cannot overlook the stand of the State Government through the Chief Secretary reiterated before us by the learned Advocate General Considering these factors and since, if no interim relief is granted, the Petitions would become infructuous, we are inclined to grant interim order."

15-A. The 'Interim Relief' thereupon granted on 05.10.2023 by 'Hon'ble Bombay High Court, Principal Bench, Bombay' in Writ Petition No.11493/2023 & Ors. was as mentioned below :-

> "***13.*** Accordingly, there shall be an interim relief in terms of prayer clause (f).
>
> "(f) Pending the hearing and final disposal of present Petition, this Hon'ble Court be pleased to allow the Petitioners to continue in their services in case their services are deemed to be relieved with

effect from 31.05.2023 by giving effect to the 2nd part of the proviso of Rule 10 of Maharashtra Civil Services (Pension) Rules, 1982."

14. We make it clear that the continuation of the Petitioner after they are so reinstated under the interim order till they attain the age of 60 years will be subject to the outcome of this Petition. The question of the Respondents' power, in case the Petitioners fail in their challenge, to pass necessary orders in respect recovery /adjustment of the Pay/Wages paid to them for the services rendered under the interim order is kept open."

16. The 'Hon'ble Bombay High Court, Principal Bench, Bombay' had subsequently in (i) WP No.13814 by 'Interim Order' dated 21.12.2023, (ii) WP No.487/2024 by 'Interim Order' dated 18.01.2024, (iii) WP No.1416/2004 by 'Interim Order' dated 31.01.2024 and (iv) Writ Petition No.463/2024 by 'Interim Order' dated 01.02.2024 granted similar 'Interim Relief' to respective petitioners to allow them to continue on posts of (i) 'Medical Officers-Group A' in Pay Scale S-23 & (ii) 'Medical Officers Group-B' in Pay Scale S-20 under Public Health Department till they attain 'Age of Superannuation' at 60 Years.

17. The executive decisions which had been taken from 31.5.20215 onwards upto 31.05.2023 to initially increase and then reduce 'Age of Superannuation' of those serving in various cadres of Public Health Department including (i) 'Medical Officers-Group A' in Pay Scale S-23 & (ii) 'Medical Officers' in Pay Scale S-20 are required to be scrutinized from an intelligible perspective against backdrop of lack of concerted efforts to fill-up large number vacant posts especially of (i) 'Medical Officers-Group A' Pay Scale S-23 & (ii) 'Medical Officers' in Pay Scale S-20 as even after adverse observations had been recorded about infringement of 'Rule 12' of 'MCS (Pension) Rules 1982' ***Hon'ble 'Bombay High Court, Aurangabad Bench' in its Judgment dated 20.3.2020 in W.P 5402/2018*** which are reproduced below :-

"33. In the said backdrop, if we consider the provisions of Rule 12, it is clear that the said provision is meant for a public servant whose retention after the period of retirement is depended upon exigencies / public grounds, that is only in special circumstances.

34. The said Rules permit the Government to continue a Government servant beyond the age of retirement on public grounds. The public ground which is shown in the present matter is shortage of Medical Officers and Higher Officers. Admittedly the said situation has been created because of non-filling of vacancies for years together by the Government. The said situation cannot be therefore termed as an 'exigency' or an 'unforeseen situation'. There are vacancies in large numbers, continuously from prior to 2015 which is evident from impugned Government Resolutions.

35. Therefore, we are of the considered view that the public ground which has been shown in the present matter is a created one, because of the failure on the part of the Government to perform its obligatory duty to promptly fill in the vacancies by taking necessary steps in that regard.

36. In this matter, it is apparent from the record that for years together the Government has not taken necessary and sufficient steps to fill in the vacancies by granting promotion or by making fresh recruitment.

37. Thus, it appears to us that Government is not serious in removing the vacancies by filling the same though the candidates like the petitioners who are available for promotion or through fresh candidates who are coming out of the Medical Colleges every year in large numbers by completing their medical training and course.

38. Moreover, according to us, the general application of Rule 12 of the Rules, 1982 is not permissible, whereas only in special circumstances which have arisen out of some unavoidable exigency. Albeit applying the Rule 12 of the Rules, 1982 in general manner and not to individual case, as in the present case, the whole idea of fixing the age of retirement and granting extension to Government Servant only in the case of public grounds beyond the age of retirement becomes meaningless.

39. Under Rule 12 of the Rules, 1982, a Government Servant can be retained beyond the age of superannuation when the Government in exigencies of public service or on public grounds exercise its discretion to retain a Government Servant in service after the age of superannuation.

40. The scope for exercise of this discretion is limited to an individual Public Servant and not in general, unrestricted and uncontrolled manner.

41. In the present matter the Government instead of filling the vacancies, has adopted a course of increasing the age of superannuation from 58 years to 60 years by illegally exercising discretion under Rule 12 of the Rules, 1982, which is not permissible in law."

18. The 'MAT, Nagpur Bench' by 'Judgment' dated 25.01.2024 in O.A No. 33/2024 which deciding about amendments to Rule 10(1) of 'MCS (Pension) Rules, 1982' by 'Notification' dated 23.02.2022 of 'Finance Department had emphasized on another perspective about the contended

issue of 'Age of Superannuation' of those serving in various cadres of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-23 & (ii) 'Medical Officers in Pay Scale S-20' by recording the following observations:-

> "12. The fact in cited decision is very much different. All the petitioners were retired on 31.5.2023. As per the undertaking given by the Finance Secretary and approved by the Principal Secretary those who were to retire after completion of 58 years before 31.5.2023, their age of retirement is extended upto 60 years whereas after 31.5.2023 all those Officers shall have to be retired after completion of age of 58 years. The applicant is about to retire on 31.1.2024 and therefore cited decision is not helpful to the applicant.
>
> 13. The Principal Bench of M.A.T, Mumbai has granted interim relief to those who were directed to be retired on 31.5.2023 on attaining the age of 58 years or yet to retire on 31.10.2023 and thereafter will continue to be in service till they attain the age of 60 years. But in para-5 of the order, it is observed that the issue involved in Writ Petition No. 11453/2023 and the O.As are different.
>
> 14. As per the Judgment of the Hon'ble Bombay High Court, the Medical Officers who were to retire after completion of 58 years, their age of retirement was extended upto 60 years, but those who are to be retired after 31.5.2023, they have to retire after completion of 58 years of age. Their age of retirement is not extended upto 60 years.
>
> 15. The Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No. 4921/2019, decided on 30.4.2020 has held "it is for the Government to decide the age of retirement, it is a policy decision of the Government and Court shall not interfere in the policy decision of the Government.
>
> 17. The specific undertaking given by the Finance Secretary approved by the Principal Secretary clearly shows that those who were to retire before 31.5.2023, their age of retirement was extended upto 60 years. But the Medical Officers who attained the age of 58 years after 31.5.2023 shall be retired on completion 58 years of age. The amended provision to Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 is applicable upto 31.5.2023 and therefore the applicant cannot take the benefit of the same. In the cited decision of the Hon'ble Bombay High Court in Writ Petition No. 11453/2023 with connected W.Ps., the Petitioners were retired on 31.5.2023 on completion of 58 years of age, but in fact they should have been granted extension till age of 60 years, therefore, the relief was granted."

19. The 'Hon'ble Bombay High Court, Nagpur Bench' had also dealt with the issue of 'Age of Superannuation' of those serving in various

cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' Pay Scale S-20 and by its 'Judgment' dated 31.01.2024 in Writ Petition No.733 of 2024 highlighted the widespread perception created by different interpretations of very last 'Proviso' in amendment in Rule 10(1) of 'MCS (Pension) Rules 1982' by observing as under :-

> "6. Our attention is invited to the judgment dated 5.10.2023 delivered in Writ Petition No. 11453/2023 with other connected matters, so as to claim that the petitioner's services ought not to have been brought to an end by considering the retirement age of 58 years.
>
> 7. Learned counsel for the petitioner has insisted for grant of ad-interim relief by drawing support from the benefits extended to similarly placed candidates who are party to the judgment delivered by the Principal Seat in above referred Writ Petition No. 11453/2023 and also applicants in Original Application No. 1107/2023 and other connected matters whose cases are claimed to be at pat with the petitioner. .....
>
> 10. The fact remains that 3rd proviso to Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982, specifies that the benefit under Rule 10 shall remain in force till 31.3.2023 where after same has ceased to operate.
>
> 11. The fact remains that the order of the Division Bench delivered by the Maharashtra Administrative Tribunal at Mumbai referred above cannot be said to be binding on this Court.
>
> 12. We are of the view that once Rule 10 does not extend the benefit to the factual matrix in the case in hand. Hence, we are not inclined to grant ad-interim relief in favour of the petitioner. Apart from above, the considerations which made before the Division Bench of Maharashtra Administrative Tribunal at Mumbai while granting interim relief in favour of the petitioner viz., in Writ Petition No. 11453/2023 cannot be said to be similar to that of the facts of the present case.
>
> 13. It is not the case of the petitioner that the 3rd proviso to Rule 10 of the Maharashtra Civil Services (Pension) Rules is still in operation as on today. That being so, we reject the prayer for grant of ad-interim relief."

20. The 'Judgment' dated 20.03.2020 in Writ Petition No.5402/2018 by 'Hon'ble Bombay High Court, Aurangabad Bench' and 'Judgment' dated 31.03.2024 in Writ Petition No.0733/2024 by 'Hon'ble Bombay High Court, Nagpur Bench' and 'Interim Order' passed on 05.10.2023 in Writ Petition No.11453 of 2023 & Ors. by 'Hon'ble Bombay High Court, Principal Bench, Bombay' as well as set of Judgments passed in (a) OA

No.639/2021 dated 04.01.2022 by 'MAT, Aurangabad Bench', (b) OA No.683/2023 dated 31.08.2023 by 'MAT, Principal Bench, Mumbai' and (c) O.A.33/2024 dated 25.01.2024 by 'M.A.T Nagpur Bench' makes it imperative for us to place all of them together to have better understanding of many dimensions of the contended issue of 'Age of Superannuation' of those serving in various cadres of Public Health Department including (i) 'Medical Officers, Group-A' in Pay Scale S-20 and 'Medical Officers Group-A' in Pay Scale S-23, as several aspects of it have been substantially dealt with earlier before we proceed to consider afresh the rival contentions about interpretation of very last 'proviso' of amendments to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' during course of hearing of this batch of OA No.1107/2023 & Ors.

21. The learned Advocate for Applicant during course of arguments relied on the following set of Judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court :-

(i) (2014) 10 SCC 432 (Union of India & Ors. Vs. Atul Shukla & Ors.);

(ii) (1985) Supp. SCC 432 (B. Prabhakar Rao & Ors. Vs. State of Andhra Pradesh & Ors.);

(iii) (1983) 1 SCC 305 (D.S. Nakara & Ors. Vs. Union of India);

(iv) (2003) 5 SCC 413 (Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr.);

(v) (2020) 14 SCC 625 (All Manipur Pensioners Association Vs. State of Manipur & Ors.);

(vi) 2007(2) Mah.L.J. (Kishor B. Rajput Vs. Preeti K. Rajput);

(vii) Civil Appeal No.9849 of 2014 (State of Uttar Pradesh & Ors. Vs. Arvindkumar Srivastava);

(viii) Writ Petition No.11453 of 2023 (Dr. Mahendra V. Phalke Vs. The State of Maharashtra & Ors.);

(ix) Writ Petition No.5320 of 2018 (Ashok R. Barde Vs. The State of Maharashtra & Ors.);

(x) Writ Petition No.5042 of 2016 (Association of College & University Superannuated Teachers Vs. Union of India);

(xi) Writ Petition No.463 of 2024 (Bharti Pandit Chavan Vs. The State of Maharashtra & Ors.).

The learned Advocate for Applicants extensively referred to 'Article 14' and 'Article 16' of the 'Constitution of India' with lead arguments being centered around nuances of the 'Doctrine of Reasonable Classification'. Thus, it is necessary to reproduce extracts from few landmark Judgments of Hon'ble Supreme Court of India which were extensively referred to by learned Advocate for Applicants.

22. The ***Constitution Bench of Hon'ble Supreme Court of India in D.S. Nakara Vs. Union of India (1983) 1 SCC 305*** had dealt with the subject of application of liberalized pension rules for which Government of India had stipulated March 31, 1979 as date for categorization of Government Servants into two different classes; with one class of those who had retired before March 31, 1979 and thus not made entitled to benefits of liberalized pension rules and other class who had retired after March 31, 1979 thus were made entitled to these better pensionary benefits. The submissions were that differential treatment accorded to Government Servants who had retired prior to the specified date of March 31, 1979 was violative of 'Article 14' of 'Constitution of India' as the choice of the date was arbitrary and the classification based on the fortuitous circumstance of retirement before or subsequent to the specified date of March 31, 1979 was thus to be declared as invalid. Important extracts regarding expansive scope & meaning of 'Article 14' and significance of 'Doctrine of Reasonable Classification' as explained in Judgment ***D.S. Nakara Vs. Union of India*** (supra) are as reproduced below :-

> "***10.*** The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the

subject in Maneka Gandhi v. Union of India(1) from which the following observation may be extracted:

> "What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits..... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence..."

11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.(1) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

13. The other facet of Art. 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi's case in the earliest stages of evolution of the Constitutional law, Art. 14 came to be identified with the doctrine of classification because the view taken was that Art. 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in EP. Royappa v. State of Tamil Nadu(1), it was held that the basic principle which informs both Arts. 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

> "From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according

to political logic and constitutional law and is, therefore, violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

15. Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differntia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corrolary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved ? The thrust of Art. 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Art. 14. The court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succor. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.(1) when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the

payment of pension. 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 worst 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."

22-A. The ***Hon'ble Supreme Court of India had in B. Prabhakar Rao Vs. State of Andhra Pradesh & Ors. (1985) Supp. SCC 432*** had examined at length the issue of reduction in 'Age of Superannuation' of Government Servants. The Government of Andhra Pradesh had in 1983 decided to reduce the 'Age of Superannuation' of its Government Servants from 58 to 55 years. In order to give effect to their policy of reversal by reducing the 'Age of Superannuation' from 58 Years to 55 Years, the Government of Andhra Pradesh had amended 'Rule 56(a)' of the 'Fundamental Rules' and 'Rule 231' of the 'Hyderabad Civil Services Rules' by substituting the figure '55' for the figure '58' and by making a special provision that those who had already attained the age of 55 years and were continuing in service beyond that age on February 8, 1983 shall retire from service on the afternoon of February 28, 1983. The earlier 'Notifications' by which these amendments were carried out were followed by another 'Notification' deleting the 'Proviso' to Rule 2 of the 'Fundamental Rules' which protected Government Servants against change of their conditions of services to their detriment after they entered service. Important extracts of observations made regarding 'Article 14' and 'Article 16' of 'Constitution of India' in Judgment of Hon'ble Supreme Court of India in ***B. Prabhakar Rao Vs. State of Andhra Pradesh*** (supra) as reproduced below:-

"***16.*** A situation such as the one before us had never presented itself to the court previously. Make this case a precedent for justice say one side; let this not be the first say the other. We have had cases where the age of superannuation had been raised from 55 to 58 years; we have had cases where having earlier raised the age of superannuation from 55 to

58 years, there was later a change of policy and the age of superannuation was once again reduced to 55 years. But this is the first occasion-neither our researches nor those of the learned counsel have been able to trace another case of this kind - where the age of superannuation was first raised from 55 to 58 years, there was then a change of policy a few years later reducing the age of superannuation from 58 to 55 years and finally there was again, within a few months, a reversion to the higher age of superannuation of 58 Years. The cases of Bishnu Narain Mishra v. State of Uttar Pradesh Ors. [1965] 1 S.C.R. 693 and K. Nagaraj & Ors. v. State of Andhra Pradesh AIR 1985 S.C. 551, belong to the second category of cases. In Bishnu Narain Mishra's case, by a notification dated November 27, 1957 the Government of Uttar Pradesh raised the age of superannuation from 55 to 58 years. On May 25, 1961 the Government reduced the age once against to 55 years, and further laid down that those who had continued beyond the age of 55 years owing to the earlier notification would be deemed to have been retained in service beyond the age of superannuation and would be compulsorily retired on December 31, 1961. The appellant who attained the age of 55 years on December 11, 1960 and was continued in service was one of those who was retired on December 31, 1961. He questioned the change in the rule of retirement on the ground that it was hit by Art. 14 in as much as it resulted in inequality between public servants in the matter of retirement. The argument was that when all those who had passed 55 years were asked to retire on December 31, 1960 some had just completed 55, some were 56, some were 57 and so on and, therefore, there was discrimination.

17. The situation which was considered in Bishnu Narain's case was exactly the identical situation which obtained on February 28, 1983 in the present case and precisely the situation which was considered by the judgment pronounced on January 18, 1985 and which is reported in A.I.R. 1985 S.C. 551 as K. Nagaraj v. State of Andhra Pradesh, the very judgment the delay in pronouncing which is said to have led to this confusion. Neither in Bishnu Narain Mishra's case nor in Nakara's case had the court occasion to consider the further step that had been taken in the present case, namely, once again raising the age of superannuation to 58 years and the exclusion of a class of persons from its benefit. Both the case are therefore plainly distinguishable and are of no assistance to us in solving the problem before us.

20. In the course of our narration, we have already stated our conclusions on several of the questions at issue, both factual and legal. The final situation that emerges is that almost immediately after the age of superannuation was reduced from 58 to 55 years, it was realised by the Government of Andhra Pradesh that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their employees. A decision was very soon taken to redress the wrong by reversing the decision but an unfortunate rider was added that they should wait till the pronouncement of the judgment of the Supreme Court, which was perhaps expected to be pronounced shortly. As the judgment was not pronounced for long, it became imperative for the Government to implement their decision of their own accord and so they passed Ordinance No. 24 of 1984 and Act No. 3 of 1985, amending Act

No. 23 of 1984 by substituting 58 years for 55 years. While doing 80, unfortunately again, those that had suffered must by being compelled to retire between 28.2.83 and 23.8.84 were denied the benefit of the legislation by Cl. 3(1) of the Ordinance and Sec. 4(1) of Act No.3 of 1985. Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick up out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counsellor, 'the common man', if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The common sense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the judge in deciding questions of fairness, arbitrariness etc. viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory. The principle of 'Nakara' clearly applies. The diversion of Government employees into two classes, those who had already attained the age of 55 on 28.2.83 and those who attained the age of 55 on 28.2.83 and 23.8.84 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. Legislations to remedy wrongs ought not to exclude from their purview persons a few of the wronged persons unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. We do not find that there is any such impossibility or detriment to the public interest involved in reinducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and sought to be remedied. As observed in Nakara, the burden of establishing the reasonableness of a classification and its nexus with the object of the legislation is on the State. Though no calamitous consequences were mentioned in any of the counter affidavits, one of the submissions strenuously urged before us by the learned Advocate-General of Andhra Pradesh and the several other counsel who followed him was the oft-repeated and now familiar argument of 'administrative chaos'. It was said that there would be considerable chaos in the administration if those who had already retired are now directed to be reinducted into service.....

In the present case too, we think that the case of chaos is much overstated. The affidavits do not disclose what disastrous consequences, insoluble problems and unsurmountable difficulties will follow and how chaos will inevitably result. True quite a large number of employees who have been promoted will have to be reverted, but their promotions and promotional - appointments are all temporary (and, we take care to add

here it would make no difference even if a few were regularly promoted) and it is not e as if they lose for ever their promotional opportunities. The promotional opportunities are merely postponed to the dates on which they would be entitled to be promoted had not the fundamental rules and the Hyderabad Civil Services, Rules been amended and Act No. 23 of 1984 passed. What has now happened 18 that these persons have secured a double advantage. First, by the initial reduction of the age of superannuation, they obtained early and unanticipated promotion, that is to say, promotion ahead of the normal date on which they would have otherwise been promoted; and second their tenure in the promoted post was increased by a further three years as a result of the subsequent increase of the age of superannuation. Having secured this double advantage they naturally desire to stick to them and talk glibly of hardship and inconvenience. On the other hand, it would be a great injustice to deny justice to those who have suffered injustice must merely because it may cause inconvenience to the administration. We are governed by the Constitution and constitutional rights have to be upheld. Surely the Constitution must take precedence over convenience and a judge may not turn a bureaucrat. We do not mean to suggest that creation of a chaotic State of administration is not a circumstance to be taken into account. It may be possible that in a given set of circumstances, portentous administrative complexity may itself justify a classification. But, there must be sufficient evidence of that how the circumstances will lead to chaos. Ups and downs of career bureaucrats do not by themselves justify such a classification. It may however be of some consequence in the matter of granting relief. For instance there would be really no point in reinducting an employee if he has one or two to go to attain the age of 58 years and to retire. Reinduction of such a person is not likely to be of any use to the administration and may indeed be detrimental to the public interest. It is bound to be wasteful. In such cases as well as in cases where they can't be reinducted because they have already completed 58 years by now, they cannot obviously be reinducted. So other ways of compensating them must be found. The obvious course is to compensate them monetarily. In Industrial Law we do award back and future wages on quite a large scale and there is no reason why we cannot adopt the same principle here. If as a rule private employers in such situations are asked to pay back wages, we see no impediment in doing 80 in the case of those that are expected to be model employers i.e. the Government, public corporations and local authorities."

26. We are not to be understood as laying down that whenever the age of superannuation of Government employees or of employees of local authorities etc. is enhanced, the benefit of such enhancement should be extended not merely to persons in service on the date on which the change is effected but also to persons who have already retired from service prior to that date. It is now well established by decisions of this Court that the Government has full power to effect a change in the age of superannuation of its employees on relevant considerations. If in the exercise of such power the age of superannuation is enhanced purely by way of implementation of policy decision taken by the Government, such alteration can legally be brought about with prospective effect from the date of the commencement of the operation of the Ordinance, Act or Rule

and no question of violation of Article 14 or 16 of the Constitution will arise merely because the benefit of the change is not extended to employees who have already retired from service. In these cases now before us our conclusion is rested entirely on the finding arrived at by us after a consideration of the factual background and legislative history of the impugned Ordinance and Act that the underlying purpose and object behind the relevant provisions of the Ordinance and the Act was to set right and nullify a wrong or injustice that had been done to the employees by the abrupt reduction of the age of superannuation from 58 years to 55 years by Ordinance 8 of 1983 and the Government's notification issued as per GOMs No. 36, dated February 8, 1983 which preceded it. All that we are holding is that in the context of these telling facts and circumstances which conclusively show that the object and purpose of the legislation was to set right the injustice that had been done, there is no rational or reasonable nexus or basis for separately classifying the employees who had retired from service prior to the date of commencement of Ordinance 23 of 1984, who are the persons most affected by the wrong by denying to them the benefit of the rectification of the injustice.

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. 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."

22-B. The ***Hon'ble Supreme Court of India in All India Manipur Pensioners Association : (2020) 14 SCC 625*** has insightfully elaborated about important considerations for permissibility of valid classification under 'Article 16' of the 'Constitution of India'. The pertinent observations are reproduced below:-

"***8.*** Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with

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

8.1 In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension-is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequal and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons who are already otherwise getting the benefits and the question is with respect to revision.

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely

covered by the decision of this Court in the case of D.S. Nakara (supra). The decision of this Court in the case of D.S. Nakara (supra) shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in the case of D.S. Nakara (supra) and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement, viz. pre1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post1996. The arrears be paid to the respective pensioners within a period of three months from today."

23. The learned CPO during course of arguments relied on the following set of Judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court :-

(a) (2015) 15 SCC 613 [Satya Pal Singh Vs. State of Madhya Pradesh & Ors.];

(b) (2008) 14 SCC 702 [Government of Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors.];

(c) (2008) 14 SCC 704 [Periyar & Pareekanni Rubbers Ltd. Vs. State of Kerala.];

(d) (1985) 1 SCC 591 [S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors.];

(e) (1985) 1 SCC 628 [Mohammad Ghouse Sahib & Ors. Vs. Muhammad Kuthubudin Sahib & Ors.];

(f) (2005) 6 SCC 754 [State of Punjab & Ors. Vs. Amar Nath Goyal & Ors.];

(g) AIR 1965 SC 1567 [Bishun Narain Misra Vs. State of Uttar Pradesh & Ors.];

(h) Civil Appeal No.7580/2012 [Dr. Prakasan M.P. & Ors. Vs. State of Kerala & Anr.];

(i) Writ Petition No.733/2024 [Dr. Milind Vs. State of Maharashtra & Ors.];

(j) Writ Petition No.1416/2024 [Dr. kailas B. Batte vs. State of Maharashtra & Ors.];

The learned CPO per contra relied on another set of landmark Judgment of Hon'ble Supreme Court of India to initially elaborate about critical aspects of interpretation of 'Proviso' when found embedded in law & rules and then proceeded to argue that there was no contravention of 'Article 14' and 'Article 16' of 'Constitution of India' besides emphasizing that no case had been made out by Applicants based on 'Doctrine of Reasonable Classification'. She steadfastly reiterated that decisions regarding applicability of 'Cut of Dates' under relevant 'Service Rules' such as for 'Age of Superannuation' or 'Entitlement of Pension', etc. are best left untouched & permitted to remain within executive domains. Thus, it is necessary to reproduce extracts from landmark Judgments of Hon'ble Supreme Court of India referred to by learned CPO.

23-A. The ***Hon'ble Supreme Court of India in (2015) 15 Supreme Court Cases 613 [Satya Pal Singh vs State Of M.P. & Ors.]*** explained about specific impact of 'Proviso' in interpretation of law & rules wherein it was held as under:-

> "It is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in Dwarka Prasad v. Dwarka Das Saraf, the relevant Para 18 of which reads thus:
>
> > "18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (Thompson v. Dibdin, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

> "9..... As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule."
>
> 36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.
>
> 37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself."

23-B The ***Hon'ble Supreme Court of India in BISHUN NARAIN MISHRA Vs STATE OF UTTAR PRADESH AND OTHERS Appeal Civil 1053 of 1963*** had made distinct observations as to whether increase in 'Age of Superannuation' and then reduction at later stage would violate 'Article 14' of 'Constitution of India' so these are as reproduced below :-

> "(3) The rule was hit by Art. 14 inasmuch as it resulted in inequality between public servants in the matter of retirement. The first question that arises is whether the rule of retirement by which the age of retirement was reduced to 55 years resulting in the retirement of public servants earlier than what was provided by the previously existing rule can be said to amount to removal within the meaning of Art. 311. Reliance in this connection has been placed on Moti Ram Deka v. General Manager, North Frontier Railway (1). That case dealt with a rule in the Railway Code giving power to the Railway Administration to terminate the services of all permanent servants to whom the rule applied merely on giving notice for a specified period or on payment of salary in lieu thereof at any time during the service long before the age of retirement. It was held therein that the termination of a permanent public servant's tenure which was authorised by the rule in question was nothing more nor less than removal from service within Art. 311 and therefore they were entitled to the protection of Art. 311(2). That case in our opinion has no application to the facts of the present case, for that case did not deal with any rule relating to age of retirement. Further it was made clear in that very case that a rule as to superannuation (retirement) or as to compulsory retirement shortly before the age of superannuation resulting in the termination of service of a public servant did not amount to removal. In the present case what has happened is that the Government first raised the age of retirement from 55 years to 58 years in the year 1957 and the appellant got the advantage of (1) I.L.R. [1962] All. 793. (2) A.I.R. 1964 S.C. 600.

697 that inasmuch as he remained in service after December 11, 1960 on which date he would have otherwise retired on completing the age of 55 years. Thereafter in 1961, the Government seems to have changed its mind as to the age of superannuation and reduced it back again to 55 years. Even so the rule dealt with the age of superannuation and the termination of service on reaching the age of superannuation was held by the majority in Moti Ram Deka's case(1) as out of the application of Art. 311. We have not been shown any provision which takes away the power of government to increase, or reduce the age of superannuation and therefore as the rule in question only dealt with the age of superannuation and the appellant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of his service which thus came about was removal within the meaning of Art. 311. The alteration in the circumstances of this case at least cannot be regarded as unreasonable. The argument that the termination of service resulting from change in the age of superannuation amounts to removal within the meaning of Art. 311 and therefore the necessary procedure for removal should have been followed is negatived by the very case on which the appellant relies. We therefore hold that Art. 311 has no application to the termination of service of the appellant in the present case. The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would therefore apply from that date to all government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all government servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the proviso which lays down that government servants who had attained the age of 55 years on or before June 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. Further the second order issued on the same day also clearly shows that there was (1) A.I.R 1954 S.C. 600. 698 no retrospective operation of the rule for in actual effect no government servant was retired before the date of the new rule i.e., May 25, 1961 and all of them were continued in service up to December 31, 1961 except those who completed the age of 58 years between May 25, 1961 and December 31, 1961 and were therefore to retire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the, age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore, cannot be struck down on the ground that it is retrospective in operation. The last argument that has been urged is that the new rule is discriminatory as different public servants have in effect

been retired at different ages. We see no force in this contention either, retirement namely December 31, 1961 in the case of all public servants and fixes the age of retirement at 55 years. There is no discrimination in the rule itself. It is however urged that the second notification by which all public servants above the age of 55 years were required to retire on December 31, 1961 except those few who completed the age of 58 years between May 25, 1961, and December 31, 1961 shows that various public servants were retired at various ages ranging from 55 years and one day to up to 58 years. That certainly is the effect of the second order. But it is remarkable that the order also fixed the same date of retirement namely December 31, 1961 in the case of all public servants who had completed the age of 55 years but not the age of 58 years before December 31, 1961. In this respect also, therefore, there was no discrimination and all public servants who had completed the age of 55 years which was being introduced as the age of superannuation by the new rule by way of reduction were ordered to retire on the same date, namely December 31, 1961. The result of this seems to be that the affected public servants retired at different ages. But this was not because they retired at different ages but because their services were retained for different periods after the age of fifty-five. Now it cannot be urged that if Government decides to retain the services of some public servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the exigencies of Public service and in the present case the difference has arisen on account of exigencies of public service. we are therefore of opinion that the second notification of May 25,1961 on which reliance is placed to prove discrimination is really not discriminatory for it has treated all public servants alike and fixed December 31, 1961 as the date of retirement for those who had completed 55 years but not 58 years up to December 31, 1961. The challenge therefore, to the, two notifications on the basis of Art. 14 must fail."

23-C The ***Hon'ble Supreme Court of India in CIVIL APPEAL NO. 7580 of 2012 [DR. PRAKASAN M.P. AND OTHERS Vs. State of Kerala & Anr.]*** had insistently re-affirmed that decisions about 'Age of Superannuation' of Government Servants and decisions regarding 'Cut off Dates' are best left within the executive domain by recording significant observations which are as follows :-

"17. Such a decision lies exclusively within the domain of the Executive. It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of retrospectively of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the

decision bad; nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O. dated 9th April, 2012, on the ground of legitimate expectation."

23-D The ***Hon'ble Supreme Court of India in Government of Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors decided on 26 March, 2008*** has emphasized on need for 'Judicial Restraint' in matters of 'Cut off Dates' by observing as mentioned below :-

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.

6. No doubt in D.S. Nakara & Ors. vs. Union of India 1983(1) SCC 305 this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab & Ors. vs. Amar Nath Goyal & Ors. (supra).

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar vs. Ramjee Prasad 1990(3) SCC 368, Union of Indian & Anr. vs. Sudhir Kumar Jaiswal 1994(4) SCC 212 (vide para (vide para 31), University Grants Commission vs. Sadhana Chaudhary & Ors. 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result."

24. The learned Advocate for Applicants and learned CPO have taken us through appreciably compiled sets of landmark Judgments of Hon'ble Supreme Court of India and have extensively argued about scope and applicability of 'Article 14' and 'Article 16' of Constitution of India and 'Doctrine of Reasonable Classification' in order to assist in fresh adjudication about contentuous issue of 'Age of Superannuation' of those serving in various cadres of Public Health Department including (i) 'Medical Officers-Group A' in Pay Scale S-23 & (ii) 'Medical Officers Group-B' in Pay Scale S-20 including Applicants who have filed this batch of OA No.1107/2023 & Ors.

25. The arguments of learned Advocate for Applicants regarding interpretation of very last 'Proviso' in amendment to 'Rule 10(1)' by 'Notification' dated 23.02.2022 of 'Finance Department' were at an exalted level based on interpretation of 'Article 14' and 'Article 16' of 'Constitution of India' and 'Doctrine of Reasonable Classification' as he extensively relied on several landmark Judgments of Hon'ble Supreme Court of India. However, unlike in ***D.S. Nakara*** (supra), ***B. Prabhakar Rao*** (supra) and ***All Manipur Pensioners Association*** (supra) which had dealt with critical issues of imminent divide within an unitary structure of otherwise class neutral Government Servants under Central Government or State Government, the 'Notification' dated 23.02.2022 of Finance Department to effect amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' through series of 'Provisos' was made applicable only to particular cadres of Government Servants serving under Public Health Department. The issues relating to Government Servants which had been decided by these landmark Judgments of Hon'ble Supreme Court were born out of completely different collective of facts and circumstances including enactment of specific laws & rules which by themselves had sought to create 'Class within Class' with respect of 'Pension Benefits' and 'Age of Superannuation' of Government Servants. On the other hand, perception of there being concealed intent to create 'Class within Class' amongst officers serving in various cadres of Public

Health Department in particular amongst (i) 'Medical Officers-Group A' in Pay Scale S-23 & (ii) 'Medical Officers Group-B' in Pay Scale S-20 took form and shape over period of time on account of multitude of interpretations about probable intendment of very last 'Provisos' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982'.

26. The arguments of learned CPO with emphasis on several landmark Judgments of Hon'ble Supreme Court of India were to establish on how Public Health Department had justiciably taken executive decisions since 31.05.2015 which were retrospectively incorporated as series of 'Provisos' in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department'. Further, learned CPO explained the real reasons behind executive decisions taken in phases from 31.05.2015 onwards to cautiously calibrate increase 'Age of Superannuation' from 58 Years to 60 Years and then from 60 Years to 62 Years of various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20 upto 31.05.2023 as only intent was to sub-serve the larger 'Public Interest' including meeting unprecedented challenges posed by 'Covid pandemic' but along with due acknowledgment of cascading impact it would have in creation of 'Class within Class' if those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20 were to be permanently benefited from increase in 'Age of Superannuation' from 58 Years to 60 Years and then 60 Years to 62 Years; when all around there was widespread clamour to raise 'Age of Superannuation' to 60 Years for other categories of 'Government Servants'.

27. The compelling reasons explained by learned CPO which had resulted in executive decisions since 31.05.2015 to raise 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 indicates enduring

prevalence of acute shortage especially of 'Medical Officers' Officers-Class-II in Pay Scale S-20 and 'Medical Officers-Class I in Pay Scale S-23 from 2014-2015 upto 2023-2024, are evident from 'Tabular Charts' placed on record by 'Affidavit-in-Reply' dated 03.07.2024 filed by 'Public Health Department'. The contents of 'Tabular Charts' compiled by 'Public Health Department' are reproduced below :-

Tabular Chart-1

MMHS Class-II (S-20)						
Sr. No.	**Date & Year**	**No. of Sanctioned Posts of Medical Officers**	**Filled up posts of Medical Officers**	**No. of Vacant Posts of Medical Officer**	**No. of New appointments of Medical Officers**	**No. of Vacant Posts of Medical Officers**
1	31.03. 2019	8023	5887	2136	730	1406
2	31.03. 2020	8036	5536	2500	0	2500
3	31.03. 2021	8326	6190	2136	0	2136
4	31.03. 2022	8441	6517	445	1479	445
5	31.03. 2023	8540	6290	2250	0	2250
6	31.03. 2024	8594	5438	1226	1930	1226

Tabular Chart-2

		MMHS Class-I (S-23)		
Sr. No.	**Year**	**No. of Sanctioned Posts of Medical Officers**	**No. of Filled up Posts of Medical Officers**	**No. of Vacant Posts of Medical Officers**
1	2014-2015	1476	643	833
2	2015-2016	1552	642	910
3	2016-2017	1552	632	920
4	2017-2018	1652	600	1052
5	2018-2019	1717	560	1157
6	2019-2020	1738	548	1190
7	2020-2021	1786	665	1121
8	2021-2022	1786	771	1015
9	2022-2023	1809	848	961
10	2023-2024	1809	850	959

The contents of 'Tabular Charts' reveal that Public Health Department may not have been left with alternative choices but to retain those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 by exercising the only option to temporarily increase 'Age of Superannuation' through executive decisions initially from 58 Years to 60 Years and then on from 60 Years to 62 Years. However, it must also be observed with lament that genuine efforts to overcome this serious contingent situation relating to dearth of 'Human Resource' is not reflected in any sustainable action that was taken by Public Health Department to fill up the large number of vacant posts especially of 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale of S-20 by way of fresh recruitment by MPSC. The softer options like appointments of (a) 'Bonded Medical Officers' & (b) 'Adhoc Medical Officers' were more relied upon by Public Health Department during pre and post 'Covid Pandemic' periods although it was possible to estimate vacant posts of 'Medical Officers-Group A in Pay Scale S-23' and 'Medical Officers in Pay Scale S-20 based on projections if 'Age of Superannuation' were to be brought back to 58 Years.

28. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department' is placed at the tail end of series of 'Provisos' which had to be incorporated retrospectively to give legal sanctity to the executive decisions taken since 31.05.2015 onwards and upto 31.05.2023 from perspective of 'Article 309' of 'Constitution of India' after stringent observations came to be recorded in 'Judgment' of ***'Hon'ble Bombay High Court Aurangabad Bench' in Writ Petition No.5402 of 2018 [Dr. Sanjay R. Kadam & 6 Ors. Vs. State of Maharashtra & Ors.] dated 20.03.2020*** which subsequently was upheld by ***Hon'ble Supreme Court of India in Special Leave to Appeal (e) No.(8) 7585/2020 dated 29.11.2021***.

29. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department was therefore more than necessary to include so as to bring to natural end the outcomes from executive decisions to increase 'Age of Superannuation' in exceptional circumstances after giving adequate notice of more than 'One Year' to those serving in various cadres including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 of Public Health Department. The very last "Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.09.2022 of Finance Department was to terminate the ad-hoc transient phase of increase in 'Age of Superannuation' beyond 58 Years with effect from 31.05.2023. The very last 'Proviso' of 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department was certainly not incorporated so as to increase 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 permanently from 58 Years to 60 Years, as it is simply worded viz. "*Provided also that the above 'Provisos' shall be in force till 31st May, 2023*". The limited spans of time for which executive decisions were taken in stages from 31.05.2015 onwards to increase 'Age of Superannuation' initially from 58 Years to 60 Years and then from 60 Years to 62 Years clearly indicates that there were always acknowledgment of its cessation as and when 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 of Public Health Department could be restored back to 58 Years. Even more important to observe is that very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 was certainly not incorporated to bring into effect any criteria for different 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers-Group A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20 if they had

been fortuitously placed on either side of 31.05.2023 as was sought to be conveyed by cavalier interpretation made during course of hearing of OA No.683/2023. The 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 was therefore fixed as 60 Years only in respect of those who happened to remain in service during 01.06.2022 upto 31.05.2023 but beyond that with effect from 31.05.2023, the 'Age of Superannuation' was to be 58 Years as fixed for all other Government Servants based on original provisions of 'Rule 10(1)' of 'MCS (Pension) Rules 1982' with exception of those appointed in 'Class-IV' or such other 'Special Category' of Government Servants who may have been exceptionally allowed higher 'Age of Superannuation' as is for cadres of 'Professors/Associate Professors/Assistant Professors' under 'Medical Education & Drugs Department'.

29-A. The ***Hon'ble Bombay High Court, Aurangabad Bench dated 20.3.2020 [Dr Sanjay R. Kadam Vs. State of Maharashtra & Ors, W.P 5402/2018]*** had adequately cautioned that executive decisions taken from 31.05.2015 onwards to increase 'Age of Superannuation' of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 were not at all justiciable; since it they resulted in infraction of 'Rule 12' of the 'MCS (Pension) Rules, 1982'. The insightful observations and words of forewarning were recorded as follows :-

> "15. To consider the contentions of learned counsel for the respective parties, it is necessary to refer to Rule 10(1) and Rule 12 of the Maharashtra Civil Services (Pension) Rules, 1982. It reads thus:-
>
> > "10. Age of retirement (I) Except as provided in this rule, every Government servant, other than a Class IV servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.
> >
> > 12. Extension in service beyond the age of compulsory retirement – Notwithstanding anything contained in subrule (3) of Rule 10 Government may grant an extension of service to any Government

servant beyond the age of retirement, on public grounds, which must be recorded in writing.

Note.- Normally except in very exceptional circumstances, extension should not be granted beyond the age of 60 years."

16. From Rule 10(1) of Rules, 1982, it is clear that age of retirement of a Government Servant is 58 years and under Rule 12, the Government may grant an extension of service to any Government servant beyond the age of retirement, on public grounds, which must be recorded in writing.

38. Moreover, according to us, the general application of Rule 12 of the Rules, 1982 is not permissible, whereas only in special circumstances which have arisen out of some unavoidable exigency. Albeit applying the Rule 12 of the Rules, 1982 in general manner and not to individual case, as in the present case, the whole idea of fixing the age of retirement and granting extension to Government Servant only in the case of public grounds beyond the age of retirement becomes meaningless.

39. Under Rule 12 of the Rules, 1982, a Government Servant can be retained beyond the age of superannuation when the Government in exigencies of public service or on public grounds exercise its discretion to retain a Government Servant in service after the age of superannuation.

40. The scope for exercise of this discretion is limited to an individual Public Servant and not in general, unrestricted and uncontrolled manner.

41. In the present matter the Government instead of filling the vacancies, has adopted a course of increasing the age of superannuation from 58 years to 60 years by illegally exercising discretion under Rule 12 of the Rules, 1982, which is not permissible in law."

30. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' had explicitly and collectively conveyed to all those serving in various cadres in Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 that they will stand retired together on 31.05.2023 having served beyond the normal 'Age of Superannuation' fixed at 58 Years under 'Rule 10(1)' of 'MCS (Pension) Rules 1982' in respect of other 'Government Servants' except those appointed in 'Class-IV'. Hence, very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department which had been brought into effect from 01.06.2022 had evidently made all those serving beyond the age of 58 Years in various cadres including Public

Health Department 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 of Public Health Department fully aware of the fact much in advance that they all were to retire after 'One Year' at age of 58 Years. Hence, it was only on account of widespread perception which had developed around the phraseology of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department' which later got compounded by contradictory interpretations made within echelons of State Government between 'Public Health Department' and 'Finance Department' that has resulted in formation of the mirage that it was covert effort to intentionally create divide amongst those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 of Public Health Department cadres including 'Medical Officers Group-A'.

31. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982 by 'Notification' dated 23.02.2022 of Finance Department could not have any other intendment but of bringing to inevitable end an ad-hoc transient phase of enhancement 'Age of Superannuation of those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20. The 'Age of Superannuation' had been (a) Increased from 58 Years to 60 Years by 'Addition' on 31.05.2015, (b) Increased from 60 Years to 62 Years by 'Substitution' on 31.05.2019 & 31.05.2021, (c) Decreased from 62 Years to 60 Years by 'Substitution' on 01.06.2022. However, as thereafter it could not have been reduced back from 60 Years to 58 Years by 'Substitution' with effect from 31.05.2023; it was achieved through insertion of very last 'Proviso' in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982 by 'Notification' dated 23.02.2022 of Finance Department.

32. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department' had in fact concurrently reduced 'Age of Superannuation' of those serving in various cadres of Public Health Department especially 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20 from 62 Years to 60 years by limiting its applicability to period of 'Three Years' from 31.05.2019 to 31.05.2022. Hence, the scale of sudden of impact on service conditions of those serving in Public Health Department as 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Gropu-A' in Pay Scale S-20 who were in age bracket of 60 Years to 62 Years as on 01.06.2022 must have been identical to scale of sudden impact on services of various cadres including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20 of Public Health Department who were serving in age bracket of 58 to 60 Years as on 31.05.2023. So, it is pertinent to observe here that while reduction in 'Age of Superannuation' from 62 Years to 60 Years with effect from 01.06.2022 had been achieved by way of 'Substitution'; but on 01.06.2023, it was required to be done by adding the last 'Proviso' to amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department. The very last 'Proviso' to amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' made effective from 01.06.2022 had the very same objective although it came to lie worded differently in absence of any option thereafter to use 'Substitution'.

33. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department as it stood interpreted by 'Additional Chief Secretary, Finance Department' and subsequently affirmed by 'Chief Secretary, Government of Maharashtra' was never the real intendment of Public Health Department. The erroneous impression that it had resulted in creation of 'Class within Class' amongst those serving in various cadres including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical

Officers Group-A' in Pay Scale S-20 of Public Health Department is nothing but an attempt to ascribe wishful meaning to very last 'Proviso'. Important it is to also observe here is that there could not have been any scope for superfluous understanding that its objective was only to divide those serving in various cadres including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 of Public Health Department as on 31.05.2023 into two distinct categories of those who can be permitted to retire at age of 60 Years, if they had crossed 58 Years before 31.05.2023 while those who had not attained age of 58 Years as on 31.05.2023 would retire on attaining age of 58 Years. In fact the real intendment of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of 'Finance Department' could not have been anything which would insubordinate the rationale behind fixing of denominator 'Age of Superannuation' of Government Servants which is 58 Years as well as outrightly infract the sanctity of 'Rule 12' of 'MCS (Pension) Rules 1982'.

34. The ***Hon'ble Supreme Court of India in S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors. (1995) 1 SCC 591*** had recorded encyclopedic observations about vastitude of meanings assignable to 'Proviso' for interpretation of law & rules & thus it is necessary to refer to these in context of extensive arguments made about interpretation of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department. The vast expanse of these encyclopedic observations is evident from extracts reproduced below :-

> "***26***. ……. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment in other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:

> (a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso.
>
> (b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.
>
> (c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.
>
> (d) Where the section is doubtful, a proviso may be used as a guide to its interpretation but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.
>
> (e) The proviso is subordinate to the main section.
>
> (f) A proviso does not enlarge an enactment except for compelling reasons.
>
> (g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision."

32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai (1966) 1 SCR 367, AIR 1966 SC 459, (1967) 1 SCJ 41 it was held that the main object of a proviso is merely to qualify the main enactment. In Madras

and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality AIR 1944 PC 71 Lord Macmillan observed thus:

> "The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

33. The above case was approved by this Court in Cite v. Indo-Mercantile Bank Ltd. 1959 Supp. (2) SCR 256, AIR 1959 SC 713 where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha (1962) 2 SCR 159, AIR 1961 SC 1596, (1962) 1 SCJ 377 Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

> "As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule."

35. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself."

38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects and elements of a proviso. In State of Rajasthan v. Leela Jain (1965) 1 SCR 276, AIR 1965 SC 1296, (1966) 1 SCJ 37 the following observations were made:

> "So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."

39. In the case of STO, Circle-1, Sales Tax Officer, Circle-1. Jabalpur v. Hanuman Prasud (1967) 1 SCR 831, AIR 1967 SC 565, (1967) 19 STC 87 Bhargava, J. observed thus:

> "It is well recognized that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded."

40. In Commissioner of Commercial Taxes v. R.S Jhaver (1968) 1 SCR 148, AIR 1968 SC 59 this Court made the following observations:

> "Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself."

41. In Dwarka Prasad v. Dwarka Das Saraf. (1976) 1 SCC 128, (1976) 1 SCR 277, AIR 1975 SC 1758 Krialına lyer. J. speaking for the Court observed thus:

> "There is some validity in this submission but if, on a fair construction, the principal provision is clean a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.
>
> If the rule of construction is that prima facie à proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

42. In Hiralal Rattanlal v. State of U.P (1973) 1 SCC 216 this Court made the following observations:

> "Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section."

34-A. The ***Hon'ble Supreme Court of India in S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors. (1995) 1 SCC 591*** had further summed up the specific legal purposes served by 'Proviso' when embedded in law & rules by authoritatively holding the following :-

> "***43.*** We need not multiply authorities after authorities on this point because the legal position seem s to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:
>
> (1) qualifying or excepting certain provisions from the main enactment:

> (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:
>
> (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the Tenor and colour of the substantive enactment itself, and
>
> (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

35. The very last 'Proviso' of amendments to 'Rule 10' of 'MCS (Pension) Rules 1982' by 'Notification' dated 28.02.2023 of 'Finance Department' was required to have been understood as the proverbial 'Sunset Clause'. The 'Sunset Clause' is provision in law or rules that states the law or rule will expire after a certain date unless it is renewed by legislative action. Interesting historical perspective to 'Sunset Clause' also needs to be quoted to emphasize its significance in legislative action from time of its origin in 'Roman Law'. The origins of 'Sunset Clause' lay in 'Roman Law' in form of '*Ad tempus concessa post tempus censetur denegata*' which when translated would imply that 'what is admitted for a period will be refused after the period'. The historical significance of 'Sunset Clause' in several emergency legislations under 'Roman Law' was later codified in '*Codex Iustinianus*'.

36. The contention of Applicants in this batch of OA No.1107/2023 is specifically woven around the very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification daed 23.02.2022 of Finance Department. Hence, to decipher its interpretation and understand its impact we rely on the following landmark Judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court.

36-A. The ***Hon'ble Supreme Court of India in S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors. (1995) 1 SCC 591*** had crystalized entire scope of 'Proviso' in interpretation of law & rules and included one

which emphasizes that its sole object is to explain the real intendment which is as follows :-

> "***43(4)*** It may be used merely to act as an optional addenda to the enactment with the sole of object of explaining the real intendment of the statutory provision."

36-B. ***Hon'ble Supreme Court in the Judgment in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress dated 04.09.1990*** which is amongst the most cited Judgments contains enlightened observations about 'Interpretation of Statutes' & these few selected extracts are necessary to reproduce below :-

> "2.1 The golden rule of statutory construction is that the words and phrases or sentences should be interpreted according to the intent of the legislature that passed the Act. All the provisions should be read together. If the words of the statutes are in themselves precise and unambiguous, the words, or phrases or sentences themselves alone do, then no more can be necessary than to expound those words or phrases or sentences in their natural and ordinary sense. But if any doubt arises from the terms employed by the legislature, it is always safe means of collecting the intention, to call in aid the ground and cause of making the statute, and have recourse to the preamble, which is a key to open the minds of the makers of the statute and the mischiefs which the Act intends to redress. In determining the meaning of statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intent of the legislature, then it is proper to look for some other possible meaning and the court cannot go further.
>
> 2.3 It cannot be accepted that the Courts, in the process of interpretation of the Statute, would not make law but leave it to the legislature for necessary amendments. In an appropriate case, Judges would articulate the inarticulate major premise and would give life and force to a Statute by reading harmoniously all the provisions ironing out the creezes. The object is to elongate the purpose of the Act.
>
> 3.3 The Court must proceed on the premise that the law making authority intended to make a valid law to confer power validly or which will be valid. The freedom therefore, to search the spirit of the enactment or what is intended to obtain or to find the intention of parliament gives the Court the power to supplant and supplement the expressions used to say what was left unsaid. This is an important branch of judicial power, the concession of which if taken to the extreme is dangerous, but denial of that power would be ruinous and this is not contrary to the expressed intention of the legislature or the implied purpose of the legislation.

36-C. The ***Hon'ble Bombay High Court in Writ Petition No.5402/2018 in its Judgment dated 20.03.2020*** made very pertinent observation about provisions of 'Rule 12' of 'MCS (Pension) Rules 1982' are reiterated again as follows :-

> "39. Under Rule 12 of the Rules, 1982, a Government Servant can be retained beyond the age of superannuation when the Government in exigencies of public service or on public grounds exercise its discretion to retain a Government Servant in service after the age of superannuation.
>
> 40. The scope for exercise of this discretion is limited to an individual Public Servant and not in general, unrestricted and uncontrolled manner.
>
> 41. In the present matter the Government instead of filling the vacancies, has adopted a course of increasing the age of superannuation from 58 years to 60 years by illegally exercising discretion under Rule 12 of the Rules, 1982, which is not permissible in law."

37. The very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department when tested by yardsticks of legal principles laid down in landmark Judgments of (i) ***Hon'ble Supreme Court of India in (i) (1985) 1 SCC 591 [S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors.]***, (ii) ***Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress [AIR 1991 SUPREME COURT 101]*** (iii) ***Hon'ble Bombay High Court in Writ Petition No.5402/2018 [Dr. Sanjay R. Kadam & Ors. Vs. State of Maharashtra & Ors.]*** does not in any way contravene 'Article 14' and 'Article 16' of 'Constitution of India' as it had no other intendment but to affirmatively restore the 'Age of Superannuation' for those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 back to 58 Years with effect from 31.05.2023 and to place them again at par with other Government Servants.

38. The very last 'Proviso' of 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department in one stroke had exterminated all other preceding 'Provisos' on 31.05.2023.

However, as we have upheld its intendment, it would now survive on pages of rule book still sheltered under amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' till it is formally consigned to legacy as is conventionally done by issuing new 'Notification' with retrospective effect from 01.06.2023.

39. The law, rules & regulations of the State Government can be amended anytime as per provisions of 'Section 21' of 'The Maharashtra General Clauses Act, 1904' which reads as follows :-

> "21. Where by any Bombay Act [for Maharashtra Act] a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, (if any) to add, to amend, vary or rescind any notifications, orders, rules or by-laws, so issued."

The legal frame work provided under 'The Maharashtra General Clauses Act, 1904' would be equally applicable for any amendment to be carried out again in 'Rule 10(1)' of 'MCS (Pension) Rules 1982 which are framed under 'Article 309' of 'Constitution of India' by the State Government.

40. The series of 'Provisos' except the very last 'Proviso' in amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department are now completely erased from face of rule book; although methodology adopted by Finance Department to achieve this objective was 'Un Orthodox' when viewed against backdrop of traditional way by which such amendments are carried out, either with prospective effect or even with retrospective effect to delete earlier provisions altogether from statutes or rule books after they have either outlived their purpose or achieved their intendment by making entries in 'Footnote' after promulgation of new 'Notification'. The following 'Photo Images' of such earlier 'Notifications' in respect of 'Rule 10' and 'Rule 66' have been cropped from 'MCS (Pension) Rules 1982' to illustrate how it should have ideally been done by 'Finance Department' to unambiguously achieve restoration of 'Age of Superannuation' to 58

Years for those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 with effect from 31.05.2023. The 'Photo Images' are as shown below :-

10. Age of retirement

(1) Except as provided in this rule, every Government servant, other than a Class IV servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. He may be retained in service beyond 58 years only with the previous sanction of Government on public grounds which must be recorded in writing.

(4) **Notwithstanding anything contained in sub-rules *(1)* and *(2)* of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving [1][notice of three months]**

[1] Substituted w. e. f. 25-5-1984 by Notification No. PEN-1088/1167/ SER-4, dated 5-5-1990.

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency :

[1][Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension ; Retirement Gratuity ; and Family Pension at the same scales as admissible to a permanent Government servant.]

[1] Inserted w. e. f. 1-1-1986 by Notification No. PEN-1088/1167/SER-4, dated 5-5-1990.
[2] Inserted by Notification No. PEN-1088/1167/SER-4, dated 5-5-1990.

66. Retirement on completion of 20 years qualifying service

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of [1][ ] *three months* in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule *(1)* shall require acceptance by the appointng authority :

Provided that where the appointing authority does not refuse to grant the premission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

[2]*(3)* [ ]

[1] Deleted w.e.f. 25-5-1984 by Notification No. PEN-1088/1167/SER-4, dated 5-5-1990.
[2] Deleted w.e.f. 25-5-1984 by Notification No. PEN-1088/1167/SER-4, dated 5-5-1990.
[3] Substituted by Notification No. PEN-1088/1167/SER-4, dated 5-5-1990.

41. The 'Judgment' in this batch of OA No.1107/2023 & Others would be applicable to Applicants who are now serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 beyond 'Age of Superannuation' at 58 Years as on 31.5.2023 only because of 'Interim Relief' granted to them by this Tribunal; but it would not be applicable to those serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 beyond 'Age of Superannuation' at 58 Years after 31.05.2023 having been granted 'Interim Relief' either by Hon'ble High Court Principal Bench, Bombay or Hon'ble Bombay High Court, Nagpur Bench or Hon'ble Bombay High Court, Aurangabad Bench.

42. The 'Judgment' in this batch of OA No.1107/2023 & Others it must be cautiously noted here would not be an impediment for State Government to refix 'Age of Superannuation' of those serving in other cadres of Public Health Department including 'Medical Officers-Group-A' in Pay Scale S-23 and 'Medical Officers' in Pay Scale S-20, if any eventuality of extreme contingency as it was during 'Covid Pandemic' were to arise ever again necessitating executive decisions to be taken expeditiously in larger 'Public Interest'. However, while doing so, Public Health Department would do well to refer on elaborate observations recorded by ***Hon'ble Supreme Court of India in Judgment in K. Nagraj & Ors. Vs. State of Andhra Pradesh & Anr. 1985 AIR 551***.

43. The 'Judgment' in this batch of OA No.1107/2023 & Others though in respect of Applicants is directed to made applicable to all other similarly placed officers serving in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-B' in Pay Scale S-20 beyond the 'Age of Superannuation' at 58 Years as on 31.05.2023 who may not be before 'MAT, Principal Bench, Mumbai' or 'MAT, Aurangabad Bench' or 'MAT, Nagpur Bench' immediately upon publication of new 'Notification' by

'Finance Department' and they shall also be retired with retrospective effect from 31.05.2023 having already attained the denominator 'Age of Superannuation' of 58 years which is applicable to other Government Servants.

44. The Judgment in this batch of OA No.1107/2023 & Ors. would thus be applicable to all officers who are serving or reinstated in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 after attaining the 'Age of Superannuation' at 58 Years on account of 'Interim Relief' granted by Tribunal with exception for only those who have been granted 'Interim Relief' by Hon'ble Bombay High Court, Principal Bench or by Hon'ble Bombay High Court, Aurangabad Bench or Hon'ble High Court, Nagpur Bench. However, it is imperative to also observe here that all such officers who are serving or reinstated in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20 upon retirement with retrospective effect from 31.05.2023 would be entitled to receive 'Retirement Benefits' due to them as on 31.05.2023; but upon full recovery of 'Salary & Allowances' drawn by them beyond 01.06.2023 or such other dues related to their extended Government Service in Public Health Department beyond 31.05.2023.

O R D E R

(A) The batch of OA No.1107/2023 & Others stand Dismissed.

(B) The 'Finance Department' is directed to issue new 'Notification' on or before 30.11.2024 for deletion of very last 'Proviso' of amendment to 'Rule 10(1)' of 'MCS (Pension) Rules 1982' by 'Notification' dated 23.02.2022 of Finance Department.

(C) The Public Health Department thereafter to issue Orders for Retirement with retrospective effect from 31.05.2023 to those serving beyond 'Age of Superannuation' at 58 Years in various cadres of Public Health Department including 'Medical Officers Group-A' in Pay Scale S-23 and 'Medical Officers Group-A' in Pay Scale S-20.

(D) No Order as to Costs.

Sd/- Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

(MRIDULA BHATKAR, J.)
Chairperson

Mumbai
Date : 11.10.2024
Dictation taken by :
S.K. Wamanse.
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